

**Reprint**  
**as at 6 October 2009**

**Tax Administration Act 1994**

Public Act 1994 No 166  
Date of assent 20 December 1994

**Contents**

	Page
Title	27
1 Short Title and commencement	27
<b>Part 1</b>	
<b>Purpose and construction</b>	
2 Purpose of Act	28
3 Interpretation	28
4 Construction of statutory references	74
4A Construction of certain provisions	74
4B Application of Act in relation to Australian wine producer rebate	78
<b>Part 2</b>	
<b>Commissioner and Department</b>	
5 Inland Revenue Department	79

---

**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

**This Act is administered in the Inland Revenue Department.**

6	Responsibility on Ministers and officials to protect integrity of tax system	79
6A	Commissioner of Inland Revenue	80
6B	Directions to Commissioner	80
7	Delegation of powers by Commissioner	81
7A	Authorisation to take securities	82
8	Deputy Commissioners of Inland Revenue <i>[Repealed]</i>	83
9	Regional Controllers of Inland Revenue <i>[Repealed]</i>	83
10	District Commissioners of Inland Revenue <i>[Repealed]</i>	83
11	Appointment of other officers <i>[Repealed]</i>	83
12	Official seal	83
13	Proof of signature of Commissioner	84
14	Giving of notices by Commissioner	84
14B	Giving of notices to Commissioner	86
14C	Giving of notices to other persons	86
15	Annual report	87

#### **Part 2A**

##### **Taxpayer's tax obligations**

15A	Purpose of this Part	88
15B	Taxpayer's tax obligations	88

#### **Part 2B**

##### **Intermediaries for PAYE, provisional tax, and resident passive income**

###### ***PAYE intermediaries***

15C	PAYE intermediaries and listed PAYE intermediaries	89
15D	Application for approval as PAYE intermediary	90
15E	Revocation of approval	90
15F	Fitness of applicants	91
15G	Application for approval as listed PAYE intermediary	91
15H	Grounds for revocation of listing	92
15I	Procedure for revocation of listing	92
15J	Employers' arrangements with PAYE intermediaries	93
15K	Privacy requirements	94
15L	Amended monthly schedules	94
15M	Subsidy claim forms	94

###### ***RWT proxies***

15N	RWT proxies	95
-----	-------------	----

###### ***Tax pooling intermediaries***

15O	Establishing tax pooling accounts	96
-----	-----------------------------------	----

15P	Role of Commissioner	96
	<b><i>Tax pooling intermediaries</i></b>	
	<i>[Repealed]</i>	
15Q	Applications to establish tax pooling accounts	96
15R	Fitness of applicants	97
15S	Requirements for applications to establish tax pooling accounts	97
15T	Winding up tax pooling accounts	98
15U	Requirements for applications to establish tax pooling accounts <i>[Repealed]</i>	99
15V	Winding up tax pooling accounts <i>[Repealed]</i>	99
	<b><i>RWT proxies</i></b>	
	<i>[Repealed]</i>	
15W	RWT proxies <i>[Repealed]</i>	99
	<b>Part 3</b>	
	<b>Information, record-keeping, and returns</b>	
	<i>Commissioner's powers to obtain information</i>	
16	Commissioner may access premises to obtain information	100
16B	Power to remove and copy documents	102
16C	Power to remove and retain documents for inspection	103
17	Information to be furnished on request of Commissioner	104
17A	Court orders for production of information or return	106
18	Inquiry before a District Court Judge	108
19	Inquiry by Commissioner	110
20	Privilege for confidential communication between legal practitioners and their clients	111
20B	No requirement to disclose tax advice document	113
20C	Treatment of book or document	115
20D	Claim that book or document is tax advice document	116
20E	Book or document or part of book or document included in tax advice document	118
20F	Person must disclose tax contextual information from tax advice document	118
20G	Challenge to claim that book or document is tax advice document	120
21	Information requisitions in relation to offshore payments	121
	<i>Taxpayer's obligations to keep records</i>	
22	Keeping of business and other records	126
22A	Records required under subpart EW of Income Tax Act 2007	135

22B	Further records required	136
23	Keeping of returns where information transmitted electronically	137
	<i>Other obligations to keep and provide records</i>	
24	Records to be kept by employer or PAYE intermediary	138
	<i>PAYE tax codes</i>	
24B	PAYE tax codes	139
24C	Tax code for payment that includes income-tested benefit	141
24D	Tax code for parental leave payment	141
24E	Tax code for employment as private domestic worker	141
24F	Special tax code certificates	141
24G	Use of incorrect tax codes	143
24H	When entitlement to use tax code ends	143
24I	PAYE tax code notification and certificate	144
	<i>PAYE certificates, notification, and applications</i>	
24J	Proof of payment	145
24K	Certain information required in returns	145
24L	Schedular notification	146
24M	Exemption certificates for schedular payments	147
24N	Special tax rate certificates for schedular payments	147
24O	Certain information required from agricultural, horticultural, or viticultural employers	148
24P	Variation of requirements	149
25	RWT withholding certificates	149
26	Records to be kept for RWT purposes	155
27	Provision of tax file numbers	158
28	Recipient of resident passive income to provide tax file number when RWT not withheld	159
28B	Investor to advise portfolio tax rate entity of investor's tax file number	159
28B	Investor advising portfolio tax rate entity of portfolio investor rate [ <i>Repealed</i> ]	159
28C	Person advising retirement savings scheme of retirement scheme prescribed rate	160
29	Shareholder dividend statement to be provided by company	160
30	Statement to shareholder when FDP credit attached to dividend	163
30A	Statement to shareholder when CTR credit attached to dividend	163



30B	Statement to share supplier when share user makes replacement payment under share-lending arrangement	164
30C	Credit transfer notice to share supplier and Commissioner when share user transfers imputation credit under share-lending arrangement	165
31	Maori authority to give notice of amounts distributed	166
31B	Portfolio tax rate entity to give statement to investors and request information	167
32	Records of specified charitable, benevolent, philanthropic, or cultural bodies	169
32A	Records to be provided by employer who contributes to superannuation fund	170
32B	Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2007	171
32C	Certification requirements for transfers from superannuation funds	173
32D	Disclosure requirements for purpose of continuity provisions and public unit trusts	175
<b><i>Resident passive income</i></b>		
32E	Applications for RWT exemption certificates	175
32F	Calculation of annual gross income when threshold met	178
32G	Evidence of annual gross income and consequences of failure to meet threshold	178
32H	Providing RWT exemption certificate when person meets requirements	179
32I	Providing RWT exemption certificate to person who does not meet requirements	180
32J	RWT exemption certificates for unincorporated bodies	181
32K	Failing to meet basis of exemption	181
32L	Cancellation of RWT exemption certificates	182
<b><i>Non-resident passive income</i></b>		
32M	Persons with approved issuer status	184
<b><i>Foreign dividends</i></b> <i>[Repealed]</i>		
32N	Information requirements when payments for foreign dividends reduced <i>[Repealed]</i>	185
<b><i>Returns, etc</i></b>		
33	Returns of income	185
33A	Annual returns of income not required	187

33B	Return not required for certain scheduler gross income <i>[Repealed]</i>	200
33C	Return not required for certain providers of personal services	201
34	Presumption as to authority of person making return	201
34B	Commissioner to list tax agents	201
35	Power of Commissioner to prescribe forms	204
36	Commissioner may approve furnishing of return information by electronic means	205
36A	Electronic format of employer monthly schedule and PAYE payment form	206
36AB	Electronic format of returns by portfolio investment entity	208
36B	Other formats of employer monthly schedule	208
36BB	Electronic format for details required for tax pooling intermediaries	210
36BC	Electronic format for details required under subpart EK of Income Tax Act 2007	210
36C	Particulars furnished in electronic format	211
36CA	Electronic filing exemption for new businesses	211
36D	Non-electronic filing of employer monthly schedule	212
36E	Election available to other employers	212
37	Dates by which annual returns to be furnished	212
38	Returns to annual balance date	215
39	Consequential adjustments on change in balance date	216
39B	Changes in return dates: taxpayers with provisional tax and GST liabilities	217
40	General requirements for returns	218
41	Annual returns by persons who receive family assistance credit	219
41A	Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts	222
41B	Return by person applying for tax credit on redundancy payment	225
42	Returns by joint venturers, partners, and partnerships	227
43	Income tax returns and assessments by executors or administrators	228
43A	Non-active companies may be excused from filing returns	229
44	Commissioner may in certain cases demand special returns, and make special assessments	232
44A	Special returns by taxpayers affected by reduced deductions under Income Tax Act 2007	234
44B	Special returns for financial arrangements	236

44C	Certificates about trees	237
44D	Natural product dealer certificate	237
45	New Zealand superannuitant to estimate other income [ <i>Repealed</i> ]	238
46	Employers to make returns as to employees	238
46A	Accident Rehabilitation and Compensation Insurance Corporation to provide information as to recipients of weekly compensation	240
<b><i>Fringe benefits</i></b>		
46B	FBT returns for quarters	243
46C	FBT returns for years	244
46D	FBT returns: changes in payment periods	244
46E	FBT returns: information for calculations	245
47	ESCT statements provided by employers	245
47B	RSCT statements provided by retirement scheme contributor or retirement savings scheme	246
48	Special arrangements for supply of information by employer or PAYE intermediary to Commissioner	247
48B	Reconciliation statement for retirement scheme contribution withholding tax	248
49	NRWT withholding certificates and annual reconciliations	250
50	Statement of payment of RWT	254
51	RWT withholding reconciliation statements	254
52	Disclosure of interest payments when no requirement to withhold RWT	259
53	Disclosure of certain financial arrangement transactions where interest payable to exempt person, etc	260
54	Information in relation to recipients of resident passive income	262
55	Consequence of inability to provide tax file numbers	263
56	Returns of special accounts	263
57	Maori authority to make returns of income	264
57B	Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement	264
58	Returns of specified charitable, benevolent, philanthropic, or cultural bodies	268
59	Disclosure of trust particulars	268
59B	Disclosure of foreign trust particulars	270
60	Returns of inter-related arrangements [ <i>Repealed</i> ]	271
61	Disclosure of interest in foreign company or foreign investment fund	272
62	Returns as to debentures and interest on debentures	274

63	Commissioner to be notified of bonus issue	274
64	Co-operative company to provide particulars of deemed dividend	274
65	Information to be furnished with return by petroleum mining entity making dispositions of shares or trust interests	275
66	Annual and other returns for PCA persons	276
67	Company dividend statement when ICA company declares dividend	278
68	Statement when FDP credit attached to dividend	280
68A	Statement when CTR credit attached to dividend	280
68B	Distribution statement required when Maori authority makes distribution	281
68C	Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form	281
68D	Statements in relation to research and development tax credits: single persons	283
68E	Statements in relation to research and development tax credits: internal software development groups	284
68F	Requirements for statements in relation to research and development tax credits	284
69	Annual ICA return	285
69B	Annual Maori authority credit account return required by Maori authority	287
70	Annual ICA return to be furnished if: required by Commissioner; requirement for imputation credit account ceases; or balance retrospectively reduced to debit or to less than refund	288
70B	Annual Maori authority credit account return to be furnished in particular cases	290
71	Annual FDPA return	291
<b><i>Foreign dividends</i></b>		
71B	Return requirements for refunds: foreign dividends	292
72	Annual FDPA return to be furnished where Commissioner so requires, or where company ceases to be resident in New Zealand	293
73	Annual FDPA returns of consolidated groups	294
74	Annual ICA return to be furnished in respect of consolidated imputation group	294
75	Notification of amalgamation to Commissioner	295
76	Amalgamated company to assume rights and obligations of amalgamating company	296

77	Company electing to maintain branch equivalent tax account to furnish amended annual ICA return	297
78	Annual and other returns for BETA persons	297
78B	Applications for tax credits	300
78C	Disclosure when changes occur	300
78D	Evidential requirements for tax credits	300
78E	Information for underlying foreign credits <i>[Repealed]</i>	301
78F	Time for providing information in relation to underlying foreign credits <i>[Repealed]</i>	301
79	Other annual returns	301
80	Commissioner may require other returns to be made	302

**Part 3A**

**Income statements**

80A	Application	302
80B	Notification required that taxpayer not subject to this Part	302
80C	Natural person to request income statement	303
80D	Commissioner must issue income statement	304
80E	Particulars to be included in income statement	306
80F	Taxpayer obligations and assessment on receipt of income statement	307
80G	Income statement deemed return	309
80H	Income statement deemed assessment	309
80I	Deemed matters	312

**Part 3B**

**Credits of Tax**

*Applying for payment by instalment*

80KA	Applications for payment of tax credit by instalment	313
80KB	Contents of application	314
80KC	When tax file number of child does not accompany application	315
80KD	What Commissioner must do on receipt of application	316

*Notices of entitlement*

80KE	Notices of entitlement	317
80KF	Effect of giving notice of entitlement	317
80KG	Notifying Commissioner of events affecting notice of entitlement	317
80KH	Cancellation of notice of entitlement	318

*Payments to holders of notices of entitlement*

80KI	Payment of tax credit by instalment by Commissioner	319
------	---	-----

80KJ	Delay in providing notice of entitlement	320
80KK	Payment by instalment of family tax credit (without abatement)	320
80KL	Payment of instalments into accounts	321
80KLB	Recovery of excess tax credits	322
80KM	Summary of instalments paid	322

*Payments of tax credit by chief executive*

80KN	Payment of tax credit by chief executive	323
80KO	Determining WFF tax credit	323
80KP	When entitlement to income-tested benefit ends	324
80KQ	No authority to pay WFF tax credit	324
80KR	Request by chief executive to stop payment of WFF tax credit	325
80KS	Request by person to stop or re-start payment of tax credit	325
80KT	Details of payments of tax credits	325

*When Commissioner takes over payment of tax credit from chief executive*

80KU	Payment of tax credit taken over by Commissioner	326
80KV	Statement of family scheme income	327
80KW	Effect of extra instalment on entitlement to tax credit	327

**Part 4  
Secrecy**

81	Officers to maintain secrecy	330
81B	Disclosure of information concerning tax advisor or person acting as tax agent	342
82	Disclosure of information for matching purposes	342
82A	Disclosure of information to prevent cessation of benefit payments	349
83	Disclosure of information for purposes of entitlement card	350
84	Disclosure of information for family support double payment identification	354
85	Disclosure of address information in relation to debtors	359
85A	Disclosure of certain information in relation to fines defaulters	361
85B	Disclosure of information for purposes of mutual assistance provision contained in social security agreement	363
85C	Use and supply of information supplied for purposes of section 85B	365

85D	Ministry of Education to provide information as to study status of student loan borrowers <i>[Repealed]</i>	365
85E	Disclosure of information for assessment of levies	365
85F	Disclosure of information for verification of government screen production payment entitlement	367
85G	Disclosure of information in relation to Working for Families tax credits	368
85GB	Government Actuary to provide information to Commissioner for purpose of administration of KiwiSaver Act 2006	371
85GC	Use of information supplied under section 85GB	371
85H	Disclosure of information for purposes of Parental Leave and Employment Protection Act 1987	372
85I	Use of Parental Leave and Employment Protection Act 1987 and parental tax credit information to determine entitlement	373
85J	Disclosure of information for administration of Australian wine producer rebate	374
85K	New Zealand Police and Ministry of Justice to provide information concerning sex offences for purposes of child support exemptions	375
85L	Use of information supplied under section 85K	376
86	Other persons to maintain secrecy	377
87	Further secrecy requirements	382
88	Secrecy obligations not to prevent disclosure in arrangements for relief from double taxation and exchange of information	385
89	Commissioner to inform Minister where funds of gift-exempt body applied for non-charitable purpose, etc	385

#### **Part 4A**

#### **Disputes procedures**

89A	Purpose of this Part	385
89AB	Response periods	386
	<i>Notices of proposed adjustment</i>	
89B	Commissioner may issue notices of proposed adjustment	388
89C	Notices of proposed adjustment required to be issued by Commissioner	388
89D	Taxpayers and others with standing may issue notices of proposed adjustment	391
89DA	Taxpayer may issue notice of proposed adjustment for taxpayer assessment	393

89E	Election of small claims jurisdiction of Taxation Review Authority	394
89F	Content of notice of proposed adjustment	394
89G	Issue of response notice	395
89H	Deemed acceptance	396
89I	Circumstances where disputant may not challenge adjustment	397
89J	Where Commissioner accepts adjustment proposed by disputant	397
89K	Late actions deemed to occur within response period	398
89L	Application to High Court	400

*Disclosure notices*

89M	Disclosure notices	401
89N	Completing the disputes process	404
89O	Test cases	407

**Part 5**  
**Determinations**

90	Determinations in relation to financial arrangements	408
90AA	Application of determinations made under section 90	414
90AB	Application for determination	414
90AC	Determinations relating to financial arrangements	414
90AD	Notification of determinations and notices	418
90AE	Four-year period in which determination not required to be applied	419
90AF	Imputation arrangement to obtain tax advantage	419
90AG	Maori authority arrangements to obtain tax advantage	420
90A	Determinations in relation to apportionment of interest costs	421
91	Determinations in relation to petroleum mining operations	423
91AA	Determinations in relation to standard-cost household service	426
91AAB	Determinations relating to types and diminishing values of listed horticultural plants	428

*Determinations relating to prepayments*

91AAC	Exemptions from section EA 3 of Income Tax Act 2007	430
-------	---	-----

*Determinations relating to livestock*

91AAD	Determination on methods for calculating value of specified livestock under national standard cost scheme	431
-------	---	-----



91AAE	Publication and revocation of determinations relating to livestock	432
-------	--	-----

*Determinations relating to depreciation*

91AAF	Determination on economic rate	433
91AAG	Determination on special rates and provisional rates	435
91AAH	Commissioner may decline to issue special rate or provisional rate	437
91AAI	Effect on special rate of change in circumstances	438
91AAJ	Disputing or challenging determination	439
91AAK	Notice of setting of economic rate	440
91AAL	Determination on maximum pooling value	440
91AAM	Applications for determinations	440

*Determinations relating to environmental restoration expenditure*

91AAN	Determinations on rates for diminishing value of environmental expenditure	442
-------	--	-----

*Determinations relating to calculation of FIF income using fair dividend rate method*

91AAO	Determination on type of interest in FIF and use of fair dividend rate method	444
-------	---	-----

*Determinations relating to non-attributing active CFCs*

91AAQ	Determination on insurer as non-attributing active CFC	446
-------	--	-----

*Determinations relating to relocation payments*

91AAR	Determination relating to eligible relocation expenses	448
-------	--	-----

**Part 5A**  
**Binding rulings**

91A	Purpose of this Part	450
91B	Interpretation	450
91C	Taxation laws in respect of which binding rulings may be made	450

*Public rulings*

91D	Commissioner may make public rulings	454
91DA	Content and notification of a public ruling	454
91DB	Effect of a public ruling	455
91DC	Application of a public ruling	455
91DD	Extension of a public ruling	456
91DE	Withdrawal of a public ruling	456

*Private rulings*

91E	Commissioner to make private rulings on request	458
91EA	Effect of a private ruling	461
91EB	Application of a private ruling	462
91EC	Applying for a private ruling	463
91ED	Disclosure requirements	463
91EE	Commissioner may request further information	464
91EF	Assumptions in making a private ruling	464
91EG	Right to consultation	464
91EH	Content and notification of a private ruling	465
91EI	Withdrawal of a private ruling	465
91EJ	Disclosure of private ruling [ <i>Repealed</i> ]	466

*Product rulings*

91F	Commissioner may make product rulings	467
91FA	Effect of a product ruling	468
91FB	Application of a product ruling	469
91FC	Applying for a product ruling	470
91FD	Disclosure requirements	470
91FE	Commissioner may request further information	471
91FF	Assumptions in making a product ruling	471
91FG	Right to consultation	472
91FH	Content and notification of a product ruling	472
91FI	Extension of a product ruling [ <i>Repealed</i> ]	473
91FJ	Withdrawal of a product ruling	473

*Rulings generally*

91G	Effect of legislative change on binding ruling	475
91GA	Applying for ruling on effect of change in legislation	475
91GB	Commissioner to make status rulings on request	475
91GC	Requirements for status ruling applications	476
91GD	Commissioner may request further information	476
91GE	Right to consultation	477
91GF	Content of status ruling	477
91GG	Notification of status ruling	477
91GH	Effect of status ruling	478
91GI	Effect of minor error on binding ruling	478
91H	Applications for rulings not to affect obligations and powers	478
91I	Regulations	478
91J	Commissioner may not issue ruling to applicant with outstanding debts	479

**Part 6**  
**Assessments**

92	Taxpayer assessment of income tax	479
92AAA	Determination on cost of timber	482
92AA	Assessment for tax credits under Part M of Income Tax Act 2007	483
92AB	Assessments of liabilities of shareholders of qualifying companies	483
92A	Basic rates of income tax	484
92B	Taxpayer assessment of GST	484
93	Assessment of FBT	485
93B	Trustee income: Commissioner's power to assess	486
93C	Foreign tax credits: Commissioner's power to amend assessments	487
94	Assessment of qualifying company election tax and additional tax	487
94A	Assessment of shortfall penalties	489
94B	Liability of wholly-owned group and other bodies to pay shortfall penalties	489
95	Assessment of withdrawal tax	490
96	Assessment of New Zealand superannuitant surcharge <i>[Repealed]</i>	492
97	Assessment of imputation penalty tax	492
97B	Assessment of Maori authority distribution penalty tax	493
98	Assessment of ESCT	494
98B	Assessment of retirement scheme contribution withholding tax	496
99	Assessment of RWT	497
100	Assessment of NRWT	498
101	Assessment of further income tax	500
101B	Assessment of imputation additional tax	501
102	Assessment of FDP <i>[Repealed]</i>	502
103	Assessment of further FDP <i>[Repealed]</i>	503
103A	Assessment of FDP relating to conduit tax relief <i>[Repealed]</i>	504
104	Assessment of FDP penalty tax <i>[Repealed]</i>	504
104B	Determination of credits and debits in memorandum accounts	505
105	Assessments and determinations made by electronic means	506
106	Assessment where default made in furnishing returns	507

107	Amended assessment for income tax where return date between 31 March and 1 October	508
107A	Time bar for amendment of assessments	509
108	Time bar for amendment of income tax assessment	510
108A	Time bar for amending GST assessment	513
108B	Extension of time bars	514
109	Disputable decisions deemed correct except in proceedings	516
109A	Transitional provision affecting assessments	516
110	Evidence of returns and assessments	516
111	Commissioner to give notice of assessment to taxpayer	518
112	Commissioner to make determination of life insurer's policyholder net loss <i>[Repealed]</i>	519
113	Commissioner may at any time amend assessments	519
113B	Amended assessments if dividend recovered or repaid	520
113C	Amended assessments for attributed repatriation dividends	521
113D	Amended assessments for research and development tax credits	522
114	Validity of assessments	522
115	Determination of claims for foreign tax credits <i>[Repealed]</i>	523
116	Notice of foreign tax credit determination to taxpayer <i>[Repealed]</i>	523
117	Foreign tax credit determination deemed correct except in proceedings on objection <i>[Repealed]</i>	523
118	Evidence of foreign tax credit determination <i>[Repealed]</i>	523
119	Commissioner may determine amount of provisional tax	523
119A	Amount of provisional tax based on 1997-98 or earlier income year <i>[Repealed]</i>	526

**Part 7**  
**Interest**

120	Commissioner to pay interest on certain excess tax <i>[Repealed]</i>	527
120A	Purpose of this Part and nature of interest	527
120AA	Application of Part	527
120B	Persons excluded	528

*General provisions*

120C	Definitions	529
120D	Liability to pay interest	535
120E	Amount of interest payable	535
120EA	Amount of interest payable to or by life insurers	536

120F	Interest priority and rights of Commissioner	537
120G	Payment date	538
120H	Setting and varying interest rates	538
120I	No right to object to interest	538
<i>Specific provisions</i>		
120J	Purpose of specific provisions	539
120K	Instalments of and due dates for provisional tax <i>[Repealed]</i>	539
120KB	Provisional tax instalments and due dates generally	539
120KC	Residual income tax of new provisional taxpayer	540
120KD	Provisional tax instalments in transitional years	543
120KE	Provisional tax and rules on use of money interest	546
120L	Meaning of unpaid tax and overpaid tax for provisional tax purposes	548
120M	Where provisional tax paid by company does not count as overpaid tax	549
120N	Variation to definition of <b>date interest starts</b> for provisional tax	550
120O	Variation to definition of date interest starts	550
120OB	Variation to definitions for determining interest chargeable or payable to PAYE intermediaries	551
120OC	Application of sections 120A, 120AA and 120D to 120I to PAYE intermediaries	554
120OD	Application of sections 120A, 120AA and 120C to 120I to intermediaries who operate tax pooling accounts	554
120OE	Interest paid on deposits in tax pooling accounts	554
120P	Spreading tax liability or apportioning income back over earlier income years	555
120PA	Applying tax credit for supplementary dividend to earlier income year	556
120Q	Due date for underestimation penalty tax	557
120R	Special provision for FDP <i>[Repealed]</i>	557
120S	Amount in nature of interest to be added to fringe benefit tax paid on annual or income year basis <i>[Repealed]</i>	558
120T	Interest on deferrable tax	558
120U	Bond provided for obligation to withhold or deduct amount of tax	559
120V	Interest on overpaid RWT	560
121	Interest to be charged where residual income tax exceeds provisional tax <i>[Repealed]</i>	560
122	Interest on tax overpaid <i>[Repealed]</i>	561
123	Amount in nature of interest to be added to fringe benefit tax paid on annual or income year basis <i>[Repealed]</i>	561

124	Interest to be charged and payable with respect to certain dividend withholding payments <i>[Repealed]</i>	562
-----	--	-----

**Part 8**  
**Objections**

124A	Application of Part 8	562
125	Certain rights of objection not conferred	563
126	Procedure for objections to assessments	567
127	Commissioner to consider objections and may amend assessment	568
128	Payment of disputed tax where competent objection lodged	568
128A	Waiver of payment or security <i>[Repealed]</i>	570
129	Determination of objection not to affect other matters	570
130	Objections to allowance determinations	570
131	Objections to determinations <i>[Repealed]</i>	572
132	Application of this Part to objections to foreign tax credit determinations <i>[Repealed]</i>	572
133	Wrong PAYE withholding determination a ground for objection	572

*Case stated*

134	Objector may require that objections be submitted to Taxation Review Authority	573
135	Powers of Taxation Review Authority on determination of objection or case stated	573
136	When objection may be referred directly to High Court	575
137	Test case procedure	581
138	Determination by Taxation Review Authority of objection in relation to allowances	584

**Part 8A**  
**Challenges**

138A	Application of this Part	585
138B	When disputant entitled to challenge assessment	585
138C	When disputant entitled to challenge disputable decision other than assessment	587
138D	Challenge may in exceptional circumstances be commenced after response period	587
138E	Certain rights of challenge not conferred	588
138F	Challenging disputable decisions which are not assessments	591
138G	Effect of disclosure notice: exclusion of evidence	592

138H	Application to strike out proceedings	593
138I	Payment of disputed tax	593
138J	Waiver of payment or security <i>[Repealed]</i>	595
138K	Determination of challenge not to affect other matters	595
138L	Challenging civil penalties	595
138M	Wrong PAYE withholding determination a ground for challenge	596
138N	Proceedings may be transferred to different hearing authorities	597
138O	Transfer from small claims jurisdiction of Taxation Review Authority	597
138P	Powers of hearing authority	598
138Q	Challenges designated as test cases	600
138R	Stay of proceedings for similar cases	600
138S	Challenge to be heard before Taxation Review Authority	602

**Part 9**  
**Penalties**

139	Purposes of this Part	602
139A	Late filing penalty for certain returns	603
139AAA	Late filing penalty for GST returns	606
139AA	Non-electronic filing penalty	607
139B	Late payment penalty	608
139BA	Imposition of late payment penalties when financial relief sought	613
139C	Late payment penalty and provisional tax	614
140	Where another person withholds RWT	618
140A	Underestimation penalty where income tax underestimated as at final instalment date <i>[Repealed]</i>	618
140B	Imputation penalty tax payable where end of year debit balance	619
140BB	Transitional imputation penalty tax payable in some circumstances	620
140C	FDP penalty tax payable where end of year debit balance <i>[Repealed]</i>	621
140CA	Transitional FDP penalty tax payable in some circumstances <i>[Repealed]</i>	622
140CB	Maori authority distribution penalty tax payable where end of year debit balance	623
140D	Application of other provisions of Act to imputation penalty tax and dividend withholding payment penalty tax <i>[Repealed]</i>	623

140DB	Application of other provisions of Act to Maori authority distribution penalty tax <i>[Repealed]</i>	623
141	Tax shortfalls	623
141AA	Shortfall penalty if non-resident contractor relieved from all liability to pay tax on contract payment	629
141A	Not taking reasonable care	630
141B	Unacceptable tax position	631
141C	Gross carelessness	635
141D	Abusive tax position	636
141E	Evasion or similar act	638
141EA	Shortfall penalty and provisional tax	640
141EB	Promoter penalties	640
141EC	Definition of promoter	642
141ED	Not paying employer monthly schedule amount	642
141F	Commissioner to determine portions in which shortfall penalty payable by taxpayer and officers of taxpayer	645
141FB	Reduction of penalties for previous behaviour	646
141FC	Loss attributing qualifying companies-reduction of shortfall penalties <i>[Repealed]</i>	649
141FD	Shareholders of loss-attributing qualifying companies	649
141G	Reduction in penalty for voluntary disclosure of tax shortfall	650
141H	Reduction for disclosure of unacceptable tax position	651
141I	Reduction where temporary shortfall	652
141J	Limitation on reduction of shortfall penalty	653
141JAA	Shortfall penalty for not taking reasonable care or for taking unacceptable tax position may not be more than \$50,000	654
141JA	Application of Part 9 to non-filing taxpayers	654
141JB	Application of Part 9 to PAYE intermediaries	655
141K	Increased penalty for obstruction	656
141KB	Discretion to cancel some shortfall penalties <i>[Repealed]</i>	656
141L	Duty of Commissioner to report on application of penalties	656
142	Due date for payment of late filing penalty	657
142A	New due date for payment of tax that is not a penalty	660
142B	Due date for shortfall penalties	662
142C	Due date for payments by officers	662
142D	Due date for repayment of excess refund or credit of tax	663
142E	Due dates for payment of imputation penalty tax	663
142F	Due date for payment of deferrable tax	664
142G	Due date for payment of non-electronic filing penalty	664



*Criminal penalties*

143	Absolute liability offences	665
143A	Knowledge offences	666
143B	Evasion or similar offence	670
143C	Offence for failure of officers of Department to maintain secrecy	671
143D	Offence for failure of other persons to maintain secrecy	671
143E	Secrecy requirements where information given by Department	672
143F	Offence in relation to inquiries	673
143G	Offence in relation to court orders	674
143H	Obstruction	674
144	Certain offences in relation to Stamp and Cheque Duties Act 1971	675
145	Penalties for offences for which no specific penalty imposed	676
146	Publication of names <i>[Repealed]</i>	677
147	Employees and officers	677
147B	Directors and officers of resident foreign trustee	678
148	Aiding or abetting	678

*Proceedings and evidence*

149	Imposition of civil and criminal penalties	679
149A	Standard of proof and onus of proof	679
149B	Proceedings for offences	680
150	Information may charge several offences	680
150A	Information may be laid within 10 years for income tax and GST offences	681
150B	Information may be laid within 4 years for stamp duty and gaming duty offences	682
150C	Authority to lay information	683
150D	Evidence in proceedings for failure to furnish returns or information	683
150E	Evidence inconsistent with instrument not admissible to reduce stamp duty <i>[Repealed]</i>	683
151	Non-presentation of instrument for stamping <i>[Repealed]</i>	684
152	Evidence of financial or property transactions	684

*Special additional taxes*

153	Imputation penalty tax payable where end of year debit balance of imputation credit account <i>[Repealed]</i>	689
154	Dividend withholding payment penalty tax payable where end of year debit balance <i>[Repealed]</i>	689

155	Application of other provisions of that Act to imputation penalty tax and dividend withholding payment penalty tax [ <i>Repealed</i> ]	690
-----	--	-----

**Part 10**  
**Recoveries**

*General*

156	Mode of recovery of unpaid tax	690
156A	Recovery of civil penalties	690
157	Deduction of tax from payments due to defaulters	692
157A	Application of Parts VII and IX to defaulters	700
158	Procedure in High Court where defendant absent from New Zealand	701
159	Procedure in District Court where defendant absent from New Zealand	701
160	Commissioner may appear in legal proceedings by officer of Public Service	701
161	Costs against Commissioner	701
162	Proceedings not affected by vacancy or change in office of Commissioner	702
163	No limitation of action to recover tax	702
164	Crown Proceedings Act 1950 not affected	702
165	Recovery of tax paid by one person on behalf of another	703
165AA	Recovery of tax paid by superannuation fund	703
165A	Recovery of excess tax credits allowed	704
165B	Recovery of overpaid refunds: NRWT	705
166	Tax paid in excess may be set off against additional tax when assessment reopened	705
166B	Shipping business of absentee taxpayer	706

*Deductions*

167	Recovery of tax and payments from employers or PAYE intermediaries	707
168	Employer or PAYE intermediary failing to withhold or deduct tax or payments	711
169	Unpaid tax payments, etc, to constitute charge on employer's or PAYE intermediary's property	713
170	Recovery of RWT	717
171	Person failing to withhold RWT	718
172	Unpaid RWT constitutes charge on payer's property	719
173	Overpayment of family credit of tax, etc [ <i>Repealed</i> ]	720

**Part 10A**

**Tax recovery agreements**

173A	Application of Part	720
173B	Definitions	721
173C	Tax recovery agreements	721
173D	Taxes that may be recovered	722
173E	Requests for assistance	722
173F	Scope of assistance	723
173G	Limitations on assistance in recovery	723
173H	Contested act of assistance	724
173I	Rights of appeal	724
173J	Certificates given by Commissioner	725

**Part 10B**

**Transfers of excess tax**

173K	Application	725
------	-------------	-----

*Transfer rules*

173L	Transfer of excess tax within taxpayer's accounts	726
173M	Transfer of excess tax to another taxpayer	727
173MB	Limitation on transfer by PAYE intermediary	729
173N	Transfer of excess tax—tax credits	729
173O	Transfer of excess tax if no date specified by taxpayer	729

*Application of transfer rules to excess provisional tax*

173P	Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment	730
173Q	Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment	731
173R	Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment	734

*Miscellaneous*

173S	Transfers of interest on overpaid tax	735
173T	Application of excess tax if taxpayer has unsatisfied tax liability	736
173U	Transfers of excess financial support	736

**Part 11**  
**Remission, relief, and refunds**

174	Application of Part to tax years before 1994	737
174AA	Power of Commissioner in respect of small amounts of refunds or tax payable	737
174A	Partial refunds of GST	738
175	Small amounts of additional tax, etc, not to be charged <i>[Repealed]</i>	739
176	Recovery of tax by Commissioner	739
177	Taxpayer may apply for financial relief	740
177A	Definition of serious hardship	741
177B	Instalment arrangements	742
177C	Write-off of tax by Commissioner	743
177CA	Proof of debt	746
177D	Relief to taxpayers to whom new start grants payable	746
178	Remission of additional tax imposed on underestimation <i>[Repealed]</i>	747
179	Relief from additional tax or incremental tax <i>[Repealed]</i>	748
180	Remissions and refunds of imputation penalty tax	748
181	Remissions and refunds of FDP penalty tax <i>[Repealed]</i>	750
181B	Remissions and refunds of Maori authority distribution penalty tax	751
181C	Remission of late payment penalties and interest incurred due to obligation to pay further income tax	752
181D	Remission of late payment penalties and interest incurred due to obligation by Maori authority to pay further income tax	753
182	Relief from additional tax incurred due to default in payment of tax <i>[Repealed]</i>	754
183	Obligation to pay tax on foreign investment income able to be suspended <i>[Repealed]</i>	754
183A	Remission for reasonable cause	755
183ABA	Remission in circumstances of emergency event	757
183AB	Cancellation of late payment penalties imposed before 1 April 2002	759
183B	Cancellation of late payment penalties under instalment arrangement <i>[Repealed]</i>	760
183C	Cancellation of interest	760
183CA	Cancellation of interest charged on unpaid provisional tax	762
183D	Remission consistent with collection of highest net revenue over time	763
183E	Remission of interest if unpaid tax remitted	764

183F	Small amounts of penalties and interest not to be charged	764
183G	Refunds by Commissioner	765
183H	Remission on application	765
183I	Time when cancellation takes effect	766
184	Refund of tax paid on income subsequently exempted by Order in Council	766
184A	Refund of tax paid in excess made by direct credit to bank account	767
184B	Tax type that may be direct credited to bank account	768
185	Payment out of Crown Bank Account	768
185B	Application of particular provisions in this Part to PAYE intermediaries	770
185C	Establishment of Listed PAYE Intermediary Bank Account	770
185D	Payments into, and out of, Listed PAYE Intermediary Bank Account	770

**Part 12**  
**Offences and penalties**

*Penal tax*

186	Penal tax for evasion of deficient tax <i>[Repealed]</i>	771
187	Penal tax deemed to be of the same nature as deficient tax <i>[Repealed]</i>	771
188	Assessment of penal tax <i>[Repealed]</i>	771
189	Date for payment of penal tax <i>[Repealed]</i>	772
190	Objections to assessments of penal tax <i>[Repealed]</i>	772
191	Recovery of penal tax <i>[Repealed]</i>	772
192	Recovery of penal tax from executors or administrators <i>[Repealed]</i>	772
193	Recovery of penal tax not affected by conviction of taxpayer <i>[Repealed]</i>	772
194	Penal tax for default in making or paying tax deduction <i>[Repealed]</i>	772
195	Penal tax for failure to deduct specified superannuation contribution withholding tax <i>[Repealed]</i>	772
196	Penal tax for default in making or paying resident withholding tax deductions <i>[Repealed]</i>	773
197	Penal tax for default in making or paying deductions of non-resident withholding tax <i>[Repealed]</i>	773

*Offences*

198	Offences relating to obstruction of Departmental functions <i>[Repealed]</i>	773
-----	--	-----

199	Penalty for failure to furnish returns etc <i>[Repealed]</i>	773
200	Offence for failure to provide information requested by Commissioner <i>[Repealed]</i>	773
201	Offence for officers and employees of corporate bodies <i>[Repealed]</i>	773
202	Further offences for officers and employees of corporate bodies <i>[Repealed]</i>	774
203	Offence for failure of officers of Department to maintain secrecy <i>[Repealed]</i>	774
204	Offence for failure of other persons to maintain secrecy <i>[Repealed]</i>	774
205	Secrecy requirements where information given by Department <i>[Repealed]</i>	774
206	Offences relating to tax deductions <i>[Repealed]</i>	774
207	Offences for failure to deduct specified superannuation contribution withholding tax <i>[Repealed]</i>	774
208	Offences relating to resident withholding tax <i>[Repealed]</i>	774
209	Offences for failure to deduct non-resident withholding tax <i>[Repealed]</i>	775
210	Offences relating to dividend withholding payments <i>[Repealed]</i>	775
211	Offences for failure to make deductions <i>[Repealed]</i>	775
212	Offences relating to family support <i>[Repealed]</i>	775
213	Offences in relation to inquiry before a District Court Judge <i>[Repealed]</i>	775
214	Offences in relation to inquiry by Commissioner <i>[Repealed]</i>	776
	<i>Proceedings</i>	
215	Proceedings to be taken summarily <i>[Repealed]</i>	776
216	Information may charge several offences <i>[Repealed]</i>	776
217	Information may be laid within 10 years <i>[Repealed]</i>	776
218	Authority to lay information <i>[Repealed]</i>	776
	<i>Evidence</i>	
219	Evidence in proceedings for failure to furnish returns or information <i>[Repealed]</i>	776
220	Evidence of financial or property transactions <i>[Repealed]</i>	776
221	Penalties for offences <i>[Repealed]</i>	777
222	Penalties for failure to meet various tax obligations <i>[Repealed]</i>	777
223	Publication of names of tax evaders <i>[Repealed]</i>	777

**Part 13**  
**Miscellaneous**

224	Regulations—Inland Revenue Acts generally	777
225	Regulations	777
225AA	Regulations: co-operative dairy and marketing companies	779
225A	Power to make interim payments of WFF tax credit	780
225B	Order in Council amending schedule 27	782
226	Power to extend time for doing anything under Act	783
226B	Business group amnesties	783

**Part 14**  
**Transitional provisions and savings**

227	Transitional provisions and savings	786
228	Commissioner and Department	787
229	References to Department, etc	787

**Schedule** 789  
**Inland Revenue Acts**

---

**An Act to reorganise and consolidate the law relating to the Inland Revenue Department and the administration of income tax matters**

**BE IT ENACTED by the Parliament of New Zealand as follows:**

**1 Short Title and commencement**

- (1) This Act may be cited as the Tax Administration Act 1994.
- (2) This Act shall come into force on 1 April 1995, and shall, where appropriate, apply with respect to the tax on income derived in the 1995-96 tax year and subsequent years.
- (3) This Act shall also apply with respect to late 1994-95 income years to the extent specified in section YB 7 of the Income Tax Act 1994.

Section 1(2): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 1(3): inserted, on 10 April 1995, by section (2) of the Tax Administration Amendment Act 1995 (1995 No 24).

## Part 1

### Purpose and construction

#### 2 Purpose of Act

- (1) The purpose of this Act is to re-enact the administrative provisions contained in the Income Tax Act 1976 and the Inland Revenue Department Act 1974 in a reorganised form.
- (2) The reorganisation of the provisions and the changes of style and language carried out by this Act in relation to the provisions of those Acts are not intended to affect the interpretation or effect of those provisions as they are included in this Act.
- (3) A reference in this Act to the time of commencement of a provision shall be construed as a reference to the time of commencement of the corresponding provision in the Income Tax Act 1976 or the Inland Revenue Department Act 1974.
- (4) Except as otherwise expressly provided, the provisions of this Act that are not in Part 6 (which relates to assessments) and that correspond to provisions of the Income Tax Act 1976 do not apply to any of the Inland Revenue Acts other than the Income Tax Act 2007, the Income Tax Act 2004, the Income Tax Act 1994, and the Taxation Review Authorities Act 1994.

Section 2(4): substituted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### 3 Interpretation

- (1) In this Act, unless the context otherwise requires,—  
**Abusive tax position** is defined in section 141D(7) for the purposes of Part 9 and section 177C  
**Acceptable interpretation** *[Repealed]*  
*[Repealed]*  
**acceptable tax position** means a tax position that is not an unacceptable tax position  
**Accounting period**, in section 107 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007  
**Activities as an airport operator** *[Repealed]*  
*[Repealed]*



**activities undertaken as an airport operator**, in section 42, has the meaning given to airport operator activities in section HR 7 of the Income Tax Act 2007.

**Additional tax***[Repealed]*

*[Repealed]*

**Amount payable** is defined in section 157(10) for the purposes of that section

**approved advisor group** is defined in section 20B(5)

**approved organisation** is an organisation—

- (a) whose members include natural persons—
  - (i) who are subject to a professional code of conduct; and
  - (ii) who are subject to a disciplinary process intended to enforce compliance with the code; and
- (b) whose members—
  - (i) typically provide trustee services in the course of their business activities;
  - (ii) satisfy other criteria acceptable to the Commissioner; and
- (c) that has been approved by the Commissioner for the purposes of this definition

**arrangement** —

- (a) means a contract, agreement, plan or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect;
- (b) for the purpose of Part 5A, includes facts that the Commissioner considers are material or relevant as background or context to a private or a product ruling

**assessment** means—

- (a) an assessment of tax made under a tax law by a taxpayer or by the Commissioner;
- (b) an assessment of a net loss for the purposes of the Income Tax Act 2007;
- (c) an assessment of terminal tax or a refund for the purposes of the Income Tax Act 2007;
- (d) an assessment of a refund due under the Goods and Services Tax Act 1985;
- (e) an amendment by the Commissioner of an assessment.

**Authorised officer—**

- (a) is defined in section 82(9) for the purposes of that section:
- (b) is defined in section 83(7) for the purposes of that section:
- (c) is defined in section 84(6) for the purposes of that section:
- (d) is defined in section 85(6) for the purposes of that section:

**Authorised savings institution**, in section 56 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Award** is defined in section 130(6) for the purposes of that section

**Bank** is defined in section 157(10) for the purposes of that section

**base amount** has the same meaning as in section YA 1 of the Income Tax Act 2007

**Basis of exemption**, in section 208(1)(f) of this Act, is the basis of exemption referred to in section 32E(2)

**Beneficiary—**

- (a) is defined in section 82(9) for the purposes of that section:
- (b) is defined in section 84(6) for the purposes of that section:

**Beneficiary information—**

- (a) is defined in section 82(9) for the purposes of that section:
- (b) is defined in section 84(6) for the purposes of that section:

**Benefit**, in sections 82, 82A, 84, and 85 of this Act, has the same meaning as in section 3(1) of the Social Security Act 1964; and includes—

- (a) a lump sum payable under section 61DB or section 61DC or section 61DD of that Act:
- (b) any special assistance granted out of the Crown Bank Account from money appropriated by Parliament under

paragraph (d) or paragraph (da) of section 124(1) of that Act:

**Bill of exchange**, in section 144, means a bill of exchange within the meaning of the Bills of Exchange Act 1908; and includes a promissory note within the meaning of that Act, other than a bank note

**Binding ruling** means any—

- (a) public ruling made under section 91D:
- (b) private ruling made under section 91E:
- (c) product ruling made under section 91F:
- (d) status ruling made under section 91GA:

**Book and document**, and **book or document**, include all books, accounts, rolls, records, registers, papers, and other documents and all photographic plates, microfilms, photo-static negatives, prints, tapes, discs, computer reels, perforated rolls, or any other type of record whatever

**Business** is defined in section 152(18) for the purposes of that section

**business group amnesty** means an amnesty declared by the Commissioner under section 226B

**Cardholder** is defined in section 83(7) for the purposes of that section

**Cardholder information** is defined in section 83(7) for the purposes of that section

**Challenge** means—

- (a) to commence proceedings under Part 8A challenging a disputable decision; or
  - (b) the proceedings,—
- as the context requires

**Charities Commission** means the Charities Commission established under Part 1 of the Charities Act 2005

**Civil penalty** means—

- (a) a late filing penalty; or
- (b) a late payment penalty; or
- (c) a shortfall penalty; or
- (cb) a promoter penalty; or
- (d) a non-electronic filing penalty; or

- (e) a civil penalty under section 215 of the KiwiSaver Act 2006:

**Collective agreement** is defined in section 130(6) for the purposes of that section

**combined tax and earner-related payment**—

- (a) unless paragraph (b) applies, has the same meaning as in section YA 1 of the Income Tax Act 2007:
- (b) is defined in section 167(4) of this Act for the purposes of that section

**Commercial production**, in section 91(1)(d) of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Commissioner of Inland Revenue**, or **Commissioner**, means the Commissioner of Inland Revenue appointed or deemed to have been appointed under this Act; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Commissioner

**Commissioner-set instalment date** is defined in section 139C for the purposes of that section

**Commissioner's statement of position** means the statement of position that the Commissioner issues pursuant to a disclosure notice; and includes any additional information the Commissioner provides in respect of the statement under section 89M(8) or section 89M(11)

**Company**—

- (a) in sections 26 and 172 of this Act, has the same meaning as in paragraph (b)(ii) of the definition of that term in section OB 1 of the Income Tax Act 1994:
- (b) in sections 22, 29, 30, 67 to 74, 77, 94, 97, 101 to 104, 120M, 140B, 140C, 143B(3), 180, and 181 of this Act, has the same meaning as in paragraph (b)(iii) of the definition of that term in section OB 1 of the Income Tax Act 1994:

**Competent authority** is defined in section 173B

**Competent objection**, for the purposes of Part 8 and in relation to a person, being a taxpayer, and to any assessment, means an objection made by the person, to the assessment, in

accordance with section 126; but does not include any non-qualifying objection

**Consideration**, in section 91 of this Act, has the same meaning as in paragraph (a) of the definition of that term in section YA 1 of the Income Tax Act 2007

**Contested act of assistance** is defined in section 173B

**Contested tax** is defined in section 173B

**contract payment**, for the purpose of section 141AA, has the meaning given by section YA 1 of the Income Tax Act 2007

**Co-operative company**, in section 64 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Corporation** is defined in section 82(9) for the purposes of that section

**Correct tax position** means the correct tax position established under one or more tax laws

**Date interest starts** is defined in section 120C for the purposes of Part 7

**Day of determination of final liability**—

- (a) for the purposes of Part 8, means,—
- (i) where the Commissioner receives from the taxpayer a notice of the withdrawal by the taxpayer of the objection to an assessment, the day on which the Commissioner receives that notice:
  - (ii) where the objection to an assessment is deemed to be withdrawn under subsection (8) of section 136, the day following the expiry of the period referred to in subsection (5) or, where appropriate, subsection (12) of that section:
  - (iii) where the objection to an assessment is otherwise deemed to be withdrawn by or under this Act, the expiry of the period of 2 calendar months following the day on which the objection is deemed to be withdrawn:
  - (iv) where the objection is determined by a Taxation Review Authority and not by a court, the day on which the Taxation Review Authority determines the objection:

- (v) where the objection is determined as a result of proceedings taken in a court, whether or not by way of appeal, the day on which the objection is finally determined, whether in those proceedings or, as the case may be, on an appeal:
  - (vi) where the taxpayer does not, within the period of 2 months immediately succeeding the date on which the notice of disallowance of the taxpayer's objection is given to the taxpayer by or on behalf of the Commissioner, by notice to the Commissioner, require—
    - (A) that the objection be heard and determined by a Taxation Review Authority; or
    - (B) the Commissioner to state a case for the opinion of the High Court, specifying in the notice the registry of that Court in which the taxpayer requires the case to be filed,—  
the day on which there expires that period of 2 months:
  - (vii) where, and to the extent that, an objection is allowed by the Commissioner, the day on which the notice of that allowance (to that extent) is given to the taxpayer by the Commissioner:
- (b) for the purposes of Part 8A, means—
- (i) the day on which the Commissioner is notified in writing by the disputant that the disputant is discontinuing a challenge:
  - (ii) the day on which a Taxation Review Authority, in its small claims jurisdiction, determines a challenge:
  - (iii) if a challenge is determined by a Taxation Review Authority in its general jurisdiction, and not by a court, the day on which the Authority determines the challenge:
  - (iv) if a challenge is determined by a court, whether or not by way of appeal, the day on which the challenge is finally determined, whether in those proceedings or in a subsequent appeal:

- (v) to the extent the Commissioner concedes a challenge, the day on which the Commissioner notifies the disputant of the concession:

**Debtor** is defined in section 85(6) for the purposes of that section

**Debtor information** is defined in section 85(6) for the purposes of that section

**Decision**, for the purposes of the definition of **disputable decision**, includes the making, giving, or exercising of a discretion, judgment, direction, opinion, approval, consent, or determination by the Commissioner

**Deferrable tax** means—

- (a) the amount of tax assessed under a tax law as payable by a taxpayer or disputant; or
- (b) goods and services tax payable (as defined in section 20A(1) of the Goods and Services Tax Act 1985) by a taxpayer or disputant on a due date,—

in relation to which the taxpayer makes a competent objection under Part 8, or that the disputant challenges as payable under Part 8A

**Deficient tax***[Repealed]*

*[Repealed]*

**Department** means the Inland Revenue Department

**Deputy Commissioner of Inland Revenue***[Repealed]*

*[Repealed]*

**Determination***[Repealed]*

*[Repealed]*

**Determination of loss***[Repealed]*

*[Repealed]*

**Determination of loss carried forward***[Repealed]*

*[Repealed]*

**Determination of net loss***[Repealed]*

*[Repealed]*

**Determination of net loss carried forward***[Repealed]*

*[Repealed]*

**Disclosure notice** means a disclosure notice issued by the Commissioner to a disputant under section 89M

**discovery obligation** means an order of a court or Taxation Review Authority, or notice of discovery in proceedings before a court or Authority, requiring the disclosure of information to the Commissioner in relation to proceedings before the court or Authority

**Discretion** is defined in section 91B for the purposes of Part 5A

**disposition**, in section 65, has a meaning corresponding to paragraph (e) of the definition of **dispose** in section YA 1 of the Income Tax Act 2007.

**Disputable decision** means—

- (a) an assessment;
- (b) a decision of the Commissioner under a tax law, except for a decision—
  - (i) to decline to issue a binding ruling under Part 5A; or
  - (ii) that cannot be the subject of an objection under Part 8; or
  - (iii) that cannot be challenged under Part 8A; or
  - (iv) that is left to the Commissioner's discretion under sections 89K, 89L, 89M(8) and (10) and 89N(3)

**Disputant** means a person—

- (a) who may issue a notice of proposed adjustment to the Commissioner; or
- (b) to whom the Commissioner issues a notice of proposed adjustment or an assessment; or
- (c) who may challenge a disputable decision,—  
under a tax law

**Disputant's statement of position** means the statement of position that a disputant provides under section 89M(6) in response to a disclosure notice; and includes any additional information the disputant provides in respect of the statement under section 89M(11)

**disqualifying offence** is defined in section 141FB(3) for the purpose of section 141FB

**disqualifying penalty** is defined in section 141FB(3) for the purpose of section 141FB



**dividend treated as interest**, in sections 25 and 51 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**District Commissioner of Inland Revenue***[Repealed]*  
*[Repealed]*

**Dividend***[Repealed]*  
*[Repealed]*

**Due date** means the last day on which a taxpayer is able—

- (a) to pay tax; or
  - (b) to provide a tax return; or
  - (c) to provide a tax form; or
  - (d) to do any other thing under a tax law,—
- before being liable to pay a penalty or (in the case of paragraph (a)) interest under Part 7

**Earnings related compensation** is defined in section 82(9) for the purposes of that section

**Employee** is defined in section 46(7) for the purposes of that section

**Employer**, in section 47, has the same meaning as in paragraphs (c) and (d) of the definition of that term in section YA 1 of the Income Tax Act 2007

**encumbrance**, in respect of an estate or interest in land, means any trust, contract, easement, condition, or contingency affecting the same, and any restriction, however imposed, on the owner's power of user, alienation, or disposition.

**Entitlement card** is defined in section 83(7) for the purposes of that section

**Exceptional circumstance**—

- (a) is defined in section 89K(3) for the purposes of that section:
- (b) is defined in section 89L(3) for the purposes of that section:
- (c) is defined in section 138D(2) for the purposes of that section:

**Excess tax***[Repealed]*  
*[Repealed]*

**Exempt person** is defined in section 53(1) for the purposes of that section and section 27(1)

**Exploratory well**, in section 91(1)(e) of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Exploratory well expenditure**, in section 91(1) of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Family notice of entitlement**, in relation to any person, means a notice issued by the Commissioner under section 80KD for the estimated entitlement of the person to a tax credit under the family scheme in subparts MA to MF and MZ of the Income Tax Act 2007

**Family support certificate of entitlement***[Repealed]*  
*[Repealed]*

**family trust** is defined in section 173M(5) for the purpose of that section

**Family support credit of tax***[Repealed]*  
*[Repealed]*

**Family tax credit***[Repealed]*  
*[Repealed]*

**First instalment date***[Repealed]*  
*[Repealed]*

**first payment period**, in section 47 and 173 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Floating charge***[Repealed]*  
*[Repealed]*

**Foreign tax***[Repealed]*  
*[Repealed]*

**Fringe benefit**, in section 22 of this Act, has the meaning given by section CX 2 of the Income Tax Act 2007

**Fringe benefit tax***[Repealed]*  
*[Repealed]*

**full and complete inspection**—

- (a) includes use as evidence in court proceedings:
- (b) does not include removal to make copies under section 16B

**Gift-exempt body**, in sections 32, 58, and 89 of this Act, means—

- (a) any society, institution, association, organisation, trust, or fund specifically named in schedule 32 of the Income Tax Act 2007; or
- (b) any other person issued with an RWT exemption certificate under section 32E as a result of an application made claiming the basis for exemption set out in section 32E(2)(k) or (l), in relation to any tax year in which such person holds the certificate

**Government agency**, in section 6, includes any department or Crown entity (as those terms are defined in the Public Finance Act 1989) and any public authority (as defined in the Income Tax Act 2007)

**GST** means goods and services tax

**GST payable** has the meaning given to **tax payable** by section 2 of the Goods and Services Tax Act 1985

**GST ratio** has the same meaning as in section YA 1 of the Income Tax Act 2007

**Hearing authority** means—

- (a) a Taxation Review Authority; or
- (b) the High Court:

**Holder***[Repealed]*

*[Repealed]*

**Implementation date***[Repealed]*

*[Repealed]*

**Income statement** means a statement issued by the Commissioner to a natural person that contains the information required by section 80E

**Income tax** is defined in section 157(10) for the purposes of that section

**Income tax payable***[Repealed]*

*[Repealed]*

**Income year***[Repealed]*

*[Repealed]*

**Incremental late payment penalty** means a late payment penalty imposed under section 139B(2)(b)

**information holder** is defined in section 20B(1) for the purposes of sections 20B to 20F

**Incremental tax***[Repealed]*

*[Repealed]*

**Information requisition** is defined in section 21(8) for the purposes of that section

**Initial late payment penalty** means a late payment penalty imposed under section 139B(2)(a)

**Inland Revenue Acts** means the Acts specified in the Schedule to this Act, and includes any Acts (whether repealed or not) that before the commencement of this Act were specified in Schedule 1 to the Inland Revenue Department Act 1974

**Instalment date**, in sections 120KB to 120KE of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**interest instalment date** has the same meaning as in section YA 1 of the Income Tax Act 2007

**Instalment portion***[Repealed]*

*[Repealed]*

**Instrument, instrument of conveyance and instrument of nomination of shares***[Repealed]*

*[Repealed]*

**Interest liability period** is defined in section 121 for the purposes of that section

**Interest paid to a taxpayer** is defined in section 120C for the purposes of Part 7

**Interest period** is defined in section 120C for the purposes of Part 7

**IR5 taxpayer** is defined in section 37(6) for the purposes of that section

**Issuer***[Repealed]*

*[Repealed]*

**Judicial officer** is defined in section 16(7) for the purposes of that section and section 16C

**late filing penalty** means a civil penalty imposed under section 139A or 139AAA for not providing on time a tax return described in section 139A(1) or 139AAA(1), as applicable

**Late payment penalty** means—

- (a) a civil penalty imposed under section 139B for not paying a tax calculated or assessed as payable under a tax law on time; and
- (b) for sections 157, 183A, and 183D includes:
  - (i) additional tax imposed on unpaid tax under section 139;
  - (ii) additional tax imposed on any tax remaining unpaid under section 41 of the Goods and Services Tax Act 1985 for supplies made in taxable periods;
  - (iii) interest on gift duty imposed under section 84 of the Estate and Gift Duties Act 1968 for gifts made;
  - (iv) a penalty imposed for unpaid stamp duty under section 58 of the or any interest imposed under section 86E on unpaid credit card duty for—
    - (A) an instrument of conveyance executed; and
    - (B) a bill of exchange made, drawn, or prepaid under sections 81 to 83 of that Act; and
    - (C) a liable transaction entered into;
  - (v) interest on unpaid totalisator duty under section 8 of the Gaming Duties Act 1971 for all betting profits that must be calculated under section 4 of that Act;
  - (vi) interest on unpaid racing duty under section 12 of the Gaming Duties Act 1971 for lotteries drawn;
  - (vii) interest on unpaid gaming machine duty under section 12F of the Gaming Duties Act 1971 for dutiable games played by means of gaming machines;
  - (viii) interest on unpaid casino duty under section 12Q of the Gaming Duties Act 1971 for casino wins;

**Legal personal representative** is defined in section 81 for the purposes of that section

**Legal practitioner** is defined in section 20 for the purposes of that section

**Life insurer**, in section 112 of this Act, has the same meaning as in paragraph (a) of the definition of that term in section YA 1 of the Income Tax Act 2007

**Maori authority distribution penalty tax** means tax payable under section 140CB

**Maori***[Repealed]*

*[Repealed]*

**Minister** means the Minister of Finance

**new provisional taxpayer** means a person who has an initial provisional tax liability as described in section YA 1 of the Income Tax Act 2007

**New provisional taxpayer***[Repealed]*

*[Repealed]*

**New return date***[Repealed]*

*[Repealed]*

**New Zealand tax***[Repealed]*

*[Repealed]*

**Non-exempt person** is defined in section 53(1) for the purposes of that section and section 27

**Non-qualifying objection**, for the purposes of Part 8 and in relation to a person, being a taxpayer, and to any assessment, means an objection made by the person, to the assessment, in accordance with section 126 where, and to the extent that, any ground of objection stated by the person is that—

- (a) the return of income furnished by the taxpayer or the other particulars supplied together with the return of income, being the return and the other particulars from and by reference to which the assessment has been made, is deficient or, as the case may be, are deficient or insufficient; or
- (b) the assessment has been made, under section 106, in the absence of the return of income or the particulars from or by reference to which, had that return of income or those particulars been furnished to the Commissioner, the assessment would have been made; or
- (c) *[Repealed]*

**notice** means a notice to which, as appropriate, section 14 or 14B or 14C applies.

**Notice of proposed adjustment** means a notice of proposed adjustment in the prescribed form—

- (a) issued by the Commissioner to a disputant under section 89B; or
- (b) issued by a disputant to the Commissioner under either section 89D or section 89DA:

**Officer**, in for the purposes of sections 89C, 141F, 141G, 142C, and 147 and the definition of **taxpayer** in section 157(10), in relation to a corporate body, includes—

- (a) a director or secretary or other statutory officer of the corporate body:
- (b) a receiver or a manager of any property of the corporate body, or a person having powers or responsibilities, similar to those of such a receiver or manager, in relation to the corporate body:
- (c) a liquidator of the corporate body:

**Officer of the Department** includes any person employed in the service of the Department and any person employed in the service of the Government of any overseas country or territory who is for the time being attached or seconded to the Department

**Offshore payment** is defined in section 21(8) for the purposes of that section

**On time**, for the purposes of performing a tax obligation, means—

- (a) except if paragraph (b) applies, on or before the relevant due date:
- (b) if the Commissioner sets a new due date for performing the tax obligation, on or before the new due date:

**Original return date***[Repealed]*

*[Repealed]*

**Other income***[Repealed]*

*[Repealed]*

**outstanding tax**, in sections 139BA, 176, 177, 177A, 177B and 177C, means tax that is payable before or after a due date.

**Paid***[Repealed]*

*[Repealed]*

**PAYE period** means **first payment period** or **second payment period**, as applicable

**Payment**, in sections 67 and section 120U of this Act, has a corresponding meaning to paragraph (a) of the definition of **pay** in section YA 1 of the Income Tax Act 2007

**Penal tax***[Repealed]*

*[Repealed]*

**Penalty***[Repealed]*

*[Repealed]*

**Period of deferral**, in respect of deferrable tax, means the period that starts on the later of—

- (a) the day on which the notice of an assessment of tax, to which a competent objection is made under Part 8 or in relation to which proceedings challenging the assessment are issued under Part 8A, is given to the taxpayer or the Commissioner; and
- (b) the day that immediately succeeds the due date for payment of the tax,—

and ends at the expiry of the day that, in relation to the deferrable tax, is the day of determination of final liability

**Permit area**, in section 91(1)(d) of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Person***[Repealed]*

*[Repealed]*

**Person incorrectly assumed to be a provisional taxpayer** is defined in section 120K for the purposes of that section

**Person incorrectly assumed to be a taxpayer***[Repealed]*

*[Repealed]*

**Person to whom this section applies** is defined in section 86(5) for the purposes of that section

**Person with access to restricted information** is defined in section 87(5) for the purposes of that section

**Petroleum mining operations**, in section 91 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Petroleum permit**, in section 91 of this Act, has the same meaning as in section OB 1 of the Income Tax Act 2004



**Policyholder loss***[Repealed]*

*[Repealed]*

**Policyholder net loss**, in section 112 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Prescribed** means prescribed by regulations under this Act or the Income Tax Act 2007 or by the Commissioner

**primary employment earnings**, for an employee and for a pay period, means a PAYE income payment that is not a schedular payment or an extra pay, when the payment meets 1 of the following requirements:

- (a) the payment is derived by the employee in the pay period from 1 employer:
- (b) the payment is the largest payment derived by the employee in the pay period, if the employee derives payments in the period from 2 or more employers:
- (c) the payment is derived in the pay period and is of the same amount as another payment that the employee chooses, if the employee derives payments in the period from 2 or more employers and 2 or more of the payments are of the same amount

**Proceedings** means proceedings commenced before a hearing authority under Part 8 or Part 8A; and includes a document that a tax law requires to be filed with a hearing authority, or to be served on a person, in connection with the proceedings

Section 3 **Proceedings**: inserted by section 3(46) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**Property**, in section 90 of this Act, has the same meaning as in paragraph (b) of the definition of that term in section YA 1 of the Income Tax Act 2007

**Proposed adjustment** means—

- (a) an adjustment or amendment the Commissioner or a disputant proposes in respect of one or more disputable decisions; or
- (b) the way the Commissioner proposes to treat differently a tax position or tax positions taken by a disputant in one or more tax returns,—

for the purposes of one or more return periods; and, where the context permits, and **adjustment** is to include a proposed adjustment

**Provisional tax paid** is defined in section 139C

**Provisional tax payable** is defined in section 139C

**provisional taxpayer** means a person who is liable to pay provisional tax under section RC 3 of the Income Tax Act 2007

**Private dwelling** is defined in section 16(7) for the purposes of that section

**Qualifying person** is defined in sections 83(7), 84(6), and 85G(6) for the purposes of those sections

**qualifying resident foreign trustee** means a person who is a resident foreign trustee and who,—

- (a) if a natural person, is a member of an approved organisation; and
- (b) if not a natural person, has a director, or other natural person in a position allowing significant influence over the management or administration of the person, who is—
  - (i) resident in New Zealand within the meaning of section YD 1 of the Income Tax Act 2007; and
  - (ii) a member of an approved organisation

**Qualifying tax in dispute***[Repealed]*

*[Repealed]*

**ratio instalment date** has the same meaning as in section YA 1 of the Income Tax Act 2007

**reconciliation statement** means a reconciliation statement under section 49

**Record**—

- (a) is defined in section 152(18) for the purposes of that section:
- (b) is defined in section 22(7) for the purposes of that section and section 26:

Section 3(a) **Record**: amended by section 3(49) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**Record holder** is defined in section 220(18) for the purposes of that section and section 26

**Regional Controller of Inland Revenue***[Repealed]*

*[Repealed]*

**Registered person** is defined in section 36(4) for the purposes of that section

**Registration Act** is defined in section 169(11) for the purposes of that section

**Reject**, for the purposes of Parts 4A and 8A, means to reject something in whole or in part

**relative** is defined in section 173M(5) for the purpose of that section.

**Relinquishment**, in section 91 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**resident foreign trustee** means a person who,—

- (a) either alone or jointly with another person, acts as a trustee of a foreign trust that is not registered as a charitable entity under the Charities Act 2005; and
- (b) is resident in New Zealand within the meaning of section YD 1, YD 2, or YD 3 (excluding section YD 2(2)) of the Income Tax Act 2007

**Residual income tax**—

- (a) is defined in section 120KB(4) for the purposes of Part 7;
- (b) for the purposes of any other provision of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007:

**response period** is defined in section 89AB

**responsible department**, in sections 81(4)(f) and (o), 82 and 85, means—

- (a) in relation to a benefit that is not a student allowance, the department for the time being responsible for administration of the Social Security Act 1964;
- (b) in relation to a student allowance, the department for the time being responsible for administration of Part 25 of the Education Act 1989

**Restricted information**, in sections 87 and 205, means any information that the Commissioner has obtained under the Inland Revenue Acts, including all Acts (whether repealed or not) at any time administered by or in the Department, or arising out of such other functions as may from time to time have been lawfully conferred on the Commissioner

**Return date***[Repealed]*  
*[Repealed]*

**Return period** means—

- (a) the period covered by a tax return, or which would be covered by a tax return if one were provided;
- (b) for a tax return that relates to a transaction, the time within which the transaction must be returned:

Section 3 **Return period**: inserted by section 3(53) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**RWT exemption certificate** has the same meaning as in section YA 1 of the Income Tax Act 2007

**second payment period**, in sections 47 and 173(1)(b) of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**secondary employment earnings**, for an employee and for a pay period, means a PAYE income payment that—

- (a) is derived by the employee in the pay period from an employer; and
- (b) is not—
  - (i) a payment of primary employment earnings; or
  - (ii) a schedular payment; or
  - (iii) an extra pay

**Security**, for the purposes of section 7A, means a security given to the Commissioner to secure the performance of a tax obligation, and includes a mortgage or charge or other encumbrance over, or pledge of, an asset or right, and a guarantee or indemnity

**Separated person***[Repealed]*

*[Repealed]*

**Settlement**, in section 59 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

**Settlor**, in section 59 of this Act, is defined in section HC 27 of the Income Tax Act 2007

**Shortfall penalty** means a penalty imposed under any of sections 141AA to 141K for taking an incorrect tax position or for doing or failing to do anything specified or described in those sections

**special tax code certificate** means a special tax code certificate under section 24F

**standard-cost household service** means a service that is a standard-cost household service under a determination that is made by the Commissioner under section 91AA

**Specified rate of additional tax***[Repealed]*

*[Repealed]*

**Specified rate of interest***[Repealed]*

*[Repealed]*

**Status ruling** means a ruling made under section 91GA

**student allowance** means an allowance paid under regulations made under section 303 of the Education Act 1989

**tax**—

(a) means—

- (i) a tax, levy, or duty of any type imposed by a tax law, regardless of how the tax, levy, or duty is described:
- (ii) an amount deemed by a tax law to be a tax, levy, or duty:
- (iii) any other amount payable to the Commissioner under a tax law, including:
  - (A) *[Repealed]*
  - (B) an amount imposed under section 157 of this Act or payable under section 43 of the Goods and Services Tax Act 1985:
  - (C) an amount payable by a payer (as defined in section 153 of the Child Support Act 1991) under Part 10 of the Child Support Act 1991:
  - (CB) an amount required to be deducted under subpart 1 of Part 3 of the KiwiSaver Act 2006:
  - (CC) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:
  - (CD) an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006:

- (D) a repayment deduction (as defined in section 2 of the Student Loan Scheme Act 1992), or an amount required to be deducted in accordance with section 46 of the Student Loan Scheme Act 1992:
  - (iv) a credit of tax under a tax law:
  - (v) a tax of the general character described in any of paragraphs (i) to (iv)—
    - (A) that is imposed on or payable by a taxpayer in a country or territory other than New Zealand; or
    - (B) that is relevant under a tax law for the purposes of determining a tax position:
- but does not include—
- (vi) interest imposed under Part 7:
  - (vii) subject to paragraph (b), a civil penalty:
  - (viii) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that does not relate to a compulsory employer contribution:
  - (viii) *[Repealed]*
  - (ix) financial support (as defined in section 2(1) of the Child Support Act 1991):
  - (x) a repayment obligation (as defined in section 2 of the Student Loan Scheme Act 1992):
  - (xi) a tax credit under section 41A:
  - (xii) is a tax prescribed in section 173D:
  - (xiii) the amount of a subsidy payable under section RP 4 of the Income Tax Act 2007 to a listed PAYE intermediary:
- (ab) for the purposes of the application of this Act in relation to a regulation made under section CV 8 of the Income Tax Act 2007, includes an Australian wine producer rebate:
  - (b) for the purposes of section 4A and Parts 7, 8, 8A, 9, 10, and 11, also includes a civil penalty:
  - (c) for the purpose of sections 6, 6A and 6B, includes any revenue collected under, entitlements arising from or repayment obligations required by, the Inland Revenue Acts, any interest charged on a loan balance (as that

term is defined in the Student Loan Scheme Act 1992), and any contributions administered by the Commissioner under the KiwiSaver Act 2006:

- (ca) for the purpose of Part 10B, includes—
  - (i) financial support, as defined in section 2(1) of the Child Support Act 1991; and
  - (ii) a repayment obligation, as defined in section 2 of the Student Loan Scheme Act 1992; and
  - (iii) a tax credit referred to in section 41A:
- (cb) for the purposes of sections 156 to 165, includes a combined tax and earner-related payment:
- (d) for the purpose of sections 176, 177, and 177A to 177D, means—
  - (i) a tax, levy or duty of any type imposed by a tax law, regardless of how the tax, levy or duty is described:
  - (ii) an amount deemed by a tax law to be a tax, levy or duty:
  - (iii) any other amount payable to the Commissioner under a tax law, including:
    - (A) *[Repealed]*
    - (B) an amount imposed under section 157 of this Act or payable under section 43 of the Goods and Services Tax Act 1985:
    - (C) an amount payable by a payer, as defined in section 153 of the Child Support Act 1991, under Part 10 of that Act:
    - (CB) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:
    - (CC) an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006:
    - (D) a repayment deduction, as defined in section 2 of the Student Loan Scheme Act 1992, or an amount required to be de-

ducted in accordance with section 46 of that Act:

- (iv) a tax prescribed in section 173D:
- (v) interest imposed under Part 7:
- (vi) a civil penalty:  
but does not include—
- (vii) *[Repealed]*
- (viii) financial support, as defined in section 2(1) of the Child Support Act 1991:
- (viiiib) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that does not relate to a compulsory employer contribution:
- (ix) a repayment obligation, as defined in section 2 of the Student Loan Scheme Act 1992.

**tax advice document** is defined in section 20B(3)

**tax advisor** is defined in section 20B(4)

**tax agent** means a person who—

- (a) is eligible under section 34B(2) to be a tax agent; and
- (b) is listed by the Commissioner as a tax agent—
  - (i) before the date on which the Taxation (Business Taxation and Remedial Matters) Act 2007 receives the Royal assent:
  - (ii) on or after the date on which that Act receives the Royal assent, after the person applies under section 34B to be listed by the Commissioner; and
- (c) is not later removed by the Commissioner from the list of tax agents

**tax code certificate** means a tax code certificate under section 24I(2)

**tax code notification** means a tax code notification under section 24I(1)

**tax contextual information** is defined in section 20F(3)

**Tax form** means a form or document a taxpayer is required by a tax law—

- (a) to complete; and
- (b) to provide to a person other than the Commissioner:



**Tax law** means—

- (a) a provision of the Inland Revenue Acts or an Act that an Inland Revenue Act replaces:
- (b) an Order in Council or a regulation made under another tax law:
- (c) a non-disputable decision:
- (d) in relation to an obligation to provide a tax return or a tax form, also includes a provision of the Accident Rehabilitation and Compensation Insurance Act 1992 or a regulation made under that Act or the Accident Insurance Act 1998 or a regulation made under that Act or the Injury Prevention, Rehabilitation, and Compensation Act 2001 or a regulation made under that Act:

**Tax or duty***[Repealed]*

*[Repealed]*

**Tax paid** is defined in section 120C for the purposes of Part 7

**Tax position** means a position or approach with regard to tax under one or more tax laws, including without limitation a position or approach with regard to—

- (a) a liability for an amount of tax, or the payment of an amount of tax:
- (b) an obligation to deduct or withhold an amount of tax, or the deduction or withholding of an amount of tax:
- (c) a right to a tax refund, or to claim or not to claim a tax refund:
- (d) a right to a credit of tax, or to claim or not to claim a credit of tax:
- (e) the provision of a tax return, or the non-provision of a tax return:
- (f) the derivation of an amount of income or exempt income or a capital gain, or the inclusion or non-inclusion of an amount in income:
- (g) the incurring of an amount of expenditure or loss, or the allowing or denying as a deduction of an amount of expenditure or loss:
- (h) the availability of a tax loss component or loss balance, or the use of a tax loss component or loss balance:
- (i) the attaching of a credit of tax, or the receipt of or lack of entitlement to receive a credit of tax:

- (j) the balance of a tax account or memorandum account of any type or description, or a debit or credit to such an account:
- (k) the estimation of the provisional tax payable:
- (l) whether the taxpayer must request an income statement or respond to an income statement issued by the Commissioner:
- (m) the application of section 33A(1):
- (n) a right to a tax credit:
- (o) the amount of a subsidy claimed under section RP 4 of the Income Tax Act 2007 to a listed PAYE intermediary

**Tax payable** is defined in section 120C for the purposes of Part 7

**Tax recovery agreement** is defined in section 173B

**Tax return** means a form or document that a taxpayer is required by a tax law—

- (a) to complete; and
- (b) to provide to the Commissioner,—

whether in electronic or written form and whether provided in respect of a period or not; and also includes a tax form issued by another taxpayer that the taxpayer provides to the Commissioner

**Tax shortfall**, for a return period, means the difference between the tax effect of—

- (a) a taxpayer's tax position for the return period; and
- (b) the correct tax position for that period,—

when the taxpayer's tax position results in too little tax paid or payable by the taxpayer or another person or overstates a tax benefit, credit, or advantage of any type or description whatever by or benefiting (as the case may be) the taxpayer or another person

**Tax to pay** is defined in section 139B

**Taxation law** is defined in section 91B for the purposes of Part 5A

**Taxation Review Authority**, or **Authority**, means a Taxation Review Authority established or continued in existence under the Taxation Review Authorities Act 1994

**Taxpayer** means a person who—

(a) is liable to perform, or to comply with, a tax obligation;  
or

(b) may take a tax position,—  
whether as principal, or as an agent or employee or officer of  
another person, or otherwise

**Taxpayer's paying rate** is defined in section 120C for the  
purposes of Part 7

**Taxpayer's tax position** means—

(a) a tax position taken by a taxpayer in or in respect of—

- (i) a tax return; or
- (ii) an income statement; or
- (iii) a due date:

(b) *[Repealed]*

**Taxpayer's total tax figure** is defined in section 141B for the  
purposes of that section

**Trade credit***[Repealed]*

*[Repealed]*

**unacceptable tax position** is defined in section 141B.

**Underestimation penalty***[Repealed]*

*[Repealed]*

**Unpaid tax** includes any amount of tax refunded under a tax  
law to the extent that the amount—

- (a) is not properly refundable; or
- (b) is in excess of any amount of tax that is refundable,—  
under the tax law

**Withdrawal tax**, in section 95 of this Act, has the same mean-  
ing as in section YA 1 of the Income Tax Act 2007.

(2) Unless the context otherwise requires, and having regard to  
the context where there is more than one definition of the same  
term, other terms used in this Act have the same meanings as  
they have in the Income Tax Act 2007.

(3) *[Repealed]*

(4) *[Repealed]*

Section 3(1) **abusive tax position**: amended by section 73(2) of the Taxation  
(Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **abusive tax position**: inserted by section 3(1) of the Tax Admin-  
istration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **acceptable interpretation**: repealed by section 82(2) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **acceptable interpretation**: inserted by section 7 of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **acceptable tax position**: inserted by section 82(3) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **accounting period**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **accounting period**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **activities undertaken as an airport operator**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **Activities as an airport operator**: revoked, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **Activities undertaken as an airport operator**: inserted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **additional tax**: repealed by section 3(2) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **approved advisor group**: inserted, on 21 June 2005, by section 120(2) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 3(1) **approved organisation**: inserted, on 1 October 2006, by section 210(3) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **arrangement**: substituted, on 26 March 2003, by section 82(4) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **arrangement**: inserted by section 3(3) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **assessment**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **assessment**: inserted by section 82(5) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **assessment**: repealed, by section 189(2) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **assessment**: substituted by section 3(3) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **assessment**: substituted, on 1 April 1995, by section 3(1) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **assessment** paragraph (a): substituted by section 430(a) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **assessment** paragraph (b) amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **assessment** paragraph (b): substituted by section 430(a) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **assessment** paragraph (c) amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **authorised savings institution**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **authorised savings institution**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 3).

Section 3(1) **base amount**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **base amount**: inserted, on 1 October 2007, by section 210(4) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **basis of exemption**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **basis of exemption**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **benefit**: amended by section 3(1)(a) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **Bill of exchange**: inserted by section 3(4) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **binding ruling** paragraph (d): inserted, on 20 May 1999, by section 62(1)(a) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **binding ruling**: inserted, on 1 April 1995, by section 3(2) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **business**: amended by section 3(5) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **business group amnesty**: inserted, on 19 December 2007, by section 188(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 3(1) **certificate of exemption**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **certificate of exemption**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **challenge**: inserted by section 3(6) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **Charities Commission**: inserted, on 1 November 2006, by section 70 of the Charities Act 2005 (2005 No 39).

Section 3(1) **civil penalty**: substituted by section 68(1) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **civil penalty**: inserted by section 3(6) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **civil penalty** paragraph (c): amended by section 3(1)(b) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **civil penalty** paragraph (cb): inserted, on 26 March 2003, by section 82(6) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **civil penalty** paragraph (d): substituted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 3(1) **civil penalty** paragraph (e) amended, on 1 April 2009, by section 15 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **civil penalty** paragraph (e): inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 3(1) **combined tax and earner premium deduction or combined tax and earner levy deduction**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **combined tax and earner-related payment**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **commercial production**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **commercial production**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **Commissioner-set instalment date**: inserted by section 3(7) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **Commissioner's statement of position**: inserted by section 3(7) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **company**: repealed, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **company** paragraph (b): amended by section 3(8) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **competent authority**: inserted, on 20 May 1999, by section 62(1)(b) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **consideration**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **consideration**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **contract payment**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **contested act of assistance**: inserted, on 20 May 1999, by section 62(1)(b) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **contested tax**: inserted, on 20 May 1999, by section 62(1)(b) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **contract payment**: inserted, on 21 December 2004, by section 88(2) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **co-operative company**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **co-operative company**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **day of determination of final liability**: substituted by section 3(11) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **day of determination of final liability**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **decision**: inserted by section 3(12) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **deferrable tax**: amended, on 1 April 2003, by section 82(7)(a) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **deferrable tax**: amended, on 1 April 2003, by section 82(7)(b) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **deferrable tax** paragraph (a): amended, by section 189(3) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **deferrable tax**: substituted by section 3(13) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **deficient tax**: repealed by section 3(14) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **Deputy Commissioner of Inland Revenue**: omitted, on 10 April 1995, by section 3(3) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **determination**: repealed, by section 189(2) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **determination of loss**: repealed by section 430(b) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **determination of loss carried forward**: repealed by section 430(c) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1): **determination of net loss**: repealed, by section 189(2) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **determination of net loss**: inserted by section 430(b) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **determination of net loss carried forward**: repealed, by section 189(2) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **determination of net loss carried forward**: inserted by section 430(c) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **disclosure notice**: inserted by section 3(15) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **discovery obligation**: inserted, on 6 October 2009, by section 596(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 3(1) **discretion**: inserted, on 1 April 1995, by section 3(4) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **disposition**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **disposition**: substituted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **dividend treated as interest**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **disputable decision**: inserted by section 3(16) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **disputable decision** paragraph (b): substituted, on 20 May 1999, by section 62(1)(c) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **disputable decision** paragraph (b)(iii): amended, on 1 April 2005, by section 88(3) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **disputable decision** paragraph (b)(iv): inserted, on 1 April 2005, by section 88(3) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **disputant**: inserted by section 3(16) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **disputant's statement of position**: inserted by section 3(16) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **disqualifying offence**: inserted, on 21 December 2004, by section 88(4) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **disqualifying penalty**: inserted, on 21 December 2004, by section 88(4) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **dividend**: repealed by section 3(17) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **due date**: inserted by section 3(18) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **employer**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **employer**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **employer**: amended by section 34(1) of the Taxation (FBT, SS-CWT and Remedial Matters) Act 2000 (2000 No 34).



Section 3(1) **employer**: amended by section 3(19) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **exploratory well**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **encumbrance**: substituted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **exceptional circumstance**: inserted, by section 3(20) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **excess tax**: repealed by section 3(21) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **exploratory well**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **exploratory well expenditure**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **exploratory well expenditure**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **family notice of entitlement**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **family certificate of entitlement**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **family certificate of entitlement**: inserted, on 1 July 1996, by section 2 of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 3(1) **family support certificate of entitlement**: repealed, on 1 July 1996, by section 2 of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 3(1) **family support credit of tax**: repealed, on 1 July 1996, by section 2 of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 3(1) **family tax credit**: repealed by section 15 of the Taxation (Parental Tax Credit) Act 1999 (1999 No 62).

Section 3(1) **family tax credit**: inserted, on 1 July 1996, by section 2 of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 3(1) **family trust**: inserted by section 73(3) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **first PAYE period**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **first instalment date**: repealed by section 3(22) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **first payment period**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **foreign tax**: repealed, by section 189(2) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **fringe benefit**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **fringe benefit**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **fringe benefit tax**: repealed by section 3(23) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **full and complete inspection**: inserted, on 18 December 2006, by section 169(1) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 3(1) **gift-exempt body** paragraph (a) amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **gift-exempt body** paragraph (a): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **gift-exempt body** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **gift-exempt body** paragraph (b): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **government agency**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **government agency**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **government agency**: inserted, on 10 April 1995, by section 3(5) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **GST**: inserted by section 3(24) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **GST payable**: inserted, on 1 April 2005, by section 88(5) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **GST ratio**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **GST ratio**: inserted, on 1 October 2007, by section 210(5) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **hearing authority**: inserted by section 3(24) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **holder**: repealed, on 20 May 1999, by section 62(1)(i) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **implementation date**: repealed, on 20 May 1999, by section 62(1)(i) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **income statement**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **income statement**: inserted by section 3(1)(f) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **income tax payable**: repealed by section 3(25) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **incremental late payment penalty**: amended, on 19 December 2007, by section 188(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 3(1) **incremental late payment penalty**: amended by section 44(2) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4).

Section 3(1) **incremental late payment penalty**: inserted by section 3(26) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **incremental tax**: repealed by section 3(27) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **information holder**: inserted, on 21 June 2005, by section 120(3) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 3(1) **initial late payment penalty**: amended, on 19 December 2007, by section 188(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 3(1) **initial late payment penalty**: inserted by section 3(28) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **initial late payment penalty**: amended by section 44(3) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4).

Section 3(1) **instalment date**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **instalment date**: amended, on 1 October 2007, by section 210(6) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **instalment date**: amended by section 3(29) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **instalment date**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **instalment portion**: repealed by section 3(30) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **instalment portion**: amended, on 1 April 1995, by section 2(1) of the Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Section 3(1) **instrument**: repealed by section 3(31) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **instrument, instrument of conveyance and instrument of nomination of shares**: repealed by section 7 of the Stamp Duty Abolition Act 1999 (1999 No 61).

Section 3(1) **instrument, instrument of conveyance, and instrument of nomination of shares**: inserted by section 3(31) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **interest instalment date**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **interest instalment date**: inserted, on 1 October 2007, by section 210(7) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **interest period**: inserted by section 3(32) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **issuer**: repealed, on 20 May 1999, by section 62(1)(i) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **judicial officer**: amended, on 18 December 2006, by section 169(2) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 3(1) **late filing penalty**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 596(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 3(1) **late payment penalty**: substituted by section 68(2) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **late payment penalty**: substituted by section 62(1)(d) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **late payment penalty**: inserted by section 3(33) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **late payment penalty** paragraph (b): amended by section 44(4) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4).

Section 3(1) **late payment penalty** paragraph (b)(viii): amended, on 21 December 2004, by section 88(6) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **life insurer**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **life insurer**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **Maori**: repealed by section 82(8) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **Maori authority distribution penalty tax**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **new provisional taxpayer**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **new provisional taxpayer**: repealed by section 60(3) of the Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39).

Section 3(1) **new provisional taxpayer**: amended by section 3(34) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **new provisional taxpayer** paragraph (a): substituted by section 430(d) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **new provisional taxpayer** paragraph (a): substituted by section 430(d) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **new provisional taxpayer** paragraph (b): substituted by section 430(d) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **new provisional taxpayer** paragraph (c): amended by section 60(2) of the Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39).

Section 3(1) **New Zealand tax**: repealed, by section 189(2) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **non-qualifying objection**: amended by section 3(35) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **non-qualifying objection** paragraph (c): repealed, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **officer**: amended by section 3(37) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **on time**: inserted by section 3(38) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **original return date**: repealed, on 1 April 2005, by section 169(3)(b) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 3(1) **other income**: repealed by section 12 of the Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59).

Section 3(1) **outstanding tax**: inserted by section 73(4) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **paid**: repealed by section 3(39) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **PAYE period**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **PAYE period**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **payment**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **payment**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **payment**: amended by section 3(40) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **penal tax**: repealed by section 3(41) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **penalty**: repealed by section 3(42) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **period of deferral**: substituted by section 3(43) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **period of deferral** paragraph (a): amended, by section 189(5)(a) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **period of deferral** paragraph (b): amended, by section 189(5)(b) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **permit area**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **permit area**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **person incorrectly assumed to be a provisional taxpayer**: inserted by section 3(45) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **petroleum mining operations**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **petroleum mining operations**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **policyholder loss**: repealed by section 430(e) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **policyholder net loss**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **policyholder net loss**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **policyholder net loss**: inserted by section 430(e) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **prescribed**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **prescribed**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **primary employment earnings**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **property**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **property**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **property**: amended, on 20 May 1999, by section 62(1)(e) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **provisional tax paid**: inserted by section 3(47) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **provisional tax payable**: inserted by section 3(47) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **provisional taxpayer**: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **provisional taxpayer**: inserted, on 1 October 2007, by section 210(8) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **qualifying person**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **qualifying resident foreign trustee**: inserted, on 1 October 2006, by section 210(9) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **qualifying resident foreign trustee** paragraph (b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **qualifying tax in dispute**: repealed by section 3(48) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **ratio instalment date**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **ratio instalment date**: inserted, on 1 October 2007, by section 210(10) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **reconciliation statement**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **Regional Controller of Inland Revenue**: omitted, on 10 April 1995, by section 3(6) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **registered person**: inserted, on 12 December 1995, by section 2(2) of the Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Section 3(1) **Registration Act to which the property is subject**: amended, on 25 November 2003, by section 103(1) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 3(1) **relative**: inserted by section 73(5) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **relinquishment**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **relinquishment**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **resident foreign trustee** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **resident foreign trustee**: inserted, on 1 October 2006, by section 210(11) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **residual income tax**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **residual income tax**: substituted by section 3(51) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **residual income tax** paragraph (a): amended, on 1 October 2007, by section 210(12) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **residual income tax** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **response period**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 596(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 3(1) **responsible department**: inserted, on 21 December 2004, by section 88(8) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 3(1) **return date**: repealed, on 1 April 2005, by section 169(3)(c) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 3(1) **return period**: substituted by section 62(1)(f) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **RWT exemption certificate**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **second instalment date**: repealed, on 1 October 2007, by section 210(14) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **second instalment date**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **second instalment date**: amended by section 3(54) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **second PAYE period**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **second payment period**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **secondary employment earnings**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **separated person**: repealed by section 73(6) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **settlement**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **settlement**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **settlor**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **settlor**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **special account**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **special tax code certificate**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **special tax code certificate**: repealed by section 3(57) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **specified dividends**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **standard-cost household service**: inserted, on 25 November 2003, by section 103(2) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 3(1) **specified rate of interest**: repealed by section 3(59) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **status ruling**: inserted, on 20 May 1999, by section 62(1)(g) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **student allowance**: inserted, on 21 December 2004, by section 88(9) of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).



Section 3(1) **tax**: substituted by section 3(60) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax** paragraph (a)(iii)(A): repealed (with effect on 30 June 2009), on 6 October 2009, by section 596(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 3(1) **tax** paragraph (a)(iii)(B): substituted by section 430(f) of the Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 3(1) **tax** paragraph (a)(iii)(CB): inserted, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 3(1) **tax** paragraph (a)(iii)(CC): inserted, on 1 April 2008, by section 14(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **tax** paragraph (a)(iii)(CD): inserted, on 1 April 2008, by section 14(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **tax** paragraph (a)(v)(A): substituted by section 430(g) of the Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 3(1) **tax** paragraph (a)(viii): inserted, on 1 April 2008, by section 14(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **tax** paragraph (a)(viii): repealed, on 27 March 2001, by section 44(5)(a) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4).

Section 3(1) **tax** paragraph (a)(xi): inserted by section 3(1)(c) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **tax** paragraph (a)(xi): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax** paragraph (a)(xii): inserted by section 58(1) of the Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 20 May 1999.

Section 3(1) **tax** paragraph (a)(xiii): inserted, on 3 April 2006, by section 210(15) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **tax** paragraph (a)(xiii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax** paragraph (1)(ab): inserted, on 21 December 2005, by section 9 of the Taxation (Urgent Measures) Act 2005 (2005 No 121).

Section 3(1) **tax** paragraph (ab): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax** paragraph (c): inserted, by section 60(4) of the Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39).

Section 3(1) **tax** paragraph (c): amended, on 1 December 2006, by section 231 of the KiwiSaver Act 2006 (2006 No 40).

Section 3(1) **tax** paragraph (c): amended, on 28 March 2007, by section 44(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 3(1) **tax** paragraph (ca): inserted by section 73(7)(a) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **tax** paragraph (ca)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax** paragraph (cb): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax** paragraph (d): inserted, by section 60(4) of the Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39).

Section 3(1) **tax** paragraph (d): amended by section 73(7)(b) of the Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32).

Section 3(1) **tax** paragraph (d)(iii)(A): repealed (with effect on 30 June 2009), on 6 October 2009, by section 596(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 3(1) **tax** paragraph (d)(iii)(A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax** paragraph (d)(iii)(CB): inserted, on 1 April 2008, by section 14(c) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **tax** paragraph (d)(iii)(CC): inserted, on 1 April 2008, by section 14(c) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **tax** paragraph (d)(vii): repealed by section 44(5)(b) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4).

Section 3(1) **tax** paragraph (d)(viii)(b): inserted, on 1 April 2008, by section 14(d) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 3(1) **tax**: inserted, on 10 April 1995, by section 3(7) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **tax advice document**: inserted, on 21 June 2005, by section 120(5) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 3(1) **tax advisor**: inserted, on 21 June 2005, by section 120(5) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 3(1) **tax agent**: substituted, on 19 December 2007, by section 188(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 3(1) **tax agent**: inserted by section 39(1) of the Taxation (Remedial Provisions) Act 1998 (1998 No 7).

Section 3(1) **tax code certificate**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax code notification**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax contextual information**: inserted, on 21 June 2005, by section 120(6) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 3(1) **tax deduction**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax form**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax law** paragraph (d): amended, on 1 April 2002, by section 338 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 3(1) **tax law**: amended, on 19 December 1998, by section 416 of the Accident Insurance Act 1998 (1998 No 114).

Section 3(1) **tax law**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax or duty**: repealed by section 3(60) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax paid**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax payable**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax position**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax position**: amended by section 82(9)(a) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **tax position**: amended by section 82(9)(b) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **tax position** paragraph (f): substituted by section 430(h) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **tax position** paragraph (f): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **tax position** paragraph (g): substituted by section 430(h) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **tax position** paragraph (g): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **tax position** paragraph (h): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax position** paragraph (h): substituted by section 430(h) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 3(1) **tax position** paragraph (j): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax position** paragraph (k): inserted by section 68(3) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **tax position** paragraph (l): inserted by section 3(1)(d) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **tax position** paragraph (m): inserted by section 3(1)(d) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **tax position** paragraph (n): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax position** paragraph (o): inserted, on 3 April 2006, by section 210(16) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **tax position** paragraph (o): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **tax recovery agreement**: inserted, on 20 May 1999, by section 62(1)(b) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **tax return**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax shortfall**: substituted by section 68(4) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **tax shortfall**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **tax to pay**: inserted by section 3(61) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **taxation law**: inserted, on 1 April 1995, by section 3(8) of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 3(1) **taxpayer**: substituted by section 3(62) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **taxpayer's tax position**: substituted by section 3(1)(e) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 3(1) **taxpayer's tax position**: substituted by section 68(5) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **taxpayer's tax position**: inserted by section 3(62) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **taxpayers tax position** paragraph (a): of amended, by section 189(7)(a) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **taxpayers tax position** paragraph (b): repealed, by section 189(7)(b) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 3(1) **taxpayer's total tax figure**: inserted by section 3(62) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **third instalment date**: repealed, on 1 October 2007, by section 210(17) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **third instalment date**: amended by section 3(63) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **third instalment date**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **trade credit**: repealed, on 20 May 1999, by section 62(1)(i) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(1) **trustee income**: repealed, on 1 October 2007, by section 210(18) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(1) **trustee income**: amended by section 3(64) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **trustee income**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(1) **withdrawal tax**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(1) **unacceptable tax position**: inserted by section 82(10) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 3(1) **underestimation penalty**: repealed by section 68(6) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 3(1) **underestimation penalty**: inserted by section 3(65) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **unpaid tax**: inserted by section 3(65) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(1) **withdrawal tax**: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 3(2) amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(3): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(3): repealed, on 1 April 2005, by section 210(19) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 3(4)(a): amended, on 20 May 1999, by section 62(2) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 3(4)(b): amended by section 3(66) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 3(4)(b): amended, on 1 April 2000, by section 34(3) of the Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34).

Section 3(4)(b): amended by section 34(2) of the Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34).

Section 3(4)(b): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 3(4): repealed, on 1 April 2005, by section 210(19) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

**4 Construction of statutory references**

Except where there is express provision to the contrary,—

- (a) a reference in this Act to a particular Part, or section, is to be construed as a reference to a Part, or section, of this Act; and
- (b) a reference in this Act to some other particular element is to be construed as a reference to that element in its immediate context.

for example, a reference to paragraph (f) is to be construed as a reference to paragraph (f) of the section, subsection, definition, or clause in which that paragraph is contained.

**4A Construction of certain provisions**

(1) In this Act—

- (a) a provision referring to a tax liability or to a tax obligation, or to something a person must do, refers to a taxpayer's liability or obligation under a tax law:
- (b) a provision referring to a taxpayer taking a tax position or to a taxpayer's tax position, also refers to the taxpayer's—
  - (i) claiming or returning or not claiming or returning the tax position; or
  - (ii) paying, deducting, or withholding, or not paying, not deducting, or not withholding, an amount of tax; or
  - (iii) being placed in the tax position,—  
whether knowingly or intentionally or involuntarily:
- (c) a provision referring to a tax position taken in a tax return refers to a tax position taken explicitly or implicitly in the tax return:
  - (ca) a provision referring to a tax position taken in an income statement refers to a tax position taken explicitly or implicitly in the income statement, whether or not the tax position was included by the Commissioner in the income statement:
- (d) a provision referring to a taxpayer's obligation to pay an amount of tax refers to the taxpayer's obligation to pay tax to the Commissioner:

- (e) a provision referring to a taxpayer's obligation to provide a tax return refers to the taxpayer's obligation to complete and provide the tax return to the Commissioner:
  - (f) a provision referring to a taxpayer's obligation to provide a tax form refers to the taxpayer's obligation to complete and provide the tax form to the person entitled to it:
  - (g) a provision referring to any tax (including, for the avoidance of doubt, a penalty) or interest is to be taken to be a reference to all, or part, or the relevant part, of the tax or interest.
- (2) For the purposes of this Act—
- (a) *[Repealed]*
  - (b) an amount of tax is deemed to be withheld when payment is made of the net amount of a PAYE income payment:
  - (bb) a contribution deduction under the KiwiSaver Act 2006 is deemed to be made when payment is made of the net amount of a PAYE income payment:
  - (c) the amount withheld or deducted described in paragraph (b) or paragraph (bb) is deemed to have been applied for a purpose other than in payment to the Commissioner if the amount is not paid to the Commissioner by the relevant due date:
  - (d) If the amount withheld or deducted described in paragraph (b) or paragraph (bb) is not paid to the Commissioner by the due date, the amount is deemed to be unpaid tax:
  - (e) despite paragraph (d), and only for the purposes of Part 10B, the amount of tax deemed to be withheld referred to in paragraph (b) is treated as tax paid although it may not have been paid to the Commissioner by the due date.
- (3) References in this Act to tax liabilities for withholding or deducting an amount of tax, or making or accounting for amounts deducted or amounts withheld, under the PAYE rules, to the extent necessary, are also to be construed as including references to liabilities for withholding, deducting, making, or accounting for,—

- (a) deductions of premiums payable under the Accident Rehabilitation and Compensation Insurance Act 1992 or regulations made under that Act or the Accident Insurance Act 1998 or a regulation made under that Act; or
  - (aa) deductions of levies under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or a regulation made under that Act; or
  - (b) deductions under the Child Support Act 1991; or
  - (bb) deductions under the KiwiSaver Act 2006; or
  - (bc) amounts of compulsory employer contributions that must be paid under Part 3, subpart 3A of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act; or
  - (c) repayment deductions or other deductions under the Student Loan Scheme Act 1992,—  
where the relevant liabilities arise or are to be performed at the same time as the tax liabilities under the PAYE rules.
- (4) When a taxpayer has an obligation under any of sections RA 5, RA 6, RA 10, RA 15 to RA 19, RD 2, RD 4, RD 22, RE 20, RE 21, or RF 13 of the Income Tax Act 2007—
- (a) furnishes a return that shows a liability to pay tax under that section; and
  - (b) the tax is required to be paid by a due date for a return period; and
  - (c) the liability shown in the return is greater than the tax that the taxpayer paid by the due date—  
the taxpayer's tax position in respect of the due date is the tax paid and not the amount of tax shown as payable in the tax return.
- (5) If a taxpayer does not provide a tax return for a return period, the taxpayer is deemed, in relation to each type of tax, to take, in respect of every due date that would be covered by a tax return for the return period if a return were provided, a tax position that is based on the tax of that type paid by the taxpayer for that return period.
- (6) Where—



- (a) a provision (in this subsection referred to as **the relevant provision**) of this Act applies in respect of a taxpayer making an objection to or a challenge in respect of an assessment or other disputable decision, but not to both; and
- (b) it is necessary or appropriate for the purposes of another provision of this Act that applies with respect to objections or challenges, but not to both, that the relevant provision apply,—

the relevant provision is to be read as if it referred with respect to both objections and challenges.

Section 4A: inserted by section 4 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 4A(1)(b)(ii): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4(1)(ca): inserted by section 4(1) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 4A(2)(a): repealed (with effect on 30 June 2009), on 6 October 2009, by section 597(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4A(2)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4A(2)(bb): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4A(2)(bb): inserted, on 1 December 2006, by section 231 of the Kiwi-Saver Act 2006 (2006 No 40).

Section 4A(2)(c): amended (with effect on 30 June 2009), on 6 October 2009, by section 597(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4A(2)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4A(2)(c): amended by section 69(1) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 4A(2)(c): amended, on 1 December 2006, by section 231 of the Kiwi-Saver Act 2006 (2006 No 40).

Section 4A(2)(d): amended (with effect on 30 June 2009), on 6 October 2009, by section 597(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4A(2)(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 597(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4A(2)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4A(2)(d): amended by section 69(2) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 4A(2)(d): amended, on 1 December 2006, by section 231 of the Kiwi-Saver Act 2006 (2006 No 40).

Section 4A(2)(e): added (with effect on 1 April 2008), on 6 October 2009, by section 597(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4A(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4A(3)(a): amended, on 19 December 1998, by section 416 of the Accident Insurance Act 1998 (1998 No 114).

Section 4A(3)(aa): inserted, on 1 April 2002, by section 338 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 4A(3)(bb): inserted, on 1 December 2006, by section 231 of the Kiwi-Saver Act 2006 (2006 No 40).

Section 4A(3)(bc): inserted, on 1 April 2008, by section 16 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 4A(4): substituted by section 69(3) of the Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 4A(4): amended (with effect on 30 June 2009), on 6 October 2009, by section 597(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 4A(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 4A(4): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

#### **4B Application of Act in relation to Australian wine producer rebate**

- (1) This section governs the application of this Act in relation to the rights and obligations of a person under a regulation made under section CV 8 of the Income Tax Act 2007, which relates to Australian wine producer rebates.
- (2) This Act applies to the rights and obligations as if—
  - (a) a person's claim for approval in respect of an Australian wine producer rebate were an application made by the person to the Commissioner for registration in respect of the administration of a tax imposed by an Inland Revenue Act:
  - (b) a person's claim for a payment of an Australian wine producer rebate were an application by the person to

the Commissioner for a refund of a tax imposed by an Inland Revenue Act:

- (c) a decision concerning an entitlement of the person to a payment of an Australian wine producer rebate were a decision by the Federal Commissioner of Taxation for Australia concerning an entitlement of the person to a refund of a tax imposed by the Commonwealth of Australia:
- (d) a payment to the person of an Australian wine producer rebate were a refund by the Federal Commissioner of Taxation for Australia of a tax imposed by the Commonwealth of Australia.

Section 4B: inserted on 21 December 2005, by section 10 of the Taxation (Urgent Measures) Act 2005 (2005 No 121).

Section 4B(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## Part 2 Commissioner and Department

### 5 Inland Revenue Department

There shall continue to be a Department of State, to be known as the Inland Revenue Department, which shall be the same Department as the Inland Revenue Department continued under the Inland Revenue Department Act 1974.

Compare: 1974 No 133 s 3(1)

### 6 Responsibility on Ministers and officials to protect integrity of tax system

- (1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their best endeavours to protect the integrity of the tax system.
- (2) Without limiting its meaning, **the integrity of the tax system** includes—
  - (a) taxpayer perceptions of that integrity; and
  - (b) the rights of taxpayers to have their liability determined fairly, impartially, and according to law; and

- (c) the rights of taxpayers to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other taxpayers; and
- (d) the responsibilities of taxpayers to comply with the law; and
- (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of taxpayers; and
- (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

Compare: 1974 No 133 s 4(1)

Section 6: on 10 April 1995, by section 4 of the Tax Administration Amendment Act 1995 (1995 No 24).

#### **6A Commissioner of Inland Revenue**

- (1) The person appointed as chief executive of the Department under the State Sector Act 1988 is designated the Commissioner of Inland Revenue.
- (2) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.
- (3) In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
  - (a) the resources available to the Commissioner; and
  - (b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and
  - (c) the compliance costs incurred by taxpayers.

Section 6A: inserted, on 10 April 1995, by section 4 of the Tax Administration Amendment Act 1995 (1995 No 24).

#### **6B Directions to Commissioner**

- (1) The Governor-General may by Order in Council, and with due regard to sections 6 and 6A of this Act and the provisions of the State Sector Act 1988 and the Public Finance Act 1989,

issue directions to the Commissioner in relation to the administration of the Inland Revenue Acts.

- (2) Subsection (1) does not authorise the giving of directions concerning the tax affairs of individual taxpayers or the interpretation of tax law.
- (3) Every order made under subsection (1) shall as soon as practicable after it is made—
  - (a) be published in the *Gazette*; and
  - (b) be laid before the House of Representatives together with any accompanying statement of the reasons for the order and any advice of the Commissioner in relation to it.
- (4) An order made under subsection (1) becomes binding on the Commissioner on the 7th day after the date on which it is made.

Section 6B: inserted, on 10 April 1995, by section 4 of the Tax Administration Amendment Act 1995 (1995 No 24).

## **7 Delegation of powers by Commissioner**

- (1) The Commissioner may from time to time, either generally or particularly, by writing under the Commissioner's hand, delegate to such officer or officers of the Department as the Commissioner thinks fit all or any of the powers of the Commissioner, except this power of delegation.
- (2) Subject to any general or special directions given or conditions imposed from time to time by the Commissioner, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the officer directly by this section and not by delegation.
- (3) Every officer purporting to act under any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (4) Any delegation under this section may be made to any specified officer, or to officers of a specified class, or to the holder or holders for the time being of a specified office or class of offices.

- (5) Unless and until any delegation under this section is revoked, it shall continue in force according to its tenor. In the event of the Commissioner by whom any such delegation is made ceasing to hold office that delegation shall, subject to subsection (6), continue in force according to its tenor.
- (6) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner.

Compare: 1974 No 133 s 11

#### **7A Authorisation to take securities**

- (1) The Commissioner may—
  - (a) accept securities to secure the performance of tax obligations; and
  - (b) require that securities be given on such terms (including the manner of payment of any costs and disbursements associated with the security) as the Commissioner specifies; and
  - (c) require that securities be transferred into the name of, and be held by, the Commissioner until the performance of a tax obligation or obligations; and
  - (d) if the Commissioner considers that the existing securities are or may be or become inadequate or insufficient, call for additional or substitute securities; and
  - (e) enforce a security if a taxpayer defaults in the performance of the tax obligation in respect of which the security was taken; and
  - (f) grant discharges, releases, or transfers of securities on terms the Commissioner considers appropriate; and
  - (g) recover from a taxpayer the costs of accepting, enforcing, discharging, releasing, or transferring any security.
- (2) The Commissioner is not to be liable for any loss suffered in relation to an asset or right that is the subject of a security, unless the Commissioner is guilty of wilful misconduct in dealing with the asset or right.
- (3) For the purposes of this section, the Commissioner and the Commissioner's successors in office—
  - (a) are deemed to be a corporation sole; and

- (b) as such corporation sole, are to have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.
- (4) Nothing in subsection (1) limits—
  - (a) any tax law which specifies the Commissioner's entitlement to a charge or other security; or
  - (b) the Commissioner's rights under the terms of a document evidencing or constituting a security; or
  - (c) the Commissioner's other rights to collect or recover tax or other amounts.

Section 7A: inserted, on 1 October 1996, by section 5 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

## **8 Deputy Commissioners of Inland Revenue**

*[Repealed]*

Section 8: repealed, on 10 April 1995, by section 5 of the Tax Administration Amendment Act 1995 (1995 No 24).

## **9 Regional Controllers of Inland Revenue**

*[Repealed]*

Section 9: repealed, on 10 April 1995, by section 5 of the Tax Administration Amendment Act 1995 (1995 No 24).

## **10 District Commissioners of Inland Revenue**

*[Repealed]*

Section 10: repealed, on 10 April 1995, by section 5 of the Tax Administration Amendment Act 1995 (1995 No 24).

## **11 Appointment of other officers**

*[Repealed]*

Section 11: repealed, on 10 April 1995, by section 5 of the Tax Administration Amendment Act 1995 (1995 No 24).

## **12 Official seal**

- (1) There shall be an official seal of the Inland Revenue Department, which shall be in the custody of the Commissioner.

(2) *[Repealed]*

Section 12(2): repealed, on 10 April 1995, by section 6 of the Tax Administration Amendment Act 1995 (1995 No 24).

### **13 Proof of signature of Commissioner**

- (1) The stamped or printed signature of the Commissioner or an officer of the Department may be used on any certificate, notice, or other document in relation to the exercise of the Commissioner's or officer's powers, duties, and functions under this or any other Act.
- (2) Any certificate, notice, or other document purporting to bear the written, stamped, or printed signature of the Commissioner or an officer of the Department shall, until the contrary is proved, be deemed to have been duly signed by the person whose signature it purports to bear.
- (3) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held office as Commissioner or other relevant officer of the Department, as the case may require.

Compare: 1974 No 133 s 21A

Section 13: substituted, on 10 April 1995, by section 7 of the Tax Administration Amendment Act 1995 (1995 No 24).

### **14 Giving of notices by Commissioner**

- (1) This section applies when this Act or any other Act requires the Commissioner to give a notice to a person.
- (2) The Commissioner must give the notice in writing.
- (3) The Commissioner must give the notice to—
  - (a) the person; or
  - (b) a representative authorised to act on behalf of the person.
- (4) The Commissioner may use the methods set out in subsections (5) to (8) to give the notice, subject to any conditions described in the subsection.
- (5) The Commissioner may give the notice by personal delivery to an addressee that is not a corporate body.



- (6) The Commissioner may give the notice by personal delivery to an addressee that is a corporate body, if the personal delivery is made to the addressee's office during working hours.
- (7) The Commissioner may give the notice by an electronic means of communication to the addressee, if the Commissioner complies with the Electronic Transactions Act 2002.
- (8) The Commissioner may give the notice by post—
  - (a) to the street address of the addressee's usual or last known place of residence; or
  - (b) to the street address of any of the addressee's usual or last known places of business; or
  - (c) to any other address, if the addressee has notified the Commissioner that they accept notices at the address.
- (9) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.
- (10) The following provisions apply if there is a conflict between this section and a provision in this or any other enactment:
  - (a) if the conflict is between any of subsections (2), (7), and (8)(c) and another provision, subsection (2), (7), or (8)(c) prevails; and
  - (b) if the conflict is between any of subsections (3) to (6), (8)(a) or (b), and (9) and another provision, the other provision prevails.

Section 14(1)(bb): inserted, on 1 April 1995, by section 104(1) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 14(1)(d): amended, on 1 April 1995, by section 104(2) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 14(1)(e): inserted, on 1 April 1995, by section 104(2) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 14: substituted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 14(9): substituted, on 1 April 2005, by section 170 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**14B Giving of notices to Commissioner**

- (1) This section applies when this Act or any other Act requires a person to give a notice to the Commissioner.
- (2) The person must give the notice in writing.
- (3) The person may give the notice to any office of the department.
- (4) The person may use the methods set out in subsections (5) to (7) to give the notice, subject to any conditions described in the subsection.
- (5) The person may give the notice by personal delivery, if the personal delivery is made during working hours.
- (6) The person may give the notice by an electronic means of communication, if the person complies with the Electronic Transactions Act 2002.
- (7) The person may give the notice by post—
  - (a) to the street address; or
  - (b) to the post office box number.
- (8) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.
- (9) The following provisions apply if there is a conflict between this section and a provision in this or any other enactment:
  - (a) if the conflict is between either of subsections (2) and (6) and another provision, subsection (2) or (6) prevails; and
  - (b) if the conflict is between any of subsections (3) to (5), (7), and (8) and another provision, the other provision prevails.

Section 14B: inserted, 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 14B(8): substituted, on 1 April 2005, by section 171 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**14C Giving of notices to other persons**

- (1) This section applies when this Act or the Income Tax Act 2007 requires a person to give a notice to a person other than the Commissioner.
- (2) The person must give the notice in writing.

- (3) The person may use the methods set out in subsections (4) to (7) to give the notice, subject to any conditions described in the subsection.
- (4) The person may give the notice by personal delivery to an addressee that is not a corporate body.
- (5) The person may give the notice by personal delivery to an addressee that is a corporate body, if the personal delivery is made to the addressee's office during working hours.
- (6) The person may give the notice by an electronic means of communication to the addressee, if the person complies with the Electronic Transactions Act 2002.
- (7) The person may give the notice by post—
  - (a) to the street address of the addressee's usual or last known place of residence; or
  - (b) to the street address of any of the addressee's usual or last known places of business; or
  - (c) to any other address, if the addressee has notified the person that they accept notices at the address.
- (8) A notice given by post is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.
- (9) The following provisions apply if there is a conflict between this section and a provision in this or any other enactment:
  - (a) if the conflict is between any of subsections (2), (6), and (7)(c) and another provision, subsection (2), (6), or (7)(c) prevails; and
  - (b) if the conflict is between any of subsections (3) to (5), (7)(a) or (b), and (8) and another provision, the other provision prevails.

Section 14C: inserted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 14C(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 14C(8): substituted, on 1 April 2005, by section 172 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

## **15 Annual report**

- (1) The Commissioner shall, as soon as practicable after the close of each financial year, furnish to the Minister a report on the

administration of the Inland Revenue Acts during the financial year.

- (2) Every such report shall be laid before Parliament as soon as practicable after it has been received by the Minister.

Compare: 1974 No 133 s 22

## **Part 2A**

### **Taxpayer's tax obligations**

Part 2A: inserted by section 6 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

#### **15A Purpose of this Part**

The purpose of this Part is to outline the primary obligations of taxpayers under the tax laws.

Section 15A: inserted by section 6 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

#### **15B Taxpayer's tax obligations**

A taxpayer must do the following:

- (aa) if required under a tax law, make an assessment:
- (a) unless the taxpayer is a non-filing taxpayer, correctly determine the amount of tax payable by the taxpayer under the tax laws:
- (b) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by the tax laws:
- (c) pay tax on time:
- (d) keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws:
- (e) disclose to the Commissioner in a timely and useful way all information (including books and records) that the tax laws require the taxpayer to disclose:
- (f) to the extent required by the Inland Revenue Acts, co-operate with the Commissioner in a way that assists the exercise of the Commissioner's powers under the tax laws:
- (g) comply with all the other obligations imposed on the taxpayer by the tax laws:

- (h) if a natural person to whom section 80C applies, inform the Commissioner that the person has not received an income statement for a tax year, if the income statement is not received by the date prescribed in section 80C(2) or (3):
- (i) if the taxpayer is a natural person, correctly respond to any income statement issued to the taxpayer.

Section 15B2A: inserted by section 6 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 15B(aa): inserted, by section 190 of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 15B(a): amended by section 45(1) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4).

Section 15B(h): inserted by section 5(1) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 15B(h): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 15B(i): inserted by section 5(1) of the Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

## **Part 2B**

### **Intermediaries for PAYE, provisional tax, and resident passive income**

Part 2B: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### ***PAYE intermediaries***

Heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15C PAYE intermediaries and listed PAYE intermediaries**

- (1) A person who meets the requirements of section 15F may apply under section 15D to the Commissioner for approval to become a PAYE intermediary.
- (2) A PAYE intermediary may apply under section 15G to the Commissioner to become a listed PAYE intermediary. To

make an application, the PAYE intermediary must meet, on a continuing basis, the requirements for a PAYE intermediary.

Compare: 2004 No 35 ss NBA 1, NBB 3

Section 15C: inserted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15D Application for approval as PAYE intermediary**

- (1) In order to become a PAYE intermediary, a person must—
  - (a) meet the requirements of section 15F; and
  - (b) have established a trust account that meets the requirements of section RP 6 of the Income Tax Act 2007; and
  - (c) operate systems to protect the personal information and payment details that are obtained in the course of running the account.
- (2) The Commissioner may approve an application if the Commissioner is satisfied that the applicant—
  - (a) will comply with the PAYE rules and the ESCT rules if they assume an employer's obligations under those rules; and
  - (b) has systems to allow them to make payments and provide information in the format required by the Commissioner.
- (3) The Commissioner may approve a person as a PAYE intermediary for a set period.

Compare: 2004 No 35 s NBA 2(1)(a)–(c), (2), (3)

Section 15D: inserted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15E Revocation of approval**

- (1) The Commissioner may revoke an approval given under section 15D if the person—
  - (a) does not comply with the PAYE rules;
  - (b) does not comply with the ESCT rules when they have assumed an employer's obligations under those rules;
  - (c) is no longer fit to be a PAYE intermediary because they do not meet the requirements of section 15F;
  - (d) when they are not a natural person, has been put into liquidation or receivership:

- (e) when they are a company, is no longer registered in New Zealand.
- (2) If the Commissioner revokes an approval under subsection (1)(b), the Commissioner must notify the person, and any employer for whom the person is a PAYE intermediary, of the revocation and its effective date. The effective date must not be less than 14 days from the date of notification.
- (3) A decision by the Commissioner under this section is not open to challenge.

Compare: 2004 No 35 s NBA 2(4)

Section 15E: inserted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15F Fitness of applicants**

- (1) This section applies for the purposes of section 15D to the following:
  - (a) an applicant who is a natural person or a corporation sole:
  - (b) each member of an applicant that is an unincorporated body:
  - (c) an officer of an applicant that is a body corporate:
  - (d) a principal of an applicant.
- (2) The applicant, member, officer, or principal, as applicable,—
  - (a) must not be a discharged or undischarged bankrupt; or
  - (b) must not have been convicted of an offence involving fraud; or
  - (c) must be eligible to be a company director.

Compare: 2004 No 35 s NBA 2(1)(c)

Section 15F: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15G Application for approval as listed PAYE intermediary**

- (1) In order to become a listed PAYE intermediary, a PAYE intermediary must—
  - (a) meet the requirements of section 15D; and
  - (b) have completed and filed the returns of income required from them; and
  - (c) paid the required amounts of tax due from them.

- (2) A PAYE intermediary is a listed PAYE intermediary only for a period that is no more than the period for which they have been approved as a PAYE intermediary.
- (3) On approval of an application under this section and before acting as a listed PAYE intermediary for an employer, the listed PAYE intermediary must inform an employer who contracts their services as a listed PAYE intermediary that the Commissioner does not guarantee payment by the intermediary to an employee of the employer, or the performance of a service provided by them.
- (4) The Commissioner may approve a PAYE intermediary as a listed PAYE intermediary for a set period.

Compare: 2004 No 35 s NBB 2

Section 15G: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15H Grounds for revocation of listing**

The Commissioner may revoke the listing of a listed PAYE intermediary if—

- (a) an approval of the person as a PAYE intermediary is revoked:
- (b) the person no longer meets the requirements of section 15F:
- (c) the person does not provide a subsidy claim form by the date and in the format required by the Commissioner:
- (d) the person does not comply with an obligation of a listed PAYE intermediary:
- (e) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.

Compare: 2004 No 35 s NBB 4(1)

Section 15H: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15I Procedure for revocation of listing**

- (1) The Commissioner must notify a listed PAYE intermediary of an intended revocation under section 15H, and must provide reasons for the intended revocation.



- (2) If the listed PAYE intermediary who is notified by the Commissioner under subsection (1) does not resolve the matters set out in the notice to the satisfaction of the Commissioner within 30 days of the date on which they are notified, the Commissioner may give 14 days' notice of revocation.
- (3) At the end of the 14-day notice period under subsection (2), the listing of the listed PAYE intermediary is revoked.
- (4) A decision by the Commissioner under this section is not open to challenge under Part 8A.

Compare: 2004 No 35 s NBB 4(2)–(5)

Section 15I: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15J Employers' arrangements with PAYE intermediaries**

- (1) An employer who wishes to enter an arrangement with a PAYE intermediary must notify the Commissioner of the proposed arrangement, providing—
  - (a) the name of the PAYE intermediary:
  - (b) the period for which the PAYE intermediary is to act for the employer:
  - (c) the bank account number of the PAYE intermediary into which the employer will deposit amounts:
  - (d) whether the proposed arrangement requires the PAYE intermediary to collect amounts under the ESCT rules.
- (2) On approval of the arrangement, the Commissioner must notify the employer, and the approval applies to pay periods that begin on or after 14 days after the date on which the notice is given.
- (3) An employer or a PAYE intermediary may end the arrangement by notifying the other party and the Commissioner. The notice must state the date that is after the notification for the end of the arrangement.
- (4) An employer or a listed PAYE intermediary may end an arrangement by notifying the other party and the Commissioner. The notice must state the date on which the arrangement is to end that must begin on or after 14 days after the date on which the notice is given.

Compare: 2004 No 35 ss NBA 3, NBA 8, NBB 7

Section 15J: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15K Privacy requirements**

The PAYE intermediary must operate and maintain systems to protect the personal information and payment details that they acquire in running the systems.

Compare: 2004 No 35 s NBA 5(3)

Section 15K: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15L Amended monthly schedules**

The PAYE intermediary may make an amended monthly schedule relating to the employee and a pay period, and is then responsible for the accuracy of the amendments.

Compare: 2004 No 35 s NBA 5(4)

Section 15L: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15M Subsidy claim forms**

- (1) A listed PAYE intermediary must file a subsidy claim form within 1 month of the date of filing an employer monthly schedule to which the form relates.
- (2) The Commissioner may amend the details in a subsidy claim form to correct an error. The amendment must be made within 2 years of receiving the form.
- (3) For the purposes of subsection (2), the Commissioner must give the listed PAYE intermediary 14 days' notice of a proposed amendment.
- (4) For the purposes of section 22, a listed PAYE intermediary must keep the necessary records to verify the information in a subsidy claim form.

Compare: 2004 No 35 ss NBB 3(2), NBB 5(1)–(3)

Section 15M: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### ***RWT proxies***

Heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15N RWT proxies**

- (1) If the requirements in subsection (2) are met, a person may choose to become an RWT proxy for a person who pays resident passive income that consists of a dividend by notifying the Commissioner.
- (2) The requirements are that—
  - (a) the person paying the resident passive income is a non-resident unit trust; and
  - (b) the person receiving the resident passive income is a natural person or a trustee of a qualifying trust who has asked the person referred to in subsection (1) to act as an RWT proxy in relation to the payment; and
  - (c) the person has agreed to act as the RWT proxy; and
  - (d) the payment of resident passive income is made while the notice is effective.
- (3) For the purposes of subsection (1), the notification to the Commissioner must contain the person's election, their name, postal address, and the date from which the election applies.
- (4) The RWT proxy may cancel their election by notifying the Commissioner. The election stops applying from the later of—
  - (a) the date set out in the notice of cancellation;
  - (b) the date on which the Commissioner receives a notice of cancellation.

Compare: 2004 No 35 s NF 2AA

Section 15N: substituted (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### ***Tax pooling intermediaries***

Heading: inserted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**15O Establishing tax pooling accounts**

A person who meets the requirements of section 15R may apply under section 15Q to the Commissioner to establish a tax pooling account.

Compare: 2004 No 35 s MBA 3(1)

Section 15O: substituted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**15P Role of Commissioner**

- (1) The Commissioner is not required to oversee or audit the operation of a tax pooling account.
- (2) The Commissioner is not liable for any loss related to the operation of a tax pooling account through—
  - (a) the failure of a tax pooling intermediary to deposit in a tax pooling account an amount paid to them by a taxpayer;
  - (b) the unauthorised withdrawal by a tax pooling intermediary from a tax pooling account;
  - (c) the failure of a tax pooling intermediary to ask for a transfer of funds from a tax pooling account to a taxpayer's tax account with the Commissioner.

Compare: 2004 No 35 s MBA 4(5), (6)

Section 15P: substituted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

***Tax pooling intermediaries***  
*[Repealed]*

Heading: repealed (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**15Q Applications to establish tax pooling accounts**

- (1) In order to establish and maintain a tax pooling account, an intermediary must—
  - (a) hold the account in their name; and
  - (b) operate systems to protect the personal information and payment details that are obtained in the course of running the tax pooling account; and

- (c) record the balance in the tax pooling account contributed by each taxpayer.
- (2) A tax pooling account continues until it is wound up under section 15T.

Compare: 2004 No 35 s MBA 4

Section 15Q: substituted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15R Fitness of applicants**

- (1) This section applies for the purposes of section 15Q to—
  - (a) an applicant who is a natural person; and
  - (b) an officer of an applicant who is not a natural person; and
  - (c) a principal of an applicant.
- (2) The applicant—
  - (a) must not be a discharged or undischarged bankrupt; or
  - (b) must not have been convicted of an offence involving dishonesty; or
  - (c) must be eligible to be a company director.

Compare: 2004 No 35 s MBA 3(d)

Section 15R: substituted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15S Requirements for applications to establish tax pooling accounts**

- (1) An application to establish a tax pooling account must contain—
  - (a) the applicant's full name, address, and tax file number; and
  - (b) a statement that the applicant—
    - (i) will operate systems that allow them to meet the requirements set out in section 15Q(1); and
    - (ii) will maintain and operate the systems to meet those requirements; and
  - (c) confirmation that the applicant will establish a trust account into which they agree to pay amounts received in their role as intermediary; and

- (d) an undertaking that, before acting as intermediary for a taxpayer, the applicant will inform the taxpayer of the following matters:
  - (i) the operation of the tax pooling account is not subject to the Commissioner's oversight or audit;
  - (ii) the Commissioner has no liability for any loss related to the tax pooling account;
  - (iii) the applicant is fit to operate the tax pooling account as required by section 15R;
  - (iv) the applicant has met the requirements set out in paragraphs (a) to (c).
- (2) The Commissioner may approve an application to establish a tax pooling account if the Commissioner is satisfied that the applicant—
  - (a) is able to operate the account correctly; and
  - (b) has systems to allow them to make payments and provide information in the format required by the Commissioner.

Compare: 2004 No 35 s MBA 3

Section 15S: substituted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **15T Winding up tax pooling accounts**

- (1) An intermediary may wind up their tax pooling account at any time.
- (2) The Commissioner may require an intermediary to wind up their tax pooling account if—
  - (a) the intermediary's actions are preventing a taxpayer from effectively managing their liability to pay provisional tax and use of money interest; or
  - (b) the intermediary is or has breached their obligations under this Part; or
  - (c) the tax pooling account is in deficit; or
  - (d) fewer than 100 taxpayers are, or are likely to be, making deposits in the tax pooling account; or
  - (e) the intermediary does not meet the requirements of section 15Q; or

- (f) when they are not a natural person, the intermediary has been put into liquidation or receivership.
- (3) For the purposes of subsection (2),—
  - (a) the Commissioner may require the winding up immediately or may set another date for the winding up:
  - (b) the Commissioner must give 30 days' notice to the intermediary of any intended action using subsection (2)(d).
- (4) On the winding up of a tax pooling account, the Commissioner may refund the balance of the account to the former holder of the account, or may apply to a court for directions for the disposal of the balance of the account.

Compare: 2004 No 35 s MBA 8

Section 15T: substituted, on 6 October 2009, by section 598(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15U Requirements for applications to establish tax pooling accounts**

*[Repealed]*

Section 15U: repealed (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15V Winding up tax pooling accounts**

*[Repealed]*

Section 15V: repealed (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### ***RWT proxies***

*[Repealed]*

Heading: repealed (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **15W RWT proxies**

*[Repealed]*

Section 15W: repealed (with effect on 1 April 2008), on 6 October 2009, by section 598(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### Part 3

#### Information, record-keeping, and returns

##### *Commissioner's powers to obtain information*

- 16 Commissioner may access premises to obtain information**
- (1) Notwithstanding anything in any other Act, the Commissioner or any officer of the Department authorised by the Commissioner in that behalf shall at all times have full and free access to all lands, buildings, and places, and to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatever, for the purpose of inspecting any books and documents and any property, process, or matter which the Commissioner or officer considers necessary or relevant for the purpose of collecting any tax or duty under any of the Inland Revenue Acts or for the purpose of carrying out any other function lawfully conferred on the Commissioner, or considers likely to provide any information otherwise required for the purposes of any of those Acts or any of those functions, and may, without fee or reward, make extracts from or copies of any such books or documents.
- (2) The occupier of land, or a building or place, that is entered or proposed to be entered by the Commissioner, or by an authorised officer, must—
- (a) provide the Commissioner or the officer with all reasonable facilities and assistance for the effective exercise of powers under this section; and
  - (b) answer all proper questions relating to the effective exercise of powers under this section, orally or, if required by the Commissioner or the officer, in writing, or by statutory declaration.
- (2A) A person whom the Commissioner or an authorised officer considers necessary for the effective exercise of powers under this section may accompany the Commissioner or the authorised officer to a place.
- (3) Notwithstanding subsection (1), the Commissioner, an authorised officer, or a person accompanying the Commissioner or the authorised officer, shall not enter any private dwelling ex-



cept with the consent of an occupier or pursuant to a warrant issued under subsection (4).

- (4) A judicial officer who, on written application made on oath, is satisfied that the exercise by the Commissioner or an authorised officer of his or her functions under this section requires physical access to a private dwelling may issue to the Commissioner or an authorised officer a warrant to enter that private dwelling.
- (5) Every warrant issued under subsection (4)—
- (a) shall be in a form prescribed by regulations made under this Act; and
  - (b) shall specify an authorised officer of the Department, whether by name or in general, who may act under the warrant; and
  - (ba) shall specify whether other persons may accompany the officer acting under the warrant; and
  - (c) shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and
  - (d) shall state its period of validity, or the date on which it expires.
- (6) Every person exercising the power of entry conferred by a warrant issued under subsection (4) shall produce the warrant of authority and evidence of identity—
- (a) On first entering the private dwelling; and
  - (b) Whenever subsequently reasonably required to do so.
- (7) In this section—

**Judicial officer** means any District Court Judge, justice, Community Magistrate, or Registrar of a District Court; but does not include any person who is an officer or employee of the Department

Section 16 **Judicial officer**: amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

**Private dwelling** means any building or part of a building occupied as residential accommodation (including any garage, shed, and other building used in connection therewith); and includes any business premises that are or are within a private dwelling.

Compare: 1974 No 133 s 16

Section 16 heading: substituted, on 26 March 2003, by section 83(1) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 16(2): substituted, on 26 March 2003, by section 83(2) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 16(2A): inserted, on 26 March 2003, by section 83(2) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 16(3): amended, on 26 March 2003, by section 83(3) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 16(4): amended, on 26 March 2003, by section 83(4) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 16(5)(b): substituted, on 26 March 2003, by section 83(5) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 16(5)(ba): inserted, on 26 March 2003, by section 83(5) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

## **16B Power to remove and copy documents**

- (1) The Commissioner, or an officer of the Department authorised by the Commissioner, may remove books or documents accessed under section 16 to make copies.
- (2) Any copies of the books or documents removed must be made, and the books or documents returned, as soon as practicable.
- (3) A copy of a book or document certified by or on behalf of the Commissioner is admissible in evidence in court as if it were the original.
- (4) The owner of a book or document that is removed under this section is entitled to inspect, and obtain a copy of, the book or document at the premises to which the book or document is removed—
  - (a) at the time the book or document is removed to the premises:
  - (b) at reasonable times subsequently.

Section 16B: inserted, on 26 March 2003, by section 84 of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

**16C Power to remove and retain documents for inspection**

- (1) The Commissioner, an authorised officer, or a person accompanying the Commissioner or the authorised officer may remove books or documents from a place accessed under section 16 and retain them for a full and complete inspection if the Commissioner or the authorised officer has—
  - (a) the consent of an occupier;
  - (b) a warrant issued under subsection (2).
- (2) A judicial officer may issue, to the Commissioner or an authorised officer, a warrant for the purpose of removing books or documents from a place and retaining them for a full and complete inspection if, on written application made on oath, the judicial officer is satisfied that the exercise by the Commissioner or an authorised officer of his or her functions under section 16 may require removing books or documents from a place and retaining them for a full and complete inspection.
- (3) Every warrant issued under subsection (2) must meet the requirements in section 16(5)(a) to (d).
- (4) Every person exercising the power to remove and retain conferred by a warrant issued under subsection (2) must produce the warrant of authority and evidence of identity—
  - (a) on first entering the place; and
  - (b) whenever subsequently reasonably required to do so.
- (5) The owner of a book or document that is removed under this section is entitled to obtain a copy of the book or document at the premises to which the book or document is removed—
  - (a) at the time the book or document is removed to the premises;
  - (b) at reasonable times subsequently.
- (6) Books or documents retained under this section may be retained for so long as is necessary for a full and complete inspection.
- (7) The Commissioner or an officer of the Department authorised by the Commissioner may make copies of books or documents retained under this section, and a copy of a book or document certified by or on behalf of the Commissioner is admissible in evidence in court as if it were the original.

- (8) In this section, **judicial officer** means a judicial officer as defined in section 16(7).

Section 16C: inserted, on 18 December 2006, by section 173 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**17 Information to be furnished on request of Commissioner**

- (1) Every person (including any officer employed in or in connection with any Department of the Government or by any public authority, and any other public officer) shall, when required by the Commissioner, furnish in writing any information and produce for inspection any books and documents which the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of any of the Inland Revenue Acts or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner.
- (1B) For the purpose of subsection (1), information or a book or document is treated as being in the knowledge, possession or control of a New Zealand resident if—
- (a) the New Zealand resident controls, directly or indirectly, a non-resident; and
  - (b) the information or book or document is in the knowledge, possession or control of the non-resident.
- (1C) For the purpose of subsection (1B) and sections 143(2) and 143A(2)—
- (a) in determining whether a non-resident is controlled by a New Zealand resident—
    - (i) anything held by a person who is resident in New Zealand, or is a controlled foreign company, and is associated with the New Zealand resident is treated as being held by the New Zealand resident; and
    - (ii) a person is treated as being associated with the New Zealand resident if the person and the New Zealand resident are associated under subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions), interpreted as if “relative? had the

meaning set out in paragraph (a) of the definition in section YA 1, or the rules for the 1988 version provisions of that Act; and

- (b) a law of a foreign country that relates to the secrecy of information must be ignored.
- (1D) If information in writing is required, or books and documents must be produced, the Commissioner may require that the information be furnished, or the books and documents be produced, to a particular office of the Department.
- (2) Without limiting subsection (1), the information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts and other accounts, and statements of assets and liabilities.
- (3) The Commissioner may, if the Commissioner considers it reasonable to do so, remove and retain any books or documents produced for inspection under this section for so long as is necessary for a full and complete inspection of those books and documents.
- (4) Any person producing any books or documents which are retained by the Commissioner under subsection (3) shall, at all reasonable times and subject to such reasonable conditions as may be determined by the Commissioner, be entitled to inspect the retained books or documents and to obtain copies of them at the person's own expense.
- (5) The Commissioner may require that any written information or particulars furnished under this section shall be verified by statutory declaration or otherwise.
- (6) The Commissioner may, without fee or reward, make extracts from or copies of any books or documents produced for inspection in accordance with this section.

Compare: 1974 No 133 s 17

Section 17(1B): substituted, on 25 November 2003, by section 105(1) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 17(1C): inserted, on 26 March 2003, by section 85 of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 17(1C): amended, on 25 November 2003, by section 105(2)(a) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 17(1C)(a)(i): amended, on 25 November 2003, by section 105(2)(b) of the Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 17(1C)(a)(i): amended, on 21 December 2004, by section 89 of the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 17(1C)(a)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 599(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 17(1C)(a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 17(1C)(a)(ii): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 17(1D): inserted, on 26 March 2003, by section 85 of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

#### **17A Court orders for production of information or return**

- (1) The purpose of this section is to provide the Commissioner with an alternative remedy to prosecuting taxpayers for the offences of—
  - (a) Failing to provide the information required under section 17; or
  - (b) Failing to provide tax returns required to be provided by the tax laws.
- (2) If a person fails to provide information to the Commissioner as required by a written notice under section 17 and within the time limit specified in the notice, the Commissioner may apply to the District Court for an order requiring the person to produce the information for review.
- (3) If a taxpayer does not provide a tax return on time, the Commissioner may apply to the District Court for an order requiring the taxpayer to provide the tax return.
- (4) The Commissioner may apply in accordance with subsection (2) or subsection (3) as well as or instead of prosecuting the taxpayer.
- (5) Notice of the application must be given by the Commissioner to—

- (a) The person in respect of whom the order is sought; and
  - (b) Any other person the District Court directs.
- (6) The Commissioner and each person who is given notice of an application is entitled to appear and to be heard on the hearing of the application.
- (7) The District Court may—
- (a) Order the information requested under section 17 to be produced to the District Court; and
  - (b) Review the information to determine—
    - (i) Whether or not to make an order requiring the taxpayer to produce the information to the Commissioner; and
    - (ii) Whether or not the information is the subject of legal professional privilege (whether within the meaning of section 20 or otherwise at law); and
    - (iii) whether or not the information is contained in a tax advice document; and
    - (iv) if the information is contained in a tax advice document, whether or not the information is required to be disclosed under section 20E, 20F, or 20G.
- (8) If and to the extent that the District Court is satisfied that the information—
- (a) is likely to be relevant for a purpose relating to the administration or enforcement of—
    - (i) a tax law; or
    - (ii) a matter arising from or connected with another function lawfully conferred on the Commissioner; and
  - (b) is not the subject of legal professional privilege (within the meaning of section 20 or otherwise at law),—  
the District Court may order the person named in the application to produce the information or any part of that information for review by the Commissioner.
- (9) The District Court may order the taxpayer named in the application to provide a tax return.
- (10) This section applies notwithstanding any enactment or rule of law that obliges taxpayers—

- (a) Not to disclose information or to keep information secret; or
  - (b) Not to perform an obligation.
- (11) Compliance with this section is not a breach of any enactment, rule, or obligation referred to in subsection (10).
- (12) No person is excused from producing information that is the subject of a Court order—
- (a) on the ground that production of the information could or might prove a breach of a tax obligation or subject the taxpayer to a fine, penalty, or conviction; or
  - (b) on the ground that another privilege could otherwise be claimed by the taxpayer in relation to production of the information in proceedings in a court.
- (13) Information produced to the Commissioner for review as a result of a Court order under this section—
- (a) may be removed and retained by the Commissioner for so long as is necessary to undertake a full review:
  - (b) may be copied by the Commissioner, without liability for a fee or payment.
- (14) A person who is required to produce information for review under this section must, if the information is not kept in written form, make the necessary arrangements to ensure that the information can be viewed and copied.
- (15) In this section—
- Information** includes a book or document
- Taxpayer** includes a person (other than the Commissioner) referred to in subsection (2).

Section 17A: inserted, on 1 October 1996, by section 7(1) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 17A(7)(b)(ii): amended, on 21 June 2005, by section 121 of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 17A(7)(b)(iii): inserted, on 21 June 2005, by section 121 of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 17A(7)(b)(iv): inserted, on 21 June 2005, by section 121 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

## **18 Inquiry before a District Court Judge**

- (1) In any case in which the Commissioner deems it necessary to hold an inquiry for the purpose of obtaining any information



with respect to the liability of any person for any tax or duty under any of the Inland Revenue Acts or any other information required for the purposes of the administration or enforcement of any of those Acts or for the purpose of carrying out any other function lawfully conferred on the Commissioner, the Commissioner may apply in writing to a District Court Judge to hold an inquiry under this section.

- (2) For the purposes of any such inquiry the District Court Judge may summon, and examine on oath touching any matter which is relevant to the subject-matter of the inquiry, all persons whom the Commissioner or any other person interested requires to be so called and examined.
- (3) The District Court Judge shall have all such jurisdiction and authority touching the summoning and examination of any such person as the Judge would have in respect of a witness in a civil action within the Judge's ordinary jurisdiction; and the person so summoned and examined shall, subject to the Inland Revenue Acts, have all such rights and be subject to all such liabilities as the person would have and be subject to if the person were such a witness.
- (4) The Commissioner and every person who is interested in the subject-matter of the inquiry may be represented by a barrister or solicitor, who may examine, cross-examine, and re-examine, in accordance with the ordinary practice, any person so summoned:  
Provided that every person so summoned may be cross-examined by the Commissioner or by the Commissioner's barrister or solicitor.
- (5) Every examination under this section shall take place in chambers.
- (6) The statement of every person so examined shall be taken down in writing, and signed by the person in the presence of the District Court Judge, and delivered to the Commissioner, and shall not form part of the records of the Court.
- (7) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate the person or render the person liable to any penalty or forfeiture.

- (8) No statement made by any such person in answer to any question put to the person shall in criminal proceedings be admissible in evidence against the person, except upon a charge of perjury against the person in respect of the person's testimony upon that examination.
- (9) A person summoned under this section may receive out of money appropriated by Parliament for the purpose such sum on account of travelling expenses and loss of time as the District Court Judge thinks reasonable and orders accordingly.
- Compare: 1974 No 133 s 18(1)-(8), (10)

## **19 Inquiry by Commissioner**

- (1) The Commissioner may, for the purpose of obtaining any information with respect to the liability of any person for any tax or duty under any of the Inland Revenue Acts or any other information required for the purposes of the administration or enforcement of any of those Acts or for the purpose of carrying out any other function lawfully conferred on the Commissioner, by notice, require any person to attend and give evidence before the Commissioner or before any officer of the Department authorised by the Commissioner in that behalf, and to produce all books and documents in the custody or under the control of that person which contain or which the Commissioner or the authorised officer considers likely to contain any such information.
- (2) The Commissioner may require any such evidence to be given on oath and either orally or in writing, and for that purpose the Commissioner or the authorised officer may administer an oath.
- (3) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate the person or render the person liable to any penalty or forfeiture.
- (4) No statement made by any such person in answer to any question put to the person shall in criminal proceedings be admissible against the person, except upon a charge of perjury against the person in respect of the person's testimony upon that examination.

- (5) The provisions of the Crimes Act 1961 which relate to perjury are applicable to any inquiry under this section.
- (6) A person required to attend before the Commissioner or an authorised officer may receive out of money appropriated by Parliament for the purpose such sum on account of travelling expenses and loss of time as the Commissioner thinks reasonable and orders accordingly.

Compare: 1974 No 133 s 19(1), (2), (2A), (2B), (4), (5)

Section 19(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

## **20 Privilege for confidential communication between legal practitioners and their clients**

- (1) Subject to subsections (2) and (3), any information or book or document shall, for the purposes of sections 16 to 19, 143(1)(b), 143A(1)(b), 143B(1)(b), and 143F, be privileged from disclosure, if—
  - (a) it is a confidential communication, whether oral or written, passing between—
    - (i) a legal practitioner in the practitioner’s professional capacity and another legal practitioner in such capacity; or
    - (ii) a legal practitioner in the practitioner’s professional capacity and the practitioner’s client,—whether made directly or indirectly through an agent of either; and
  - (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
  - (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.
- (2) Where the information or book or document consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, the practitioner’s client, or any other person), it shall not be privileged from disclosure if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by the legal practitioner in connection with a trust account of

the legal practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.

- (3) Where the information or book or document consists wholly or partly of, or relates wholly or partly to investment receipts (being receipts arising or accruing on or after 1 April 1975 from any money lodged at any time with a legal practitioner for investment) of any person or persons (whether the legal practitioner, the practitioner's client or clients, or any other person or persons), it shall not be privileged from disclosure if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.
- (4) Except as provided in subsection (1), no information or book or document shall for the purposes of sections sections 16 to 19, 143(1)(b), 143A(1)(b), 143B(1)(b), and 143F be privileged from disclosure on the ground that it is a communication passing between one legal practitioner and another legal practitioner or between a legal practitioner and the practitioner's client.
- (5) Where any person refuses to disclose any information or book or document on the ground that it is privileged under this section, the Commissioner or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid; and, for the purposes of determining any such application, the District Court Judge may require the information or book or document to be produced to the District Court Judge. An application under this subsection may be made in the course of an inquiry under section 18 to the District Court Judge who is holding the inquiry.
- (6) Subject to subsection (3), this section shall apply to information, books, and documents made or brought into existence whether before or after the commencement of this Act.
- (7) In this section, **legal practitioner** means a barrister or solicitor of the High Court, and references to a legal practitioner include a firm or an incorporated law firm (within the meaning of the

Lawyers and Conveyancers Act 2006) in which he or she is, or is held out to be, a partner, director, or shareholder.

Compare: 1974 No 133 s 20

Section 20(1): amended by section 8 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 20(2): amended by section 8 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 20(3): amended by section 8 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 20(4): amended by section 8 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 20(2): amended, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 20(3): amended, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 20(5): amended, on 1 April 1995, by section 3 of the Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Section 20(7): substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

## **20B No requirement to disclose tax advice document**

- (1) A person (called in this section and sections 20C to 20G an **information holder**) who is required under 1 or more of sections 16 to 19 or under a discovery obligation to disclose information in relation to the information holder or another person is not required to disclose a book or document that is a tax advice document for the person to whom the information relates.
- (2) A book or document is eligible to be a **tax advice document** for a person if the book or document—
  - (a) is confidential; and
  - (b) is created by—
    - (i) the person for the main purpose of instructing a tax advisor to act for the person by giving advice to the person, if the advice is to be about the operation and effect of tax laws:
    - (ii) a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor's firm, for the main purpose of recording research and analysis, if the research and analysis is performed for the main purpose of enabling the tax advisor

- to give advice to the person about the operation and effect of tax laws:
- (iii) a tax advisor or, where the tax advisor is in public practice, an employee of the tax advisor's firm, for the main purpose of the giving of advice by the tax advisor to the person, or the recording of advice given by the tax advisor to the person, if the advice is about the operation and effect of tax laws; and
  - (c) is created for purposes that do not include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.
- (3) A book or document is a tax advice document for a person if—
- (a) the book or document is eligible under subsection (2) to be a tax advice document for the person; and
  - (b) the person makes a claim, under section 20D, that the book or document is a tax advice document; and
  - (c) the person satisfies the requirements of sections 20E and 20F for the book or document.
- (4) A **tax advisor** is a natural person who is subject to the code of conduct and disciplinary process, referred to in subsection (5)(a)(ii) and (iii), of an approved advisor group.
- (5) An **approved advisor group** is a group that—
- (a) includes natural persons who—
    - (i) have a significant function of giving advice on the operation and effect of tax laws; and
    - (ii) are subject to a professional code of conduct in giving the advice; and
    - (iii) are subject to a disciplinary process that enforces compliance with the code of conduct; and
  - (b) is approved by the Commissioner for the purposes of this definition.

Section 20B: inserted, on 21 June 2005, by section 122(1) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 20B(1): amended, on 6 October 2009, by section 600(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**20C Treatment of book or document**

- (1) This section applies to a book or document that is—
  - (a) included in a request for, or discovery obligation for disclosure of, information in relation to a person; and
  - (b) possibly eligible to be a tax advice document for the person.
- (2) The book or document must be treated as being a tax advice document for the person—
  - (a) from the time of the request for, or discovery obligation for disclosure of, information:
  - (b) until the earlier of—
    - (i) the time by which the person is required by section 20D to claim that the book or document is a tax advice document for the person:
    - (ii) the time at which the person informs the Commissioner that the person does not claim that the book or document is a tax advice document for the person.
- (3) If the person makes a claim under section 20D that the book or document is a tax advice document for the person, the book or document must be treated as being a tax advice document for the person from the time of the claim until—
  - (a) the book or document is ruled not to be a tax advice document for the person by—
    - (i) the District Court:
    - (ii) a court or Taxation Review Authority, if the claim is made in response to a discovery obligation in proceedings before the court or Authority:
  - (b) the person agrees in writing that the book or document is not eligible to be a tax advice document for the person:
  - (c) the person withdraws in writing the claim that the book or document is a tax advice document for the person:
  - (d) an approved advisor group informs the Commissioner that a tax advisor is not or was not a member of the approved advisor group at a time—
    - (i) at which the tax advisor is claimed by the person or the tax advisor to be a member of the approved advisor group; and

- (ii) at which the tax advisor would be required to be a member of an approved advisor group for the document to be a tax advice document.
- (4) If a book or document must be treated under this section as being a tax advice document for a person, a copy of the book or document must be held in a secure place for the periods referred to in subsections (2) and (3) by a tax advisor.

Section 20C: inserted, on 21 June 2005, by section 122(1) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 20C(1)(a): amended, on 6 October 2009, by section 601(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20C(2)(a): substituted, on 6 October 2009, by section 601(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20C(3)(a): substituted, on 6 October 2009, by section 601(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **20D Claim that book or document is tax advice document**

- (1) A claim by a person that a book or document is a tax advice document for the person must be made by the person or by a tax advisor who is authorised to act on behalf of the person for the purposes of sections 20C to 20G.
- (2) A claim that a book or document created by a person is a tax advice document for the person must contain the following information:
  - (a) a brief description of the form and contents of the book or document; and
  - (b) the name of the tax advisor for whom the book or document was intended; and
  - (c) the date on which the book or document was created.
- (3) A claim that a book or document created by a tax advisor, or by an employee of a tax advisor's firm, is a tax advice document for a person must contain the following information:
  - (a) a brief description of the form and contents of the book or document; and
  - (b) the name of the tax advisor giving the tax, advice in relation to which the book or document was created; and



- (c) the approved advisor group to which the tax advisor belonged when the book or document was created; and
  - (d) the statute or other enactment and the type of revenue that was the subject of the tax advisor's advice in relation to which the book or document was created; and
  - (e) the date on which the book or document was created.
- (4) A claim that a book or document is a tax advice document for a person must be made—
- (a) if the requirement to disclose information is under section 16 or under section 16 and either of sections 16B and 16C—
    - (i) on the day on which the Commissioner or an officer of the Department exercises the right of inspection or removal that leads to the claim;
    - (ii) by a later date to which the Commissioner agrees;
  - (b) if the requirement to disclose information is under section 17, by the date that is the later of the following:
    - (i) the date that is given by the Commissioner in the request for disclosure of the information;
    - (ii) the date that is 28 days after the date of the request by the Commissioner for disclosure of the information;
  - (c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information;
  - (d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information;
  - (e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.
- (5) If a tax advisor acting on behalf of a person claims that a book or document is a tax advice document for the person, the claim must include written confirmation from the tax advisor that the tax advisor is authorised to act on behalf of the person for the purposes of sections 20C to 20G.

Section 20D: inserted, on 21 June 2005, by section 122(1) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 20D(4)(a): amended, on 18 December 2006, by section 174 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 20D(4)(d): amended, on 6 October 2009, by section 602(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20D(4)(e): added, on 6 October 2009, by section 602(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **20E Book or document or part of book or document included in tax advice document**

An information holder who is required to disclose information in relation to a person is required to provide a copy of a book or document or part of a book or document that—

- (a) is attached to a book or document that is eligible under section 20B(2) to be a tax advice document for the person; and
- (b) is not eligible under section 20B(2) to be a tax advice document for the person.

Section 20E: inserted, on 21 June 2005, by section 122(1) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

### **20F Person must disclose tax contextual information from tax advice document**

- (1) An information holder who is required to disclose information relating to a person must disclose under subsection (2) a description of tax contextual information from a book or document that the person claims, under section 20D, to be a tax advice document for the person.
- (2) A disclosure under subsection (1) of a description of tax contextual information from a book or document must be made—
  - (a) if the requirement to disclose information is under section 16 or under section 16 and either of sections 16B and 16C, by the date that is determined by the Commissioner;
  - (b) if the requirement to disclose information is under section 17 and the requirement is accompanied or followed by a requirement for disclosure of a description of tax contextual information, by the date that is the later of—

- (i) the date that is given by the Commissioner in the requirement for disclosure of the description:
    - (ii) the date that is 28 days after the date of the requirement by the Commissioner for disclosure of the description:
  - (c) if the requirement to disclose information is under section 17A or section 18, by the date on which the Court requires the production of information:
  - (d) if the requirement to disclose information is under section 19, by the date on which the Commissioner requires the production of information:
  - (e) if the requirement to disclose information is under a discovery obligation, by the date by which the discovery obligation requires the disclosure of information.
- (3) **Tax contextual information** for a tax advice document for a person is—
- (a) a fact or assumption relating to a transaction that has occurred or is postulated by the person creating the tax advice document:
  - (b) a description of a step involved in the performance of a transaction that has occurred or is postulated by the person creating the tax advice document:
  - (c) advice that does not concern the operation and effect on the person of tax laws:
  - (d) advice that concerns the operation and effect on the person of tax laws relating to the collection by the Commissioner of debts payable to the Commissioner:
  - (e) a fact or assumption relating to advice that is referred to in paragraph (c) or (d):
  - (f) a fact or assumption from, or relating to the preparation of,—
    - (i) financial statements of the person:
    - (ii) a document containing information that the person is required to provide to the Commissioner under an Inland Revenue Act.
- (4) A disclosure by a person or tax advisor of tax contextual information from a tax advice document for the person must be in a statutory declaration that—

- (a) is made by a tax advisor who has not been barred under subsection (5) from making statutory declarations under this subsection; and
  - (b) states that the tax advisor is authorised to act on behalf of the person for the purposes of sections 20C to 20G; and
  - (c) is in the prescribed form.
- (5) The Commissioner may apply to a District Court Judge, or to a court or Taxation Review Authority in relation to a tax advisor making a statutory declaration considered in proceedings before the court or Authority, that a tax advisor be barred from making statutory declarations under this section, if the tax advisor is convicted of an offence under—
- (a) section 111 of the Crimes Act 1961:
  - (b) section 143(1)(b):
  - (c) section 143A(1)(b) or (c):
  - (d) section 143A(1)(b) or (c):
  - (e) section 143H.

- (6) An application under subsection (5) may be made in the course of proceedings before a court or Taxation Review Authority.

Section 20F: inserted, on 21 June 2005, by section 122(1) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 20F(2)(a): amended, on 18 December 2006, by section 175 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 20F(2)(d): amended, on 6 October 2009, by section 603(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20F(2)(e): added, on 6 October 2009, by section 603(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20F(5): amended, on 6 October 2009, by section 603(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20F(6): added, on 6 October 2009, by section 603(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

## **20G Challenge to claim that book or document is tax advice document**

- (1) If a person claims that a book or document is a tax advice document for the person, the Commissioner or the person may

apply to a District Court Judge, or to the court or Taxation Review Authority hearing the proceedings giving rise to the claim, for an order determining whether—

- (a) the book or document is a tax advice document for the person:
  - (b) information provided or withheld by the person is tax contextual information in relation to the book or document:
  - (c) the person should provide a more detailed or better description of tax contextual information in relation to the book or document.
- (2) For the purposes of determining an application under this section, the District Court Judge, court, or Taxation Review Authority may require the book or document to be produced to the District Court Judge, court, or Taxation Review Authority.
  - (3) An application under this section may be made in the course of an inquiry under section 18 to the District Court Judge who is holding the inquiry.
  - (4) An application under this section may be made in the course of proceedings before a court or Taxation Review Authority.

Section 20G: inserted, on 21 June 2005, by section 122(1) of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 20G(1): amended, on 6 October 2009, by section 604(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20G(1)(b): substituted, on 6 October 2009, by section 604(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20G(2): amended, on 6 October 2009, by section 604(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 20G(4): added, on 6 October 2009, by section 604(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

## **21 Information requisitions in relation to offshore payments**

- (1) Where the Commissioner gives an information requisition to any person and the requisition concerns, wholly or in part, a deduction claimed by a taxpayer in respect of any offshore payment of the taxpayer, and—

- (a) where the requisition was given to the taxpayer, the taxpayer fails to respond to the requisition, so far as that requisition relates to the offshore payment, within 90 days of the date of the mailing of the requisition; or
- (b) where the requisition was given to a person other than the taxpayer, the person fails to respond to the requisition, so far as that requisition relates to the offshore payment, within 90 days of the date of the mailing of the requisition and the taxpayer fails to respond to the copy of the requisition required to be given to the taxpayer under subsection (6), so far as that requisition relates to the offshore payment, within 90 days of the date of the mailing of the copy of the requisition to the taxpayer,—  
the Commissioner may wholly or partly deny, in the course of making any assessment in respect of the taxpayer, the deduction claimed by the taxpayer in respect of the offshore payment and the assessment, to the extent of the deduction claimed by the taxpayer in respect of the offshore payment, shall not be disputed in any proceedings under Part 8 or Part 8A, notwithstanding the inclusion in any notice of objection or document filed in the proceedings of any ground or grounds objecting to or challenging the denial of the deduction, unless the taxpayer first establishes, in the proceedings,—
- (c) where the requisition in which the offshore payment is referred to was given to the taxpayer, that the taxpayer responded to the requisition in relation to the offshore payment within 90 days of the date of the mailing of the requisition; or
- (d) where the requisition in which the offshore payment is referred to was given to a person other than the taxpayer, that—
  - (i) the person responded to the requisition in relation to the offshore payment within 90 days of the date of the mailing of the requisition; or
  - (ii) the taxpayer responded to the copy of the requisition required to be given to the taxpayer under subsection (6) in relation to the offshore payment within 90 days of the date of the mailing of the requisition.

- (2) Where the Commissioner gives an information requisition to any person and the requisition concerns, either wholly or in part, a deduction claimed by a taxpayer in respect of any offshore payment and the person responds to the requisition, any evidence concerning the offshore payment that relates to any information or material sought by the Commissioner in the requisition shall not be admissible in any proceedings under Part 8 or Part 8A in which any deduction in respect of the offshore payment is in issue, except to the extent to which—
- (a) Such evidence is provided or is referred to or is otherwise identified in the person's response to the requisition or in any other material in the possession of the Commissioner when the Commissioner gave the requisition to the person and is able to be verified by the Commissioner; or
  - (b) Such evidence is provided to the Commissioner by the taxpayer, if the requisition was given to a person other than the taxpayer, within 90 days of the date of the mailing of the copy of the requisition required to be given to the taxpayer under subsection (6) and is able to be verified by the Commissioner.
- (3) Nothing in subsection (2) shall prevent the Commissioner from adducing any evidence in any proceedings.
- (4) Subsection (2) shall not apply unless the Commissioner, by a separate notice issued prior to or contemporaneously with a notice of assessment, informs the taxpayer claiming a deduction in respect of any offshore payment referred to in any requisition that the Commissioner considers that,—
- (a) the taxpayer; or
  - (b) if the requisition was given to a person other than the taxpayer, the person to whom the requisition was given,—
- has not furnished sufficient information or material to sustain a deduction claimed by the taxpayer in respect of any offshore payment referred to in the requisition.
- (5) For the purposes of this section,—
- (a) any requisition; and
  - (b) any notice given by the Commissioner under subsection (6)—

that is given by the Commissioner to a person that is—

(c) an agent for a partnership; or

(d) a partner in a partnership,—

shall be deemed to be given by the Commissioner to every partner in the partnership.

- (6) A copy of every notice given under subsection (1) or subsection (2), if given to a person other than the taxpayer who has claimed a deduction in respect of an offshore payment, shall be given to the taxpayer who has claimed a deduction in respect of the offshore payment; and, for the purposes of section 14, every such copy shall be deemed to be a notice required by this Act to be given by the Commissioner to the taxpayer.
- (7) For the purposes of this section, a response to a requisition or a copy of that response shall be deemed not to include an actual response which does not fulfil the requirements of the Commissioner under section 17 set out in the requisition.
- (8) In this section—

**Information requisition, or requisition,** in relation to any person, means a notice —

- (a) given by the Commissioner to the person giving notice of the exercise by the Commissioner of any power under section 17; and
- (b) requiring the person to furnish any information or produce for inspection any books or documents or verify by statutory declaration or otherwise any information or particulars as specified in the notice:

**Offshore payment,** in relation to a taxpayer, means an amount of expenditure or loss incurred or purportedly incurred by the taxpayer on or after 1 August 1986 to—

- (a) a person outside New Zealand; or
- (b) a person (whether in or outside New Zealand) associated with or acting for or on behalf of or in a fiduciary capacity in relation to a person outside New Zealand; or
- (c) a person in New Zealand who, in the opinion of the Commissioner, may in consequence of the expenditure or loss incurred by the taxpayer (whether or not in consequence of any other thing and whether or not as an immediate or eventual consequence) make a payment—
- (i) to a person outside New Zealand; or



(ii) to a person of the kind first referred to in this paragraph.

Compare: 1976 No 65 s 21A

Section 21(1): amended, on 1 October 1996, by section 9(1)(a) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 21(1): amended, on 1 October 1996, by section 9(1)(b) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 21(1): amended, on 1 October 1996, by section 9(1)(c) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 21(1): amended, on 1 October 1996, by section 9(1)(d) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 21(1): amended, by section 431(1) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 21(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(2): amended, on 1 October 1996, by section 9(2) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 21(2): amended, by section 431(2) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 21(2): amended, on 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the word “a” for the words “an allowable”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(4): amended, by section 431(3) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 21(4): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(6): substituted, by section 431(4) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 21(6): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(8): amended, on 1 October 1996, by section 9(3) of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 21(8): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

*Taxpayer's obligations to keep records***22 Keeping of business and other records**

- (1) Without limiting the generality of subsection (7), the records required to be kept and retained under subsection (2) in respect of any business carried on during any income year by any person, shall contain—
- (a) a record of the assets and liabilities of the person (in relation to that business); and
  - (b) a record of all entries from day to day of all sums of money received and expended by the person (in relation to that business) and the matters in respect of which the receipt and expenditure takes place; and
  - (c) where that business involves dealing in goods—
    - (i) a record of all goods purchased, and of all goods sold in the carrying on of that business (except those sold in the course of cash retail trading customarily conducted in a business of the kind of which that business is one) showing the goods, and the sellers and buyers or, as the case may be, the agents of the sellers and buyers in sufficient detail to enable the goods, and the sellers and buyers, and those agents, to be readily identified by the Commissioner; and all invoices relating to the goods; and
    - (ii) statements (including quantities and values) of trading stock held by the person at the end of each such tax year, and all records of stocktakings from which any such statement of trading stock has been, or is to be, prepared; and
    - (iii) a taxpayer, other than a low-turnover trader, must retain all accounting records relating to the calculation of the value of closing stock (as defined in section YA 1 of the Income Tax Act 2007); and
    - (iv) a low-turnover trader (as defined in section YA 1 of the Income Tax Act 2007) must retain records of the valuation methods and their application in calculating the value of closing stock, except if the methods and their application are not materially different from the previous income year; and

- (v) the taxpayer must comply with section EB 22(4) of the Income Tax Act 2007; and
  - (d) where that business involves the provision of services, records of the services provided and all invoices relating to them; and
  - (e) the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the carrying on of that business.
- (2) Subject to subsections (2B),(3), (4), and (6), every person who—
- (a) carries on any business in New Zealand:
  - (b) carries on any other activity (not being the carrying on of employment as an employee) in New Zealand for the purpose of deriving assessable income:
  - (c) is a person to whom the ESCT rules apply and who makes an employer's superannuation contribution to a superannuation fund:
  - (cb) is a person to whom the RSCT rules apply and who makes a retirement scheme contribution to a retirement savings scheme:
  - (d) makes, holds, or disposes of, for the purpose of deriving assessable income, any investment:
  - (e) is an employer to whom the FBT rules apply or is a person who provides any fringe benefit to any person who, in relation to any employer to whom the FBT rules apply, is an employee:
  - (eb) has a tax credit under section LH 2 of the Income Tax Act 2007:
  - (ec) is a listed research provider under section LH 15 of that Act:
  - (f) is a company that is an ICA company, a FDPA company, a BETA company, a BETA person, a PCA company, or a PCA person:
  - (fb) is a resident foreign trustee of a foreign trust in any income year,—
- shall keep in New Zealand sufficient records in the English language to enable the ascertainment readily by the Commis-

sioner, or any officer authorised by the Commissioner in that behalf, of—

- (g) the assessable income derived by that person from the carrying on of that business, or the carrying on of that other activity, or the making or holding or disposing of that investment; and
- (h) the deductions of that person in the carrying on of that business, or the carrying on of that other activity, or the making or holding or disposing of that investment; and
- (i) every fringe benefit, and the taxable value of every fringe benefit, provided by the person to any person in relation to whom the person is an employer, and every fringe benefit provided by the person to any person who in relation to another person is an employee, those records to include (without limiting the generality of the preceding provisions of this paragraph) details of the recipient of the fringe benefit, the occasion of the providing of it, and the amount (if any) paid or payable by the employee for the receipt or enjoyment of it; and
- (j) *[Repealed]*
- (k) every credit and debit to the person's memorandum accounts (other than a CTR account and an ASC account), and the amount of a credit attached to a dividend or distribution paid by the person:
- (kb) *[Repealed]*
- (kc) the amount of the person's tax credit under section LH 2 of the Income Tax Act 2007; and
- (kd) the person's compliance with section LH 15(1) of that Act, if the person is a listed research provider under section LH 15 of that Act, to show—
  - (i) they meet the start-up requirements and the other continuing requirements; and
  - (ii) the amounts derived and incurred by them in performing the research and development activities on behalf of other persons; and
- (l) every employer's superannuation contribution, and the taxable value of that contribution, made by the person to any superannuation fund, those records to include (without limiting the generality of the preceding pro-

- visions of this paragraph) details of the recipient of the employer's superannuation contribution, the occasion of making it, and any related tax credit under section MK 1(2) of the Income Tax Act 2007.; and
- (lb) every retirement scheme contribution, and the taxable value of that contribution, made by the person to any retirement savings scheme, those records to include, without limiting the generality of the preceding provisions of this paragraph, details of the recipient of the retirement scheme contribution and the occasion of making it; and
- (m) the financial position of the foreign trust,—  
and shall retain in New Zealand all such records for a period of at least 7 years after the end of the income year, or (for paragraph (k)) the tax or income year (as applicable), to which they relate:  
provided that the Commissioner may, on application in writing being made to the Commissioner in that behalf, authorise any such person, by notice, to keep and retain outside New Zealand or, as the case may be, in a language other than the English language, such of those records as the Commissioner determines.
- (2B) A taxpayer referred to in subsection (2)(e) who is required by subsection (2) to retain records is not required to retain those records for a period of more than 7 years after the end of the income year to which the records relate.
- (2C) If there are more than one resident foreign trustee of a foreign trust, the resident foreign trustees may appoint one of themselves as an agent for the purposes of keeping the records required by subsection (2).
- (3) A taxpayer to whom section 33A applies and who is required by subsection (2) to retain records of income of that taxpayer from which tax has been withheld or deducted at source need retain those records only until the expiry of 12 months after the end of the income year in which the income was received by the taxpayer.
- (4) This section shall not require the retention of any records—
- (a) in respect of which the Commissioner has given notice that retention is not required:

- (b) of a company which has been liquidated:
  - (c) by a partner of a partnership, if the partnership retains the records that the partner would be required to retain but for this paragraph.
- (5) The Commissioner may, by notice given before the expiry of the 7-year retention period specified in subsection (2) or (2B), require a taxpayer to retain all or any of the records specified in that subsection for a further period not exceeding 3 years following the expiry of the 7-year period where—
  - (a) the affairs of the taxpayer are or have been under audit or investigation by the Commissioner; or
  - (b) the Commissioner intends to conduct such an audit or investigation before the expiry of the retention period as so extended, or is actively considering any such audit or investigation.
- (6) The Commissioner may, by notice published in the *Gazette*, dispense any class of taxpayers from the need to retain the records, or any class of records, specified in subsection (2) or (2B), for more than 12 months following the end of the income year or tax year to which they relate where—
  - (a) the taxpayers are not provisional taxpayers; and
  - (b) the records relate to payments from which tax has been withheld or deducted at source.
- (7) In this section, **records** includes—
  - (a) books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure:
  - (b) vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account referred to in paragraph (a):
  - (c) accounts (whether contained in a manual, mechanical, or electronic format) to be maintained under the imputation rules, the FDP rules, or section OA 3 for accounts under subparts OE and OJ, and sections OP 97 to OP 108 of the Income Tax Act 2007, and any statement to be retained under section 31 or 71 of this Act:
  - (d) in the case of a foreign trust, other than for the period for which section 59B(3) applies,—

- (i) documents that evidence the creation and constitution of the foreign trust; and
- (ii) particulars of settlements made on, and distributions made by, the foreign trust, including the date of the settlement or distribution, the name and address (if known) of the settlor of the settlement, the name and address (if known) of the recipient of the distribution; and
- (iii) a record of—
  - (A) the assets and liabilities of the foreign trust; and
  - (B) all entries from day to day of all sums of money received and expended by the trustee in relation to the foreign trust and the matters in respect of which the receipt and expenditure takes place; and
  - (C) if the trust carries on a business, the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each income year in the administration of the trust:
- (e) for the purposes of subsection (2)(kc), other documents evidencing research and development activities.

Compare: 1976 No 65 s 428; 1994 No 76 s 73

Section 22 heading: amended, on 19 December 2007, by section 189(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1): amended, on 1 April 2005, by section 211(1)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(1)(c)(ii): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(c)(iii): inserted, on 26 November 1998, by section 26 of the Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107).

Section 22(1)(c)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(1)(c)(iii): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(c)(iii): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(c)(iv): inserted, on 26 November 1998, by section 26 of the Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107).

Section 22(1)(c)(iv): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(1)(c)(iv): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(c)(iv): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(c)(iv): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(c)(iv): amended, on 1 April 2005, by section 211(1)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(1)(c)(v): inserted, on 26 November 1998, by section 26 of the Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107).

Section 22(1)(c)(v): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(1)(c)(v): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(e): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(1)(e): amended, on 1 April 2005, by section 211(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2): amended, on 1 April 2005, by section 211(2)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2)(b): substituted, by section 432(1) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 22(2)(d): substituted, by section 432(1) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 22(2)(g): substituted, by section 432(1) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 22(2)(h): substituted, by section 432(1) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Subsection (2)(b): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Subsection (2)(d): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).



Subsection (2)(g): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(2)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2)(cb): inserted (with effect from 1 April 2007), on 19 December 2007, by section 189(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(2)(eb): inserted, on 19 December 2007, by section 189(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(2)(ec): inserted, on 19 December 2007, by section 189(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(2)(f): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2)(f): amended, on 1 April 2005, by section 211(2)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2)(fb): inserted, on 1 April 2005, by section 211(2)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2)(h): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(2)(j): repealed (with effect on 30 June 2009), on 6 October 2009, by section 605(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 22(2)(k): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2)(kb): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2)(kb): inserted by section 86(1) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 22(2)(kc): inserted, on 19 December 2007, by section 189(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(2)(kd): inserted, on 19 December 2007, by section 189(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(2)(l): amended, on 1 April 2008, by section 17 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 22(2)(l): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2)(l): amended, on 1 April 2005, by section 211(2)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2)(lb): inserted (with effect from 1 April 2007), on 19 December 2007, by section 189(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(2)(m): inserted, on 1 April 2005, by section 211(2)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(2): amended, on 1 April 2005, by section 211(3) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2) : amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(2B): inserted, on 1 April 2005, by section 211(4) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(2C): inserted, on 1 October 2006, by section 211(5) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(3): amended, by section 3(1) of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 22(3): substituted, by section 432(2) of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 22(3): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(3): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(3): amended, on 1 April 2005, by section 211(6) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(4)(a): amended, on 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Section 22(4)(b): amended, on 1 April 2008, by section 28(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section 22(4)(c): added, on 1 April 2008, by section 28(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Section 22(5): amended, on 1 April 2005, by section 211(7) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(6): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(6): amended, on 1 April 2005, by section 211(8)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(6): amended, on 1 April 2005, by section 211(8)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(6)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(7)(c): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(7)(c): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22(7)(c): amended, on 1 October 2006, by section 211(9) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(7)(d): inserted, on 1 October 2006, by section 211(9) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 22(7)(d)(iii)(C): amended, on 19 December 2007, by section 189(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 22(7)(e): added, on 19 December 2007, by section 189(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

## **22A Records required under subpart EW of Income Tax Act 2007**

- (1) A taxpayer who applies section EW 18 of the Income Tax Act 2007 and who does not use a market approved by the Commissioner under section 90AC(1)(c) must keep, in English, records sufficient to enable the Commissioner to verify that the market value adopted is reliable.
- (2) A taxpayer who applies section EW 26(2) of the Income Tax Act 2007 must keep, in English, records sufficient to enable the Commissioner to verify that their reason for changing spreading methods was a sound commercial one.
- (3) A taxpayer required to retain records must—
  - (a) take all reasonable precautions for the safe custody of those records; and
  - (b) retain those records for 7 years after the end of the year that the records relate to, unless:
    - (i) the Commissioner has given notice that retention is not required; or
    - (ii) the records are required by law to be given to another person; or

- (iii) the taxpayer is a company that has been liquidated or wound up; and
- (c) retain the records required for a further period as specified by the Commissioner under subsection (4).
- (4) The Commissioner may, by giving notice before the end of the 7-year retention period specified in subsection (3), require a taxpayer to retain records specified by the Commissioner for a further period of not more than 3 years following the expiry of the 7-year period if—
  - (a) the taxpayer is or has been under audit or investigation by the Commissioner; or
  - (b) the Commissioner intends to conduct an audit or investigation before the expiry of the retention period as extended, or is actively considering an audit or investigation.

Section 22A: inserted, on 20 May 1999, by section 63(1) of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 22A heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22A heading: amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22A(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(1): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 22A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 22(2): amended, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

## **22B Further records required**

- (1) A trustee to whom either section EW 44 or EZ 39 of the Income Tax Act 2007 applies must keep, in English, records of—
  - (a) the amounts of debt forgiven by creditors; and
  - (b) amounts distributed to the trust's beneficiaries.
- (2) A trustee required to retain records must—
  - (a) take all reasonable precautions for the safe custody of those records; and
  - (b) retain those records for as long as the trust exists.

Sections 22A and 22B were inserted, as from 20 May 1999, by section 63(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

The heading to section 22B was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “under Part EH”.

Section 22B(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 46 or EZ 36” for the words “section EH 5 or section EH 52”.

### **23 Keeping of returns where information transmitted electronically**

- (1) Where information contained in a taxpayer’s return has been transmitted by electronic means in the prescribed electronic format in accordance with section 36, the taxpayer shall retain or cause to be retained the return (being the signed hard-copy transcript of the information so transmitted) for—
  - (a) 7 years after the end of the income year to which the return relates; or
  - (b) such greater period as the Commissioner requires under section 22 in relation to any other records of the taxpayer, where the Commissioner gives the taxpayer notice of a further retention period under subsection (5) of that section.
- (2) This section does not require the retention of any return—
  - (a) in respect of which the Commissioner has given notice that retention is not required; or
  - (b) of a company that has been liquidated; or
  - (c) that is an employer monthly schedule.

Compare: 1976 No 65 s 428A; 1994 No 76 s 74

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(a) was amended, as from 1 April 2005, by section 212(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Subsection (2)(b) was amended by section 6(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “liquidated; or” for the word “liquidated”, and subsection (2)(c) was inserted, with application as from 1 April 1999.

*Other obligations to keep and provide records***24 Records to be kept by employer or PAYE intermediary**

- (1) An employer who makes a PAYE income payment to an employee must keep a proper record relating to the employee, showing the amount of the PAYE income payment before tax and the amount of the tax withheld from it, and must enter those amounts in the record at the time of making the PAYE income payment.
- (1B) For a pay period in which a person acts as a PAYE intermediary for an employer in relation to an employee—
- (a) the person must keep a proper record of the person's actions as a PAYE intermediary in respect of the employee; and
  - (b) the employer must keep a proper record of the employer's payments to the person of salary or wages in respect of the employee.
- (2) Every employer or PAYE intermediary shall take all reasonable precautions for the safe custody of all records that the employer or the PAYE intermediary is required to keep under this section, and of all pay sheets, receipts for PAYE income payments, withholding certificates, tax code notifications, tax code certificates, and certificates of entitlement, and shall retain all such records, pay sheets, receipts, tax code declarations, tax code certificates, and certificates of entitlement for not less than 7 years after the making of the payments to which they relate except and to the extent that the employer or the PAYE intermediary is required by this Act or the Income Tax Act 2007 to deliver to the Commissioner or to any other person the signed withholding certificates, tax code notifications, tax code certificates, and any certificate of entitlement:

Provided that this subsection shall not require retention of any records, pay sheets, receipts, tax code notifications, tax code certificates, or certificates of entitlement in respect of which the Commissioner has notified the employer or the PAYE intermediary that retention is not required.

Compare: 1976 No 65 s 352

The heading to section 24 was amended by section 87(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003

(2003 No 5) by inserting the words “or PAYE intermediary” after the word “employer” with application for pay periods beginning as from 1 April 2004.

Section 24(1): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1B) was inserted by section 87(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Section 24(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended by section 87(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or PAYE intermediary” after the words “Every employer” with application for pay periods beginning as from 1 April 2004.

Subsection (2) was amended by section 87(4) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or the PAYE intermediary” after the words “the employer” in each place where they occur with application for pay periods beginning as from 1 April 2004.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 24(2) proviso: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### ***PAYE tax codes***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24B PAYE tax codes**

- (1) This section applies for the purposes of the PAYE rules to provide an employee with a tax code for a PAYE income payment. Subsection (2) overrides this subsection.
- (2) Subsection (1) does not apply to the following amounts:
  - (a) an extra pay:
  - (b) a schedular payment:
  - (c) a payment of an income-tested benefit.
- (3) An employee must notify their employer that their tax code is 1 of the following:
  - (a) ‘M’ for primary employment earnings when the employee is not entitled to a tax credit under section LC 4 or LC 13 of the Income Tax Act 2007:

- (ab) “ME” for primary employment earnings when the employee is entitled to a tax credit under section LC 13 of the Income Tax Act 2007:
  - (b) ‘ML’ for primary employment earnings when the employee is entitled to a tax credit under section LC 4 of the Income Tax Act 2007:
  - (c) “S” for secondary employment earnings for an employee whose annual income is not more than \$48,000:
  - (d) “SH” for secondary employment earnings for an employee whose annual income is more than \$48,000 but is not more than \$70,000:
  - (e) “ST” for secondary employment earnings for an employee whose annual income is more than \$70,000:
  - (f) ‘CAE’ for salary or wages for employment as a casual agricultural employee:
  - (g) ‘EDW’ for salary or wages for employment as an election day worker:
  - (gb) “NSW” for salary or wages for employment as a non-resident seasonal worker:
  - (h) ‘no notification’ when the employee has not provided their employer with a tax code notification or a tax code certificate.
- (4) If another Act requires an employer to withhold the amount of tax for a PAYE income payment to an employee and pay the amount to the Commissioner, the tax code may be combined with another code applying under that Act.

Compare: 2004 No 35 s NC 8(1), (1AA)

Section 24B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 24B(3)(a): amended, on 1 April 2009, by section 39(a) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 24B(3)(ab): inserted, on 1 April 2009, by section 39(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 24B(3)(c): substituted, on 1 April 2009, by section 16(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 24B(3)(c): substituted, on 1 October 2008, by section 18(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 24B(3)(d): substituted, on 1 April 2009, by section 16(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).



Section 24B(3)(d): substituted, on 1 October 2008, by section 18(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 24B(3)(e): substituted, on 1 October 2008, by section 18(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 24B(3)(gb): inserted (with effect on 1 April 2009), on 6 October 2009, by section 607(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**24C Tax code for payment that includes income-tested benefit**

If an employee receives a PAYE income payment of an income-tested benefit and a PAYE income payment that does not consist of an income-tested benefit, the tax code 'S' applies to the payment that does not consist of an income-tested benefit.

Compare: 2004 No 35 s NC 8(1) proviso

Section 24C: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**24D Tax code for parental leave payment**

The tax code applying to an employee's parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is their tax code before the parental leave from their employment started unless the employee provides a further tax code notification.

Compare: 2004 No 35 s NC 8(9A)

Section 24D: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**24E Tax code for employment as private domestic worker**

An employee who wishes to have a tax code for their employment as a private domestic worker may provide their tax code notification to the Commissioner.

Compare: 2004 No 35 s NC 8(12)

Section 24E: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**24F Special tax code certificates**

- (1) The Commissioner may provide an employee with a special tax code certificate, whether because the employee has 2 or more employments, or is entitled to have a net loss carried

forward, or wishes to have a reduction applying to the amount of tax withheld under section 24H(1), or for another reason.

- (2) The special tax code may—
  - (a) set out a tax code to apply to a payment of salary or wages to an employee by 1 or more of their employers for a period referred to in the certificate:
  - (b) require that no amount of tax is withheld from, or a particular rate of tax applies to, a proportion of a PAYE income payment of the employee, as if it were the whole payment.
- (3) The Commissioner must calculate, for the PAYE income payments and period referred to in the certificate, and set out in the certificate, the amount of tax for the payments or the rate of tax applying to them, having regard to the amount of tax for the payments that would be required under sections RD 9 to RD 11 of the Income Tax Act 2007.
- (4) When an employee provides a special tax code certificate to their employer, the provisions of the certificate override anything in the Income Tax Act 2004 and this Act other than the employee's duties under sections RA 8, RA 10, and RD 4(2) of the Income Tax Act 2007.
- (5) An employee's entitlement under subparts MA to MF and MZ of the Income Tax Act 2007 is not taken into account in setting a tax code for a special tax code certificate.
- (5B) This section does not apply to an employee who is a non-resident seasonal worker.
- (6) The Commissioner may cancel a special tax code certificate at any time, and on notification of the cancellation, the employee must return the certificate to the Commissioner within a period of 7 days.

Compare: 2004 No 35 s NC 14

Section 24F: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 24F(5B): inserted (with effect on 1 April 2009), on 6 October 2009, by section 608(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**24G Use of incorrect tax codes**

- (1) This section applies when the Commissioner considers that an employer or PAYE intermediary has used an incorrect tax code in relation to a PAYE income payment to an employee.
- (2) The Commissioner may notify the employer or PAYE intermediary of the incorrect code and provide the tax code that should apply to the PAYE income payment.
- (3) The employer or PAYE intermediary must use the tax code provided by the Commissioner in relation to a PAYE income payment made to the employee after the date of notification. But the tax code does not apply if the employee notifies their employer that their circumstances have changed and, as a result, a different tax code should apply.

Compare: 2004 No 35 s NC 12A(1)–(3)

Section 24G: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**24H When entitlement to use tax code ends**

- (1) This section applies when an employee is no longer entitled to use a certain tax code.
- (2) The tax code does not apply to a PAYE income payment made to the employee after the date on which the entitlement ends, unless the payment is salary or wages for a current pay period.
- (3) The employee must notify their employer that their entitlement has ended within the period of 4 days after the date on which they became aware that they are no longer entitled to use the tax code. If the employee provides the notification to the Commissioner, they must notify the Commissioner similarly.
- (4) For the purposes of subsection (3), the employee must give the reason why the tax code no longer applies and the date on which entitlement ended.
- (5) If the employee provides their employer with a tax code notification or tax code certificate within the period of 7 days after the date on which they become aware that they are no longer entitled to use a tax code, the tax code in the notification or certificate applies from the date on which the entitlement to use the earlier code ends.

- (6) When an employee's entitlement to use a certain tax code ends, their employer is not liable for withholding a reduced amount of tax for a payment if they have not received notice that the entitlement has ended.
- (7) An employee is not entitled to use the tax code 'ML' in a tax year if the employee knows or expects, or should have known or expected, that they will not be entitled to a tax credit under section LC 4 of the Income Tax Act 2007.

Compare: 2004 No 35 ss NC 8(7), (8), NC 9

Section 24H: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24I PAYE tax code notification and certificate**

- (1) An employee who wishes to have the amount of tax for a PAYE income payment reduced may notify their employer of the applicable tax code. This subsection applies separately for each employment situation.
- (2) If an employee finds it difficult or impractical to notify their employer as described in subsection (1), they may notify the Commissioner who must then provide a tax code certificate to the employer setting out the applicable tax code. The employee may give the certificate to their employer.
- (3) The tax code notified or set out in a tax code certificate applies to a PAYE income payment made to an employee by their employer from—
- (a) the first day of a pay period to which the payment relates up to the date on which the employee is no longer entitled to use the particular tax code if—
    - (i) the employer has no earlier tax code for the employee; or
    - (ii) the notification or certificate changes an earlier tax code for the employee and is provided before the date on which the employer calculates their payroll for the period:
  - (b) the first day of the pay period following that to which the payment relates if the notification or certificate changes an earlier tax code for the employee and is provided after the date on which the employer calculates their payroll for the period.

- (4) A tax code notification must provide for an employee's statement of their entitlement under the Immigration Act 1987 to work for their employer.
- (5) A tax code notification or tax code certificate delivered to an employer before the start of the tax year but expressed to relate to the tax year, is treated as if it is delivered on 1 April in the tax year.

Compare: 2004 No 35 ss NC 8(2)–(4), (11), NC 8A

Section 24I: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### ***PAYE certificates, notification, and applications***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24J Proof of payment**

- (1) An employer or PAYE intermediary who is required to withhold and pay to the Commissioner an amount of tax for a PAYE income payment must provide a PAYE payment form to the Commissioner by the applicable due date set out in section RA 15 of the Income Tax Act 2007.
- (2) If the PAYE payment form is not provided electronically, it must be signed by the employer or PAYE intermediary, as applicable.
- (3) The Commissioner may release an employer or a class of employers, or a PAYE intermediary or a class of PAYE intermediaries, from the requirement to provide a PAYE payment form if the information is contained in an employer monthly schedule.

Compare: 2004 No 35 s NC 15(1), (2), (2B)

Section 24J: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24K Certain information required in returns**

- (1) This section applies for the purposes of sections RE 23 and RE 24 of the Income Tax Act 2007 when—
  - (a) an amount of tax for resident passive income paid in a tax year by a company is treated as an FDP credit:

- (b) an amount of tax for a taxable Maori authority distribution is treated as a Maori authority credit attached to the distribution.
- (2) The company paying the dividend and withholding the amount of tax under section RA 6(1) of that Act must provide to the Commissioner information in relation to the amount of tax in—
  - (a) its annual FDPA return under section 71; or
  - (b) if paragraph (a) does not apply, its annual ICA return under section 69.
- (3) For the purposes of subsection (2) and the payment of the dividend, the company must provide to the Commissioner information in relation to the dividend in—
  - (a) its dividend statement under section 67 if it is an ICA company; or
  - (b) if paragraph (a) does not apply, a form approved by the Commissioner, containing the information set out in section 67(a) to (c) and (f) and filed no later than 31 May after the end of the tax year.
- (4) The Maori authority making the distribution and withholding the amount of tax under section RA 6(1) of the Income Tax Act 2007 must provide to the Commissioner information in relation to the amount of tax in its annual Maori authority credit account return.
- (5) For the purposes of subsection (4) and the making of the distribution, the Maori authority must provide to the Commissioner information in relation to the distribution in the distribution statement prepared under section 68B.

Compare: 2004 No 35 ss NF 8(2)–(4), NF 8A

Section 24K: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24L Schedular notification**

- (1) This section applies to a person who is entitled to receive a schedular payment described in section RD 8 of the Income Tax Act 2007.
- (2) Before the person receives the schedular payment, they must notify the person making the payment of the applicable schedular tax code.

- (3) The notification referred to in subsection (2) must be in a form authorised by the Commissioner.

Compare: 2004 No 35 s NC 7(1)

Section 24L: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24M Exemption certificates for schedular payments**

- (1) The Commissioner may provide a person who is entitled to receive a schedular payment with an exemption certificate setting out the payments for a period for which no amount of tax is to be withheld.
- (2) Subsection (1) does not apply to a payment to a non-resident entertainer.
- (3) The Commissioner may cancel an exemption certificate at any time.
- (4) If the Commissioner cancels an exemption certificate, the person who was provided the certificate must return it within 7 days of the date of cancellation.
- (5) An exemption certificate must not be altered or be used to cause a person making a schedular payment not to withhold an amount of tax for the payment.

Compare: SR 1979/259 regulation 5, Income Tax (Withholding Payments) Regulations

Section 24M: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24N Special tax rate certificates for schedular payments**

- (1) The Commissioner may provide a person who is entitled to receive a schedular payment with a special tax rate certificate setting out the amount of tax for the payment, or the rate applying to the payment or a part of each payment as if it were the whole payment.
- (2) Subsection (1) does not apply to a payment to a non-resident entertainer.
- (3) The Commissioner may cancel a special tax rate certificate at any time. The Commissioner must give notice of the cancellation.

- (4) If the Commissioner cancels a special tax rate certificate, the person who was provided the certificate must return it within 7 days of the date of notification of the cancellation.
- (5) A special tax rate certificate must not be altered or be used to cause a person making a schedular payment not to withhold an amount of tax for the payment.

Compare: SR 1979/259 regulation 6A, Income Tax (Withholding Payments) Regulations

Section 24N: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24O Certain information required from agricultural, horticultural, or viticultural employers**

- (1) This section applies when an agricultural, horticultural, or viticultural employer makes a schedular payment for work done or services rendered in a class set out in schedule 4, part C, clause 1(b) of the Income Tax Act 2007
- (2) If the employer is required to provide an employer monthly schedule to the Commissioner for a particular period, and no amount of tax for the payment is required to be made because an exemption certificate or special tax rate certificate has been provided under section 24M or 24N, as applicable, the employer must include in the schedule the information set out in subsection (4).
- (3) If the employer is not required to provide an employer monthly schedule for a month, the employer must provide the information set out in subsection (4) in relation to the payment by the 20th day of the month following that in which the payment is made.
- (4) The information referred to in subsections (2) and (3) is—
  - (a) the name and tax file number of the employer; and
  - (b) the name of the person who received the payment; and
  - (c) the tax file number of the person who received the payment if the employer has been supplied the number; and
  - (d) the gross amount of the payment; and
  - (e) the date of the payment; and



- (f) the number of an exemption certificate or special tax rate certificate provided to the person who received the payment if the employer has been supplied the number.

Compare: SR 1979/259 regulation 12A, Income Tax (Withholding Payments) Regulations

Section 24O: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **24P Variation of requirements**

The Commissioner may vary the requirements set out in RD 22 of the Income Tax Act 2007, and 24B, 24H, 24I, and 24L for a person or a class of persons.

Compare: 2004 No 35 ss NC 7(3), NC 8(10), NC 15(3)

Section 24P: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 24P: amended (with effect on 1 April 2008), on 6 October 2009, by section 609(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **25 RWT withholding certificates**

- (1) Subsection (1B) applies when a person withholds RWT for resident passive income paid to or derived by any other person that is—
  - (a) interest; or
  - (b) a dividend treated as interest; or
  - (c) a dividend to which section RE 9(2) of the Income Tax Act 2007 applies.
- (1B) The person must prepare an RWT withholding certificate that contains the information set out in subsection (6).
- (2) Every person (in this section referred to as the **payer**) who is required to prepare an RWT withholding certificate in respect of any amount of resident passive income paid to or derived (as applicable) by any other person (in this section referred to as the **recipient**) shall, at the discretion of the payer, either—
  - (a) prepare the RWT withholding certificate with respect to all such amounts of resident passive income of that type (being either interest or dividends) paid to or derived (as applicable) by the recipient during the relevant tax year; or

- (b) prepare the RWT withholding certificate with respect to each such amount of resident passive income of that type paid to or derived (as applicable) by the recipient,—  
and in either case shall provide the tax deduction certificate to the recipient not later than the 20 May that follows the end of the relevant year.
- (3) Notwithstanding subsection (2), the recipient may at any time during the relevant year request, by notice the payer to prepare and provide an RWT withholding certificate in relation to RWT withheld during that year for resident passive income that relates to a financial arrangement, if the financial arrangement has matured, been remitted, or been disposed of by the recipient, and in such event the payer shall prepare the withholding certificate and provide it to the recipient not later than 20 working days after the receipt by the payer of the request.
- (4) Notwithstanding subsection (2), where any person (not being a person who continues to hold an RWT exemption certificate issued to that person notwithstanding the cessation in carrying on a taxable activity) in any month—
- (a) ceases to carry on any taxable activity in respect of which that person has been required to withhold RWT;  
or
- (b) ceases to carry on any such taxable activity in New Zealand,—  
that person shall prepare and provide to the recipients an RWT withholding certificate required to be prepared by that person with respect to that taxable activity not later than the 20th of the following month.
- (5) Notwithstanding subsection (2), where any person in any month ceases to be a person holding an RWT exemption certificate issued to that person (not being a person who continues to be required to withhold RWT by virtue of making payments in the course of or furtherance of a taxable activity notwithstanding such cessation in holding an RWT exemption certificate) that person shall prepare and provide to the recipients an RWT withholding certificate required to be prepared by that person not later than the 20th of the following month.
- (6) An RWT withholding certificate must include the following:

- (a) a statement as to whether the resident passive income is interest, a dividend treated as interest, or a dividend to which section RE 9(2) of the Income Tax Act 2007 applies:
  - (b) the date on which the RWT was withheld, or if there is more than 1 instance, the year in which the amounts were withheld:
  - (c) the amount of resident passive income and the amount of RWT withheld:
  - (d) the basic tax rate that applied to the resident passive income.
- (6A) *[Repealed]*
- (6B) The Commissioner may prescribe a formula for determining the average basic tax rate that is to be applied to resident passive income.
- (7) No person shall be required to prepare and provide an RWT withholding certificate relating to any interest from which the person has in a tax year withheld RWT where—
- (a) all resident passive income is interest paid by the person under a financial arrangement, and the interest is not more than \$50 in that tax year; or
  - (b) the RWT withheld was from resident passive income that is interest, and the amount was required to be withheld by the person under section RE 7 or RE 8 of the Income Tax Act 2007, and the total amount of the resident passive income, being interest, paid by the person in that tax year to the recipient of the interest is no more than \$50,—
- unless the person is requested, by notice, by the recipient of the interest for such a certificate, in which case the certificate shall be prepared and provided to the recipient not later than 20 working days after receipt of that notice.
- (8) An RWT withholding certificate must be retained by the person to whom it is provided for a period of 3 years after the end of the year to which it relates, unless the Commissioner otherwise permits.
- (9) Where any resident passive income is paid to or derived (as applicable) by 2 or more persons jointly, any payer shall be entitled to treat those persons as one person and accordingly

issue only one RWT withholding certificate in the name of any one or more of those persons who may be nominated by those persons for this purpose or, in the absence of any such nomination, in the name of those persons jointly.

- (10) For the purposes of this section, an RWT withholding certificate shall be deemed to have been provided to a recipient where the certificate—
- (a) is given to the recipient personally; or
  - (b) is sent by post addressed to the recipient at the recipient's last known place of abode or business; or
  - (c) is given personally to any other person authorised to act on behalf of the recipient; or
  - (d) is sent by post addressed to that other person at that other person's last known place of abode or business; or
  - (e) is sent electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agree to receiving the certificate this way.
- (11) In this section, a dividend that is resident passive income paid by an RWT proxy as described in section RE 3(1)(c) of the Income Tax Act 2007 is treated as being interest.

Compare: 1976 No 65 s 327H

Section 25 heading: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(1): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 74(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by substituting the words "that contains" for the words "in such form as the Commissioner may approve and containing" with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Subsections (1) and (2) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994" wherever they appear.

Section 25(1B): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 25(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice” after the word “request” in the first place where it appears.

Section 25(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(6): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6) was substituted by section 7(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to a resident withholding tax deduction certificate required to be issued in respect of interest paid as from 1 April 1999.

Subsection (6)(a) was substituted by section 46(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from 27 March 2001.

Section 25(6)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6)(g) was amended by section 15(1) Taxation (Tax Rate Increase) Act 1999 (1999 No 143) by substituting the expression “clause 1(a), (b), (c), (d) or (e)” for the expression “clause 1(c)” with application to a resident withholding tax deduction certificate required to be issued in respect of interest paid as from 1 April 2000.

Subsection (6)(g) was substituted by section 46(2) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from 1 April 2001.

Subsection (6) was substituted by section 74(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Section 25(6A): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6A) was inserted by section 7(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to a resident withholding tax deduction certificate required to be issued in respect of interest paid as from 1 April 1999.

Subsection (6A) was substituted by section 15(2) Taxation (Tax Rate Increase) Act 1999 (1999 No 143) with application to a resident withholding tax deduc-

tion certificate required to be issued in respect of interest paid as from 1 April 2000.

Section 25(6B): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (7), the text before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “, by notice,” for the words “in writing”.

Subsection (7)(a) was substituted, as from 20 May 1999, by section 64(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 25(7)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (7)(a) and (b) were amended by section 74(3) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by substituting the expression “\$50” for the expression “\$20” with application as from the 2002-03 income year.

Subsection (7)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 25(7)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(8): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(9): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (9) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 25(10): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (10)(d) was amended by section 74(4) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by substituting the words “business; or” for the expression “business.” with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Subsection (10)(e) was inserted by section 74(4) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Section 25(11): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (11) was inserted, as from 21 December 2004, by section 123 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

**26 Records to be kept for RWT purposes**

- (1) Every person required, in accordance with the RWT rules, to pay RWT for resident passive income paid to or derived (as applicable) by any other person shall keep in English proper records sufficient to enable the Commissioner to ascertain readily at any time the following information in relation to each amount of resident passive income:
  - (a) the amount of the resident passive income before withholding RWT;
  - (b) the amount of RWT withheld;
  - (c) the date on which the RWT was required to be withheld;
  - (d) the full name and last known address of the recipient of the payment or the person deriving the resident passive income, as applicable;
  - (e) in the case of a payment of interest, any number used by the person to identify the financial arrangement in relation to which the interest was paid;
  - (f) such other information as the Commissioner may require.
- (2) Every person liable under the Income Tax Act 2007 to pay RWT for an amount of resident passive income paid to or derived (as applicable) by any other person had that other person not held an RWT exemption certificate given under section RE 27 of that Act shall keep in English proper records in relation to such amount sufficient to enable the Commissioner to ascertain readily at any time the following information in relation to each such amount:
  - (a) the amount and the date upon which the payment of RWT would have been required; and
  - (b) the full name and last known address of the other person; and
  - (c) the other person's tax file number.
- (3) Every person required to keep records by virtue of the application of subsections (1) and (2) shall record at the end of each year, in relation to each recipient to whom interest or dividends treated as interest were paid by that person during that year,

- sufficient information to enable the Commissioner to ascertain readily—
- (a) the total amount of interest and dividends treated as interest paid; and
  - (b) details of all other financial arrangements under which interest has been paid by that person to that recipient at any time during that year.
- (4) Every person required by section 52 or section 54 to provide information to the Commissioner shall keep in English proper records to allow verification readily by the Commissioner of such information.
- (5) Every person required by this section to retain records shall—
- (a) take all reasonable precautions for the safe custody of all records that the person is required to keep under this section; and
  - (b) retain those records for not less than 7 years after the end of the year in which were made the payments to which they relate, except to the extent that—
    - (i) the Commissioner has given notice that retention is not required; or
    - (ii) those records are required by law to be delivered to any other person; or
    - (iii) the person is a company which has been liquidated; and
  - (c) where the Commissioner so notifies the person in accordance with subsection (7), retain such of those records as may be specified by the Commissioner for such further period as the Commissioner may specify under that subsection.
- (6) The Commissioner may, on application made in writing in that behalf, authorise any person, by notice, to keep such records required by this section as the Commissioner determines in a language other than English.
- (7) The Commissioner may, by notice given before the expiry of the 7-year retention period specified in subsection (5), require a person to retain any records specified by the Commissioner for a further period not exceeding 3 years following the expiry of the 7-year period where—



- (a) the affairs of the person are or have been under audit or investigation by the Commissioner; or
- (b) the affairs of any person to whom the records relate are or have been under audit or investigation by the Commissioner; or
- (c) the Commissioner intends to conduct such an audit or investigation before the expiry of the retention period as so extended, or is actively considering any such audit or investigation.

Compare: 1976 No 65 s 327P; 1994 No 76 s 52

Section 26 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 26(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 21 December 2004, by section 124(1)(a) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “payments of resident withholding tax in relation to” for the words “deductions of resident withholding tax from”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 26(1)(a): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 21 December 2004, by section 124(1)(b) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the word “payment” for the word “deduction”.

Section 26(1)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 21 December 2004, by section 124(1)(c) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the word “payment” for the word “deduction”.

Section 26(1)(c): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 26(1)(d): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 26(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 21 December 2004, by section 124(2)(a) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “pay resident withholding tax in relation to” for the words “deduct resident withholding tax from”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 26(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(a) was amended, as from 21 December 2004, by section 124(2)(b) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the word “payment” for the word “deduction”.

Section 26(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 26(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5)(b)(i) and (c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the word “notice” for the words “notification in writing”.

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

## **27 Provision of tax file numbers**

- (1) Every recipient who receives resident passive income from which RWT must be withheld and who has a tax file number shall, within 10 working days of receiving a request, by notice, from the payer, provide the payer with the recipient’s tax file number.
- (2) Every non-exempt person who—
  - (a) enters into any acquisition or disposition of the type specified in paragraphs (b) and (c) of section 53(1); or
  - (b) receives a redemption payment of the type specified in paragraphs (b) and (d) of section 53(1),—and who has a tax file number shall, within 10 working days of receiving a request, by notice, from the exempt person, provide the exempt person with the non-exempt person’s tax file number.

Compare: 1976 No 65 ss 327ZB(2), 327ZD(2)

Section 27(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 21 December 2004, by section 125(a) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “resident withholding tax payment” for the words “resident withholding tax deduction”.

Subsection (1) was amended, as from 21 December 2004, by section 125(b) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by omitting the words “by a payer”.

Subsections (1) and (2) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a request, by notice,” for the words “any written request”.

**28 Recipient of resident passive income to provide tax file number when RWT not withheld**

A person who receives from a payment of resident passive income, that is interest, must provide their tax file number to the payer within 10 working days of receiving a request by notice from the payer, if no requirement to withhold RWT arises because—

- (a) the payment was not made by the payer in the course of, or furtherance of, a taxable activity;
- (b) section RE 10 of the Income Tax Act 2007 applies.

Section 28: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 28 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a request, by notice,” for the words “any request”.

**28B Investor to advise portfolio tax rate entity of investor’s tax file number**

A resident of New Zealand who is an investor in a portfolio tax rate entity must give notice of the person’s tax file number to the entity within 1 month of the date of a request from the entity for the tax file number.

First section 28B: inserted, on 1 April 2008, by section 191 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**28B Investor advising portfolio tax rate entity of portfolio investor rate**

*[Repealed]*

Second section 28B: repealed (with effect from 1 October 2007), on 19 December 2007, by section 190 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Second section 28B: inserted, on 1 October 2007, by section 176 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**28C Person advising retirement savings scheme of retirement scheme prescribed rate**

A person who gives a notice that the retirement scheme prescribed rate for the person and an income year is less than 39% must include the person's tax file number in the notice.

Section 28C: inserted (with effect from 1 April 2007), on 19 December 2007, by section 192 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**29 Shareholder dividend statement to be provided by company**

- (1) A company that pays to a shareholder a dividend (not being a dividend treated as interest) from which RWT has been withheld, or a dividend with an imputation credit, an FDP credit, or a CTR credit attached must give to the shareholder a shareholder dividend statement in a form approved by the Commissioner, showing—
- (a) the name of the company:
  - (b) the date of payment of the dividend:
  - (c) the name and address of the shareholder to whom the dividend is paid:
  - (d) the amount of RWT withheld, if any:
  - (e) the amount of NRWT withheld, if any:
  - (f) the amount of the dividend paid to the shareholder:
  - (g) the amount of any imputation credit attached to that dividend:
  - (h) the aggregate of the amount of the dividend and the amount of any imputation credit attached to that dividend:
  - (i) where an FDP credit is attached to the dividend, the information required to be included in the shareholder dividend statement in accordance with section 30:
  - (ia) when a CTR credit is attached to the dividend, the information required to be included in the shareholder dividend statement in accordance with section 30A:
  - (ib) the amount, if any, of the dividend paid to a retirement savings scheme as a retirement scheme contribution for the shareholder:
  - (ic) the name of the retirement savings scheme to which any retirement scheme contribution was paid:

- (id) the amount, if any, of imputation credit used to satisfy a liability of the company for RSCT:
  - (ie) the amount, if any, of imputation credit remaining after the company has used an imputation credit in satisfying a liability for RSCT:
  - (j) such other information as may be required by the Commissioner.
- (1B) An Australian ICA company must use, in a shareholder dividend statement, the term **New Zealand imputation credit** to describe the quantity referred to in subsection (1)(g).
- (1C) The company must give the shareholder dividend statement to the shareholder—
- (a) at the time of payment of the dividend, if paragraph (b) does not apply; or
  - (b) before the date that is 3 months after the time of emigration, if the company is treated under section FL 2 of the Income Tax Act 2007 (which relates to an emigrating company) as paying the dividend.
- (2) A shareholder dividend statement shall be deemed to have been given to a shareholder where the statement—
- (a) is given to the shareholder personally; or
  - (b) is sent by post addressed to the shareholder's usual or last known place of abode or business; or
  - (c) is given personally to any person authorised to act on behalf of the shareholder; or
  - (d) is sent by post addressed to that other person at that other person's last known place of abode or business.

Compare: 1976 No 65 s 394I

Section 29(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) (before paragraph (a)) was amended, as from 3 April 2006, by section 213(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the word "must" for the words "; shall at the time of payment of the dividend," with application as from the income year corresponding to the 2005-06 tax year.

Subsection (1) was amended by section 40(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) by inserting the words "or a conduit tax relief amount attached", with application to dividends paid as from 1 April 1998.

Subsection (1) was amended by section 59(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) by substituting the words "conduit tax relief credit" for the

words “conduit tax relief amount”, with application to dividends paid as from 1 April 1998.

Subsection (1) was amended by section 59(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) by substituting the words “conduit tax relief credit” for the words “conduit tax relief amount”, with application to dividends paid as from 1 April 1998.

Section 29(1)(d): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 29(1)(e): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 29(1)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(ia) was inserted by section 59(2) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application to dividends paid as from 1 April 1998.

Section 29(1)(ia): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 29(1)(ib): inserted (with effect from 1 April 2007), on 19 December 2007, by section 193(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 29(1)(ic): inserted (with effect from 1 April 2007), on 19 December 2007, by section 193(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 29(1)(id): inserted (with effect from 1 April 2007), on 19 December 2007, by section 193(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 29(1)(id): amended, on 1 April 2008, by section 193(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 29(1)(ie): inserted (with effect from 1 April 2007), on 19 December 2007, by section 193(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 29(1)(ie): amended, on 1 April 2008, by section 193(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1B) was inserted, as from 1 April 2003, by section 106 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 29(1B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1C) was inserted, as from 3 April 2006, by section 213(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application as from the income year corresponding to the 2005-06 tax year.

Section 29(1C)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1C)(b) was amended, as from 3 April 2006, by section 177(1) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No

81) by substituting the words “date of the emigration time” for the words “emigration date” with application as from the 2005–06 income year.

### **30 Statement to shareholder when FDP credit attached to dividend**

Where an FDPA company attaches an FDP credit to a dividend under section OC 27 of the Income Tax Act 2007, the company shall include in the shareholder dividend statement required to be given in accordance with section 29 of this Act, the following information:

- (a) the amount of the FDP credit:
- (b) the aggregate of—
  - (i) the dividend paid to the shareholder; and
  - (ii) the sum of the imputation credit and the FDP credit:
- (c) the aggregate of the imputation credit and the FDP credit.

Compare: 1976 No 65 s 394ZZB

Section 30 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 30(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30(b)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **30A Statement to shareholder when CTR credit attached to dividend**

Where a CTR company attaches a CTR credit to a dividend under section OD 20 of the Income Tax Act 2007, the company must include the following information in the shareholder dividend statement required by section 29:

- (a) *[Repealed]*
- (b) the amount of the CTR additional dividend paid under section LQ 5 of the Income Tax Act 2007:

- (c) the aggregate of—
  - (i) the dividend paid to the shareholder; and
  - (ii) the CTR additional dividend paid to the shareholder.

Section 30A was inserted by section 41(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application to dividends paid as from 1 April 1998.

Section 30A heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30A: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30A was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Paragraph (a) was repealed by section 60(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 1 April 1998.

Section 30A(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30A(c)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **30B Statement to share supplier when share user makes replacement payment under share-lending arrangement**

A share user under a share-lending arrangement who pays a replacement payment to the share supplier must at the time of paying the replacement payment give to the share supplier a replacement payment statement in a form approved by the Commissioner showing—

- (a) the name of the share user:
- (b) the date on which the replacement payment is paid:
- (c) the name and address of the share supplier:
- (d)
- (e) the amount of the replacement payment after the RWT is withheld:
- (f) the amount of any imputation credit attached under section OB 64 of the Income Tax Act 2007 to the replacement payment:
- (g) the aggregate of the amount of any imputation credit referred to in paragraph (f) and the amount of the imputation credit arising under section RE 25 of the Income Tax Act 2007 for the share supplier from the amount of RWT withheld:



(h) *[Repealed]*

Sections 30B and 30C were inserted, as from 1 July 2006, by section 214 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Paragraph (d) was repealed, as from 1 July 2006, by section 178 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 30B(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30B(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30B(g): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (h) was repealed, as from 1 July 2006, by section 178 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**30C Credit transfer notice to share supplier and Commissioner when share user transfers imputation credit under share-lending arrangement**

- (1) A credit transfer notice may be issued by a share user under a share-lending arrangement when a dividend is paid for an original share, by complying with this section.
- (2) A credit transfer notice must—
  - (a) be in a form approved by the Commissioner:
  - (b) show the amount of imputation credit, if any, and the amount of FDP credit, if any, attached to the dividend, if the dividend is derived by the share user:
  - (c) state that any imputation credit and any FDP credit is to be transferred to the share supplier, if the dividend is derived by the share user:
  - (d) attach a copy of the shareholder dividend statement for the dividend, if the dividend is derived by the share user:
  - (e) be given to the relevant share supplier and the Commissioner when the dividend is paid or as soon as possible after it is paid.

Sections 30B and 30C were inserted, as from 1 July 2006, by section 214 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 30C(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30C(2)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**31 Maori authority to give notice of amounts distributed**

- (1) A Maori authority that makes a taxable Maori authority distribution to a member must, at the time the distribution is made, give to the member a notice that contains the following details:
- (a) the name of the Maori authority;
  - (b) the date the distribution is made;
  - (c) the name and address, and the tax file number if the number is known by the Maori authority, of the member to whom the distribution is made;
  - (d) the amount of the distribution made to the member, including what portion is a taxable distribution and what portion is a non-taxable distribution;
  - (e) the amount of a Maori authority credit attached to the distribution or treated as being attached to the distribution under section RE 24 of the Income Tax Act 2007;
  - (eb) the amount, if any, of the distribution paid to a retirement savings scheme as a retirement scheme contribution for the shareholder;
  - (ec) the name of the retirement savings scheme to which any retirement scheme contribution was paid;
  - (ed) the amount, if any, of Maori authority credit used to satisfy a liability of the company for RSCT;
  - (ee) the amount, if any, of Maori authority credit remaining after the company has used an imputation credit in satisfying a liability for RSCT;
  - (f) such other information as the Commissioner may require.
- (2) A notice is treated as having been given to a member if the notice is—
- (a) given to the member personally; or
  - (b) is sent by post to the member's usual or last known place of abode or business; or
  - (c) is given personally to a person authorised to act on behalf of the member; or
  - (d) is sent by post to the person at their last known place of abode or business.

Section 31 was substituted by section 88(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 31(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by adding the words “of the Income Tax Act 2004”.

Subsection (1)(e) was amended, as from 1 April 2005, by section 179 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting the expression “section NF 8A” for the expression “section NF 8B”.

Section 31(1)(eb): inserted (with effect from 1 April 2007), on 19 December 2007, by section 194(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31(1)(ec): inserted (with effect from 1 April 2007), on 19 December 2007, by section 194(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31(1)(ed): inserted (with effect from 1 April 2007), on 19 December 2007, by section 194(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31(1)(ed): amended, on 1 April 2008, by section 194(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31(1)(ee): inserted (with effect from 1 April 2007), on 19 December 2007, by section 194(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31(1)(ee): amended, on 1 April 2008, by section 194(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **31B Portfolio tax rate entity to give statement to investors and request information**

- (1) *[Repealed]*
- (2) A portfolio tax rate entity must give to an investor in the entity who has a portfolio investor exit period a notice giving information that the Commissioner considers relevant for each portfolio calculation period in which the portfolio exit period falls, if the portfolio calculation period is more than a day.
- (2B) A portfolio tax rate entity must give a notice required by subsection (2)—
  - (a) by the end of the month following the quarter in which an investor has a portfolio exit period, if the investor has a prescribed investor rate of more than zero and invests in an entity that pays tax under section HL 22 of the Income Tax Act 2007:

- (b) by 30 June, if the investor is not an investor referred to in paragraph (a) and invests in a portfolio tax rate entity that pays tax under section HL 22 or HL 24 of that Act:
  - (c) by 30 June, or 2 months after the end of the entity's income year if that date is after 30 June, if the investor invests in a portfolio tax rate entity that pays tax under section HL 23 of that Act.
- (2C) For the purposes of subsection (2B)(a), if the quarter is a second or third quarter, the portfolio tax rate entity may provide a combined notice for the affected period.
- (3) If subsection (2) does not apply to an investor in a portfolio tax rate entity, the entity must give to the investor information that the Commissioner considers relevant for each tax year in a notice—
  - (a) by the 30 June after the end of the tax year, if paragraph (b) does not apply; or
  - (b) by the end of the second month following the month in which the corresponding income year for the portfolio tax rate entity ends, if the corresponding income year ends after the tax year.
- (4) A portfolio tax rate entity must at least once in each tax year give a notice to an investor in the entity requesting that the investor provide the entity with the investor's prescribed investor rate.
- (5) A portfolio tax rate entity must, as soon as practicable after an investor joins, give a notice to the investor requesting that the investor provide the entity with the investor's tax file number.

Section 31B: inserted, on 1 October 2007, by section 180 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 31B(1): repealed (with effect on 1 October 2007), on 6 October 2009, by section 612(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 31B(1): amended, on 1 October 2007, by section 52(1) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(1)(a): repealed, on 1 October 2007, by section 52(1) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(1)(b): repealed, on 1 October 2007, by section 52(1) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(2): substituted, on 1 October 2007, by section 52(2) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(2B): substituted (with effect on 1 October 2007), on 6 October 2009, by section 612(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 31B(2B): substituted (with effect from 1 October 2007), on 19 December 2007, by section 195 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31B(2B): inserted, on 1 October 2007, by section 52(3) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(2C): inserted (with effect on 1 October 2007), on 6 October 2009, by section 612(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 31B(3): substituted (with effect from 1 October 2007), on 19 December 2007, by section 195 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 31B(3): amended (with effect on 1 October 2007), on 6 October 2009, by section 612(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 31B(3)(a): amended, on 1 October 2007, by section 52(4) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(3)(b): amended, on 1 October 2007, by section 52(5) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(4): amended, on 1 October 2007, by section 52(6) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 31B(5): added, on 29 May 2008, by section 54 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

## **32 Records of specified charitable, benevolent, philanthropic, or cultural bodies**

- (1) All gift-exempt bodies must keep in New Zealand sufficient records in the English language to enable the Commissioner to determine both the sources of donations made to them and the application, within New Zealand or within a country or territory outside New Zealand, of their funds.
- (2) Notwithstanding subsection (1), the Commissioner, in writing, may authorise a gift-exempt body to keep those records in a language other than English if the gift-exempt body applies in writing to the Commissioner for the authorisation.

Section 32 was substituted by section 41 Taxation (Remedial Provisions) Act 1996 (1996 No 159) with application as from the 1996-97 income year.

**32A Records to be provided by employer who contributes to superannuation fund**

- (1) Upon the request of a member or a trustee of a superannuation fund acting on a member's behalf, a member's employer, or a member's past employer, must provide the member or trustee with a record of all employer's superannuation cash contributions made by the employer on the member's behalf in each of the 4 tax years before the tax year in which a withdrawal, being one to which section CS 1 of the Income Tax Act 2007 applies, is made.
- (2) A request must be made by notice.
- (3) A person who receives a request must provide the information requested, to the extent it is held or can be accessed, no later than 20 working days after the date on which the request is made.
- (4) When calculating the superannuation fund's income under section CS 1 of the Income Tax Act 2007, the member and the trustee are entitled to rely on information provided under this section as being correct, and the information provided is treated as being correct unless the member or the trustee has reasonable grounds for believing that the information provided is not correct.

Sections 32A to 32C were inserted by section 35(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application as from 14 September 2000.

Section 32A(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 614(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32A(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax years before the tax year" for the words "income years before the income year".

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "section CS 1 of the Income Tax Act 2004" for the words "section CL 4 of the Income Tax Act 1994".

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "by notice" for the words "in writing".

Section 32A(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income under section CS 1 of the Income Tax Act 2004” for the words “gross income under section CL 4 of the Income Tax Act 1994”.

**32B Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2007**

- (1) The trustee of a superannuation fund may request the following information from a member or a member’s employer, or a member’s past employer, in respect of a tax year or part of a tax year:
  - (a) the amount of employer’s superannuation cash contributions made by an employer:
  - (b) the amount of employer’s superannuation cash contributions for which ESCT has been withheld at the rate specified in schedule 1, part D, clause 1 of the Income Tax Act 2007:
  - (c) the amount of employer’s superannuation cash contributions that have been treated as salary or wages under section RD 68 of the Income Tax Act 2007:
  - (d) the taxable income that the member derived in the 4 tax years before the tax year in which a withdrawal is made:
  - (e) evidence to support an application for a withdrawal that is necessary to alleviate significant financial hardship:
  - (f) the date on which a member ceases employment:
  - (g) whether a member was employed for less than 2 years:
  - (h) whether a member is employed for 30 hours per week or less:
  - (i) whether a member has reduced their working hours because the member is nearing full retirement:
  - (j) whether a member has stopped contributing to a superannuation fund:
  - (k) whether a member’s employer has stopped making employer’s superannuation cash contributions to a superannuation fund on the member’s behalf:
  - (l) whether employer’s superannuation cash contributions made to a superannuation fund have increased in accordance with a trust deed or a contract, or an amendment to a trust deed or a contract, in existence before 1 April 2000, and if so, the extent of the increase:

- (m) any other information required to determine the superannuation fund's income under section CS 1 of the Income Tax Act 2007.
- (2) A request must be made by notice.
- (3) A person who receives a request must provide the information requested, to the extent it is held or can be accessed, no later than 20 working days after the date on which the request is made.
- (4) When calculating the superannuation fund's income under section CS 1 of Income Tax Act 2007, the trustee is entitled to rely on information provided under this section as being correct, and the information provided is treated as being correct unless the trustee has reasonable grounds for believing that the information provided is not correct.

Sections 32A to 32C were inserted by section 35(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application as from 14 September 2000.

Section 32B heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 32B was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "section CS 1 of Income Tax Act 2004" for the words "section CL 4 of Income Tax Act 1994".

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "a tax year" for the words "an income year" in both places they appear.

Section 32B(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 615(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32B(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32B(1)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32B(1)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 615(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "schedule 1, part A, clause 10(a) of the Income Tax Act 2004" for the words "Schedule 1, Part A, clause 10(a)".

Subsection (1)(b) was substituted, as from 1 April 2007, by section 181 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).



Section 32B(1)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 615(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32B(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by adding the words “of the Income Tax Act 2004”.

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 32B(1)(k): amended (with effect on 1 April 2008), on 6 October 2009, by section 615(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32B(1)(k): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32B(1)(l): amended (with effect on 1 April 2008), on 6 October 2009, by section 615(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32B(1)(l): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32B(1)(m): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(m) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income under section CS 1 of the Income Tax Act 2004” for the words “gross income under section CL 4 of the Income Tax Act 1994”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “by notice” for the words “in writing”.

Section 32B(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income under section CS 1 of Income Tax Act 2004” for the words “gross income under section CL 4 of Income Tax Act 1994”.

### **32C Certification requirements for transfers from superannuation funds**

- (1) The trustee of a superannuation fund that receives an amount from another superannuation fund may request the following information from the trustee of the transferor fund in respect of a tax year or part of a tax year:

- (a) amounts transferred that, if withdrawn, would be subject to any of section CS 2(1), (2), and (8) of the Income Tax Act 2007:
  - (b) amounts transferred that are employer-sourced superannuation savings:
  - (c) any information previously supplied to the transferor fund by a superannuation fund from which a member has transferred:
  - (d) any other information required to determine the transferee fund's income under section CS 1 of the Income Tax Act 2007.
- (2) A request must be made by notice.
- (3) A trustee who receives a request must provide the information requested, to the extent it is held or can be accessed, no later than 40 working days after the date on which the request is made.
- (4) When calculating the transferee superannuation fund's income under section CS 1 of the Income Tax Act 2007, the trustee is entitled to rely on information provided under this section as being correct, and the information provided is treated as being correct unless the trustee has reasonable grounds for believing that the information provided is not correct.

Sections 32A to 32C were inserted by section 35(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application as from 14 September 2000.

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "a tax year" for the words "an income year" in both places they appear.

Section 32C(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "of section CS 2(1), (2), and (8) of the Income Tax Act 2004" for the words "one of paragraphs (a) to (d) of section CL 3(1) of the Income Tax Act 1994".

Section 32C(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32C(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "income under section CS 1 of the Income Tax Act 2004" for the words "gross income under section CL 4 of the Income Tax Act 1994".

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “by notice” for the words “in writing”.

Section 32C(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income under section CS 1 of the Income Tax Act 2004” for the words “gross income under section CL 4 of the Income Tax Act 1994”.

### **32D Disclosure requirements for purpose of continuity provisions and public unit trusts**

- (1) Upon the request of a trustee of a public unit trust, a unit holder of the public unit trust must provide the trustee with a written statement of persons associated with the unit holder.
- (2) A request must be made by notice.
- (3) A unit holder who receives a request must provide the statement no later than 20 working days after the date on which the request is made.
- (4) The trustee is entitled to rely on the statement as being correct, and the statement is treated as being correct, unless the trustee has reasonable grounds for believing that the statement provided is not correct.

Section 32D was inserted, by section 191 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) with application as from the 2001-02 income year.

Section 32D heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32D(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “by notice” for the words “in writing”.

### ***Resident passive income***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **32E Applications for RWT exemption certificates**

- (1) A person listed in subsection (2) may apply to the Commissioner for an RWT exemption certificate.

- (2) The persons are—
- (a) a registered bank;
  - (b) a building society;
  - (c) the Public Trust or a company that would be a member of the same wholly-owned group of companies as the Public Trust, if it were a company for the purposes of this Act;
  - (d) the Maori Trustee;
  - (e) a statutory trustee company;
  - (eb) a portfolio investment entity;
  - (ec) the trustee of the Niue International Trust Fund;
  - (ed) the trustee of the Tokelau International Trust Fund;
  - (f) a person whose main business is—
    - (i) borrowing money or accepting deposits, or receiving credit or selling a credit instrument; and
    - (ii) lending money or granting credit, or buying or discounting a credit instrument;
  - (g) a person that is
    - (i) a nominee company subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006 and operated by a barrister and solicitor or an incorporated law firm; or
    - (ii) a broker's nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply;
  - (h) a practitioner within the meaning of the Lawyers and Conveyancers Act 2006 or incorporated firm within the meaning of that Act in relation to the operation of their trust account which is an account maintained under section 112 of that Act;
  - (i) a person—
    - (i) who has met their obligation to file a return of income under the Inland Revenue Acts within the time allowed; and
    - (ii) whose annual gross income for the tax year for which they last filed a return of income is more than \$2,000,000:

- (j) a person in an accounting year who reasonably believes their annual gross income for the tax year that corresponds to the next accounting year will be more than \$2,000,000:
  - (k) a person who derives in a tax year an amount that is exempt income under sections CW 38(2), CW 39(2), CW 40 to CW 52, and CW 63 of the Income Tax Act 2007 in relation to their activities in the capacity in which they derive the exempt income:
    - (kb) a Board of Trustees that is constituted under Part 9 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual:
    - (kc) a tertiary education institution that is established under Part 14 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual:
  - (l) a person to whom section DV 8 of the Income Tax Act 2007 applies and who would, but for that section, have net income of an amount less than the amount set out in the section for their most recently ended accounting year.
- (3) The person must apply in writing to the Commissioner, and the application must—
- (a) state the basis of exemption under subsection (2); and
  - (b) include a declaration by the person or an officer authorised by them that they come within the basis of exemption.
- (4) The person must provide further information in relation to the application as the Commissioner requires.

Compare: 2004 No 35 s NF 9(1)–(3)

Section 32E: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 32E(2)(ec): inserted, on 6 October 2009, by section 616(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32E(2)(ed): inserted, on 6 October 2009, by section 616(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32E(2)(i)(ii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 616(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32E(2)(kb): inserted, on 1 July 2008, by section 55 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 32E(2)(kc): inserted, on 1 July 2008, by section 55 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

### **32F Calculation of annual gross income when threshold met**

For the purposes of section 32E(2)(i), when the person is part of a group of companies, the person's annual gross income is determined by—

- (a) including the total annual gross income in the tax year of other group companies; and
- (b) excluding an amount of assessable income derived by the company or another company in the same group from a transaction or series of related or connected transactions with another company in the group.

Compare: 2004 No 35 s NF 9(8), (10)

Section 32F: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **32G Evidence of annual gross income and consequences of failure to meet threshold**

- (1) This section applies when a person's application for an RWT exemption certificate is based on their meeting the requirements in section 32E(2)(j).
- (2) The person must provide evidence to satisfy the Commissioner of their annual gross income for the accounting year. They must provide the evidence within the 3-month period after the end of the accounting year.
- (3) For the purposes of subsection (2), the Commissioner may require further evidence, and also for the purposes of section 32L.
- (4) If the person's annual gross income for the tax year referred to in section 32E(2)(j) is less than \$2,000,000, they are liable for late payment penalties in relation to an amount received or derived by them that would have been withheld under the RWT rules, had they not held an RWT exemption certificate. Section 139B applies to the person as if—
  - (a) they had failed to withhold an amount of tax; and

- (b) the default occurred on each day on which they received or derived a payment from which RWT would otherwise have been withheld.
- (5) In the calculation of estimated annual gross income of a company that anticipates that it will be part of a group of companies for the tax year referred to in section 32E(2)(j), the estimated annual gross income of all other group companies is included.
- (6) Despite subsection (5), in the calculation of the annual gross income of a company for the purposes of this section, an amount of income derived by them or another company in the same group of companies from a transaction or series of related or connected transactions with another company in the group is excluded.
- (7) Despite subsections (2) and (4), the Commissioner may provide an RWT exemption certificate to, or allow it to be retained by, a person who does not meet the requirements of section 32E(2)(j) if the Commissioner considers that the failure is solely a consequence of extraordinary circumstances that are—
  - (a) beyond the person's reasonable control; and
  - (b) unlikely to be repeated in later accounting years.
- (8) For the purposes of subsection (6), the Commissioner may remit some or all of a late payment penalty if the Commissioner considers that the failure is solely a consequence of extraordinary circumstances that the person could not reasonably be expected to have foreseen.

Compare: 2004 No 35 s NF 9(6), (7), (9)–(11)

Section 32G: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **32H Providing RWT exemption certificate when person meets requirements**

- (1) This section applies when the Commissioner has received an application for an RWT exemption certificate from a person who meets the requirements of section 32E.
- (2) The Commissioner must provide the certificate to the person, setting out the person's tax file number. The certificate is valid from the starting date set out in the certificate.

- (3) The Commissioner may determine that a person's application should have an end date, and this date must be set out in the certificate.
- (4) The Commissioner may provide a replacement certificate if an original certificate is lost or destroyed.

Compare: 2004 No 35 s NF 9(4), (5)

Section 32H: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **32I Providing RWT exemption certificate to person who does not meet requirements**

- (1) Despite section 32H, the Commissioner may provide an RWT exemption certificate for a period to a person who does not meet the requirements in section 32E(2) if the person—
  - (a) will, or is likely to, have for the period, total deductions under the Income Tax Act 2007 that are not less than the total amount of assessable income of the person for the period; or
  - (b) would have, or would likely have, in a part of a tax year that falls in the period, total tax credits under section LB 3 of the Income Tax Act 2007 for resident passive income that are more than the income tax liability of the person for the tax year by an amount not less than \$500.
- (2) Despite subsection (1), the Commissioner may not provide an RWT exemption certificate to a person unless they have applied in writing as described in section 32E(3), and include in the application a set of budgeted accounts with details, for the period, of the person's projected—
  - (a) total amount of assessable income:
  - (b) total deductions:
  - (c) tax credits for resident passive income:
  - (d) income tax liability.
- (3) For the purposes of subsection (2), the Commissioner may require the person to provide further information.
- (4) A certificate provided under this section is cancelled under section 32L at the expiry date set out in the certificate.



- (5) If a person provided with a certificate under this section notifies another person that they hold the certificate, the notification must include a copy of the certificate.

Compare: 2004 No 35 s NF 9(12)–(14)

Section 32I: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**32J RWT exemption certificates for unincorporated bodies**

- (1) This section applies when the Commissioner provides an RWT exemption certificate to an unincorporated body under section RE 30 of the Income Tax Act 2007.
- (2) The certificate must name the body as the holder. If the body is a trustee, the certificate must name the trust as the holder.
- (3) No member of the body can be provided with an RWT exemption certificate in relation to the taxable activity carried on by the body.
- (4) For the purposes of the RWT rules, a notice to the body as holder is treated as served on the body and on each member of the body.

Compare: 2004 No 35 s NF 10(1)(a), (d), (3)

Section 32J: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**32K Failing to meet basis of exemption**

- (1) This section applies when a holder of an RWT exemption certificate no longer meets the requirements on which their exemption is based.
- (2) If the holder becomes aware that they no longer meet the requirements, they must notify the Commissioner within a period of 5 days after the day on which they became aware, and they must deliver the certificate to the Commissioner.
- (3) The Commissioner may ask the holder to provide the full name and last known address of all persons to whom they have shown the certificate for the purposes of obtaining an exemption from withholding the amount of tax from a payment of resident passive income. The person must respond to the Commissioner's request within 5 days.

Compare: 2004 No 35 s NF 11(1)

Section 32K: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **32L Cancellation of RWT exemption certificates**

- (1) The Commissioner may cancel a person's RWT exemption certificate at any time, and notify any person of the fact of the cancellation, when—
  - (a) the Commissioner reasonably believes the person no longer meets the requirements on which their exemption is based; or
  - (b) the person did not meet the requirements on which their exemption was based and obtained the certificate through misleading information; or
  - (c) the person should not have been provided with the certificate; or
  - (d) the person's exemption was based on a ground set out in section 32E(2)(i) or (j), and the evidence provided under section 32G—
    - (i) shows the person did not meet the threshold; or
    - (ii) is unsatisfactory; or
    - (iii) is materially incorrect or misleading; or
  - (e) the person is liable for income tax that remains unpaid by the due date for payment.
- (2) If the Commissioner cancels a certificate under subsection (1), the Commissioner must notify the person who must deliver the certificate to the Commissioner within a period of 5 days after the date of notification. The person must also comply with a request under section 32K(3) if asked by the Commissioner.
- (3) Despite subsection (1), if the Commissioner considers that a person referred to in subsection (1)(a) to (d) is a person to whom section 32G applies and who has a further basis of exemption apart from that set out in the certificate, the Commissioner must not cancel the certificate except to provide a substitute certificate that has immediate effect.
- (4) A person who receives a notice under subsection (2) must, within a period of 5 days after the date of receipt, notify all persons to whom they have shown the certificate for the purposes of obtaining an exemption under the RWT rules and

from whom they expect to receive further payments of resident passive income of the cancellation.

- (5) The Commissioner must publish in the *Gazette*—
- (a) on or before 30 June in each tax year—
    - (i) a list of all certificates cancelled in the previous tax year, other than a certificate held by a person before cancellation that was later reissued to the person; and
    - (ii) a list of all certificates provided during the previous tax year to a person who had previously held a certificate, other than a certificate provided to a person who previously held a certificate that was cancelled; and
  - (b) in April, July, October, and January (the **month of publication**)—
    - (i) a list of all certificates cancelled during the 3-month period immediately before the month of publication, other than a certificate held by a person before cancellation that was later reissued to the person in the 3-month period; and
    - (ii) a list of all certificates provided during the 3-month period immediately before the month of publication to a person who had previously held a certificate, other than a certificate provided to a person who previously in the 3-month period held a certificate that was cancelled.
- (6) The Commissioner may publish a list referred to in subsection (5) by electronic means at any time after the publication referred to in that subsection.
- (7) A person who is required to deliver an RWT exemption certificate to the Commissioner must deliver all original certificates provided to them by the Commissioner.
- (8) An RWT exemption certificate ceases to be valid on the 5th working day after the date of publication in the *Gazette* referred to in subsection (5). For a person who is notified of a cancellation by the Commissioner or by the previous holder of a certificate, a certificate ceases to be valid after a period of 5 working days from the date of notification.

Compare: 2004 No 35 s NF 11(2)–(9)

Section 32L: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### *Non-resident passive income*

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **32M Persons with approved issuer status**

- (1) A person who borrows, or has borrowed, or will borrow money, may apply to the Commissioner to have approved issuer status for the purposes of the NRWT rules.
- (2) On making an application under subsection (1), the person is an approved issuer from the date of the application unless the Commissioner—
  - (a) considers that they have been responsible for serious default or neglect in complying with their obligations under the Inland Revenue Acts in the 2-year period leading up to the date of application; and
  - (b) notifies the person within 20 working days after the date of receiving the application that the application is declined.
- (3) The Commissioner may revoke a person's approved issuer status at a particular time if—
  - (a) the Commissioner considers that the person has been responsible for serious default or neglect in complying with their obligations under the Inland Revenue Acts in the 2-year period leading up to that time; or
  - (b) the person asks for revocation of the status.
- (4) The Commissioner must notify the person of a revocation under subsection (3).
- (5) Despite subsection (3), the person continues to have approved issuer status for the purposes of the NRWT rules and Part 6B of the Stamp and Cheque Duties Act 1971 in relation to a payment of interest made after the date of revocation for money lent to the person under a registered security while the person was an approved issuer and before the date of the revocation.

Compare: 2004 No 35 ss NG 5–NG 7

Section 32M: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### ***Foreign dividends***

*[Repealed]*

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 617(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **32N Information requirements when payments for foreign dividends reduced**

*[Repealed]*

Section 32N: repealed (with effect on 30 June 2009), on 6 October 2009, by section 617(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 32N: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### *Returns, etc*

### **33 Returns of income**

- (1) In each tax year, a taxpayer, other than a taxpayer to whom section 33A applies or a portfolio tax rate entity who makes payments of income tax under section HL 22 or HL 24 of the Income Tax Act 2007, must furnish to the Commissioner a return of income in the prescribed form for the preceding tax year, together with such other particulars as may be prescribed.
- (1B) In an income year, a trust, society or institution to which section CW 41 or CW 42 of the Income Tax Act 2007 applies, may furnish to the Commissioner a return of income in the prescribed form for the preceding tax year, together with such other particulars as may be prescribed if the trust, society or institution receives a taxable Maori authority distribution.
- (1C) A portfolio tax rate entity or portfolio investor proxy who makes payments of income tax under section HL 22 or HL 24 of the Income Tax Act 2007 must furnish to the Commissioner the returns for which the entity is responsible under section 57B.
- (2) A return must contain a notice of the assessment required to be made under section 92.
- (3) Subsection (2) does not apply if subsection (1B) applies.
- (4) The nominated company for a consolidated group is treated as a taxpayer for the purposes of this section. A company that is a

member of a consolidated group in a tax year must not provide a separate return for a tax year, but this restriction applies only to a tax year, or a part of a tax year, in which the company is part of the group.

Section 33 was amended, as from 1 July 1996, by section 4 Tax Administration Amendment Act 1996 (1996 No 19) by substituting the words “taxpayer to whom section 33A applies” for the words “pay-period taxpayer” wherever they appear.

Section 33 was substituted by section 433 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2) was substituted by section 8(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Section 33 was substituted, by section 192 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Section 33 heading: amended (with effect from 1 October 2007), on 19 December 2007, by section 196(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

The heading to section 33 was amended by section 89(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “by taxpayers” with application as from the 2004-05 income year.

Section 33(1): amended, on 1 April 2008, by section 196(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 33(1): amended (with effect from 1 October 2007), on 19 December 2007, by section 196(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 33(1): amended, on 1 October 2007, by section 182 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “each tax year” for the words “an income year”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “preceding tax year” for the words “preceding income year”.

Subsection (1B) was inserted by section 89(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004-05 income year.

Section 33(1B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CW 34 or CW 35 of the Income Tax Act 2004” for the words “section CB 4(1)(c) or section CB 4(1)(e) of the Income Tax Act 1994”.

Subsection (1B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “preceding tax year” for the words “preceding income year”.

Section 33(1C): inserted (with effect from 1 October 2007), on 19 December 2007, by section 196(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 33(1C): amended, on 1 April 2008, by section 196(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3) was inserted by section 89(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 33(4): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **33A Annual returns of income not required**

- (1) A natural person is not required to furnish a return of income for a tax year and will not receive an income statement from the Commissioner for the year if, in the corresponding income year, the person—
- (a) had assessable income for the tax year that was derived only from—
    - (i) income from employment that is subject to the PAYE rules; or
    - (ii) interest or a dividend that is subject to the RWT rules; or
    - (iii) interest or a dividend that does not have a New Zealand source; or
    - (iiib) a taxable Maori authority distribution; or
    - (iiic) a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
    - (iv) a source or sources other than those listed in subparagraphs (i) to (iiic) and the total amount derived is \$200 or less; and
    - (iv) *[Repealed]*
  - (b) derives a total of \$200 or less of—
    - (i) income that is subject to the PAYE rules in relation to which the person’s obligations under those rules are not met; and
    - (ii) income that is subject to the PAYE rules and to a student loan repayment deduction under sec-

- tions 19 and 20 of the Student Loan Scheme Act 1992, in relation to which the person's obligations under those rules are not met; and
- (iii) income from employment from which the earner premium or earner levy is not withheld or deducted correctly; and
  - (iv) interest or a dividend that is resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies (other than interest for which an RWT withholding certificate did not have to be prepared under section 25(7)), from which RWT has been withheld at a rate other than that specified in—
    - (AA) *[Repealed]*
    - (A) schedule 1, part D, table 2, row 3 of the Income Tax Act 2007 if that person's annual gross income is more than \$48,000 but not more than \$70,000; or
    - (BA) *[Repealed]*
    - (B) schedule 1, part D, table 2, row 4 or 5 of the Income Tax Act 2007 if that person's annual gross income is more than \$70,000; and
  - (v) income from employment being extra emoluments from which tax has been withheld at a rate other than that specified in—
    - (AA) *[Repealed]*
    - (A) schedule 2, part B, table 1, row 2 of the Income Tax Act 2007 if that person's annual gross income is more than \$48,000 but not more than \$70,000; or
    - (BA) *[Repealed]*
    - (B) schedule 2, part B, table 1, row 3 of the Income Tax Act 2007 if that person's annual gross income is more than \$70,000; and
  - (vi) income from employment being secondary employment earnings from which tax has been withheld at a rate other than that specified in—



- (AA) *[Repealed]*
- (A) schedule 2, part A, clause 5 of the Income Tax Act 2007 if that person's annual gross income is more than \$48,000 but not more than \$70,000; or
- (BA) *[Repealed]*
- (B) schedule 2, part A, clause 6 of the Income Tax Act 2007 if that person's annual gross income is more than \$70,000; and
- (via) dividends if that person's annual gross income is more than \$70,000; and
- (vib) taxable Maori authority distributions if the person's annual gross income is more than \$48,000; and
- (vii) interest, dividends, or taxable Maori authority distributions, if the person is required to pay financial support in the tax year under the Child Support Act 1991; and
- (viii) interest, dividends, or taxable Maori authority distributions, if the person has an IRD loan balance (as defined in section 2 of the Student Loan Scheme Act 1992), other than a balance of nil on the last day of the tax year, and income that is more than the student loan repayment threshold (as defined in section 2 of the Student Loan Scheme Act 1992) for that tax year; and
- (ix) salary or wages from employment as an election day worker, if the worker has used the "EDW" tax code; and
- (ixa) salary or wages from employment as a casual agricultural employee, if the employee has used the "CAE" tax code; and
- (ixb) salary or wages from employment as a non-resident seasonal worker if the employee has used the "NSW" tax code; and
- (ixc) salary or wages from employment as a non-resident seasonal worker; and
- (x) interest or a dividend that—
  - (A) does not have a New Zealand source; and

- (B) was not resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies; and
  - (xi) portfolio investor allocated income that is not excluded income; and
  - (c) does not receive income from employment from which an amount of tax is withheld or deducted and the amount is determined in whole or in part by a special tax code certificate issued under section 24F; and
  - (d) is not issued a family notice of entitlement for any part of the tax year; and
  - (e) is not living in a marriage, civil union, or de facto relationship, with a person who is issued with a family notice of entitlement for any part of the tax year; and
  - (f) or the person with whom the natural person lives in a marriage, civil union, or de facto relationship, is not paid by the chief executive of the administering department a family assistance credit for which the amount of family credit abatement under section MD 13 of the Income Tax Act 2007 is greater than zero; and
  - (g) is a person who has a nil IRD loan balance on the last day of the tax year; and
  - (h) is not eligible to receive a full interest write-off under section 38B of the Student Loan Scheme Act 1992; and
  - (i) is not eligible to receive a base interest write-off or reduction under section 39 or section 40 of the Student Loan Scheme Act 1992; and
  - (j) is a non-resident seasonal worker.
- (2) Subsection (1) does not apply to a natural person who, in the tax year—
- (a) is a non-resident other than a non-resident seasonal worker employed under the recognised seasonal employment scheme; or
  - (b) is a provisional taxpayer; or
  - (c) is not a cash basis person; or
  - (cb) *[Repealed]*
  - (d) received total income of more than \$200 that included—
    - (i) a schedular payment, if it is not—

- (A) an amount or proportion of a schedular payment for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007;
  - (B) income that is a personal service rehabilitation payment for a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001:
    - (ii) beneficiary income; or
    - (d) *[Repealed]*
    - (db) *[Repealed]*
    - (e) has a tax loss or tax loss component, other than a tax loss component under section LE 2 of the Income Tax Act 2007; or
    - (e) *[Repealed]*
    - (f) has a loss balance; or
    - (f) *[Repealed]*
    - (g) has carried forward to the income year a tax credit under section LE 3 of the Income Tax Act 2007; or
    - (g) *[Repealed]*
    - (h) held an RWT exemption certificate under section 32E at any time in the tax year; or
    - (h) *[Repealed]*
    - (i) *[Repealed]*
    - (j) *[Repealed]*
    - (k) *[Repealed]*
    - (kb) *[Repealed]*
    - (l) *[Repealed]*
    - (m) *[Repealed]*
    - (n) *[Repealed]*
    - (o) *[Repealed]*
- (2B) Subsection (1) does not apply to a natural person who, at any time,—
- (a) is required under section 44 to furnish a return of income for the tax year; or
  - (b) leaves New Zealand and contacts the Commissioner for an assessment for the tax year; or
  - (c) is a person who the Commissioner considers should furnish a return of income for the tax year.

- (3) A person to whom subsection (2) or subsection (2B) applies for a tax year is required to furnish a return of income for that year and is not a person to whom an income statement is required to be issued.
- (4) Subject to section 80D, the Commissioner may not issue an income statement to a person to whom subsection (1) applies.
- (5) The Commissioner must issue an income statement to a natural person to whom none of section 33A(1), (2) and (2B) applies.

Section 33A was substituted by section 9(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

The heading to section 33A was amended, by section 193(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting “returns of income” for “income tax returns”, with application as from the 2002-03 income year.

Subsection (1)(b)(x) was repealed by section 65(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from the 1999-2000 income year.

Subsection (1) was substituted by section 61(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “a tax year” for “an income year”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “in the corresponding income year” for “in the year”.

Subsection (1)(a) (the part before subpara (i)) was substituted by section 75(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

Subsection (1)(a) (the part before subpara (i)) was amended, as from 1 April 2005, by section 183 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting “assessable income” for “gross income”.

Subsection (1)(a)(iii) was amended by section 75(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by substituting “or” for “and” with application as from the 2002-03 income year.

Subsection (1)(a)(iiib) was inserted by section 107(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2004-05 income year.

Section 33A(1)(a)(iiic): inserted, on 1 July 2008, by section 197(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1)(a)(iv) was inserted by section 75(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 2002-03 income year.

Section 33A(1)(a)(iv): amended, on 1 July 2008, by section 197(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1)(a)(iv), as inserted by section 75(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002, was amended by section 107(3) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting “subparagraphs (i) to (iiib)” for “subparagraphs (i) to (iii)” with application as from the 2004-05 income year.

A second subsection (1)(a)(iv) was inserted, as from 26 March 2003, by section 90(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004-05 income year.

Subsection (1)(a)(iv), as inserted by section 90(1) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003, was repealed by section 107(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2004-05 income year.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting “for the tax year” after “gross income”.

Section 33A(1)(b)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(iii) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting, after “premium”, “or earner levy”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1)(b)(i) and (ii) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting “gross” wherever it appears.

Section 33A(1)(b)(iv): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (1)(b)(iv) was substituted by section 16(1) Taxation (Tax Rate Increase) Act 1999 (1999 No 143) with application as from the 2000-2001 income year.

Subsection (1)(b)(iv) was amended by section 126(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting “Interest or a dividend that is resident withholding income under section NF 2(1A)(b) of the Income Tax Act 2004” for “Interest”.

Section 33A(1)(b)(iv)(AA): repealed, on 1 April 2009, by section 17(1)(a) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(iv)(AA): inserted (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(iv)(A): amended, on 1 April 2009, by section 17(1)(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(iv)(A): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(iv)(A): amended (with effect from 1 April 2008), on 29 May 2008, by section 56(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Subsection (1)(b)(iv)(A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “schedule 14, clause 1(b) of the Income Tax Act 2004” for “Schedule 14, clause 1(b)”.

Section 33A(1)(b)(iv)(BA): repealed, on 1 April 2009, by section 17(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(iv)(BA): inserted (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(c) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(iv)(B): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(d) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(iv)(B): amended (with effect from 1 April 2008), on 29 May 2008, by section 56(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Subsection (1)(b)(iv)(B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “schedule 14, clause 1(a) or (e) of the Income Tax Act 2004” for “Schedule 14, clause 1(a) or clause 1(e)”.

Subsection (1)(b)(v) was substituted by section 16(1) Taxation (Tax Rate Increase) Act 1999 (1999 No 143) with application as from the 2000-2001 income year.

Section 33A(1)(b)(v)(AA): repealed, on 1 April 2009, by section 17(1)(d) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(v)(AA): inserted (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(e) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(v)(A): amended, on 1 April 2009, by section 17(1)(e) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(v)(A): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(f) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(v)(A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(v)(A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “schedule 19, clause 8(b) of the Income Tax Act 2004” for “Schedule 19, clause 8(b)”.

Section 33A(1)(b)(v)(BA): repealed, on 1 April 2009, by section 17(1)(f) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(v)(BA): inserted (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(g) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(v)(B): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(h) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(v)(B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(v)(B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “schedule 19, clause 8(c) of the Income Tax Act 2004” for “Schedule 19, clause 8(c)”.

Subsection (1)(b)(vi) was substituted by section 16(1) Taxation (Tax Rate Increase) Act 1999 (1999 No 143) with application as from the 2000-2001 income year.

Section 33A(1)(b)(vi)(AA): repealed, on 1 April 2009, by section 17(1)(g) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(vi)(AA): inserted (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(i) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(vi)(A): amended, on 1 April 2009, by section 17(1)(h) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(vi)(A): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(j) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(vi)(A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(vi)(A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “schedule 19, clause 5A of the Income Tax Act 2004” for “Schedule 19, clause 5A”.

Section 33A(1)(b)(vi)(BA): repealed, on 1 April 2009, by section 17(1)(i) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(vi)(BA): inserted (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(k) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(vi)(B): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(l) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33A(1)(b)(vi)(B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(vi)(B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “schedule 19, clause 5B of the Income Tax Act 2004” for “Schedule 19, clause 5B”.

Subsection (1)(b)(via) was inserted by section 16(1) Taxation (Tax Rate Increase) Act 1999 (1999 No 143) with application as from the 2000-2001 income year.

Section 33A(1)(b)(via): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(m) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Subsection (1)(b)(vib) was inserted by section 90(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004-05 income year.

Section 33A(1)(b)(vib): amended, on 1 April 2009, by section 17(1)(j) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 33A(1)(b)(vib): amended (with effect from 1 April 2008), on 29 May 2008, by section 10(1)(n) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Subsection (1)(b)(vii) and (1)(b)(viii) were amended by section 90(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting “interest, dividends, or taxable Maori authority distributions” for “interest or dividends” with application as from the 2004–05 income year.

Subsection (1)(b)(vii) and (1)(b)(viii) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “tax year” for “income year” wherever they appear.

Subsection (1)(b)(ixa) was inserted by section 61(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from 1 April 1999.

Section 33A(1)(b)(ixb): inserted (with effect on 1 April 2009), on 6 October 2009, by section 619(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 33A(1)(b)(ixc): inserted (with effect on 1 April 2008), on 6 October 2009, by section 619(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 33A(1)(b)(x)(B): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(x)(B) was substituted by section 126(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 33A(1)(b)(xi): added, on 1 October 2007, by section 53 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 33A(1)(c): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “Income Tax Act 2004” for “Income Tax Act 1994”.

Section 33A(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) and (e) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “tax year” for “income year” wherever they appear.

Section 33A(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “is not living in a marriage, civil union, or de facto relationship between a man and a woman, with a person” for “does not have a spouse”.

Subsection (1)(e) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.



Subsection (1)(f) was substituted by section 16 Taxation (Parental Tax Credit) Act 1999 (1999 No 62) with application as from 1 October 1999.

Section 33A(1)(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “subpart KD credit under section KD 2 of the Income Tax Act 2004” for “Part KD credit under section KD 2 of the Income Tax Act 1994”.

Subsection (1)(f) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “or the person with whom the natural person lives in a marriage, civil union, or de facto relationship between a man and a woman,” for “or the spouse of the natural person”.

Subsection (1)(f) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (1)(g) was amended, by section 61(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting “year,” for “year.” and subsection (1)(h) was inserted, with application to base interest write-offs and base interest reductions made in respect of the 1999-2000 and subsequent income years.

Subsection (1)(g) and (h) were substituted, by section 15 Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96) with application as from the income year commencing on 1 April 2000.

Section (1)(g) was substituted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Subsection (1)(i) was inserted by section 15 Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96) with application as from the income year commencing on 1 April 2000.

Section 33A(1)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 619(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 33A(1)(j): added (with effect on 1 April 2008), on 6 October 2009, by section 619(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (2) was substituted by section 61(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “in the tax year” for “in an income year”.

Section 33A(2)(a): substituted (with effect on 1 April 2009), on 6 October 2009, by section 619(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (2)(c) was substituted by section 65(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from the 1999-2000 income year.

Section 33A(2)(cb): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(cb) was inserted by section 107(4) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2002-03 income year.

Subsection (2)(cb) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting “gross”.

Subsection (2)(cb)(ii) was repealed by section 126(3) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

First section 33A(2)(d): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Second subsection (2)(d) was repealed by section 107(5) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2002-03 income year.

Subsection (2)(d) was substituted by section 75(3) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 2001-02 income year.

Section 33A(2)(d)(i): substituted, on 1 July 2008, by section 197(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 33A(2)(db): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 33A(2)(db): inserted, on 19 December 2007, by section 197(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

First section 33A(2)(e): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Second subsection (2)(e) was repealed by section 107(5) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2002-03 income year.

First section 33A(2)(f): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Second subsection (2)(f) was repealed by section 126(3) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

First section 33A(2)(g): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Second subsection (2)(g) was repealed by section 107(5) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2002-03 income year.

First section 33A(2)(h): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(h) was repealed by section 107(6) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2003-04 income year.

Subsection (2)(i) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 33A(2)(j): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(j) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “Income Tax Act 2004” for “Income Tax Act 1994”.

Section 33A(2)(k): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 33A(2)(kb): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(kb) was inserted, as from 1 October 2005, by section 126(4) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005–06 income year.

Subsection (2)(l) was repealed by section 75(4) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application on the first day of the 2002-03 income year.

Section 33A(2)(m): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(m) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “tax year” for “income year”.

Subsection (2)(m) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “Income Tax Act 2004” for “Income Tax Act 1994”.

Subsection (2)(n) was amended, by section 193(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by omitting “to determine their income tax liability”, with application as from the 2002-03 income year.

Subsection (2)(n) and (o) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Subsection (2B) was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting “or subsection (2B)” after “subsection (2)”.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “a tax year” for “an income year”.

Subsection (4) was amended by section 47(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) by substituting “the Commissioner may not” for “the Commissioner will not”, with application as from 27 March 2001.

Subsection (5) was amended by section 61(2) Taxation (Remedial Matters) Act 1999 (1999 No 98) by substituting “natural person” for “person”, with application as from the 1999-2000 income year.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “none of section 33A(1), (2), and (2B)” for “neither of section 33A(1) or (2)”.

Section 33A was inserted by section 5(1) Tax Administration Amendment Act 1996 (1996 No 19) with application to the 1995-96 income year.

Section 33A was substituted by section 28(1) Taxation (Income Tax Rates) Act 1997 (1997 No 9) with application as from the 1996-97 income year.

Section 33A was substituted by section 30(1) Taxation (Income Tax Rates) Act 1997 (1997 No 9) with application as from the 1997-98 income year.

Subsection (1)(a) was repealed by section 13(1) Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) with application to tax on taxable income as from the 1998-99 income year.

Subsection (1)(c) was amended by section 31(1) Taxation (Income Tax Rates) Act 1997 (1997 No 9) by substituting “\$38,000” for “\$34,200” with application as from the 1998-99 income year.

Subsection (1)(i) was amended by section 42(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) by inserting “; and” with application as from the 1998-99 income year.

Subsection (1)(j) was inserted by section 42(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application as from the 1998-99 income year.

Subsection (2) was repealed by section 13(2) Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) with application to tax on taxable income as from the 1998-99 income year.

Subsection (3) was amended by section 13(3) and (4) Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) by substituting “subsection (1)” for “subsections (1) and (2)” with application to tax on taxable income as from the 1998-99 income year.

Subsection (3)(b) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “chief executive of the department for the time being responsible for the administration of the Social Security Act 1964” for “Director-General of Social Welfare”.

Subsection (4) was amended by section 13(3) and (4) Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) by substituting “subsection (1)” for “subsections (1) and (2)” with application to tax on taxable income as from the 1998-99 income year.

### **33B Return not required for certain scheduler gross income**

#### *[Repealed]*

Section 33B was inserted, as from 25 November 2003, by section 108 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 33B was repealed, as from 21 December 2004, by section 90 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application as from the 2003-04 income year.

**33C Return not required for certain providers of personal services**

A natural person who derives income in an income year for providing personal services to a person who is a claimant under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is not required to furnish a return of income for the corresponding tax year if—

- (a) a personal service rehabilitation payment is made for the claimant and for the personal services; and
- (b) the taxable income of the person does not exceed \$14,000 for the tax year; and
- (c) tax is withheld at the rate of 12.5% from the personal service rehabilitation payment; and
- (d) the person is not required to furnish a return of income under section 33A(1) for the tax year, ignoring for the purposes of that section income from providing personal services for which personal service rehabilitation payments are made.

Section 33C: inserted, on 1 July 2008, by section 198 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 33C(b): amended, on 1 July 2008, by section 11(1)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33C(c): amended, on 1 April 2009, by section 11(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section 33C(c): amended, on 1 July 2008, by section 11(1)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

**34 Presumption as to authority of person making return**

A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

Compare: 1976 No 65 s 18

**34B Commissioner to list tax agents**

- (1) The Commissioner must compile and maintain a list of persons who are tax agents.
- (2) A person is eligible to be a tax agent if the person—

- (a) prepares the returns of income required to be furnished for 10 or more taxpayers; and
  - (b) is 1 of the following:
    - (i) a practitioner carrying on a professional public practice;
    - (ii) a person carrying on a business or occupation in which returns of income are prepared;
    - (iii) the Maori Trustee.
- (3) A person who is not a tax agent and who is eligible to be a tax agent may give a notice (the **application**) to the Commissioner in a form approved by the Commissioner—
- (a) stating that the person wishes to be listed as a tax agent; and
  - (b) providing the information required by subsection (11), if the person is not a natural person; and
  - (c) providing any other information required by the Commissioner.
- (4) The Commissioner may request further information from the person (the **applicant**) making the application and obtain information relating to the applicant from other persons before deciding whether to list the applicant as a tax agent.
- (5) The Commissioner must list the applicant as a tax agent if the Commissioner is satisfied by the available information that—
- (a) the applicant is entitled to make the application; and
  - (b) listing the applicant as a tax agent would not adversely affect the integrity of the tax system.
- (6) An applicant is listed as a tax agent from the date given in the Commissioner's notice informing the applicant of the Commissioner's decision to list the applicant as a tax agent.
- (7) The Commissioner must refuse to list an applicant as a tax agent if the Commissioner is satisfied that—
- (a) the applicant is not entitled to make the application;
  - (b) listing the applicant as a tax agent would adversely affect the integrity of the tax system.
- (8) The Commissioner may remove a person from the list of tax agents if the Commissioner is satisfied that—
- (a) the applicant is not eligible to be a tax agent:

- (b) continuing to list the applicant as a tax agent would adversely affect the integrity of the tax system.
- (9) Before refusing to put a person on the list of tax agents, or removing a person from the list, the Commissioner must—
  - (a) give notice to the person of the Commissioner's reasons for the proposed decision:
  - (b) consider any arguments against the proposed decision that are provided by the person within the period, beginning from the day of the notice,—
    - (i) of 30 days, unless subparagraph (ii) or (iii) applies; or
    - (ii) allowed by the Commissioner of less than 30 days, if the Commissioner considers such a period is necessary to protect the integrity of the tax system; or
    - (iii) allowed by the Commissioner of more than 30 days, if the Commissioner considers such a period is appropriate in the circumstances.
- (10) A person listed as a tax agent is removed from the list on the date of the Commissioner's notice that informs the person of the Commissioner's decision to remove the person from the list.
- (11) An entity that is not a natural person must provide to the Commissioner the information described in subsection (12) if the entity—
  - (a) makes an application under subsection (3):
  - (b) is a tax agent who—
    - (i) has not made an application under subsection (3) and has not previously provided information to the Commissioner as required by this subsection:
    - (ii) has previously provided information to the Commissioner as required by this subsection and that information is inaccurate.
- (12) The information that subsection (11) requires an entity to provide to the Commissioner consists of the names of the following persons:
  - (a) each person having the duties of tax manager, chief financial officer, chief executive officer, or director, if the

- entity is a body corporate other than a closely-held company:
- (b) each shareholder of the entity, if the entity is a closely-held company:
  - (c) each partner in the entity, if the entity is a partnership:
  - (d) each member of the entity, if the entity is an unincorporated body.
- (13) An entity that is a tax agent and is required by subsection (11) to provide information to the Commissioner must provide the information by—
- (a) the day 12 months after the day on which the Taxation (Business Taxation and Remedial Matters) Act 2007 receives the Royal assent, if the entity has not made an application under subsection (3) and has not previously provided information to the Commissioner as required by subsection (11):
  - (b) the end of the 12-month period beginning from the first day on which the information most recently provided to the Commissioner as required by subsection (11) is inaccurate.

Section 34B: inserted, on 19 December 2007, by section 199 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **35 Power of Commissioner to prescribe forms**

- (1) For the purposes of the Inland Revenue Acts and any other Acts administered by the Department, the Commissioner may from time to time prescribe any forms and any electronic formats that are not otherwise specifically prescribed.
- (2) *[Repealed]*
- (3) The production by the Commissioner of any document purporting to be—
  - (a) a prescribed form or an extract from a prescribed form or a copy of any such form or extract; or
  - (b)shall in all Courts and in all proceedings (including proceedings before a Taxation Review Authority) be sufficient evidence of the fact that the form or electronic format was prescribed.

Compare: 1974 No 133 s 22A



Subsections (2) and (3)(b) were repealed, as from 1 April 1999, by section 10(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

**36 Commissioner may approve furnishing of return information by electronic means**

- (1) For the purposes of this Act, the Income Tax Act 2007, and the Goods and Services Tax Act 1985, the Commissioner may give approval to any taxpayer or registered person, or to any agent of any taxpayer or registered person, to transmit by electronic means in the prescribed electronic format the information contained in any return of the taxpayer or registered person.
- (2) Any approval given under subsection (1)—
  - (a) may relate to an individual taxpayer or registered person or agent or to any class or classes of taxpayers or registered persons:
  - (b) may relate to any one or more classes of return:
  - (c) shall be subject to any conditions that may be specified by the Commissioner, whether generally or in any particular case.
- (3) Where a taxpayer or registered person, or agent of a taxpayer or registered person, transmits to the Commissioner in the prescribed electronic format the information contained in any return of the taxpayer or registered person in accordance with an approval given under subsection (1),—
  - (a) the taxpayer or registered person shall retain or cause to be retained a hard-copy transcript of the information so transmitted; and
  - (b) the hard-copy transcript shall be deemed to be the return of the taxpayer or registered person, and shall be signed by the taxpayer or registered person in accordance with section 40 and held by the taxpayer or registered person on behalf of the Commissioner; and
  - (ba) paragraph (b) does not apply to an employer monthly schedule or annual reconciliation statement under section 57B furnished electronically; and
  - (c) the information transmitted to the Commissioner shall be treated for the purposes of this Act and the Goods and Services Tax Act 1985 as if it were a return fur-

nished under such provisions of this Act or the Goods and Services Tax Act 1985 as relate to the kind of return in question.

- (4) In this section, registered person has the same meaning as in section 2(1) of the Goods and Services Tax Act 1985.

Compare: 1976 No 65 s 14A

Section 36 was substituted, as from 12 December 1995, by section 4 Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Section 36(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “Income Tax Act 2004” for “Income Tax Act 1994”.

Subsection (3)(ba) was inserted by section 11(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

Section 36(3)(ba): amended, on 1 October 2007, by section 54 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

### **36A Electronic format of employer monthly schedule and PAYE payment form**

- (1) The Commissioner must prescribe one or more electronic formats in which an employer monthly schedule must be furnished by an employer or a PAYE intermediary that is required to furnish that schedule in an electronic format.
- (2) The Commissioner may prescribe one or more electronic formats in which a PAYE payment form must be furnished by an employer or a PAYE intermediary that has elected to furnish that payment form in electronic format.
- (2B) An employer or PAYE intermediary to whom section RD 22(1) of the Income Tax Act 2007 applies must provide their employer monthly schedules and PAYE income payment forms to the Commissioner by electronic means and in the required format. But the requirement to file electronically does not apply if the employer—
- (a) is not a new employer and has gross amounts of tax for PAYE income payments and employer’s superannuation contributions payable for the preceding tax year of less than \$100,000:

- (b) is a new employer but only in relation to the months in the income year for which the total amounts of tax for PAYE income payments and employer's superannuation contributions remain under the \$100,000 threshold:
  - (c) is authorised under section 36B to provide the schedule and form in a format other than an electronic format.
- (3) A format prescribed under subsection (1) or (2) may relate to an employer, a class of employers, a PAYE intermediary, or a class of PAYE intermediaries and is subject to the conditions specified by the Commissioner, whether generally or in a particular case.

Sections 36A to 36E were inserted by section 12(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules, forms, and returns furnished as from 1 April 1999.

Section 36A heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 91(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words "or a PAYE intermediary" after the words "an employer" in the second place where they occur, with application for pay periods beginning as from as from 1 April 2004.

Section 36A(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 620(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 36A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended by section 91(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words "or a PAYE intermediary" after the words "an employer" with application for pay periods beginning as from as from 1 April 2004.

Section 36A(2B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 620(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (3) was amended by section 91(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words "a class of employers, a PAYE intermediary, or a class of PAYE intermediaries" for the words "or to a class of employer" with application for pay periods beginning as from as from 1 April 2004.

**36AB Electronic format of returns by portfolio investment entity**

- (1) The Commissioner must prescribe one or more electronic formats in which a return required under section 57B must be furnished by a portfolio tax rate entity or portfolio investor proxy.
- (2) A format prescribed under subsection (1) is subject to the conditions specified by the Commissioner, whether generally or in a particular case.

Section 36AB: inserted, on 1 October 2007, by section 184 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**36B Other formats of employer monthly schedule**

- (1) Despite section 36A(1), the Commissioner may authorise an employer that is required to furnish the employer monthly schedule in electronic format to furnish the schedule in a format that is not electronic if the employer's accounting system is incapable of providing the employer monthly schedule in a prescribed electronic format.
- (2) For the purpose of subsection (1), an employer's accounting system is incapable of providing the employer monthly schedule in a prescribed electronic format if the Commissioner considers the cost likely to be incurred by the employer in furnishing it is material, having regard to—
  - (a) the likely costs incurred by other employers in providing an employer monthly schedule in a prescribed electronic format; and
  - (b) the additional administrative costs that are likely to be incurred by the Commissioner in processing an employer monthly schedule that is not provided in a prescribed electronic format; and
  - (c) whether in the preceding tax year, the employer employed, on average, 50 or fewer employees on each day in the year; or
  - (d) if the employer was not an employer in the preceding tax year, whether the employer employs, on average, 50 or fewer employees on each day in the current tax year:
- (3) For the purpose of subsection (2)(c) and (d), if during a tax year an employer ceases one business and commences a new business or operates 2 or more businesses simultaneously, the

number of employees of the employer is calculated as the total of the employees in all the businesses.

- (4) If an amalgamating company ceases to exist on an amalgamation, subsection (2)(c) and (d) apply from the date of the amalgamation as though the number of employees employed by the amalgamating company is the same as in the preceding year.
- (5) In subsection (2), the average number of employees must be calculated on the basis—
  - (a) that an employee for part of a day is employed for the whole of that day; and
  - (b) of the number of employees employed on each day of the tax year, or part tax year if section 36B(2)(d) applies.
- (6) An authorisation under section 36B(1) is valid until the Commissioner gives notice cancelling it.
- (7) An authorisation cancelled by the Commissioner applies until the later of—
  - (a) 1 April following the year in which cancellation is notified; or
  - (b) six months after the date cancellation is notified.
- (8) If the Commissioner is satisfied that the number of employees of an employer did not or will not exceed the number provided in subsection (2)(c) or (d), an employer does not have to make the calculation under subsection (2)(c) or (d).
- (9) If an employer is authorised not to furnish an employer monthly schedule electronically and employed an average of more than 50 employees but not more than 100 employees in the 1999-2000 tax year,—
  - (a) subsection (7) does not apply; and
  - (b) the authorisation under this section expires on the last day of the 1999-2000 tax year.

Sections 36A to 36E were inserted by section 12(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules, forms, and returns furnished as from 1 April 1999.

Subsection (2)(c) and (d) were amended by section 13(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101), by substituting the expression “50”, for the expression “100”, wherever it appears, with application to an employer monthly schedule that is required to be furnished as from 1 April 2000.

Subsection (2)(c) and (d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (5)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Subsection (9), before paragraph (a), was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (9)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

### **36BB Electronic format for details required for tax pooling intermediaries**

The Commissioner may prescribe one or more electronic formats in which details that must be provided under sections RP 17 to RP 21 of the Income Tax Act 2007, and sections 15N to 15S may be provided by electronic means.

Section 36BB was inserted, as from 1 April 2003, by section 92 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 36BB heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 36BB: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 36BB was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart MBA of Income Tax Act 2004” for the words “Part MBB of Income Tax Act 1994”.

Section 36BB was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart MBA of the Income Tax Act 2004” for the words “Part MBB of the Income Tax Act 1994”.

### **36BC Electronic format for details required under subpart EK of Income Tax Act 2007**

The Commissioner may prescribe 1 or more electronic formats in which details that must be provided under subpart EK of the Income Tax Act 2007 may be provided by electronic means.

Section 36BC was inserted, as from 21 June 2005, by section 127 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 36BC heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 36BC: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **36C Particulars furnished in electronic format**

- (1) In the application of any of sections 35, 36, 36A, 36B, 36BB, or 36BC, information that is required to be furnished electronically is not in a prescribed format unless it is furnished in an electronic format certified by the Commissioner as being the prescribed electronic format.
- (2) The production by the Commissioner of a document purporting to be a printed copy of a specification of an electronic format or a part of that specification, in all courts and in all proceedings (including proceedings before a Taxation Review Authority), is sufficient evidence that the electronic format was prescribed.

Sections 36A to 36E were inserted by section 12(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules, forms, and returns furnished as from 1 April 1999.

Subsection (1) was amended by section 93(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “36B or 36BB” for the expression “or 36B” with application as from the 2003–04 income year.

Subsection (1) was amended, as from 21 June 2005, by section 128 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the expression “, 36BB, or 36BC” for the quote “or 36BB”.

### **36CA Electronic filing exemption for new businesses**

- (1) An employer who begins business after 1 April 1999 and who is required to furnish an employer monthly schedule electronically may furnish an employer monthly schedule on the form prescribed by the Commissioner for the first six months of business.
- (2) The first six months of business begins on the date on which the employer begins business.

Section 36CA was inserted by section 62(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application to employer monthly schedules that must be furnished as from 1 April 1999.

**36D Non-electronic filing of employer monthly schedule**

An employer must furnish the particulars required to be included in an employer monthly schedule on the form supplied by the Commissioner if the employer—

- (a) is not required to furnish an employer monthly schedule in a prescribed electronic format; and
- (b) has not elected to do so under section 36E.

Sections 36A to 36E were inserted by section 12(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules, forms, and returns furnished as from 1 April 1999.

**36E Election available to other employers**

An employer that is not required to furnish an employer monthly schedule electronically may elect to furnish that schedule in an electronic format prescribed by the Commissioner.

Sections 36A to 36E were inserted by section 12(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules, forms, and returns furnished as from 1 April 1999.

**37 Dates by which annual returns to be furnished**

- (1) The annual returns of income required under this Act shall be furnished to the Commissioner as follows:
  - (a) *[Repealed]*
  - (b) in the case of any taxpayer with a late balance date, not later than the 7th of the month which is the 4th month after the end of the taxpayer's corresponding income year;
  - (c) in all other cases, not later than 7 July in each year.
- (2) The Commissioner shall give public notice of the days by which the returns are required to be furnished by publishing the notice in such manner as the Commissioner thinks fit; but the omission to give any such notice shall not affect the liability of any person to furnish any return within the time prescribed by this section in that behalf.
- (3) Subject to subsection (5), where any taxpayer satisfies the Commissioner that the taxpayer is unable to furnish the required return by the due date required under this section, the Commissioner, upon application by or on behalf of the taxpayer on or before that date, or within such further period as



- the Commissioner may allow in any case or class of cases, may extend the time for furnishing the required return to such date as the Commissioner thinks proper in the circumstances.
- (4) Subject to subsection (5), the Commissioner may extend a tax agent's time for furnishing a return of income for any taxpayer to a date the Commissioner thinks proper in the circumstances, if the Commissioner is satisfied that—
- (a) the tax agent is unable to furnish the return of income on or before the date set by subsection (1); or
  - (b) it would be unreasonable, having regard to the circumstances of the tax agent preparing the return, to require the return to be furnished on or before the date set by subsection (1).
- (4A) If a tax agent has not furnished for a tax year the required number of tax returns by the dates specified by the Commissioner, the Commissioner may:
- (a) refuse to grant an extension of time under subsection (4) for furnishing one or more tax returns that are linked to the tax agent; and
  - (b) cancel any existing extension of time arrangement granted under subsection (4) for the tax years for which the tax agent has not furnished the required number of tax returns by the dates specified by the Commissioner; and
  - (c) cancel any existing extension of time arrangement granted under subsection (4) for one or more returns, but not necessarily all returns, for the tax years for which the tax agent has not furnished the required number of tax returns by the dates specified by the Commissioner.
- (4B) If the Commissioner extends under subsection (4) the time for a person listed as a tax agent to furnish a return of income for a taxpayer and the person ceases to be a tax agent before the extension of time would have expired, the Commissioner must extend the taxpayer's time for furnishing the return to a date of 31 March on or after the date that would have applied if the person had continued to be a tax agent.
- (5) For the purposes of subsections (3) and (4),—

- (a) where the return required to be furnished by any taxpayer is a return for a year ending on 31 March, the time for furnishing that return shall not be extended or further extended to a time later than the 31 March that immediately succeeds that 31 March:
- (b) where the return required to be furnished by any taxpayer is, by consent of the Commissioner under section 38, a return for a year ending with the date of the annual balance of the accounts of the taxpayer, the time for furnishing that return shall,—
  - (i) where that date is between 30 September and the next succeeding 31 March, not be extended or further extended to a time later than the 31 March next succeeding the 31 March that immediately succeeds that date:
  - (ii) where that date is between 31 March and the next succeeding 1 October, not be extended or further extended to a time later than the 31 March that immediately succeeds that date.

(6) *[Repealed]*

Compare: 1976 No 65 s 17

Subsection (1)(a) was repealed by section 14(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101). *See* section 14(3) of that Act as to the repeal having application as from the 1999-2000 income year.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “corresponding income year” for the words “accounting year”.

Subsection (3) was amended, as from 23 September 1997, by section 70 Taxation (Remedial Provisions) Act 1997 (1997 No 74) by omitting the words “in that behalf made in writing”.

Subsection (4) was substituted, and subsection (4A) was inserted, by section 43(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application as from the 1997-98 income year.

Subsection (4A) was substituted, as from 20 May 1999, by section 66(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (4A)(b) and (c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years” wherever they appear.

Section 37(4B): inserted, on 19 December 2007, by section 200 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (6) was substituted by section 435 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (6) was repealed by section 14(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

### **38 Returns to annual balance date**

- (1) Instead of furnishing a tax year return under section 33 on the basis of a corresponding income year that ends on 31 March, a taxpayer (other than a taxpayer to whom section 33A(1) or (5) applies) may, with the consent of the Commissioner, elect to furnish a return based on a corresponding income year that ends with the date of the annual balance of the taxpayer's accounts.
- (1B) A portfolio tax rate entity that does not make payments of tax under section HL 23 of the Income Tax Act 2007 must not make an election under subsection (1).
- (2) *[Repealed]*
- (3) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until it is altered by the taxpayer with the prior approval in writing of the Commissioner.

Compare: 1976 No 65 s 15

Subsection (1) was substituted by section 436 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1) was amended by section 15(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words "a taxpayer (other than a taxpayer to whom section 33A applies)" for the words "any taxpayer" with application as from the 1999-2000 income year.

Subsection (1) was amended by section 63(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) by substituting the words "sections 33A(1) or (5)" for the words "section 33A" with application as from the 1999-2000 income years.

Subsection (1) was substituted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 38(1B): inserted, on 1 October 2007, by section 185 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 38(1B): amended, on 1 April 2008, by section 201 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**39 Consequential adjustments on change in balance date**

- (1) If the Commissioner approves a change to a new balance date that is earlier in the year than the original balance date, the change is effected by the taxpayer having a transitional year of the period from the original balance date up to and including the new balance date in the next succeeding year.
- (2) If the Commissioner approves a change to a new balance date that is later in the year than the original balance date, the change is effected by the taxpayer having a transitional year of the period from the original balance date up to and including the new balance date in the same year.
- (3) If the change in balance date means that a taxpayer has 2 corresponding income years for the same tax year, the figures for both corresponding income years are aggregated when the taxpayer's net income or net loss is determined.
- (4) For the purpose of giving effect to this section and section 38, the Commissioner may, for any corresponding income year, make any assessment that the Commissioner considers necessary.
- (5) For the tax year corresponding to the income year or years in which the change of balance date occurs, the basic tax rate for the purposes of the Income Tax Act 2007 and this Act is the rate that would apply if the person's taxable income for the tax year were calculated using the formula—

$$\frac{365}{\text{income year days} \times \text{taxable income}}$$

- (6) In the formula,—
  - (a) **income year days** is the total days in the income year or years that correspond to the tax year:
  - (b) **taxable income** is the person's taxable income for the tax year.

Section 39(1): substituted, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 39(1): amended, on 1 October 2007, by section 217(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 39(2): amended, on 1 October 2007, by section 217(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsections (2) and (3) were substituted by section 437 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (3) was substituted, by section 194 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (4) was amended, by section 194 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by omitting the words “or additional assessments”, with application as from the 2002-03 income year.

Subsection (4) was amended by section 94(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “an income year, make an assessment” for the expression “any year or years of assessment, make all such assessments” with application as from the 2002-03 income year.

Section 39(5): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 39(6): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **39B Changes in return dates: taxpayers with provisional tax and GST liabilities**

- (1) Subsection (2) applies if a provisional taxpayer—
  - (a) is a person registered under the Goods and Services Tax Act 1985, and pays GST on a 2-month cycle or a 6-month cycle; and
  - (b) elects under section 38(1) to change their balance date at some time in an income year; and
  - (c) moves from—
    - (i) a balance date in an even-numbered month to a balance date in another even-numbered month; or
    - (ii) a balance date in an odd-numbered month to a balance date in another odd-numbered month.
- (2) Until the new balance date is reached, the taxpayer must—
  - (a) continue with the due dates for their provisional tax instalments that applied before the change in balance date was approved; and
  - (b) apply sections RC 20 to RC 25, as relevant, and schedule 3, part B of the Income Tax Act 2007 for the transitional period to determine the due date and amount of an instalment.
- (3) Subsection (4) applies if a provisional taxpayer—

- (a) is a person registered under the Goods and Services Tax Act 1985, and pays GST on a 2-month cycle or a 6-month cycle; and
  - (b) elects under section 38(1) to change their balance date at some time in an income year; and
  - (c) moves from—
    - (i) a balance date in an even-numbered month to a balance date in an odd-numbered month; or
    - (ii) a balance date in an odd-numbered month to a balance date in an even-numbered month.
- (4) Until the new balance date is reached, the taxpayer must—
- (a) continue with the due dates for their provisional tax instalments that applied before the change in balance date was approved; and
  - (b) apply sections RC 21 to RC 25, as relevant, and schedule 3, part B of the Income Tax Act 2007 for the transitional period to determine the due date and amount of an instalment; and
  - (c) make an adjustment to their provisional tax liability for the income year for the part of the taxable period in which the new balance date falls.
- (5) If a change in balance date means that the taxpayer's taxable period is not aligned with their balance date, the Commissioner must make an adjustment to the taxable period under section 15B of the Goods and Services Tax Act 1985.

Section 39B: inserted, on 1 October 2007, by section 218 of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 39B(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 39B(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **40 General requirements for returns**

- (1) A return required to be furnished in writing must be—
- (a) signed; and
  - (b) contain all the information and be accompanied by all the documents required under any of the Inland Revenue Acts.
- (2) A return furnished by electronic means must be—

- (a) transmitted in an electronic format prescribed under either sections 36, 36A or 36B; and
  - (b) contain all the information and be accompanied by all the documents required under any of the Inland Revenue Acts.
- (3) A return that is subject to this section is treated as being furnished on the date it is received at an office of the department.

Compare: 1974 No 133 s 17A

Section 40 was substituted by section 16(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

#### **41 Annual returns by persons who receive family assistance credit**

- (1) If a person is eligible to receive a credit of tax under subparts MA to MF and MZ of the Income Tax Act 2007, the person must apply to the Commissioner for the credit of tax in the manner specified by the Commissioner.
- (2) A person's application must be signed and provide the information the Commissioner requires.
- (3) Subsection (4) applies if, apart from this section, a person is not required to furnish a return of income for a tax year and—
- (a) for the whole or part of the tax year the person is issued with a family notice of entitlement under subparts MA to MF and MZ of the Income Tax Act 2007; or
  - (b) after the end of the income year, the person applies to the Commissioner for a family assistance credit or a minimum family tax credit for that tax year.
- (4) A person must furnish a return to the Commissioner for the income year, whether or not the person derived income in the tax year, together with—
- (a) the details of every family assistance credit paid to the person in the tax year; and
  - (b) such other details as may be prescribed or required by the Commissioner.
- (5) The provisions of this Act, so far as they are applicable and with any necessary modifications, apply to every return furnished or required to be furnished under subsection (4) as if

the return were furnished or required to be furnished under section 33.

- (6) A person who is eligible for a tax credit under subparts MA to MF and MZ of the Income Tax Act 2007 in an income year, or would be eligible if their spouse, civil union partner, or de facto partner were not a transitional resident, and who would otherwise be a transitional resident in an income year may apply not to be a transitional resident under section HR 8(4) of that Act.
- (7) A notice of election under section HR 8(4) must be—
- (a) in a form acceptable to the Commissioner; and
  - (b) be received by the Commissioner on or before the latest of the following:
    - (i) the date by which section 37 would require the person to provide a return of income for the 2006–07 tax year, if required;
    - (ii) the date by which section 37 would require the person to provide a return of income for the tax year corresponding to the first income year affected by the election, if required;
    - (iii) the date allowed by the Commissioner on application.
- (8) An application under subsection (7)(b)(iii) for an extension of time to make an election is treated as if it were an application under section 37 in relation to a return of income for the later of the tax years referred to in subsection (7)(b)(i) and (ii).

Paragraph (a) was amended, as from 1 July 1996, by section 9(1) Tax Administration Amendment Act 1996 (1996 No 19) by substituting the words “family certificate of entitlement” for the words “family support certificate of entitlement”.

Paragraph (b) was amended, as from 1 July 1996, by section 9(2) Tax Administration Amendment Act 1996 (1996 No 19) by substituting the words “family tax credit” for the words “family support credit of tax”.

Section 41 was substituted by section 438 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 41 was substituted by section 17 Taxation (Parental Tax Credit) Act 1999 (1999 No 62) with application as from 1 October 1999.

Section 41 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 41 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD” for the words “Part KD”.



Section 41(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Subsection (3), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year” wherever they appear.

Section 41(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (3)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Section 41(3)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 41(3)(b): amended (with effect from 1 April 2007), on 19 December 2007, by section 202(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (3)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD” for the words “Part KD”.

Subsection (4), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (4), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 41(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD” for the words “Part KD”.

Subsection (4)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 41(6): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 41(7): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 41(8): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**41A Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts**

- (1) A person who has a tax credit under section LC 6 or sections LD 1 to LD 3 of the Income Tax Act 2007 may apply to the Commissioner for 1 or more refunds.
- (2) The total amount refunded, including a refund made on an application under subsection (7), must be no more than the annual amount of the tax credits.
- (3) The sum of the housekeeping payments under section LC 6 of that Act and charitable or other public benefit gifts under sections LD 1 to LD 3 of that Act made by a person must be no more than their taxable income in the tax year in which the payment or gift, or both, is made.
- (4) If subsection (3) applies, the Commissioner must reduce, in equal portions, the total amount of housekeeping payments and charitable or other public benefit gifts so that the total is no more than the person's taxable income in the tax year in which the payment or gift, or both, is made.
- (5) An application under subsection (1) must be made in the manner required by the Commissioner, be signed by the person, and be accompanied by any information the Commissioner requires, including—
  - (a) the amount of a housekeeping payment under section LC 7 of that Act; and
  - (b) the amount of a charitable or other public benefit gift to which sections LD 1 to LD 3 of that Act apply.
- (6) A taxpayer with a standard balance date or an early balance date may apply for a refund for a tax year after 1 April that follows the end of the taxpayer's income year. A taxpayer with a late balance date may apply for a refund for a tax year on or after the first day of the taxpayer's next accounting year.
- (7) Despite subsection (6), the Commissioner may, in special circumstances, accept an application for a refund before the end of the tax year to which the application relates.
- (8) For the purpose of subsection (7), special circumstances include—
  - (a) the person leaving New Zealand, permanently or for a significant length of time:

- (b) a trustee of a deceased person's estate wishing to wind up the estate.
- (9) Despite subsection (1), the Commissioner must not refund the amount of a tax credit unless the requirements of subsections (2) and (3) are met.
- (10) When the Commissioner has considered an application, the Commissioner must notify the person of the amount of the tax credit under section LC 6 or sections LD 1 to LD 3 of that Act and of the amount of refund allowed.
- (11) A tax credit may not be refunded to an absentee, a company, a public authority, a Maori authority, an unincorporated body, or a trustee liable for income tax under sections HC 16, HC 32, or HZ 2 of that Act.
- (12) A refund under subsection (1) must be paid as if it were tax paid in excess.
- (13) A refund under subsection (1), to the extent to which it is more than the correct amount of refund, is recoverable as an excess tax credit under section 142D.
- (14) Part 7 does not apply to a refund or an excess refund made under this section.
- (15) Part 9 applies to applications made under this section.

Section 41A: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 41A was inserted by section 17(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to qualifying payments and gifts made as from the 1999-2000 income year.

Section 41A(1): substituted (with effect on 1 April 2009), on 6 October 2009, by section 623(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (2) was substituted, by section 62(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to qualifying payments and gifts made as from the 1999-2000 income year.

Section 41A(3): substituted (with effect on 1 April 2009), on 6 October 2009, by section 623(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (3) was substituted by section 64(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in both places they appear.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (4) was substituted by section 64(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (5)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 41A(5)(b): substituted (with effect on 1 April 2009), on 6 October 2009, by section 623(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (6) was substituted by section 64(2) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (6) was amended by section 62(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) by substituting the expression “in the period from 1 April to 31 December” for the expression “in the 6 months from 1 April to 30 September”, with application to rebate applications made in respect of the 1999-2000 income year.

Subsection (6) was amended, by section 62(3) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) by substituting the words “in the 6 months from 1 April to 30 September” for the words “in the period from 1 April to 31 December”, with application to rebate applications made in respect of the 2000-2001 and subsequent income years.

Subsection (6) was repealed, by section 195(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) with application as from the first day of the 2001-02 income year.

A new subsection (6) was inserted by section 76(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 2001-02 income year.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year” in both places they appear.

Subsection (6A) was inserted, by section 64(2) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (6AA) was inserted, by section 62(4) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39, with application to qualifying payment and gifts made as from the 1999 to 2000 income year.

Subsection (6AA) was substituted, by section 195(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) with application to rebate applications made as from the 2001-02 income year.

Subsection (6AA) was amended by section 76(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by substituting the words “Despite subsection (6), the” for the word “The” with application as from the 2001-02 income year.

Subsection (6AA) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (6AB) was inserted, by section 62(4) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to qualifying payment and gifts made as from the 1999 to 2000 income year.

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (8) was amended, by section 195(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by omitting the words “assessable income” with application as from the 2002-03 income year.

Subsection (8) was amended by section 95(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the expression “, HK 14,” with application as from the 2004-05 income year.

Subsection (8) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 41A(10): substituted (with effect on 1 April 2009), on 6 October 2009, by section 623(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **41B Return by person applying for tax credit on redundancy payment**

- (1) A person who has a tax credit under section ML 2 of the Income Tax Act 2007 may apply to the Commissioner for a refund.
- (2) An application under subsection (1) must be made in the manner required by the Commissioner, be signed by the person, and be accompanied by—
  - (a) any information the Commissioner requires, including—
    - (i) the amount of the payment that is a redundancy payment under sections ML 1 to ML 3 of the Income Tax Act 2007; and
    - (ii) the name of the payer of the redundancy payment; and

- (iii) the date on which the redundancy payment was made; and
  - (b) written verification of the details referred to in paragraph (a), in a document signed by the payer of the redundancy payment or other form satisfactory to the Commissioner.
- (3) An application for a refund must be made in the period—
  - (a) beginning after the date of the redundancy payment; and
  - (b) ending with the day that is 4 years after the date of the redundancy payment.
- (4) When the Commissioner has considered an application for a refund, the Commissioner must, by notice, inform the taxpayer of the amount of the tax credit the taxpayer has under sections ML 1 to ML 3 of the Income Tax Act 2007 and the amount of refund allowed.
- (5) A refund allowed under subsection (1) must be paid as if it were tax paid in excess.
- (6) A refund allowed under subsection (1), to the extent it exceeds the correct amount of refund, is recoverable as an excess credit of tax under section 142D.
- (7) Part 7 does not apply to a refund or an excess refund made under this section.
- (8) Part 9 applies to applications made under this section.

Section 41B: inserted, on 19 December 2007, by section 203(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 41B heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 624(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 41B(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 624(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 41B(1): amended, on 1 April 2008, by section 203(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 41B(2)(a)(i): amended, on 1 April 2008, by section 203(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 41B(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 624(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 41B(4): amended, on 1 April 2008, by section 203(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**42 Returns by joint venturers, partners, and partnerships**

- (1) This section applies when 2 or more people derive income jointly or have deductions jointly.
- (2) Despite subsection (1), this section does not apply to the income derived by, and the deductions of, an airport operator from activities undertaken as an airport operator.
- (3) In the case of partners,—
  - (a) if the partnership of the partner is a limited partnership registered under the Limited Partnerships Act 2008 or is a partnership that would carry on a business in New Zealand ignoring section HG 2 of the Income Tax Act 2007, then the partners must make a joint return of income that includes—
    - (i) the total amount of income derived by the partners as members of the partnership; and
    - (ii) the partners' partnership shares in the income; and
    - (iii) a summary of the deductions of each partner:
  - (b) there is no joint assessment, but each partner must make a separate return of income under section 33, including the income derived by the partner as a member of the partnership, and the partner's deductions. Each partner is separately assessed.
- (4) In any other case, each person shall make a separate return taking into account that person's share of the joint income and deductions. Each person is separately assessed.

Section 42: substituted, on 1 April 2008, by section 29(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section 42 was substituted by section 439 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "income and deductions" for the words "gross income and allowable deductions".

Subsection (1)(b)(i) and (ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word "gross" wherever it appears.

Subsection (1)(b)(i) and (ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word "allowable".

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word "gross" in both places it appeared.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “allowable”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income derived by and the” for the words “gross income derived by and the allowable”.

### **43 Income tax returns and assessments by executors or administrators**

- (1) The executor or administrator of a deceased taxpayer must furnish the same returns of income and make the same assessments that the taxpayer was required to furnish or make, or would have been required to furnish or make, if the taxpayer had remained alive.
- (2) The Commissioner may from time to time require the executor or administrator to furnish such further returns of income for the deceased taxpayer as the Commissioner considers necessary.
- (3) Income tax assessed in respect of a deceased taxpayer, whether or not under subsection (1), is to be treated as a liability incurred by the deceased taxpayer during their lifetime, and the executor or administrator of the taxpayer is liable for the same accordingly.
- (4) The executor or administrator of a deceased taxpayer must request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(5) refers if the taxpayer had remained alive and the Commissioner has not issued an income statement.
- (5) The executor or administrator of a deceased taxpayer may request the Commissioner to issue an income statement if the taxpayer would have been a person to whom section 33A(1) applied if the taxpayer had remained alive.

Subsection (1) was substituted by section 440 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (3) was inserted by section 18(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

Section 43 was substituted, by section 196 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.



Subsection (4) was substituted by section 77(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 2002-03 income year.

Subsection (5) was inserted by section 77(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 2002-03 income year.

**43A Non-active companies may be excused from filing returns**

- (1) A company is not required to furnish a return of income in respect of any tax year if the company—
  - (a) is a non-active company throughout that tax year; and
  - (b) has made and furnished to the Commissioner, in a form approved by the Commissioner,—
    - (i) a declaration that it is a non-active company, and that it will inform the Commissioner if it ceases to be a non-active company; and
    - (ii) a statement of such other matters as the Commissioner may require; and
  - (c) has not since the making of the declaration ceased to be a non-active company.
- (2) For the purposes of this section, a company is a non-active company for a tax year if, throughout that tax year, the company—
  - (a) has not derived or been deemed to have derived any income; and
  - (b) has no deductions; and
  - (c) has not disposed of or been deemed to have disposed of any assets; and
  - (d) has not been a party to or perpetuated or continued with any transactions which, during the tax year,—
    - (i) give rise to income in any person's hands; or
    - (ii) give rise to fringe benefits to any employee or to any former employee; or
    - (iib) *[Repealed]*
    - (iii) give rise to a debit in the company's imputation credit account or FDP account.
- (3) In determining whether a company complies with the requirements of subsection (2), no account shall be taken of any—
  - (a) statutory company filing fees or associated accounting or other costs; or

- (b) bank charges or other minimal administration costs totalling not more than \$50 in the tax year; or
  - (c) interest earned on any bank account during the tax year, to the extent that the total interest does not exceed the total of any charges or costs incurred by the company to which paragraph (b) of this subsection applies.
- (4) A company that is resident in New Zealand with a standard balance date need not furnish an imputation return for any tax year during which it is a non-active company.
- (5) A company that is resident in New Zealand with a non-standard balance date need not furnish an imputation return for any tax year if it is a non-active company for both the tax years in which the tax year falls.
- (6) Where at any time any paragraph of subsection (2) ceases to apply to a company that has made a declaration under this section, the company must—
  - (a) inform the Commissioner that it has ceased to be a non-active company; and
  - (b) provide the Commissioner with a statement, in a form approved by the Commissioner, as to—
    - (i) whether or not the company had any loss balance to be carried forward or set off against the net income of the company or any other person, or any credit balance in its imputation credit account or FDP account, at the start of the tax year that began its period of non-activity; and
    - (ii) whether or not there has been any change of ownership in the company since that time, whether direct or indirect; and
    - (iii) whether or not the application of any of the continuity provisions would preclude the carrying forward, offsetting, or other utilisation of any tax loss or loss balance or credit balance of the company referred to in subparagraph (i).
- (7) Notwithstanding subsections (1), (4), and (5), a non-active company shall furnish a return of income or an annual ICA return if required by the Commissioner to do so.

Section 43A was inserted, as from 10 April 1995, by section 8 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Subsection (2)(a) was substituted by section 441(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (2)(b) was substituted by section 441(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appears.

Subsection (2)(c) was substituted, and subsection (2)(d) was inserted by section 441(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(d)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Section 43A(2)(d)(iib): repealed, on 1 April 2009, by section 26(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 43A(2)(d)(iib): inserted, on 1 April 2008, by section 204(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 43A(2)(d)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3)(b) and (c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 43A(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2003, by section 109(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “that is resident in New Zealand” after the words “A company”.

Section 43A(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) was amended, as from 1 April 2003, by section 109(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “that is resident in New Zealand” after the words “A company”.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

Section 43A(6)(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6)(b)(i) was amended by section 441(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “net income” for the word “income” with application as from the 1997-98 income year.

Subsection (6)(b)(i) was amended by section 483(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “net loss” for the word “loss”.

Subsection (6)(b)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 43A(6)(b)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6)(b)(iii) was amended by section 483(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “net loss” for the word “loss” with application as from the 1997-98 income year.

Section 43A(7): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **44 Commissioner may in certain cases demand special returns, and make special assessments**

- (1) This section applies to the following persons:
  - (a) an agent:
  - (b) a non-resident trader:
  - (c) a person who is believed by the Commissioner to be about to leave New Zealand or to be about to discontinue the carrying on of business in New Zealand:
  - (d) a person who has ceased to carry on business in New Zealand or to derive income:
  - (e) the executors or administrators of a deceased taxpayer in respect of taxable income of the taxpayer for the taxpayer’s lifetime:
  - (f) a person who has become bankrupt, or a company which is in the course of being liquidated.
- (2) The Commissioner may, if the Commissioner thinks fit, at any time during the tax year or in any subsequent year, and either before or after the passing of the annual taxing Act or the due date of tax, require any person to whom this section applies to make a return in relation to a specified transaction or transactions from which income has been derived, or any specified

period in which income has been derived, and may assess the person for income tax accordingly, or, when default is made in making any such return, or the Commissioner is dissatisfied with the return, then on such sum as the Commissioner thinks reasonable, and shall give notice of the assessment to the person so assessed.

- (3) Any person so assessed shall have the same right to object to the assessment under Part 8 or to challenge the assessment under Part 8A as if the person had been assessed in the ordinary course.
- (4) Tax so assessed shall be payable on demand, which may be made in and by the notice of assessment or at any later date, and the tax shall be recoverable in the same manner as income tax assessed in the ordinary course.
- (5) If an assessment is made under this section before the passing of the annual taxing Act, the tax shall be assessed at the rate fixed by the annual taxing Act last passed before the date of the assessment.
- (6) No assessment made under this section shall in any manner preclude a subsequent assessment of the same person in the ordinary course for the tax year with respect to which the assessment under this section was made, but in any such case the tax paid under the earlier assessment shall be credited in the subsequent assessment.

Compare: 1976 No 65 s 12; 1994 No 76 s 9

Subsection (1)(d) was substituted by section 442(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (1)(e) was substituted by section 442(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2) was substituted by section 442(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” in both places it appeared.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (3) was amended, as from 1 October 1996, by section 10 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to object to the assessment under Part 8 or to challenge the assessment under

Part 8A” for the words “of objection”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (5) was substituted by section 442(3) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (5) was amended, by section 197(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “an assessment is made under this section” for the words “any such assessment of taxable income is made”, with application as from the 2002-03 income year.

Subsection (6) was substituted by section 442(3) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (6) was amended, by section 197(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the word “for” for the words “in respect of the taxable income of the person during”, with application as from the 2002-03 income year.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

#### **44A Special returns by taxpayers affected by reduced deductions under Income Tax Act 2007**

- (1) A taxpayer who has made a return of income for a tax year must file a special return for that tax year in the form required by the Commissioner if the taxpayer’s taxable income or net loss for the tax year is affected by—
  - (a) a reduction under section DT 2(3) of the taxpayer’s deduction under section DT 2(2) of the Income Tax Act 2007; or
  - (b) a reduction under section DS 3 of the taxpayer’s deduction under section DS 1 or DS 2 of the Income Tax Act 2007; or
  - (c) a reduction under section DT 2(3) of another taxpayer’s deduction under section DT 2(2) of the Income Tax Act 2007; or
  - (d) a reduction under section DS 3 of another taxpayer’s deduction under section DS 1 or DS 2 of the Income Tax Act 2007.
- (2) A taxpayer who has derived consideration that gives rise to a reduction under section DT 2(3) or DS 3 of the Income Tax Act 2007 and any other taxpayer affected by that reduction must file a special return—

- (a) for the tax year in which the consideration is derived;  
and
- (b) by the date that the taxpayer's return of income for that tax year would be due.

Sections 44A was inserted by section 67(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 17 November 1998.

Section 44A heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 44A was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (1) was amended, as from 17 November 1998, by section 36(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) by substituting the words "taxable income" for the words "net income" with application as from 14 September 2000.

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "a tax year" for the words "an income year".

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax year" for the words "income year" in both places they appear.

Section 44A(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "section DT 2(3) of the taxpayer's deduction under section DT 2(2) of the Income Tax Act 2004" for the words "section DM 1A(4) of the taxpayer's deduction under section DM 1A(3)".

Section 44A(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "section DS 3 of the taxpayer's deduction under section DS 1 or DS 2 of the Income Tax Act 2004" for the words "section EO 4A(4) of the taxpayer's deduction under section EO 4A(3)".

Section 44A(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "section DT 2(3) of another taxpayer's deduction under section DT 2(2) of the Income Tax Act 2004" for the words "section DM 1A(4) of another taxpayer's deduction under section DM 1A(3)".

Section 44A(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section DS 3 of another taxpayer’s deduction under section DS 1 or DS 2 of the Income Tax Act 2004” for the words “section EO 4A(4) of another taxpayer’s deduction under section EO 4A(3)”.

Section 44A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section DT 2(3) or DS 3 of the Income Tax Act 2004” for the words “section DM 1A(4) or section EO 4A(4)”.

Subsection (2)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

#### **44B Special returns for financial arrangements**

- (1) A person who calculates an adjustment under section EW 53 of the Income Tax Act 2007 must file a special return for the adjustment in the form required by the Commissioner on or before the date on which the person must file their return of income in the tax year specified in section EW 53(3).
- (2) Despite the time bar, the Commissioner must make assessments in respect of the person for the tax years to which the adjustment relates according to the calculations of income and expenditure under the adjustment.

Section 44B was inserted, as from 20 May 1999, by section 67(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 44B(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 53 of the Income Tax Act 2004” for the words “section EH 57 of the Income Tax Act 1994”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 53(3)” for the words “section EH 57(2)”.

Subsection (2) was substituted, by section 198(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.



**44C Certificates about trees**

- (1) The question whether trees are ornamental or incidental arises under the following provisions of the Income Tax Act 2007:
  - (a) section CB 25;
  - (c) section EB 24;
  - (c) sections FB 6 and FB 7;
  - (d) sections GC 1 and GC 2.
- (2) A certificate as to whether trees are ornamental or incidental provides conclusive evidence on the question if it is given by—
  - (a) a properly authorised officer of the Ministry of Forestry; or
  - (b) any other person suitably qualified to give a certificate.
- (3) The question whether trees are planted mainly for the purposes of timber production arises under the definitions of **listed horticultural plant** and **non-listed horticultural plant** in section YA 1 of the Income Tax Act 2007 and under schedule 20, part A, item 8 of that Act.
- (4) A certificate as to whether trees are planted mainly for the purposes of timber production provides conclusive evidence on the question if it is given by—
  - (a) a properly authorised officer of the relevant regional council; or
  - (b) a properly authorised officer of the Ministry of Forestry; or
  - (c) any other person suitably qualified to give a certificate.

Compare: 1994 No 164 ss CJ 1(3), DO 4(5)

Section 44C was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 44C(1): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 44C(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**44D Natural product dealer certificate**

- (1) For the purposes of schedule 4, part H of the Income Tax Act 2007, the Commissioner may issue a natural product dealer certificate to a person who applies in writing.

- (2) The certificate may be issued for any period of time, and is revoked when a notice ordering revocation is received by the Commissioner, if the person revokes the certificate, or by the person, if the Commissioner revokes the certificate.

Section 44D: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **45 New Zealand superannuitant to estimate other income**

*[Repealed]*

Section 45 was repealed by section 14 Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) with application to tax on taxable income as from the 1998-99 income year.

#### **46 Employers to make returns as to employees**

- (1) An employer must furnish an employer monthly schedule containing particulars of the persons employed by the employer in a month and of all salaries, wages, and other emoluments received in that month by each person employed.
- (2) The Commissioner may vary the requirements to provide particulars of the commencement or cessation of employment in an employer monthly schedule, in relation to any employer or class of employer, and in the cases and to the extent that the Commissioner considers fit, and the requirements apply as varied.
- (3) No variation made by the Commissioner under subsection (2) may impose a more onerous requirement on an employer than is imposed by the employer monthly schedule.
- (4) An employer must consolidate into one employer monthly schedule the particulars that must be included in an employer monthly schedule for an employee who receives, between 1 April 1999 and 31 March 2000, a payment listed under subsection (5).
- (5) Subsection (4) applies to a payment of—
- (a) New Zealand superannuation; or
  - (b) a veteran's pension; or
  - (c) an income-tested benefit; or
  - (d) weekly compensation or compensation for loss of potential earning capacity payable under the Accident Rehabilitation and Compensation Insurance Act 1992; or

- (da) all payments of weekly compensation made by the Accident Compensation Corporation under the Accident Insurance Act 1998; or
  - (db) payments of compensation for loss of earnings or loss of potential earning capacity in so far as the payments relate to a work-related personal injury and are made by the Accident Compensation Corporation under a policy of personal accident or sickness insurance to which section 188(1)(a) of the Accident Insurance Act 1998 applies; or
  - (e) an allowance paid under regulations made under section 303 of the Education Act 1989; or
  - (f) a credit of tax paid under subparts MA to MF and MZ of the Income Tax Act 2007.
- (5A) The employer must furnish the Commissioner with the consolidated employer monthly schedule on or before 5 April 2000.
- (5B) The particulars required under subsection (4) do not include the name, tax file number, or any other particular relating to child support or student loan deductions made.
- (6) Nothing in the employer monthly schedule requires information in relation to—
- (a) any period referred to in subsection (2) where no person commences or ceases in that period to be an employee of the employer; or
  - (b) the commencement or cessation of—
    - (i) any class or description of employment; or
    - (ii) the employment of any class or description of employee; or
    - (iii) the employment of employees by any class or description of employer,—  
specified by the Commissioner as not requiring to be included in a certificate under this section; or
  - (c) *[Repealed]*
- (7) In this section, **employee** includes any person who receives or is entitled to receive a payment that would, but for section RD 3(2) to (4) of the Income Tax Act 2007, be a PAYE income payment.

Compare: 1976 No 65 s 432

Subsection (1) was substituted by section 19(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

Subsections (2) to (5) were substituted, and subsection (5A) and (5B) were inserted by section 19(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

Subsection (5)(da) and (db) was inserted by section 68(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 1 July 1999.

Section 46(5)(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Subsection (6) was amended by section 19(3)(a) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999 by substituting the words “Nothing in the employer monthly schedule requires information in relation to—” for the words “Nothing in subsection (2) requires a certificate to be furnished, or to contain information, in relation to—”.

Subsection (6)(c) was repealed by section 19(3)(b) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

Section 46(7): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section OB 2(2) of the Income Tax Act 2004” for the words “subsection (2) or subsection (3) of section OB 2 of the Income Tax Act 1994”.

#### **46A Accident Rehabilitation and Compensation Insurance Corporation to provide information as to recipients of weekly compensation**

- (1) The purpose of this section is to facilitate the exchange of information between the Corporation and the Department for the purpose of verifying entitlement to the child tax credit.
- (2) For the purpose of this section, the Corporation or any authorised officer of the Corporation shall, on request, on notice, of the Commissioner, provide the following information:
  - (a) the name and address of a person who has been in continuous receipt of weekly compensation for the continuation period or longer; and
  - (b) the tax file number of the person; and
  - (c) the date of birth of the person; and

- (d) the dates of the periods where the person has received weekly compensation for a continuous period of 3 months or more.
- (3) Where the Commissioner receives information from the Corporation, the Commissioner may cause a comparison of the information to be made with the information held by the Commissioner which relates to that person in order to assess the entitlement of that person, or of the person with whom that person lives in a marriage, civil union, or de facto relationship, to the child tax credit.
- (4) Notwithstanding section 81, access by a person to information in respect of that person provided to the Commissioner by the Corporation shall be governed by the provisions of the Privacy Act 1993.
- (5) In this section,—

**Child tax credit** has the same meaning as in section YA 1 of the Income Tax Act 2007

**Continuation period**, in relation to a person receiving weekly compensation, means the period beginning on the first day of the person's eligibility for weekly compensation and ending on the earlier of—

- (a) the day having the same date as the first day of the person's continuous period of eligibility for weekly compensation and occurring in the third calendar month after that first day; and
- (b) the last day of the third calendar month after the first day of the person's continuous period of eligibility for weekly compensation:

**Corporation** means the Accident Rehabilitation and Compensation Insurance Corporation or the Accident Compensation Corporation

**Independent family tax credit***[Repealed]*

*[Repealed]*

**Weekly compensation** means compensation of the kind referred to in paragraph (b)(xii) or (xiii) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004 paid by the Accident Rehabilitation and Compensation Insur-

ance Corporation or the Accident Compensation Corporation or its agent.

Section 46A was inserted, as from 1 July 1996, by section 10(1) Tax Administration Amendment Act 1996 (1996 No 19).

Subsections (1) and (3) were amended by section 18(1) Taxation (Parental Tax Credit) Act 1999 (1999 No 62) by substituting “child tax credit” for “independent family tax credit” with application as from 1 October 1999.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “, on notice, of” for “by”.

Subsection (3) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “assess the entitlement of that person, or of the person with whom that person lives in a marriage, civil union, or de facto relationship between a man and a woman,” for “make an assessment of that person’s entitlement or his or her spouse’s entitlement”.

Subsection (3) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Section 46A(5) **child tax credit**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) Child tax credit: this definition was inserted by section 18(2) Taxation (Parental Tax Credit) Act 1999 (1999 No 62) with application as from 1 October 1999.

Subsection (5) Child tax credit: this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “Income Tax Act 2004” for “Income Tax Act 1994”.

Subsection (5) Corporation: this definition was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting “or the Accident Compensation Corporation”.

Subsection (5) Independent family tax credit: this definition was repealed by section 18(2) Taxation (Parental Tax Credit) Act 1999 (1999 No 62) with application as from 1 October 1999.

Subsection (5) Weekly compensation: this definition was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting “or the Accident Compensation Corporation”.

Subsection (5) Weekly compensation: this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “paragraph (b)(xii) or (xiii) of the definition of salary or wages in section OB 1 of the Income Tax Act 2004” for “paragraphs (h) and (i) of the definition of ‘salary and wages’ in section OB 1 of the Income Tax Act 1994”.

### *Fringe benefits*

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**46B FBT returns for quarters**

- (1) This section applies to an employer who pays their FBT liability under the single rate option or the alternate rate option. The employer chooses the relevant option by providing a return stipulating the selected rate.
- (2) For each quarter of a tax year, the employer must provide a return that—
  - (a) sets out the details of the fringe benefits received by each of their employees in the quarter; and
  - (b) includes a calculation of the amount of FBT payable on the taxable value of the fringe benefits in the quarter.
- (3) The returns must be provided, and the employer is liable to pay the amount of FBT, by the following dates:
  - (a) for a return for each of the first 3 quarters of a tax year, 20 days after the end of the quarter:
  - (b) for a return for the final quarter of a tax year, 31 May after the end of the quarter, unless subsection (4)(a) applies.
- (4) If an employer chooses to pay FBT under sections RD 50 and RD 53 of the Income Tax Act 2007, and the result of the calculation is—
  - (a) a negative number, the employer is entitled to a refund of the overpayment:
  - (b) a positive number, the employer must pay the difference.
- (5) If no fringe benefit has been provided during a quarter, the employer must still provide a return under subsection (3). However, the Commissioner may relieve an employer of this obligation.
- (6) If an employer stops employing staff in a tax year as described in section RD 63 of that Act, they must provide a return within 2 months after the end of the quarter in which the employment ceased. For this purpose, subsections (3) and (4), and paragraph (d) of the definition of date interest starts apply to the employer.

Compare: 2004 No 35 ss ND 2(3), ND 9(2), (3), ND 10(2)–(5), ND 11, ND 12  
Section 46B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**46C FBT returns for years**

- (1) This section applies to an employer who pays their FBT liability under the close company option or the small business option. The employer chooses the relevant option by notifying the Commissioner.
- (2) The employer must provide a return that—
  - (a) sets out the details of the fringe benefits received by each of their employees in the tax year or income year, as applicable; and
  - (b) includes a calculation of the amount of FBT payable on the taxable value of the fringe benefits in the tax year or income year, as applicable.
- (3) For an employer who chooses to pay under the close company option, the return must be provided no later than the employer's terminal tax date for the relevant income year. The employer is liable to pay the amount calculated by the terminal tax date.
- (4) For an employer who chooses to pay under the small business option, the return must be provided no later than 31 May after the end of the relevant tax year. The employer is liable to pay the amount calculated by 31 May.

Compare: 2004 No 35 ss ND 13(5), (6), ND 14(5), (6)

Section 46C: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**46D FBT returns: changes in payment periods**

- (1) This section applies when an employer chooses to pay income tax on an income year basis under the close company option, and the first day of the relevant income year is not the same day as the first day of a quarter.
- (2) The employer must provide a return and pay FBT under section 46B, treating the period between the first day of the quarter in which the income year starts and the first day of the income year as if it were a quarter.

Compare: 2004 No 35 s ND 15(7), (8)

Section 46D: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



**46E FBT returns: information for calculations**

- (1) This section applies for the purposes of sections RD 58(2), RD 60(4), and RD 61(4) of the Income Tax Act 2007 when an employer asks the Commissioner to replace the FBT liability determined under a set rate with a calculated amount.
- (2) The employer must provide the information within 2 months after notifying the Commissioner that an assessment for the final quarter or year has been made.

Compare: 2004 No 35 s ND 1(6)

Section 46E: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**47 ESCT statements provided by employers**

- (1) This section applies when an employer or PAYE intermediary withholds in a period an amount of ESCT from an employer's superannuation contribution.
- (2) The employer or PAYE intermediary must deliver to the Commissioner a PAYE payment form showing the amount of employer's superannuation contribution, the amount of ESCT relating to the contribution, and any other particulars required by the Commissioner as follows:
  - (a) when the employer or PAYE intermediary has withheld the ESCT during the first payment period, no later than the 20th of the month during which the ESCT was withheld:
  - (b) when the employer or PAYE intermediary has withheld the ESCT during the second payment period, no later than the 5th of the month following the month in which the ESCT was withheld:
  - (c) despite paragraphs (a) and (b), if the employer or PAYE intermediary is required to pay an amount of tax to the Commissioner under section RD 4(1)(a) of the Income Tax Act 2007, no later than the 20th of the following month in which the amount was withheld.

Section 47: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 20(1)(b) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words "to the Commissioner a remittance certificate showing the amount of specified superannuation contribution and the amount of specified superannuation con-

tribution withholding tax relating to that contribution and any other particulars the Commissioner may require.” for the words “to the Commissioner a statement in a form prescribed by the Commissioner showing such particulars as are prescribed in that statement of the specified superannuation contribution and of the specified superannuation contribution withholding tax relating to that contribution.” with application as from 1 April 1999.

Subsection (1) was amended by section 110(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “or PAYE intermediary” after the words “Every employer” with application to pay periods as from 1 April 2004.

Subsection (1)(a) was amended by section 110(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “or PAYE intermediary” after the words “where the employer” with application to pay periods as from 1 April 2004.

Subsection (1)(b) was amended by section 110(3) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “or PAYE intermediary” after the words “where the employer” with application to pay periods as from 1 April 2004.

Subsection (1)(c) was amended by section 20(1)(a) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the expression “section NC 15(1)(c) or (d)” for the expression “section NC 15(1)(c)” with application as from 1 April 1999.

Subsection (1)(c) was amended by section 110(4) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “or PAYE intermediary” after the words “where the employer” with application to pay periods as from 1 April 2004.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was repealed by section 20(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

#### **47B RSCT statements provided by retirement scheme contributor or retirement savings scheme**

- (1) This section applies when a retirement scheme contributor or retirement savings scheme withholds an amount of RSCT from a retirement scheme contribution other than a contribution made by way of an imputation credit or Maori authority credit.
- (2) The contributor or scheme must provide to the Commissioner a statement in a form acceptable to the Commissioner showing the amount of retirement scheme contribution, the amount of RSCT relating to the contribution, and any other particulars required by the Commissioner.

- (3) The statement must be provided no later than the 20th of the month after the month in which the amount was withheld.

Compare: 2004 No 35 s NEB 3(1)(b)

Section 47B: inserted, on 1 April 2008, by section 205 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**48 Special arrangements for supply of information by employer or PAYE intermediary to Commissioner**

- (1) Notwithstanding anything in this Act and the Income Tax Act 2007, with the prior consent of the Commissioner, any requirement under this Act or the Income Tax Act 2007 for the delivery by an employer or a PAYE intermediary of any reconciliation, or return to the Commissioner or an employee may be satisfied by submitting the information required in any manner approved by the Commissioner.
- (2) Any information submitted under subsection (1) may, with the prior consent of the Commissioner, relate to more than one employer or PAYE intermediary.
- (3) For the purposes of this section, the Commissioner may—
- (a) give consent under this section upon such terms and conditions as the Commissioner thinks fit:
  - (b) vary those terms and conditions and revoke any such consent at any time:
  - (c) prescribe forms for the purposes of this section.

Compare: 1976 No 65 s 354

The heading to section 48 was amended by section 96(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or PAYE intermediary” after the word “employer” with application for pay periods beginning as from 1 April 2004.

Section 48(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 21(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by omitting the expression “certificate,” with application as from 1 April 1999.

Subsection (1) was amended by section 96(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or a PAYE intermediary” after the words “an employer” with application for pay periods beginning as from 1 April 2004.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in both places they appear.

Subsection (2) was amended by section 96(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or PAYE intermediary” after the word “employer” with application for pay periods beginning as from 1 April 2004.

**48B Reconciliation statement for retirement scheme contribution withholding tax**

- (1) If a retirement scheme contributor has made a retirement scheme contribution to a retirement savings scheme for a person in an income year, the retirement scheme contributor, or the retirement savings scheme acting on behalf of the retirement scheme contributor, must deliver to the Commissioner a reconciliation statement for the income year showing the information required by—
  - (a) subsection (2), relating to the person; and
  - (b) subsection (3), relating to the retirement scheme contributor.
- (2) The reconciliation statement must show the following information for the income year relating to the person referred to in subsection (1):
  - (a) the total amount of RSCT payable on retirement scheme contributions; and
  - (b) the total amount of imputation credits and Maori authority credits used in meeting the liability for RSCT; and
  - (c) the total amount of RSCT paid or payable other than by using imputation credits and Maori authority credits; and
  - (d) the amount of each retirement scheme contribution subject to RSCT; and
  - (e) the rate used to calculate the RSCT on the retirement scheme contribution; and
  - (f) the RSCT for the retirement scheme contribution; and
  - (g) the amount of imputation credits attached to the retirement scheme contribution; and
  - (h) the amount of imputation credits used to meet the liability for RSCT on the retirement scheme contribution; and
  - (i) the amount of Maori authority credits attached to the retirement scheme contribution; and

- (j) the amount of Maori authority credits used to meet the liability for RSCT on the retirement scheme contribution; and
  - (k) the amount of RSCT remaining owing on the retirement scheme contribution after the use of imputation credits and Maori authority credits; and
  - (l) the amount of RSCT on the retirement scheme contribution paid other than by the use of imputation credits and Maori authority credits; and
  - (m) the tax file number, if a rate of less than 39% is used to calculate the RSCT on a retirement scheme contribution; and
  - (n) the amount of the imputation credits or Maori authority credits attached to the retirement scheme contribution that are not used to meet the liability for RSCT; and
  - (o) the total amount of NRWT payable on retirement scheme contributions; and
  - (p) the amount of each retirement scheme contribution that is non-resident passive income; and
  - (q) any other particulars the Commissioner may require.
- (3) The reconciliation statement must show the following information for the income year relating to the retirement scheme contributor referred to in subsection (1):
- (a) the total amount of retirement scheme contributions for which RSCT is payable; and
  - (b) the total amount of RSCT payable on retirement scheme contributions; and
  - (c) the total amount of imputation credits used in meeting the liability for RSCT; and
  - (d) the total amount of Maori authority credits used in meeting the liability for RSCT; and
  - (e) the total amount of RSCT paid or payable other than by using imputation credits and Maori authority credits.
- (4) The reconciliation statement required by subsection (1) for an income year must be received by the Commissioner on or before the end of the second month following the end of the income year.

Section 48B: inserted, on 19 December 2007, by section 206(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(a): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(b): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(c): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(d): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(e): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(f): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(h): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(j): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(k): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(l): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(m): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(n): amended, on 1 April 2008, by section 206(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(o): amended, on 1 April 2008, by section 206(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(2)(p): amended, on 1 April 2008, by section 206(2)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(3)(a): amended, on 1 April 2008, by section 206(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(3)(b): amended, on 1 April 2008, by section 206(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(3)(c): amended, on 1 April 2008, by section 206(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(3)(d): amended, on 1 April 2008, by section 206(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 48B(3)(e): amended, on 1 April 2008, by section 206(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

## **49 NRWT withholding certificates and annual reconciliations**

(1) Subsection (1B) applies when a person in a year—

- (a) withholds, or is required by the NRWT rules to withhold, NRWT for non-resident passive income paid to or derived by any other person; or
  - (b) pays to, or is required to pay to, the Commissioner under section RF 10 of the Income Tax Act 2007 NRWT for non-resident passive income that is a dividend.
- (1B) The person must prepare and provide to the Commissioner, no later than 31 May in the following year, in the form approved by the Commissioner, —
  - (a) an NRWT withholding certificate for all NRWT withheld or paid in relation to each recipient during the year; and
  - (b) an annual reconciliation statement for all NRWT withheld or paid during the year.
- (2) Every NRWT withholding certificate shall include the following information:
  - (a) the full name, relevant address, and tax file number of the person withholding or paying the NRWT:
  - (b) the full name, last known address, and tax file number of the recipient of the payment (except where, after making reasonable inquiries, the payer is unable to obtain such details of the recipient):
  - (c) the country code of the recipient:
  - (d) the year in which the NRWT to which the certificate relates was withheld:
  - (e) the type of non-resident passive income to which the certificate relates:
  - (f) the amount of NRWT withheld and the amount of non-resident passive income to which it relates:
  - (g) the amount of NRWT paid:
  - (h) the payer's signature and date of signing:
  - (i) such further information as may be required by the Commissioner.
- (3) Every annual reconciliation statement shall include such information as the Commissioner may require, whether particularly or in any class or classes of case.
- (4) Where in any month a person—

- (a) ceases to carry on any taxable activity in respect of which the person has been required to withhold NRWT; or
  - (b) ceases to carry on any such taxable activity in New Zealand,—  
the person must furnish to the Commissioner any NRWT withholding certificates required to be prepared by the person with respect to the taxable activity, and an annual reconciliation statement, as if the end of that month were the end of a year.
- (4B) An emigrating company that is treated under section FL 2(1) of the Income Tax Act 2007 as paying a dividend to shareholders must furnish to the Commissioner, as if the time of emigration were the end of a year,—
- (a) any NRWT withholding certificates required to be prepared by the company; and
  - (b) an annual reconciliation statement.
- (4C) A company must furnish to the Commissioner the withholding certificates and annual reconciliation statement required under this section for a year—
- (a) by not later than 31 May in the year following the year to which the certificates and statement relate, if paragraphs (b) and (c) do not apply; or
  - (b) before the date that is 40 working days after the end of the month referred to in subsection (4), if that subsection applies and paragraph (c) does not apply; or
  - (c) before the date that is 3 months after the time of emigration, if the company is an emigrating company.
- (5) The Commissioner may vary any of the requirements of this section in relation to any person or class of persons in such cases and to such extent as the Commissioner thinks fit, and where the Commissioner does so this section shall apply as so varied.

Compare: 1976 No 65 s 316

Section 49 was substituted, as from 12 December 1995, by section 5 Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Section 49 heading: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(1): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Section 49(1B): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in both places they appear.

Subsection (1) was amended, as from 3 April 2006, by section 219(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “must prepare and” for the words “shall prepare, and shall by not later than 31 May in the following year” with application as from the income year corresponding to the 2005-06 tax year.

Section 49(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(2)(d): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(2)(e): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(2)(f): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(2)(g): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 3 April 2006, by section 219(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “must furnish to the Commissioner” for the words “shall furnish to the Commissioner within 40 working days after the end of that month” with application as from the income year corresponding to the 2005-06 tax year.

Section 49(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (4B) and (4C) were inserted, as from 3 April 2006, by section 219(3) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application as from the income year corresponding to the 2005-06 tax year.

Section 49(4B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4B) was amended, as from 3 April 2006, by section 186(1) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting the words “date of the emigration time” for the words “emigration date” with application as from the 2005-06 income year.

Section 49(4B)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(4C): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 49(4C)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4C)(c) was amended, as from 3 April 2006, by section 186(2) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting the words “date of the emigration time” for the words “emigration date” with application as from the 2005–06 income year.

## **50 Statement of payment of RWT**

Every person who at any time is required to make a payment of RWT shall, at the time at which the payment was (or, in the case of a failure to make such a required payment, would have been) required to be paid to the Commissioner or within such further time as the Commissioner may allow, deliver to the Commissioner a statement in a form authorised by the Commissioner showing such details in relation to the payment of RWT as the Commissioner may prescribe.

Compare: 1976 No 65 s 327E(5)

Section 50 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 50 was substituted, as from 21 December 2004, by section 129(a) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 50: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 50 was amended, as from 21 December 2004, by section 129(b) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the word “payment” for the word “deduction” wherever it appears.

## **51 RWT withholding reconciliation statements**

- (1) Subsection (1B) applies when a person withholds (or is required by the RWT rules to withhold, but fails to do so) RWT for resident passive income paid to or derived by another person that is—
- (a) interest; or
  - (b) a dividend treated as interest; or
  - (c) a dividend to which section RE 9(2) of the Income Tax Act 2007 applies.
- (1B) The person must provide to the Commissioner, in the form prescribed by the Commissioner, the information that the Commissioner may require in relation to the RWT.

- (2) The Commissioner may require the following information in relation to RWT withheld:
- (a) the full name, address and tax file number of the person (the **payer**); and
  - (b) the full name and last known address of the recipient unless, after making reasonable inquiries, the payer is unable to obtain those details; and
  - (c) the tax file number of the recipient, if known to the payer; and
  - (d) whether the resident passive income is interest, a dividend treated as interest, or a dividend to which section RE 9(2) of the Income Tax Act 2007 applies; and
  - (e) the date on which the RWT was withheld, or if more than 1 amount is withheld, the year in which the amounts were withheld; and
  - (f) the amount of resident passive income and the amount of RWT withheld; and
  - (g) the tax rate for RWT that applied to the resident passive income; and
  - (h) further information that the Commissioner considers relevant.
- (2A) If the person has paid interest, a dividend treated as interest, or a dividend to which section RE 9(2) of the Income Tax Act 2007 applies to another person (the recipient) and has not withheld RWT because the person holds an RWT exemption certificate, the Commissioner may require the following information:
- (a) the full name and last known address of the recipient; and
  - (b) the total interest, dividends treated as interest, or dividends to which section RE 9(2) of the Income Tax Act 2007 applies that are paid to the recipient; and
  - (c) the recipient's tax file number, unless the recipient is, at the time of payment, a person to whom any of section 32E(2)(a) to (c) applies; and
  - (d) further information that the Commissioner considers relevant.

- (2B) Information that may be required under subsection (2) or subsection (2A) must be provided in a form approved by the Commissioner.
- (3) Where any person is required to provide any information to the Commissioner under subsection (2) or subsection (2A), that person shall provide such information to the Commissioner—
- (a) In any case where the Commissioner has requested such information not less than 20 working days before the date upon which that person is required to furnish a statement under subsection (1), with that statement; or
  - (b) in any other case, within 20 working days of the request from the Commissioner.
- (4) Notwithstanding any provisions of this section, where any person in any month of any year—
- (a) ceases to carry on any taxable activity in relation to which that person (not being a person who continues to hold an RWT exemption certificate issued to that person notwithstanding the cessation in carrying on a taxable activity) has been required to withhold RWT from payments made to any other person; or
  - (b) ceases to carry on any such business in New Zealand,— that person shall provide to the Commissioner the information required to be provided by virtue of the application of this section as if the end of that month were the end of that year.
- (5) Notwithstanding the provisions of this section, where any person in any month in any year ceases to be a person holding an RWT exemption certificate issued to that person (not being a person who continues to be required to withhold RWT by virtue of making payments in the course of or furtherance of a taxable activity notwithstanding such cessation in holding an RWT exemption certificate), that person shall provide to the Commissioner the information required to be provided by virtue of the application of this section as if the end of that month were the end of the year.
- (5B) An emigrating company that is treated under section FL 2(1) of the Income Tax Act 2007 as paying a dividend to shareholders must provide to the Commissioner the information required under this section, as if the time of emigration were the end of a year.

- (5C) A company must furnish to the Commissioner the information required under subsection (4), (5), or (5B)—
- (a) on or before the date that is 40 working days after the end of the month referred to in subsection (4), if that subsection applies and paragraphs (b) and (c) do not apply; or
  - (b) on or before the date that is 40 working days after the end of the month referred to in subsection (5), if that subsection applies and paragraph (c) does not apply; or
  - (c) before the date that is 3 months after the time of emigration, if the company is an emigrating company.
- (6) The Commissioner may vary any of the requirements of this section in relation to any person or class of persons in such cases and to such extent as the Commissioner thinks fit, and in every such case this section shall apply as so varied.
- (7) In this section, a dividend that to which section RE 3(c) of the Income Tax Act 2007 applies is treated as being interest.

Compare: 1976 No 65 s 327I

Section 51 heading: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(1): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(1B): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1) (after paragraph (b)) was amended, as from 3 April 2006, by section 220(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the word “must” for the words “shall, by not later than 31 May following the end of that year,” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (2) was substituted by section 78(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Section 51(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(2)(d): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(2)(e): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(2)(f): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(2)(g): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (2A) was inserted by section 78(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Section 51(2A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(2A)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(2A)(c): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2A)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsections (2B) was inserted by section 78(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Subsection (3) was amended by section 78(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the words “or subsection (2A)” with application to resident withholding certificates provided as from 1 April 2002 that relate to interest or specified dividends paid as from the 2001-02 income year.

Subsection (4) was amended, as from 3 April 2006, by section 220(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by repealing the words “and within 40 working days after the end of that month” with application as from the income year corresponding to the 2005-06 tax year.

Section 51(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 51(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) was amended, as from 3 April 2006, by section 220(3) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by repealing the words “and within 40 working days after the end of that month” with application as from the income year corresponding to the 2005-06 tax year.

Subsections (5B) and (5C) were inserted, as from 3 April 2006, by section 220(4) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application as from the income year corresponding to the 2005-06 tax year.

Section 51(5B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5B) was amended, as from 3 April 2006, by section 187(1) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting the words “emigration time” for the words “emigration date” with application as from the 2005–06 income year.

Section 51(5C)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5C)(c) was amended, as from 3 April 2006, by section 187(2) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting the words “date of the emigration time” for the words “emigration date” with application as from the 2005–06 income year.

Subsection (7) was inserted, as from 21 December 2004, by section 130 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 51(7): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## 52 Disclosure of interest payments when no requirement to withhold RWT

A person who in a year pays an amount of resident passive income that is interest, —

- (a) for which RWT is required to be withheld because—
  - (i) the payment was not made by the person in the course of or furtherance of a taxable activity; or
  - (ii) section RE 10 of the Income Tax Act 2007 applies; and
- (b) that is allowed as a deduction for the purposes of the Income Tax Act 2007; and
- (c) that is paid to a person other than a person who holds an RWT exemption certificate,—

shall, in the return of income that the payer is required under this Act to furnish in relation to that year, provide the Commissioner with the following information in relation to each person (in this section called the **recipient**) to whom such a payment was made in that year:

- (d) the full name and last known address of the recipient; and
- (e) the total resident passive income, being interest, paid by the payer to the recipient in that tax year; and
- (f) the tax file number of the recipient; and
- (g) such further information as the Commissioner may require.

Compare: 1976 No 65 s 327J(1)

Section 52 heading: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 52: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 52(a): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (a)(ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 52(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (b) was substituted by section 443 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Paragraph (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 52(c): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 52(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **53 Disclosure of certain financial arrangement transactions where interest payable to exempt person, etc**

- (1) Where, in relation to any year,—
- (a) Any person (in this section and section 27(1) called the **exempt person**) holds at any time during that year an RWT exemption certificate; and
  - (b) the exempt person, during that year,—
    - (i) acquires a financial arrangement from, or disposes of a financial arrangement to, any other person; or
    - (ii) makes a redemption payment to any other person in respect of a financial arrangement,—  
and that other person was not either—
    - (iii) a party to the financial arrangement; or
    - (iv) a person holding at the time of acquisition, disposition, or redemption, as the case may be, an RWT exemption certificate; and



- (c) the financial arrangement is one in relation to which interest is payable, which interest, if derived by the exempt person, would have been subject to RWT had the exempt person not held an RWT exemption certificate; and
- (d) in the case of a redemption payment, the redemption payment is a payment from which RWT has not been withheld under section RE 6 of the Income Tax Act 2007,—

the exempt person shall, in the return of income which that person is required under this Act to furnish in relation to that year, provide the Commissioner with the following information, in relation to each such other person (in this section and section 27(1) called the **non-exempt person**) and each such acquisition, disposition, or redemption payment made during that year:

- (e) the full name and last known address of the non-exempt person:
  - (f) the date of the acquisition, disposition, or redemption:
  - (g) the consideration paid or received by the exempt person in respect of the acquisition, disposition, or redemption, exclusive of any fees:
  - (h) the tax file number (if any) of the non-exempt person:
  - (i) such further information as the Commissioner may prescribe.
- (2) For the purposes of subsection (1), except where the Commissioner otherwise requires, the information specified in paragraphs (f) to (i) of that subsection may, with respect to each such non-exempt person and that year, be provided in the form of—
- (a) summary totals in relation to all such acquisitions:
  - (b) summary totals in relation to all such dispositions:
  - (c) summary totals in relation to all such redemptions.
- (3) Where any exempt person is not required under this Act to furnish a return of income in relation to any tax year during which is made an acquisition or disposition to which subsection (1) applies, that exempt person shall furnish to the Commissioner the information described in subsection (1) in such form as

the Commissioner may prescribe and within 2 months after the end of that tax year.

Compare: 1976 No 65 s 327ZB

Section 53(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b)(iii) was substituted, as from 20 May 1999, by section 69(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 53(1)(b)(iv): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 53(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 53(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax year" for the words "income year" in both places they appear.

#### **54 Information in relation to recipients of resident passive income**

- (1) Any person (in this section called the **payer**) who in any year is required to withhold RWT for an amount of resident passive income paid to or derived (as applicable) by any other person (in this section called the **recipient**) shall in such form and at such time as the Commissioner may require, provide the Commissioner with the following information in relation to each recipient:
- (a) the full name and last known address of the recipient:
  - (b) the total resident passive income of the recipient in the tax year for which RWT was required to be withheld by the payer:
  - (c) the tax file number (if any) of the recipient:
  - (d) such further information as the Commissioner may require.
- (2) The Commissioner may exempt any person or persons from any or all of the requirements to furnish information to the Commissioner under this section, and in the case of any such exemption this section shall apply subject to that exemption.

Compare: 1976 No 65 s 327ZD

Section 54 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 54(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 54(1)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

## **55 Consequence of inability to provide tax file numbers**

Where any person at any time—

- (a) is required in accordance with section 52 or section 53 or section 54 to provide the Commissioner with any other person’s tax file number; and
- (b) having made reasonable efforts to obtain that tax file number, is unable to do so,—

that person shall, notwithstanding any other provision of the RWT rules, be relieved from that obligation to provide the Commissioner with that tax file number.

Compare: 1976 No 65 s 327Y

## **56 Returns of special accounts**

Every authorised savings institution shall, not later than 15 May in each year,—

- (a) furnish to the Commissioner a certificate in the prescribed form in respect of each special home ownership account operated by a person under Part 2 of the Home Ownership Savings Act 1974 operated with that institution, showing the name and address of the person operating the account, the number of the account or other particulars sufficient to identify it, the balance in that account at the end of the preceding tax year and at the end of the income year immediately preceding that tax year, and such other information or particulars as may be prescribed in the form; and
- (b) deliver to each person operating a special home ownership account operated by a person under Part 2 of the

Home Ownership Savings Act 1974 with that institution a copy of the certificate referred to in paragraph (a).

Compare: 1976 No 65 s 430(2)

Section 56(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Section 56(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **57 Maori authority to make returns of income**

- (1) Every year a Maori authority must furnish a return in the prescribed form that is a complete statement of the Maori authority's taxable income for the preceding year.
- (2) The return must be furnished to the Commissioner on or before the date by which returns of income are required under this Act.

Section 57 was substituted by section 444 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 57 was substituted by section 97(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004-05 income year.

### **57B Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement**

- (1) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year and who has not made an election under section HL 23 or HL 24 of the Income Tax Act 2007 for the tax year must perform the responsibilities referred to in subsection (4)—
  - (a) for a portfolio calculation period in the tax year; and
  - (b) by the day that is the end of the month beginning from the end of the portfolio calculation period.
- (2) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year and who has made an election under section HL 23 of the Income Tax Act 2007 for the tax year must perform the responsibilities of a provisional taxpayer under the provisional tax rules.

- (3) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year and who has made an election under section HL 24 of the Income Tax Act 2007 for the tax year must perform the responsibilities referred to in subsection (4),—
- (a) for an investor with a portfolio investor exit period in the tax year,—
    - (i) for the portfolio investor exit period; and
    - (ii) by the day given by subsection (3B) for the portfolio investor exit period; and
  - (b) for the investors who hold portfolio investor interests at the end of the tax year,—
    - (i) for the tax year; and
    - (ii) by the end of the month beginning from the end of the tax year.
- (3B) A person who is required to perform responsibilities under subsection (3)(a) for a portfolio investor exit period must perform them by the day that is—
- (a) the end of the 1-month period beginning from the end of the portfolio investor exit period, if paragraph (b) does not apply; or
  - (b) the 15 January following the end of the portfolio investor exit period, if the portfolio investor exit period ends in November.
- (4) The responsibilities of a person for each period are to—
- (a) file a return in the prescribed form showing—
    - (i) the amount of the portfolio entity tax liability of the person for the period; and
    - (ii) *[Repealed]*
    - (iii) further information that the Commissioner considers relevant; and
  - (b) pay an amount of income tax for the tax year equal to the portfolio entity tax liability of the person for the period.
- (5) A person who is a portfolio tax rate entity or portfolio investor proxy in a tax year must file for the tax year a return in the prescribed form showing—
- (a) the income tax paid by the person for the tax year; and
  - (b) further information that the Commissioner considers relevant.

- (6) A person required by subsection (5) to file a return must file the return—
- (a) by 30 June of the calendar year in which the tax year ends, if—
    - (i) the person has a corresponding income year that does not end after the end of the tax year; and
    - (ii) the person is a portfolio tax rate entity or portfolio investor proxy at the end of that corresponding income year; or
  - (b) by the end of the second month following the month in which the corresponding income year for the portfolio tax rate entity ends, if—
    - (i) the portfolio tax rate entity has a corresponding income year that ends after the end of the tax year; and
    - (ii) the person is a portfolio tax rate entity or portfolio investor proxy at the end of that corresponding income year; or
  - (c) by the end of the third month following the month in which the entity ceases to be a portfolio tax rate entity or portfolio investor proxy, if the person ceases to be a portfolio tax rate entity or portfolio investor proxy in the corresponding year.
- (7) A person who is a portfolio tax rate entity or portfolio investor proxy and makes a payment of income tax under section HL 25 of the Income Tax Act 2007 for a period in an income year that is not included in a return required by subsection (3) must file a tax return for the period—
- (a) in the prescribed form showing—
    - (i) the amount of the payment for the period; and
    - (ii) the information concerning the payment that would be required in a return under subsection (3); and
    - (iii) further information that the Commissioner considers relevant; and
  - (b) by the day that is—
    - (i) the end of the month beginning from the end of the month in which the period ends, if subparagraph (ii) does not apply; or

- (ii) the 15 January following the end of the period, if the period ends in November.

Section 57B: inserted, on 1 October 2007, by section 188 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 57B(1): amended, on 1 April 2008, by section 207(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(1)(b): substituted (with effect from 1 October 2007), on 19 December 2007, by section 207(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(2): amended, on 1 April 2008, by section 207(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(3): amended, on 1 April 2008, by section 207(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(3)(a)(ii): substituted (with effect from 1 October 2007), on 19 December 2007, by section 207(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(3B) subsection number and section: substituted (with effect on 1 October 2007), on 6 October 2009, by section 625(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 57B first subsection (7): inserted (with effect from 1 October 2007), on 19 December 2007, by section 207(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(4)(a)(ii): repealed, on 1 October 2007, by section 55(1) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 57B(4)(b): amended (with effect from 1 October 2007), on 19 December 2007, by section 207(8) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B(6)(a): substituted, on 1 October 2007, by section 55(2) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 57B(6)(b): substituted, on 1 October 2007, by section 55(2) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 57B(6)(c): added, on 1 October 2007, by section 55(2) of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 57B(6)(c): amended (with effect on 1 October 2007), on 6 October 2009, by section 625(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 57B second subsection (7): added (with effect from 1 October 2007), on 19 December 2007, by section 207(9) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 57B second subsection (7): amended, on 1 April 2008, by section 207(10) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**58 Returns of specified charitable, benevolent, philanthropic, or cultural bodies**

Every gift-exempt body shall furnish, on request, by notice, of the Commissioner, a return of its funds derived or received in any tax year and showing the source and application of those funds, together with such other particulars as may be required by the Commissioner.

Compare: 1976 No 65 s 432A(3)

Section 58 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice,” after the word “request”.

Section 58 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**59 Disclosure of trust particulars**

- (1) Where any person resident in New Zealand at the time of settlement makes a settlement on or after 17 December 1987 to or for the benefit of a trust or on the terms of a trust and—
- (a) at the time of the settlement there was no trustee of that trust resident in New Zealand; or
  - (b) if at the time of the settlement there was a trustee of the trust resident in New Zealand, on any subsequent date there is no trustee of the trust resident in New Zealand,—
- that person shall disclose to the Commissioner in the prescribed form and within 3 months of the date of settlement or of the date on which there is no trustee of the trust resident in New Zealand the fact of that settlement, the name and address of the trustee and the beneficiary of the trust, and such further details as may be required by the Commissioner.
- (2) Where any person resident in New Zealand at the time of settlement would be treated as having made a settlement to or for the benefit of a trust or on the terms of a trust but for the application of section YB 21 of the Income Tax Act 2007, and where at the time of settlement there was no trustee of that trust resident in New Zealand, that person shall disclose to the Commissioner in the prescribed form within 3 months of the date of settlement the fact of that settlement, the name and address of the person who is deemed to be the settlor of the trust



under section YB 21 of that Act, and such further details as may be required by the Commissioner.

- (3) The trustee of every trust must in every case make a return of all income derived by the trustee as trustee of the trust, and each return is treated as being separate and distinct from any return made by the trustee in respect of another trust or in the trustee's own right.
- (4) Nothing in subsections (1) and (2) of this section or in section 93B shall apply to any trust that is a superannuation fund, or to any person in respect of a superannuation fund.
- (5) Nothing in subsections (1) and (2) of this section or in section 93B shall, before 1 April 1990, apply to any superannuation scheme constituted outside New Zealand and classified by the Government Actuary under regulation 29 or regulation 30 of the Superannuation Schemes Regulations 1983.

Compare: 1976 No 65 s 231

Section 59(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 627(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 59(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 627(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 59(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (3) was substituted by section 445 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (3) was substituted by section 79(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 1997-98 income year.

Section 59(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (4) and (5) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Section 59(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**59B Disclosure of foreign trust particulars**

- (1) A resident foreign trustee for a foreign trust must disclose to the Commissioner the following particulars for the foreign trust:
- (a) the name or other identifying particulars (for example, the date of the settlement on the trust) that relate to the foreign trust; and
  - (b) the name and contact particulars of the resident foreign trustees; and
  - (c) whether a settlor is resident in the Commonwealth of Australia; and
  - (d) if a resident foreign trustee claims to be a qualifying resident foreign trustee,—
    - (i) the name of the approved organisation; and
    - (ii) the name and contact particulars of the natural person whose membership of the approved organisation is claimed to satisfy the requirements of paragraph (a) or (b)(ii) of the definition of **qualifying resident foreign trustee** ; and
  - (e) if a resident foreign trustee has been appointed by another resident foreign trustee as an agent under subsection (7) or section 22(2C),—
    - (i) the name of the trustee appointed as agent; and
    - (ii) the name of the appointing trustee.
- (2) A resident foreign trustee must disclose to the Commissioner an alteration to a particular to which subsection (1) refers.
- (3) The disclosure required by subsections (1) and (2) and the application of section 22(2)(fb) and (m) is delayed for a period of 2 years (calculated from the date on which the trustee becomes a New Zealand resident) for a trustee who is a natural person and who was appointed a trustee of the foreign trust before becoming a New Zealand resident if the trustee—
- (a) becomes a New Zealand resident on or after 1 October 2006; and
  - (b) is not in the business of providing trustee services; and
  - (c) 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.

- (4) If subsection (3) does not apply, the disclosure required by subsection (1) must be made by the date that is,—
- (a) if the person is appointed on or after 1 October 2006, 30 days after the later of the following:
    - (i) the date of the person's appointment as a trustee:
    - (ii) the date of the person's arrival in New Zealand;or
  - (b) if the person is appointed before 1 October 2006, 60 days after the later of the following:
    - (i) the date of the commencement of this section:
    - (ii) the date of the person's arrival in New Zealand.
- (5) If subsection (3) does apply, the disclosure required by subsection (1) must be made by the date that is 30 days after the end of the period of 2 years that begins when the trustee becomes a New Zealand resident.
- (6) The disclosure required by subsection (2) must be made by,—
- (a) if subsection (3) does not apply, the date that is 30 days after the date on which the alteration becomes known to the trustee:
  - (b) if subsection (3) does apply, the date that is the later of—
    - (i) the date that is 30 days after the end of the period of 2 years that begins when the trustee becomes a New Zealand resident:
    - (ii) the date that would be given by paragraph (a) if subsection (3) did not apply.
- (7) If there are more than one resident foreign trustee of a foreign trust, the resident foreign trustees may appoint one of themselves as an agent for the purposes of making disclosure under this section.

Section 59B was inserted, as from 1 October 2006, by section 221 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

## **60 Returns of inter-related arrangements**

*[Repealed]*

Compare: 1976 No 65 s 64H

Subsection (1)(b) was substituted by section 446 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 60 was repealed, as from 20 May 1999, by section 70(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**61 Disclosure of interest in foreign company or foreign investment fund**

- (1) Where any person has at any time in an income year an income interest or a control interest in a foreign company or an attributing interest in a foreign investment fund, that person shall disclose to the Commissioner, in the prescribed form and within the time allowed by section 37 for providing the person's return of income for the relevant tax year,—
- (a) the existence and nature of that interest; and
  - (b) such other information as may be required by the Commissioner in respect of that interest for the purposes of the administration of the Income Tax Act 2007:
- provided that, unless the Commissioner requires, no person shall be required to disclose a control interest to the extent to which such control interest exists only by virtue of the application of EX 3(1)(b) or (d) of the Income Tax Act 2007.
- (1B) A resident foreign trustee of a foreign trust who makes the disclosure required by section 59B is exempt from the requirements of subsection (1).
- (1C) A portfolio tax rate entity that does not make payments of tax under section HL 23 of the Income Tax Act 2007 is required to make a disclosure under subsection (1) in the prescribed form by the due date for the entity's return under section 57B(6) for the tax year.
- (2) The Commissioner may exempt any person or class of persons from the requirements of subsection (1) where, in the opinion of the Commissioner, disclosure by that person or class or classes of persons is not necessary for the administration of the international tax rules.
- (3) The Commissioner may at any time cancel any exemption granted to any person or class or classes of persons under subsection (2).

Compare: 1976 No 65 s 245W

The heading to section 61 was amended by section 80(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the

words “foreign company or” after the word “in” with application as from 17 October 2002.

Section 61(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 628(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 61(1): amended (with effect on 1 April 2005), on 6 October 2009, by section 628(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (1), before paragraph (a), was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1) proviso was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EX 3(b) or (d) of the Income Tax Act 2004” for the words “paragraph (b) or paragraph (d) of section CG 4(2) of the Income Tax Act 1994”.

Subsection (1) was amended, as from 1 April 2005, by section 131 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “attributing interest in a foreign investment fund” for the words “interest in a foreign investment fund”.

Section 61(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 61(1) proviso: amended (with effect on 1 April 2008), on 6 October 2009, by section 628(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 61(1) proviso: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1B) was inserted, as from 1 October 2006, by section 222 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 61(1C): substituted (with effect on 1 April 2008), on 6 October 2009, by section 628(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 61(1C): inserted (with effect from 1 October 2007), on 19 December 2007, by section 208(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 61(1C): amended, on 1 April 2008, by section 208(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**62 Returns as to debentures and interest on debentures**

Every company or local or public authority shall from time to time, as required by the Commissioner, make a return giving such particulars as the Commissioner requires relative to debentures issued by that company or local or public authority, the holders of the debentures, and the interest paid or payable on the debentures.

Compare: 1976 No 65 s 431

**63 Commissioner to be notified of bonus issue**

Every company that makes any bonus issue in any year shall, within the time within which that company is required to furnish a return of its income for the tax year, deliver in writing to the Commissioner a statement showing particulars of every bonus issue so made in that year, together with such further particulars as may be required by the Commissioner.

Compare: 1976 No 65 s 13A

Section 63 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**64 Co-operative company to provide particulars of deemed dividend**

A co-operative company that makes an election in relation to a notional distribution under section OB 79 of the Income Tax Act 2007 shall—

- (a) furnish, with the return furnished under section 33 of this Act for the income year in which the determination is made, particulars of the dividend deemed to have been paid; and
- (b) retain such particulars as will enable the Commissioner to determine whether any subsequent distribution in respect of the deemed dividend is excluded from being a dividend under section CD 33(2) of the Income Tax Act 2007.

Compare: 1976 No 65 s 394ZA(3)

Section 64: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 64, before paragraph (a), was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Paragraph (a) was amended, as from 1 April 2005, by section 223(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Section 64(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “being a dividend under section CD 24(2) of the Income Tax Act 2004” for the words “the term ‘dividends’ under section CF 3(1)(j) of the Income Tax Act 1994”.

## **65 Information to be furnished with return by petroleum mining entity making dispositions of shares or trust interests**

Every controlled petroleum mining entity shall furnish to the Commissioner, with its annual return, the following information with respect to disposals to which section CX 42 or DT 13 of the Income Tax Act 2007 applies that are made during the relevant income year:

- (a) the date of the disposal; and
- (b) the number of shares, or the proportion of the trust represented by the trust interest, comprised in the disposal; and
- (c) the name and address of the person disposing of and the person acquiring the shares or trust interest.

Compare: 1976 No 65 s 214K(4)

Section 65: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 65 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “disposals to which section CX 36 or DT 13 of the Income Tax Act 2004” for the words “dispositions to which section CJ 6 or section DM 6 of the Income Tax Act 1994”.

Section 65 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 65 was amended, as from 1 April 2005, by section 224(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act

2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Paragraphs (a) and (b) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the word “disposal” for the word “disposition”.

## **66 Annual and other returns for PCA persons**

- (1) Every PCA person shall furnish to the Commissioner an annual PCA return in the prescribed form for each income year in respect of which the person is required to maintain such an account.
- (2) The annual return shall show—
  - (a) the opening and closing balances of the account for the income year:
  - (b) the amount and source of all credits and debits that have arisen during the income year in accordance with sections OJ 12 to OJ 18 of the Income Tax Act 2007:
  - (c) such further information as may be prescribed or as may be required by the Commissioner.
- (3) Every person liable to furnish an annual return under this section in respect of any income year shall furnish the return not later than the time allowed in accordance with section 37 for the furnishing of a return of income in respect of the income year.
- (4) The Commissioner may require a PCA person to furnish, within such time as the Commissioner may allow, a PCA return in respect of any period specified by the Commissioner.
- (5) A PCA person may furnish to the Commissioner, at any time, a PCA return in respect of the period commencing on the first day of any income year and ending with any day specified by the person within that income year, being a day that is not more than 7 days earlier than the date upon which the PCA return is furnished to the Commissioner.
- (6) A return referred to in subsection (4) or subsection (5) shall, except as the Commissioner may otherwise specify, contain the information referred to in subsection (2) as if the references in that subsection to an income year were,—



- (a) in the case of a return required to be furnished under subsection (4), references to the period specified by the Commissioner:
- (b) in the case of a return furnished under subsection (5), references to the period referred to in that subsection.

Compare: 1976 No 65 s 394ZZZI

Section 66 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 66(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1) was amended, as from 1 April 2005, by section 225(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (2)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (2)(a) was amended, as from 1 April 2005, by section 225(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Section 66(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2)(b) was amended, as from 1 April 2005, by section 225(3) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (3) was amended, as from 1 April 2005, by section 225(4) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” in both places they occur with application as from the income year corresponding to the 2005-06 tax year.

Section 66(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 66(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (5) was amended, as from 1 April 2005, by section 225(5) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” in both places they occur with application as from the income year corresponding to the 2005-06 tax year.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (6) was amended, as from 1 April 2005, by section 225(6) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “an income year” for the words “a tax year” with application as from the income year corresponding to the 2005-06 tax year.

## **67 Company dividend statement when ICA company declares dividend**

- (1) An ICA company that declares any dividend shall, at the time it declares the dividend, complete and retain a company dividend statement in a form approved by the Commissioner showing—
- (a) the number of shares in respect of which the dividend is declared or, in the case of a dividend that is a bonus issue, the number of shares included in the bonus issue:
  - (b) the date the dividend is declared and the date of payment of the dividend:
  - (c) the total amount paid as dividends in respect of the shares or, in the case of a dividend that is a bonus issue, the amount of the bonus issue as determined in accordance with section CD 7 or CD 8 of the Income Tax Act 2007:
  - (d) the total amount of the imputation credits attached in respect of the dividend (which amount shall be shown as a nil amount where no credits are attached):
  - (e) the imputation ratio of the dividend:
  - (eb) if the dividend was paid in Australian currency by an Australian ICA company, the exchange rate between the New Zealand dollar and the Australian dollar that was used to calculate the imputation ratio:

- (f) such further information as may be required by the Commissioner.
- (2) Every company to which this section applies shall, not later than the time allowed in accordance with section 37 for the furnishing of a return of income in respect of an income year, furnish to the Commissioner any company dividend statement required to be completed in the tax year.

Compare: 1976 No 65 s 394H

Section 67 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 67(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 67(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CD 6 or CD 7 of the Income Tax Act 2004” for the words “section CF 2(6) of the Income Tax Act 1994”.

Subsection (1)(eb) was inserted, as from 1 April 2003, by section 111 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 67(1)(eb): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 67(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2) was amended, as from 1 April 2005, by section 226(1)(a) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “an income year” for the words “a tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (2) was amended, as from 1 April 2005, by section 226(1)(b) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “that income year” for the words “that tax year” with application as from the income year corresponding to the 2005-06 tax year.

**68 Statement when FDP credit attached to dividend**

Where an FDPA company attaches an FDP credit to a dividend, the company shall include in the company dividend statement required by section 67 the following information:

- (a) the total amount of the FDP credits attached in respect of the dividend:
- (b) the FDP ratio of the dividend:
- (c) where any imputation credit has also been attached to the dividend, the combined imputation and FDP ratio of the dividend.

Compare: 1976 No 65 s 394ZZA

Section 68 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 68: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 68(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 68(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 68(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**68A Statement when CTR credit attached to dividend**

If a CTR company attaches a CTR credit to a dividend, the company must include the following information in the company dividend statement required by section 67:

- (a) the CTR additional dividend paid under section LQ 5 of the Income Tax Act 2007:
- (b) the FDP ratio, calculated as if the credit were an FDP credit:
- (c) the combined imputation and FDP ratio, calculated as if the credit were an FDP credit, if an imputation credit has been attached to the dividend.

Section 68A: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 68A was inserted by section 44(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application to dividends paid as from 1 April 1998.

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

**68B Distribution statement required when Maori authority makes distribution**

- (1) A Maori authority that makes a distribution to a member must, at the time it makes the distribution, complete and retain a distribution statement that contains the following:
  - (a) the date on which the distribution is made;
  - (b) the total amount of distributions made;
  - (c) the total amount of Maori authority credits attached to the distributions (to be shown as a nil amount if Maori authority credits are not attached);
  - (d) the Maori authority credit ratio of the distribution;
  - (e) such further information as the Commissioner may require.
- (2) A Maori authority must, no later than the time allowed by section 37 for furnishing a return of income for a tax year, furnish to the Commissioner the distribution statement for the imputation year that corresponds with the tax year.

Section 68B was inserted by section 98(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 68(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**68C Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form**

- (1) This section applies to a person’s fund provider.
- (2) The fund provider must claim a tax credit under section MK 1(1) of the Income Tax Act 2007 for the person for a member credit year, if the fund provider—
  - (a) is the person’s fund provider on—
    - (i) 30 June of the member credit year; or
    - (ii) the day in the member credit year that is before the person ceases to be a member of the fund provider’s fund or scheme due to permitted withdrawals other than transfers; and

- (b) is reasonably satisfied of the number of days in the member credit year on which the person resides mainly in New Zealand; and
  - (c) has no knowledge that the person does not meet the requirements of section MK 2(1)(a) to (c), and (d)(i) and (ii) of that Act for any part of the member credit year.
- (3) The fund provider must claim a tax credit for the person for the member credit year by furnishing to the Commissioner a member credit claim in relation to the person, in the form prescribed by the Commissioner. The member credit claim must—
- (a) contain the person's name, address, and (if known) tax file number, the amount of the person's member credit contributions for the member credit year, and any other information that the Commissioner may require; and
  - (b) *[Repealed]*
- (4) The fund provider may claim an amount of a tax credit under section MK 1(1) of the Income Tax Act 2007 for the person if the provider meets the requirements of subsections (2)(b) and (c), and is satisfied that the amount of tax credit has not previously been claimed. A claim under this subsection may be supplementary to or included in a claim under subsection (3), and must be in the form prescribed under subsection (3).

Section 68C was inserted, as from 1 July 2007, by section 56 Taxation (Kiwi-Saver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 68C(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 630(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68C(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 630(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68C(2)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 630(1)(c) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68C(3)(a): amended (with effect from 1 July 2007), on 19 December 2007, by section 18(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 68C(3)(b): repealed, on 6 October 2009, by section 630(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68C(4): substituted (with effect from 1 July 2007), on 19 December 2007, by section 18(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 68C(4) was amended, as from 1 April 2008, by section 18(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

**68D Statements in relation to research and development tax credits: single persons**

- (1) *[Repealed]*
- (2) A person who is not a member of an internal software development group must furnish, in the form and electronic format prescribed by the Commissioner, a statement in relation to research and development tax credits under section LH 2 of the Income Tax Act 2007 that they claim for a tax year.
- (3) The statement described in subsection (2) must be furnished to the Commissioner no later than—
  - (a) the day that is 30 days after the last day for furnishing a return of income for the relevant tax year under section 37; or
  - (b) the day that is 2 years after the last day for furnishing a return of income for the relevant tax year under section 37, if—
    - (i) that tax year is the 2008–09 tax year; and
    - (ii) the person has not claimed, in a return of income for that tax year, research and development tax credits under section LH 2 of the Income Tax Act 2007.
- (4) *[Repealed]*

Section 68D: inserted, on 19 December 2007, by section 209(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 68D(1): repealed (with effect on 1 April 2008), on 6 October 2009, by section 631(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68D(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 631(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68D(3)(b)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 631(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68D(4): repealed (with effect on 1 April 2008), on 6 October 2009, by section 631(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**68E Statements in relation to research and development tax credits: internal software development groups**

- (1) The nominated member of an internal software development group must furnish, in the electronic format prescribed by the Commissioner, a statement relating to the research and development tax credits that the members of the group have under section LH 2 of the Income Tax Act 2007 for a tax year.
- (2) The statement described in subsection (1) must be furnished to the Commissioner no later than—
  - (a) the day that is—
    - (i) 30 days after the latest day for a member of the group to furnish a return of income or joint return of income under section 37 for the relevant tax year; or
    - (ii) a later day allowed by the Commissioner, if the Commissioner considers that a failure to meet the requirements of subparagraph (i) is a result of simple oversight; or
  - (b) the day that is 2 years after the latest day for a member of the group to furnish a return of income under section 37 for the relevant tax year if—
    - (i) the tax year is the 2008–09 tax year; and
    - (ii) no member has an amount of a research and development tax credit under section LH 2 in a return of income for that tax year.

Section 68E: substituted (with effect on 1 April 2008), on 6 October 2009, by section 632(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 68E: inserted, on 19 December 2007, by section 209(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**68F Requirements for statements in relation to research and development tax credits**

- (1) A person making a statement in relation to a research and development tax credit under section 68D or 68E is excluded from the following requirements:
  - (a) the requirement under section 23(1) to retain a copy of their statement for 7 years;
  - (b) the requirement under section 36(3) to print off and sign a copy of the statement.



- (2) A person making a statement in relation to a research and development tax credit under section 68D or 68E is not taking a tax position in relation to which a liability to a tax shortfall under section 141 may arise.

Section 68F: inserted (with effect on 1 April 2008), on 6 October 2009, by section 633(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **69 Annual ICA return**

- (1) An imputation credit account (ICA) company must provide to the Commissioner an annual ICA return in the prescribed form for a tax year, showing —
- (a) the opening balance and closing balance of the imputation credit account for the tax year:
  - (b) the amount and source of all credits and debits that have arisen during the tax year as described in sections OA 5(2) and OA 6(2) of the Income Tax Act 2007:
  - (c) the amount of any further income tax payable for the tax year under sections OB 65 to OB 67 of that Act:
  - (d) the amount of any imputation penalty tax payable for the tax year:
  - (e) when the company is a branch equivalent tax account (BETA) company,—
    - (i) the opening balance and closing balance of the company's branch equivalent tax account for the tax year:
    - (ii) the amount and source of all credits and debits to the company's branch equivalent tax account for the tax year that have arisen as described in sections OA 5(5)(a) and OA 6(5)(a) of that Act:
  - (f) when the company is a conduit tax relief (CTR) company for the tax year,—
    - (i) the opening and closing balances of the company's CTR account for the tax year:
    - (ii) the amount and source of all credits and debits that have arisen in the company's CTR account as described in sections OA 5(4) and OA 6(4) of that Act:
  - (g) when the company is a policyholder credit account (PCA) company,—

- (i) the opening balance and closing balance of the company's policyholder credit account for the tax year:
    - (ii) the amount and source of all credits and debits to the company's policyholder credit account for the tax year that have arisen as described in sections OA 5(7)(a) and OA 6(7)(a) of that Act:
  - (h) when the company is a public unit trust or a group investment fund that derives category A income —
    - (i) the opening and closing balances of the trust's or fund's ASC account for the tax year:
    - (ii) the amount and source of all credits and debits that have arisen in the trust's or fund's ASC account as described in sections OA 5(6) and OA 6(6) of that Act:
  - (i) further information as may be prescribed or required by the Commissioner.
- (2) The annual ICA return required for the tax year by subsection (1) must be provided to the Commissioner no later than—
- (a) the last day of the July that follows the end of the tax year, if the ICA company is an Australian ICA company that is not required to file a return of income for the tax year:
  - (b) if paragraph (a) does not apply, the last day on which the ICA company is permitted under section 37 to file a return of income for the tax year.

Section 69: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) (that part before paragraph (a)) was substituted, as from 1 April 2003, by section 112(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (1)(b), (c), and (e)(ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (1)(ea) was inserted by section 45 Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application as from the 1998-99 income year.

Subsection (1)(ea)(ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (1)(ea)(ii) was amended, as from 1 April 2005, by section 132 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the expression "subpart MI" for the expression "Part MI".

Subsection (1)(f)(ii) and (fa)(ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(fa) was inserted by section 81(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from the 2002-03 income year.

Subsection (1B) was inserted, as from 1 April 2003, by section 112(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (1B)(a) was amended, as from 1 April 2005, by section 227(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “tax year” for the words “income year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (1B)(b) was amended, as from 1 April 2005, by section 227(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “tax year” for the words “income year” with application as from the income year corresponding to the 2005-06 tax year.

Subsections (2) and (3) were repealed by section 99(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 imputation year.

Subsection (4) was inserted by section 45 Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application as from the 1998-99 income year.

Subsection (4) was repealed by section 99(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 imputation year.

### **69B Annual Maori authority credit account return required by Maori authority**

- (1) A Maori authority must, no later than the time allowed by section 37 for furnishing a return of income for a tax year, furnish to the Commissioner an annual Maori authority credit account return in the prescribed form for the tax year.
- (2) The annual Maori authority credit account return must show—
  - (a) the opening and closing balances of the Maori authority credit account for the tax year:
  - (b) the amount and sources of all credits and debits that have arisen during the tax year in accordance with sections OK 2 to OK 18 of the Income Tax Act 2007:
  - (c) the amount of any further income tax payable for the tax year under sections OK 21 and OK 22 of that Act:
  - (d) the amount of any Maori authority distribution penalty tax payable for the tax year:

- (e) such further information as the Commissioner may prescribe or require.

Section 69B was inserted by section 100(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 69B(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 69B(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 69B(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(b) and (c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 69B(2)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 69B(2)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**70 Annual ICA return to be furnished if: required by Commissioner; requirement for imputation credit account ceases; or balance retrospectively reduced to debit or to less than refund**

- (1) The Commissioner may require an ICA company to furnish, within such time as the Commissioner may allow, an annual ICA return in respect of any period specified by the Commissioner.
- (2) A company that in any tax year ceases to be an ICA company shall furnish to the Commissioner, not later than 2 calendar months after the last day on which it is still an ICA company, an imputation return in respect of the period commencing on the first day of the tax year and ending with the last day on which the company is an ICA company.
- (2B) An ICA company or consolidated imputation group that is affected by a refund or transfer relating to an amount in a tax pooling account, and occurring after the end of a tax year, must

furnish to the Commissioner a revised return for the tax year within 2 calendar months of the date of the refund or transfer if, as a result of the application of section OB 34, OB 35, OP 32, or OP 33 of the Income Tax Act 2007, the refund or transfer causes the balance of the imputation credit account of the company or group for the end of the tax year to become—

- (a) a debit balance:
  - (b) a balance that is less than the amount of a refund that the company would anticipate receiving but for sections RM 13 to RM 17, RM 32, and RZ 6 of the Income Tax Act 2007.
- (3) An ICA company may furnish to the Commissioner, at any time, an annual ICA return in respect of the period commencing on the first day of any tax year and ending with any day specified by the company within that tax year, being a day that is not more than 7 days earlier than the date on which the annual ICA return is furnished to the Commissioner.
- (4) An annual ICA return furnished under this section shall, except where the Commissioner otherwise specifies, contain the matters referred to in section 69 as if the references in that section to a tax year were—
- (a) in the case of a return required to be furnished under subsection (1) of this section, references to the period specified by the Commissioner:
  - (b) in the case of a return required to be furnished under subsection (2) of this section, references to the period referred to in that subsection:
  - (c) in the case of a return furnished under subsection (3) of this section, references to the period referred to in that subsection.

Compare: 1976 No 65 s 394K

The heading to section 70 was substituted, as from 25 November 2003, by section 113(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 70 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 70(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 70(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2B) was inserted, as from 25 November 2003, by section 113(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 70(2B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2B), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section ME 5(2)(eb) or ME 12(2)(da) of the Income Tax Act 2004” for the words “section ME 5(2)(ec) or ME 12(2)(db) of the Income Tax Act 1994”.

Section 70(2B)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2B)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 70(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 70(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **70B Annual Maori authority credit account return to be furnished in particular cases**

- (1) The Commissioner may require a Maori authority to furnish, within the time allowed by the Commissioner, a Maori authority credit account return for a period specified by the Commissioner.
- (2) A Maori authority that ceases to be a Maori authority in a tax year must furnish to the Commissioner, no later than 2 calendar months after the last day on which it is still a Maori authority, a Maori authority credit account return for the period beginning on the first day of the tax year and ending on the last day on which the Maori authority is a Maori authority.
- (3) A Maori authority may furnish to the Commissioner, at any time, a Maori authority credit account return for a period beginning on the first day of a tax year and ending on a day specified by the Maori authority within the tax year, being a day that is not more than 7 days earlier than the date on which the Maori authority credit account return is furnished to the Commissioner.
- (4) A Maori authority credit account return furnished under this section must, except if the Commissioner otherwise specifies,

contain the matters referred to in section 69B as if the references in that section to a tax year were—

- (a) in the case of a return required to be furnished under subsection (1), references to the period specified by the Commissioner; and
- (b) in the case of a return required to be furnished under subsection (2) or subsection (3), references to the period referred to in subsection (2) or subsection (3) respectively.

Section 70B was inserted by section 101(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 70B(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 70B(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 70B(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **71 Annual FDPA return**

A foreign dividend payment (FDPA) company must, not later than the time allowed under section 37 for providing a return of income for an income year, provide to the Commissioner an annual FDPA return in the prescribed form for the tax year corresponding to the income year, showing—

- (a) the opening and closing balances of the FDP account for the tax year;
- (b) the amount and source of all credits and debits that have arisen during the tax year as described in sections OA 5(3) and OA 6(3) of the Income Tax Act 2007;
- (c) the amount of FDP payable for the tax year under sections OC 30 to OC 32 of that Act;
- (d) the amount of FDP penalty tax payable for the tax year;
- (e) whether the company has chosen under section OC 4(1) of that Act to stop being an FDPA company;
- (f) the amount and source of every foreign dividend paid to the company during the year, and the amount of FDP paid for the foreign dividend;
- (g) further information as may be prescribed or required by the Commissioner.

Section 71: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 71 (before paragraph (a)) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Section 71 (before paragraph (a)) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 71 (before paragraph (a)) was amended, as from 1 April 2005, by section 228(1)(a) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “an income year” for the words “a tax year” with application as from the income year corresponding to the 2005-06 tax year.

Section 71 (before paragraph (a)) was amended, as from 1 April 2005, by section 228(1)(b) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “that income year” for the words “that tax year” with application as from the income year corresponding to the 2005-06 tax year.

Paragraphs (b), (c), and (e) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### ***Foreign dividends***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **71B Return requirements for refunds: foreign dividends**

- (1) This section applies for the purposes of section RM 21(3) of the Income Tax Act 2007 when a loss balance is used to reduce a company’s net income for an income year in which a foreign dividend is paid.
- (2) The company described in section RM 21(1) of that Act must—
  - (a) file a return of income under section 33 for the income year in which the tax loss arose; and
  - (b) file a return of income under section 33 for the current income year; and
  - (c) apply to the Commissioner for the refund of the FDP.
- (3) The company described as group company B in section RM 21(2) of that Act must—
  - (a) file a return of income under section 33 for the income year in which the tax loss arose; and



- (b) notify the Commissioner that payment of some or all of the FDP is satisfied by reducing the tax loss.

Compare: 2004 No 35 s NH 4(5)(b), (c)

Section 71B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**72 Annual FDPA return to be furnished where Commissioner so requires, or where company ceases to be resident in New Zealand**

- (1) The Commissioner may require an FDPA company to furnish, within such time as the Commissioner may allow, an FDPA return in respect of any period specified by the Commissioner.
- (2) An FDPA company that in any tax year ceases to be resident in New Zealand shall furnish to the Commissioner, not later than 2 calendar months after the last day on which it is still resident, an FDPA return in respect of the period commencing on the first day of the tax year and ending with the last day on which the company is so resident.
- (3) A return required to be furnished under this section shall, except where the Commissioner otherwise specifies, contain the matters referred to in section 71 as if the references in that section to a tax year were—
  - (a) in the case of a return required to be furnished under subsection (1) of this section, references to the period specified by the Commissioner:
  - (b) in the case of a return required to be furnished under subsection (2) of this section, references to the period referred to in that subsection.

Compare: 1976 No 65 s 394ZZD

Section 72 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 72(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 72(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 72(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**73 Annual FDPA returns of consolidated groups**

The nominated company for a consolidated group shall, in respect of that consolidated group, comply with sections 71 and 72 as if—

- (a) the group were a single company; and
- (b) each reference in those sections to a provision of this Act or of the Income Tax Act 2007 were, where appropriate, a reference to the equivalent provision applicable to consolidated groups.

Compare: 1976 No 65 s 191UD

Section 73 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 73(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

**74 Annual ICA return to be furnished in respect of consolidated imputation group**

- (1) A nominated company for a consolidated imputation group must, subject to subsection (2), comply in respect of the group with sections 69 and 70 as if—

- (a) the group were a single company; and
  - (b) the reference in section 70(2) to that company ceasing to be an ICA company were a reference to the consolidated imputation group—
    - (i) ceasing to be a consolidated imputation group; or
    - (ii) ceasing to be an imputation group and becoming a consolidated group that is a consolidated imputation group; or
    - (iii) ceasing to be a consolidated group that is a consolidated imputation group and becoming an imputation group
- ; and
- (c) each reference in those sections to a provision of this Act or of the Income Tax Act 2007 were, where appropriate, a reference to the equivalent provision applicable to a consolidated imputation group.

- (2) The nominated company for a resident imputation subgroup is not required to furnish an annual ICA return under section 69 in respect of the group for a tax year if the group has no liability to make a payment under section OP 6 of the Income Tax Act 2007 for the tax year.

Compare: 1976 No 65 s 191SD(3)

Section 74 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 74 was amended, as from 1 April 2003, by section 114(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “consolidated imputation group” for the words “consolidated groups”.

Subsection (1) (that part before paragraph (a)) was substituted, as from 1 April 2003, by section 114(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 74(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2003, by section 114(3) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “consolidated group ceasing to exist” for the words “consolidated imputation group—”.

Section 74(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2003, by section 114(4) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “consolidated imputation group” for the words “consolidated groups”.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was inserted, as from 1 April 2003, by section 114(5) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 74(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of the Income Tax Act 2004” after the words “section ME 14(3)”.

## **75 Notification of amalgamation to Commissioner**

Where an amalgamation occurs, the amalgamated company shall, within 63 working days of the date upon which—

- (a) documents evidencing the amalgamation are delivered to the Registrar of Companies for registration under Part

- 5A or Part 5C of the Companies Act 1955 or Part 13 or Part 15 of the Companies Act 1993; or
- (b) in the case of any amalgamation under section 24A of the Co-operative Dairy Companies Act 1949, the extraordinary resolution referred to in subsection (3)(g) of that section is passed; or
  - (c) in the case of any amalgamation occurring under foreign law, the equivalent procedure occurs under foreign law,—

give notice to the Commissioner, in such form as the Commissioner may approve, detailing—

- (d) The name and tax file number (if any) of each amalgamating company and the amalgamated company; and
- (e) the date upon which the amalgamation has effect; and
- (f) in any case where the amalgamated company has a non-standard balance date, the non-standard balance date; and
- (g) such other information as the Commissioner may require.

Compare: 1976 No 65 s 191WD(3); 1994 No 76 s 29

Section 75 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

## **76 Amalgamated company to assume rights and obligations of amalgamating company**

Where any amalgamating company ceases to exist on an amalgamation, the amalgamated company shall, in accordance with section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993,—

- (a) comply with all obligations of and meet all liabilities of, and be entitled to all rights, powers and privileges of, the amalgamating company under the Inland Revenue Acts with respect to the tax year in which the amalgamation occurs and all preceding tax years; and
- (b) in particular but without limitation, make a return of income in respect of the amalgamating company and the tax year in which the amalgamation takes place.

Compare: 1976 No 65 s 191WD(7); 1994 No 76 s 29

Section 76 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

**77 Company electing to maintain branch equivalent tax account to furnish amended annual ICA return**

Where any company—

- (a) has made an election under section OE 3 of the Income Tax Act 2007 after the end of the tax year after the end of the imputation year in respect of which the election is made; and
- (b) has furnished to the Commissioner before the election was made an annual ICA return for that year in the prescribed form which does not include the information prescribed in section 69(1)(e),—

the company shall immediately after the making of that election furnish an amended annual ICA return for that tax year including that information.

Compare: 1976 No 65 s 394ZZN(6)

Section 77 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 77: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 77(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 77(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**78 Annual and other returns for BETA persons**

- (1) Every BETA person shall furnish to the Commissioner an annual BETA return in the prescribed form for each income year in respect of which the person is required to maintain such an account.
- (2) The annual return shall show—

- (a) The opening and closing balances of the account for the income year:
  - (b) The amount and source of all credits and debits that have arisen during the income year as described in sections OA 5(5) and OA 6(5) of the Income Tax Act 2007:
  - (c) Such further information as may be prescribed or as may be required by the Commissioner.
- (3) Every person liable to furnish an annual return under this section in respect of any income year shall furnish the return not later than the time allowed in accordance with section 37 for the furnishing of a return of income in respect of the income year.
- (4) The Commissioner may require a BETA person to furnish, within such time as the Commissioner may allow, a BETA return in respect of any period specified by the Commissioner.
- (5) A BETA who ceases to be resident in New Zealand shall furnish to the Commissioner, not later than the last day on which the company or person is so resident, a BETA return in respect of the period commencing on the first day of the income year and ending with the last day on which the person is resident in New Zealand.
- (6) A return required to be furnished under subsection (4) or subsection (5) shall, except as the Commissioner may otherwise specify, contain the information referred to in subsection (2) as if the references in that subsection to an income year were,—
- (a) in the case of a return required to be furnished under subsection (4), references to the period specified by the Commissioner:
  - (b) in the case of a return required to be furnished under subsection (5), references to the period referred to in that subsection.

Compare: 1976 No 65 s 394ZZW

Section 78 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 78(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1) was amended, as from 1 April 2005, by section 229(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2)(a) was amended, as from 1 April 2005, by section 229(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Section 78(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2)(b) was amended, as from 1 April 2005, by section 229(3) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Subsection (3) was amended, as from 1 April 2005, by section 229(4) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” in both places that they occur with application as from the income year corresponding to the 2005-06 tax year.

Section 78(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 78(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (5) was amended, as from 1 April 2005, by section 229(5) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (6) was amended, as from 1 April 2005, by section 229(6) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “an income year” for the words “a tax year” with application as from the income year corresponding to the 2005-06 tax year.

### **78B Applications for tax credits**

- (1) A taxpayer who has a tax credit under section LJ 2 or LK 1 of the Income Tax Act 2007 must apply for the credit within 4 years after the end of the tax year in which the taxpayer would have the credit in the absence of this section. The Commissioner may extend this 4-year period by another period of up to 2 years.
- (2) The taxpayer must provide with the application under subsection (1) information that is necessary to determine the amount of the credit.

Compare: 2004 No 35 s LC 13(1)

Section 78B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **78C Disclosure when changes occur**

A taxpayer must provide to the Commissioner, as soon as possible, all relevant information if —

- (a) an amount referred to in section LJ 6 of the Income Tax Act 2007 is changed; and
- (b) the change occurs after the taxpayer has made an application under section 78B.

Compare: 2004 No 35 s LC 13(2)

Section 78C: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **78D Evidential requirements for tax credits**

A taxpayer who has a tax credit under section LB 3 or subparts LE, LF, or LO of the Income Tax Act 2007, must provide the Commissioner with sufficient evidence of the credit, including, as applicable—

- (a) for an imputation credit, a shareholder dividend statement:



- (b) for an FDP credit, a shareholder dividend statement for the FDP credit:
- (c) for a credit for RWT, an RWT withholding certificate for the amount of RWT:
- (d) for a Maori authority credit, a Maori authority distribution statement for the credit:
- (e) any other information that the Commissioner may require.

Compare: 2004 No 35 ss LB 2(4), LD 3(4), LD 3A(5), LD 8(3), LD 9(4)

Section 78D: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **78E Information for underlying foreign credits**

*[Repealed]*

Section 78E: repealed (with effect on 30 June 2009), on 6 October 2009, by section 634(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 78E: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **78F Time for providing information in relation to underlying foreign credits**

*[Repealed]*

Section 78F: repealed (with effect on 30 June 2009), on 6 October 2009, by section 635(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 78F: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **79 Other annual returns**

In addition to the returns required by sections 33 and 41 to 44, every person, whether a taxpayer or not, shall make to the Commissioner such annual returns as may be prescribed for the purposes of this Act or the Income Tax Act 2007.

Compare: 1976 No 65 s 13

Section 79: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 79 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

**80 Commissioner may require other returns to be made**

In addition to the returns mentioned in sections 33, 41 to 44, 63, and 79, every person, whether a taxpayer or not, shall, as and when required by the Commissioner, make such further or other returns as the Commissioner requires for the purposes of this Act or the Income Tax Act 2007.

Compare: 1976 No 65 s 14

Section 80: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **Part 3A**

#### **Income statements**

**80A Application**

- (1) This Part applies to a natural person who derives income from employment, or receives interest and dividends, and who—
- (a) is a person to whom section 33A(5) applies; or
  - (b) is a person exempted under section 33A from the requirement to furnish an annual return of income or to be issued an income statement and who asks the Commissioner to issue an income statement under section 80C(4); or
  - (c) is a person exempted under section 33A from the requirement to furnish an annual return of income and is a person to whom an income statement is not required to be issued but who has been issued an income statement under section 80D(2).
- (2) This Part applies to the 1999-2000 and subsequent tax years.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

**80B Notification required that taxpayer not subject to this Part**

- (1) A natural person who receives an income statement and who is not subject to this Part in a tax year because the person derived

income other than from employment, interest or dividends, or who is a person to whom section 33A(2) applies, must inform the Commissioner that the person is not (for that tax year) subject to this Part.

- (2) The information required must be received by the Commissioner no later than the person's terminal tax date for the tax year to which the income statement relates.
- (3) *[Repealed]*
- (4) An income statement to which section 80B(1) refers is to be regarded as not having been issued.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1) was amended by section 65(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) by substituting the words "interest or dividends" for the words "or received interest or dividends", with application as from the 1999-2000 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "a tax year" for the words "an income year".

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax year" for the words "income year".

Subsection (2) was substituted by section 63(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from the 1999-2000 income year.

Subsection (2) was substituted by section 102(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (3) was amended by section 63(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression "section NC 17(2)" for the expression "section NC 17", with application as from the 1999-2000 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax year" for the words "income year".

Subsection (3) was repealed by section 102(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

### **80C Natural person to request income statement**

- (1) A person to whom section 33A(5) refers and who has not received an income statement must request the Commissioner to issue an income statement.

- (1A) Subsection (1) does not apply to a person who has received resident passive income from which insufficient RWT was withheld due to an error made by the payer.
- (2) The request must be received by the Commissioner no later than the person's terminal tax date for the tax year to which the income statement relates.
- (3)
- (4) A person to whom section 33A(1) applies may at any time after the end of the person's tax year request the issue of an income statement relating to that year.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1A) was inserted by section 66(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Section 80C(1A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was substituted by section 64(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from the 1999-2000 income year.

Subsection (2) was substituted by section 103(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax year" for the words "income year".

Subsection (3) was amended, by section 64(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression "section NC 17(2)" for the expression "section NC 17", with application as from the 1999-2000 income year.

Subsection (3) was repealed by section 103(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "tax year" for the words "income year".

### **80D Commissioner must issue income statement**

- (1) For each income year, the Commissioner must issue an income statement to a person who the Commissioner considers—
  - (a) derived in the tax year income that was—
    - (i) income from employment:
    - (ii) interest:

- (iii) dividends; and
- (b) did not derive in the tax year any income that is not referred to in paragraph (a); and
- (c) is a person—
  - (i) to whom section 33A(1) does not apply;
  - (ii) to whom section 33A(1) does apply and who requests the Commissioner to issue an income statement;
  - (iii) to whom section 33A(1) does apply and who is required by section RD 4(2) of the Income Tax Act 2007 to provide to the Commissioner an employer monthly schedule relating to a PAYE income payment that the person derived in the tax year.
- (2) Despite subsection (1), the Commissioner may issue an income statement to a person at any time if the Commissioner considers the person has received income in a tax year.
- (3) The Commissioner may issue more than one income statement in respect of a tax year to a person.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1) was substituted by section 115(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2003-04 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” in both places it appears.

Section 80D(1)(c)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was amended by section 65(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) by omitting the word “annual” with application as from 10 October 2000.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsections (2) and (3) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

**80E Particulars to be included in income statement**

- (1) An income statement issued under this Part must contain the information specified in subsection (2) to the extent that the information is both available and applicable to the person's circumstances.
- (2) The information is—
  - (a) the amount of a natural person's annual gross income for the tax year that the Commissioner considers was derived from employment, or interest, or dividends; and
  - (b) the sources of the annual gross income for the tax year in paragraph (a); and
  - (c) the amounts of the tax withheld for PAYE income payments and other income made in relation to the annual gross income for the tax year; and
  - (d) the amount of earner premium or earner levy deducted in respect of the person; and
  - (e) a calculation of the income tax liability of the person, including any tax payable or refund due; and
  - (ea) for a person to whom a notice of entitlement has been given under section 80KD, particulars relating to Working for Families tax credits; and
  - (f) any further particulars the Commissioner considers necessary.
- (3) Information required under subsection (2)(ea) may be placed on a separate form and still remain part of the income statement.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1) was substituted by section 66(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Subsection (2)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words "for the tax year" after the words "annual gross income".

Section 80E(2)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "annual gross income for the tax year" for the words "gross annual income".

Subsection (2)(d) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by in-

serting, after the word “premium”, the words “or earner levy”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (2)(ea) was inserted by section 66(2) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

Section 80E(2)(ea): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80E(2)(ea): amended (with effect from 1 April 2007), on 19 December 2007, by section 210(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2)(ea) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (3) was inserted by section 66(3) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

#### **80F Taxpayer obligations and assessment on receipt of income statement**

- (1) Unless subsection (4) applies, a person who receives an income statement that the person considers is incorrect must inform the Commissioner, not later than the date prescribed in subsection (2), of the reasons why the person considers the income statement is incorrect and provide the information the taxpayer considers necessary to correct the income statement.
- (2) A person must inform the Commissioner by the later of—
  - (a) the person’s terminal tax date for the tax year to which the income statement relates; and
  - (b) the date that occurs 2 months after the date the income statement is issued.
- (3) *[Repealed]*
- (4) A person is not required to inform the Commissioner of an amount of annual gross income for the tax year from employment, interest, or dividends that is not included in the income statement unless the total amount is more than \$200.
- (5) For the purposes of subsection (4), the amount of annual gross income for the tax year from interest must not include an amount of interest in relation to which there was no requirement to prepare a RWT withholding certificate under section 25(7).

- (6) If the Commissioner accepts as correct the information given by the person under subsection (1), the Commissioner must issue another income statement that incorporates that information.
- (6A) Subsection (6) does not apply if—
- (a) the taxpayer receives an income statement due to incorrect information held by the Commissioner; and
  - (b) Section 33A(1) applies to the taxpayer; and
  - (c) the taxpayer has not requested an income statement.
- (7) If the Commissioner does not accept as correct all the information given by the person under subsection (1), the Commissioner may issue to the person a further income statement or an assessment that includes those particulars in section 80E that the Commissioner accepts as being applicable to the person.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1) was amended by section 104(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the expression “or (3)” with application as from the 2002-03 income year.

Subsection (2) was substituted by section 66(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from the 1999-2000 income year.

Subsection (2) was substituted by section 104(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (3) was amended by section 66(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “section NC 17(2)” for the expression “section NC 17”, with application as from the 1999-2000 income year.

Subsection (3) was repealed by section 104(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsections (4) and (5) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “annual gross income for the tax year” for the words “gross annual income” wherever they appear.

Section 80F(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Subsection (6A) was inserted by section 68(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1999-2000 income year.

### **80G Income statement deemed return**

- (1) This section applies to a person to whom—
  - (a) an income statement is required to be issued and who considers that the income statement correctly summarises the particulars listed in section 80E(2) that apply to that person:
  - (b) an income statement is issued and who does not inform the Commissioner of the reasons why the person considers that the income statement is incorrect.
- (2) Except in section 37, an income statement issued to a person to whom subsection (1) applies is deemed to be a return of income furnished by the person under section 33 and to contain a notice of assessment signed by the person.
- (3) Unless a taxpayer responds in the manner required under section 80F, each tax position taken in an income statement issued by the Commissioner is deemed to be a taxpayer's tax position.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (2) was amended by section 69(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) by substituting the words "Except in section 37" for the words "Except in sections 37 and 38" with application as from the 1999-2000 income year.

Subsection (2) was amended, by section 199 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words "to contain a notice of assessment signed" for the words, "to be signed", with application as from the 2002-03 income year.

### **80H Income statement deemed assessment**

- (1) A person is treated as having made an assessment under section 92 in respect of an income statement that is deemed to be a return of income under section 80G(2).
- (2) *[Repealed]*
- (3) Unless subsection (4) or (6) applies, an assessment under subsection (1) is treated as being made on the earliest of—

- (a) *[Repealed]*
  - (ab) *[Repealed]*
  - (b) the person's terminal tax date for the tax year to which the income statement relates; or
  - (c) the 30th day after the date of issue of an income statement if the statement shows an amount of tax is overpaid and that amount does not exceed the amount specified in section RM 5 of the Income Tax Act 2007; or
  - (d) the date on which the person requests a refund of tax under section RM 5 of the Income Tax Act 2007.
- (4) An assessment under subsection (1) is treated as being made on the date that is 2 months after the date an income statement is issued if the income statement is issued not more than 2 months before the person's terminal tax date.
- (5) *[Repealed]*
- (6) If a person is first issued with an income statement for a tax year after their terminal tax date, an assessment under subsection (1) is—
- (a) treated as having been made on the date that is 2 months after the date the first income statement is issued; and
  - (b) treated as reflecting the tax position taken in the last income statement issued by the Commissioner in that 2-month period.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

The heading to section 80H was substituted, by section 200(4) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (1) was substituted, by section 200(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (2) was repealed, as from 25 November 2003, by section 116(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (3) was amended by section 200(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words "an assessment" for the words "a general assessment", with application as from the 2002-03 income year.

Subsection (3) was amended by section 116(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substi-

tuting the words “or (5)” for the words “or (6)” with application as from the 2002-03 income year.

Subsection (3)(a) was substituted by section 67(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to income statements issued for the 1999-2000 and subsequent income years.

Subsection (3)(a) was repealed by section 105(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (3)(ab) was inserted by section 67(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to income statements issued for the 1999-2000 and subsequent income years.

Subsection (3)(ab) was repealed by section 105(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (3)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 80H(3)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 80H(3)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (4) was substituted by section 67(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to income statements issued for the 1999-2000 and subsequent income years.

Subsection (4) was amended by section 200(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “An assessment” for the words “A general assessment”, with application as from the 2002-03 income year.

Subsection (4) was substituted by section 105(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (5) was amended by section 67(3) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “section NC 17(2)” for the expression “section NC 17”, with application to income statements issued for the 1999-2000 and subsequent income years.

Subsections (5) was amended by section 200(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “an assessment” for the words “a general assessment”, with application as from the 2002-03 income year.

Subsection (5) was repealed by section 105(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (6) was inserted by section 67(4) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to income statements issued for the 1999-2000 and subsequent income years.

Subsection (6) was amended by section 200(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “an assessment” for the words “a general assessment”, with application as from the 2002-03 income year.

Subsection (6) was amended by section 105(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “or the date their income tax is payable under section NC 17(3)” with application as from the 2002-03 income year.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

## **80I Deemed matters**

- (1) This section applies to matters that are deemed to occur under this Part and to the tax year in which the matters are deemed to occur.
- (2) A statement by the Commissioner that—
  - (a) a return of income is deemed to be furnished; or
  - (b) a return of income is deemed to have been signed by a taxpayer; or
  - (c) an assessment is deemed to have been made—is conclusive of whether an event referred to in this Part has occurred.
- (3) A matter referred to in subsection (2) may not be called into question in any challenge or other proceedings on the basis that—
  - (a) a return of income has not been furnished; or
  - (b) a taxpayer has not furnished a return of income; or
  - (c) a taxpayer has not signed a return of income; or
  - (d) the assessment is not final.
- (4) A matter required to be done or provided within the time limit for furnishing a return of income is deemed to be required to be done or provided within the time limit for responding to an income statement.

Part 3A (comprising sections 80A to 80I) was inserted by section 22(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2)(c) was substituted, by section 201(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

## **Part 3B**

### **Credits of Tax**

Part 3B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### ***Applying for payment by instalment***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KA Applications for payment of tax credit by instalment**

- (1) This section applies to applications made under section MF 1 of the Income Tax Act 2007.
- (2) An application by a person who wants to be paid their tax credit (other than a parental tax credit) by instalment must be made before the selected period starts.
- (3) A person who wants to be paid their parental tax credit by instalment must apply no later than 3 months after the date of the dependent child’s birth.
- (4) If a person referred to in subsection (3) applies more than 3 months after the date of the dependent child’s birth, the person may receive the parental tax credit only after taking into account their end of year assessment under subpart LA of the Income Tax Act 2007 for the tax year in which the birth occurs.
- (5) If the 3-month period described in subsection (3) spans 2 tax years and the whole of the selected period falls in the first tax year, the selected period is treated as falling in the second tax year if all instalments are paid to the person in the second tax year.

Compare: 2004 No 35 s KD 5(1B)–(1C)

Section 80KA: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **80KB Contents of application**

- (1) An application referred to in section 80KA must—
  - (a) be in a form prescribed by the Commissioner; and
  - (b) be signed by the person and any other person who, at the time at which the application is made, expects to be, in the selected period, their spouse, civil union partner, or de facto partner; and
  - (c) give, for each person who signed the application (the **signatory**), a complete statement of—
    - (i) the family scheme income that is expected to be attributable to the tax year; and
    - (ii) the family scheme income that is expected to be attributable to the selected period; and
  - (d) choose whether the instalments should be paid weekly or fortnightly; and
  - (e) contain any other information required by the Commissioner; and
  - (f) be accompanied by the information described in subsection (2).
- (2) The application under subsection (1) must be accompanied by,  
—
  - (a) for a signatory who expects to derive income from employment, evidence of the amount of income from employment derived by them in the period of 1 month immediately before the date on which the application is made;
  - (b) for a signatory who expects to derive income from a business,—
    - (i) a copy of the financial statements of the business for the tax year or corresponding income year immediately before the tax year that contains the selected period; or
    - (ii) if the financial statements referred to in subparagraph (i) have not been completed, a copy of the financial statements for the business for the tax year or corresponding income year that is before

- the year immediately before the tax year that contains the selected period; or
- (iii) a set of budgeted accounts of the business for the tax year or corresponding income year that contains the selected period; or
  - (iv) other evidence in relation to the business for the tax year or corresponding income year that contains the selected period:
- (c) unless paragraph (d) applies, the tax file number of each child for whom an entitlement to a tax credit arises:
  - (d) in the case of a child that has died or is given up for adoption, a birth certificate or other evidence verifying the birth or existence of the child for whom an entitlement to a tax credit arises.
- (3) Subsection (2)(a) does not apply if the Commissioner considers that the Commissioner has enough evidence of a signatory's income from employment.
  - (4) Subsection (2)(d) does not apply to an application made by a person who is an adoptive parent, as that term is defined in the Adoption Act 1955.

Compare: 2004 No 35 s KD 5(2)–(2AB)

Section 80KB: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **80KC When tax file number of child does not accompany application**

- (1) Subsection (2) applies when—
  - (a) an application referred to in section 80KA is not accompanied by the tax file number of each child for whom an entitlement to a tax credit arises; and
  - (b) the Commissioner has enough other evidence of the person's entitlement.
- (2) The Commissioner must—
  - (a) provide the person with a notice of entitlement; and
  - (b) pay to the person instalments of a tax credit under section MA 1 or, as applicable, sections MB 1 and ME 1 of the Income Tax Act 2007 for a period of 56 days.
- (3) Subsection (4) applies when the person or their spouse, civil union partner, or de facto partner does not provide the tax file

number of a child for whom an entitlement to a tax credit arises within the 56-day period.

- (4) The Commissioner must stop paying the tax credit for the child until the tax file number is provided.

Compare: 2004 No 35 s KD 5(3), (3A)

Section 80KC: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **80KD What Commissioner must do on receipt of application**

- (1) This section applies when the Commissioner receives an application that complies with section 80KB.
- (2) The Commissioner must do the following:
- (a) determine under sections MD 1, or MD 1 and ME 1 of the Income Tax Act 2007, as applicable, the estimated amount of tax credit to which the person would be entitled for the selected period; and
  - (b) calculate under section MF 3 of that Act the amount that, if the Commissioner gave a person a notice of entitlement for the whole selected period, would be the interim instalment of the tax credit that would be set out in the notice; and
  - (c) for all or some of the selected period, give the person a notice (the **notice of entitlement**) setting out—
    - (i) the amount of the instalment of the tax credit to which the person is entitled; and
    - (ii) the amount after abatement contributed by the family tax credit to the instalment; and
    - (iii) the amount of credit after abatement contributed by the in-work tax credit to the instalment; and
    - (iv) the amount after abatement contributed by the child tax credit to the instalment; and
    - (v) the amount after abatement contributed by the parental tax credit to the instalment; and
    - (vi) the amount contributed by the minimum family tax credit to the instalment.
- (3) The Commissioner must keep a copy of every notice of entitlement that is given under this section.

Compare: 2004 No 35 s KD 5(4), (5)(a)



Section 80KD: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KD(2)(c)(ii): amended, on 1 April 2008, by section 211(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KD(2)(c)(iii): amended, on 1 April 2008, by section 211(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KD(2)(c)(vi): amended, on 1 April 2008, by section 211(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### ***Notices of entitlement***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KE Notices of entitlement**

A notice of entitlement issued under section 80KD—

- (a) is not transferable; and
- (b) is subject to the terms and conditions set out in it by the Commissioner.

Compare: 2004 No 35 s KD 5(11)

Section 80KE: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KF Effect of giving notice of entitlement**

- (1) If a notice of entitlement has been given to a person, the Commissioner must pay the person instalments of tax credit under section 80KN.
- (2) A person continues to be entitled to a tax credit under section MC 2 or, as applicable, sections MA 1 and ME 1 of the Income Tax Act 2007 for relationship periods after the relationship period for which an application was made, until the Commissioner cancels the notice under section 80KH.

Compare: 2004 No 35 s KD 5(2A), (5)(b), (7)

Section 80KF: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KG Notifying Commissioner of events affecting notice of entitlement**

- (1) Subsection (2) applies when—
  - (a) a person has been given a notice of entitlement; and

- (b) 1 or more of the events described in subsection (3) occur within the period starting on the date of the notice of entitlement and ending on the last day of the selected period.
- (2) The person must notify the Commissioner immediately if an event of the kind described in subsection (3) occurs that may result in the person losing their entitlement.
- (3) The events include—
  - (a) the person or their spouse, civil union partner, or de facto partner stops being the principal caregiver of a child, and the person expects that they will not resume the role of principal caregiver for a period of more than 56 consecutive days; or
  - (b) the person starts or stops being a spouse, civil union partner, or de facto partner; or
  - (c) any other event of a kind set out in the notice of entitlement for the purposes of this subsection.
- (4) Subsection (5) applies when—
  - (a) a notice of entitlement has been issued to a person; and
  - (b) 1 or more of the events described in subsection (6) occur.
- (5) The person may notify the Commissioner if an event of the kind described in subsection (6) occurs that may change a person's entitlement.
- (6) The events include —
  - (a) the person or their spouse, civil union partner, or de facto partner becomes the principal caregiver of any child; or
  - (b) something happens that the person thinks may affect their entitlement to the tax credit specified in the notice of entitlement; or
  - (c) the notice of entitlement is lost or destroyed.

Compare: 2004 No 35 s KD 5(9)

Section 80KG: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **80KH Cancellation of notice of entitlement**

- (1) This section applies when the Commissioner—
  - (a) is notified under section 80KG; or

- (b) considers that a notice of entitlement given to a person no longer applies; or
  - (c) is advised by the chief executive of the administering department, under sections 84 or 85G, that the person is also receiving a tax credit from the chief executive or will receive a tax credit from the chief executive.
- (2) The Commissioner may, on notifying the person,—
- (a) cancel the notice of entitlement; or
  - (b) provide a replacement notice of entitlement for the same relationship period or a different relationship period, or provide a supplement to the notice of entitlement, as appropriate, having regard to information in the Commissioner's possession.

Compare: 2004 No 35 s KD 5(10), (12)

Section 80KH: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### ***Payments to holders of notices of entitlement***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KI Payment of tax credit by instalment by Commissioner**

- (1) This section applies when the Commissioner has given a notice of entitlement to a person.
- (2) In the period described in subsection (3), the Commissioner must pay to the person the instalments of the tax credit set out in the notice of entitlement.
- (3) The period —
  - (a) starts on the day stated in the notice of entitlement; and
  - (b) ends with the earlier of —
    - (i) the day on which the notice of entitlement is cancelled by the Commissioner; or
    - (ii) the end date stated in the notice of entitlement.
- (4) The Commissioner may choose the days on which the instalments are paid.

Compare: 2004 No 35 s KD 7(1)

Section 80KI: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**80KJ Delay in providing notice of entitlement**

- (1) This section applies when the Commissioner thinks that the time taken to provide a notice of entitlement has been unduly delayed.
- (2) The Commissioner may pay the instalments of the tax credit that the Commissioner thinks should be paid, having regard to the circumstances of the case.

Compare: 2004 No 35 s KD 7(3)

Section 80KJ: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**80KK Payment by instalment of family tax credit (without abatement)**

- (1) This section applies when the Commissioner considers, on the basis of information provided under section 85G by the chief executive, that a person is entitled to family tax credit.
- (2) In the period described in subsection (3), the Commissioner must pay to the person the family tax credit by instalment and without abatement.
- (3) The period—
  - (a) starts on the day following the day that the chief executive says is the last day that the person is entitled to—
    - (i) an income-tested benefit, an orphan's benefit, or an unsupported child's benefit paid or payable under the Social Security Act 1964; or
    - (ii) a WFF tax credit under section 80KN; and
  - (b) ends on the earlier of—
    - (i) the day before the first day stated in a notice of entitlement that is provided later:
    - (ii) a period of not more than 56 days, starting on the first day referred to in paragraph (a).
- (4) Subsection (5) applies when the chief executive pays the family tax credit for part of the 56-day period referred to in subsection (3)(b)(ii).
- (5) The period referred to in subsection (3)(b)(ii) is reduced by the period for which the chief executive paid the family tax credit.

Compare: 2004 No 35 s KD 7(2B), (2C)

Section 80KK: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KK heading: amended, on 1 April 2008, by section 212(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KK(1): amended, on 1 April 2008, by section 212(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KK(2): amended, on 1 April 2008, by section 212(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KK(3)(a)(ii): amended, on 1 April 2008, by section 212(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KK(4): amended, on 1 April 2008, by section 212(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KK(5): amended, on 1 April 2008, by section 212(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **80KL Payment of instalments into accounts**

- (1) Unless the Commissioner in a particular case otherwise determines, it is a condition of the receipt of tax credits paid by instalments by the Commissioner that—
  - (a) the person, or the person and their spouse, civil union partner, or de facto partner,—
    - (i) gives the Commissioner the details of an existing bank account held by the person (whether alone or jointly with their spouse, civil union partner, or de facto partner); or
    - (ii) opens a bank account (if they do not have one), and gives the Commissioner details of that account; and
  - (b) the existing account or, as applicable, the opened account is an account held as described in subsection (2).
- (2) The account must be held with —
  - (a) a registered bank within the meaning of that term in section 2 of the Reserve Bank of New Zealand Act 1989; or
  - (b) a building society, in respect of any deposits with the building society; or
  - (c) the Public Service Investment Society Limited; or
  - (d) a credit union within the meaning of that term in section 2 of the Friendly Societies and Credit Unions Act 1982.
- (3) The Commissioner must pay every instalment of tax credit into the account.

Compare: 2004 No 35 s KD 7(4)

Section 80KL: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **80KLB Recovery of excess tax credits**

- (1) This section applies when—
  - (a) the Commissioner pays a person a tax credit by instalment under section MF 1 of the Income Tax Act 2007 in a tax year; and
  - (b) in paying a tax credit by instalment in an earlier tax year, the Commissioner has overpaid the tax credit as described in of that Act.
- (2) The Commissioner may use the amount of an instalment payable to the person to satisfy an amount added under section MF 6(2) of that Act to the tax payable by the person for the earlier tax year.

Section 80KLB: inserted (with effect on 1 April 2008), on 6 October 2009, by section 636(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **80KM Summary of instalments paid**

- (1) This section applies when the Commissioner pays to a person instalments of the tax credit shown in the notice of entitlement given to the person.
- (2) The Commissioner must give the person—
  - (a) a summary showing the total of all the tax credits paid by instalments under the person's notice of entitlement for the tax year; and
  - (b) any other information prescribed by the Commissioner.
- (3) The Commissioner must provide the summary—
  - (a) for a non-filing taxpayer, on or before 20 May next following the last day of the tax year in which the payment is made; and
  - (b) for a filing taxpayer, on the same date that the Commissioner issues the person with an income statement for the tax year in which the payment is made.

Compare: 2004 No 35 s KD 7(2), (2A)

Section 80KM: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### ***Payments of tax credit by chief executive***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KN Payment of tax credit by chief executive**

- (1) This section applies when—
- (a) in a tax year, the chief executive of the administering department pays to a person an income-tested benefit; and
  - (b) the chief executive is satisfied that—
    - (i) the person is entitled to receive a WFF tax credit for which the amount of the family credit abatement is zero; or
    - (ii) the chief executive is authorised by an Order in Council made under section 225A to pay the person a WFF tax credit for which the family credit abatement is more than zero.
- (2) When paying the income-tested benefit, the chief executive must pay to the person the WFF tax credit that the chief executive considers that the person is entitled to at the time of the payment.

Compare: 2004 No 35 s KD 6(1)

Section 80KN: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KN(1)(b)(i): amended, on 1 April 2008, by section 213 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KN(1)(b)(ii): amended, on 1 April 2008, by section 213 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KN(2): amended, on 1 April 2008, by section 213 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **80KO Determining WFF tax credit**

In determining the amount of WFF tax credit that is payable under section 80KN, the chief executive must—

- (a) use the method set out in section MF 3 of the Income Tax Act 2007, if required to calculate the amount of the family credit abatement; and

- (b) take into account the rate of family tax credit and the family credit abatement given by sections MD 3 and MD 13 of that Act.

Compare: 2004 No 35 s KD 6(1A)

Section 80KO: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KO heading: amended, on 1 April 2008, by section 214(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KO: amended, on 1 April 2008, by section 214(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KO(b): amended, on 1 April 2008, by section 214(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **80KP When entitlement to income-tested benefit ends**

- (1) This section applies for the purposes of section 80KN when—
- (a) a person's entitlement to an income-tested benefit ends; and
  - (b) they apply to the chief executive to have the payment of their family tax credit continued.
- (2) The chief executive must continue to pay the family tax credit to the person for a period determined by the chief executive in consultation with the Commissioner. The amount is determined as if the person were still being paid an income-tested benefit during this period.

Compare: 2004 No 35 s KD 6(1B)

Section 80KP: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KP(1)(b): amended, on 1 April 2008, by section 215 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KP(2): amended, on 1 April 2008, by section 215 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **80KQ No authority to pay WFF tax credit**

- (1) This section applies when the chief executive is not satisfied that they are authorised to pay the WFF tax credit to the person under the section.
- (2) The chief executive may ask the Commissioner to accept from the person their application for a notice of entitlement.

Compare: 2004 No 35 s KD 6(1C)

Section 80KQ: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Section 80KQ heading: amended, on 1 April 2008, by section 216(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KQ(1): amended, on 1 April 2008, by section 216(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**80KR Request by chief executive to stop payment of WFF tax credit**

- (1) This section applies when—
  - (a) the chief executive has made a request under section 80KQ(2); but
  - (b) the chief executive is satisfied that they are authorised to pay the person the WFF tax credit.
- (2) The chief executive may ask the Commissioner to stop paying the person under their notice of entitlement.

Compare: 2004 No 35 s KD 6(1D)

Section 80KR: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KR heading: amended, on 1 April 2008, by section 217(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KR(1)(b): amended, on 1 April 2008, by section 217(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**80KS Request by person to stop or re-start payment of tax credit**

- (1) Subsection (2) applies, despite section 80KN or 80KP, when a person notifies the chief executive not to pay them the tax credit.
- (2) The chief executive must, as soon as practicable, stop paying the person the tax credit.
- (3) Subsection (4) applies when a person cancels their notification under subsection (1).
- (4) The chief executive must, as soon as practicable, start paying the person the tax credit again.

Compare: 2004 No 35 s KD 6(2), (3)

Section 80KS: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**80KT Details of payments of tax credits**

- (1) This section applies when the chief executive pays under section 80KN a tax credit to a person.

- (2) The chief executive must, for each month in which a payment is made, give the Commissioner details of the payment in an employer monthly schedule.
- (3) The chief executive must, not later than 20 April next following the last day of the tax year in which the payment is made, give the person—
  - (a) a summary—
    - (i) signed by the chief executive; and
    - (ii) in a form authorised by the Commissioner; and
    - (iii) showing the total of all of the tax credits paid; and
  - (b) any other information required by the Commissioner.
- (4) The chief executive must, not later than 31 May in the tax year in which the summary is provided under subsection (3), give the Commissioner—
  - (a) a copy of every summary given by the chief executive under subsection (3)(a); and
  - (b) any other information required by the Commissioner.

Compare: 2004 No 35 s KD 6(4)

Section 80KT: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

***When Commissioner takes over payment of tax credit from chief executive***

Heading: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**80KU Payment of tax credit taken over by Commissioner**

- (1) This section applies when—
  - (a) in a tax year, the chief executive stops paying a person an amount of tax credit with an income-tested benefit; and
  - (b) the person applies to the Commissioner for payment of WFF tax credit, family tax credit, or minimum family tax credit; and
  - (c) the Commissioner determines that the person is entitled to the tax credit under section MD 1 of the Income Tax Act 2007 for the period described in subsection (3).

- (2) For the period described in subsection (3), the Commissioner may pay to the person the arrears of the tax credits, other than the in-work tax credit and the parental tax credit.
- (3) The period—
- (a) starts on the later of—
    - (i) the first day of the tax year; and
    - (ii) the day following that on which the chief executive stops paying the amount to the person; and
  - (b) ends on the day before the first day stated in a notice of entitlement that is later given to the person.

Compare: 2004 No 35 s KD 7(3A), (3B), (3C)

Section 80KU: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KU(1)(b): amended, on 1 April 2008, by section 218(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KU(2): amended, on 1 April 2008, by section 218(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **80KV Statement of family scheme income**

- (1) This section applies to a person to whom the Commissioner has given a notice of entitlement for a tax year.
- (2) The person must, in the time within which they are required to file their return of income for the tax year, give the Commissioner a statement setting out—
- (a) a complete statement of their family scheme income signed by the person; and
  - (b) a complete statement of the family scheme income for the tax year of their spouse, civil union partner, or de facto partner signed by that person.

Compare: 2004 No 35 s KD 4(5)

Section 80KV: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **80KW Effect of extra instalment on entitlement to tax credit**

- (1) This section applies to a person who—
- (a) is entitled to a WFF tax credit or minimum family tax credit for the whole or part of a tax year; and
  - (b) receives a payment under either section 80KI or 80KN of an instalment of the credit for each period of a fortnight or a week in the tax year, as applicable; and

- (c) as a consequence of the year not being divided into an exact number of fortnights or weeks,—
- (i) receives in the tax year 27 instalments corresponding to a period of a fortnight; or
  - (ii) may have received in the tax year 53 instalments corresponding to a period of a week.
- (2) Subsection (3) applies—
- (a) for the purposes of section MF 6 of the Income Tax Act 2007; and
  - (b) when the person has received payments for the whole of a tax year in 27 instalments as described in subsection (1)(c)(i).
- (3) The person is entitled to a tax credit for the tax year of an amount calculated using the formula —
- $$\text{tax credit} + (\text{final instalment} - \text{parental tax credit}) \times 13/14.$$
- (4) In the formula in subsection (3),—
- (a) **tax credit** is the amount of the tax credit for the tax year calculated for the person under—
    - (i) section MD 1 of the Income Tax Act 2007, if the person is entitled to a WFF tax credit;
    - (ii) section ME 1 of that Act, if the person is entitled to the minimum family tax credit;
  - (b) **final instalment** is the amount of the final instalment received by the person in the tax year;
  - (c) **parental tax credit** is the amount of any parental tax credit that is included in the final instalment received by the person in the tax year.
- (5) Subsection (6) applies—
- (a) for the purposes of section MF 6 of the Income Tax Act 2007; and
  - (b) when the person has received payments for the whole of a tax year in 53 instalments as described in subsection (1)(c)(ii).
- (6) The person is entitled to a tax credit for the tax year equal to an amount calculated using the formula—
- $$\frac{(\text{tax credit} - \text{parental tax credit})}{52} \times 53.$$
- (7) In the formula in subsection (6),—

- (a) **tax credit** is the amount of the tax credit for the tax year calculated for the person under—
  - (i) section MD 1 of the Income Tax Act 2007, if the person is entitled to WFF tax credit:
  - (ii) section ME 1 of that Act, if the person is entitled to the minimum family tax credit:
- (b) **parental tax credit** is the total amount of parental tax credit to which the person is entitled for the tax year calculated under section MD 12 of the Income Tax Act 2007.

Compare: 2004 No 35 s KD 7A

Section 80KW: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 80KW(1)(a): amended, on 1 April 2008, by section 219(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(1)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 637(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 80KW(2)(b): substituted, on 1 April 2008, by section 219(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 637(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 80KW(4)(a)(i): amended, on 1 April 2008, by section 219(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(4)(a)(ii): amended, on 1 April 2008, by section 219(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(5)(b): substituted, on 1 April 2008, by section 219(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(5)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 637(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 80KW(6) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 637(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 80KW(7)(a)(i): amended, on 1 April 2008, by section 219(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(7)(a)(ii): amended, on 1 April 2008, by section 219(7) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 80KW(7)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 637(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

## Part 4

### Secrecy

#### 81 Officers to maintain secrecy

- (1) Every officer of the Department—
  - (a) shall maintain and aid in maintaining the secrecy of all matters relating to—
    - (i) the Inland Revenue Acts, including all Acts (whether repealed or not) at any time administered by or in the Department; and
    - (ii) the Accident Compensation Act 1982 or Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998; and
    - (iia) the Injury Prevention, Rehabilitation, and Compensation Act 2001 where the Commissioner is acting as agent for the collection of levies under sections 193 and 219 and earner levies from employees under section 219 of that Act; and
    - (iii) the New Zealand Superannuation Act 1974,— which come to the officer's knowledge, and shall not, either while the officer is or after the officer ceases to be an officer of the Department, communicate any such matters to any person except for the purpose of carrying into effect the Acts referred to in subparagraphs (i), (ii), and (iia) or any other enactment imposing taxes or duties payable to the Crown, or of carrying into effect the powers, duties, and functions of the Commissioner under the New Zealand Superannuation Act 1974; and
  - (b) shall, before the officer begins to perform any official duty as an officer of the Department, make a declaration of fidelity and secrecy in the form prescribed by the Commissioner to maintain secrecy in conformity with this section, which declaration may be made before the Commissioner, or an officer of the Department, or any other person authorised by or under the Oaths and Declarations Act 1957 to take statutory declarations.
- (2) Where, before the commencement of this Act, any officer of the Department has made a declaration of fidelity or secrecy

under subsection (1)(b) of section 13 of the Inland Revenue Department Act 1974, or was deemed by subsection (2) or subsection (2A) of that section to have made the declaration under that subsection (1)(b), that declaration shall, in either case, be deemed to be a declaration to maintain secrecy, as from the commencement of this Act, in accordance with this section.

- (3) Without limiting the generality of subsection (1), no officer of the Department shall be required to produce in any Court or tribunal any book or document or to divulge or communicate to any Court or tribunal any matter or thing coming under the officer's notice in the performance of the officer's duties as an officer of the Department, except when it is necessary to do so for the purpose of—
- (a) carrying into effect—
    - (i) the Inland Revenue Acts, including all Acts, whether repealed or not, at any time administered by the Department; or
    - (ii) the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
    - (iii) any other enactment imposing taxes or duties payable to the Crown; or
  - (b) carrying into effect the powers, duties, and functions of the Commissioner under the New Zealand Superannuation Act 1974.
- (4) Nothing in subsection (1) or subsection (3) shall be deemed to prohibit the Commissioner from—
- (a) communicating such information as is necessary for the purpose of any prosecution under any Act of the Parliament of New Zealand or under the law of any country or territory outside New Zealand, or such information as the Commissioner considers desirable for the purpose of any investigation into any suspected indictable or summary offence, being a prosecution or an investigation in relation to any misappropriation or attempted misappropriation by any person in respect of money

payable by the Department to another person or by any person in respect of money entrusted to that person by, for, or on behalf of, another person for payment to the Department:

provided that no communication under this paragraph shall be made in respect of any person to whom any such money was payable, or by, or for, or on behalf of, whom any such money was entrusted, unless that person or that person's legal personal representative, or, where that person is a company, the authorised officer of that company, consents to the communication:

- (b) divulging or communicating any matter or thing or producing in any Court any book or document, that the Commissioner considers desirable for the purposes of any investigation into any suspected offence or prosecution under the Crimes Act 1961, where the investigation or prosecution is in relation to any tax imposed or payable or any refund made or claimed under the Goods and Services Tax Act 1985, and any such matter or thing shall be deemed to be divulged or communicated and any such book or document shall be deemed to be produced for the purpose of carrying into effect the Goods and Services Tax Act 1985:
- (c) divulging or communicating any matter or thing to the Director of the Serious Fraud Office, or producing in any Court any book or document, that the Commissioner considers desirable for the purposes of any investigation or prosecution in relation to any suspected inland revenue offence, and any such matter or thing shall be deemed to be divulged or communicated, and any such book or document shall be deemed to be produced, for the purpose of carrying into effect the Acts referred to in subparagraphs (i), (ii), and (iia) of subsection (1)(a) or any other enactment imposing taxes or duties payable to the Crown:
- (d) communicating to any officer, being an employee of the Department of Statistics, any information, being information—



- (i) which that officer is authorised by that Department to receive; and
  - (ii) which the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable that officer to carry out any official duty lawfully imposed on the officer by the Statistics Act 1975:
- (e) communicating to any officer, being an employee of the Treasury (as defined in section 2 of the Public Finance Act 1989), any information, being information—
  - (i) which that officer is authorised by the Secretary (as defined in section 2 of the Public Finance Act 1989) to receive; and
  - (ii) which the Commissioner considers is not undesirable to disclose and is essential to enable that officer to carry out any duty lawfully conferred on that officer relating to the preparation of taxation revenue forecasts:
    - (ea)
- (eb) communicating to a person who is an employee of the Department of Internal Affairs or the Ministry of Health information that—
  - (i) the person is authorised by the Department or Ministry to receive; and
  - (ii) the Commissioner considers is not undesirable to disclose and is essential to enable the person to carry out any duty lawfully conferred on the person relating to the determination of the problem gambling levy rate:
- (f) communicating to any person, being an officer, employee, or agent of the responsible department or of the Accident Compensation Corporation or of the Ministry of Justice, any information, being information—
  - (i) Which the person is authorised by the Director-General of Social Welfare or the Managing Director or Chief Executive of the Accident Compensation Corporation or or the chief executive of the Department for Courts to receive; and

- (ii) Which is communicated to that person for the purposes of section 82 or section 83 or section 84 or section 85 or section 85A or section 85K:
- (fa) communicating to any person, being an officer, employee, or agent of the Regulator for the purposes of the Accident Insurance Act 1998 any information, being information—
  - (i) which the person is authorised by the Regulator to receive; and
  - (ii) which is communicated to that person for the purposes of section 370 or section 371 of the Accident Insurance Act 1998:
- (fb) communicating to any person, being a member, an employee, or an agent of the Charities Commission, any information, being information—
  - (i) that the person is authorised by the Charities Commission to receive; and
  - (ii) that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable that person to carry out any duty lawfully conferred on that person relating to the exercise of the Charities Commission's powers or the performance of its functions and duties:
- (fc) communicating to a person who is a member, employee, or agent, of the New Zealand Customs Service, information that—
  - (i) the person is authorised by the New Zealand Customs Service to receive; and
  - (ii) relates to a person who is liable to pay financial support under the Child Support Act 1991; and
  - (iii) the Commissioner considers is not undesirable to disclose and is reasonably necessary for the purposes specified in sections 280K and 280L of the Customs and Excise Act 1996:
- (g) communicating to any authorised person under section 62 of the Student Loan Scheme Act 1992 any information required for the purpose specified in subsection (2), (2AA), or (2A) of that section:

- (gb) communicating to the chief executive of the New Zealand Customs Service under section 62A of the Student Loan Scheme Act 1992 any information specified in subsection (2) of that section for the purpose set out in subsection (1) of that section.
- (h) communicating to any officer or employee or agent of any of the State Services any information in relation to the processing of information, data, documents, or any other matter necessary for the effective administration of the Inland Revenue Acts (including all Acts at any time administered by or in the Department) or any other function that may from time to time be lawfully conferred on the Commissioner:
- (i) communicating to any person, or employee of that person, being a person engaged by the Commissioner for the performance of services necessary for the effective administration of the Inland Revenue Acts (including all Acts at any time administered by or in the Department) or any other function that may from time to time be lawfully conferred on the Commissioner, such information as the Commissioner considers necessary for the performance of those services:
- (j) communicating any information of a general nature, being information which does not reveal the identity of any taxpayer, to any person authorised by the Minister to receive it, where the Minister—
  - (i) is satisfied that it is in the public interest to communicate that information, and that such information is readily available in the Department; and
  - (ii) considers that it is reasonable and practicable to communicate that information:
- (k) communicating any information to any authorised officer of the Government of any country or territory outside New Zealand where the application of a provision of any of the Inland Revenue Acts affecting the incidence of tax or duty is expressed to be conditional on the existence of a reciprocal law or concession in any such country or territory, or where under a provision in any of

the Inland Revenue Acts a reciprocal arrangement has been made with the Government of any such country or territory affecting the incidence of tax or duty:

provided that any such communication shall be limited to such information as is necessary to enable that Government to give effect to the reciprocal law or concession or to the reciprocal arrangement:

- (l) permitting a copy of, or details of and from, any book, document, or information (including details of taxes and duties paid and payable), in the possession of, or obtained by, or on behalf of, the Commissioner for the purposes of any of the Inland Revenue Acts, including all Acts (whether or not repealed) at any time administered by or in the Department, or for the purpose of any other function lawfully conferred on the Commissioner, to be given to the person from whom, or on behalf of whom, or in relation to whom such book, document, or information is held or was obtained, or to the legal personal representative of that person or to the agent of that person or of that legal personal representative authorised in writing or in such other manner as the Commissioner prescribes in that behalf:

provided that no information shall be given under this paragraph unless the Commissioner—

- (i) is satisfied that such information is readily available in the Department; and
- (ii) considers it reasonable and practicable to give that information.
- (lb) communicating, to a person who is named under section RP 18 of the Income Tax Act 2007 by an intermediary as being connected with a deposit to a tax pooling account, the details of the deposit that are connected with the person in the Commissioner's records:
- (m) publishing a product ruling issued under Part 5A.
- (mb) publishing a list of organisations that are approved organisations:

- (mc) publishing the name of a company that has given the Commissioner a notice under section EX 33B(1)(b) or (2)(b) of the Income Tax Act 2004:
- (n) Communicating to any Registrar, in accordance with section 104A of the Summary Proceedings Act 1957, any information required under subsection (1) of that section.
- (n) *[Repealed]*
- (o) communicating, for the purpose of section 82A, information to a person who is an officer, employee, or agent of the responsible department and who is authorised to receive the information by the chief executive of that department:
- (p) communicating, for the purpose of section 85F, information to a person who is an officer, employee, or agent of the New Zealand Film Commission responsible for the administration of a scheme under which government screen production payments are made and who is authorised to receive the information by the Chief Executive of the New Zealand Film Commission:
- (q) communicating, for the purpose of section 85H, information to a person who is an officer, employee, or agent of the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987 and who is authorised to receive the information by the chief executive of that department.
- (r) communicating to any person, being the Government Actuary or any person to whom the Government Actuary has delegated any of his or her functions, duties, or powers under this Act, any information, being information—
  - (i) that the person is authorised by the Government Actuary to receive; and
  - (ii) that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable the Government Actuary to perform any duty or function, or exercise any power, lawfully conferred by the KiwiSaver Act 2006.

- (s) communicating to any person, being a member of the New Zealand Police, any information, being information—
    - (i) that the person is authorised by the Commissioner of Police to receive; and
    - (ii) that is communicated to that person for the purposes of section 85K:
  - (t) communicating to any person who is an employee of the Treasury (as defined in section 2 of the Public Finance Act 1989), any information communicated to that person for the purposes of section LH 15 of the Income Tax Act 2007.
- (5) For the purposes of this section, unless the context otherwise requires, every reference to the New Zealand Superannuation Act 1974 shall be deemed to include a reference to Part 1 of the Superannuation Schemes Act 1976, and every reference to the New Zealand Superannuation Corporation shall be deemed to include a reference to the National Provident Fund Board in relation to its functions under Part 1 of the Superannuation Schemes Act 1976.
- (6) In this section, unless the context otherwise requires, **legal personal representative**, in relation to any person, means—
- (a) the executor, original or by representation, or an administrator for the time being of a deceased person:
  - (b) any person who by order of Court has been appointed as guardian or manager of the estate of any person:
  - (c) any other person who by order of Court administers the estate of any person.
- (7) In this section **tax or duty**, **taxes or duties**, and **tax and duty** include any financial support within the meaning of the Child Support Act 1991 and any amount payable under the Student Loan Scheme Act 1992.

Compare: 1974 No 133 ss 2, 13(1), (2A), (3), (4), (6)

Subsection (1)(a)(ii) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting after the expression “1992”, the words “or the Accident Insurance Act 1998”.

Subsection (1)(b) was amended, as from 1 April 1995, by section 44(1) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the words “or an officer of the Department,” for the words “or a Deputy Commissioner, or a Regional Controller, or a District Commissioner,”.

Subsection (1)(a) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by substituting the expression “subparagraphs (i), (ii), and (ia)” for the expression “subparagraphs (i) and (ii)”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1)(a)(ia) was inserted, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49). *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (3)(a)(ii) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting after the expression “1992”, the words “or the Accident Insurance Act 1998”.

Subsection (3)(a)(ii) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the words “the Accident Insurance Act”, the words “or the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (4)(c) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by substituting the expression “subparagraphs (i), (ii), and (ia)” for the expression “subparagraphs (i) and (ii)”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (4)(eb) was inserted, as from 25 November 2003, by section 117(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (4)(f) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” and “chief executive of that department” for the words “Department of Social Welfare” and “Director-General of Social Welfare” respectively.

Subsection (4)(f) was substituted, as from 1 November 1998, by section 30 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (4)(f) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by omitting the words “Accident Rehabilitation and Compensation Insurance Corporation” wherever they appear.

Subsection (4)(f) was to be amended, as from 21 December 2004, by section 91(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (4)(f) (that part before subpara (i)) was substituted, as from 21 December 2004, by section 230(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (4)(f)(i) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting after the words “Managing Director”, the words “or Chief Executive”.

Subsection (4)(f)(ii) was amended, as from 10 April 1995, by section 9(1) Tax Administration Amendment Act 1995 (1995 No 24) by inserting the words “or section 84 or section 85”.

Subsection (4)(f)(ii) was amended, as from 26 September 2006, by section 51(1) Child Support Amendment Act 2006 (2006 No 42) by adding the words “or section 85K”.

Subsection (4)(fa) was inserted, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114).

Subsection (4)(fb) was inserted, as from 1 November 2006, by section 71 Charities Act 2005 (2005 No 39). *See* clause 2 Charities Act Commencement Order 2006 (SR 2006/300).

Section 81(4)(fc): inserted, on 8 August 2008, by section 220(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (4)(g) was amended, as from 26 November 1998, by section 27 Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107) by inserting the expression “or (2A)”.

Subsection (4)(g) was amended, as from 15 December 2000, by section 16 Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96) by inserting, after the expression “subsection (2)”, the expression “, (2AA),”.

Subsection (4)(gb) was inserted, as from 28 March 2007, by section 44(3) Student Loan Scheme Amendment Act 2007 (2007 No 13).

Subsection (4)(l) was amended by section 23(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by inserting the words “or in such other manner as the Commissioner prescribes” with application as from 1 April 1999.

Subsection (4)(lb) was inserted, as from 26 March 2003, by section 106 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 81(4)(lb): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4)(lb) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section MBA 5 of the Income Tax Act 2004” for the words “section MBB 5 of the Income Tax Act 1994”.

Subsection (4)(m) was inserted, as from 10 April 1995, by section 9(2) Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (4)(mb) was inserted, as from 1 October 2006, by section 230(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (4)(mc) was inserted, as from 1 April 2007, by section 189 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).



Subsection (4)(n) was inserted, as from 1 November 1998, by section 30 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

A new subsection (4)(n) was inserted, after (4)(m), by section 23(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999. It would appear that the intention was to insert a new paragraph (o), as a paragraph (n) had already been inserted by section 30 Summary Proceedings Amendment Act (No 3) 1998.

Subsection (4)(n) (as inserted by section 23(2) Taxation (Simplification and Other Remedial Matters) Act 1998) was repealed, as from 25 November 2003, by section 117(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (4)(o) was inserted, as from 25 November 2003, by section 117(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (4)(o) was amended, as from 21 December 2004, by section 91(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964” where they first appear.

Subsection (4)(o) was amended, as from 21 December 2004, by section 91(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “that department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964” where they secondly appear.

Section 81(4)(p): substituted, on 6 October 2009, by section 638(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (4)(p) was inserted, as from 25 November 2003, by section 117(3) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (4)(p) was amended, as from 21 June 2005, by section 133 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the expression “Commission:” for the expression “Commission.”

Subsection (4)(q) was inserted, as from 21 June 2005, by section 133 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Subsection (4)(r) was inserted, as from 1 December 2006, by section 231 Kiwi-Saver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Subsection (4)(s) was inserted, as from 26 September 2006, by section 51(2) Child Support Amendment Act 2006 (2006 No 42).

Section 81(4)(s)(ii): amended (with effect on 19 December 2007), on 6 October 2009, by section 638(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 81(4)(t): added (with effect on 19 December 2007), on 6 October 2009, by section 638(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (7) was inserted by section 71 Taxation (Remedial Provisions) Act 1997 (1997 No 74). See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

**81B Disclosure of information concerning tax advisor or person acting as tax agent**

- (1) Despite section 81, the Commissioner may supply information to an approved advisor group about an action or omission—
  - (a) by a person who is, or purports to be, a member of the approved advisor group; and
  - (b) that the Commissioner considers to be a breach of a member's responsibilities under sections 20B to 20G.
- (2) Despite section 81, the Commissioner may supply information about a person to an association or group if—
  - (a) the person is, or purports to be, a member of the association or group as a person who is in a business of preparing tax returns for other people; and
  - (b) the members of the association or group are subject to—
    - (i) a professional code of conduct; and
    - (ii) a disciplinary process that enforces compliance with the code of conduct; and
  - (c) the information—
    - (i) is relevant to a decision of the Commissioner removing the person from the list of tax agents or refusing to list the person as a tax agent;
    - (ii) in the Commissioner's opinion, is or would be relevant to a decision referred to in subparagraph (i).

Section 81B was inserted, as from 21 June 2005, by section 134 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 81B heading: substituted, on 19 December 2007, by section 221(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 81B(2): added, on 19 December 2007, by section 221(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**82 Disclosure of information for matching purposes**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the re-

sponsible department and the Corporation for the purposes of verifying—

- (a) the entitlement or eligibility of any person to or for any benefit or to or for earnings related compensation; or
  - (b) the amount of any benefit or of earnings related compensation to which any person is or was entitled or for which any person is or was eligible; or
  - (c) whether any premium or levy is payable or the amount of any premium or levy payable by any person.
- (2) For the purpose of this section, any officer or employee or agent of the responsible department authorised in that behalf by the chief executive of that department may from time to time supply to the Commissioner any beneficiary information held by that Department.
- (3) For the purpose of this section, any officer or employee or agent of the Corporation authorised in that behalf by the Managing Director or Chief Executive of the Corporation may from time to time supply to the Commissioner any beneficiary information held by the Corporation.
- (4) Where, in relation to any person, beneficiary information is supplied to the Commissioner under subsection (2) or subsection (3), the Commissioner may cause a comparison of that information to be made with any information held by the Department and which relates to that person.
- (5) Where the result of any comparison carried out under subsection (4) indicates that any person—
- (a) who is receiving, or has received, a benefit is or was, while receiving that benefit, also receiving any other income; or
  - (b) who is receiving, or has received, earnings related compensation is or was, while receiving that compensation, receiving income from employment (including self-employment),—
- the Commissioner may take action under subsection (6).
- (6) Where, in relation to any person, either of the circumstances referred to in subsection (5) applies, the Commissioner may, for the purpose of this section, supply to any authorised officer of the responsible department or, as the case may require, the

Corporation, all or any of the following information that is held by the Department and that relates to the person:

- (a) where the person is, or was, in employment while receiving any benefit, or any earnings related compensation,—
    - (i) the date or dates on which that employment commenced:
    - (ii) where applicable, the date or dates on which that employment ceased:
    - (iii) the name and business address of each employer so employing that person:
  - (b) where the person is, or was, receiving any other income during any period in which he or she is receiving, or has received, any benefit or any earnings related compensation, in circumstances where that other income may be taken into account in determining the person's entitlement to or eligibility for that benefit or compensation, or in determining the amount of that benefit or compensation, the amount of that other income so received during that period.
- (7) Where the result of any comparison carried out under subsection (4) indicates that any person who is an applicant for any benefit or for earnings related compensation is receiving any income from any source, and that income may be taken into account in determining the person's entitlement to or eligibility for that benefit or compensation, or in determining the amount of that benefit or compensation, the Commissioner may, for the purpose of this section, supply details of that income to any authorised officer of the responsible department or, as the case may be, the Corporation.
- (7B) If the Commissioner supplies under subsection (6) or (7) information about a person to the responsible department, the Commissioner may also supply to that department the following additional information that is held by the Department and that relates to the person:
- (a) the full name and date of birth of the person:
  - (b) if the information held by the Department includes information about the person's employment—

- (i) the telephone number of each employer of the person:
  - (ii) the email address of each employer of the person:
  - (iii) the tax code or codes applicable to the person during each period for which the person received a benefit.
- (8) The provisions of this section shall apply notwithstanding any other provision of this Act.
- (9) In this section, unless the context otherwise requires,—

**Authorised officer**,—

- (a) in relation to the responsible department, means any officer, employee, or agent of that Department who is authorised by the chief executive of that department to receive information supplied by the Commissioner under this section:
- (b) in relation to the Corporation, means any officer, employee, or agent of the Corporation who is authorised by the Managing Director or Chief Executive of the Corporation to receive information supplied by the Commissioner under this section:

**beneficiary** means—

- (a) a person who is receiving, or has received, a benefit or earnings related compensation:
- (b) an applicant for a benefit or earnings related compensation:
- (c) in the case of a benefit that is a student allowance, a person who is a spouse of the recipient of the benefit under regulation 2 of the Student Allowances Regulations 1998

**benefit** includes a benefit payable under the Social Security Act 1964 and a student allowance payable under Part 25 of the Education Act 1989

**Beneficiary information**, in relation to a beneficiary, means information that—

- (a) identifies the beneficiary, which may include the beneficiary's tax file number; and
- (b) identifies any benefit or earnings related compensation that the beneficiary is receiving, or has received, or for

which the beneficiary has applied, including, in the case of any benefit or earnings related compensation that the beneficiary is receiving or has received, the dates on which payment of the benefit or compensation commenced and (where applicable) the date on which that payment ceased:

**Corporation** means the Accident Compensation Corporation or the Accident Rehabilitation and Compensation Insurance Corporation

**Earnings related compensation** means—

- (a) Compensation payable under the accident Compensation Act 1982; and
- (b) any compensation for loss of earnings payable under sections 38, 39, and 43 of the Accident Rehabilitation and Compensation Insurance Act 1992, and any vocational rehabilitation allowance payable under section 25 of that Act, and any compensation for loss of potential earning capacity payable under section 45 or section 46 of that Act, and any weekly compensation payable under section 58, section 59, or section 60 of that Act, and any payments continued to be paid under section 137, section 138, or section 145 of that Act (excluding any payments continued under section 143 of that Act in relation to section 68 of the Accident Compensation Act 1982).
- (c) any weekly compensation payable under the Accident Insurance Act 1998 or the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Compare: 1974 No 133 s 13A

Subsection (1) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” for the words “Department of Social Welfare”.

Subsection (1)(c) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the word “premium” in both places where it occurs, the words “or levy”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1) was amended, as from 21 December 2004, by section 92(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111)

by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (2) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” for the words “Department of Social Welfare”.

Subsection (2) was amended by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 by substituting the words “chief executive of that department” for the words “Director-General of Social Welfare”.

Subsection (2) was amended, as from 21 December 2004, by section 92(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (3) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting the words “or Chief Executive”.

Subsection (5)(a) was amended by section 483(1) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “gross income” for the word “income” with application as from the 1997-98 income year.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (6)(b) was amended by section 483(1) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “gross income” for the word “income” with application as from the 1997-98 income year.

Subsection (6) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” for the words “Department of Social Welfare”.

Subsection (6) was amended, as from 21 December 2004, by section 92(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (6)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appears.

Subsection (7) was amended by section 483(1) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “gross income” for the word “income” with application as from the 1997-98 income year.

Subsection (7) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” for the words “Department of Social Welfare”.

Subsection (7) was amended, as from 21 December 2004, by section 92(4) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appears.

Subsection (7B) was inserted, as from 21 December 2004, by section 92(5) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for withholding payments made as from 1 April 2005.

Subsection (9) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” for the words “Department of Social Welfare”.

Subsection (9) was amended by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 by substituting the words “chief executive of that department” for the words “Director-General of Social Welfare”.

Subsection (9) authorised officer: paragraph (b) of this definition was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting the words “or Chief Executive”.

Subsection (9) authorised officer: paragraph (a) of this definition was amended, as from 21 December 2004, by section 92(6)(a) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (9) beneficiary: this definition was substituted, as from 21 December 2004, by section 92(6)(b) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (9) benefit: this definition was inserted, as from 21 December 2004, by section 92(6)(c) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (9) Earnings related compensation: paragraph (c) of this definition was inserted, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114).

Subsection (9) Earnings related compensation: this definition was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the word “the Accident Insurance Act 1998”, the words “or the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.



**82A Disclosure of information to prevent cessation of benefit payments**

- (1) This section authorises the exchange of information between the Inland Revenue Department and the department for the time being responsible for the administration of the Social Security Act 1964 to ensure the provision of correct tax file numbers of beneficiaries so as to prevent the cessation of benefit payments.
- (2) For the purpose of subsection (1), an authorised officer or agent of the department for the time being responsible for the administration of the Social Security Act 1964 may give to the Commissioner any information about a beneficiary that is held by that department if the information may assist in identifying the beneficiary to the Inland Revenue Department.
- (3) A disclosure of information must not be made under subsection (2) until 10 working days after the department for the time being responsible for the administration of the Social Security Act 1964 requests, orally or in writing, a beneficiary to supply the beneficiary's tax file number and the beneficiary does not provide it to the Department.
- (4) The Commissioner may compare the information referred to in subsection (2) with other information held by the Inland Revenue Department.
- (5) If, as a result of a comparison under this section, the beneficiary is identified, the Commissioner may supply the tax file number of the beneficiary to a person authorised under section 81(4)(o) to receive that information.
- (6) A tax file number provided by the Commissioner under subsection (5) may be used by the department for the time being responsible for the administration of the Social Security Act 1964 as if it were supplied by the beneficiary.
- (7) In this section, **authorised officer** (in relation to the department for the time being responsible for the administration of the Social Security Act 1964), has the same meaning as in section 82(9).
- (8) In this section—  
**Beneficiary** means a person who is receiving, or who has received, a benefit, and includes an applicant for a benefit

**Beneficiary information***[Repealed]**[Repealed]***Benefit** includes an allowance paid pursuant to regulations made under section 303 of the Education Act 1989**Information about a beneficiary** means information that—

- (a) identifies the beneficiary; and
- (b) identifies the benefit that the beneficiary is receiving, has received, or for which the beneficiary has applied:

- (9) A secrecy obligation or other restriction imposed does not prevent the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 or an authorised officer of that department from receiving information disclosed by the Commissioner.

Section 82A was inserted by section 24(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 7 October 1998.

Subsection (5) was amended, as from 25 November 2003, by section 231 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the expression “section 81(4)(o)” for the expression “section 81(4)(n)”.

Subsection (8) beneficiary information: this definition was repealed, as from 20 May 1999, by section 71(1)(a) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (8) information about a beneficiary: this definition was inserted, as from 20 May 1999, by section 71(1)(b) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**83 Disclosure of information for purposes of entitlement card**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the department for the time being responsible for the administration of the Social Security Act 1964—
  - (a) for the purpose of enabling the chief executive of that department to issue entitlement cards; and
  - (b) for the purpose of verifying the entitlement or eligibility of any cardholder to or for an entitlement card.
- (2) For the purpose of subsection (1)(a), on request, by notice, from the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964, the Commissioner may, at any time, supply to any authorised officer of the department all or any of the follow-

ing information that is held by the Department in relation to a WFF tax credit for the year commencing on 1 April 1990 or any subsequent year:

- (a) The names and addresses of persons in receipt of that credit of tax; and
  - (b) the tax file number of each person in receipt of that credit of tax; and
  - (c) the number of children to which that credit of tax relates; and
  - (d) whether that credit of tax is a full credit or a partial credit; and
  - (e) the expected net income of the qualifying person, or the combined expected net income of the qualifying person and the person with whom the qualifying person lives in a marriage, civil union, or de facto relationship, which is used to determine that credit of tax; and
  - (f) the net income of the qualifying person, or the combined net income of the qualifying person and the person with whom the qualifying person lives in a marriage, civil union, or de facto relationship, which is used to determine that credit of tax; and
  - (g) the amounts of all credits of tax by instalments payable to the qualifying person, or the combined amounts of all credits of tax by instalments payable to the qualifying person and the person with whom the qualifying person lives in a marriage, civil union, or de facto relationship; and
  - (h) the amounts of the credits of tax for the income year that are payable to the qualifying person, or the combined amounts of the credits of tax for the income year that are payable to the qualifying person and the person with whom the qualifying person lives in a marriage, civil union, or de facto relationship; and
  - (i) the birth date of each child to which that credit of tax relates.
- (3) For the purpose of subsection (1)(b), any officer or employee or agent of the department for the time being responsible for the administration of the Social Security Act 1964 authorised in that behalf by the chief executive of that department may

from time to time supply to the Commissioner any cardholder information held by that Department.

- (4) Where, in relation to any person, cardholder information is supplied to the Commissioner under subsection (3), the Commissioner may cause a comparison of the information to be made with any information held by the Department and which relates to that person.
- (5) Where the result of any comparison carried out under subsection (4) indicates that a cardholder is receiving, or has, during the previous income year, received, any income from any source, and that income may be, or might have been, taken into account in determining the cardholder's entitlement to or eligibility for an entitlement card, the Commissioner may, for the purpose of subsection (1)(b), supply details of that income to any authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964.
- (6) The provisions of this section shall apply notwithstanding any other provision of this Act.
- (7) In this section, unless the context otherwise requires,—

**Authorised officer**, in relation to the department for the time being responsible for the administration of the Social Security Act 1964, means any officer, employee, or agent of that Department who is authorised by the chief executive of that department to receive information supplied by the Commissioner under this section

**Cardholder** means an individual who holds an entitlement card; and includes an applicant for an entitlement card

**Cardholder information**, in relation to a cardholder, means information that identifies the cardholder, which may include the cardholder's tax file number

**Entitlement card** means a card issued under regulations made under section 132A of the Social Security Act 1964

**Income year** *[Repealed]*  
*[Repealed]*

**qualifying person** means a person qualifying for an entitlement under section MC 2 of the Income Tax Act 2007.

Compare: 1974 No 133 s 13B

Subsection (1) were amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “department for the time being responsible for the administration of the Social Security Act 1964” for “Department of Social Welfare”.

Subsection (1) were amended by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 by substituting “chief executive of that department” for “Director-General of Social Welfare”.

Section 83(2): amended, on 1 April 2008, by section 222 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 83(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 July 1996, by section 11 Tax Administration Amendment Act 1996 (1996 No 19) by substituting “family tax credit” for “credit of tax under Part KD of the Income Tax Act 1994 or Part 11A of the Income Tax Act 1976”.

Subsection (2) was amended by section 19 Taxation (Parental Tax Credit) Act 1999 (1999 No 62) by substituting “Part KD credit” for “family tax credit” with application as from 1 October 1999.

Subsection (2) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 by substituting “chief executive of the department for the time being responsible for the administration of the Social Security Act 1964” and “department” for “Director-General of Social Welfare” and “Department of Social Welfare” respectively.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting “, by notice,” after “request”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “subpart KD credit” for “Part KD credit”.

Subsection (2)(e) was substituted by section 447(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(e) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “and the person with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “and his or her spouse”.

Subsection (2)(e) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (2)(f) was substituted by section 447(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(f), (g), and (h) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “and the person with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “and his or her spouse”.

Subsection (2)(f), (g), and (h) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (3) were amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “department for the time being responsible for the administration of the Social Security Act 1964” for “Department of Social Welfare”.

Subsection (3) were amended by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 by substituting “chief executive of that department” for “Director-General of Social Welfare”.

Subsection (5) was substituted by section 447(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (5) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “department for the time being responsible for the administration of the Social Security Act 1964” for “Department of Social Welfare”.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting “gross” wherever it appears.

Subsection (7) was amended by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 by substituting “chief executive of that department” for “Director-General of Social Welfare”.

Subsection (7) income year: this definition was omitted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 83(7) **qualifying person**: added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **84 Disclosure of information for family support double payment identification**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the department for the time being responsible for the administration of the Social Security Act 1964 for the purposes of—
  - (a) identifying a qualifying person and the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship who are in receipt of a WFF tax credit from both the Commissioner and the chief executive of that department; and
  - (b) verifying whether a qualifying person is or was entitled to any benefit.
- (2) For the purpose of subsection (1), the Commissioner may, at any time, supply to an authorised officer of the department

for the time being responsible for the administration of the Social Security Act 1964 all or any of the following information that is held by the Inland Revenue Department in relation to a qualifying person and the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship:

- (a) the name and address of the qualifying person and the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship; and
  - (b) the tax file number of the qualifying person and the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship; and
  - (c) the date of birth of the qualifying person and the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship.
- (3) Where, in relation to any qualifying person and the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship, information is supplied by the Commissioner to any authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964, the chief executive of that department may compare that information with any beneficiary information held by the department which relates to that qualifying person and person (if any).
- (4) Where the results of any comparison carried out under subsection (3) indicate that a qualifying person (and any person with whom the qualifying person lives in a marriage, civil union, or de facto relationship) is in receipt of a WFF tax credit from both the Commissioner and the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964, the chief executive shall—
  - (a) transfer the results of that comparison to the Commissioner; and
  - (b) retain a copy of the results for the purposes of verifying a person's current or previous entitlement to a benefit.
- (5) The provisions of this section shall apply notwithstanding any other provision of this Act.
- (6) In this section, unless the context otherwise requires,—

**Authorised officer**, in relation to the department for the time being responsible for the administration of the Social Security Act 1964, means any officer, employee, or agent of that Department who is authorised by the chief executive of that department to receive information supplied by the Commissioner under this section

**Beneficiary** means any person who is in receipt of any benefit

**Beneficiary information**, in relation to a beneficiary, means information that identifies the beneficiary, which may include the beneficiary's tax file number

**Part KD credit***[Repealed]*

*[Repealed]*

**qualifying person** means a person who meets the requirements of sections MC 3 to MC 6(a) of the Income Tax Act 2007, and includes a person entitled to a tax credit under section MD 10 or ME 1 of that Act

**WFF tax credit** means an interim instalment of WFF tax credit

Compare: 1974 No 133 s 13C

Subsection (1) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting "department for the time being responsible for the administration of the Social Security Act 1964" for "Department of Social Welfare".

Section 84(1)(a): amended, on 1 April 2008, by section 223(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 84(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 July 1996, by section 12(1) Tax Administration Amendment Act 1996 (1996 No 19) by substituting "family tax credit" for "family support credit of tax".

Subsection (1)(a) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting "chief executive of that department" for "Director-General of Social Welfare".

Subsection (1)(a) was amended by section 20(1) Taxation (Parental Tax Credit) Act 1999 (1999 No 62) by substituting "Part KD credit" for "family tax credit" with application as from 1 October 1999.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting "subpart KD credit" for "Part KD credit".

Subsection (1)(a) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting "the person



(if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “spouse (if any)”.

Subsection (1)(a) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (2) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “department for the time being responsible for the administration of the Social Security Act 1964” for “Department of Social Welfare”.

Subsection (2) (before paragraph (a)) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “spouse (if any)”.

Subsection (2) (before paragraph (a)) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (2)(a), (b) and (c) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “spouse (if any)”.

Subsection (2)(a), (b) and (c) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (3) was substituted, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Subsection (3) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “the person (if any) with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “spouse (if any)” where they first occur.

Subsection (3) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “person (if any)” for “spouse (if any)” where they secondly occur.

Subsection (3) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Section 84(4): amended, on 1 April 2008, by section 223(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 84(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 July 1996, by section 12(2) Tax Administration Amendment Act 1996 (1996 No 19) by substituting “family tax credit” for “family support credit of tax”.

Subsection (4) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “chief executive of the department for the time being responsible for the administration of the Social Security Act 1964, the chief executive” for “Director-General of Social Welfare, the Director-General”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “subpart KD credit” for “Part KD credit”.

Subsection (4) was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting “any person with whom the qualifying person lives in a marriage, civil union, or de facto relationship between a man and a woman” for “spouse (if any)”.

Subsection (4) was amended, as from 1 April 2007, by section 3(2) Tax Administration Amendment Act 2005 (2005 No 22) by omitting “between a man and a woman”.

Subsection (6) “authorised officer”: this definition was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “department for the time being responsible for the administration of the Social Security Act 1964” for “Department of Social Welfare”.

Subsection (6) “authorised officer”: this definition was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “chief executive of that department” for “Director-General of Social Welfare”.

Section 84(6) **family assistance credit**: repealed, on 1 April 2008, by section 223(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 84(6) **family assistance credit**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6) Part KD credit: this definition was inserted by section 20(2) Taxation (Parental Tax Credit) Act 1999 (1999 No 62) with application as from 1 October 1999.

Subsection (6) Part KD credit: this definition was omitted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 84(6) **qualifying person**: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6) qualifying person: this definition was substituted, as from 1 July 1996, by section 12(3) Tax Administration Amendment Act 1996 (1996 No 19).

Subsection (6) qualifying person: this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “Income Tax Act 2004” for “Income Tax Act 1994”.

Subsection (6) qualifying person: this definition was amended, as from 1 April 2006, by section 26(1) Taxation (Working for Families) Act 2004 (2004 No 52) by substituting “section KD 2AAA or KD 3” for “section KD 3(3)”.

Section 84(6) **subpart KD credit**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6) subpart KD credit: this definition was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 84(6) **WFF tax credit**: inserted, on 1 April 2008, by section 223(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

## **85 Disclosure of address information in relation to debtors**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the responsible department for the purpose of assisting the responsible department to recover money owed by debtors to the responsible department, acting in the name of the Crown.
- (2) For the purpose of this section, any officer or employee or agent of the responsible department authorised in that behalf by the chief executive of that department may from time to time supply to the Commissioner any debtor information held by that Department.
- (3) Where, in relation to any debtor, information is supplied by any authorised officer of the responsible department to the Commissioner, the Commissioner may compare that information with any information held by the Commissioner which relates to the debtor.
- (4) For the purpose of subsection (3), where the Commissioner has information relating to the debtor, the Commissioner may supply to an authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964 all or any of the following information that is held by the Commissioner in relation to that debtor:
  - (a) the street address of the debtor; and
  - (b) the name and street address of the last known employer of the debtor.
- (5) The provisions of this section shall apply notwithstanding any other provision of this Act.
- (6) In this section, unless the context otherwise requires,—

**Authorised officer**, in relation to the responsible department, means any officer, employee, or agent of that Department who is authorised by the chief executive of that department to receive information supplied by the Commissioner under this section

**Debtor** means—

- (a) any person in respect of whom liable parent contributions assessed under the Social Security Act 1964 remain unpaid; or
- (b) any person who is not currently receiving a benefit and from whom any amount of money may be recovered under section 86 or section 125 of that Act; or
- (c) any person liable to pay any maintenance under the Family Proceedings Act 1980 that remains unpaid and that may be enforced against the person pursuant to section 259 of the Child Support Act 1991;
- (d) a person who is not currently receiving a student allowance and from whom a debt relating to an allowance (as defined in section 302 of the Education Act 1989) is recoverable under section 307B of that Act

**Debtor information** means information that identifies the debtor, which may include the debtor's tax file number.

Compare: 1974 No 133 s 13D

Subsection (1) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” and the word “department” for the words “Department of Social Welfare”.

Subsection (1) was substituted, as from 21 December 2004, by section 93(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsections (2), (3), (4), and (6) (definition of Authorised officer) were amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “department for the time being responsible for the administration of the Social Security Act 1964” for the words “Department of Social Welfare”.

Subsections (2) and (6) (definition of Authorised officer) were amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting the words “chief executive of that department” for the words “Director-General of Social Welfare”.

Subsection (2) was amended, as from 21 December 2004, by section 93(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (3) was amended, as from 21 December 2004, by section 93(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111)

by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (6) authorised officer: this definition was amended, as from 21 December 2004, by section 93(4)(a) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “the responsible department” for the words “the department for the time being responsible for the administration of the Social Security Act 1964”.

Subsection (6) Debtor: paragraph (b) was amended, as from 16 September 1997, by section 2(a) Tax Administration Amendment Act 1997 (1997 No 70) by inserting the word “; or”.

Subsection (6)(c) Debtor: paragraph (c) was inserted, as from 16 September 1997, by section 2(b) Tax Administration Amendment Act 1997 (1997 No 70).

Subsection (6) Debtor: paragraph (d) of this definition was inserted, as from 21 December 2004, by section 93(4)(b) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

#### **85A Disclosure of certain information in relation to fines defaulters**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Department for Courts for the purpose of establishing an information matching programme to enable the Department for Courts to locate any fines defaulter.
- (2) For the purpose of this section, any authorised officer of the Department for Courts may from time to time supply to the Commissioner any fines defaulter information held by that Department.
- (3) If, in relation to any fines defaulter, information is supplied by any authorised officer of the Department for Courts to the Commissioner, the Commissioner may compare that information with any information held by the Commissioner which relates to the fines defaulter.
- (4) If the Commissioner has information relating to the fines defaulter, the Commissioner may supply to an authorised officer of the Department for Courts all or any of the following information that is held by the Commissioner in relation to that fines defaulter:
  - (a) the last known address of the fines defaulter; and
  - (b) if applicable, the date when that address was most recently changed; and

- (c) the telephone number of the fines defaulter; and
  - (d) the name of the employer of the fines defaulter; and
  - (e) the address of the employer of the fines defaulter; and
  - (f) the telephone number of the employer of the fines defaulter.
- (5) The provisions of this section apply despite any other provision of this Act.
- (6) In this section, unless the context otherwise requires,—
- Authorised officer**, in relation to the Department for Courts, means any officer, employee, or agent of that Department who is authorised by the chief executive to supply information to or receive information from the Commissioner under this section
- Chief executive** means the chief executive of the Department for Courts
- fines defaulter** means any person who is in default in the payment of—
- (a) a fine within the meaning of section 79 of the Summary Proceedings Act 1957;
  - (b) an amount of reparation as defined in section 145D of the Sentencing Act 2002;
  - (c) a fine or other sum of money to which any of sections 19 to 19E of the Crimes Act 1961 applies;
  - (d) a fine to which any of sections 43 to 46 of the Misuse of Drugs Amendment Act 1978 applies

fines defaulter: this definition was substituted, as from 10 April 2006, by section 4(2) Tax Administration Amendment Act 2006 (2006 No 14).

**fines defaulter information—**

- (a) means information that identifies a fines defaulter; and
- (b) includes—
  - (i) the name, address, and telephone number of the fines defaulter; and
  - (ii) the name, address, and telephone number of the employer of the fines defaulter.

fines defaulter information: this definition was substituted, as from 10 April 2006, by section 4(2) Tax Administration Amendment Act 2006 (2006 No 14).

Section 85A was inserted, as from 1 November 1998, by section 30 Summary Proceedings Amendment Act (No 3) 1998 (1998 No 91).

Subsection (4)(c) was substituted, as from 10 April 2006, by section 4(1) Tax Administration Amendment Act 2006 (2006 No 14).

Subsection (4)(d) to (f) was inserted, as from 10 April 2006, by section 4(1) Tax Administration Amendment Act 2006 (2006 No 14).

**85B Disclosure of information for purposes of mutual assistance provision contained in social security agreement**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the department for the time being responsible for the administration of the Social Security Act 1964 for the purpose of giving assistance to the government of a country with which New Zealand has a social security agreement.
- (2) For the purpose of this section, any authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964 may from time to time supply to the Commissioner any personal information supplied to that department by the government of that country.
- (3) Where, in relation to any person, personal information is supplied in accordance with subsection (2) to the Commissioner, the Commissioner may compare that information with any information held by the Commissioner which relates to the person.
- (4) For the purpose of this section, where the Commissioner has information relating to the person, the Commissioner may supply to an authorised officer—
  - (a) any of the following information held by the Commissioner if that information is of a type specified in the agreement made under section 19C(1)(d) of the Social Welfare (Transitional Provisions) Act 1990:
    - (i) the street address of the person; and
    - (ii) the name and street address of the last known employer of the person; and
    - (iii) where the result of a comparison carried out under subsection (3) indicates that the person is receiving, or has, during the previous tax year, received, any income from any source, the details of that income; and

- (iv) where the Commissioner knows the names and dates of birth of any dependent children of the person, those names and dates; and
  - (b) any other information held by the Commissioner that is of a type specified in the agreement made under section 19C(1)(d) of the Social Welfare (Transitional Provisions) Act 1990.
- (5) Where the Commissioner has supplied information under subsection (4) to an authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964, the department may supply that information to the competent institution of the government of the other country in accordance with the mutual assistance provision of the social security agreement.
- (6) The provisions of this section apply despite any other provision of this Act.
- (7) In this section, unless the context otherwise requires,—
  - authorised officer** means any officer, employee, or agent of the department for the time being responsible for the administration of the Social Security Act 1964 who is authorised by the chief executive of that department to supply information or receive information from the Commissioner under this section
  - personal information** means information that identifies an individual, which may include the individual's tax file number
  - social security agreement** means an agreement or Convention or alteration to an agreement or Convention—
    - (a) in respect of which an Order in Council has been made under section 19 of the Social Welfare (Transitional Provisions) Act 1990; and
    - (b) that contains a mutual assistance provision of a kind referred to in section 19A(2)(b) of that Act.

Sections 85B and 85C were inserted, as from 23 November 2000, by section 9 Social Welfare (Transitional Provisions) Amendment Act 2000 (2000 No 88).

Subsection (4)(a)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (4)(a)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appears.



**85C Use and supply of information supplied for purposes of section 85B**

Where information is supplied to the Commissioner under section 85B(2), the Commissioner—

- (a) may use that information for any of the following purposes:
  - (i) the purposes set out in subsections (3) and (4) of that section:
  - (ii) making an assessment of the amount of tax due by any person:
  - (iii) detecting tax fraud or tax evasion:
- (b) may not supply that information to any other country without the prior written consent of the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 and subject to such conditions as that chief executive sets.

Sections 85B and 85C were inserted, as from 23 November 2000, by section 9 Social Welfare (Transitional Provisions) Amendment Act 2000 (2000 No 88).

**85D Ministry of Education to provide information as to study status of student loan borrowers**

*[Repealed]*

Section 85D was inserted, as from 15 December 2000, by section 17 Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96).

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting “, by notice,” after “requested”.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting “tax year” for “income year”.

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting “, by notice,” after “request”.

Section 85D was repealed, as from 1 April 2007, by section 44(4) Student Loan Scheme Amendment Act 2007 (2007 No 13).

**85E Disclosure of information for assessment of levies**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Accident Compensation Corporation for the purpose of establishing an information matching programme to enable the Corporation to assess levies for employers, self-employed persons, private domestic workers, and shareholder-employees

in accordance with the Injury Prevention, Rehabilitation, and Compensation Act 2001.

- (2) For the purposes of subsection (1), for the year commencing on 1 April 2002 and every subsequent year, on request, by notice, from the chief executive of the Corporation, the Commissioner may, at any time, supply to any authorised officer of the Corporation all of the following information that is held by the Department:
- (a) the names, addresses, and ACC file numbers for employers, self-employed persons, private domestic workers, and shareholder-employees:
  - (b) the time at which an employer or a private domestic worker became or ceased to become an employer or a private domestic worker:
  - (c) the time at which a self-employed person commenced or ceased business:
  - (d) the total amount paid in any year by an employer or a private domestic worker as earnings as an employee:
  - (e) in the case of a self-employed person, the earnings as a self-employed person:
  - (f) in the case of a shareholder-employee, the earnings as a shareholder-employee.
- (3) In this section,—

**earnings as an employee, employer, private domestic worker, and self-employed person** have the meanings given to them by section 6 of the Injury Prevention, Compensation, and Rehabilitation Act 2001

**earnings as a self-employed person** has the meaning given to it by section 6 of the Injury Prevention, Compensation, and Rehabilitation Act 2001

**earnings as a shareholder-employee** has the meaning given to it by section 15 of the Injury Prevention, Compensation, and Rehabilitation Act 2001.

Section 85E was inserted, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49). *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice,” after the word “request”.

**85F Disclosure of information for verification of government screen production payment entitlement**

- (1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the Commission for the purpose of providing to the Commission information which the chief executive considers necessary to enable the Commission to determine the entitlement of a company to a government screen production payment.
- (2) For the purposes of subsection (1), on request from the chief executive, the Commissioner may, at any time, provide to any authorised officer of the Commission all of the following information that is held by the Department:
  - (a) particulars relating to the amount of expenditure incurred in relation to a project that is the subject of an application for a government screen production payment:
  - (b) particulars relating to the amount of expenditure incurred in New Zealand in relation to a project that is the subject of an application for a government screen production payment:
  - (c) the Commissioner’s opinion as to the accuracy of any information provided by an applicant in relation to the application for a government screen production payment.
- (3) In this section—

**chief executive** means the person appointed under section 13(1) of the New Zealand Film Commission Act 1978

**Commission** means the New Zealand Film Commission established by section 3 of the New Zealand Film Commission Act 1978

**company** means a company to which the definition of large budget screen production grant in section YA 1 of the Income Tax Act 2007 refers.
- (4) If any of the information specified in subsection (2) is not held by the Department, the Commissioner may use any of

the Commissioner's powers that are contained in Part 3 of this Act to obtain information.

Section 85F was inserted, as from 25 November 2003, by section 118(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 85F heading: amended, on 6 October 2009, by section 639(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 85F(1): substituted, on 6 October 2009, by section 639(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 85F(2): substituted, on 6 October 2009, by section 639(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994" in both places they appear.

Section 85F(3) **company**: amended, on 6 October 2009, by section 639(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 85F(3) **company**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85F(3) **large budget screen production grant**: repealed, on 6 October 2009, by section 639(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 85F(3) **large budget screen production grant**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **85G Disclosure of information in relation to Working for Families tax credits**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the department currently responsible for administering the Social Security Act 1964 for the purpose of providing to the Commissioner information that the chief executive of that department considers necessary to enable the Commissioner to—
  - (a) commence paying family tax credit payments to a qualifying person who has ceased to be entitled to be paid a WFF tax credit under section 80KN;
  - (b) contact a person in order to invite the person to—
    - (i) apply for a credit of tax under section MD 1, or sections MD 1 and ME 1, of the Income Tax Act 2007; or

- (ii) provide additional information so that the Commissioner may calculate the credit of tax:
  - (c) withdraw or replace a certificate of entitlement under section 80KH.
- (2) For the purpose of subsection (1), any authorised officer may from time to time supply to the Commissioner all or any beneficiary information that is held by the department currently responsible for administering the Social Security Act 1964 in relation to a beneficiary and a spouse (if any) of the beneficiary.
- (3) If information is supplied under subsection (2), the Commissioner may compare that information with any qualifying person information held by the Commissioner.
- (4) The Commissioner may take action under subparts MA to MF and MZ of the Income Tax Act 2007 if the results of a comparison under subsection (3) indicate that—
  - (a) the qualifying person will be in receipt of a WFF tax credit from both of the Commissioner and the chief executive of the department currently responsible for administering the Social Security Act 1964:
  - (b) the Commissioner may be required to commence paying a WFF tax credit to a qualifying person.
- (5) The provisions of this section apply notwithstanding any other provisions of this Act.
- (6) In this section, unless the context otherwise requires,—
  - authorised officer**, in relation to the department currently responsible for administering the Social Security Act 1964, means any officer, employee, or agent of that department who is authorised by the chief executive of that department to supply information to the Commissioner under this section
  - beneficiary** means any person who is or was in receipt of any benefit
  - beneficiary information**, in relation to a beneficiary, means information that identifies the beneficiary, the beneficiary's spouse (if any) and any dependent child of that beneficiary (including their dates of birth and tax file numbers), and any other information of a kind specified by the Minister by notice

published in the *Gazette*, being information that may assist the Commissioner to achieve the purpose in subsection (1)

**qualifying person** means a person who meets the requirements in sections MC 3 to MC 6(a) of the Income Tax Act 2007, and includes a person entitled to a tax credit under section MD 10 or ME 1 of that Act

**WFF tax credit** means an interim instalment of WFF tax credit

Section 85G was inserted, as from 1 April 2005, by section 27(1) Taxation (Working for Families) Act 2004 (2004 No 52).

Section 85G heading: amended (with effect from 1 April 2007), on 19 December 2007, by section 224(1)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 85G(1)(a): amended, on 1 April 2008, by section 224(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 85G(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(1)(a): amended (with effect from 1 April 2007), on 19 December 2007, by section 224(1)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 85G(1)(b)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 640(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 85G(1)(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(1)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 640(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 85G(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(4)(a): amended, on 1 April 2008, by section 224(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 85G(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(4)(b): amended, on 1 April 2008, by section 224(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 85G(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(6) **family assistance credit**: repealed, on 1 April 2008, by section 224(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 85G(6) **family assistance credit**: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(6) **qualifying person**: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(6) **specified benefit**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(6) **subpart KD credit**: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 85G(6) **WFF tax credit**: inserted, on 1 April 2008, by section 224(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **85GB Government Actuary to provide information to Commissioner for purpose of administration of KiwiSaver Act 2006**

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Government Actuary for the purpose of administration of the KiwiSaver Act 2006.
- (2) For the purposes of this section, the Government Actuary or any person to whom the functions, duties, or powers of the Government Actuary are delegated, must, as soon as reasonably practicable after a request by the Commissioner, provide the Commissioner with the information that is requested by the Commissioner that the Government Actuary considers is not undesirable to disclose and is reasonably necessary to enable the Commissioner to exercise or perform any function, duty, or power lawfully conferred by the KiwiSaver Act 2006.
- (3) The information referred to in subsection (2) must be provided to the best of the knowledge and belief of the person who provides the information, if the person does not have certain knowledge of the relevant matters.

Sections 85GB and 85GC were inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

### **85GC Use of information supplied under section 85GB**

- (1) If information is supplied to the Commissioner under section 85GB, the Commissioner may use the information in connec-

tion with the exercise or performance of any of the Commissioner's duties, functions, or powers under the KiwiSaver Act 2006.

- (2) Section 85GB and this section apply despite any other provision of this Act.

Sections 85GB and 85GC were inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 85GC heading: amended, on 19 December 2007, by section 225 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **85H Disclosure of information for purposes of Parental Leave and Employment Protection Act 1987**

- (1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the responsible department for the purposes of providing to the responsible department, applicant information that the Commissioner considers necessary to enable the responsible department to—
- (a) verify an entitlement to parental leave payments:
  - (b) investigate possible overpayment of parental leave payments.
- (2) For the purpose of subsection (1), an employee or agent of the responsible department who is authorised to do so by the chief executive of the responsible department may from time to time supply to the Commissioner information that is held by the responsible department in relation to an applicant, or the spouse of an applicant, for a parental leave payment.
- (3) For the purpose of subsection (1), the Commissioner may compare applicant information contained in an application for payment of paid parental leave made under section 71I of the Parental Leave and Employment Protection Act 1987, or compare applicant information supplied under subsection (2), and information held by the Commissioner that relates to the applicant.
- (4) Where the Commissioner has made a comparison under subsection (3), the Commissioner may communicate applicant information to the chief executive of the responsible department



if the Commissioner considers the communication to be necessary for the purposes set out in subsection (1).

(5) In this section and in section 85I,—

**applicant** means a person who has made an application for a parental leave payment under section 71I of the Parental Leave and Employment Protection Act 1987

**applicant information**, for an applicant, means—

- (a) information that relates to the circumstances of the applicant that are relevant to the eligibility of the applicant for parental leave payments under Part 7A of the Parental Leave and Employment Protection Act 1987:
- (b) the applicant's name and tax file number:
- (c) the name and tax file number of the applicant's employer

**parental leave** has the meaning in section 2 of the Parental Leave and Employment Protection Act 1987

**responsible department** means the department for the time being responsible for the administration of the Parental Leave and Employment Protection Act 1987.

Sections 85H and 85I were inserted, as from 21 June 2005, by section 135 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

### **85I Use of Parental Leave and Employment Protection Act 1987 and parental tax credit information to determine entitlement**

- (1) For the purpose of section 71G(1) of the Parental Leave and Employment Protection Act 1987, if the Commissioner as a delegate under section 71ZA of that Act receives an application for parental leave payments in relation to a child, the Commissioner may—
  - (a) compare applicant information and information held by the Commissioner:
  - (b) refuse the application for payment of parental leave if a comparison under paragraph (a) indicates that the employee or his or her spouse has received a payment of parental tax credit in respect of the child.
- (2) The Commissioner may treat information obtained while acting as a delegate of the responsible department under section 71ZA of the Parental Leave and Employment Protection Act

1987 as information obtained for the purposes of administering the Inland Revenue Acts.

- (3) The Commissioner may refuse or recover a parental tax credit under section MD 11 of the Income Tax Act 2007 in respect of a child if a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is to be paid or has been paid to the applicant in respect of the child.

Sections 85H and 85I were inserted, as from 21 June 2005, by section 135 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 85I(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**85J Disclosure of information for administration of Australian wine producer rebate**

- (1) The purpose of this section is to facilitate the exchange of information between the Commissioner and the Australian Taxation Office and the New Zealand Customs Service for the purpose of administering the entitlements of New Zealand resident wine producers to Australian wine producer rebates.
- (2) For the purposes of subsection (1), the Commissioner may at any time provide all information referred to in subsection (3) to a person who is—
- (a) an officer, employee, or agent of the Australian Taxation Office or the New Zealand Customs Service; and
  - (b) authorised to receive the information by the chief executive officer of the Australian Taxation Office or the New Zealand Customs Service.
- (3) The information that may be provided under subsection (2) is all information relevant to—
- (a) the claim by a New Zealand resident wine producer for payment of an Australian wine producer rebate in respect of wine produced in New Zealand that is sold in Australia;
  - (b) the approval or verification of the entitlement of a New Zealand resident wine producer to a payment of an Australian wine producer rebate.

Section 85J was inserted, as from 21 December 2005, by section 11 Taxation (Urgent Measures) Act 2005 (2005 No 121).

**85K New Zealand Police and Ministry of Justice to provide information concerning sex offences for purposes of child support exemptions**

- (1) The purpose of this section and section 85L is to facilitate the exchange of information between the Inland Revenue Department and the New Zealand Police and between the Inland Revenue Department and the Ministry for the purpose of determining whether a person is eligible for an exemption under subpart 4 of Part 5A of the Child Support Act 1991.
- (2) For the purposes of this section,—
  - (a) the Commissioner of Police, or any authorised officer of the police, must, within 10 working days of a request by the Commissioner, provide the Commissioner with the information specified in subsection that is requested by the Commissioner in connection with the exercise or performance of any of the Commissioner's duties, powers, or functions under subpart 4 of Part 5A of the Child Support Act 1991; and
  - (b) the chief executive of the Ministry, or any authorised officer of the Ministry, must, within 10 working days of a request by the Commissioner, provide the Commissioner with the information specified in subsection (3) that is requested by the Commissioner in connection with the exercise or performance of any of the Commissioner's duties, powers, or functions under Child Support Act 1991 subpart 4 of Part 5A of the .
- (3) For the purposes of subsection (2), the information that may be provided is—
  - (a) whether a particular person—
    - (i) has been convicted of a sex offence; or
    - (ii) has been proved to have committed a sex offence before a Youth Court; and
  - (b) details of that offence, including the type of offence and the date, or approximate date, when that offence was committed; and
  - (c) whether a particular person is the victim of that offence; and
  - (d) whether a conviction for that offence has been quashed; and

- (e) whether a finding of a Youth Court that a sex offence has been committed has been reversed or set aside; and
  - (f) whether any court has ordered a new trial in relation to the matter; and
  - (g) any other particulars that the Commissioner considers relevant to the purpose of this section.
- (4) The information specified in subsection (3) must be provided to the best of the knowledge and belief of the person who provides the information if the person does not have certain knowledge of the relevant matters.
- (5) In this section and in section 85L, unless the context otherwise requires,—

**authorised officer of the Ministry** means an officer of the Ministry who is authorised by the chief executive of the Ministry to provide information under this section

**authorised officer of the police** means a Police employee who is authorised by the Commissioner of Police to provide information under this section

**Ministry** means the Ministry of Justice

**sex offence** means an offence under any of sections 127 to 144C of the Crimes Act 1961

**victim** means the person against whom an offence is committed by another person.

Sections 85K and 85L were inserted, as from 26 September 2006, by section 52 Child Support Amendment Act 2006 (2006 No 42).

Section 85K(5) **authorised officer of the police**: amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

### **85L Use of information supplied under section 85K**

- (1) If information is supplied to the Commissioner under section 85K, the Commissioner may use the information in connection with the exercise or performance of any of the Commissioner's duties, powers, or functions under subpart 4 of Part 5A of the Child Support Act 1991.
- (2) Section 85K and this section apply despite any other provision of this Act.

Sections 85K and 85L were inserted, as from 26 September 2006, by section 52 Child Support Amendment Act 2006 (2006 No 42).

**86 Other persons to maintain secrecy**

- (1) Every person to whom this section applies shall, before the person acquires or has access to or is given any of the information referred to in subsection (5), certify in the manner prescribed in subsection (3) that the person has been shown, has read, and has understood the provisions of this section, and after that shall be bound to maintain and aid in maintaining the secrecy of all matters relating to—
  - (a) the Inland Revenue Acts, including all Acts (whether repealed or not) at any time administered by or in the Department; and
  - (b) the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
  - (c) the New Zealand Superannuation Act 1974—  
which come to the person's knowledge through the agency of the Commissioner, and shall not, either while the person is or after the person ceases to be a person to whom this section applies, communicate such matters to any other person except for the purpose of carrying into effect the Accident Compensation Act 1982, or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or the Injury Prevention, Rehabilitation, and Compensation Act 2001, or the New Zealand Superannuation Act 1974, as the case may be.
- (2) Without limiting the generality of subsection (1), no person to whom this section applies shall be required to produce in any Court or tribunal any book or document or to divulge or communicate to any Court or tribunal any matter or thing which the person may acquire or have access to or be given by way of information referred to in subsection (5), except when it is necessary to do so for the purpose of carrying into effect any provision of the Accident Compensation Act 1982, or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or the Injury Prevention, Rehabilitation, and Compensation Act 2001, or

the New Zealand Superannuation Act 1974, as the case may be.

- (3) The certificate referred to in subsection (1) shall be given in and form part of a bound register to be kept in a secure place as a permanent record, and shall include the full name, address, and signature of the person giving the certificate and the date on which the certificate is given, and, in other respects, shall be in such form as the Commissioner may prescribe.
- (4) The register referred to in subsection (3) shall—
- (a) Where it contains certificates given by persons mentioned in subsection (5)(a), be kept by the Accident Compensation Corporation or the Accident Rehabilitation and Compensation Insurance Corporation or the Accident Compensation Corporation; and
  - (aa) Where it contains certificates given by persons mentioned in subsection (5)(aa), be kept by the Regulator; and
  - (b) Where it contains certificates given by persons mentioned in subsection (5)(b), be kept by the person, association, company, firm, body, or institution to whom or to which powers and functions have been delegated or subdelegated under the relevant provision referred to in subsection (5)(b); and
  - (c) Where it contains certificates given by persons mentioned in subsection (5)(c), be kept by the New Zealand Superannuation Corporation; and
  - (d) Where it contains certificates given by persons mentioned in subsection (5)(d), be kept by the person, association, company, firm, body, or institution to whom or to which powers and functions have been delegated or subdelegated under the relevant provision referred to in subsection (5)(d):

Provided that, when any such person, association, company, firm, body, or institution ceases to be a person, association, company, firm, body, or institution to whom or to which powers and functions are delegated or subdelegated under the relevant provision, the register kept by the person or entity, shall, as soon as practicable after that cessation, be deposited with the Commissioner.

- (5) In this section, **person to whom this section applies** means—
- (a) A person who is or has been a member of, or who is or has been appointed or employed by, the Accident Compensation Corporation constituted under the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Corporation constituted under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Compensation Corporation established under the Accident Insurance Act 1998 or continued by the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
  - (aa) a person who is or has been appointed or employed by the Regulator under the Accident Insurance Act 1998; or
  - (b) a person, association, company, firm, body, or institution to whom or to which powers and functions have been delegated or subdelegated under section 18 of the Accident Compensation Act 1982 or clause 28 of Schedule 2 to the Accident Rehabilitation and Compensation Insurance Act 1992 or clause 25 of Schedule 6 of the Accident Insurance Act 1998 or clause 25 of Schedule 5 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 and any officer, employee, or agent employed or appointed by that person, association, company, firm, body, or institution; or
  - (c) a person who is or has been a member of or who is or has been appointed or employed by the New Zealand Superannuation Corporation constituted under the New Zealand Superannuation Act 1974; or
  - (d) a person, association, company, firm, body, or institution to whom or to which powers and functions have been delegated or subdelegated under section 16 or section 17 of the New Zealand Superannuation Act 1974, and any officer, employee or agent employed or appointed by that person, association, company, firm, body, or institution,—
- and who by reason of that membership, appointment, or employment, or in the course of that membership, appointment, or employment, or by reason of, or in the course of carrying

out, any powers, or functions under the delegation or subdelegation, as the case may be, may acquire or have access to or be given, through the agency of the Commissioner, any information which the Commissioner has obtained or which has been disclosed to the Commissioner under—

- (e) the Inland Revenue Acts, including all Acts (whether repealed or not) at any time administered by or in the Department; or
  - (f) the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
  - (g) the New Zealand Superannuation Act 1974.
- (6) For the purposes of this section, unless the context otherwise requires, every reference to the New Zealand Superannuation Act 1974 shall be deemed to include a reference to Part 1 of the Superannuation Schemes Act 1976, and every reference to the New Zealand Superannuation Corporation shall be deemed to include a reference to the National Provident Fund Board in relation to its functions under Part 1 of the Superannuation Schemes Act 1976.

Compare: 1974 No 133 ss 13(6), 14

Subsection (1) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or the Accident Insurance Act 1998”.

Subsection (1)(b) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or the Accident Insurance Act 1998”.

Subsection (1)(b) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the words “the Accident Insurance Act 1998”, the words “or the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1) (that part after paragraph (b)) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the words “the Accident Insurance Act 1998”, the words “or the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.



Subsection (2) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or the Accident Insurance Act 1998”.

Subsection (2) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the words “the Accident Insurance Act 1998”, “the words or the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (4)(a) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or the Accident Compensation Corporation”.

Subsection (4)(aa) was inserted, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114).

Subsection (5)(a) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting after the words “the Accident Insurance Act 1998”, the words “or continued by the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (5)(a) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or the Accident Compensation Corporation established under the Accident Insurance Act 1998”.

Subsection (5)(b) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by substituting the words “or clause 25 of Schedule 6 of the Accident Insurance Act 1998 or clause 25 of Schedule 5 of the Injury Prevention, Rehabilitation, and Compensation Act 2001” for the words “or clause 26 of Schedule 6 of the Accident Insurance Act 1998”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (5)(aa) was inserted, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114).

Subsection (5)(b) was inserted, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting the words “or clause 26 of Schedule 6 of the Accident Insurance Act 1998”.

Subsection (5)(f) was inserted, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting the words “or the Accident Insurance Act 1998”.

Subsection (5)(f) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting, after the words “the Accident Insurance Act 1998”, the words “or the Injury Prevention, Rehabilitation, and Compensation Act 2001”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of

workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

## **87 Further secrecy requirements**

- (1) Any person with access to restricted information shall—
  - (a) before he or she acquires or has access to or is given any restricted information, certify in the manner prescribed in subsection (3) that he or she has been shown, has read, and has understood the provisions of this section; and
  - (b) subsequently be bound to maintain and aid in maintaining the secrecy of all restricted information that comes to his or her knowledge, and shall not at any time communicate such information to any person, except for any purpose for which, and to the extent to which, the Commissioner authorises such disclosure.
- (2) Without limiting the generality of subsection (1), no person shall be required to produce in any Court or tribunal any book or document, or to divulge or communicate to any Court or tribunal any restricted information.
- (3) The certificate referred to in subsection (1) shall be given in the form prescribed by the Commissioner, and shall include the full name, address, and signature of the person giving the certificate and the date on which the certificate is given.
- (4) The certificate shall—
  - (a) where it is given by any person referred to in section 81(4)(d), be kept by the Department of Statistics as a permanent record:
  - (b) where it is given by any person referred to in section 81(4)(f) who is an officer or employee or agent of the department for the time being responsible for the administration of the Social Security Act 1964, be kept by that Department as a permanent record:
  - (c) where it is given by any person referred to in section 81(4)(f) who is an officer or employee or agent of the Accident Rehabilitation and Compensation Insurance Corporation or the Accident Compensation Corporation, be kept by that Corporation as a permanent record:

- (d) where it is given by any person referred to in section 81(4)(g) (being an employee of the loan manager under the Student Loan Scheme or an employee of any tertiary institution or the Secretary of Education or any employee of the Ministry of Education), be kept by the Secretary of Education as a permanent record:
  - (db) where it is given by any person referred to in section 81(4)(gb), be kept by the New Zealand Customs Service as a permanent record:
  - (e) in any other case be kept by the Inland Revenue Department as a permanent record.
- (5) In this section, **person with access to restricted information** means any person who—
- (a) acquires or has access to or is given restricted information—
    - (i) Through the agency of the Commissioner under any of paragraphs (d), (e), (eb), (f), (g), (gb), (h), (i) and (q) of section 81(4); or
    - (ii) by virtue of the person's access to the information processing and storage systems of the Department; or
  - (b) being a person who, by the nature of his or her physical access to the premises or the information processing and storage systems of the Department may or is likely to have access to restricted information, has been required by the Commissioner to certify in the manner prescribed by subsection (3); or
  - (c) accompanies the Commissioner or an authorised officer, as permitted by section 16(2A), to a place where the person may or is likely to have access to restricted information; or
  - (d) being a person who is an officer, employee, or agent of the New Zealand Film Commission responsible for the administration of a scheme under which government screen production payments are made and who is authorised to receive information provided under section 85F; or
  - (e) being a person employed by Archives New Zealand (Te Rua Mahara o te Kawanatanga) or by or in a repository

approved under section 26 of the Public Records Act 2005, has access to public records in respect of which the Department is subject to an obligation of secrecy under section 81.

Compare: 1974 No 133 s 15

Subsection (4)(b) was amended, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96) by substituting “department for the time being responsible for the administration of the Social Security Act 1964” for “Department of Social Welfare”.

Subsection (4)(c) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting “or the Accident Compensation Corporation”.

Subsection (4)(db) was inserted, as from 28 March 2007, by section 44(5) Student Loan Scheme Amendment Act 2007 (2007 No 13).

Subsection (5) was amended, as from 26 March 2003, by section 107(a) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting “subsection (3); or” for “subsection (3)”.

Subsection (5)(a)(i) was amended, as from 21 December 2004, by section 94(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting “(eb),” after “(e)” with application for secrecy certificates that are signed as from 21 December 2004.

Subsection (5)(a)(i) was amended, as from 21 June 2005, by section 136 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting “, (i) and (q)” for “and (i)”.

Subsection (5)(a)(i) was amended, as from 28 March 2007, by section 44(6) Student Loan Scheme Amendment Act 2007 (2007 No 13) by inserting “(gb),” after “(g)”.

Subsection (5)(c) was inserted, as from 26 March 2003, by section 107(b) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (5)(c) was amended, as from 25 November 2003, by section 119(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting “information; or” for “information.”.

Subsection (5)(d) was inserted, as from 25 November 2003, by section 119(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 87(5)(d): substituted, on 6 October 2009, by section 641 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

(5)(d) was amended, as from 21 April 2005, by section 67(1) Public Records Act 2005 (2005 No 40) by inserting “; or”.

Subsection (5)(e) was inserted, as from 21 April 2005, by section 67(1) Public Records Act 2005 (2005 No 40).

**88 Secrecy obligations not to prevent disclosure in arrangements for relief from double taxation and exchange of information**

Notwithstanding any obligation of secrecy imposed by any enactment, the Commissioner may disclose such information as is required to be disclosed under a double tax agreement or tax recovery agreement to a person authorised to receive such information under the law of the territory in relation to which the double tax agreement or tax recovery agreement has been made.

Section 88 was amended by section 448 Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the expression “BH 1” for the expression “BB 11” with application as from the 1997-98 income year.

Section 88 was substituted, as from 23 September 1997, by section 72 Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 88 was amended, as from 20 May 1999, by section 72(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the words “double tax agreement or tax recovery agreement” for the words “double tax agreement”.

**89 Commissioner to inform Minister where funds of gift-exempt body applied for non-charitable purpose, etc**

In any case where the Commissioner has reason to believe that the funds of any gift-exempt body might be or are being applied for a purpose that is not charitable, benevolent, philanthropic, or cultural, the Commissioner shall, notwithstanding section 81, without revealing the identity of the maker of any donation to the gift-exempt body, inform the Minister accordingly.

Compare: 1976 No 65 s 432A(4)

**Part 4A  
Disputes procedures**

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**89A Purpose of this Part**

- (1) The purpose of this Part is to establish procedures that will—

- (a) improve the accuracy of disputable decisions made by the Commissioner under certain of the Inland Revenue Acts; and
  - (b) reduce the likelihood of disputes arising between the Commissioner and taxpayers by encouraging open and full communication—
    - (i) to the Commissioner, of all information necessary for making accurate disputable decisions; and
    - (ii) to the taxpayers, of the basis for disputable decisions to be made by the Commissioner; and
  - (c) promote the early identification of the basis for any dispute concerning a disputable decision; and
  - (d) promote the prompt and efficient resolution of any dispute concerning a disputable decision by requiring the issues and evidence to be considered by the Commissioner and a disputant before the disputant commences proceedings.
- (2) This Part does not apply with respect to any tax returns or notices of assessments that are, or become, subject to objection proceedings under Part 8.
- (3) Despite section 1(2), this Part applies to disputable decisions made by the Commissioner for tax years before the 1994-95 tax year.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was inserted, as from 20 May 1999, by section 73(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **89AB Response periods**

- (1) This section applies for the purposes of Parts 4A and 8A to set the period for a notice in response to another notice (the **initiating notice**). The period is called the **response period**.

- (2) When the initiating notice is a notice of proposed adjustment, the response period is a 2-month period starting on the date of issue of the notice.
- (3) When the initiating notice is a notice of assessment issued by a taxpayer, the response period for a notice of proposed adjustment under section 89DA is—
  - (a) a 4-month period starting on the date of issue of the initiating notice; or
  - (b) if the notice of proposed adjustment relates solely to the amount of a tax credit under section LH 2 of the Income Tax Act 2007, a period starting on the date the initiating notice is received in an office of the department and ending 2 years after the latest date to provide a return of income for the relevant tax year.
- (4) When the initiating notice is either a notice of disputable decision or a notice revoking or varying a disputable decision that is not an assessment, the response period for a notice is—
  - (a) a 2-month period starting on the date of issue of the initiating notice, unless paragraph (b) or (c) applies; or
  - (b) for a notice of proposed adjustment to which paragraph (c) does not apply, a 4-month period starting on the date of issue of the initiating notice; or
  - (c) for a notice of proposed adjustment relating solely to the amount of a tax credit under section LH 2 of that Act, a period starting on the date the notice of proposed adjustment is received in an office of the department and ending on the later of—
    - (i) 4 months after the date of the initiating notice;
    - (ii) 2 years after the latest date to provide a return of income for the relevant tax year.
- (5) When the initiating notice is a disclosure notice, a notice issued by the Commissioner rejecting an adjustment proposed by a disputant, or a disputant's statement of position, the response period is a 2-month period starting on the date of issue of the initiating notice.
- (6) For the purposes of subsections (3)(b) and (4)(c)(ii), if the taxpayer is a member of an internal software development group to which section 68E applies, the latest date for providing a return means the latest date for any member of the group.

Section 89AB: inserted (with effect on 1 April 2008), on 6 October 2009, by section 642(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

*Notices of proposed adjustment*

**89B Commissioner may issue notices of proposed adjustment**

- (1) The Commissioner may issue one or more notices of proposed adjustment in respect of a tax return or an assessment.
- (2) The Commissioner may issue one notice of proposed adjustment in relation to more than one return period, if, in the Commissioner's opinion,—
  - (a) the adjustments proposed to each tax return or assessment for the return periods relate exclusively to the same issues or arrangements; or
  - (b) the adjustments proposed to each tax return or assessment for the return periods relate substantially to the same issues, and the issue of one notice is likely to expedite the issue of the assessments for all of the returns.
- (3) The Commissioner may issue a notice of proposed adjustment in relation to more than one return period, more than one issue, and more than one tax type.
- (4) The Commissioner may not issue a notice of proposed adjustment—
  - (a) if the proposed adjustment is already the subject of a challenge; or
  - (b) after the expiry of the time bar that, under—
    - (i) Sections 108 and 108B; or
    - (ii) Sections 108A and 108B,—  
applies to the assessment.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**89C Notices of proposed adjustment required to be issued by Commissioner**

The Commissioner must issue a notice of proposed adjustment before the Commissioner makes an assessment, unless—



- (a) the assessment corresponds with a tax return that has been provided by the taxpayer; or
- (b) the taxpayer has provided a tax return which, in the Commissioner's opinion, appears to contain a simple or obvious mistake or oversight, and the assessment merely corrects the mistake or oversight; or
- (c) the assessment corrects a tax position previously taken by the taxpayer in a way or manner agreed by the Commissioner and the taxpayer; or
- (d) the assessment reflects an agreement reached between the Commissioner and the taxpayer; or
- (db) the assessment is made in relation to a matter for which the material facts and relevant law are identical to those for an assessment of the taxpayer for another period that is at the time the subject of court proceedings; or
- (e) the Commissioner has reasonable grounds to believe a notice may cause the taxpayer or an associated person—
  - (i) to leave New Zealand; or
  - (ii) to take steps, in relation to the existence or location of the taxpayer's assets, making it harder for the Commissioner to collect the tax from the taxpayer; or
- (eb) the Commissioner has reasonable grounds to believe that the taxpayer has been involved in fraudulent activity; or
- (f) the assessment corrects a tax position previously taken by a taxpayer that, in the opinion of the Commissioner is, or is the result of, a vexatious or frivolous act of, or vexatious or frivolous failure to act by, the taxpayer; or
- (g) the assessment is made as a result of a direction or determination of a court or the Taxation Review Authority; or
- (h) the taxpayer has not provided a tax return when and as required by a tax law; or
- (i) the assessment is made following the failure by a taxpayer to withhold or deduct an amount required to be withheld or deducted by a tax law or to account for an amount withheld or deducted in the manner required by a tax law; or

- (j) the taxpayer is entitled to issue a notice of proposed adjustment in respect of a tax return provided by the taxpayer, and has done so; or
- (k) the assessment corrects a tax position taken by the taxpayer or an associated person as a consequence or result of an incorrect tax position taken by another taxpayer, and, at the time the Commissioner makes the assessment, the Commissioner has made, or is able to make, an assessment for that other taxpayer for the correct amount of tax payable by that other taxpayer; or
- (l) The assessment results from an income statement under Part 3A; or
- (m) the assessment includes a calculation by the Commissioner of a tax credit identified in subparts MA to MF and MZ of the Income Tax Act 2007.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 89C (that part before paragraph (a)) was amended, by section 202(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the “makes an assessment” for the words “may issue a taxpayer with an assessment of tax”, with application as from the 2002-03 income year.

Paragraph (db) was inserted, as from 21 December 2004, by section 95(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to assessments issued on or after 1 April 2005.

Paragraph (db) was amended, as from 3 April 2006, by section 232 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the word “period” for the words “income year”.

Paragraph (eb) was inserted, as from 21 December 2004, by section 95(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to assessments issued on or after 1 April 2005.

Paragraph (eb) was amended, as from 18 December 2006, by section 190 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by omitting the words “left New Zealand and may have”.

Paragraphs (g) and (i) were amended, by section 202(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “made” for the word “issued”, with application as from the 2002-03 income year.

Section 89C(i): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (k) was amended by section 25(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “taxpayer; or” for the word “taxpayer.” with application to assessments made or deemed to be made as from 1 April 1999.

Paragraph (k) was amended, by section 202(3)(a) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “makes”, “made”, and “make” for the words “issues”, “issued”, and “issue” respectively, with application as from the 2002-03 income year.

Paragraph (k) was amended, by section 202(3)(b) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “assessment for” for the words “assessment to”, with application as from the 2002-03 income year.

Paragraph (l) was inserted by section 25(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to assessments made or deemed to be made as from 1 April 1999.

Paragraph (l) was amended, by section 202(4) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the expression “IIIA; or” for the expression “IIIA.”, with application as from the 2002-03 income year.

Paragraph (m) was inserted, by section 202(4) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Section 89C(m): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (m) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

## **89D Taxpayers and others with standing may issue notices of proposed adjustment**

- (1) If the Commissioner—
  - (a) issues a notice of assessment to a taxpayer, and
  - (b) Has not previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment, whether or not in breach of section 89C,—the taxpayer may, subject to subsection (2), issue a notice of proposed adjustment in respect of the assessment.
- (2) A taxpayer who has not furnished a return of income for an assessment period may dispute the assessment made by the Commissioner only by furnishing a return of income for the assessment period.
- (2A) For the purpose of subsection (2), section 33(2) does not apply.

- (2B) A taxpayer to whom section 80F applies who has not furnished an amended income statement for an assessment period may dispute a deemed assessment under section 80H only by furnishing an amended income statement for the assessment period.
- (2C) A taxpayer who has not provided a GST tax return for a GST return period may not dispute the assessment made by the Commissioner other than by providing a GST return for the GST return period.
- (2D) For the purpose of subsection (2C), section 16(6) of the Goods and Services Tax Act 1985 does not apply.
- (2E) If the Commissioner makes an assessment of an amount of research and development credit, a taxpayer who has not provided a statement under section 68D or 68E in relation to an assessment period may dispute the assessment only by providing a statement for the period within the time allowed under section 68D or 68E, as applicable.
- (3) If the Commissioner—
- (a) issues a notice of disputable decision that is not a notice of assessment; and
  - (b) the notice of disputable decision affects the taxpayer,—the taxpayer, or any other person who has the standing under a tax law to do so on behalf of the taxpayer, may issue a notice of proposed adjustment in respect of the disputable decision.
- (4) *[Repealed]*
- (5) For a notice of proposed adjustment issued under this section to have effect, the notice must be issued within the applicable response period.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was substituted by section 26(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to assessments made as from 1 April 1999.

Subsection (2) was substituted by section 203 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsections (2A) and (2B) were inserted, by section 203 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) with application as from the 2002-03 income year.

Subsection (2C) was inserted, as from 21 December 2004, by section 96(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods that begin on or after 1 April 2005.

Subsection (2D) was inserted, as from 3 April 2006, by section 233 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (2D) was amended, as from 31 March 2007, by section 191(1) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting “section 16(6)” for “section 16(3)” with application for taxable periods ending on or after 31 March 2007.

Section 89D(2E): added (with effect on 1 April 2008), on 6 October 2009, by section 643(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (4) was repealed, as from 21 December 2004, by section 96(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods that begin on or after 1 April 2005.

#### **89DA Taxpayer may issue notice of proposed adjustment for taxpayer assessment**

- (1) A taxpayer may issue a notice of proposed adjustment in respect of an assessment made by the taxpayer for a tax year or a GST return period if the Commissioner has not previously issued a notice of proposed adjustment to the taxpayer in respect of the assessment.
- (2) A notice of proposed adjustment under this section is not effective unless it is issued within the response period for the notice.
- (3) A taxpayer who makes an assessment of an amount of research and development credit but does not provide a statement under section 68D or 68E in relation to the tax year referred to in subsection (1), may dispute the assessment only by providing a statement for the tax year within the time allowed under section 68D or 68E, as applicable.

Section 89DA was inserted, by section 204(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (1) was amended, as from 21 December 2004, by section 97(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or a GST return period” after the words “income year” with application to notices issued in relation to GST return periods that begin on or after 1 April 2005.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was substituted, as from 21 December 2004, by section 97(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to notices issued in relation to GST return periods that begin on or after 1 April 2005.

Section 89DA(3): added (with effect on 1 April 2008), on 6 October 2009, by section 644(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

## **89E Election of small claims jurisdiction of Taxation Review Authority**

- (1) Where a disputant—
- (a) issues a notice of proposed adjustment under section 89D or 89DA and the amount in dispute is \$30,000 or less; or
  - (b) rejects a notice of proposed adjustment issued by the Commissioner under section 89B and the amount in dispute is \$30,000 or less,—

the disputant may elect, in the disputant's notice of proposed adjustment or notice of rejection, that any unresolved dispute arising from the notice of proposed adjustment is to be heard by a Taxation Review Authority acting in its small claims jurisdiction.

- (2) If a disputant elects under subsection (1) to challenge a disputable decision or tax liability in a Taxation Review Authority acting in its small claims jurisdiction, the decision is irrevocable and binds the disputant.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended, as from 21 December 2004, by section 98(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the expression "\$30,000" for the expression "\$15,000" wherever it appears with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (1)(a) was amended, as from 21 June 2005, by section 137(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the expression "89D or 89DA" for the expression "89D" with application for disputes that begin under Part 4A of this Act on or after 1 April 2005.

## **89F Content of notice of proposed adjustment**

- (1) A notice of proposed adjustment must—

- (a) contain sufficient detail of the matters described in subsections (2) and (3) to identify the issues arising between the Commissioner and the disputant; and
  - (b) be in the prescribed form.
- (2) A notice of proposed adjustment issued by the Commissioner must—
- (a) identify the adjustment or adjustments proposed to be made to the assessment; and
  - (b) provide a concise statement of the key facts and the law in sufficient detail to inform the disputant of the grounds for the Commissioner’s proposed adjustment or adjustments; and
  - (c) state how the law applies to the facts.
- (3) A notice of proposed adjustment issued by a disputant must—
- (a) identify the adjustment or adjustments proposed to be made to the assessment; and
  - (b) provide a statement of the facts and the law in sufficient detail to inform the Commissioner of the grounds for the disputant’s proposed adjustment or adjustments; and
  - (c) state how the law applies to the facts; and
  - (d) include copies of the documents of which the disputant is aware at the time that the notice is issued that are significantly relevant to the issues arising between the Commissioner and the disputant.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 89F was amended by section 28(1) Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107) by inserting the words “be in the prescribed form and” with application as from 1 April 1999.

Section 89F was substituted by section 99(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of this Act on or after 1 April 2005.

### **89G Issue of response notice**

- (1) To reject a proposed adjustment, the recipient of the notice of proposed adjustment must, within the response period for the notice, notify the issuer that the adjustment is rejected by issuing a response notice.

- (2) A notice of response must state concisely—
- (a) the facts or legal arguments in the notice of proposed adjustment that the issuer of the notice of response considers are wrong; and
  - (b) why the issuer of the notice of response considers those facts or legal arguments to be wrong; and
  - (c) any facts and legal arguments relied on by the issuer of the notice of response; and
  - (d) how the legal arguments apply to the facts; and
  - (e) the quantitative adjustments to any figure referred to in the notice of proposed adjustment that result from the facts and legal arguments relied on by the issuer of the notice of response.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was substituted by section 100(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of this Act on or after 1 April 2005.

### **89H Deemed acceptance**

- (1) If a disputant does not, within the response period for a notice of proposed adjustment issued by the Commissioner, reject an adjustment contained in the notice, the disputant is deemed to accept the proposed adjustment and section 89I applies.
- (2) If the Commissioner does not, within the response period for a notice of proposed adjustment issued by a disputant, reject an adjustment contained in the notice, the Commissioner is deemed to accept the proposed adjustment and section 89J applies.
- (3) Where—
  - (a) a disputant does not, within the response period for replying to a notice from the Commissioner rejecting an adjustment proposed by the disputant, reject in writing all or part of the Commissioner's notice, the disputant is deemed to accept the matters specified in the Commissioner's notice; or
  - (b) the disputant accepts all or part of the Commissioner's notice in writing,—



then, in those circumstances,—

- (c) section 89I applies as if the matters contained in the Commissioner's notice were an adjustment or adjustments proposed by the Commissioner; and
- (d) the Commissioner's notice is deemed, for the purposes of section 89K, to be a notice of proposed adjustment.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**89I Circumstances where disputant may not challenge adjustment**

- (1) a disputant may not challenge an adjustment proposed by the Commissioner if the disputant—
  - (a) accepts the adjustment in writing; or
  - (b) Is deemed to accept the adjustment, and section 89K does not apply.
- (2) The Commissioner must include or take account of each proposed adjustment that is accepted or deemed accepted by a disputant in a notice of assessment issued to the disputant.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**89J Where Commissioner accepts adjustment proposed by disputant**

- (1) If the Commissioner accepts or is deemed to accept an adjustment proposed by a disputant, and section 89L does not apply, the Commissioner must include or take account of the adjustment in—
  - (a) a notice of assessment issued to the disputant; and
  - (b) any further notice of assessment or further amended assessment issued to the disputant.
- (2) Despite subsection (1), the Commissioner may issue a notice of assessment or an amended assessment that does not include or take into account an adjustment that the Commissioner has accepted, or is deemed to have accepted, if the Commissioner considers that the disputant in relation to the adjustment—

- (a) was fraudulent:
- (b) wilfully misled the Commissioner.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 89J(1): substituted, on 19 December 2007, by section 226 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 89J(2): added, on 19 December 2007, by section 226 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **89K Late actions deemed to occur within response period**

- (1) Where—
  - (a) the Commissioner considers that an exceptional circumstance has prevented a disputant from, within the applicable response period,—
    - (i) rejecting an adjustment contained in a notice of proposed adjustment issued by the Commissioner; or
    - (ii) issuing a notice of proposed adjustment under section 89D or 89DA in respect of a disputable decision; or
    - (iii) issuing a statement of position; and
  - (b) the disputant sends to the Commissioner—
    - (i) a notice—
      - (A) rejecting an adjustment proposed by the Commissioner in the notice of proposed adjustment referred to in paragraph (a)(i); and
      - (B) specifying the matters required by section 89G; or
    - (ii) a notice of proposed adjustment—
      - (A) in respect of a disputable decision referred to in paragraph (a)(ii); and
      - (B) specifying the matters required by section 89F; or,—
    - (iii) a statement of position
  - (c) the disputant's rejection of the Commissioner's notice of proposed adjustment; or
  - (d) the disputant's notice of proposed adjustment—

- (e) the disputant's statement of position is to be treated for all purposes under this Part as if it had been given within the applicable response period.
- (2) Subsection (1) may apply even if the Commissioner has already issued a notice of disputable decision that includes or takes account of an adjustment that was proposed by the Commissioner; and, where subsection (1) applies, the notice of disputable decision is to be deemed not to have been issued.
- (3) For the purposes of subsection (1),—
  - (a) an **exceptional circumstance** arises if—
    - (i) an event or circumstance beyond the control of a disputant provides the disputant with a reasonable justification for not rejecting a proposed adjustment, or for not issuing a notice of proposed adjustment or statement of position, within the response period for the notice:
    - (ii) a disputant is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period:
  - (b) an act or omission of an agent of a disputant is not an exceptional circumstance unless—
    - (i) it was caused by an event or circumstance beyond the control of the agent that could not have been anticipated, and its effect could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or
    - (ii) the agent is late in issuing a notice of proposed adjustment, notice of response or statement of position but the Commissioner considers that the lateness is minimal, or results from 1 or more statutory holidays falling in the response period.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1)(a)(ii) was amended, as from 21 December 2004, by section 101(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004

(2004 No 111) by substituting the words “GST tax return; or” for the words “GST tax return”.

Subsection (1)(a)(ii) was amended, as from 21 December 2004, by section 101(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “or 89DA in respect of a disputable decision; or” for the words “in respect of a disputable decision or a GST tax return,—”.

Subsection (1)(a)(iii) was inserted, as from 21 December 2004, by section 101(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (1)(a)(iii) was inserted, as from 21 December 2004, by section 101(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (1)(a) was substituted, as from 21 December 2004, by section 234(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application to disputes commenced under Part 4A of this Act as from 1 April 2005.

Subsection (1)(b)(ii)(A) was amended, as from 21 December 2004, by section 101(4) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by omitting the words “or GST tax return” with application to disputes that are commenced under Part 4A of this Act on or after 1 April 2005.

Subsection (1)(b)(ii)(B) was amended, as from 21 December 2004, by section 101(5) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section 89F; or” for the words “section 89F” with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (1)(d) was amended, as from 21 December 2004, by section 101(6) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “proposed adjustment; or” for the words “proposed adjustment” with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (1)(e) was inserted, as from 21 December 2004, by section 101(6) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (3)(a) and (b) were substituted, as from 21 December 2004, by section 101(7) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

## **89L Application to High Court**

- (1) The Commissioner may apply to the High Court for an order allowing the Commissioner to issue a notice rejecting an adjustment proposed by a taxpayer that the Commissioner has accepted, or is deemed to have accepted, if—

- (a) the Commissioner considers that an exceptional circumstance applies or has prevented the Commissioner from rejecting the adjustment within the response period; and
  - (b) the Commissioner applies—
    - (i) before the Commissioner issues a notice of assessment including the adjustment; or
    - (ii) relying on section 108(2) or section 108A(3).
- (2) The High Court may—
- (a) make an order for the purposes of subsection (1) on such terms as the Court deems fit; or
  - (b) decline to make an order.
- (3) For the purposes of subsection (1), an **exceptional circumstance**—
- (a) is an event or circumstance beyond the control of the Commissioner or an officer of the Department that provides the Commissioner with a reasonable justification for not rejecting an adjustment proposed by a disputant within the response period; and
  - (b) without limiting paragraph (a), includes a change to a tax law, or a new tax law, or a decision of a court in respect of a tax law, that is enacted or made within the response period.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### *Disclosure notices*

#### **89M Disclosure notices**

- (1) Unless subsection (2) applies, and subject to section 89N, the Commissioner must issue a disclosure notice in respect of a notice of proposed adjustment to a disputant at the time or after the Commissioner or the taxpayer, as the case may be, issues the notice of proposed adjustment.
- (2) The Commissioner may not issue a disclosure notice in respect of a notice of proposed adjustment if the Commissioner has already issued a notice of disputable decision that includes,

- or takes account of, the adjustment proposed in the notice of proposed adjustment.
- (3) Unless the disputant has issued a notice of proposed adjustment, the Commissioner must, when issuing a disclosure notice,—
- (a) provide the disputant with the Commissioner’s statement of position; and
  - (b) include in the disclosure notice—
    - (i) a reference to section 138G; and
    - (ii) a statement as to the effect of the evidence exclusion rule.
- (4) The Commissioner’s statement of position in the prescribed form must, with sufficient detail to fairly inform the disputant,—
- (a) give an outline of the facts on which the Commissioner intends to rely; and
  - (b) give an outline of the evidence on which the Commissioner intends to rely; and
  - (c) give an outline of the issues that the Commissioner considers will arise; and
  - (d) specify the propositions of law on which the Commissioner intends to rely.
- (5) If the Commissioner issues a disclosure notice to a disputant, the disputant must issue the Commissioner with the disputant’s statement of position within the response period for the disclosure notice.
- (6) A disputant’s statement of position in the prescribed form must, with sufficient detail to fairly inform the Commissioner,—
- (a) give an outline of the facts on which the disputant intends to rely; and
  - (b) give an outline of the evidence on which the disputant intends to rely; and
  - (c) give an outline of the issues that the disputant considers will arise; and
  - (d) specify the propositions of law on which the disputant intends to rely.
- (6B) In subsections (4)(b) and (6)(b), **evidence** refers to the available documentary evidence on which the person intends to

- rely, but does not include a list of potential witnesses, whether or not identified by name.
- (7) A disputant who does not issue a statement of position in the prescribed form within the response period for the statement of position, is treated as follows:
- (a) if the Commissioner has proposed the adjustment to the assessment, the disputant is treated as having accepted the Commissioner's notice of proposed adjustment or statement of position:
  - (b) if the disputant has proposed the adjustment to the assessment, the disputant is treated as not having issued a notice of proposed adjustment.
- (8) The Commissioner—
- (a) may, within the response period for a disputant's statement of position, provide the disputant with additional information in response to the disputant's statement of position; and
  - (b) must provide the additional information as far as possible in the manner required by subsection (4).
- (9) The additional information provided by the Commissioner under subsection (8) is deemed to form part of the Commissioner's statement of position.
- (10) The Commissioner may apply to the High Court for more time to reply to a disputant's statement of position if—
- (a) the Commissioner applies before the expiry of the response period for the disputant's statement of position; and
  - (b) the Commissioner considers it is unreasonable to reply to the disputant's statement of position within the response period, because of the number or complexity or novelty of matters raised in the disputant's statement of position.
- (11) The disputant may apply to the High Court for more time within which to reply to the Commissioner's statement of position if—
- (a) the disputant applies before the expiry of the response period for the Commissioner's statement of position; and

- (b) the disputant considers it unreasonable to reply to the Commissioner's statement of position within the response period, because the issues in dispute had not previously been discussed between the Commissioner and the disputant.
- (12) The High Court shall, in considering an application under subsection (11), have regard to the provisions of section 89A and the conduct of the parties to the dispute.
- (13) The Commissioner and a disputant may agree to additional information being added, at any time, to either of their statements of position.
- (14) The additional information provided by the Commissioner or a disputant under subsection (13) is deemed to form part of the provider's statement of position.

Part 4A (comprising sections 89A to 89M) was inserted, as from 1 October 1996, by section 11 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended, as from 21 December 2004, by section 102(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words "and subject to section 89N, the Commissioner must issue" for the words "the Commissioner may issue" with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (6B) was inserted, as from 21 December 2004, by section 102(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (7) was substituted, as from 21 December 2004, by section 102(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

### **89N Completing the disputes process**

- (1) This section applies if—
  - (a) a notice of proposed adjustment has been issued; and
  - (b) the dispute has not been resolved by agreement between the Commissioner and the disputant; and
  - (c) none of the following applies:
    - (i) the Commissioner notifies the disputant that, in the Commissioner's opinion, the disputant in the course of the dispute has committed an offence



under an Inland Revenue Act that has had an effect of delaying the completion of the disputes process:

- (ii) the Commissioner has reasonable grounds to believe that the disputant may take steps in relation to the existence or location of the disputant's assets to avoid or delay the collection of tax from the disputant:
- (iii) the Commissioner has reasonable grounds to believe that a person who is, under the 1988 version provisions in subpart YB of the Income Tax Act 2007, an associated person of the disputant may take steps in relation to the existence or location of the disputant's assets to avoid or delay the collection of tax from the disputant:
- (iv) the disputant has begun judicial review proceedings in relation to the dispute:
- (v) a person who is, under the 1988 version provisions in subpart YB of the Income Tax Act 2007, an associated person of the disputant and is involved in another dispute with the Commissioner involving similar issues has begun judicial review proceedings in relation to the other dispute:
- (vi) during the disputes process, the disputant receives from the Commissioner a requirement under a statute to produce information relating to the dispute and fails to comply with the requirement within a period that is specified in the requirement:
- (vii) the disputant elects under section 89E to have the dispute heard by a Taxation Review Authority acting in its small claims jurisdiction:
- (viii) the disputant and the Commissioner agree in writing that they have reached a position in which the dispute would be resolved more efficiently by being submitted to the court or Taxation Review Authority without completion of the disputes process:

- (ix) the disputant and the Commissioner agree in writing to suspend proceedings in the dispute pending a decision in a test case referred to in section 89O.
- (2) If this section applies, the Commissioner may not amend an assessment under section 113 before one of the following occurs:
- (a) the Commissioner or the disputant accepts a notice of proposed adjustment, notice of response, or statement of position issued by the other:
  - (b) the Commissioner considers a statement of position issued by the disputant.
- (3) Despite subsection (2), the Commissioner may apply to the High Court for an order that allows more time for the completion of the disputes process, or for an order that completion of the disputes process is not required.
- (4) The Commissioner must make an application under subsection (3) within the period of time during which the Commissioner would otherwise be required, under the Inland Revenue Acts, to make an amended assessment.
- (5) If the Commissioner makes an application under subsection (3), the Commissioner must make an amended assessment by the last day of the period that—
- (a) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment; and
  - (b) contains the total of—
    - (i) the number of days between the date on which the Commissioner files the application in the High Court and the earliest date on which the application is decided by the High Court or the application or dispute is resolved:
    - (ii) the number of days allowed by an order of a court as a result of the application.

Section 89N was inserted by section 103(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of this Act on or after 1 April 2005.

Section 89N(1)(c)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 89N(1)(c)(v): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c)(vi) was amended, as from 3 April 2006, by section 235(1)(a) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “a requirement under a statute to produce information” for the words “a request under a statute for information”.

Subsection (1)(c)(vi) was amended, as from 3 April 2006, by section 235(1)(b) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “the requirement” for the words “the request” in both places they occur.

Subsection (5) was substituted, as from 3 April 2006, by section 235(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

## **89O Test cases**

- (1) This section applies if—
  - (a) a dispute between a disputant and the Commissioner has been identified; and
  - (b) the Commissioner has designated a separate challenge as a test case.
- (2) The disputant and the Commissioner may agree in writing to suspend the proceedings in the dispute because there is significant similarity between the facts and questions of law in the dispute and the facts and questions of law in the challenge that has been designated as a test case.
- (3) A suspension that is agreed under subsection (2) starts on the date of the agreement and ends on the earliest of—
  - (a) the date of the court’s decision in the test case;
  - (b) the date on which the test case is otherwise resolved;
  - (c) the date on which the dispute is otherwise resolved.
- (4) The Commissioner may make an assessment or perform an action in relation to a suspended dispute that is consistent with the resolution of the test case.
- (5) The Commissioner must make an amended assessment, or perform an action, that is the subject of a suspended dispute by the later of the following:
  - (a) the day that is 60 days after the last day of the suspension;

- (b) the last day of the period that—
  - (i) begins on the day following the day by which the Commissioner, in the absence of the suspension, would be required under the Inland Revenue Acts to make the amended assessment, or perform the action; and
  - (ii) contains the same number of days as does the period of the suspension.

Section 89O was inserted by section 103(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of this Act on or after 1 April 2005.

Subsection (5) was substituted, as from 3 April 2006, by section 236 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

## Part 5 Determinations

### 90 Determinations in relation to financial arrangements

- (1) For the purposes of the old financial arrangements rules, the Commissioner may determine the following matters:
  - (a) how the yield to maturity method is to be applied to any financial arrangement or class of financial arrangement for the purposes of section EZ 35(2) (except the proviso) of the Income Tax Act 2007:
  - (b) how the straight-line method is to be applied to any financial arrangement or class of financial arrangement for the purposes of section EZ 35(3) of that Act:
  - (c) the method for determining income deemed to be derived or expenditure deemed to be incurred in relation to any financial arrangement or class of financial arrangement for the purposes of section EZ 35(6) (except the proviso) of that Act that results in the allocation to each income year of an amount that has regard to the tenor of section EZ 35(2) of that Act:
  - (d) the method or methods that may be applied in determining income deemed to be derived or expenditure deemed to be incurred in relation to any financial arrangement or arrangements, or class or classes of financial arrangements, for the purposes of the provisos to subsections (2) and (6)(a) of section EZ 35 of that

Act (which financial arrangements may be specified or differentiated by the Commissioner by reference to the type of financial arrangement, any characteristics of such arrangements, the purpose or purposes for which any such arrangement was originally acquired or issued, or otherwise):

- (e) the market, the method or methods, and the source of information used to determine market values that may be used for the purposes of section EZ 35(7) of that Act:
- (f) whether or not, and in what circumstances, a method or methods may qualify for allowance by the Commissioner under section EZ 35(8) of that Act, and the circumstances or conditions under which a change in any such method may qualify for approval by the Commissioner:
- (g) where an excepted financial arrangement is part of a financial arrangement, the method for determining the part of—
  - (i) the income, gain or loss, or expenditure:
  - (ii) the acquisition price:
  - (iii) the consideration receivable by the holder or payable by the issuer,—  
that is attributable to the excepted financial arrangement:
- (h) the method for determining the discounted value of amounts payable for—
  - (i) goods or services under trade credits; or
  - (ii) property that is acquired or sold under agreements for the sale and purchase of property or specified options:
- (i) the method for determining the discounted value of hire purchase payments payable under any hire purchase agreement:
- (j) the method for determining under sections FM 18 to FM 20 of that Act the consideration to be taken into account under section EZ 38 of that Act in the case of a disposition of a financial arrangement between members of the same consolidated group of companies:

(k) *[Repealed]*

and the class of persons by whom such determination may be applied:

Provided that the acceptance by the Commissioner of a method under the provisos to section EZ 35(2) or (6) of that Act shall not constitute the making of a determination.

- (2) Any determination made under any of paragraphs (a), (c), (e), (g), (h), and (j) of subsection (1) shall be binding on persons for the purposes of the old financial arrangements rules.
- (3) Any person who issues or holds, or who intends to issue or hold, a financial arrangement may apply to the Commissioner to exercise the Commissioner's discretion to make a determination under subsection (1), and every such application shall be made in accordance with such procedure as may be prescribed by regulations made under this Act; or, if no such regulations have been made or the regulations do not provide for the eventuality that occurs, in accordance with such procedure as may be prescribed by the Commissioner.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) The Commissioner may at any time—
  - (a) make a determination that varies, cancels, restricts or extends in scope an earlier determination made under this section:
  - (b) issue a notice that cancels a determination made under this section.
- (6B) A person who acquires or issues a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by subsection (6) is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the date that is 4 years after that date of notification or publication.
- (7) All determinations made by the Commissioner under subsection (1) and notices issued by the Commissioner under subsection (6)(b) shall be published in the *Gazette* within 30 days of the making of the determination or notice, in such form as may be specified by regulations made under this Act.

- (8) For the purposes of this section a determination or notice shall be deemed to be made when it is signed by the Commissioner.
- (9) If a person has applied a determination under subsection (1), an assessment made in respect of the person must be in accordance with the determination.
- (10) Subsection (9) does not apply if—
  - (a) since the date of the determination, the legislation on which the determination was based has been repealed or amended to the detriment of the person relying on the determination; or
  - (b) there was a material misrepresentation or omission in the application for the determination, whether intentional or not.

Compare: 1976 No 65 s 64E

Subsection (1) (before the paragraphs) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “old financial arrangements rules” for the words “qualified accruals rules”.

Section 90(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(2) (except the proviso) of the Income Tax Act 2004” for the words “section EH 1(2) (except the proviso) of the Income Tax Act 1994”.

Section 90(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(3) of the Income Tax Act 2004” for the words “section EH 1(3) of the Income Tax Act 1994”.

Subsection (1)(c) was substituted by section 449 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 90(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) and the proviso to subsection (1) were amended by section 8(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “EH 1(6)” for the expression “EH 1(5)”, with application as from 20 May 1999.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(6) (except the proviso) of the Income Tax Act 2004” for the words “section EH 1(6) (except the proviso) of the Income Tax Act 1994”.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(2)” for the words “section EH 1(2)”.

Subsection (1)(c) was amended, as from 1 April 2005, by section 237(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (1)(d) was substituted by section 449 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 90(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended by section 68(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “(6)(a)” for the expression “(5)(a)”, with application as from 20 May 1999.

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32 of the Income Tax Act 2004” for the words “section EH 1 of the Income Tax Act 1994”.

Section 90(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e) was amended by section 68(3) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “EH 1(7)” for the expression “EH 1(6)”, with application as from 20 May 1999.

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(7) of the Income Tax Act 2004” for the words “section EH 1(7) of the Income Tax Act 1994”.

Section 90(1)(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(f) was amended by section 68(4) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “EH 1(8)” for the expression “EH 1(7)”, with application as from 20 May 1999.

Subsection (1)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(8) of the Income Tax Act 2004” for the words “section EH 1(8) of the Income Tax Act 1994”.

Subsection (1)(g) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “an excepted financial arrangement is part of a financial arrangement” for the words “a financial arrangement includes an excepted financial arrangement”.



Section 90(1)(j): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(j) was amended, as from 12 December 1995, by section 6(1) Tax Administration Amendment Act (No 3) 1995 (1995 No 77) by substituting the expression “companies:” for the expression “companies;—”.

Subsection (1)(j) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(j) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 35” for the words “section EH 4”.

Subsection (1)(k) was inserted, as from 12 December 1995, by section 6(2) Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Subsection (1)(k) was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 90(1) proviso: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) proviso was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EZ 32(2) or (6) of the Income Tax Act 2004” for the words “section EH 1(2) or section EH 1(6) of the Income Tax Act 1994”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “old financial arrangements rules” for the words “qualified accruals rules”.

Subsections (4) and (5) were repealed, as from 1 October 1996, by section 12 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.*

Subsection (6) was substituted, as from 21 December 2004, by section 104(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (6B) was inserted, as from 21 December 2004, by section 104(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (7) was amended, as from 21 December 2004, by section 104(2)(a) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “and notices issued by the Commissioner under subsection (6)(b)” after the words “subsection (1)”.

Subsection (7) was amended, as from 21 December 2004, by section 104(2)(b) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or notice” after the word “determination”.

Subsection (8) was amended, as from 21 December 2004, by section 104(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or notice” after the word “determination”.

Subsection (9) was substituted, and subsection (10) was inserted, by section 205 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

**90AA Application of determinations made under section 90**

- (1) A determination made under section 90 applies, in principle, to a financial arrangement to which subpart EW of the Income Tax Act 2007 applies until a new determination that is relevant to the financial arrangement is made by the Commissioner under section 90AC.
- (2) Once a determination is made under section 90AC, a person must apply that determination to a financial arrangement to which subpart EW of the Income Tax Act 2007 applies, and must not apply the determination made under section 90.

Sections 90AA to 90AE were inserted, as from 20 May 1999, by section 74(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 90AA(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 90AA(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (1) and (2) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart EW of the Income Tax Act 2004” for the words “Part EH Division 2”.

**90AB Application for determination**

- (1) A person who becomes, or who intends to become, a party to a financial arrangement may apply to the Commissioner for a determination to be made under section 90AC(1).
- (2) Unless subsection (3) applies, an application must be made in accordance with regulations made under this Act.
- (3) If no regulations have been made under this Act or if regulations made do not provide for the eventuality that occurs, an application must be made in accordance with a procedure that the Commissioner prescribes.

Sections 90AA to 90AE were inserted, as from 20 May 1999, by section 74(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**90AC Determinations relating to financial arrangements**

- (1) For the purpose of the financial arrangements rules in subpart EW of the Income Tax Act 2007, the Commissioner may determine the following:
  - (a) how the yield to maturity method applies to a financial arrangement or class of financial arrangements under section EW 16 of the that Act:

- (b) how the straight line method applies to a financial arrangement or class of financial arrangements under section EW 17 of the that Act:
- (bb) the method that may be applied to determine the income derived or expenditure incurred for a financial arrangement or class of financial arrangements under section EW 15E(2)(d) or EW 15I(2)(c) of the Income Tax Act 2007:
- (c) the market, the method, and the source of information, that a person may use to determine market value under section EW 18 of the that Act:
- (d) the method for determining the income derived or expenditure incurred for a financial arrangement or class of financial arrangements under section EW 20 of the that Act:
- (e) the alternative method that may be applied to determine the income derived or expenditure incurred for a financial arrangement or class of financial arrangements under either section EW 16(2) or EW 20(2) of the that Act:
- (f) whether a method meets the requirements of section EW 23(2) of the that Act and may be treated as complying with the consistency requirement:
- (g) whether or not a method may be changed under section EW 23(3) of the that Act and the circumstances or conditions under which a change in method is allowed:
- (h) if an excepted financial arrangement is part of a financial arrangement, the method for determining the portion of the income, gain, loss, expenditure, consideration paid, or consideration received that is solely attributable to the excepted financial arrangement:
- (i) the method for determining the future value, discounted value, or a combination of both the future and discounted values of amounts paid or payable on the date the first right in the contracted property is transferred or services are provided under an agreement to which either section EW 32(5) or (6) of the that Act applies:
- (j) the method for determining under sections FM 18 to FM 20 of that Act the consideration to be taken into account

- under section EW 31 of that Act in the case of a financial arrangement that is disposed of between members of the same consolidated group of companies:
- (k) the exchange rate that a taxpayer or a class of taxpayer may use, and the circumstances in which the rate may be used under section EW 34(4) of the that Act, having regard to the costs that the taxpayer or class of taxpayer would incur in using a rate available under section EW 34(4)(a) or (b) of that Act.
- (2) The Commissioner may also determine the class of persons that may apply a determination.
  - (3) A determination made under any of subsection (1)(a), (1)(d), (1)(h), (1)(i), or (1)(j) is binding on persons who are subject to the financial arrangements rules.
  - (4) A determination is not made when the Commissioner accepts an alternative method to the yield to maturity method under section EW 16 of the Income Tax Act 2007 or an alternative method under section EW 20 of that Act.
  - (5) For the purpose of subsection (1)(e), the Commissioner may specify or differentiate financial arrangements by reference to type, characteristics, the purpose for which the arrangements were entered into, or in any other way.
  - (6) The Commissioner may at any time—
    - (a) make a determination that varies, cancels, restricts or extends in scope an earlier determination under this section:
    - (b) issue a notice that cancels a determination made under this section.

Sections 90AA to 90AE were inserted, as from 20 May 1999, by section 74(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 90AC(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “financial arrangements rules in subpart EW of the Income Tax Act 2004” for the words “accrual rules in Part EH Division 2 of the Income Tax Act 1994”.

Section 90AC(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 16 of the Income Tax Act 2004” for the words “section EH 34(1)”.

Section 90AC(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 17 of the Income Tax Act 2004” for the words “section EH 35”.

Section 90AC(1)(bb): inserted (with effect from 1 April 2007), on 19 December 2007, by section 227(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 90AC(1)(bb): amended, on 1 April 2008, by section 227(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 90AC(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 18 of the Income Tax Act 2004” for the words “section EH 36”.

Section 90AC(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 20 of the Income Tax Act 2004” for the words “section EH 38(1)”.

Section 90AC(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 16(2) or EW 20(2) of the Income Tax Act 2004” for the words “section EH 34(2) or EH 38(2)”.

Section 90AC(1)(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 23(2) of the Income Tax Act 2004” for the words “section EH 42(1)”.

Section 90AC(1)(g): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(g) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 23(3) of the Income Tax Act 2004” for the words “section EH 42(3)”.

Subsection (1)(h) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “an excepted financial arrangement is part of a financial arrangement” for the words “a financial arrangement includes an excepted financial arrangement”.

Section 90AC(1)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 32(5) or (6) of the Income Tax Act 2004” for the words “section EH 48(3)(c) or EH 48(3)(d)”.

Section 90AC(1)(j): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(j) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of the Income Tax Act 2004” after the words “section FD 10(4)”.

Subsection (1)(j) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 31 of that Act” for the words “section EH 47”.

Section 90AC(1)(k): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(k) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 34(4) of the Income Tax Act 2004” for the words “section OB 7(2)(c)(ii)”.

Subsection (1)(k) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 34(4)(a) or (b) of that Act” for the words “section OB 7(2)(a) or (b)”.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “financial arrangements rules” for the words “accrual rules”.

Section 90AC(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 16 of the Income Tax Act 2004” for the words “section EH 34”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EW 20 of that Act” for the words “section EH 38 of the Income Tax Act 1994”.

Subsection (6) was substituted, as from 21 December 2004, by section 105 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

### **90AD Notification of determinations and notices**

- (1) The Commissioner must publish a determination or notice made under section 90AC in the *Gazette* not later than 30 days after the date the determination or notice is made. The determination or notice must be published in a form that is specified by regulations made under this Act.
- (2) A determination or notice is made under section 90AC when it is signed by the Commissioner.
- (3) If a person has applied a determination under section 90AC, an assessment made in respect of the person must be in accordance with the determination.
- (4) Subsection (3) does not apply if—

- (a) since the date of the determination, the legislation on which the determination was based has been repealed or amended to the detriment of the person relying on the determination; or
- (b) there was a material misrepresentation or omission in the application for the determination, whether intentional or not.

Sections 90AA to 90AE were inserted, as from 20 May 1999, by section 74(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

The heading to section 90AD was amended, as from 21 December 2004, by section 106(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “and notices” after the word “determinations”.

Subsection (1) was amended, as from 21 December 2004, by section 106(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or notice” after the word “determination” wherever it occurs.

Subsection (2) was amended, as from 21 December 2004, by section 106(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or notice” after the word “determination”.

Subsection (3) was substituted, and subsection (4) was inserted, by section 206(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

### **90AE Four-year period in which determination not required to be applied**

A person who enters into a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by section 90AC(6) is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the date that is 4 years after that date of notification or publication.

Sections 90AA to 90AE were inserted, as from 20 May 1999, by section 74(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 90AE was substituted, as from 21 December 2004, by section 107 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

### **90AF Imputation arrangement to obtain tax advantage**

- (1) If an arrangement to obtain a tax advantage arises as described in section GB 35 of the Income Tax Act 2007, the Commissioner may make any of the following determinations:

- (a) a determination whether the arrangement results in an account advantage, a tax credit advantage, or both:
  - (b) a determination whether a streaming arrangement as described in section GB 35(3) of that Act is subject to section GB 36(1) or (2) of that Act:
  - (c) a determination of the amount of the imputation credit or FDP credit that is subject to the arrangement:
  - (d) a determination of the tax year in which the arrangement commenced, being the year in which the first reasonably identifiable step in the arrangement took place.
- (2) The Commissioner must give notice of any determination under subsection (1) to the company whose account is affected by the arrangement, as soon as is convenient.
- (3) The notice may be included in—
- (a) a notice of assessment under section 111(1); or
  - (b) a determination under section 104B.
- (4) Failure to comply with subsection (2) does not invalidate the determination.

Section 90AF: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **90AG Maori authority arrangements to obtain tax advantage**

- (1) If an arrangement to obtain a tax advantage arises as described in section GB 42 of the Income Tax Act 2007, the Commissioner may make any of the following determinations:
- (a) a determination whether the arrangement results in an account advantage, a tax credit advantage, or both:
  - (b) a determination whether a streaming arrangement as described in section GB 42(3) of that Act is subject to section GB 43(1) or (2) of that Act:
  - (c) a determination of the amount of the Maori authority credit that is subject to the arrangement:
  - (d) a determination of the tax year in which the arrangement commenced, being the year in which the first reasonably identifiable step in the arrangement took place.
- (2) The Commissioner must give notice of any determination under subsection (1) to the Maori authority whose account is affected by the arrangement, as soon as is convenient.
- (3) The notice may be included in—



- (a) a notice of assessment under section 111(1); or
  - (b) a determination under section 104B.
- (4) Failure to comply with subsection (2) does not invalidate the determination.

Section 90AG: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**90A Determinations in relation to apportionment of interest costs**

- (1) For the purpose of subpart FE of the Income Tax Act 2007, the Commissioner may determine the extent to which a financial arrangement provides funds to a party under the arrangement.
- (2) Any determination made under subsection (1) shall be binding on persons for the purposes of subpart FE of the Income Tax Act 2007.
- (3) Any taxpayer may apply to the Commissioner to exercise the Commissioner's discretion to make a determination under subsection (1), and every such application shall be made in accordance with such procedure as may be prescribed by regulations made under this Act; or, if no such regulations have been made or the regulations do not provide for the eventuality that occurs, in accordance with such procedure as may be prescribed by the Commissioner.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) The Commissioner may at any time—
  - (a) make a determination that varies, cancels, restricts or extends in scope an earlier determination under this section:
  - (b) issue a notice that cancels a determination under this section.
- (6B) A person who enters into a financial arrangement before the date of notification or publication of a determination, or notice, that is authorised by subsection (6) is not required to apply the determination to the financial arrangement, or treat the notice as affecting the financial arrangement, until the first tax year that commences after that date of notification or publication.

- (7) All determinations made by the Commissioner under subsection (1) shall be published in the *Gazette* within 30 days of the making of the determination, in such form as may be specified by regulations made under this Act.
- (8) For the purposes of this section, a determination shall be deemed to be made when it is signed by the Commissioner.
- (9) If a person has applied a determination under subsection (1), an assessment made in respect of the person must be in accordance with the determination.
- (10) Subsection (9) does not apply if—
  - (a) since the date of the determination, the legislation on which the determination was based has been repealed or amended to the detriment of the person relying on the determination; or
  - (b) there was a material misrepresentation or omission in the application for the determination, whether intentional or not.

Section 90A was inserted by section 2(1) Tax Administration Amendment Act (No 2) 1995 (1995 No 72) with application to tax on income derived as from 1 April 1996.

Subsection (1) was substituted, as from 20 May 1999, by section 75(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 90A(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart FG of the Income Tax Act 2004” for the words “Part FG of the Income Tax Act 1994”.

Section 90A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart FG of the Income Tax Act 2004” for the words “Part FG of the Income Tax Act 1994”.

Subsections (4) and (5) were repealed by section 73(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74 with application as from 1 October 1996).

Subsection (6) was substituted, as from 21 December 2004, by section 108(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (6B) was inserted, as from 21 December 2004, by section 108(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (6B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (7) was amended, as from 21 December 2004, by section 108(2)(a) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “and notices issued by the Commissioner under subsection (6)(b)” after the words “subsection (1)”.

Subsection (7) was amended, as from 21 December 2004, by section 108(2)(b) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or notice” after the word “determination”.

Subsection (8) was amended, as from 21 December 2004, by section 108(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or notice” after the word “determination”.

Subsection (9) was substituted, and subsection (10) was inserted, by section 207 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

## **91 Determinations in relation to petroleum mining operations**

- (1) For the purposes of the Income Tax Act 2007, if a question arises as to—
- (a) in any case where the holder of a petroleum permit disposes of the permit, the proportion of the permit disposed of; or
  - (b) in any case where a petroleum permit is disposed of together with petroleum mining assets, the consideration and the deductions to be attributed to—
    - (i) the permit; and
    - (ii) any asset of the kind described in section CT 7(1)(b) or (c) of the Income Tax Act 2007; or
  - (c) whether, and if so when, a permit has been relinquished; or
  - (d) the year or date of first commercial production for a permit area in which a petroleum miner holds an interest; or
  - (e) whether any expenditure incurred before 16 December 1991 on an exploratory well contributed to defining the scope, character, or size of any deposit of petroleum; or
  - (f) in the case where petroleum mining operations are carried on outside New Zealand, the foreign equivalent of—
    - (i) a prospecting permit; or
    - (ii) a mining permit; or
    - (iii) the extension of a mining permit; or

- (iv) the relinquishment of a permit,—  
that question shall be determined, for the purposes of ascertaining the income of the petroleum miner for any year,—
  - (g) by agreement between the petroleum miner or petroleum miners affected and the Commissioner; or
  - (h) in the absence of such agreement, by the Commissioner after consulting, if the Commissioner considers it necessary, with any organisation or person having relevant expertise or information.
- (1B) For the purposes of subsection (1)(f), the Crown Minerals Act 1991 is used to determine by analogy the equivalents in the context of the relevant foreign regime for the licensing and conduct of petroleum mining operations of—
  - (a) obtaining a permit; or
  - (b) determining whether or when a permit has been relinquished; or
  - (c) interpreting other relevant documents or matters relating to the licensing and conduct of petroleum operations.
- (2) Where the Commissioner is satisfied that a determination made under this section should be varied or rescinded, or restricted or extended in scope, the Commissioner may make a fresh determination (whether by agreement with the petroleum miner or miners affected or by the Commissioner after such consultation, if any, as the Commissioner considers necessary) which shall be effective to vary, rescind, restrict, or extend the earlier determination.
- (3) Where the Commissioner makes a determination under subsection (1) or subsection (2),—
  - (a) the determination shall be subject to such terms and conditions as are agreed or as the Commissioner may specify; and
  - (b) the Commissioner shall give notice of the determination and any terms and conditions to the petroleum miner in respect of whom the determination is made within a reasonable period of time.

- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) For the purpose of determining any question under subsection (1) or subsection (2), the Commissioner may consult with the appropriate government department or other body, or with any other organisation or person having relevant expertise or information, and any government department or government body so consulted shall provide such assistance or advice as the Commissioner reasonably requires.

(7) *[Repealed]*

Compare: 1976 No 65 s 214L

Section 91(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 450 Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “that question shall be determined, for the purposes of ascertaining the gross income of the petroleum miner for any year,—” for the words “that question shall be determined, for the purposes of ascertaining the assessable income of the petroleum miner for any year,—” with application as from the 1997-98 income year.

Subsection (1) (after paragraph (f)) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “deferred”.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “deferred”.

Subsection (1)(b)(ii) was substituted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91(1)(b)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1B) was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Subsection (3)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “written”.

Subsections (4) and (5) were repealed, as from 1 October 1996, by section 13 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (7) was repealed, as from 1 October 1996, by section 13 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**91AA Determinations in relation to standard-cost household service**

- (1) For the purpose of the Inland Revenue Acts, the Commissioner may determine that a service is a standard-cost household service if—
  - (a) the activity of providing the service is carried on by taxpayers who are natural persons; and
  - (b) the activity of providing the service requires the use of each taxpayer's domestic accommodation in activities that commonly occur in a family household; and
  - (c) the Commissioner considers that the determination would result in a significant reduction in compliance costs for providers of the service without inappropriate—
    - (i) risk to the revenue of the Crown;
    - (ii) demands on the resources of the Commissioner as a result of the administrative and enforcement duties that would be associated with the determination;
    - (iii) inaccuracy, for a significant number of providers, of any determination by the Commissioner of the costs of providing the service.
- (2) For the purpose of calculating the income tax liability of natural persons who derive an amount in a tax year from a standard-cost household service, the Commissioner may determine for the income year and the standard-cost household service—
  - (a) requirements for the exemption under section CW 61 of the Income Tax Act 2007 of income that a taxpayer derives from providing the standard-cost household service;
  - (b) a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by a taxpayer in deriving exempt income from providing the standard cost household service;
  - (c) a method that a taxpayer may use to calculate a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by a taxpayer in deriving exempt income from providing the standard-cost household service:

- (d) a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by a taxpayer in deriving income from providing the standard-cost household service:
  - (e) a method that a taxpayer may use to calculate a figure for a cost or costs that for the purpose of this Act may be treated as being incurred by the taxpayer in deriving income from providing the standard-cost household service:
  - (f) requirements for the application of a determination under paragraphs (a) to (e).
- (3) A taxpayer who in a tax year derives an amount from providing a standard-cost household service may, in calculating the taxpayer's income tax liability for the tax year, elect to use a figure for a cost or costs or a method of calculating such a figure that the Commissioner has determined under subsection to be appropriate for the taxpayer.
- (4) A taxpayer who makes an election under subsection (3) to use a figure or method must not use, in calculating the taxpayer's income tax liability for the tax year, any figure for an additional cost of providing the standard-cost household service if the figure or method in the Commissioner's determination relates to a type of cost that includes the additional cost.
- (5) If the Commissioner is satisfied that a determination that is made under this section should be varied or rescinded, or restricted or extended in scope, the Commissioner may make a fresh determination that varies, rescinds, restricts or extends that determination.
- (6) A determination that is made by the Commissioner under this section must be published in the *Gazette* within 30 days of the making of the determination.
- (7) A determination that is made by the Commissioner under this section may apply for tax years that are specified in the determination.

Section 91AA was inserted, as from 25 November 2003, by section 120 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 91AA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word "gross" wherever it appears.

Subsection (2) (before paragraph (a)) was amended, as from 21 December 2004, by section 109(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “an amount” for the words “gross income” with application as from the 2003–04 income year.

Section 91AA(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(a) was amended, as from 21 December 2004, by section 109(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section CB 9(gb) and (h) of the Income Tax Act 1994” for the words “section CB 9(h)” with application as from the 2003–04 income year.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CW 49 of the Income Tax Act 2004” for the words “section CB 9(gb) and (h) of the Income Tax Act 1994”. It appears that the amending provision mistakenly said to delete the words “section CB 9(gb) or (h) of the Income Tax Act 1994”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (3) was amended, as from 21 December 2004, by section 109(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “an amount” for the words “gross income” with application as from the 2003–04 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “the tax year” for the words “the income year”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “the tax year” for the words “the income year”.

Subsection (7) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

### **91AAB Determinations relating to types and diminishing values of listed horticultural plants**

- (1) For the purpose of sections DO 5 to DO 9 of the Income Tax Act 2007, the Commissioner may determine—
  - (a) that a type of horticultural plant, tree, vine, bush, cane, or other similar plant that is cultivated on land, is a type of listed horticultural plant:



- (b) the banded rate set out in schedule 12, column 1 of that Act that is to be used to calculate the diminishing value for a type of listed horticultural plant.
- (2) In making a determination, the Commissioner must take into account the estimated useful life of the type of plant, and may also take into account—
  - (a) the main purpose for which the type of plant is cultivated;
  - (b) the manner in which the type of plant is cultivated and managed.
- (3) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2003-04 income year.
- (4) The determination may provide for the extension, limitation, variation, cancellation or revocation of an earlier determination.
- (5) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.
- (6) Within 30 days of issuing a determination under this section, the Commissioner must publish a notice in the *Gazette* that—
  - (a) gives notice that the determination has been issued; and
  - (b) states where copies of the determination can be obtained.

Section 91AAB was inserted by section 110(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application as from the 2003-04 income year.

Section 91AAB(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “sections DO 4B to DO 4E of the Income Tax Act 2004” for the words “sections DO 4B, DO 4C, and DO 4D of the Income Tax Act 1994”.

Section 91AAB(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “schedule 11, column 1 of the Income Tax Act 2004” for the words “column 1 of Schedule 11 of the Income Tax Act 1994”.

*Determinations relating to prepayments*

This heading was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35)

**91AAC Exemptions from section EA 3 of Income Tax Act 2007**

- (1) For the purposes of section EA 3 of the Income Tax Act 2007, the Commissioner may determine whether and the extent to which a person is not required to comply with section EA 3 of the Act in relation to an unexpired portion of expenditure (except expenditure on employment income for services that have been performed), having regard to—
- (a) the nature and amount of the kinds of expenditure that the person regularly incurs:
  - (b) the nature and size of the activity giving rise to the expenditure that the person incurs:
  - (c) the costs of the person in complying with section EA 3 of the Act:
  - (d) whether, for the person and the expenditure, the difference between expenditure incurred under section EA 3 of the Act and expenditure that would be allowed as a deduction if the Commissioner were to exercise the discretion under this section is not material.
- (2) The Commissioner may cancel a determination under this section at any time.
- (3) In this section, a reference to a person includes a class of persons.

Compare: 1994 No 164 s EF 1(3), (4)

Section 91AAC was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAC heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAC(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

*Determinations relating to livestock*

This heading was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35)

**91AAD Determination on methods for calculating value of specified livestock under national standard cost scheme**

- (1) This section describes the matters that a determination under section EC 24 of the Income Tax Act 2007 may provide.
- (2) The determination may provide 1 or more methods for calculating the average cost of each type, class, or age grouping of livestock that a person has on hand at the end of an income year, and for incorporating the costs for homebred livestock and purchased livestock in that average cost.
- (3) The determination may provide for the age groupings of immature and mature livestock of each type to which the average costs apply.
- (4) The determination may provide 1 or more inventory control methods under which mature livestock must be accounted for, or the setting of minimum standards for an inventory control method.
- (5) The determination may provide the way in which the determination applies when animals of the same type, class, or other category are valued both under section EC 22 of the Income Tax Act 2007 and under another valuation method. For the purposes of this section, the other valuation methods are market value, replacement price, and the high-priced livestock valuation method.
- (6) The determination may provide for conditions or limitations on the valuation of livestock under section EC 22 of the Income Tax Act 2007, including—
  - (a) a restriction on valuing livestock of a particular type, class, or other category under that section if livestock of the same type, class, or category are also valued under another valuation method; and
  - (b) the setting of a notice requirement for elections of valuation method for livestock affected by a restriction imposed under paragraph (a).
- (7) The determination may provide for the valuation of livestock when livestock was previously valued using another valuation method.

- (8) The determination may provide for 1 or more classes of person by whom the determination may be applied, and for the income year or years for which it is to apply.
- (9) The determination may provide for the extension, limitation, variation, or revocation of an earlier determination.

Compare: 1994 No 164 s EL 4(6)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAD(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAD(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAD(6): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **91AAE Publication and revocation of determinations relating to livestock**

- (1) A determination issued under any of sections EC 15, EC 23, and EC 24 of the Income Tax Act 2007 must be published in the Gazette no later than 30 days after it has been signed by the Commissioner.
- (2) If the Commissioner revokes a determination made under section EC 15, EC 23, or EC 24 of the Income Tax Act 2007, and substitutes a new determination, that new determination does not apply for an income year that ends on or before the day 30 days before the day on which the new determination is published in the Gazette.

Compare: 1994 No 164 ss EL 3A(2), (3), EL 4(7), (8), EL 8(2), (3)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAE(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAE(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### *Determinations relating to depreciation*

This heading was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35)

**91AAF Determination on economic rate**

- (1) Having followed the procedure in section EE 27, EE 28, EE 30, or EZ 23 of the Income Tax Act 2007, the Commissioner may set in a determination—
  - (a) only the diminishing value rate for the kind of item; or
  - (b) both the diminishing value rate and the straight-line rate for the kind of item.
- (1B) For the purposes of subsection (1), the rate set by the Commissioner may be a default rate for kinds of items of depreciable property.
- (2) An economic rate set in a determination may be expressed to apply in any way, including—
  - (a) to items of a kind, whenever they are acquired or used; or
  - (b) to items of a kind, having regard to—
    - (i) the date on which, or income year in which, a particular person acquired or used such an item; or
    - (ii) the date on which, or income year in which, any person first acquired or used such an item; or
    - (iii) whether or not such an item has been used before in New Zealand or elsewhere or has been available for use before in New Zealand or elsewhere.

This subsection is overridden by subsection (3).

- (3) A determination setting an economic rate cannot be expressed to apply to an item of depreciable property that—
  - (a) is already subject to a higher economic rate under an existing determination; and
  - (b) is acquired—
    - (i) before the date on which the new determination is issued; or
    - (ii) after the date on which the new determination is issued, under a binding contract entered into before that date.

This subsection is overridden by subsection (4).

- (4) A determination setting an economic rate can be expressed to apply to an item of depreciable property that—
  - (a) is already subject to a higher economic rate under an existing determination; and

- (b) is reacquired after the date on which the new determination is issued, by the person who disposed of it before the date on which the new determination is issued.
- (5) A determination made under this section may apply to an item of depreciable property to which section EE 27, EE 28, or EE 30 of the Income Tax Act 2007 applies if the item is acquired or used by a person before the commencement of this section.
- (6) The Commissioner may revoke a determination setting an economic rate. The revocation takes effect on the day after the date of publication of the *Gazette* in which notification under section 91AAK is made.

Compare: 1994 No 164 s EG 4(2), (6), (7)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAF(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 3 April 2006, by section 238(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “section EE 25B, EE 25C, EE 25E, or EZ 21B” for the expression “section EE 25” with application as from the income year corresponding to the 2005-06 tax year.

Section 91AAF(1B): inserted (with effect on 1 April 2005), on 6 October 2009, by section 646(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAF(4)(b): substituted (with effect on 3 April 2006), on 6 October 2009, by section 646(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (4)(b) was amended, as from 3 April 2006, by section 238(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by inserting the words “or is an item of property to which section EE 25B, EE 25C, EE 25E, or EZ 21B of the Income Tax Act 2004 applies” after the word “reacquired” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (4)(b) was substituted, as from 18 December 2006, by section 192 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 91AAF(4)(b)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) was inserted, as from 3 April 2006, by section 238(3) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application as from the income year corresponding to the 2005-06 tax year.

Section 91AAF(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAF(6): added (with effect on 1 April 2008), on 6 October 2009, by section 646(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**91AAG Determination on special rates and provisional rates**

- (1) A person may apply, in writing, to the Commissioner for the issue of a determination allowing them to use for an item, for a specified income year or years,—
  - (a) a special rate higher or lower than the economic rate set in a determination under section 91AAF; or
  - (b) a provisional rate when no applicable rate, other than a default rate, is set in a determination under section 91AAF.
- (2) When determining whether or not to grant an application for a special rate or a provisional rate, the level of any such rate, and the income year or years to which it applies, the Commissioner may have regard to any factors that are relevant in determining the item's estimated useful life, including an estimate based on a depreciation method or on a valuer's report, or a rate of depreciation that the person uses for the item for financial reporting purposes
  - (a) *[Repealed]*
  - (b) *[Repealed]*
- (3) The Commissioner may issue a determination setting a special rate or a provisional rate using, as applicable,—
  - (a) the formula in section EE 27 of the Income Tax Act 2007; or
  - (b) the formula in section EE 28 of that Act; or
  - (c) the formula in section EE 30 of that Act; or
  - (cb) the formula in section EZ 23 of that Act; or
  - (d) the straight-line method other than under paragraph (b).
- (4) The Commissioner may issue a determination setting a provisional rate after doing the following:
  - (a) determining a figure using the applicable formula from subsection (3); and
  - (b) rounding the figure up or down to the nearest rate specified in schedule 11 or 12 of the Income Tax Act 2007.
- (5) A determination setting a provisional rate for an item and a person may also be expressed to apply to—

- (a) items of the same kind as the item:
  - (b) any other person or class of persons.
- (5B) A determination setting a special rate for an item and a person may also be expressed to apply to items, of the same kind as the item, for which the Commissioner considers the special rate is appropriate.
- (6) A determination setting a provisional rate ceases to apply to the item and the person, or any other person, at the time at which an economic rate set under section 91AAF for that kind of item comes into force, unless the determination specifically provides that it does not cease to apply.
- (7) The Commissioner may revoke a provisional determination if it no longer applies to an item or if the item is no longer in use or available for use. The revocation takes effect on the day after the date of publication of the *Gazette* in which notification under section 91AAM(4) is made.

Compare: 1994 No 164 s EG 10(1)-(3), (5)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAG(1)(b): substituted (with effect on 1 April 2005), on 6 October 2009, by section 647(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (2) was amended, as from 1 October 2005, by section 138(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “may have regard to any factors that are relevant in determining the item’s estimated useful life, including an estimate based on a depreciation method or on a valuer’s report, or a rate of depreciation that the person uses for the item for financial reporting purposes” for the words “must have regard to-” with application as from the 2005-06 income year.

Subsection (2)(a) and (b) was repealed, as from 1 October 2005, by section 138(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005-06 income year.

Subsection (3) was substituted, as from 3 April 2006, by section 239(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application as from the income year corresponding to the 2005-06 tax year.

Section 91AAG(3): amended (with effect on 1 October 2005), on 6 October 2009, by section 647(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAG(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAG(3)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Section 91AAG(3)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAG(3)(cb): inserted (with effect on 1 April 2005), on 6 October 2009, by section 647(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAG(4)(a): substituted (with effect on 3 April 2006), on 6 October 2009, by section 647(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAG(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4)(b) was amended, as from 3 April 2006, by section 239(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by inserting the words “or schedule 11B” after the expression “schedule 11” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (5B) was inserted, as from 1 October 2005, by section 138(3) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005-06 income year.

Section 91AAG(7): added (with effect on 1 April 2008), on 6 October 2009, by section 647(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**91AAH Commissioner may decline to issue special rate or provisional rate**

- (1) The Commissioner may decline to issue a determination under section 91AAG when,—
  - (a) for an application for a special rate, one of the circumstances described in subsection (2) exists;
  - (b) or an application for a provisional rate, one of the circumstances described in subsection (3) exists.
- (2) For the purposes of subsection (1)(a), the circumstances are as follows:
  - (a) an appropriate special rate would not differ from the economic rate already applicable to the item by an amount equal to or more than 50% of the amount by which the next highest or lowest, as applicable, rate in schedule 12 of the Income Tax Act 2007 is more or less than the already applicable economic rate; or
  - (b) the Commissioner is reviewing the economic rate applicable to the item and intends to set a new economic rate equal to or more than an appropriate special rate

- within 6 months of the Commissioner's receiving the person's application for a special rate; or
- (c) the person has supplied insufficient information to enable the Commissioner to calculate an appropriate rate.
- (3) For the purposes of subsection (1)(b), the circumstances are as follows:
- (a) an economic rate, other than a default rate, already applies to the item; or
  - (ab) if a default rate applies to the item, the provisional rate would differ from the default rate by an amount that is less than 50% of the amount by which the next highest or lowest rate, as applicable, set out in schedule 12 of the Income Tax Act 2007 is more or less than the default rate; or
  - (b) the Commissioner is in the process of determining an economic rate applicable to the item for the income year to which the application relates and intends to set it within 6 months of the Commissioner's receiving the person's application for a provisional rate; or
  - (c) the person has supplied insufficient information to enable the Commissioner to calculate an appropriate rate.

Compare: 1994 No 164 s EG 10(4)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAH(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAH(3)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 648(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAH(3)(ab): inserted (with effect on 1 April 2008), on 6 October 2009, by section 648(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **91AAI Effect on special rate of change in circumstances**

- (1) This section applies when—
- (a) the Commissioner has issued a determination setting a special rate for a person's item of depreciable property; and
  - (b) the circumstances that applied at the time the determination was issued—

- (i) no longer exist; or
  - (ii) have changed materially.
- (2) The Commissioner may—
  - (a) revoke the determination without issuing a new determination; or
  - (b) revoke the determination and issue a new determination setting a new special rate for the item.
- (3) If the Commissioner revokes the determination without issuing a new determination, the person must depreciate the item applying the economic rate or an applicable provisional rate.
- (4) A revocation takes effect—
  - (a) if notice of the revocation is given to the person under section 91AAM(5), on the day after the date of the notice; or
  - (b) if the notice is published in the Gazette, on the day after the date of the publication.

Compare: 1994 No 164 s EG 10(6), (7)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

### **91AAJ Disputing or challenging determination**

- (1) This section applies to—
  - (a) a person who applied for a determination under section 91AAG; or
  - (b) a person to whom a determination made under section 91AAG applies through the operation of section 91AAG(5)(b).
- (2) The person may dispute or challenge the determination under Parts 4A and 8A.
- (3) Part 8, except section 125, applies with any necessary modifications to the dispute or challenge in the same manner and to the same extent as if the dispute or challenge were an objection made under section 126.

Compare: 1994 No 164 s EG 10(8), (9)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**91AAK Notice of setting of economic rate**

Within 30 days of issuing or revoking a determination under section 91AAF, the Commissioner must publish a notice in the Gazette that—

- (a) gives notice that the determination has been issued; and
- (b) states where copies of it can be obtained.

Compare: 1994 No 164 s EG 14(2)(b)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91AAK: amended (with effect on 1 April 2008), on 6 October 2009, by section 649(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**91AAL Determination on maximum pooling value**

- (1) A person may apply, in writing, to the Commissioner for the issue of a determination allowing them a maximum pooling continued value for an item of depreciable property greater than that currently available to them.
- (2) When determining whether or not to grant an application, the Commissioner must have regard to the following factors:
  - (a) whether or not items of the kind concerned are relatively homogeneous in nature;
  - (b) whether or not the person's compliance costs are likely to be materially reduced by pooling items of the kind concerned;
  - (c) the frequency with which the person acquires and disposes of items of the kind concerned.
- (3) The Commissioner may issue the determination after having regard to the factors in subsection (2).

Compare: 1994 No 164 s EG 11(6), (7)

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**91AAM Applications for determinations**

- (1) A person making an application for a determination under section 91AAG must make it in accordance with—
  - (a) the procedures, if any, prescribed by regulations made under section 225; or

- (b) the procedures prescribed by the Commissioner, if the regulations do not provide for the person's case or if no regulations have been made.
- (2) Unless subsection (2B) applies, within 6 months of receiving an application, the Commissioner must respond to it by—
  - (a) issuing the determination; or
  - (b) deciding to decline to issue a determination.
- (2B) Despite subsection (2), a person making an application may agree to an extension of the 6-month time limit within which the Commissioner must respond.
- (3) Within 30 days of issuing a determination or deciding to decline to issue a determination, the Commissioner must give to the person—
  - (a) notice of the decision; and
  - (b) either—
    - (i) a copy of the determination; or
    - (ii) the reasons for declining to issue the determination.
- (4) Within 30 days of issuing a determination under section 91AAG(4) or revoking a determination under section 91AAG(7) that is expressed to apply to a class of persons, the Commissioner must publish a notice in the Gazette that—
  - (a) gives notice that the determination has been issued; and
  - (b) states where copies of it can be obtained.
- (5) Within 30 days of revoking a determination under section 91AAI(2), the Commissioner must give to the person who applied for the determination notice of—
  - (a) the decision; and
  - (b) the reasons for revoking the determination.
- (6) If a representative of a person applies for a determination, the Commissioner gives the notice referred to in subsection (3) or (5) to the representative.

Compare: 1994 No 164 ss EG 13, EG 14

Sections 91AAD to 91AAM were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Subsection (2) was amended, as from 1 October 2005, by section 139(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “Unless subsection (2B) applies, within” for the word “Within” with application as from the 2005-06 income year.

Subsection (2B) was inserted, as from 1 October 2005, by section 139(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005-06 income year.

Section 91AAM(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 650(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

*Determinations relating to environmental  
restoration expenditure*

This heading was inserted, as from 21 June 2005, by section 140 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

**91AAN Determinations on rates for diminishing value of  
environmental expenditure**

- (1) A person or a group of persons may request the Commissioner in writing to set a rate or an assumed life for the purpose of section DB 46 of the Income Tax Act 2007.
- (2) The Commissioner may determine that the person, group, or a class of persons is to use for a type of expenditure listed in schedule 19, part A of the Income Tax Act 2007 or, for expenditure that is part of such a type of expenditure, for the purposes of section DB 46(4)(c) of that Act,—
  - (a) a diminishing value rate that is a banded rate set out in schedule 12, column 1 of that Act:
  - (b) a straight-line rate that is a banded rate set out in schedule 12, column 2 of that Act.
- (3) The Commissioner may decline to issue a determination under subsection (1) if—
  - (a) the information that is supplied to the Commissioner by the person or group is insufficient for the calculation of an appropriate rate:
  - (b) the Commissioner considers that the alternative rate for the expenditure differs from the banded rate set out for the expenditure in schedule 19 of the Income Tax Act 2007, or in an existing applicable determination, by less than half the difference between that banded rate and the banded rate that is next closest to the alternative rate.
- (4) In making a determination, the Commissioner may take into account—

- (a) the length of time for which the expenditure may reasonably be expected to be effective for the purpose for which it was incurred:
  - (b) the length of time for which the expenditure may reasonably be expected to be effective for the purpose of earning income:
  - (c) the treatment of the expenditure in the person's financial reports:
  - (d) the life of any resource consent that is associated with the expenditure:
  - (e) an estimate based on a depreciation method or on a valuer's report.
- (5) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2005-06 income year.
- (6) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- (7) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.
- (8) Within 30 days of issuing a determination under subsection (1), the Commissioner must give notice of the determination to the person or group who requested the determination.
- (9) Within 30 days of issuing a determination under subsection (1) that is expressed to apply to a class of persons, the Commissioner must publish a notice in the *Gazette* that—
- (a) gives notice that the determination has been issued; and
  - (b) states where copies of the determination can be obtained.

Section 91AAN was inserted, as from 21 June 2005, by section 140 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 91AAN(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAN(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAN(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAN(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91AAN(3)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

*Determinations relating to calculation of FIF  
income using fair dividend rate method*

This heading was inserted, as from 1 April 2007, by section 193 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

**91AAO Determination on type of interest in FIF and use of  
fair dividend rate method**

- (1) For the purposes of section EX 46 of the Income Tax Act 2007, the Commissioner may determine that a type of financial arrangement or excepted financial arrangement is—
  - (a) a type of attributing interest in a FIF for which a person may use the fair dividend rate method to calculate FIF income from the interest; or
  - (b) a type of attributing interest in a FIF for which a person may not use the fair dividend rate method to calculate FIF income from the interest.
- (2) In making a determination, the Commissioner may take into account the following:
  - (a) the principle that the fair dividend rate method should not be used for an attributing interest in a FIF that is economically equivalent to a loan denominated in New Zealand dollars:
  - (b) the extent to which the assets of a FIF—
    - (i) are loans, fixed-return foreign equity as defined in section YA 1 of the Income Tax Act 2007, or arrangements with a fixed economic return:
    - (ii) are denominated in New Zealand dollars:
    - (iii) have a value in New Zealand dollars that is substantially unaffected by variations in currency exchange rates:
  - (c) the compliance costs incurred by a person required to use the fair dividend rate method:
  - (d) arrangements affecting the assets of a FIF and interests held directly or indirectly in a FIF.
- (3) A determination may be made for income years specified in the determination.



- (3B) A determination does not apply for a person and an income year beginning before the date of the determination unless the person chooses that the determination apply for the income year.
- (3C) Subsection (3D) applies to a portfolio tax rate entity that makes payments of tax under section HL 22 of the Income Tax Act 2007.
- (3D) A determination does not apply for the portfolio tax rate entity for a quarter beginning before the date of the determination unless the PIE chooses that the determination apply for the quarter.
- (4) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- (5) The Commissioner must:
  - (a) notify the making of a determination in the *Gazette* within 30 days of the date of the determination; and
  - (b) publish the determination in a publication of the department as soon as possible.

Section 91AAO was inserted, as from 1 April 2007, by section 193 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 91AAO(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 651(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAO(2): substituted (with effect from 1 April 2007), on 19 December 2007, by section 228(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 91AAO(2)(b)(i): substituted (with effect on 30 June 2009), on 6 October 2009, by section 651(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAO(2)(b)(i): substituted, on 1 April 2008, by section 228(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 91AAO(3): substituted (with effect from 1 April 2007), on 19 December 2007, by section 228(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 91AAO(3B): inserted (with effect from 1 April 2007), on 19 December 2007, by section 228(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 91AAO(3C): inserted (with effect on 1 April 2008), on 6 October 2009, by section 651(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAO(3D): inserted (with effect on 1 April 2008), on 6 October 2009, by section 651(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 91AAO(5): substituted (with effect from 1 April 2007), on 19 December 2007, by section 228(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### ***Determinations relating to non-attributing active CFCs***

Heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 652 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

#### **91AAQ Determination on insurer as non-attributing active CFC**

- (1) A person may apply in writing to the Commissioner for a determination that, for the purposes of section EX 21B of the Income Tax Act 2007,—
  - (a) a CFC is a non-attributing active CFC, if the CFC satisfies subsection (2); or
  - (b) the members of a group of CFCs are non-attributing active CFCs, if the members satisfy subsection (3).
- (2) A CFC satisfies this subsection if—
  - (a) the CFC is controlled by a company resident in New Zealand that—
    - (i) has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994;
    - (ii) is in the same group of companies as a company resident in New Zealand that has a business of insurance registered and rated under that Act; and
  - (b) the CFC has, in a country or territory outside New Zealand, a business of insurance that is registered under the laws of the country or territory relating to the business of insurance; and
  - (c) the CFC or a company in the group of companies to which the CFC belongs, before and after 30 June 2009,—
    - (i) was controlled by a New Zealand resident; and
    - (ii) had the business in the country or territory.

- (3) A group of CFCs satisfies this subsection if—
- (a) the group is a group of companies that, before and after 30 June 2009,—
    - (i) was controlled by a New Zealand resident; and
    - (ii) had, in a country or territory outside New Zealand, a business of insurance that is registered under the laws of the country or territory relating to the business of insurance; and
  - (b) each CFC is—
    - (i) controlled by a company resident in New Zealand that has a business of insurance registered and rated under the Insurance Companies (Ratings and Inspection) Act 1994 or that is in the same group of companies as such a company; and
    - (ii) is incorporated in the same country or territory as the other CFCs; and
    - (iii) is subject to the laws of the country or territory; and
    - (iv) is liable in the country or territory to income tax on its income; and
    - (v) derives its income mainly from the country or territory; and
    - (vi) has a main business that is insurance or is related to insurance.
- (4) In deciding whether or not to grant an application, the Commissioner must consider whether the business of the CFC or group of CFCs—
- (a) is carried on with the main purpose of producing a commercial return on the capital of the CFC or group; and
  - (b) produces all or nearly all of the income of the CFC or group from—
    - (i) premiums from insurance contracts, other than reinsurance contracts, covering risks arising in the country or territory in which the business of the CFC or group is located;
    - (ii) proceeds from investment assets having a total value commensurate with the value of those insurance contracts.

- (5) For the purposes of subsection (4), the Commissioner may take into account the following:
- (a) the nature and extent of the activities undertaken by the CFC or group in the business of insurance:
  - (b) the nature and extent of the risks arising in the country or territory that are assumed by the CFC or group in the business:
  - (c) the nature and value of the assets used by the CFC or group in the business compared with the nature and extent of the risks assumed by the CFC or group in the business:
  - (d) the nature and amount of deductions that the company controlling the CFC or group has for expenditure or loss incurred in giving support in relation to the business compared with the nature and amount of the assessable income that the company has from the CFC or group in relation to the business.
- (6) A determination may be made for income years specified in the determination.
- (7) A determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination.
- (8) A determination must be published in the *Gazette* within 30 days of the making of the determination.

Section 91AAQ: inserted (with effect on 30 June 2009), on 6 October 2009, by section 652 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### ***Determinations relating to relocation payments***

Heading: inserted, on 6 October 2009, by section 653 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **91AAR Determination relating to eligible relocation expenses**

- (1) The Commissioner may determine that a type of expenditure is an eligible relocation expense for the purposes of section CW 17B of the Income Tax Act 2007, section CW 13B of the Income Tax Act 2004, and section CB 12(1B) of the Income Tax Act 1994.

- (2) The determination may set out the income year or income years for which it is to apply, but may not apply for income years before the 2002–03 income year.
- (3) In determining whether a type of expenditure is an eligible relocation expense, the Commissioner may take into account whether the expenditure necessarily arises from a work-related relocation of an employee, rather than arising as a cost, including a private or capital cost, that an employee has incurred, or will incur, gradually over time irrespective of whether the employee would have relocated. In this regard, the Commissioner may bear in mind—
  - (a) whether the expenditure amounts to a substitution for an employee’s salary or wages;
  - (b) whether employers generally treat the type of expenditure as a relocation expense;
  - (c) the difficulty of and costs in measuring any element of private benefit.
- (4) The determination may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 30 days’ notice of the implementation date of any change to the determination.
- (5) A person affected by a determination made under this section may dispute or challenge the determination under Parts 4A and 8A.
- (6) Within 30 days of issuing or changing a determination under this section, the Commissioner must publish a notice in the *Gazette* that—
  - (a) gives notice that the determination has been issued or changed, as applicable; and
  - (b) states where copies of the determination can be obtained.

Section 91AAR: inserted, on 6 October 2009, by section 653 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

## **Part 5A**

### **Binding rulings**

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91A Purpose of this Part**

The purpose of this Part is to—

- (a) provide taxpayers with certainty about the way the Commissioner will apply taxation laws; and
- (b) help them to meet their obligations under those laws,—by enabling the Commissioner to issue rulings that will bind the Commissioner on the application of those laws. The Part also recognises the importance of collecting the taxes imposed by Parliament and the need for full and accurate disclosure by taxpayers who seek to obtain binding rulings.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91B Interpretation**

In this Part—

**Discretion**, in relation to the exercise of the Commissioner's discretion under a taxation law, includes—

- (a) the exercising of a power by the Commissioner;
- (b) the forming of an opinion by the Commissioner;
- (c) the attaining by the Commissioner of a state of mind:

**Taxation law** means a provision specified in section 91C(1) in respect of which the Commissioner may make a binding ruling; and includes, in relation to any such provision that requires or authorises the Commissioner to exercise a discretion, the exercise of that discretion.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91C Taxation laws in respect of which binding rulings may be made**

- (1) The Commissioner may make a binding ruling on any provision of—
  - (a) the Estate and Gift Duties Act 1968; or
  - (b) the Gaming Duties Act 1971; or
  - (c) the Goods and Services Tax Act 1985, except sections 12 and 13 of that Act; or
  - (d) the Stamp and Cheque Duties Act 1971; or
  - (e) the Income Tax Act 1994, on an application to which section YA 4(1)(a)(i) of the Income Tax Act 2004 ap-

plies, except to the extent to which the matter in question is or could have been, before the repeal of the Income Tax Act 1994 the subject of a determination of the Commissioner under—

- (i) sections 90 or 90AC of this Act in relation to a financial arrangement; or
  - (iA) section 90A of this Act in relation to the extent to which a financial arrangement provides funds to a party under the arrangement; or
  - (ii) section 91 of this Act in relation to petroleum mining; or
  - (iii) section EF 1(3) of the Income Tax Act 1994 in relation to accrual expenditure; or
  - (iv) any of sections EG 4, EG 10, EG 11, and EG 12 of the Income Tax Act 1994 in relation to depreciable property; or
  - (v) section EL 4 of the Income Tax Act 1994 in relation to specified livestock; or
  - (vi) section EL 9(3) of the Income Tax Act 1994 in relation to non-specified livestock; or
- (eb) the Income Tax Act 2004, on an application to which section ZA 4(1)(a)(i) of the Income Tax Act 2007 applies, except to the extent to which the matter in question is or could be the subject of a determination of the Commissioner under—
- (i) sections 90 or 90AC in relation to a financial arrangement; or
  - (ii) section 90A in relation to the extent to which a financial arrangement provides funds to a party under the arrangement; or
  - (iii) section 91 in relation to petroleum mining; or
  - (iv) section 91AAD or 91AAE in relation to livestock; or
  - (v) any of sections 91AAF to 91AAM in relation to depreciation; or
  - (vi) section EA 3(8) of the Income Tax Act 2004 in relation to accrual expenditure; or.

- (ec) the Income Tax Act 2007, except to the extent to which the matter in question is or could be the subject of a determination of the Commissioner under—
    - (i) sections 90 or 90AC in relation to a financial arrangement; or
    - (ii) section 90A in relation to the extent to which a financial arrangement provides funds to a party under the arrangement; or
    - (iii) section 91 in relation to petroleum mining; or
    - (iv) section 91AAD or 91AAE in relation to live-stock; or
    - (v) any of sections 91AAF to 91AAM in relation to depreciation; or
    - (vi) section EA 3(8) of the Income Tax Act 2007 in relation to accrual expenditure; or
  - (f) any Order in Council or regulation made under section 225 of this Act or under any of the Acts listed in paragraphs (a) to (eb) of this subsection, except—
    - (i) any provision to the extent that it is or could be the subject of a determination referred to in paragraph (e) or (eb); or
    - (ii) section RD 24 of the Income Tax Act 2007.
- (1A) The Commissioner may make a binding ruling under section 91GB.
- (2) The Commissioner may also make a binding ruling on how the Commissioner will exercise his or her discretion under a provision specified in subsection (1).
- (3) The Commissioner may not make a binding ruling on a provision that authorises or requires the Commissioner to—
  - (a) impose or remit a penalty; or
  - (b) inquire into the correctness of any return or other information supplied by any person; or
  - (c) prosecute any person; or
  - (d) recover any debt owing by any person.
- (4) Despite subsection (1), the Commissioner may not make a binding ruling on the following provisions and matters:
  - (a) whether a person meets the eligibility requirements in section LH 3 of the Income Tax Act 2007:



- (b) whether expenditure or depreciation loss meets the requirements of the definition of **eligible expenditure** in section LH 4 of that Act:
- (c) whether an activity meets the requirements of the definition of research and development activities in section LH 7 of that Act.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “on an application to which section YA 4(1)(a)(i) of the Income Tax Act 2004 applies, except to the extent to which the matter in question is or could have been, before the repeal of the Income Tax Act 1994” for the words “except to the extent that the matter in question is or could be”.

Subsection (1)(e)(i) was amended, as from 20 May 1999, by section 76(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the expression “Sections 90 or 90AC” for the expression “Section 90”.

Subsection (1)(e)(iA) was inserted by section 74(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application to tax on assessable income derived in the 1996-97 income year and taxable income for the 1997-98 and subsequent income years.

Subsection (1)(e)(v) was amended by section 74(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by omitting the words “or section EL 9(3)” with application as from 1 October 1996.

Subsection (1)(e)(vi) was inserted, as from 23 September 1997, by section 74(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (1)(e)(iA) was substituted, as from 20 May 1999, by section 76(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1)(eb) was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 91C(1)(eb): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91C(1)(ec): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 91C(1)(f): amended (with effect from 1 April 2005), on 19 December 2007, by section 230(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 91C(1)(f)(i): amended (with effect from 1 April 2005), on 19 December 2007, by section 230(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 91C(1)(f)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1A) was inserted, as from 20 May 1999, by section 76(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 91C(4): added, on 19 December 2007, by section 230(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### *Public rulings*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

#### **91D Commissioner may make public rulings**

The Commissioner may at any time make a public ruling on how a taxation law applies in relation to any type of person and any type of arrangement.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

#### **91DA Content and notification of a public ruling**

- (1) A public ruling must state—
  - (a) that it is a public ruling made under section 91D; and
  - (b) the taxation law or laws on which it is a ruling; and
  - (c) the arrangement to which the ruling applies; and
  - (d) how the taxation law or laws apply to the arrangement; and
  - (e) either—
    - (i) the period or tax year for which the ruling applies; or
    - (ii) in the case of a ruling issued for an indefinite period, the date or tax year from which the ruling applies.

Anything that does not contain these statements is not a public ruling.

- (2) The Commissioner shall notify the making of a public ruling by notice in the *Gazette*.
- (3) The notice shall indicate the subject of the public ruling and state where a copy of the ruling may be obtained.
- (4) The Commissioner must publish each public ruling, in full, in a publication of the department.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1) was substituted, as from 20 May 1999, by section 77(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1)(e) was substituted by section 82(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Subsection (3) was inserted, as from 20 May 1999, by section 77(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91DB Effect of a public ruling**

- (1) Notwithstanding anything in any other Act, if—
- (a) a public ruling on a taxation law applies to a person in relation to an arrangement; and
  - (b) the person applies the taxation law in the way stated in the ruling,—

the Commissioner must apply the taxation law in relation to the person and the arrangement in accordance with the ruling.

- (2) *[Repealed]*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (2) was repealed, as from 20 May 1999, by section 78(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91DC Application of a public ruling**

- (1) A public ruling on a taxation law applies to a person and an arrangement—
- (a) if the taxation law is expressly referred to in the ruling; and
  - (b) for an arrangement that is specified in the ruling; and
  - (c) for an arrangement that is entered into either—
    - (i) during the period or tax year for which the ruling applies; or
    - (ii) in the case of a ruling issued for an indefinite period, on or after the date, or on or after the first day of the tax year, from which the ruling applies; and
  - (d) either—
    - (i) for the period or tax year specified in the ruling; or
    - (ii) in the case of a ruling issued for an indefinite period, for an indefinite period.

- (2) Subsection (1) does not apply to a taxpayer who has issued the Commissioner with a notice of proposed adjustment to change the effect of a ruling previously applied by the taxpayer.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91DC was substituted, as from 20 May 1999, by section 79(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (1)(b) and (c) were substituted by section 83(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

Subsection (1)(d) was inserted by section 83(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

#### **91DD Extension of a public ruling**

- (1) The Commissioner may extend the period for which a public ruling applies by publishing a notice of extension in the *Gazette*.
- (2) A notice of extension must state—
- (a) that it is an extension of a public ruling under this section; and
  - (b) the original period or tax year for which the ruling applied; and
  - (c) the new period or tax year for which the ruling applies.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Subsection (2)(b) was amended, as from 20 May 1999, by section 80(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the words “or income year”.

Subsection (2)(c) was amended, as from 20 May 1999, by section 80(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the words “or income year”.

#### **91DE Withdrawal of a public ruling**

- (1) The Commissioner may at any time withdraw a public ruling.

- (2) The Commissioner must notify the withdrawal by giving adequate notice in the *Gazette*.
- (3) A public ruling is withdrawn on the date stated in the notice of withdrawal. The date cannot be before the date on which notice is given under subsection (2).
- (4) If the Commissioner withdraws a public ruling, the ruling does not apply to an arrangement entered into after the date of withdrawal.
- (4A) If the Commissioner withdraws a public ruling, the ruling continues to apply—
  - (a) to an arrangement to which it previously applied that was entered into before the date of withdrawal; and
  - (b) either—
    - (i) for the remainder of the period or tax year specified in the ruling; or
    - (ii) in the case of a ruling issued for an indefinite period, for 3 years after the date stated in the notice of withdrawal.
- (5) A notice of withdrawal must specify—
  - (a) that it is a withdrawal of a public ruling under this section; and
  - (b) the ruling that is being withdrawn; and
  - (c) either—
    - (i) the original period or tax year for which the ruling applied; or
    - (ii) in the case of a ruling issued for an indefinite period, the original date or tax year from which the ruling applied; and
  - (d) the date of the withdrawal.

Anything that does not contain these statements is not a notice of withdrawal of a public ruling.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (2) was substituted, as from 20 May 1999, by section 81(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3) was substituted, as from 20 May 1999, by section 81(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(b) was substituted, as from 20 May 1999, by section 81(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4) was substituted by section 84(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

Subsection (4A) was inserted by section 84(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

Subsection (4A)(b)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (5)(c) was amended, as from 20 May 1999, by section 81(4) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the words “or income year”.

Subsection (5)(c) was substituted by section 84(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 17 October 2002.

Subsection (5)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

### *Private rulings*

#### **91E Commissioner to make private rulings on request**

- (1) Subject to section 91EF, the Commissioner must make a private ruling on how a taxation law applies, or would apply, to a person and to the arrangement, whether a single or a recurring arrangement, for which the ruling is sought.
- (2) The Commissioner may make a private ruling on how a taxation law applies to the arrangement described in an application whether or not reference was made to that taxation law in the application.
- (3) The Commissioner may decline to make a private ruling if—
  - (a) the Commissioner considers that the correctness of the ruling would depend on which assumptions were made about a future event or other matter; or
  - (b) the matter on which the ruling is sought is subject to an objection, challenge, or appeal, whether in relation to the applicant or any other person; or
  - (c) the applicant has outstanding debts relating to earlier binding ruling applications.
- (4) The Commissioner may not make a private ruling if—
  - (a) the application for the ruling would require the Commissioner to determine questions of fact; or

- (b) at the time the application is made or at any time before the ruling is issued, the Commissioner considers that the person to whom the ruling is to apply is not seriously contemplating the arrangement for which the ruling is sought; or
- (c) the application is frivolous or vexatious; or
- (d) the matter on which the ruling is sought—
  - (i) concerns a tax (excluding provisional tax), duty, or levy that is due and payable, unless the application is received before the tax (excluding provisional tax), duty, or levy is due and payable; or
  - (ii) is being dealt with, or in the Commissioner's opinion should be dealt with, by one or both competent authorities of the parties to a double tax agreement; or
- (e) a private ruling already exists on how the relevant taxation law applies to the person and the arrangement, and the proposed ruling would apply to a period or a tax year to which the existing ruling applies; or
- (f) an assessment relating to the person, the arrangement, and a period or a tax year to which the proposed ruling would apply has been made, unless the application is received by the Commissioner before the date an assessment is made; or
- (g) the Commissioner is auditing or investigating how the taxation law applies to the person and to the arrangement for a period or a tax year to which the proposed ruling would apply; or
- (ga) the application relates to an arrangement that is the subject of a notice of proposed adjustment; or
- (h) in the Commissioner's opinion the applicant has not provided sufficient information in relation to the application after the Commissioner has requested further information; or
- (i) in the Commissioner's opinion it would be unreasonable to make a ruling in view of the resources available to the Commissioner; or
- (j) the application for the ruling would require the Commissioner to form an opinion as to a generally accepted

accounting practice or to form an opinion as to a commercially acceptable practice.

- (4A) Subsection (4)(a) does not apply if the application for the ruling relates to how either sections GC 6 to GC 14 or YD 5 of the Income Tax Act 2007 applies, or would apply, to the person applying for the ruling and to the arrangement, whether a single or a recurring arrangement, for which the ruling is sought.
- (5) The Commissioner may not, before 1 April 1996 or such other date as may be specified by the Governor-General by Order in Council for the purposes of this subsection, make a private ruling on an arrangement if that arrangement was entered into before the date on which the Commissioner received the application for the ruling.
- (6) *[Repealed]*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1) was substituted, as from 20 May 1999, by section 82(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3)(b) was amended, as from 1 October 1996, by section 75(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by inserting the word “challenge”.

Subsection (3)(b) was amended, as from 20 May 1999, by section 82(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the expression “; or”.

Subsection (3)(c) was inserted, as from 20 May 1999, by section 82(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(b) was substituted, as from 20 May 1999, by section 82(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(d)(i) was substituted, as from 20 May 1999, by section 82(4) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(d)(ii) was substituted, as from 23 September 1997, by section 75(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74)

Subsection (4)(e) was amended, as from 20 May 1999, by section 82(5) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the words “a period or an income year” for the words “any period”.

Subsection (4)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (4)(f) was substituted, as from 20 May 1999, by section 82(6) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.



Subsection (4)(g) was substituted, and subsection (4)(ga) was inserted, as from 20 May 1999, by section 82(7) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(g) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (4)(i) was amended, as from 26 November 1998, by section 29 Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107) by inserting the expression “; or”.

Subsection (4)(j) was inserted, as from 26 November 1998, by section 29 Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107).

Subsection (4)(j) was amended, as from 25 November 2003, by section 121 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “generally accepted accounting practice” for the words “generally accepted accounting principle”.

Subsection (4A) was inserted by section 3(1) Tax Administration Amendment Act (No 2) 1995 (1995 No 72) with application with respect to tax on income derived as from 1 April 1996.

Subsection (4A) was substituted, as from 20 May 1999, by section 82(8) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 91E(4A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (6)(d) was repealed, as from 1 April 2005, by section 111 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (6)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “or the Income Tax 2004” after the words “Income Tax Act 1994”.

Subsection (6) was repealed, as from 21 June 2005, by section 141 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

### **91EA Effect of a private ruling**

- (1) Notwithstanding anything in any other Act, if—
  - (a) a private ruling on a taxation law applies to a person in relation to an arrangement; and
  - (b) the person applies the taxation law in the way stated in the ruling,—the Commissioner must apply the taxation law in relation to the person and the arrangement in accordance with the ruling.

(1A) Subsection (1) does not apply if a taxpayer has issued the Commissioner with a notice of proposed adjustment to change the effect of a ruling previously applied by the taxpayer.

(2) *[Repealed]*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1A) was inserted, as from 20 May 1999, by section 83(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (2) was repealed, as from 20 May 1999, by section 83(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91EB Application of a private ruling**

(1) A private ruling on a taxation law applies to a person in relation to an arrangement—

- (a) only if the taxation law is expressly referred to in the ruling; and
- (b) only for the period or tax year for which the ruling applies.

(2) A private ruling does not apply to a person in relation to an arrangement if—

- (a) the arrangement is materially different from the arrangement identified in the ruling; or
- (b) there was a material omission or misrepresentation in, or in connection with, the application for the ruling; or
- (c) the Commissioner makes an assumption about a future event or another matter that is material to the ruling, and the assumption subsequently proves to be incorrect; or
- (d) the Commissioner stipulates a condition that is not satisfied.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1)(b) was substituted, as from 20 May 1999, by section 84(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2)(c) was substituted, as from 20 May 1999, by section 84(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (2)(d) was inserted, as from 20 May 1999, by section 84(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**91EC Applying for a private ruling**

- (1) A person, in their own right or on behalf of a person who is yet to come into legal existence, may apply to the Commissioner for a private ruling on how a taxation law applies, or would apply, to—
  - (a) the person making the application or the prospective person, as the case may be; and
  - (b) an arrangement, whether a single or a recurring arrangement.
- (2) Two or more persons may jointly apply, or a person on behalf of two or more persons who are yet to come into legal existence, may apply to the Commissioner for a private ruling on how a taxation law applies, or would apply, to each person and to an arrangement, whether a single or a recurring arrangement.
- (3) An application for a private ruling—
  - (a) must be made in the form prescribed by the Commissioner; and
  - (b) must comply with the disclosure requirements of section 91ED.
- (4) An applicant for a private ruling may at any time withdraw the application by notice in writing to the Commissioner.
- (5) The withdrawal of an application by a joint applicant for a private ruling shall not be treated as withdrawing the application of the other party or parties to the application unless the Commissioner considers that the withdrawal—
  - (a) materially affects the arrangement identified in the application; or
  - (b) results in insufficient information in relation to the application being provided to the Commissioner.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1) was substituted, as from 20 May 1999, by section 85(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (2) was substituted, as from 20 May 1999, by section 85(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**91ED Disclosure requirements**

- (1) An application for a private ruling must—

- (a) identify the applicant; and
  - (b) disclose all relevant facts and documents relating to the arrangement for which the ruling is sought; and
  - (c) state the taxation laws in respect of which the ruling is sought; and
  - (d) state the propositions of law (if any) which are relevant to the issues raised in the application; and
  - (e) provide a draft ruling.
- (2) If the Commissioner considers that it would be unreasonable to require the applicant to comply with any of the requirements in paragraphs (c) to (e) of subsection (1), the Commissioner may waive those requirements.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

#### **91EE Commissioner may request further information**

The Commissioner may at any time request, by notice, further relevant information from an applicant for a private ruling.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91EE was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice,” after the word “request”.

#### **91EF Assumptions in making a private ruling**

- (1) If the Commissioner considers that the correctness of a private ruling would depend on assumptions being made about a future event or other matter, the Commissioner may—
- (a) make the assumptions that the Commissioner considers to be most appropriate; or
  - (b) decline to make the ruling.
- (2) The Commissioner may not make assumptions about information which the applicant can provide.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

#### **91EG Right to consultation**

Before the Commissioner makes a private ruling, the Commissioner must give the applicant a reasonable opportunity to

be consulted if the content of the proposed ruling differs from that requested by the applicant.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

### **91EH Content and notification of a private ruling**

- (1) A private ruling must state—
  - (a) that it is a private ruling made under section 91E; and
  - (b) the identity of the person, the taxation law, and the arrangement (which may be identified by reference to the arrangement in the application) to which the ruling applies; and
  - (c) how the taxation law applies to the arrangement and to the person; and
  - (d) the period or tax year for which the ruling applies; and
  - (e) material assumptions about future events or other matters made by the Commissioner; and
  - (f) conditions stipulated by the Commissioner.anything that does not contain these statements is not a private ruling.
- (2) The Commissioner shall notify the making of a private ruling by sending a copy of the ruling to the person or persons who applied for it.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1) was substituted, as from 20 May 1999, by section 86(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **91EI Withdrawal of a private ruling**

- (1) The Commissioner may at any time withdraw a private ruling by notifying the person to whom the ruling applies in writing that the ruling has been withdrawn.
- (2) The private ruling is withdrawn from the date specified in the notice of withdrawal. That date may not be earlier than the date on which the person could reasonably be expected to receive the notice of withdrawal.

- (2A) A status ruling on a withdrawn private ruling does not apply on and after the date specified in the notice of withdrawal.
- (3) If the Commissioner withdraws a private ruling—
- (a) the ruling does not apply if the arrangement was entered into after the date of withdrawal; but
  - (b) the ruling continues to apply, for the remainder of the period or tax year specified in the ruling, if the arrangement was entered into before the date of withdrawal; and
  - (c) a status ruling that has been made on the private ruling continues to apply, for the remainder of the period or tax year specified in the private ruling, if the arrangement was entered into before the date of withdrawal.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (2)(c) was inserted, as from 20 May 1999, by section 87(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (2A) was inserted, as from 20 May 1999, by section 87(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3)(b) was amended, as from 20 May 1999, by section 87(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the words “or income year”.

Subsection (3)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (3)(c) was amended, as from 20 May 1999, by section 87(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the words “withdrawal; and” for the word “withdrawal”.

Subsection (3)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

## **91EJ Disclosure of private ruling**

*[Repealed]*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91EJ was repealed, as from 20 May 1999, by section 88(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### *Product rulings*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91F Commissioner may make product rulings**

- (1) The Commissioner may make a product ruling on how any taxation law applies to a particular arrangement if—
  - (a) the Commissioner receives an application for a product ruling on the arrangement; and
  - (b) the Commissioner is satisfied that a private ruling cannot be made because it is not practicable to identify the taxpayers who may enter into the arrangement; and
  - (c) the characteristics of the taxpayers who may enter into the arrangement would not affect the content of the ruling.
- (2) The Commissioner may make a product ruling on how a taxation law applies to the arrangement described in an application whether or not reference was made to that taxation law in the application.
- (3) The Commissioner may decline to make a product ruling if—
  - (a) the Commissioner considers that the correctness of the ruling would depend on which assumptions were made about a future event or other matter; or
  - (b) the matter on which the ruling is sought is subject to an objection, challenge, or appeal, whether in relation to the applicant or any other person; or
  - (c) the applicant has outstanding debts relating to earlier binding ruling applications.
- (4) The Commissioner may not make a product ruling if—
  - (a) the application for the ruling would require the Commissioner to determine questions of fact; or
  - (b) at the time the application is made or at any time before the ruling is issued, the Commissioner considers that the person to whom the ruling is to apply is not seriously contemplating the arrangement for which the ruling is sought; or
  - (c) the application is frivolous or vexatious; or
  - (d) the matter on which the ruling is sought is being dealt with, or in the Commissioner's opinion should be dealt with, by one or both competent authorities of the parties to a double tax agreement; or
  - (e) a product ruling already exists on how the taxation law applies to the arrangement, and the proposed ruling

- would apply to a period or tax year to which the existing ruling applies; or
- (f) in the Commissioner's opinion the applicant has not provided sufficient information in relation to the application after the Commissioner has requested further information; or
  - (g) in the Commissioner's opinion it would be unreasonable to make a ruling in view of the resources available to the Commissioner; or
  - (h) the application for the ruling would require the Commissioner to form an opinion as to a generally accepted accounting practice or to form an opinion as to a commercially acceptable practice.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (3)(b) was amended, as from 1 October 1996, by section 76(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by inserting the word “, challenge,”.

Subsection (3)(b) was amended, as from 20 May 1999, by section 89(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the expression “; or”.

Subsection (3)(c) was inserted, as from 20 May 1999, by section 89(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(b) was substituted, as from 20 May 1999, by section 89(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(d) was substituted, as from 23 September 1997, by section 76(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74)

Subsection (4)(e) was substituted, as from 20 May 1999, by section 89(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (4)(g) was amended, as from 26 November 1998, by section 30 Taxation (Tax Credits, Trading Stock, and Other Remedial Matters) Act 1998 (1998 No 107) by inserting the expression “; or”, and subs (4)(h) was inserted.

Subsection (4)(h) was amended, as from 25 November 2003, by section 122 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “generally accepted accounting practice” for the words “generally accepted accounting principle”.

### **91FA Effect of a product ruling**

- (1) Notwithstanding anything in any other Act, if—



- (a) a product ruling on a taxation law applies to an arrangement; and
  - (b) a person who enters into the arrangement applies the taxation law in the way stated in the ruling,—  
the Commissioner must apply the taxation law in relation to the arrangement in accordance with the ruling.
- (1A) Subsection (1) does not apply if a taxpayer has issued the Commissioner with a notice of proposed adjustment to change the effect of a ruling previously applied by the taxpayer.
- (2) *[Repealed]*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1A) was inserted, as from 20 May 1999, by section 90(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (2) was repealed, as from 20 May 1999, by section 90(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **91FB Application of a product ruling**

- (1) A product ruling on a taxation law applies to an arrangement—
- (a) only if the taxation law is expressly referred to in the ruling; and
  - (b) only for the period or tax year for which the ruling applies.
- (2) A product ruling does not apply to an arrangement if—
- (a) the arrangement is materially different from the arrangement identified in the ruling; or
  - (b) there was a material omission or misrepresentation in, or in connection with, the application for the ruling; or
  - (c) the Commissioner makes an assumption about a future event or another matter that is material to the application of the ruling, and the assumption subsequently proves to be incorrect; or
  - (d) the Commissioner stipulates a condition that is not satisfied.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1)(b) was substituted, as from 20 May 1999, by section 91(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2)(c) was substituted, as from 20 May 1999, by section 91(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (2)(d) was inserted, as from 20 May 1999, by section 91(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91FC Applying for a product ruling**

- (1) A person, in their own right or on behalf of a person who is yet to come into legal existence, may apply to the Commissioner for a product ruling on how a taxation law applies, or would apply—
  - (a) to an arrangement; or
  - (b) to the consumer of the product that is the subject of the ruling, and to the arrangement.
- (1A) A person making an application under subsection (1) or a prospective person, as the case may be, must intend to be a party to the proposed arrangement.
- (1B) For the purpose of subsection (1)(b), a **consumer** is a party to the arrangement who is not the applicant.
- (2) An application for a product ruling—
  - (a) must be made in the form prescribed by the Commissioner; and
  - (b) must comply with the disclosure requirements of section 91FD.
- (3) An applicant for a product ruling may at any time withdraw the application by notice to the Commissioner.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1) was substituted, as from 20 May 1999, by section 92(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsections (1A) and (1B) were inserted, as from 20 May 1999, by section 92(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

### **91FD Disclosure requirements**

- (1) An application for a product ruling must—
  - (a) identify the applicant; and

- (b) disclose all relevant facts and documents relating to the arrangement for which the ruling is sought; and
  - (c) explain—
    - (i) why it is not practicable to seek a private ruling; and
    - (ii) why the characteristics of the taxpayers who may enter into the arrangement are not relevant to the content of the ruling; and
  - (d) state the taxation laws in respect of which the ruling is sought; and
  - (e) state the propositions of law (if any) which are relevant to the issues raised in the application; and
  - (f) provide a draft ruling.
- (2) If the Commissioner considers that it would be unreasonable to require the applicant to comply with any of the requirements in paragraphs (d) to (f) of subsection (1), the Commissioner may waive those requirements.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

#### **91FE Commissioner may request further information**

The Commissioner may at any time request, by notice, further relevant information from an applicant for a product ruling.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91FE was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice,” after the word “request”.

#### **91FF Assumptions in making a product ruling**

- (1) If the Commissioner considers that the correctness of a product ruling would depend on assumptions being made about a future event or other matter, the Commissioner may—
  - (a) make the assumptions that the Commissioner considers to be most appropriate; or
  - (b) decline to make the ruling.
- (2) The Commissioner may not make assumptions about information which the applicant can provide.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91FG Right to consultation**

Before the Commissioner makes a product ruling, the Commissioner must give the applicant a reasonable opportunity to be consulted if the content of the proposed ruling differs from that requested by the applicant.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91FH Content and notification of a product ruling**

- (1) A product ruling must state—
  - (a) that it is a product ruling made under section 91F; and
  - (b) the name of the person who applied for the ruling; and
  - (c) the taxation law and the arrangement to which the ruling applies; and
  - (d) how the taxation law applies to the arrangement; and
  - (e) the period or tax year for which the ruling applies; and
  - (f) material assumptions about future events or other matters made by the Commissioner; and
  - (g) conditions stipulated by the Commissioner.anything that does not contain these statements is not a product ruling.
- (2) The Commissioner must send a copy of the ruling to the applicant as soon as practicable after the date on which the ruling is made.
- (3) Unless earlier publication is requested by the applicant in writing, the Commissioner cannot publish a product ruling until 2 months have passed after the date the ruling is made.
- (4) If earlier publication is requested by the applicant, the Commissioner must—
  - (a) notify the making of the product ruling by notice in the *Gazette*; and
  - (b) publish the product ruling in a publication of the department as soon as possible.
- (5) After the 2-month period has ended, the Commissioner must—
  - (a) notify the making of a product ruling by notice in the *Gazette*; and
  - (b) publish each product ruling, in full, in a publication of the department.

- (6) A taxpayer, other than the applicant, cannot obtain a copy of a product ruling before it is published by the Commissioner.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91FH was substituted, as from 20 May 1999, by section 93(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **91FI Extension of a product ruling**

*[Repealed]*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91FI was repealed, as from 20 May 1999, by section 94(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91FJ Withdrawal of a product ruling**

- (1) The Commissioner may at any time withdraw a product ruling.
- (2) The Commissioner must notify the withdrawal by giving adequate notice in the *Gazette*.
- (3) A product ruling is withdrawn on the date stated in the notice of withdrawal. The date cannot be before the date on which notice is given under subsection (2).
- (3A) A status ruling on a withdrawn product ruling does not apply on and after the date specified in the notice of withdrawal.
- (4) If the Commissioner withdraws a product ruling—
  - (a) the ruling does not apply to an arrangement entered into after the date of withdrawal; but
  - (b) the ruling continues to apply, for the remainder of the period or tax year specified in the ruling, to any arrangement to which it previously applied that was entered into before the date of withdrawal; and
  - (c) a status ruling that has been made on the product ruling continues to apply, for the remainder of the period or tax year specified in the product ruling, if the arrangement to which it previously applied was entered into before the date of withdrawal.
- (5) A notice of withdrawal must specify—

- (a) that it is a withdrawal of a product ruling under this section; and
  - (b) the ruling that is being withdrawn; and
  - (c) the original period or tax year for which the ruling applied; and
  - (ca) any status ruling that applied to the product ruling; and
  - (cb) that the status ruling is also being withdrawn; and
  - (d) the date of the withdrawal.
- anything that does not contain these statements is not a notice of withdrawal of a product ruling.
- (6) The Commissioner shall also give notice of the withdrawal to the person who applied for the product ruling.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (2) was substituted, as from 20 May 1999, by section 95(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3) was substituted, and subsection (3A) was inserted, as from 20 May 1999, by section 95(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(b) was amended, as from 20 May 1999, by section 95(3) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the words “or income year”.

Subsection (4) was amended, as from 20 May 1999, by section 95(4) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the words “withdrawal; and” for the word “withdrawal”.

Subsection (4)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (4)(c) was inserted, as from 20 May 1999, by section 95(4) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (4)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (5)(c) was amended, as from 20 May 1999, by section 95(5) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by inserting the words “or income year”.

Subsection (5)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsections (5)(ca) and (cb) were inserted, as from 20 May 1999, by section 95(6) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “give notice of the withdrawal” for the words “notify the withdrawal in writing”.

### *Rulings generally*

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

#### **91G Effect of legislative change on binding ruling**

A binding ruling does not apply from the date a taxation law is repealed or amended to the extent that the repeal or amendment changes the way the taxation law applies in the ruling.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Section 91G was substituted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **91GA Applying for ruling on effect of change in legislation**

- (1) A person who applied for a private ruling made under section 91E, may apply to the Commissioner for a ruling on whether the amendment or repeal of a taxation law that is stated as applying in the private ruling has changed the way that the law applies in the ruling.
- (2) A person who applied for a product ruling made under section 91F, may apply to the Commissioner for a ruling on whether the amendment or repeal of a taxation law that is stated as applying in the product ruling has changed the way that the law applies in the ruling.
- (3) A ruling made under subsection (1) or (2) is a **status ruling**.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **91GB Commissioner to make status rulings on request**

- (1) The Commissioner must make a status ruling on whether the amendment or repeal of a taxation law that is stated as applying in a private or a product ruling has changed the way that the law applies in the ruling.
- (2) The Commissioner may make a status ruling on whether the amendment or repeal of a taxation law has changed the way

that the law applies in a private or a product ruling whether or not reference was made to that taxation law in the application.

- (3) The Commissioner may not make a status ruling if—
- (a) the application is frivolous or vexatious; or
  - (b) the Commissioner considers that the correctness of the private or product ruling would depend on which assumptions were made about a future event or other matter; or
  - (c) the Commissioner considers that it would be unreasonable to make a ruling in view of the resources available to the Commissioner.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **91GC Requirements for status ruling applications**

- (1) An application for a status ruling must be made in the form prescribed by the Commissioner and must—
- (a) identify the applicant; and
  - (b) identify the private or product ruling on which the status ruling is sought; and
  - (c) state the taxation laws that are stated as applying in the private or product ruling that have been amended or repealed; and
  - (d) state any propositions of law that are relevant to the issues raised in the application; and
  - (e) provide a draft ruling.
- (2) If the Commissioner considers that it would be unreasonable to require the applicant to comply with any of the requirements in subsection (1)(d) or (1)(e), the Commissioner may waive those requirements.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **91GD Commissioner may request further information**

The Commissioner may at any time request, by notice, further relevant information from an applicant for a status ruling.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).



Section 91GD was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice,” after the word “request”.

### **91GE Right to consultation**

Before the Commissioner makes a status ruling, the Commissioner must give the applicant a reasonable opportunity to be consulted if the content of the proposed ruling differs from that requested by the applicant.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91GF Content of status ruling**

A status ruling must identify the private or product ruling on which it is a ruling and state—

- (a) that it is a status ruling made under section 91GA; and
- (b) whether the amendment or repeal of a taxation law has changed the way that the law applies in the ruling.

anything that does not contain these statements is not a status ruling.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **91GG Notification of status ruling**

- (1) The Commissioner must send a copy of a status ruling to the applicant as soon as practicable after the date on which the ruling is made.
- (2) In the case of a status ruling on a product ruling, the Commissioner must also—
  - (a) notify the making of a status ruling by notice in the *Gazette*; and
  - (b) publish the status ruling in a publication of the department .
- (3) The Commissioner must notify the making of and publish a status ruling as soon as possible but not before the 2-month period specified in section 91FH(3) has passed, unless the applicant has requested earlier publication of their product ruling under that section.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**91GH Effect of status ruling**

If a person applies a taxation law in accordance with a status ruling, the Commissioner must also apply the taxation law in accordance with the status ruling.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**91GI Effect of minor error on binding ruling**

- (1) The Commissioner does not have to withdraw and reissue a new ruling to correct a typographical or a minor error if the correction does not change the meaning of the ruling.
- (2) A ruling that is not withdrawn and reissued remains valid.

Sections 91GA to 91GI were inserted, as from 20 May 1999, by section 96(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**91H Applications for rulings not to affect obligations and powers**

The fact that there has been an application for a private ruling or a product ruling does not affect a person's obligation to provide any return, make any payment, or do any other act, or the Commissioner's power to make or amend any assessment.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

**91I Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing or providing for the fixing of fees payable in respect of applications for private, product and status rulings.
- (2) Any such regulations may—
  - (a) specify the persons by whom any fees are payable:
  - (b) prescribe specific fees for specific work or services:
  - (c) prescribe a scale of fees or a rate based on the time involved in carrying out the work or services:
  - (d) allow the Commissioner to waive, in whole or in part, any fees that are payable.

Part 5A comprising sections 91A to 91I was inserted, as from 1 April 1995, by section 10 Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (1) was amended, as from 20 May 1999, by section 98(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by sub-

stituting the word “private, product and status rulings” for the words “private rulings and product rulings”.

Subsection (2)(c) was amended by section 98(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the word “services:” for the word “services.” with application as from 1 April 1995.

Subsection (2)(d) was inserted by section 98(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 1 April 1995.

**91J Commissioner may not issue ruling to applicant with outstanding debts**

- (1) The Commissioner may refuse to issue a private, a product, or a status ruling to an applicant with an outstanding debt that relates to an earlier binding ruling application.
- (2) An applicant has an outstanding debt if she or he has not paid, on or before 60 days after the date stated in an invoice sent by Inland Revenue, the amount stated in the invoice.
- (3) This section applies only to an outstanding debt that first arises on or after 1 June 1999.

Section 91J was inserted, as from 20 May 1999, by section 99(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**Part 6  
Assessments**

**92 Taxpayer assessment of income tax**

- (1) A taxpayer who is required to furnish a return of income for a tax year must make an assessment of the taxpayer’s taxable income and income tax liability and, if applicable for the tax year, the net loss, terminal tax or refund due.
- (2) An assessment under this section is made on the date on which the taxpayer’s return of income is received at an office of the Department.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) This section does not apply to a taxpayer—
  - (a) in respect of whom a tax credit identified in subparts MA to MF and MZ of the Income Tax Act 2007 is calculated by the Commissioner; and
  - (b) for the tax year to which the tax credit relates.

- (6) This section does not apply to a taxpayer—
- (a) in respect of whom the Commissioner has made an assessment; and
  - (b) for the tax year to which the assessment relates.
- (7) The nominated company for a consolidated group is treated as a taxpayer for the purposes of this section. A company that is part of a consolidated group in a tax year must not make a separate assessment for a tax year, but this restriction applies only to a tax year, or part of a tax year, in which the company is part of the group.

Subsection (1) was substituted by section 451(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(a) was amended, as from 1 October 1996, by section 14(1)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “Part 8A and sections 107, 108, 109, 110” for the expression “Part 8 and sections 107 to 110”. *See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act. This amendment appears to be in error as the original subsection (2)(a) was worded “sections 107 to 111” not “sections 107 to 110”.*

Subsection (2)(b) was amended, as from 1 October 1996, by section 14(1)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “section 138K” for the expression “section 129”. *See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.*

Subsection (2)(b) was amended, as from 1 October 1996, by section 14(1)(c) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “that is challenged” for the words “objected to”. *See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.*

Subsection (2)(b) was amended, as from 1 October 1996, by section 14(1)(d) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “a challenge” for the words “an objection”. *See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.*

Subsection (2) was substituted by section 451(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2)(b) was amended, as from 20 May 1999, by section 100(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the expression “section 138K” for the expression “section 138J”.

Subsection (3)(d) was repealed by section 4(1)(b) Tax Administration Amendment Act (No 2) 1995 (1995 No 72) with application to the tax on income derived as from 1 April 1996.

Subsection (3) was substituted by section 451(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (4) was substituted by section 451(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (5) was amended by section 4(1)(c) Tax Administration Amendment Act (No 2) 1995 (1995 No 72) by omitting the words “and section GC 1 of the Income Tax Act 1994”, with application to the tax on income derived as from 1 April 1996.

Subsection (5) was amended, as from 1 October 1996, by section 14(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “Part 7A” for the expression “Part 8”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (5) (that part before paragraph (a)) was amended, as from 27 March 1998, by section 46 Taxation (Remedial Provisions) Act 1998 (1998 No 7) by inserting the expression “or MI 12”.

Subsection (5) (that part before paragraph (c)) was substituted by section 451(2) Taxation (Core Provisions) Act 1996 (1996 No 67), with application as from the 1997-98 income year.

Subsection (5)(e) was amended, as from 1 October 1996, by section 14(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “section 138K” for the expression “section 129”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (5)(e) was amended, as from 1 October 1996, by section 14(2)(c) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “that is challenged” for the words “objected to”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (5)(e) was substituted by section 451(3) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 92 was substituted, by section 208(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

The heading to section 92 was substituted, as from 1 October 2004, by section 112(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application as from the 2004-05 income year. The heading previously read “Taxpayer assessment”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2) was substituted, as from 1 October 2004, by section 112(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application as from the 2004-05 income year.

Subsection (3) was repealed, as from 1 October 2004, by section 112(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application as from the 2004-05 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (4) was repealed, as from 1 October 2005, by section 142(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005–06 tax year.

Section 92(5)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Section 92(5)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (6)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Section 92(7): added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **92AAA Determination on cost of timber**

- (1) When the Commissioner receives from a person a return of income showing that they have incurred, in the 1987-88 tax year or a later tax year, an expenditure or loss that may be a cost of timber, the Commissioner—
  - (a) determines the amount to be deducted for the expenditure or loss; and
  - (b) gives the person notice of the amount.
- (2) Section 92(5) applies, as far as applicable and with the necessary modifications, as if a determination by the Commissioner were a determination of net loss made under section 92(3).

Compare: 1994 No 164 s DL 1(10), (11)

Section 92AAA was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

### **92AA Assessment for tax credits under Part M of Income Tax Act 2007**

The Commissioner must make an income tax assessment for a tax year for a taxpayer who has a tax credit identified in Part M of the Income Tax Act 2007 for the year.

Section 92AA: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 92AA was inserted, by section 209 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

The heading to section 92AA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Section 92AA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Section 92AA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **92AB Assessments of liabilities of shareholders of qualifying companies**

- (1) The Commissioner may assess the liability of a shareholder who has agreed under section HA 8 of the Income Tax Act 2007 to be personally liable for their share of the income tax payable by a qualifying company.
- (2) A person assessed under subsection (1) is liable as agent for the company.
- (3) The Commissioner may reduce a person’s agreed liability if, in the relevant income year, —
  - (a) they first acquire shares in the company; or
  - (b) they dispose of all their shares in the company.
- (4) To reduce a person’s liability under subsection (3),—
  - (a) the Commissioner must be satisfied that the reduction is appropriate; and
  - (b) the person must provide adequate accounts and other relevant information to show that the company’s income tax liability attributable to the part of the income year in which they were a shareholder is proportionately

smaller than the liability attributable to the full income year.

- (5) An assessment of the company or the person does not prevent an assessment of the other.

Compare: 2004 No 35 s HG 8(1), (2)

Section 92AB: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **92A Basic rates of income tax**

- (1) The Commissioner may for a tax year (whether before or after the passing of the annual taxing Act for that year) assess the income tax of any taxpayer at the basic rates. No such assessment shall be deemed to be invalid on the ground that it is made before the passing of the annual taxing Act.
- (2) If the annual rates for any tax year are higher or lower than the basic rates, the amount of every assessment of income tax made under this section in respect of that year shall be deemed to be increased or reduced accordingly, and every such assessment shall have the same effect as if the amount as so increased or reduced had been specified in the assessment.

Section 92A was inserted by section 452 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1) was amended, by section 210(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “for an income year” for the words “in any year of assessment”, with application as from the 2002-03 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, by section 210(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “income year” for the words “year of assessment”, with application as from the 2002-03 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **92B Taxpayer assessment of GST**

- (1) A taxpayer who is required under the Goods and Services Tax Act 1985 to provide a GST tax return for a GST return period must make an assessment of the amount of GST payable by the taxpayer for the return period.



- (2) An assessment under this section is made on the date on which the taxpayer's GST tax return is received at an office of the Department.
- (3) This section does not apply to a taxpayer for a GST return period if the Commissioner has made an assessment of the GST payable by the taxpayer for the return period.

Section 92B was inserted by section 113(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to GST return periods beginning on or after 1 April 2005.

### **93 Assessment of FBT**

- (1) The Commissioner may, in respect of any person who is chargeable with FBT in respect of any quarter or any income year, make an assessment of the amount of FBT which, in the Commissioner's judgment, ought to be imposed, and that person shall be liable to pay the FBT so assessed, except so far as the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with FBT.
- (2) Sections 109, 111, and 113 shall apply, so far as may be, with respect to every assessment made under this section as if—
  - (a) The term **tax already assessed** in section 113 included FBT already assessed under this section; and
  - (b) The term **taxpayer** in sections 109, 111, and 113 included a person who is chargeable with FBT.
- (3) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act shall apply accordingly.

Compare: 1976 No 65 s 336V

Section 93 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 93(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 15(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words "in proceedings challenging the assessment" for the words "on objection". See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1) was amended, as from 1 April 2005, by section 240(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “income year” for the words “tax year” with application as from the income year corresponding to the 2005-06 tax year.

Section 93(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 93(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 93(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 October 1996, by section 15(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”.

Subsection (3) was amended, as from 1 October 1996, by section 15(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.” See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **93B Trustee income: Commissioner’s power to assess**

- (1) This section applies when a person—
- (a) fails to disclose details of a trust under section 59; or
  - (b) fails to provide information that the Commissioner has asked for under section 17 in relation to a trust; or
  - (c) is unable to obtain sufficient information to calculate the amount of trustee income in an income year.
- (2) The Commissioner may determine in a fair and reasonable manner the amount of trustee income for the income year.

Compare: 2004 No 35 s HH 7

Section 93B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**93C Foreign tax credits: Commissioner's power to amend assessments**

- (1) This section applies when a person is entitled to a tax credit under section LK 1 of the Income Tax Act 2007 and—
  - (a) the amount of the credit cannot be determined before the time by which the person must file a return of income for an income year; and
  - (b) the person asks the Commissioner for an amended assessment within 4 years after the end of the income year.
- (2) The Commissioner must amend the assessment for the income year to reflect the amount of the credit.

Compare: 2004 No 35 s LC 4(1C)

Section 93C: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**94 Assessment of qualifying company election tax and additional tax**

- (1) The Commissioner may, in respect of any company liable to pay qualifying company election tax under section HA 42 of the Income Tax Act 2007, make an assessment of the amount of qualifying company election tax, and any late payment penalty payable under section 139B of this Act, that, in the Commissioner's judgment, ought to be imposed, and the company shall be liable to pay the qualifying company election tax and any late payment penalty so assessed, except so far as the company establishes in proceedings challenging the assessment that the assessment is excessive or that the company is not chargeable with qualifying company election tax, or the late payment penalty.
- (2) Sections 108 to 111, 113, and 114 shall apply, so far as may be, with respect to every assessment made under this section as if—
  - (a) The term **tax already assessed**, in section 113, included qualifying company election tax and any late payment penalty already assessed under this section; and
  - (b) The term **taxpayer**, in sections 109, 111, and 113, included a company which is chargeable with qualifying company election tax; and

- (c) The term **income tax** for any year in section 108(1) included an amount assessed under this section, and the term **property** were substituted for the term **income** in section 108(2).
- (3) An assessment made under subsection (1) is subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act applies accordingly.

Compare: 1976 No 65 s 393L(3), (4), (5)

Subsection (1) was substituted, as from 1 October 1996, by section 16(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 94(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2)(a) was amended by section 123 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “late payment penalty” for the words “additional tax” with application to late payment penalties that arise as from the 1997-98 income year.

Subsection (2)(c) was substituted by section 453 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 94(3): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Subsection (3) was amended, as from 1 October 1996, by section 16(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended, as from 1 October 1996, by section 16(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

**94A Assessment of shortfall penalties**

- (1) The Commissioner may make or amend an assessment of a civil penalty in the same way as the Commissioner may make or amend an assessment of the tax in respect of which the penalty is imposed.
- (2) The Commissioner must assess a shortfall penalty in the same way as the tax to which it relates, but separately from the tax. However, this subsection does not apply to a penalty under section 141ED.
- (3) The Commissioner may assess a shortfall penalty before or after unpaid tax has been assessed, or has become assessable or payable, or has been paid.
- (4) If the Commissioner assesses a shortfall penalty in respect of unpaid income tax before the passing of the annual taxing Act, the unpaid income tax shall be calculated by reference to the rates determined by the last preceding annual taxing Act.
- (5) Unless a tax law specifically provides otherwise, a payment made by, or an amount applied on behalf of, a taxpayer on account of a shortfall penalty does not give rise to a credit towards or in respect of any other tax or tax liability.

Sections 94A and 94B were inserted by section 17 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 94A(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 654(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**94B Liability of wholly-owned group and other bodies to pay shortfall penalties**

- (1) If the Commissioner treats the companies in a wholly-owned group as if they were a single taxpayer for the purpose of determining a tax shortfall,—
  - (a) The Commissioner may assess one company in the group for the shortfall penalty; but

- (b) All the other companies remain liable to pay the shortfall penalty until it is paid in full.
- (2) All the partners in a partnership, and all the persons in any other group of persons that derive or incur amounts jointly or that are assessed together, are liable individually and collectively for a shortfall penalty imposed by the Commissioner—
  - (a) in respect of a tax position taken; or
  - (b) as a consequence of how or the way in which a tax position is taken,—by the partnership or the other group of persons, as the case may be.
- (3) For the purposes of subsection (2),—
  - (a) where a shortfall penalty is imposed in respect of a partnership, the part of that penalty imposed on each partner shall be in proportion to the partner's share or interest in the partnership; and
  - (b) where a shortfall penalty is imposed in respect of a group of persons (other than a partnership), that penalty shall be imposed in such proportions as the Commissioner determines on any one or more of the persons in that group.

Sections 94A and 94B were inserted by section 17 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended by section 454 Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “All the partners in a partnership, and all the persons in any other group of persons that derive or incur amounts jointly or that are assessed together, are liable individually and collectively for a shortfall penalty imposed by the Commissioner—” for the words “All the partners in a partnership, and all the persons in any other group of persons that derive income jointly or are assessed together for income or for any other item, are to be liable individually and collectively for a shortfall penalty imposed by the Commissioner—” with application as from the 1997-98 income year.

## **95 Assessment of withdrawal tax**

- (1) The Commissioner may, in respect of any person who is chargeable with withdrawal tax under section RZ 9 of the Income Tax Act 2007, make an assessment of the amount of withdrawal tax which, in the Commissioner's judgment, ought to be imposed, and that person shall be liable to pay

the tax so assessed, except so far as the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with withdrawal tax.

- (2) Sections 109 to 111, 113, and 114 shall apply, so far as may be, with respect to every assessment made under this section as if—
- (a) the term **tax already assessed** used in section 113 included withdrawal tax already assessed under this section; and
  - (b) the term **taxpayer** used in sections 109, 111, and 113 included a person who is chargeable with withdrawal tax.
- (3) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act shall apply accordingly.

Compare: 1976 No 65 s 334

Section 95(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 18(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 455 Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the expression “section IZ 2” for the expression “section ID 2” with application as from the 1997-98 income year.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 95(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 October 1996, by section 18(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended, as from 1 October 1996, by section 18(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the

words “and Part 8A of this Act shall apply accordingly” for the words following “Income Tax Act 1994.” See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

## **96 Assessment of New Zealand superannuitant surcharge** *[Repealed]*

Subsection (1) was amended, as from 1 October 1996, by section 19(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (4) was amended, as from 1 October 1996, by section 19(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended, as from 1 October 1996, by section 19(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.” See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 96 was repealed by section 15 Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) with application to tax on taxable income as from the 1998-99 income year.

## **97 Assessment of imputation penalty tax**

- (1) The Commissioner may, in respect of any company chargeable with imputation penalty tax, make an assessment of the amount of imputation penalty tax that in the judgment of the Commissioner ought to be imposed on the company.
- (2) The company shall be liable to pay the imputation penalty tax so assessed except in so far as the company establishes in proceedings challenging the assessment that the assessment is excessive or that the company is not chargeable with the imputation penalty tax.



- (3) Sections 109, 111, and 113 shall apply with respect to every assessment under this section as if—
- (a) in those sections, the term **taxpayer** included a company chargeable with imputation penalty tax; and
  - (b) in section 113, the term **tax already assessed** included any imputation penalty tax already assessed under this section.
- (4) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act shall apply accordingly.

Compare: 1976 No 65 s 394N(5)-(8)

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (2) was amended, as from 1 October 1996, by section 20(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 97(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 October 1996, by section 20(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended, as from 1 October 1996, by section 20(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **97B Assessment of Maori authority distribution penalty tax**

- (1) The Commissioner may, in respect of a Maori authority chargeable with Maori authority distribution penalty tax, make an assessment of the amount of Maori authority distri-

bution penalty tax that the Commissioner considers should be imposed on the Maori authority.

- (2) The Maori authority is liable to pay the Maori authority distribution penalty tax assessed except to the extent that the Maori authority establishes in proceedings challenging the assessment that the assessment is excessive or that the Maori authority is not chargeable with the Maori authority distribution penalty tax.
- (3) Sections 109, 111 and 113 apply to an assessment made under this section as if—
  - (a) the references to “taxpayer” in those sections included a Maori authority chargeable with Maori authority distribution penalty tax; and
  - (b) the reference to “tax already assessed” in section 113 included Maori authority distribution penalty tax already assessed under this section.
- (4) An assessment made under this section is subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 7 of this Act applies accordingly.

Section 97B was inserted by section 108(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 97B(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

## **98 Assessment of ESCT**

- (1) The Commissioner may, in respect of any employer who is chargeable with ESCT under section RD 67 of the Income Tax Act 2007, make an assessment of the amount of the employer’s superannuation contribution on which, in the Commissioner’s judgment, ESCT ought to be imposed and an assessment of the amount of that tax, and that employer shall be liable to pay the tax so assessed except so far as the employer establishes in proceedings challenging the assessment that the assessment is excessive or that the employer is not chargeable with the tax so assessed.

- (2) Sections 109, 111, and 113 shall apply, so far as may be, with respect to every assessment made under subsection (1) of this section as if—
- (a) in those sections, the term **taxpayer** included a person who is chargeable with ESCT; and
  - (b) in section 113, the term **tax already assessed** included ESCT already assessed under subsection (1) of this section.
- (3) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act shall apply accordingly.

Compare: 1976 No 65 s 336ZG

Section 98 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 98(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 21(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 98(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 98(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 98(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 October 1996, by section 20(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended, as from 1 October 1996, by section 20(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

**98B Assessment of retirement scheme contribution withholding tax**

- (1) The Commissioner may, for any person who is chargeable with RSCT under section RH 2 of the Income Tax Act 2007, make an assessment of the amount of the retirement scheme contribution on which, in the Commissioner’s judgment, RSCT ought to be imposed and an assessment of that tax.
- (2) The person is liable to pay the tax so assessed except to the extent that the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with the tax assessed.
- (3) Sections 109, 111, and 113 shall apply, so far as may be, with respect to an assessment made under subsection (1) of this section as if—
  - (a) in those sections, the term **taxpayer** included a person who is chargeable with RSCT; and
  - (b) in section 113, the term **tax already assessed** included RSCT already assessed under subsection (1) of this section.
- (4) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act shall apply accordingly.

Section 98B: inserted (with effect from 1 April 2007), on 19 December 2007, by section 231(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 98B(1): substituted, on 1 April 2008, by section 231(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 98B(3)(a): substituted, on 1 April 2008, by section 231(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 98B(3)(b): substituted, on 1 April 2008, by section 231(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 98B(4): amended, on 1 April 2008, by section 231(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**99 Assessment of RWT**

- (1) The Commissioner may make an assessment of any amount that, in the Commissioner's opinion, any person is liable to account for or pay to the Commissioner under the RWT rules, and any person who is so assessed shall be liable to pay the amount so assessed, except so far as the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not liable to account for or pay the amount so assessed.
- (2) Sections 108 to 111, 113, and 114 shall apply, so far as may be, with respect to every assessment made under subsection (1) of this section, as if—
  - (a) The term **income tax for any year** in section 108(1) included an amount assessed under subsection (1) of this section and the term **income** in section 108(2) included an amount of resident passive income; and
  - (b) The term **taxpayer** in sections 109, 111, and 113 included a person who is assessed or is liable to be assessed under subsection (1) of this section; and
  - (c) The term **tax already assessed** in section 113 included an amount already assessed under subsection (1) of this section.
- (3) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Parts 7 and 8A of this Act shall apply accordingly.

Compare: 1976 No 65 s 327T

Section 99 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 22(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words "in proceedings challenging the assessment" for the words "on objection". See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2)(a) was substituted by section 456 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 99(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word "gross".

Section 99(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 October 1996, by section 22(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended, as from 1 October 1996, by section 22(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

## 100 Assessment of NRWT

- (1) The Commissioner may, in respect of any person who is chargeable with NRWT under section RF 3 of the Income Tax Act 2007, make an assessment of the amount of non-resident passive income on which in the Commissioner’s judgment NRWT ought to be imposed and of the amount of that tax, and that person shall be liable to pay the tax so assessed, except so far as the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with the tax so assessed.
- (2) The Commissioner may make an assessment of any amount which in the Commissioner’s judgment any person is liable to account for or pay to the Commissioner under subpart RF of the Income Tax Act 2007, and any person who is so assessed shall be liable to pay the amount so assessed, except so far as the person establishes in proceedings challenging the assessment that the assessment is excessive or that the person is not liable to account for or pay the amount so assessed.
- (3) Sections 109 to 111, 113, and 114 shall apply, so far as may be, with respect to every assessment made under subsection (1) or subsection (2) of this section, as if—
  - (a) the term **tax already assessed** used in section 113 included NRWT already assessed under subsection (1) of

- this section or, as the case may be, an amount already assessed under subsection (2) of this section; and
- (b) the term **taxpayer** used in sections 109, 111, and 113 included a person who is chargeable with NRWT or, as the case may be, a person who is assessed or is liable to be assessed under subsection (2) of this section.
- (4) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act shall apply accordingly.

Compare: 1976 No 65 s 321

Section 100 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 100(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 23(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 100(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 25 November 2003, by section 124 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “in proceedings challenging the assessment” for the words “on objection”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart NG of the Income Tax Act 2004” for the words “Part NG of the Income Tax Act 1994”.

Section 100(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 100(3)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 100(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 October 1996, by section 23(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of

that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended, as from 1 October 1996, by section 23(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **101 Assessment of further income tax**

- (1) The Commissioner may, in respect of any company liable to pay further income tax under sections OB 65 to OB 67 of the Income Tax Act 2007, make an assessment of the amount of the further income tax that in the Commissioner’s judgment ought to be imposed, and the company shall be liable to pay the further income tax so assessed except so far as the company establishes in proceedings challenging the assessment that the assessment is excessive or that the company is not chargeable with the further income tax.
- (2) Sections 109, 111, and 113 shall apply, so far as may be, with respect to every assessment made under this section as if—
  - (a) in those sections, the term **taxpayer** included a company which is chargeable with further income tax; and
  - (b) in section 113, the term **tax already assessed** included the further income tax already assessed under this section.
- (3) An assessment made under this section shall be subject to challenge in the same manner as an assessment of income tax and Part 8A of this Act shall apply, so far as may be, to a challenge to an assessment made under this section as if the terms **income tax** and **tax** in that Part included the further income tax for which a company may be chargeable under sections OB 65 to OB 67 of the Income Tax Act 2007.

Compare: 1976 No 65 s 394L(7), (8), (9)

Section 101(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Subsection (1) was amended, as from 1 October 1996, by section 24(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (3) was amended, as from 1 October 1996, by section 24(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was substituted, as from 1 October 1996, by section 77 Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 101(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **101B Assessment of imputation additional tax**

- (1) The Commissioner may, in respect of any company liable to pay imputation additional tax under section OB 72 of the Income Tax Act 2007, make an assessment of the amount of the imputation additional tax that in the Commissioner’s judgment ought to be imposed, and the company shall be liable to pay the imputation additional tax so assessed except so far as the company establishes in proceedings challenging the assessment that the assessment is excessive or that the company is not chargeable with the imputation additional tax.
- (2) Sections 109, 111, and 113 apply, so far as may be, with respect to every assessment made under this section as if—
  - (a) in those sections, the term “taxpayer” included a company which is chargeable with imputation additional tax; and
  - (b) in section 113, the term “tax already assessed” included the imputation additional tax already assessed under this section.

- (3) An assessment made under this section is subject to challenge in the same manner as an assessment of income tax and Part 8A of this Act shall apply, so far as may be, to a challenge to an assessment made under this section as if the terms “income tax” and “tax” in that Part included the imputation additional tax for which a company may be chargeable under section OB 72 of the Income Tax Act 2007.

Section 101B was inserted, as from 16 November 2004, by section 143 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 101B heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 101B(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 101B(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 101B(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 101B(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## 102 Assessment of FDP

*[Repealed]*

Section 102: repealed (with effect on 30 June 2009), on 6 October 2009, by section 655(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 102 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 102(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 25(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 102(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 102(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 102(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 102(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 102(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 102(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 October 1996, by section 25(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended, as from 1 October 1996, by section 25(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

## **103 Assessment of further FDP**

*[Repealed]*

Section 103: repealed (with effect on 30 June 2009), on 6 October 2009, by section 656(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 103 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 103(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 October 1996, by section 26(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was amended, as from 1 October 1996, by section 26(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”.

Subsection (2) was amended, as from 1 October 1996, by section 26(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “assessment of income tax,”.

Section 103(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 103(3)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **103A Assessment of FDP relating to conduit tax relief**

*[Repealed]*

Section 103A: repealed (with effect on 30 June 2009), on 6 October 2009, by section 657(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 103A was inserted, as from 27 March 1998, by section 47(1) Taxation (Remedial Provisions) Act 1998 (1998 No 7) with application as from the 1998-99 income year.

Section 103A heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 103A(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 103A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 103A(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 103A(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **104 Assessment of FDP penalty tax**

*[Repealed]*

Section 104: repealed (with effect on 30 June 2009), on 6 October 2009, by section 658(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 104 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 104(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Section 104(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 October 1996, by section 27(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “in proceedings challenging the assessment” for the words “on objection”.

Section 104(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 104(3)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 104(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 October 1996, by section 27(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “to challenge” for the words “to objection”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended, as from 1 October 1996, by section 27(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “and Part 8A of this Act shall apply accordingly” for all the words after “Income Tax Act 1994.”. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

#### **104B Determination of credits and debits in memorandum accounts**

(1) In this section,—

**credit date** means the credit date recorded when a memorandum credit arises in a memorandum account

**debit date** means the debit date recorded when a memorandum debit arises in a memorandum account

**memorandum account person** means a company, person, consolidated imputation group, or consolidated group (including the nominated company for a consolidated group) that maintains a memorandum account.

(2) The Commissioner may determine that a memorandum account is corrected by—

- (a) adjusting the amount of a credit or debit recorded in the account; or
  - (b) changing a credit date or a debit date recorded in the account.
- (3) Notice of the determination must be given to the memorandum account person affected by the determination as soon as is convenient after the determination has been made.
- (4) Notice of the determination may be included in a notice of assessment.
- (5) Failure to give the notice of determination does not invalidate the determination.
- (6) Failure to give the notice of determination does not invalidate the determination.
- (7) The memorandum account person must record those changes that are necessary or appropriate to ensure that all memorandum accounts of the person correctly reflect the determination.
- (8) Subsections (6) and (7) do not apply to the extent to which it is established in proceedings under a challenge that the determination is not correct.

Compare: 2004 No 35 ss ME 20, ME 40, MF 6, MG 12, MI 12, MJ 8, MK 9

Section 104B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **105 Assessments and determinations made by electronic means**

Any assessment or determination made by the Commissioner for the purposes of any of the Inland Revenue Acts that is made automatically by a computer or other electronic means in response to or as a result of information entered or held in the computer or other electronic medium shall be treated as an assessment or determination made by or under the properly delegated authority of the Commissioner.

Compare: 1974 No 133 s 21D

Section 105 was amended, by section 211 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by inserting, after the words “An assessment or determination made”, the words “by the Commissioner”, with application as from the 2002-03 income year.

**106 Assessment where default made in furnishing returns**

- (1) If any person makes default in furnishing any return, or if the Commissioner is not satisfied with the return made by any person, or if the Commissioner has reason to suppose that any person, although the person has not made a return, is a taxpayer, the Commissioner may make an assessment of the amount on which in the Commissioner's judgment tax ought to be imposed and of the amount of that tax, and that person shall be liable to pay the tax so assessed, save so far as the person establishes on objection or in proceedings challenging the assessment that the assessment is excessive or that the person is not chargeable with tax.
- (1A) Despite Part 3A, if the Commissioner considers an income statement incorrectly summarises the particulars required by section 80E(2), the Commissioner may make an assessment of the amount on which the Commissioner considers tax ought to be imposed and of the amount of that tax.
- (1B) Tax assessed under subsection (1A) in respect of a person is payable by the person unless the person disputes the assessment and complies with the requirements of section 89D.
- (1C) Subsection (1A) applies if a person to whom an income statement is issued does not inform the Commissioner of the reasons why the person considers the income statement is incorrect and provides the information the person considers necessary to correct the income statement by the date prescribed in section 80F.
- (1D) If a person who is required to provide a GST tax return for a GST return period does not provide a GST tax return for the return period, or provides a GST tax return with which the Commissioner is not satisfied, the Commissioner may make an assessment of the GST payable by the person for the return period.
- (1E) A person who is assessed under subsection (1D) is liable to pay the GST assessed unless the person establishes in proceedings challenging the assessment that the assessment is excessive, or that the person is not chargeable with GST.
- (2) An assessment made under this section shall not be invalidated by virtue of the fact that it is made automatically by a com-

puter or other electronic means in response to or as a result of information entered or held in the computer or other electronic medium.

Compare: 1976 No 65 s 21

Subsection (1) was amended, as from 1 October 1996, by section 28 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by inserting, after the words “on objection” the words “or in proceedings challenging the assessment”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 483(3) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the word “imposed” for the word “levied” with application as from the 1997-98 income year.

Subsections (1A) to (1C) were inserted by section 27(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1B) was amended by section 125(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “subsection (1A)” for the words “this subsection” with application to the 1999-2000 to 2001-02 income years.

Subsection (1B) was substituted by section 125(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2002-03 income year.

Subsections (1D) and (1E) were inserted by section 114(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to GST return periods beginning on or after 1 April 2005.

## **107 Amended assessment for income tax where return date between 31 March and 1 October**

Where, whether before or after the commencement of this Act,—

- (a) any taxpayer, in respect of income derived during any number of successive accounting periods ending respectively with a day between 31 March and 1 October in each year, has made returns of income and been assessed for income tax upon the basis that the income derived during each such accounting period was derived during the tax year ending with the 31 March next succeeding the end of that accounting period; and
- (b) the Commissioner has amended all those assessments (or such of them as the Commissioner is not precluded by the time bar from amending) by assessing the taxpayer upon the basis that the income derived during each accounting period was derived during the tax year



ending with the 31 March preceding the end of that accounting period,—  
the validity of the amended assessment in respect of the income derived during any such accounting period shall not be deemed to be affected or to have at any time been affected by reason of its having been made for the same tax year as the assessment in respect of the income derived by the taxpayer during the preceding accounting period.

The heading to section 107 was amended, by section 212(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “Amended assessment” for the words “Reassessment”, with application as from the 2002-03 income year.

Section 107 was substituted by section 457 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 107 was amended, by section 212(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “income year” for the words “year of assessment”, with application as from the 2002-03 income year.

Section 107 was amended, by section 236(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amended” for the word “altered” wherever it occurs, with application as from the 2002-03 income year.

Section 107 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appears.

Section 107 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Paragraph (b) was amended, by section 212(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “amending” for the words “altering”, with application as from the 2002-03 income year.

### **107A Time bar for amendment of assessments**

- (1) When any person has made returns and has been assessed for income tax for any year, it shall not be lawful for the Commissioner to amend the assessment so as to increase its amount after the expiration of 4 years from the end of the year in which the notice of original assessment was issued.
- (2) Notwithstanding subsection (1), in any case where, in the opinion of the Commissioner, the returns so made are fraudulent or wilfully misleading or omit all mention of income which is of a particular nature or was derived from a particular source, and in respect of which a return is required to be made, it shall be

lawful for the Commissioner to amend the assessment (being an assessment made on or after 1 April 1958) at any time so as to increase the amount of the assessment.

- (3) Subsections (1) and (2) apply to a return filed in the period between 1 October 1996 and 31 March 1997, and, for such a return, a reference to section 108 of this Act is deemed to be a reference to this section.

Section 107A was inserted, as from 1 October 1996, by section 78(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 107A was amended, by section 236(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amend” for the word “alter” wherever it occurs, with application as from the 2002-03 income year.

#### **108 Time bar for amendment of income tax assessment**

- (1) Except as specified in this section or in section 108B, if—
- (a) a taxpayer furnishes an income tax return and an assessment has been made; and
  - (b) 4 years have passed from the end of the tax year in which the taxpayer provides the tax return,—
- the Commissioner may not amend the assessment so as to increase the amount assessed.
- (1A) Unless subsection (2) or section 108B applies, the Commissioner must not issue an income statement under Part 3A if 4 years have passed since the end of the tax year that follows the tax year to which the income statement would apply.
- (1B) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and development tax credit under section LH 2 of the Income Tax Act 2007 if—
- (a) a taxpayer furnishes an income tax return for the 2008–09 or a later tax year; and
  - (b) 2 years have passed from the latest date to provide a return of income for the relevant tax year and, for a member of an internal software development group to which section 68E applies, the latest date means the latest date for any member of the group; and
  - (c) the taxpayer—
    - (i) has not issued a notice of proposed adjustment to the Commissioner for an amount of a tax credit

- for research and development expenditure for the relevant tax year within the relevant response period; and
- (ii) has not asked for an assessment to be amended under section 113, having provided a detailed research and development statement under section 68D or 68E, as applicable, within the time limit referred to in paragraph (b).
- (1B) *[Repealed]*
- (2) If the Commissioner is of the opinion that a tax return provided by a taxpayer—
- (a) is fraudulent or wilfully misleading; or
- (b) does not mention income which is of a particular nature or was derived from a particular source, and in respect of which a tax return is required to be provided,—
- the Commissioner may amend the assessment at any time so as to increase its amount.
- (3) This section overrides every other provision of this Act, and any other rule or law, that limits the Commissioner’s right to amend assessments.
- (3B) The Commissioner may amend an assessment or a determination to give effect to section LA 6(3) of the Income Tax Act 2007 despite the time bar.
- (3B) *[Repealed]*
- (4) Subsection (1) applies to all returns filed on or after 1 April 1997.

Compare: 1976 No 65 s 25

Section 108 was substituted, as from 1 October 1996, by section 29 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 108 was amended, by section 236(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amend” for the word “alter” wherever it appears, with application as from the 2002-03 income year.

The heading to section 108 was substituted, by section 213(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

The heading to section 108 was to be amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income tax liability, and tax payable under Income Tax Act 2004” for the words “in-

come tax liability and tax payable under Income Tax Act 1994”. However, this amendment appears to be in error as the words “income tax liability and tax payable under Income Tax Act 1994” do not appear in the heading.

Subsection (1)(a) was substituted by section 458 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1)(a) was substituted, by section 213(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1A) was inserted by section 28(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to income statements issued as from the 1999-2000 income year.

Subsection (1A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Section 108 first subsection (1B): inserted, on 19 December 2007, by section 232(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 108(1B)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 659(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 108 first subsection (1B)(b): amended (with effect from 19 December 2007), on 15 December 2008, by section 27 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 108 first subsection (1B)(b): amended, on 19 December 2007, by section 232(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 108(1B)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 659(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Second subsection (1B) was inserted, by section 213(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Second subsection (1B) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Second subsection (1B) was repealed, as from 1 October 2005, by section 144(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005-06 tax year.

Subsection (2)(b) was amended by section 483(1) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “gross income” for the word “income” with application as from the 1997-98 income year.

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

First section 108(3B): inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Second subsection (3B) was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Second subsection (3B) was repealed, as from 1 April 2005, by section 144(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005–06 tax year.

### **108A Time bar for amending GST assessment**

- (1) Subject to this section and section 108B, if a taxpayer provides a GST tax return for a GST return period and an assessment has been made, the Commissioner may not amend the assessment to increase the amount assessed if 4 years have passed from the end of the GST return period in which the tax return was provided.
- (2) *[Repealed]*
- (3) The Commissioner may, at any time, amend an assessment to increase the amount of the assessment if the Commissioner considers that the person assessed has knowingly or fraudulently failed to disclose to the Commissioner all of the material facts that are necessary for determining the amount of GST payable for a GST return period.
- (4) This section overrides every other provision of this Act, and any other rule or law, that limits the Commissioner's right to amend GST assessments.

Section 108A was inserted, as from 1 October 1996, by section 29 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

The heading to section 108A was substituted, as from 1 April 2005, by section 115(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods beginning on or after 1 April 2005. The heading previously read "Time bar for assessment of GST"

Section 108A was amended, by section 236(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word "amend" for the word "alter" wherever it occurs, with application as from the 2002-03 income year.

Subsection (1) was substituted, as from 21 December 2004, by section 115(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods beginning on or after 1 April 2005.

Subsection (2) was repealed, as from 1 April 2005, by section 115(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods beginning on or after 1 April 2005.

Subsection (3) was substituted, as from 1 April 2005, by section 115(4) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods beginning on or after 1 April 2005.

### **108B Extension of time bars**

- (1) The application of a time bar that is referred to in subsection (3) may be delayed for a taxpayer by a waiver—
  - (a) for not more than 12 months from the time at which the time bar would otherwise apply, by written agreement between the Commissioner and the taxpayer;
  - (b) for a further 6 months from the end of the 12-month period referred to in paragraph (a), by written notice given by the taxpayer.
- (1B) A waiver under subsection (1) does not affect the application of a time bar to an assessment of the taxpayer by the Commissioner on a ground that was not identified and known to the taxpayer and the Commissioner before the time at which the time bar would have applied but for subsection (1).
- (2) An agreement under subsection (1)(a) must be in the prescribed form and must be signed and delivered to the Commissioner before the expiry of the relevant 4-year period.
- (2B) A notice under subsection (1)(b) must be given to the Commissioner before the expiry of the 12-month period referred to in subsection (1)(a).
- (3) Subsection (1) applies to—
  - (a) the time bar occurring under section 25 of the Income Tax Act 1976 after the period of 4 years from the end of the year in which the notice of original assessment was issued; and
  - (b) the time bar occurring under section 107A after the period of 4 years from the end of the year in which the notice of original assessment was issued; and
  - (c) the time bar occurring under section 108 (as that section applied before it was amended by section 29 of the Tax Administration Amendment Act (No 2) 1996) after the period of 4 years from the end of the year in which the notice of original assessment was issued; and
  - (d) the time bar occurring under section 108(1) and (1A) (as amended by section 29 of the Tax Administration

- Amendment Act (No 2) 1996) after the period of 4 years from the end of the tax year in which the taxpayer provides a return of income; and
- (e) the time bar occurring under the former section 31 of the Goods and Services Tax Act 1985 (as that section applied on 30 September 1996) after the period of 4 years from the end of the month in which the GST return was provided or, as the case may be, the assessment made; and
  - (f) the time bar occurring under section 108A(1) after the period of 4 years from the end of the GST return period in which the GST tax return was provided.
  - (g) *[Repealed]*

Section 108B was inserted, as from 1 October 1996, by section 29 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 108B was substituted by section 101(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 1 October 1996. *See* Section 101(3) of that Act which states that this substitution “does not apply to a waiver made under subsection 108B if the waiver was signed and delivered to the Commissioner before 17 November 1998”.

Subsection (1) was substituted, as from 21 December 2004, by section 116(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (1B) was inserted, as from 21 December 2004, by section 116(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to disputes that are commenced under Part 4A of the Tax Administration Act 1994 on or after 1 April 2005.

Subsection (2) was amended, as from 18 December 2006, by section 194(1) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81) by substituting the words “An agreement under subsection (1)(a)” for the words “A waiver under subsection (1)”.

Subsection (2B) was inserted, as from 18 December 2006, by section 194(2) Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 108B(3)(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 660(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 108B(3)(d): amended, on 19 December 2007, by section 233(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (3)(f) was amended, as from 21 December 2004, by section 116(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “in which the GST tax return was provided,” for the words “for which the GST return was provided or, as the case may be, the assessment made; and” with application for GST return periods beginning on or after 1 April 2005.

Subsection (3)(g) was repealed, as from 21 December 2004, by section 116(3) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for GST return periods beginning on or after 1 April 2005.

## **109 Disputable decisions deemed correct except in proceedings**

Except in objection proceedings under Part 8 or a challenge under Part 8A,—

- (a) no disputable decision may be disputed in a court or in any proceedings on any ground whatsoever; and
- (b) every disputable decision and, where relevant, all of its particulars are deemed to be, and are to be taken as being, correct in all respects.

Compare: 1976 No 65 s 27

Section 109 was substituted, as from 1 October 1996, by section 30 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **109A Transitional provision affecting assessments**

A notice of assessment issued on or after 1 April 1995 and relating to return periods before that date shall be deemed to have been made under the Tax Administration Act 1994.

Section 109A was inserted, as from 1 April 1995, by section 79(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

## **110 Evidence of returns and assessments**

- (1) The production of any document under the hand of the Commissioner or an officer of the Department purporting to be a copy of or extract from any return, income statement, or assessment shall in all Courts and in all proceedings (including proceedings before a Taxation Review Authority) be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts and Taxation Review Authorities shall in all proceedings take judicial notice of the signature of the Commissioner or an officer of the Department either to the original or to any such copy or extract.



- (2) The production of any document under the hand of the Commissioner or an officer of the Department purporting to be a hard-copy transcript of all or any information transmitted by electronic means in accordance with section 36, or section 36A, or any other provision of this Act or of any of the other Inland Revenue Acts or the Goods and Services Tax Act 1985 shall in all Courts and in all proceedings (including proceedings before a Taxation Review Authority) be sufficient evidence of the information electronically transmitted, and all Courts and Taxation Review Authorities shall in all proceedings take judicial notice of the signature of the Commissioner or an officer of the Department to any such hard-copy transcript.

Compare: 1976 No 65 s 28

Subsection (1) was amended, as from 1 April 1995, by section 44(2) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the words “an officer of the Department” for the words “a Regional Controller or a District Commissioner” and the words “Regional Controller or District Commissioner”.

Subsection (1) was amended by section 29(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “return, income statement, or assessment” for the words “return or assessment”, with application as from the 1999-2000 income year.

Subsection (2) was amended, as from 1 April 1995, by section 44(2) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the words “an officer of the Department” for the words “a Regional Controller or a District Commissioner” and the words “Regional Controller or District Commissioner”.

Subsection (2) was amended, as from 12 December 1995, by section 7 Tax Administration Amendment Act (No 3) 1995 (1995 No 77) by inserting the words “or the Goods and Services Tax Act 1985”.

Subsection (2) was amended, as from 1 October 1996, by section 31 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “any of the other Inland Revenue Acts” for the words “the Income Tax Act 1994”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended by section 29(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by inserting the words “, or section 36A,” with application as from the 1999-2000 income year.

**111 Commissioner to give notice of assessment to taxpayer**

- (1) As soon as conveniently may be after making an assessment the Commissioner shall cause notice of the assessment to be given to the taxpayer:

Provided that where—

- (a) the taxpayer has, in the taxpayer's return to which the assessment relates, calculated the amount on which tax is payable or the amount of the tax; or
- (b) the assessment has been made on default by the taxpayer in furnishing any return for the year to which the assessment relates; or
- (ba) the assessment is made after a failure by the taxpayer to comply with the taxpayer's obligations under section 80F; or
- (bb) an assessment is deemed to be made under Part 3A; or
- (c) the Commissioner causes a separate statement in relation to the assessment to be given to the taxpayer setting forth the amount on which tax is payable and the amount of the tax,—

it shall not be necessary to set forth in the notice of the assessment any particulars other than particulars as to the amount of tax to be paid by the taxpayer or the amount of tax to be refunded.

- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) Omitting to give a notice under this section does not invalidate the assessment or in any manner affect the operation of the assessment.
- (7) If requested to do so, the Commissioner must give a notice of assessment to a taxpayer who accepts under section 80F an income statement as correct.
- (8) If the Commissioner makes an assessment in relation to goods that are treated under section 5(2) of the Goods and Services Tax Act 1985 as being supplied by a person, the Commissioner must send a copy of the notice referred to in subsection (1) to

whichever of the person whose goods were sold and the person selling the goods is the person who is not assessed.

Compare: 1976 No 65 s 29

Subsection (1)(ba) and (bb) were inserted by section 30(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (1) was amended, by section 214(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “making an assessment” for the words “an assessment is made”, with application as from the 2002-03 income year.

Subsections (2), (3), (5) and (6) were amended by section 483(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “net loss” for the word “loss”, wherever it occurs, with application as from the 1997-98 income year.

Subsections (2) to (5) were repealed, by section 214(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

Subsection (6) was substituted, by section 214(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (7) was inserted by section 30(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from the 1999-2000 income year.

Subsection (7) was amended, by section 214(4) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by substituting the words “a notice of assessment” for the words “an assessment”, with application as from the 2002-03 income year.

Subsection (8) was inserted, as from 21 December 2004, by section 117(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to notices that are issued on or after 1 April 2005.

## **112 Commissioner to make determination of life insurer’s policyholder net loss**

*[Repealed]*

Subsections (1) to (3) were amended by section 483(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “net loss” for the word “loss” wherever it occurs, with application as from the 1997-98 income year.

Section 112 was repealed, by section 215 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

## **113 Commissioner may at any time amend assessments**

- (1) Subject to sections 89N and 113D, the Commissioner may from time to time, and at any time, amend an assessment as the Commissioner thinks necessary in order to ensure its cor-

rectness, notwithstanding that tax already assessed may have been paid.

- (2) If any such amendment has the effect of imposing any fresh liability or increasing any existing liability, notice of it shall be given by the Commissioner to the taxpayer affected.

Compare: 1976 No 65 s 23

Section 113(1): amended, on 19 December 2007, by section 234(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1) was amended, as from 21 December 2004, by section 118(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “Subject to section 89N, the Commissioner may from time to time, and at any time, amend” for the words “The Commissioner may from time to time and at any time make all such alterations in or additions to” with application to amendments for which notices are issued on or after 1 April 2005.

Subsection (2) was amended, as from 21 December 2004, by section 118(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the word “amendment” for the words “alteration or addition” with application to amendments for which notices are issued on or after 1 April 2005.

### **113B Amended assessments if dividend recovered or repaid**

- (1) This section applies if—
- (a) a company recovers a dividend from a shareholder under section 56 of the Companies Act 1993 or an equivalent provision of foreign law; or
  - (b) the release of a debt is treated as a dividend and the released amount is repaid; or
  - (c) close company expenditure to which section CD 41(2) of the Income Tax Act 2007 applies is treated as a dividend and the expenditure is repaid; or
  - (d) a loan made before 1 April 1992 was treated as a dividend under section 4(1)(b) of the Income Tax Act 1976 and the loan is repaid.
- (2) If the Commissioner is given notice of the recovery or repayment, the Commissioner must amend each relevant assessment to the extent necessary to ensure that the dividend and any attached imputation credit or FDP credit are disregarded.

- (3) This section applies despite the time bar.

Compare: 1994 No 164 s CF 2(8)(a)(i)

Sections 113B and 113C were inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 113B(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 113B(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **113C Amended assessments for attributed repatriation dividends**

- (1) Subsection (2) applies if—
- (a) a person has derived a dividend from a controlled foreign company (CFC) under section CD 21 of the Income Tax Act 2007; and
  - (b) a financial arrangement of the CFC has matured within 5 years of the date on which it was entered into, or an amount owing under the financial arrangement has been remitted or released giving rise to a dividend; and
  - (c) a person has notified the Commissioner in writing of the maturity or dividend described in paragraph (b); and
  - (d) as a result,—
    - (i) section CD 39(13) of that Act ceases to apply; and
    - (ii) section CD 50(11) of that Act requires the financial arrangement or amount remitted or released to be disregarded when attributed repatriation dividends from the CFC are calculated.
- (2) The Commissioner must amend each relevant assessment to give effect to sections CD 39(13) and CD 50(11) of the Income Tax Act 2007, despite the time bar.

Compare: 1994 No 164 s CF 2(17)(d)

Sections 113B and 113C were inserted, as from 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 113C(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 113C(1)(d)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 113C(1)(d)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 113C(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**113D Amended assessments for research and development tax credits**

- (1) If a taxpayer has issued a notice of proposed adjustment for their claim for an amount of research and development tax credit under section LH 2 of the Income Tax Act 2007 within the relevant response period, the Commissioner may not amend an assessment so as to increase the amount of tax credit by more than the adjustment proposed in the notice of proposed adjustment.
- (2) If a taxpayer asks for an assessment to be amended under section 113, having provided a detailed research and development statement under section 68D or 68E, as applicable, within the time limit referred to in section 108(1B)(b), the Commissioner may not increase the amount of the credit by more than the amount set out in the taxpayer's request.

Section 113D: inserted, on 19 December 2007, by section 235(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 113D(2): added (with effect on 1 April 2008), on 6 October 2009, by section 661(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**114 Validity of assessments**

An assessment made by the Commissioner is not invalidated—

- (a) through a failure to comply with a provision of this Act or another Inland Revenue Act; or
- (b) because the assessment is made wholly or partially in compliance with—
  - (i) a direction or recommendation made by an authorised officer on matters relating to the assessment;
  - (ii) a current policy or practice approved by the Commissioner that is applicable to matters relating to the assessment.

Section 114 was amended, as from 1 October 1996, by section 32 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “any of the other Inland Revenue Acts” for the words “the Income Tax Act 1994”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 114 was amended, by section 216 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by inserting, after the word

“assessment”, the words “made by the Commissioner”, with application as from the 2002-03 income year.

Section 114 was substituted, as from 21 December 2004, by section 119 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

### **115 Determination of claims for foreign tax credits**

*[Repealed]*

Section 115 was repealed, by section 217 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

### **116 Notice of foreign tax credit determination to taxpayer**

*[Repealed]*

Section 116 was repealed, by section 218 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

### **117 Foreign tax credit determination deemed correct except in proceedings on objection**

*[Repealed]*

Section 117 was repealed, as from 1 October 1996, by section 33 Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

### **118 Evidence of foreign tax credit determination**

*[Repealed]*

Section 118 was amended, as from 1 April 1995, by section 44(3) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the words “an officer of the Department” for the words “a District Commissioner” and “District Commissioner”.

Section 118 was repealed, by section 219 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

### **119 Commissioner may determine amount of provisional tax**

- (1) The Commissioner may at any time determine the amount that, in the opinion of the Commissioner, ought to be the provisional tax payable by a person for a tax year (being an amount greater than the amount that would otherwise be payable) where—
  - (a) the person defaults in furnishing the annual return of income required to be furnished for the immediately preceding tax year; or

- (b) the Commissioner is not satisfied with a return made by the person for any of the 2 immediately preceding tax years; or
  - (c) the Commissioner has reason to believe that the person, although the person has not furnished a return, is a provisional taxpayer; or
  - (d) the Commissioner considers that any estimate of residual income tax furnished by a taxpayer pursuant to section RC 7 of the Income Tax Act 2007 was not fair and reasonable—
    - (i) at the time the estimate was furnished; or
    - (ii) on any instalment date; or
  - (e) the person is required, under sections RC 7 and RC 18(5) of that Act, to estimate their residual income tax for a tax year, and fails to provide an estimation or re-estimation to the Commissioner.
- (2) The Commissioner may at any time determine the amount that, in the opinion of the Commissioner, ought to be the provisional tax payable by a provisional taxpayer for a tax year (being an amount greater or lesser than the amount that would otherwise be payable) where—
- (a) *[Repealed]*
  - (b) the Commissioner considers, by reason of any of sections HD 29(3), LJ 1, LK 1, and LK 6 of the Income Tax Act 2007, or by reason of any double tax agreement, that the provisional tax that would be payable by the person is excessive,
- (3) An amount of provisional tax determined by the Commissioner under subsection (1) shall not exceed the amount of provisional tax that would be payable if the taxpayer had not estimated.
- (4) Where the Commissioner determines an amount under subsection (1) or subsection (2), the Commissioner must give the taxpayer notice accordingly and, where the provisional tax payable by the taxpayer is increased under the determination,—
- (a) subject to paragraph (b), the amount of the consequent shortfall shall be due and payable by the taxpayer on



- such day as is specified in the notice, being a day not less than 30 days after the issuing of the notice; or
- (b) where the notice specifies that an estimate furnished by the taxpayer was not fair and reasonable, the consequent shortfall for any instalment date for which the estimate had effect, or would but for the determination have effect, shall be treated as being or having been due and payable by the taxpayer on that instalment date, except to the extent superseded by any further estimate or determination.
- (5) The amount of any provisional tax determined by the Commissioner in accordance with this section shall be open to objection under Part 8 or may be challenged under 8A.

Compare: 1976 No 65 s 379; 1993 No 17 s 71

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

Subsection (1)(d) was substituted by section 80(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application to the 1998-99 and subsequent income years.

Section 119(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 119(1)(d): amended, on 1 October 2007, by section 241(1)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 119(1)(d)(ii): amended, on 1 October 2007, by section 241(1)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 119(1)(e): added, on 1 October 2007, by section 241(1)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 119(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2)(a) was repealed by section 80(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application to the 1998-99 and subsequent income years.

Subsection (2)(b) was amended by section 459 Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the expression “section BH 1” for the expression “section BB 11” with application as from the 1997-98 income year.

Subsection (2)(b) was substituted, as from 23 September 1997, by section 81 Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 119(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (3) was substituted by section 80(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application to the 1998-99 and subsequent income years.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “must give the taxpayer notice accordingly” for the words “shall advise the taxpayer accordingly in writing”.

Subsection (5) was amended, as from 1 October 1996, by section 34 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by inserting after the words “under Part 8” the words “or may be challenged under Part 8A”. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **119A Amount of provisional tax based on 1997-98 or earlier income year**

*[Repealed]*

Section 119A was inserted by section 16 Taxation (Superannuitant Surcharge Abolition) Act 1997 (1997 No 59) with application to tax on taxable income as from the 1998-99 income year.

Section 119A was repealed by section 69(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from 10 October 2000.

## **Part 7 Interest**

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application

of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **120 Commissioner to pay interest on certain excess tax**

*[Repealed]*

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **120A Purpose of this Part and nature of interest**

- (1) The purpose of this Part is—
  - (a) in appropriate circumstances—
    - (i) to compensate the Commissioner for the loss of use of money through taxpayers paying too little tax; and
    - (ii) to compensate taxpayers for the loss of use of money through their paying too much tax; and
  - (b) to encourage taxpayers to pay the correct amount of tax on time.
- (2) Interest payable under this Part is not a penalty.
- (3) Where the Commissioner withholds RWT or NRWT from an interest payment, the interest paid to a taxpayer under this Part is the net amount.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120A(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **120AA Application of Part**

- (1) This Part does not apply if—
  - (a) a taxpayer has paid qualifying tax in dispute; and
  - (b) the taxpayer has objected, appealed, or stated a case relating to the qualifying tax in dispute paid; and

- (c) the taxpayer has indicated to the Commissioner, before the date that the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 receives the Royal assent, that repealed sections 120 or 139 of this Act or repealed sections 34A or 398 of the Income Tax Act 1976 apply; and
  - (d) the decision on the objection, appeal, or case stated requires the Commissioner to refund the qualifying tax in dispute paid or requires the taxpayer to pay deferrable tax, as that term was defined before its repeal by section 3 of the Tax Administration Amendment Act (No 2) 1996.
- (2) If subsection (1) applies, the Commissioner must apply, as appropriate—
- (a) Sections 120 or 139 as they applied immediately before their repeal by sections 36 and 43 respectively of the Tax Administration Amendment Act (No 2) 1996; or
  - (b) sections 34A or 398 of the Income Tax Act 1976 as they applied immediately before the enactment of this Act.

Section 120AA was inserted by section 102(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 1 April 1997.

### **120B Persons excluded**

Nothing in this Part applies to—

- (a) a person (other than an employer and the Commissioner) specified in section 157A in relation to the person's obligations under a tax law specified in that section:
- (b) a liable person in relation to child support (both as defined in the Child Support Act 1991):
- (bb) an employer in relation to amounts of compulsory employer contributions that must be paid under Part 3, subpart 3A of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act:
- (c) a borrower in relation to repayment obligation (both as defined in the Student Loan Scheme Act 1992).

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amend-

ment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application of the original Part 7. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120B(bb): inserted, on 1 April 2008, by section 19 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

### *General provisions*

#### **120C Definitions**

(1) In this Part, unless the context otherwise requires,—

**Commissioner's paying rate** means the rate of interest established and notified as the Commissioner's paying rate by an Order in Council made under section 120H

**Date interest starts**, subject to sections 120N and 120O,—

- (a) for unpaid tax means—
  - (i) if a taxpayer pays too little tax by a due date—
    - (A) the day after the due date for payment of the tax; or
    - (B) where the due date is a new due date or, in the case of GST, a later due date for payment of the tax, the day after the original due date for payment of the tax:
  - (ii) if the Commissioner refunds or applies tax which should be kept and taken into account in respect of satisfying a taxpayer's tax liability at a due date, the day after the day the Commissioner refunds or applies the tax; and
  - (iii) for a provisional taxpayer to whom section 120KE(7) applies, the day after whichever dates of instalments B, D, and F for their corresponding income year occur 30 days after their last ratio instalment date; and
- (b) for overpaid tax, other than GST or FBT for the final quarter of a tax year, means the later of the following days—
  - (i) if a taxpayer pays too much tax by or after a due date and subparagraph (iv) does not apply—

- (A) the day after the later of the due date for payment of the tax and the date the payment is made; or
  - (B) where the due date is a new due date, the day after the later of the original due date for payment of the tax and the date on which the payment is made; and
- (ii) if a tax return is also to be provided in respect of the tax, the day after the tax return is provided; and
- (iii) for a taxpayer to whom section 80D applies, the date on which the initial income statement is issued; and
- (iv) for a provisional taxpayer other than one to whom section 120KE(1) or (3) applies, the first day of the income year; and
- (v) for a provisional taxpayer to whom section 120KE(6) applies, the later of
  - (A) the day after the date set out in section RC 18(3) of the Income Tax Act 2007;
  - (B) the day after their last ratio instalment date; and
- (c) for a GST refund, means the latest of the following days:
  - (i) the day after the earlier of—
    - (A) the 15th working day after the taxpayer provides a tax return for the return period to which the GST refund relates; and
    - (B) the original due date for payment of output GST in respect of that return period; and
  - (ii) the day after the day on which the tax return is provided; and
  - (iii) the day after the date on which the payment is made; and
- (d) for overpaid tax, being FBT for the final quarter of a tax year, means the later of 31 May next following the end of the final quarter and the date on which the return for the final quarter is filed; and
- (e) for tax paid, being a deposit to a tax pooling account in accordance with sections RP 17 to RP 21 of the Income

Tax Act 2007, means the date on which the deposit is made, unless the Commissioner refunds the deposit as required by section RP 18(5) of that Act, in which case there is not a date on which interest starts.

- (f) for unpaid tax, being terminal tax for the tax year in which a taxpayer dies, the due date for the deceased person's terminal tax, if—
- (i) each instalment of provisional tax payable by the deceased person for that tax year is paid by the due date under section RC 6 for the instalment; and
  - (ii) the terminal tax payable by the deceased person for that tax year is paid by the due date under section RA 13 for the terminal tax

**Interest paid to a taxpayer** means interest credited to, or dealt with in the interests of or on behalf of, the taxpayer; and **interest paid** and **paid** have corresponding meanings

**Interest period—**

- (a) for unpaid tax, means the period beginning on the date interest starts and ending on the date the tax is paid or credited as paid (both dates inclusive):
- (b) for overpaid tax, means the period (both dates inclusive) beginning on the date interest starts and ending on the earlier of—
  - (i) the date the tax is refunded by the Commissioner; and
  - (ii) the date the tax is applied by the Commissioner towards meeting another tax liability; and
  - (iii) *[Repealed]*

Interest period: paragraph (b)(ii) of this definition was amended, as from 7 October 1998, by section 31(b) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “liability; and” for the word “liability:”.

Interest period: paragraph (b)(iii) of this definition was inserted, as from 7 October 1998, by section 31(b) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Interest period: paragraph (b)(iii) of this definition was amended by section 126(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “is required by section MD 1(1A) of the Income Tax Act 1994 to confirm an income statement as correct before the Commissioner may make the refund to the taxpayer”

for the words “has overpaid tax of \$50 or more” with application to income statements issued on or after 15 May 2003 relating to the 2002–03 income year.

Interest period: paragraph (b)(iii) of this definition was repealed, as from 21 June 2005, by section 145(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2004–05 tax year.

Interest period: paragraph (b)(iii) of this definition was to be amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”. However, this subpara had already been repealed with application as from the 2004–05 tax year, see above.

**tax paid, at a time, means—**

- (a) an amount of tax that—
  - (i) is paid or credited by the time for a tax liability; and
  - (ii) has not been refunded or applied by the Commissioner to satisfy another tax liability;
- (b) an amount credited by the time to a tax pooling account under sections RP 17 to RP 21 of the Income Tax Act 2007;
- (c) an amount credited or transferred by the time to a taxpayer’s account with the Commissioner from a tax pooling account under sections RP 17 to RP 21 of that Act

**Tax payable, at any time, means** the amount of tax payable in respect of a tax liability by that time, determined in accordance with the tax laws; and includes an amount of tax that must be withheld or deducted under a tax law and paid to the Commissioner

**Taxpayer’s paying rate** means the rate of interest established and notified as the taxpayer’s paying rate by an Order in Council made under section 120H.

- (2) For the purposes of this Part, where, at any time,—
  - (a) the tax paid by a taxpayer exceeds the tax payable, the excess is **overpaid tax**; and
  - (b) the tax payable by a taxpayer exceeds the tax paid, the excess is **unpaid tax**.
- (3) In the definition of **tax paid**, paragraph (a)(i) includes tax paid in excess that is applied under either section MZ 5 or section MZ 6 of the Income Tax Act 2004.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amend-



ment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120C(1) **Date interest starts** paragraph (a)(iii): added, on 1 October 2007, by section 242(1)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120C(1) **date interest starts** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Date interest starts: the portion of paragraph (b) before subparagraph (i) was substituted by section 37(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application as from 1 April 2000.

Date interest starts: paragraph (b) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Section 120C(1) **Date interest starts** paragraph (b)(i): amended, on 1 October 2007, by section 242(1)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Date interest starts: paragraph (b)(iii) of this definition was inserted, as from 7 October 1998, by section 31(a) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

Section 120C(1) **Date interest starts** paragraph (b)(iv): added, on 1 October 2007, by section 242(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120C(1) **Date interest starts** paragraph (b)(v): added, on 1 October 2007, by section 242(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120C(1) **date interest starts** paragraph (b)(v)(A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Date interest starts: paragraph (c)(iii) of this definition was amended by section 37(2) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) by substituting the expression “made; and” for the expression “made:” with application as from 1 April 2000 .

Date interest starts: paragraph (d) of this definition was inserted, by section 37(2) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application as from 1 April 2000.

Section 120C(1) **date interest starts** paragraph (d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Date interest starts: paragraph (d) of this definition was amended, as from 1 April 2003, by section 109(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “filed; and” for the expression “filed.”.

Date interest starts: paragraph (d) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Date interest starts: paragraph (e) of this definition was inserted, as from 1 April 2003, by section 109(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 120C(1) **date interest starts** paragraph (e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Date interest starts: paragraph (e) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart MBA of the Income Tax Act 2004” for the words “Part MBB of the Income Tax Act 1994”.

Date interest starts: paragraph (e) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section MBA 5(3)” for the words “section MBB 5(3)”.

Date interest starts: paragraph (f) of this definition was inserted, as from 21 June 2005, by section 145(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Date interest starts: paragraph (f) of this definition was substituted, as from 21 June 2005, by section 195 Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 120C(1) **date interest starts** paragraph (f)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120C(1) **date interest starts** paragraph (f)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120C(1) **tax paid**: substituted, on 6 October 2009, by section 662 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

tax paid: this definition was substituted, as from 1 April 2003, by section 109(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 120C(1) **tax paid** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120C(1) **tax paid** paragraph (c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

tax paid: paragraphs (b) and (c) of this definition were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart MBA of the Income Tax Act 2004” for the words “Part MBB of the Income Tax Act 1994”.

Section 120C(1) **tax payable**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was inserted, by section 220 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application from the 1997-98 income year to the 2001-02 income year (both income years inclusive).

Subsection (3) was amended by section 109(4) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “paragraph (a)(i)” for the expression “paragraph (a)” with application from the 1997-98 income year to the 2001-02 income year (both income years inclusive).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **120D Liability to pay interest**

- (1) A taxpayer is liable to pay interest on unpaid tax to the Commissioner in accordance with this Part.
- (2) The Commissioner may recover interest payable on unpaid tax as though it were tax (of the same type as the unpaid tax) payable by the taxpayer.
- (3) The Commissioner is liable to pay interest on overpaid tax to a taxpayer in accordance with this Part.
- (4) Interest overpaid by the Commissioner may be recovered in the same manner as income tax that is payable under the Income Tax Act 2007.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was substituted, by section 221 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application date from the 2002-03 income year.

Section 120D(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **120E Amount of interest payable**

- (1) The amount of interest payable—
  - (a) by a taxpayer on unpaid tax; or
  - (b) by the Commissioner on overpaid tax,—is calculated for each day in the interest period in accordance with the following formula:

$$\frac{t \times r}{365}$$

where—

- t is the unpaid tax or overpaid tax on which the interest is payable; and
- r is the Commissioner's paying rate or the taxpayer's paying rate applying on the day.
- (2) the amount of interest payable in an interest period, is the sum of the amounts calculated under subsection (1) for each day in the interest period.
- (3) the amount of interest outstanding at any time in an interest period is—
- (a) the sum of the amounts calculated under subsection (1) for each day in the interest period that falls before that time; less
- (b) any interest that has been paid by that time.
- (4) This section is subject to section 120EA.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application of the original Part 7. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (4) was inserted by section 461 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

### **120EA Amount of interest payable to or by life insurers**

Where a life insurer derives policyholder income in an income year and fails to pay or overpays income tax in relation to the policyholder base income tax liability, no interest under section 120E is payable on the proportion of the unpaid or overpaid income tax that is attributable to the amount of underwriting income represented by underwriting result in the formula in section EY 43(1) of the Income Tax Act 2007.

Section 120EA was inserted by section 462 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 120EA: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120EA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "underwriting result in the formula in section EY 42(1) of the Income Tax Act 2004" for the words "item 'u' in the formula in section CM 15(1)".

**120F Interest priority and rights of Commissioner**

- (1) If, for a return period,—
  - (a) a taxpayer has unpaid tax to pay; and
  - (b) the taxpayer is liable to pay interest on the unpaid tax,—  
any payment the Commissioner receives or applies on account of the taxpayer's liability to pay the unpaid tax and interest for the return period must first be applied towards payment of the interest.
- (2) The Commissioner may apply interest payable by the Commissioner to a taxpayer towards the payment of the taxpayer's unpaid tax on or after the date the taxpayer furnishes their return of income.
- (3) The Commissioner may apply interest under subsection (2) only if the Commissioner is not prevented, by a tax law, from applying the relevant overpaid tax towards the payment of the tax.
- (4) If, for a period,—
  - (a) a taxpayer is liable to pay the Commissioner interest on unpaid tax; and
  - (b) the Commissioner is liable to pay the taxpayer interest on overpaid tax,—  
the Commissioner may—
  - (c) assess the taxpayer for the net amount of interest payable by the taxpayer for the period; or
  - (d) pay the taxpayer the net amount of interest payable by the Commissioner for the period.
- (5) In this section, the expressions **unpaid tax** and **overpaid tax** include—
  - (a) any tax which has not been paid or which has been overpaid; and
  - (b) any civil penalty imposed in respect of that tax which has not been paid or which has been overpaid,—  
as if the tax and the civil penalty were a single tax type.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application of the original Part 7. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was substituted, by section 48(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from 1 April 1998.

### **120G Payment date**

Except where a tax law provides otherwise, interest payable by a taxpayer to the Commissioner on unpaid tax is payable immediately and without the need for a demand.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **120H Setting and varying interest rates**

The Governor-General may from time to time, by Order in Council,—

- (a) specify the criteria and other requirements by and against which interest rates will be set or reset and notified for the purposes of this Part:
- (b) set the Commissioner's paying rate and taxpayer's paying rate.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **120I No right to object to interest**

- (1) A taxpayer may not object to or challenge the imposition of interest payable under this Part.
- (2) Subsection (1) does not limit a taxpayer's right to object to or challenge the taxpayer's liability to pay tax.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

*Specific provisions*

**120J Purpose of specific provisions**

- (1) The purpose of sections 120K to 120V is to allow the general interest regime contained in this Part to apply to the specific tax or tax regime referred to in those sections.
- (2) The specific rules or applications specified in sections 120K to 120V do not apply to other Parts or sections of this Act, except where a tax law specifically provides that they do.

Part 7 (comprising sections 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application of the original Part 7. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120J was amended by section 82 Taxation (Remedial Provisions) Act 1997 (1997 No 74) by substituting the expression “sections 120K to 120V” for the expression “sections 120K to 120U”. See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

**120K Instalments of and due dates for provisional tax**

*[Repealed]*

Section 120K: repealed, on 1 October 2007, by section 243(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

**120KB Provisional tax instalments and due dates generally**

- (1) This section applies—
  - (a) in a tax year other than a transitional year:
  - (b) to a provisional taxpayer who is not a new provisional taxpayer.
- (2) A provisional taxpayer’s residual income tax is due and payable as set out in section RC 9 of the Income Tax Act 2007.
- (3) If a provisional taxpayer uses a GST ratio to determine the amount of provisional tax payable, and an adjustment to a base amount referred to in section RC 8 of the Income Tax Act 2007 will, or is likely to, change the amount payable, the taxpayer may ask the Commissioner to make the adjustment and reassess their liability.

- (4) For the purposes of this section and sections 120KC to 120KE, residual income tax means a person's residual income tax for a tax year as defined in section YA 1 of the Income Tax Act 2007—
- (a) as increased by an amount calculated in relation to the person and the income year under section MF 6(2) of that Act; or
  - (b) as reduced by an amount calculated in relation to the person and the income year under section LA 4(1) of that Act.

Section 120KB: inserted, on 1 October 2007, by section 243(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120KB(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KB(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KB(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KB(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KB(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **120KC Residual income tax of new provisional taxpayer**

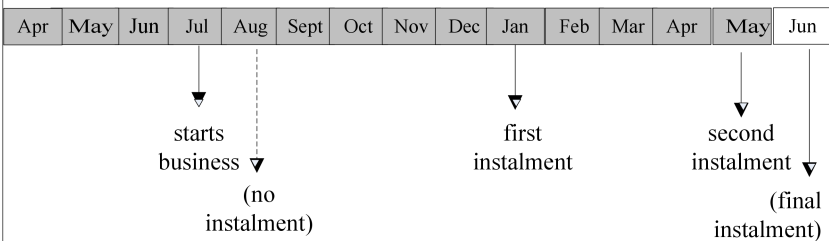
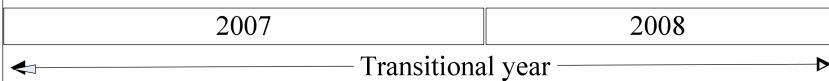
- (1) In a tax year other than a transitional year, and for the purposes of this Part, a new provisional taxpayer's residual income tax is treated as due and payable—
- (a) in 3 equal instalments on the interest instalment dates B, D, and F for the taxpayer's corresponding income year, if section RC 9(9)(a) of the Income Tax Act 2007 applies;
  - (b) in 2 equal instalments on the interest instalment dates, for the corresponding year,—
    - (i) D and F, if section RC 9(9)(b)(i) applies; or
    - (ii) C and F, if section RC 9(9)(b)(ii) applies;
  - (c) in 1 instalment on the interest instalment date F for the taxpayer's corresponding income year, if section RC 9(9)(c) of that Act applies.
- (2) In this section, a reference to an instalment classified by the letters A to F is a reference to an instalment date in the table



in schedule 3, part A of the Income Tax Act 2007 on which an instalment of provisional tax is payable by a provisional taxpayer for an income year that corresponds to a tax year.

**Example: Section 120KD**

Mr Yellow, who has a March balance date, decides to change to a May balance date. The transitional year is 14 months long. He starts business on 31 July, estimating provisional tax at \$15,000 for the income year. At the end of the year, Mr Yellow's residual income tax is \$20,000. He is not subject to GST.



Instalments in transitional year: 28th day of 5th, 9th, and 13th months after balance date, and final instalment on 28th day of month following final month in transitional year (s MB 20(2) and schedule 13, part B Income Tax Act 2004). But first business day falls within 30 days of the date that would be the first instalment, 28 August (s MB 20(4)(a) of that Act), so no instalment is due. The April instalment only is due on 7 May.

Amounts payable on the instalment dates are calculated under s MB 22 of that Act.

First instalment due 15 January:  $\$15,000 \times 4/14 = \$4,285$

Second instalment due 7 May:  $\$15,000 \times 8/14 - \$4,285 = \$4,286$

Final instalment due 28 June:  $\$15,000 - \$8,571 = \$6,429$ .

Three interest start dates apply: 16 January, 8 May, and 29 June (s 120KD(2)).

First instalment 15 January on RIT:  $\$20,000 \times 4/14 = \$5,714$

- interest payable from 16 January on:  $(\$5,714 - \$4,285) = \$1,429$

Second instalment 7 May on RIT:  $\$20,000 \times 4/14 = \$5,714$

- interest payable from 8 May on:  $(\$5,714 - \$4,286) = \$1,428$

Final instalment 28 June on RIT:  $\$20,000 - (\$5,714 + \$5,714) = \$8,572$

- interest payable from 29 June on RIT:  $(\$8,572 - \$6,429) = \$2,143$ .

Section 120KC: inserted, on 1 October 2007, by section 243(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120KC(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KC(1)(b): substituted (with effect from 1 October 2007), on 19 December 2007, by section 236(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 120KC(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KC(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Example heading: substituted (with effect from 1 October 2007), on 19 December 2007, by section 237 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Example: substituted, on 1 October 2007, by section 196(1) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Example: amended (with effect on 1 April 2008), on 6 October 2009, by section 664(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **120KD Provisional tax instalments in transitional years**

- (1) For a transitional year to which schedule 3, part B of the Income Tax Act 2007 applies, the residual income tax of a provisional taxpayer, other than a person to whom section 120KE(1) or (3) applies, is due and payable as determined under sections RC 21 to RC 24 of the Income Tax Act 2007.
- (2) A provisional taxpayer in a transitional year is liable for use of money interest for unpaid tax in relation to the instalments of provisional tax payable in the months set out in schedule 3, part B of the Income Tax Act 2007. The date interest starts is the day after the day on which payment of the instalment is due under section RC 21 of that Act.
- (3) For the purposes of calculating the amount of interest due in relation to an instalment of provisional tax other than a final instalment, the amount of residual income tax payable on the instalment date is calculated using the formula—
$$\frac{\text{residual income tax} \times \text{instalment period}}{\text{months in transitional year}}$$
- (4) In the formula, the **instalment period** is either
  - (a) 4, for provisional taxpayers who pay on the equivalent of instalment dates B, D, and F; or

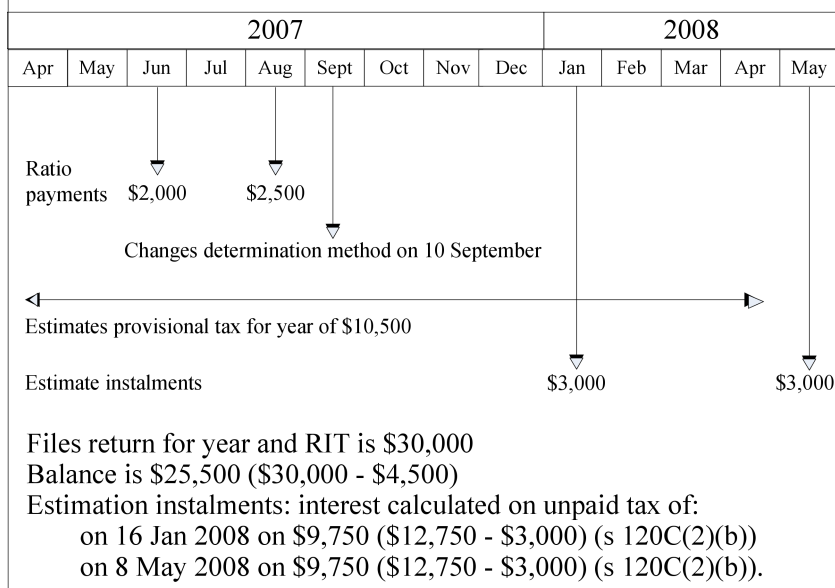
- (b) 6, for provisional taxpayers who pay on the equivalent of instalment dates C and F.
  - (5) For the purposes of calculating the amount of interest due in relation to a final instalment of provisional tax, the amount of residual income tax payable is the residual income tax for the tax year minus any amount treated as due on an instalment date referred to in subsection (3).
  - (6) In this section, a provisional taxpayer includes a new provisional taxpayer.
-

**Example:** Section 120KE

Dr Beige starts the income year (March balance date) using a GST ratio to determine the amount of provisional tax payable. He makes payments in June and August. On 10 September 2007, Dr Beige decides to change his determination method. He must then estimate his residual income tax for the income year (s MB 17(5) Income Tax Act 2004), and pay 2 instalments under the estimation method on instalment dates D and F (s MB 6(5) of that Act). Dr Beige provides a return for the income year that shows residual income tax of \$30,000.

Four interest start dates apply:

- for credit interest, the interest start date is 11 September 2007 (s 120KE(6));
- for debit interest, the interest start dates are:
  - 11 September for unpaid instalments under the GST ratio method (s 120KE(7))
  - 16 January 2008 for unpaid instalments under estimation method (s 120C(1)(a)(i)(A))
  - 8 May 2008 for unpaid instalments under estimation method (s 120C(1)(a)(i)(A)).



Section 120KD: amended, on 6 October 2009, by section 664 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 120KD: inserted, on 1 October 2007, by section 243(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120KD(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KD(1): amended (with effect from 1 October 2007), on 19 December 2007, by section 238(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 120KD(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KD(2): amended (with effect from 1 October 2007), on 19 December 2007, by section 238(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Example heading: substituted (with effect from 1 October 2007), on 19 December 2007, by section 239 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Example: substituted, on 1 October 2007, by section 197(1) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

### **120KE Provisional tax and rules on use of money interest**

- (1) A provisional taxpayer's residual income tax for a tax year is due and payable in 1 instalment on their terminal tax date if—
  - (a) they are a natural person, other than in their capacity as trustee; and
  - (b) their residual income tax is less than \$50,000 for the tax year; and
  - (c) they have not estimated their residual income tax under section RC 7 of the Income Tax Act 2007 for the tax year; and
  - (d) they have not used a GST ratio under section RC 8 of that Act in the tax year to determine the amount of provisional tax payable for the tax year; and
  - (e) they have not at any time in the tax year held an RWT exemption certificate under section 32I.
- (2) When subsection (1) applies, in relation to the payment of provisional tax under section RC 9(3) or (5), or RC 21 of the Income Tax Act 2007, the provisional taxpayer—
  - (a) is not liable for use of money interest under section 120D for unpaid tax until their terminal tax date;
  - (b) is not entitled to use of money interest under section 120D for overpaid tax until their terminal tax date.
- (3) A provisional taxpayer's residual income tax for a tax year is due and payable in 1 instalment on their terminal tax date if—

- (a) they use a GST ratio to determine the amount of provisional tax payable for the tax year; and
  - (b) they use the GST ratio as the determination method for the whole of the corresponding income year.
- (4) When subsection (3) applies, in relation to the amount of provisional tax paid or payable for the period in the corresponding income year in which the GST ratio is used, the provisional taxpayer—
  - (a) is not liable for use of money interest under section 120D for unpaid tax until their terminal tax date;
  - (b) is not entitled to use of money interest under section 120D for overpaid tax until their terminal tax date.
- (5) Subsections (6) and (7) apply if, under section RC 18 of the Income Tax Act 2007, a provisional taxpayer changes the way they determine the amount of provisional tax.
- (6) A taxpayer is not entitled to use of money interest for overpaid tax under section 120D until the later of—
  - (a) the day after the date—
    - (i) on which they notify the Commissioner under section RC 18(2); or
    - (ii) set out in section RC 18(3) (as the case may be);
  - (b) the day after their last ratio instalment date.
- (7) For debit interest, the taxpayer is liable for use of money interest—
  - (a) for the period of the tax year in which they use the GST ratio, from the later of the dates set out in subsection (6):
  - (b) for the period of the tax year in which they estimate their provisional tax, from whichever dates of instalments B, D, and F for their corresponding income year occur 30 days after their last ratio instalment date.
- (8) In this section, a reference to an instalment classified by the letters A to F is a reference to a date in the table in schedule 3, part A of the Income Tax Act 2007 on which an instalment of provisional tax is payable by a provisional taxpayer for an income year that corresponds to a tax year.

Section 120KE: inserted, on 1 October 2007, by section 243(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 120KE(1)(b): amended, on 1 April 2009, by section 23(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section 120KE(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KE(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KE(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KE(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KE(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120KE(6): substituted (with effect from 1 October 2007), on 19 December 2007, by section 240(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 120KE(8): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **120L Meaning of unpaid tax and overpaid tax for provisional tax purposes**

- (1) For the purposes of determining amounts of unpaid tax and overpaid tax in respect of instalment dates for a tax year, a taxpayer's residual income tax is to be calculated in accordance with the definition of that term in section 120KB(4).
- (2) If a taxpayer makes a payment and does not specify how the payment is to be applied, the Commissioner must apply the payment towards the provisional tax that is due on an instalment date to which the Commissioner considers the payment relates.
- (3) If the taxpayer makes a payment and specifies that it is made to meet their provisional tax due on an instalment date, the Commissioner must apply the payment towards the provisional tax specified by the taxpayer.

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120L(1): amended, on 1 October 2007, by section 244(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).



Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsections (2) and (3) were inserted by section 103(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from the 1998-99 income year.

### **120M Where provisional tax paid by company does not count as overpaid tax**

No amount of tax paid by a company is to be treated as overpaid tax to the extent that—

- (a) The tax is provisional tax paid by the company for a tax year in excess of the company’s residual income tax for the tax year, and is retained by the Commissioner under sections RM 13 to RM 17, RM 32, and RZ 6 of the Income Tax Act 2007 at any time after the company would, but for those sections, be entitled to a refund of the tax; or
- (b) The tax would not be in excess of the company’s residual income tax for a tax year, but for the payment of an instalment of provisional tax being satisfied by an amount of further income tax in accordance with section RC 35 of the Income Tax Act 2007.

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120M(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 665 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 120M(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 120M(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120M(b): amended, on 1 October 2007, by section 245(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Paragraph (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Paragraph (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **120N Variation to definition of date interest starts for provisional tax**

Where the due date for the payment of tax is an instalment date for provisional tax, the definition of **date interest starts** is to be construed as if the words “the later of the following days” and subparagraph (ii) were omitted from paragraph (b) of that definition.

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **120O Variation to definition of date interest starts**

The definition of **date interest starts** is to be construed as if the words “the later of the following days” and subparagraph (ii) were omitted from paragraph (b) of that definition when—

- (a) a payment required by sections RA 5 and RD 4 of the Income Tax Act 2007 is due to be paid to the Commissioner no later than 5 April in a year:
- (b) a payment required by sections RA 5 and RD 23(3) of that Act is due to be paid to the Commissioner no later than 20 April in a year:
- (c) a payment required by sections RA 6, RE 20, and RE 21 of that Act is due to be paid to the Commissioner no later than 20 April in a year:

(d) a payment required by sections RA 6 and RF 13 of that Act is due to be paid to the Commissioner no later than 20 April in a year:

(e) *[Repealed]*

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application of the original Part 7. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120O was substituted by section 84 Taxation (Remedial Provisions) Act 1997 (1997 No 74). See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 120O(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120O(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120O(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120O(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120O(e): repealed (with effect on 30 June 2009), on 6 October 2009, by section 666 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 120O(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraphs (a) to (e) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

### **120OB Variation to definitions for determining interest chargeable or payable to PAYE intermediaries**

- (1) Despite section 120C, this section sets out the definitions that apply for the purpose of determining interest chargeable or payable to a person acting as a PAYE intermediary for an employer, if the employer has—
  - (a) paid to the person the salary or wages relating to an employee as required by sections RP 9 to RP 11 of the Income Tax Act 2007; and
  - (b) provided to the person the information requested by the person, as required by section RP 8(b) of that Act.
- (2) In this Part—

**Commissioner's paying rate** means the rate of interest established and notified as the Commissioner's paying rate by an Order in Council made under section 120H

**date interest starts**—

- (a) for unpaid tax means—
  - (i) if a PAYE intermediary pays too little tax by a due date—
    - (A) the day after the due date for payment of the tax; or
    - (B) where the due date is a new due date, the day after the original due date for payment of the tax;
  - (ii) if the Commissioner refunds tax which should be kept and taken into account in satisfying tax payable by a PAYE intermediary on a due date, the day after the day the Commissioner refunds the tax; and
- (b) for overpaid tax, if a PAYE intermediary pays too much tax by or after a due date—
  - (i) the day after the later of the due date for payment of the tax and the date the payment is made; or
  - (ii) where the due date is a new due date, the day after the later of the original due date for payment of the tax and the date on which the payment is made

**interest paid to a taxpayer** means interest credited to the PAYE intermediary; and **interest paid** and **paid** have corresponding meanings

**interest period**—

- (a) for unpaid tax, means the period beginning on the date interest starts and ending on the date the tax is paid or credited as paid (both dates inclusive):
- (b) for overpaid tax, means the period beginning on the date interest starts and ending on the date the tax is refunded by the Commissioner (both dates inclusive); and

**tax paid**, at any time, means the amount of tax that at the time—

- (a) has been paid or credited as paid for an amount of tax that must be withheld or deducted under a tax law; and

(b) has not been refunded by the Commissioner  
**tax payable**, at any time, means an amount of tax that at the time is due to be withheld or deducted under a tax law and paid to the Commissioner

**taxpayer's paying rate** means the rate of interest established and notified as the taxpayer's paying rate by an Order in Council made under section 120H.

- (3) For the purposes of this Part, where, at any time—
- (a) the tax paid by a PAYE intermediary exceeds the tax payable, the excess is overpaid tax; and
  - (b) the tax payable by a PAYE intermediary exceeds the tax paid, the excess is unpaid tax.

Sections 120OB and 120OC were inserted by section 110(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Section 120OB(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 21 December 2004, by section 120(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1)” for the words “section NBB 4(1)(b)” with application for pay periods beginning on or after 1 April 2004.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1) of the Income Tax Act 2004” for the words “section NBB 4(1) of the Income Tax Act 1994”.

Section 120OB(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 21 December 2004, by section 120(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1B)(b)” for the words “section NBB 4(1)(d)” with application for pay periods beginning on or after 1 April 2004.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1B)(b) of the Income Tax Act 2004” for the words “section NBB 4(1B)(b) of the Income Tax Act 1994”.

Section 120OB(2) **tax paid** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120OB(2) **tax payable**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**120OC Application of sections 120A, 120AA and 120D to 120I to PAYE intermediaries**

- (1) Sections 120A, 120AA and 120D to 120I apply to a PAYE intermediary in their capacity as a PAYE intermediary as if references to a “taxpayer” were read as references to a “PAYE intermediary”.
- (2) Despite subsection (1), sections 120EA, 120F(2) and 120F(3) do not apply to a PAYE intermediary.

Sections 120OB and 120OC were inserted by section 110(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

**120OD Application of sections 120A, 120AA and 120C to 120I to intermediaries who operate tax pooling accounts**

- (1) Sections 120A, 120AA and 120C to 120I apply to an intermediary who operates a tax pooling account in accordance with sections RP 17 to RP 21 of the Income Tax Act 2007 in their capacity as an intermediary as if references to a “taxpayer” were read as references to an “intermediary”.
- (2) Despite subsection (1), sections 120EA, 120F(2) and 120F(3) do not apply to an intermediary.

Section 120OD was inserted, as from 1 April 2003, by section 111 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 120OD(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart MBA of the Income Tax Act 2004” for the words “Part MBB of the Income Tax Act 1994”.

**120OE Interest paid on deposits in tax pooling accounts**

- (1) Interest paid by the Commissioner on an amount deposited in a tax pooling intermediary’s tax pooling account accrues to the benefit of the intermediary from the date of the deposit to, as applicable,—
  - (a) the date the amount is refunded; or
  - (b) the date of a transfer under section RP 19 of the Income Tax Act 2007.
- (2) The interest referred to in subsection (1) is payable to the intermediary on the date the amount is credited to another account

with the Commissioner, or on the date the amount is refunded to the intermediary.

- (3) A deposit in a tax pooling account is treated as tax paid by the intermediary for the purposes of calculating use of money interest, but for no other purpose.
- (4) Subsection (5) applies when a payment is made either by a tax pooling intermediary to their client, or by a client to their tax pooling intermediary, and the payment represents a difference between funds held in a tax pooling account for a period of time and an amount paid for the entitlement to the funds.
- (5) The payment is treated as—
  - (a) a payment of interest to the person who derives the payment for the purposes of section CC 4 of the Income Tax Act 2007, the RWT rules, and the NRWT rules:
  - (b) expenditure incurred in deriving the income of the person making the payment.

Compare: 2004 No 35 ss MBA 5(5), (6), MBA 9

Section 120OE: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120OE(1): substituted, on 6 October 2009, by section 667 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **120P Spreading tax liability or apportioning income back over earlier income years**

- (1) If, under a tax law,—
  - (a) A taxpayer elects to spread a tax liability over the tax year in respect of which the election is made (**election tax year**) and one or more earlier tax years; or
  - (b) The Commissioner apportions income over a tax year (**apportionment tax year**) and one or more earlier tax years,—

to the extent the election or apportionment alters the taxpayer's liability to tax in a tax year that precedes the election tax year or apportionment tax year, as the case may be (the extent of that altered liability being called **affected tax**), no interest is payable under this Part on the affected tax before the taxpayer's terminal tax date for the election tax year or apportionment tax year.

- (2) If income of a taxpayer is allocated to a tax year under subsection (1)(b), the taxpayer shall allocate to the tax year that proportion of deductions allowed in the allocation tax year which the allocated income represents as a proportion of the income for the allocation tax year calculated without allocation.

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

The heading to section 120P was to be amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “income and deductions to earlier tax” for the words “gross income and allowable deductions to earlier income”. However, this amendment appears to be in error as the words “gross income and allowable deductions to earlier income” do not appear in the heading.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year” in both places they appear.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (1)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

Subsection (1)(b) was to be amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”. However, this amendment appears to be in error as the word “gross” does not appear in subsection (1)(b).

Subsection (2) was inserted by section 144(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application as from the 1997-98 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appears.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

### **120PA Applying tax credit for supplementary dividend to earlier income year**

If a taxpayer sets off a tax credit for a supplementary dividend against its income tax liability for an earlier income year under



section LP 3(3) of the Income Tax Act 2007, the amount set off does not reduce the taxpayer's tax payable for that year for the purpose of this Part.

Section 120PA was inserted by section 71 Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from the 1997-98 income year.

Section 120PA heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120PA: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120PA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

### **120Q Due date for underestimation penalty tax**

For the purposes of this Part, the due date for the payment by a taxpayer of underestimation penalty tax is deemed to be the date of instalment F set out in schedule 3, part A of the Income Tax Act 2007, for the taxpayer's corresponding income year.

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120Q: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120Q: amended, on 1 October 2007, by section 246(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

### **120R Special provision for FDP**

*[Repealed]*

Section 120R: repealed (with effect on 30 June 2009), on 6 October 2009, by section 668(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120R heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120R(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 464(1) Taxation (Core Provisions) Act 1996 (1996 No 67) by inserting the words “or allocation alters the taxpayer’s income tax liability for an income year that precedes the election income year or allocation income year, as the case may be (the extent of the alteration being called the ‘affected tax’), the taxpayer is not required by this Part to pay interest on the affected tax before the taxpayer’s terminal tax date for the election income year or allocation income year.”, with application as from the 1997-98 income year.

Section 120R(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended by section 144(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by substituting the words “net loss” for the word “loss” with application as from the 1997-98 income year.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(b) was substituted by section 464(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2) was inserted by section 464(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year, and was repealed by section 144(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application as from the 1997-98 income year.

## **120S Amount in nature of interest to be added to fringe benefit tax paid on annual or income year basis**

*[Repealed]*

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Subsection (4) was inserted by section 85 Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 120S was repealed by section 38(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application: on 1 April 2001, for an employer who pays fringe benefit tax on an annual basis; and as from the 2001-2002 income year, for an employer who pays fringe benefit tax on an income year basis.

## **120T Interest on deferrable tax**

- (1) Interest continues to accrue on deferrable tax even though a taxpayer has or may have no liability at the time to pay the deferrable tax.

(2) *[Repealed]*

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was repealed by section 112(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from 1 April 2003.

**120U Bond provided for obligation to withhold or deduct amount of tax**

If—

- (a) under a tax law, a taxpayer provides the Commissioner with a bond or other security so that the taxpayer is not required to withhold or deduct an amount of tax from a payment made to any person; and
- (b) the Commissioner subsequently determines that the payment was liable to have an amount of tax withheld or deducted,—

the due date for the purpose of the definition of **date interest starts** for withholding or deducting the amount of tax is the date on which the amount withheld or deducted would have been payable to the Commissioner, if a bond or other security had not been provided.

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 120U heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120U: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120U(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120U(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**120V Interest on overpaid RWT**

If the Commissioner is required to make a refund of overpaid RWT under section RM 8 of the Income Tax Act 2007, no interest shall be payable by the Commissioner under section 120D(3) on the excess refunded.

Section 120V was inserted by section 86 Taxation (Remedial Provisions) Act 1997 (1997 No 74). See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 120V heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120V: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 120V was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

**121 Interest to be charged where residual income tax exceeds provisional tax**

*[Repealed]*

Item a of subsection (2) was amended, as from 1 April 1995, by section 8(1) Tax Administration Amendment Act (No 3) 1995 (1995 No 77) by substituting the words “treated as due and payable for the purposes of” for the words “due and payable under”.

Subsection (4)(b)(ii) was amended, as from 1 April 1995, by section 8(2) Tax Administration Amendment Act (No 3) 1995 (1995 No 77) by substituting the expression “1994; or” for the expression “1994,-”.

Subsection (4)(b)(iii) was inserted, as from 1 April 1995, by section 8(3) Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Subsection (7) was amended, as from 10 April 1995, by section 11(1) Tax Administration Amendment Act 1995 (1995 No 24) by inserting the words “preceding that”.

Subsection (7)(a) was amended, as from 12 December 1995, by section 8(4) Tax Administration Amendment Act 1995 (1995 No 77) by inserting the words “(not being an Order in Council made under subsection (10) of this section)”.

Subsection (9) was amended, as from 10 April 1995, by section 11(2) Tax Administration Amendment Act 1995 (1995 No 24) by inserting the words “Subject to subsection (9A),”.

Subsection (9A) was inserted, as from 10 April 1995, by section 11(3) Tax Administration Amendment Act 1995 (1995 No 24).

Subsections (9B) and (9C) were inserted, as from 10 April 1995, by section 11(3) Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (10)(b) was substituted, as from 12 December 1995, by section 8(5) Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Subsection (12) income tax payable: substituted, as from 10 April 1995, by section 11(4) Tax Administration Amendment Act 1995 (1995 No 24).

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **122 Interest on tax overpaid**

*[Repealed]*

Subsection (7) was amended by section 35 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by omitting the words “(other than the non-resident withholding tax rules)”, with application as from the 1994-95 income year.

Subsection (7A) was inserted, as from 10 April 1995, by section 12(1) Tax Administration Amendment Act 1995 (1995 No 24).

Subsections (7B) and (7C) were inserted, as from 10 April 1995, by section 12(1) Tax Administration Amendment Act 1995 (1995 No 24).

Subsection (10) residual income tax: substituted, as from 10 April 1995, by section 12(2) Tax Administration Amendment Act 1995 (1995 No 24).

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (10) was amended, by section 222(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by inserting the definition “Tax paid”, with application as to the 1995-96 and 1996-97 income years.

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

*[Repealed]*

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* section 36(2) of that Act as to the continued application of the original Part 7. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**124 Interest to be charged and payable with respect to certain dividend withholding payments***[Repealed]*

Part 7 (comprising section 120 to 124) was substituted by a new Part 7 (comprising sections 120A to 120U) by section 36(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See section 36(2) of that Act as to the continued application of the original Part 7. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**Part 8  
Objections****124A Application of Part 8**

- (1) Despite section 1(2), this Part applies to—
  - (a) every notice of assessment or reassessment issued by the Commissioner under a provision of the Inland Revenue Acts after 1 April 1995 and before 1 October 1996 for a particular item or matter, irrespective of the period to which the assessment or reassessment relates; and
  - (b) every notice of assessment issued by the Commissioner under a provision of the Inland Revenue Acts on or after 1 October 1996, if before that date, a taxpayer has made a competent objection to a notice of assessment that precedes the notice of reassessment for the same particular item or matter.
- (2) The Commissioner may, with the written agreement of a taxpayer, specify that a notice of assessment or reassessment—
  - (a) issued before 1 October 1996, is to be treated as if it had been issued on or after that date (in which case the provisions of Parts 4A and 8A are to apply to the notice); and
  - (b) issued on or after 1 October 1996, is to be treated as if it had been issued before that date (in which case the provisions of Part 8 are to continue to apply to the notice).
- (3) Despite section 1(2) Part 3 of the Income Tax Act 1976 does not apply to a notice of assessment or reassessment issued on or after 1 April 1995.

Section 124A was inserted, as from 1 October 1996, by section 37 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was substituted by section 104(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 1 October 1996.

Subsection (3) was inserted, as from 20 May 1999, by section 104(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Subsection (3) was amended by section 71(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by substituting the expression “Part 3” for the expression “Part 3A”, with application as from 20 May 1999

## **125 Certain rights of objection not conferred**

Except so far as may be expressly provided to the contrary in this Act or the Income Tax Act 2007, this Part of this Act shall not confer any right of objection with respect to—

- (a) any decision or determination of the Commissioner made in exercise of any power or discretion conferred on the Commissioner to enlarge or extend the time for giving any notice, making any application, furnishing any return, or doing any other act, matter, or thing; or
- (b) any matter which is left to the discretion, judgment, opinion, approval, consent, or determination of the Minister or any act, matter, or thing done or omitted by the Minister under this Act or the Income Tax Act 2007 or any regulations made under those Acts; or
- (c) any matter in respect of which provision is made by this Act or the Income Tax Act 2007 or by any regulations made under those Acts—
  - (i) for an objection to be heard and determined by; or
  - (ii) for the matter to be inquired into, considered, reported upon, heard, decided, determined, or otherwise dealt with by; or
  - (iii) for the matter to be the subject of any recommendation of—  
any special committee, tribunal, or authority (other than a Taxation Review Authority) established in that behalf or any person or official (other than the Commissioner); or

- (d) any decision or determination of the Commissioner approving or not approving a sickness, accident, or death benefit fund for the purposes of section CW 34 of the Income Tax Act 2007; or
- (e) any determination of the Commissioner, for the purposes of section 130 of this Act and section 73 of the Income Tax Act 1976, as to whether and to what extent any allowance (being an allowance paid before 1 April 1995) in respect of or in relation to the employment or service of any person constituted a reimbursement of expenditure incurred by that person in deriving that person's income; or
- (f) any determination of the Commissioner as to whether and to what extent any person or class of persons is not required to comply with section EA 3 of the Income Tax Act 2007; or
- (g) *[Repealed]*
- (h) any valuation or apportionment made by the Valuer-General or a registered valuer under the Valuation of Land Act 1951 or the Income Tax Act 2007; or
- (i) any determination of the Government Actuary under section EY 11 of the Income Tax Act 2007 in relation to the status of a superannuation fund under subsections (3) to (9) of that section; or
- (j) any matter which by any provision in—
  - (i) the PAYE rules (); or
  - (ii) the provisional tax rules; or
  - (iii) any of sections CD 15, CD 19, HD 2, HD 3(2), HD 5(4), HD 15, HD 24, HD 26 to HD 29, LA 6 to LA 8, LJ 1 to LJ 7, RD 3, RM 2 to RM 4, RM 6, RM 8, and RM 10 of the Income Tax Act 2007 and sections 33, 89, 92A and 184 of the Tax Administration Act 1994.
  - (iv) any of sections 21 to 23, 36 to 46, 58, 62, 63, 78B, 78C, 80, 88, 89C, 89K, 89M, 92, 106, 107, 108, 108A, 108B, 109, 110, 111, 113 to 116, 118, 120A to 120U, 131, 138N, 142A, 142C, 146, 150A, 157, 160, 166, 166B, 167, 174AA,



176, 177, 177A to 177D, 183A,, 183D, and 183F,  
225B of this Act,—

is left to the discretion, judgment, opinion, approval,  
consent, or determination of the Commissioner; or

- (k) any matter in respect of which it is expressly provided  
that there shall be no right of objection or challenge to  
the decision or determination of the Commissioner.

Compare: 1976 No 65 s 36

Section 125: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 125, before the paragraphs, and paras (b) and (c) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 125(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 125(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 125(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 669 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 125(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (d) was amended, as from 1 April 1995, by section 42(a) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the expression “section CB 5(1)(g)” for the expression “section CB 5(g)”.

Paragraph (d) was amended, as from 25 November 2003, by section 127 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the expression “CB 5(1)(g)” for the expression “CB 5(1)(g) and (i)”.

Paragraph (d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “sickness, accident, or death benefit fund for the purposes of section CW 28 of the Income Tax Act 2004” for the words “sick, accident, or death benefit fund for the purposes of section CB 5(1)(g) and (i) of the Income Tax Act 1994”. However, this amendment appears to in error as paragraph (d) contained the expression “sick, accident, or death benefit fund for the purposes of section CB 5(1)(g) of the Income Tax Act 1994”, and these words have been editorially omitted.

Paragraph (e) was substituted, as from 1 April 1995, by section 13 Tax Administration Amendment Act 1995 (1995 No 24).

Paragraph (e) was substituted by section 469 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Paragraph (e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Section 125(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section EA 3 of the Income Tax Act 2004” for the words “section EF 1 of the Income Tax Act 1994”.

Paragraph (g) was repealed, as from 20 May 1999, by section 105(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 125(h): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (h) was amended, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69) by inserting the words “or a registered valuer”. See sections 55 to 63 for the savings and transitional provisions.

Section 125(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraphs (h) and (i) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Paragraph (j)(i) was amended by section 113(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “(except section NC 17)” with application as from the 2002-03 income year.

Paragraph (j)(iii) was substituted, as from 1 April 1995, by section 42(b) Taxation (Remedial Provisions) Act 1996 (1996 No 159).

Section 125(j)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (j)(iii) was amended by section 86(1)(a) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by omitting the expression “IB 1,” with application as from 17 October 2002.

Paragraph (j)(iii) was amended by section 86(1)(b) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the expression “92A” after the expression “89” with application as from 17 October 2002.

Paragraph (j)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Paragraph (j)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the expression “CD 9, CD 11” for the expression “CF 6”.

Paragraph (j)(iv) was amended, as from 1 April 1995, by section 42(c) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the expression “106, 107, 109 to 111” for the expression “106 to 111”.

Paragraph (j)(iv) was substituted, as from 1 October 1996, by section 38(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 125(j)(iv): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (j)(iv) was amended by section 105(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the expression “174AA,” for the expression “174,” with application as from 1 April 1999.

Paragraph (j)(iv) was amended by section 49(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) by omitting the expression “183B,” with application as from 1 April 2002.

Paragraph (j)(iv) was amended by section 86(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the expression “177A to 177D,” after the expression “176, 177” with application as from 1 December 2002.

Paragraph (j)(iv) was amended, as from 1 April 2003, by section 113(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the expression “128A,”.

Paragraph (k) was amended, as from 1 October 1996, by section 38(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by inserting after the words “of objection”, the words “or challenge”.

## **126 Procedure for objections to assessments**

- (1) Any person who has been assessed for income tax may object to that assessment by delivering or posting to the Commissioner a notice of objection stating shortly the grounds of the person’s objection, within such time as may be specified in that behalf in the notice of assessment, not being less than 14 days after the date on which that notice of assessment is given, or within such extended time as the Commissioner may allow on the application of the person made before the expiry of—
- (a) the time for objection specified in the notice of assessment; or
  - (b) any extended time for objection previously allowed by the Commissioner in respect of the assessment:

Provided that, where the assessment is an amended assessment, the person so assessed shall have no further right of objection than the person would have had if the amendment had not been made, except to the extent to which by reason of the amendment a fresh liability in respect of any particular is imposed on the person or an existing liability in respect of any particular is increased.

- (2) No notice of objection given after the time specified in the notice of assessment, or after such extended time as the Commissioner may allow under subsection (1), shall be of any force

or effect unless the Commissioner accepts the same and gives notice to the objector accordingly.

Compare: 1976 No 65 s 30

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “written”.

### **127 Commissioner to consider objections and may amend assessment**

- (1) The Commissioner shall consider all such objections, and may consequently amend the assessment.
- (2) If the Commissioner, after considering the objection, has allowed the objection in part and has reduced the assessment, the reduced assessment shall be the assessment to be dealt with by the Taxation Review Authority under section 134.

Compare: 1976 No 6 s 31(1), (3)

Subsection (1) was amended, by section 236(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amend” for the word “alter”, with application as from the 2002-03 income year.

### **128 Payment of disputed tax where competent objection lodged**

- (1) *[Repealed]*
- (2) A taxpayer is not liable to pay—
  - (a) the deferrable tax relating to any tax in dispute; or
  - (b) a shortfall penalty, where the penalty is payable in respect of any tax in dispute; or
  - (c) the interest accruing under Part 7 on that deferrable tax or that shortfall penalty,—until the due date for payment of that deferrable tax.
- (2B) Despite subsection (2), the Commissioner may require a taxpayer to pay all tax in dispute if the Commissioner considers that there is a significant risk that the tax in dispute will not be paid should the taxpayer not succeed in objection proceedings.
- (3) If and to the extent that a taxpayer succeeds in objection proceedings, the Commissioner must, after the day of determination of final liability, refund or pay to, or apply on behalf of, the taxpayer—

- (a) the tax in dispute paid in accordance with subsection (2B); and
  - (b) interest accrued on the tax in dispute under Part 7.
- (4) This section applies only where a taxpayer lodges a competent objection.
- (5) Part 7 applies to interest calculated on deferrable tax on and after 1 April 1997, irrespective of whether the competent objection or challenge relates to a tax year before the 1997-98 tax year.
- (6) If the competent objection or challenge relates to the 1996-97 or an earlier tax year, interest must be calculated on deferrable tax on and after the date that the period of deferral starts.

Compare: 1976 No 65 s 34

Section 128 was substituted, as from 1 October 1996, by section 39 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

The heading to section 128 was substituted, as from 1 April 2003, by section 114(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (1) was repealed, as from 1 April 2003, by section 114(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (2B) was inserted, as from 1 April 2003, by section 114(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (3)(a) and (3)(b) was substituted, as from 1 April 2003, by section 114(4) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (5) was inserted by section 72 Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 1 April 1997.

Subsection (5) was amended, as from 1 April 2003, by section 114(5) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “and non-deferrable”.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (6) was inserted by section 72 Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 1 April 1997.

Subsection (6) was amended, as from 1 April 2003, by section 114(6) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “or non-deferrable”.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **128A Waiver of payment or security**

*[Repealed]*

Section 128A was inserted, as from 1 October 1996, by section 39 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 128A was repealed, as from 1 April 2003, by section 115 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

### **129 Determination of objection not to affect other matters**

The determination of an objection under this Part shall relate solely to the matters which are the subject of the objection, and shall not affect the right of the Commissioner to amend the assessment objected to in any manner rendered necessary by any other matter.

Section 129 was substituted by section 470 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

### **130 Objections to allowance determinations**

- (1) Notwithstanding anything in this Act or the Income Tax Act 2007, where any person who, before 1 April 1995, was granted or was to be granted an allowance to which a determination made under subsection (2) or subsection (3) of section 73 of the Income Tax Act 1976 applies is dissatisfied with that determination, that person may object to that determination by delivering or posting to the Commissioner, within one month after the date on which the notice of that determination was given by the Commissioner, a notice of objection stating shortly the grounds of the objection.
- (2) Notwithstanding anything in this Act or the Income Tax Act 1994, where any employer or workers' union, or the authorised representative of any employer or group of employees (referred to in this section as the **applicant**), being a party to

an award, or a collective agreement, or another instrument a clause or other provision of which provides for the payment of an allowance, being an allowance paid or payable before 1 April 1995, in relation to which a determination has been made by the Commissioner under subsection (2) or subsection (3) or subsection (4) of section 73 of the Income Tax Act 1976, is dissatisfied with that determination, the applicant may, on behalf of any person who was granted or was to be granted that allowance, object to the determination by delivering or posting to the Commissioner a notice of objection stating shortly the grounds of objection within one month after the date on which notice of that determination was given by the Commissioner.

- (3) No notice of objection given after the time specified in subsection (1) or subsection (2) of this section shall be of any force or effect unless the Commissioner accepts the same and gives notice to the objector accordingly.
- (4) The Commissioner shall consider every objection made under this section and may consequently amend the determination.
- (5) For the purposes of this section, sections 128, 129, and 135 shall, in relation to any objection under this section, apply in the same manner and to the same extent that they would apply if the objection were an objection made under section 126(1).
- (6) In this section, **award**, **collective agreement**, and **instrument** have the same meanings as in regulation 2 of the Wage Adjustment Regulations 1974.

Compare: 1976 No 65 s 73

Section 130(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 1995, by section 14(1)(a) Tax Administration Amendment Act 1995 (1995 No 24) by substituting the words “, before 1 April 1995, was granted or was to be granted” for the words “is granted or is to be granted”.

Subsection (1) was amended, as from 1 April 1995, by section 14(1)(b) Tax Administration Amendment Act 1995 (1995 No 24) by substituting the words “subsection (2) or subsection (3) of section 73 of the Income Tax Act 1976” for the words “subsection (1) or subsection (2) of section CB 12 of the Income Tax Act 1994”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “written”.

Subsection (2) was amended, as from 1 April 1995, by section 14(2)(a) Tax Administration Amendment Act 1995 (1995 No 24) by inserting the words “, being an allowance paid or payable before 1 April 1995,”.

Subsection (2) was amended, as from 1 April 1995, by section 14(2)(b) Tax Administration Amendment Act 1995 (1995 No 24) by substituting the words “subsection (2) or subsection (3) or subsection (4) of section 73 of the Income Tax Act 1976” for the words “subsection (1) or subsection (2) or subsection (3) of section CB 12 of the Income Tax Act 1994”.

Subsection (2) was amended, as from 1 April 1995, by section 14(2)(c) Tax Administration Amendment Act 1995 (1995 No 24) by substituting the words “was granted or was” for the words “is granted or is”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “written”.

Subsection (4) was amended, by section 236(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amend” for the word “alter”, with application as from the 2002-03 income year.

### **131 Objections to determinations**

*[Repealed]*

Section 131 was repealed, by section 223 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

### **132 Application of this Part to objections to foreign tax credit determinations**

*[Repealed]*

Section 132 was repealed, by section 224 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

### **133 Wrong PAYE withholding determination a ground for objection**

A taxpayer may object to an assessment that is issued by the Commissioner in relation to an amount of tax withheld on the basis of a determination under section RD 3(5) of the Income Tax Act 2007, on the ground that the determination is wrong, whether in fact or in law.

Compare: 1976 No 65 s 337(4)

Section 133 was substituted, as from 1 October 1996, by section 40 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of



that Act as to the application of the amendment in relation to other provisions of this Act.

Section 133 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 133: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 133 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### *Case stated*

#### **134 Objector may require that objections be submitted to Taxation Review Authority**

If an objection is not wholly allowed by the Commissioner, the objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice to the Commissioner require that the objection be heard and determined by a Taxation Review Authority, and in that event the objection shall be heard and determined by an Authority, and the Taxation Review Authorities Act 1994 shall apply in respect of the institution, hearing, and determination of the proceedings on the objection.

Compare: 1976 No 65 s 31(2)

Section 134 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

#### **135 Powers of Taxation Review Authority on determination of objection or case stated**

- (1) On hearing any objection a Taxation Review Authority may—
  - (a) confirm or cancel or vary the assessment, or reduce the amount of the assessment, or increase the amount of the assessment to the extent to which the Commissioner was empowered to make an assessment of an increased amount at the time the Commissioner made the assessment to which the objection relates, and that last-mentioned assessment shall be altered by the Commissioner to such extent as may be necessary to conform to that determination:
  - (b) make any assessment which the Commissioner was empowered to make at the time the Commissioner made

the assessment to which the objection relates, or direct the Commissioner to make such an assessment, in which case an assessment shall be made by the Commissioner so as to conform to that direction.

- (2) Notwithstanding subsection (1), where the objection relates to a determination made under either section 90(1) or 90AC(1) of this Act, or under section 64E of the Income Tax Act 1976, or under section 245S of that Act as in force before its repeal by section 49 of the Income Tax Amendment Act (No 2) 1993, the Authority shall not make a determination or alter the determination under subsection (1)(a) or subsection (1)(b) but may direct the Commissioner to alter the determination to such extent as may be necessary to conform to the decision of the Taxation Review Authority and with such effect as provided in either section 90(6) or sections 90AC(6) and 90AE of this Act or, where appropriate, section 245S of the Income Tax Act 1976 as so previously in force:

Provided that no such fresh determination shall be issued by the Commissioner before the resolution of the appeal procedures.

- (3) The time bar shall not apply with respect to—
- (a) any determination of the Authority under subsection (1)(a) or any amendment made by the Commissioner to an assessment for the purpose of conforming to any such determination; or
  - (b) any assessment made by the Authority or the Commissioner under subsection (1)(b).

Compare: 1976 No 65 s 32

Subsection (2) was amended, as from 20 May 1999, by section 107(a) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the expression “either section 90(1) or 90AC(1)” for the expression “section 90(1)”.

Subsection (2) was amended, as from 20 May 1999 by section 107(b) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the expression “either section 90(6) or sections 90AC(6) and 90AE” for the expression “section 90(6)”.

Subsection (3)(a) was amended, by section 236(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amendment” for the word “alteration” wherever it occurs, with application as from the 2002-03 income year.

**136 When objection may be referred directly to High Court**

- (1) Notwithstanding anything in this Part, where—
  - (a) an objection to an assessment is made in accordance with section 126(1) or accepted by the Commissioner under section 126(2); and
  - (b) the objection is not wholly allowed by the Commissioner; and
  - (c) the objection is one to which subsection (2) or subsection (3) applies,—the objection may be referred directly to the High Court by way of case stated in accordance with this section.
- (2) Where an objection relates to a question of law only,—
  - (a) the objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice to the Commissioner require the Commissioner to state a case for the opinion of the High Court, and shall specify in the notice the registry of that Court in which the objector requires the case to be filed:
  - (b) the Commissioner, in any case where under section 134 the objector has required the objection to be heard and determined by a Taxation Review Authority, may, instead of referring the objection to a Taxation Review Authority, state a case for the opinion of the High Court, and shall notify the objector accordingly.
- (3) Where an objection relates to a question of fact (whether or not it also relates to a question of law),—
  - (a) the objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, give notice to the Commissioner that the objector desires the Commissioner to state a case for the opinion of the High Court, specifying in the notice the registry of that Court in which the objector desires the case to be filed:
  - (b) the Commissioner may, in any case where the objector has under section 134 required the objection to be heard and determined by a Taxation Review Authority, notify the objector that the Commissioner desires the objection to be referred directly to the High Court.

- (4) Where any notice is given by the objector or the Commissioner under subsection (3), the objection shall be referred directly to the High Court if both the Commissioner and the objector consent, or with the leave of that Court granted on the application of the objector or the Commissioner upon the ground that in the opinion of the Court, by reason of the amount of the tax in dispute between the parties or of the general or public importance of the matter or of its extraordinary difficulty or for any other reason, it is desirable that the objection be heard and determined by the High Court instead of by a Taxation Review Authority.
- (5) Within 3 months after—
- (a) The date of the objector's giving notice under subsection (2)(a) or subsection (3)(a), where it is the objector who requires or desires the Commissioner to state a case for the opinion of the High Court; or
  - (b) The date of the objector's giving notice in relation to the objection under section 134, where it is the Commissioner who determines or desires under subsection (2)(b) or subsection (3)(b) of this section to state a case for the opinion of the High Court,—
- the objector shall serve on the Commissioner, by delivery to the National Office of the Inland Revenue Department at Wellington or to such other address as the Commissioner has given notice of to the objector for the purpose, a notice in the prescribed form of the objector's points of objection.
- (6) The points of objection shall state, with sufficient particularity so as to fairly inform the Commissioner and the Court,—
- (a) the facts upon which the objector relies in support of the objection; and
  - (b) the propositions of law (if any) on which the objector relies in support of the objection; and
  - (c) the issues which the objector considers require to be determined by the Court.

- (7) The objector shall annex to the points of objection copies of any documents upon which the objector intends to rely in support of the objection:  
Provided that where the documents upon which the objector intends to rely are numerous, the objector may annex a list of those documents instead of copies of the actual documents.
- (8) If the objector fails to serve on the Commissioner the points of objection within the period referred to in subsection (5), or within such further period as may be allowed under subsection (12), the objection shall be deemed to be withdrawn and the Commissioner shall not be required to take any further steps in relation to the objection.
- (9) Where under this section an objection is to be referred directly to the High Court, the Commissioner shall, within 3 months after the date of service of the points of objection or within such further period as may be allowed under subsection (12), state and sign a case which shall comprise—
- (a) a notice in the prescribed form containing—
    - (i) particulars of the assessment made by the Commissioner to which the objection has been made; and
    - (ii) the grounds of objection given by the objector; and
    - (iii) the question for the determination of the Court; and
  - (b) the points of objection served by the objector; and
  - (c) a notice in the prescribed form stating—
    - (i) any further facts which the Commissioner considers are relevant to the issues to be determined by the Court; and
    - (ii) the issues which the Commissioner claims require to be determined by the Court.
- (10) The case so stated and signed, together with one copy, shall be filed by the Commissioner—
- (a) In the registry of the High Court specified by the objector in the notice under subsection (2)(a) or subsection (3)(a), where such a notice has been given by the objector; or

- (b) in such registry of the High Court as the Commissioner thinks fit in any other case, having due regard to the convenience of the objector.
- (11) A copy of the case so filed shall be served by the Commissioner on the objector either personally or by sending it to the objector by registered post addressed to the objector at the address for service specified by the objector in the points of objection, or at such other address as the objector has given notice of to the Commissioner for the purpose, and the copy so sent by registered post shall be deemed to have been received when in the ordinary course of post it would be delivered.
- (12) The High Court may, on the written application of the objector or the Commissioner,—
  - (a) extend the time for service by the objector on the Commissioner of the points of objection; or
  - (b) extend the time for the filing of the case by the Commissioner—

until such time as the Court thinks fit, whether the application is made before or after the expiry of the time limit:  
provided that when application is made for an extension of time more than 2 months after the date for service of the points of objection or the date for filing the case, as the case may be, an order for extension of time shall be made only in exceptional circumstances.
- (13) Where the Commissioner fails to file a case within the time specified in subsection (9), or within such further time as may be allowed under subsection (12), the objector may apply to the High Court for an order directing the Commissioner to allow the objector's objection, and the High Court—
  - (a) shall make such an order accordingly, unless it is satisfied that there are reasonable grounds for the failure to file the case:
  - (b) may, where it refuses to make such an order, make such other orders as in the circumstances it thinks fit, whether relating to the filing of the case in the High Court, the remitting of the objection to a Taxation Review Authority for hearing and determination, or otherwise.
- (14) The contents of the case shall not be conclusive as to the matters set forth in it either against the objector or the Commis-

sioner, except so far as agreed to in writing by or on behalf of the objector and the Commissioner.

- (15) At any time before the case stated is set down for hearing—
  - (a) the Commissioner may file an amended case and serve a copy on the objector at the objector's address for service:
  - (b) the objector may serve on the Commissioner amended points of objection at the Commissioner's address for service specified in the case.
- (16) Sections 16(2), 17, and 18 of the Taxation Review Authorities Act 1994, as far as they are applicable, shall apply to any such case stated by the Commissioner as if references in those provisions to an Authority were references to the High Court. Subject to those provisions, the procedure at the hearing before the High Court of any such case stated shall be the same, with any necessary modifications, as if the case were a proceeding in which the objector is the plaintiff and the Commissioner is the defendant.
- (17) On hearing any case stated under this section, the High Court may—
  - (a) confirm or cancel or vary the assessment, or reduce the amount of the assessment, or increase the amount of the assessment to the extent to which the Commissioner was empowered to make an assessment of an increased amount at the time the Commissioner made the assessment to which the objection relates, and that last-mentioned assessment shall be amended by the Commissioner to such extent as may be necessary to conform to that determination:
  - (b) make any assessment which the Commissioner was empowered to make at the time the Commissioner made the assessment to which the objection relates, or direct the Commissioner to make such an assessment, in which case an assessment shall be made by the Commissioner so as to conform to that direction.
- (18) Notwithstanding subsection (17), where the objection relates to a determination made under section 90(1) of this Act, or under section 64E of the Income Tax Act 1976, or under section 245S of that Act as in force before its repeal by section

49 of the Income Tax Amendment Act (No 2) 1993, the High Court shall not make a determination or alter the determination under subsection (17)(a) or subsection (17)(b), but may direct the Commissioner to alter the determination to such extent as may be necessary to conform to the decision of the High Court and with such effect as provided in section 90(6) of this Act or, where appropriate, section 245S of the Income Tax Act 1976 as so previously in force:

Provided that no such fresh determination shall be made by the Commissioner before the resolution of the appeal procedures.

- (19) The time bar shall not apply with respect to—
- (a) any determination of the Court under subsection (17)(a) or any amendment made by the Commissioner to an assessment for the purpose of conforming to any such determination; or
  - (b) any assessment made by the Court or the Commissioner under subsection (17)(b).
- (20) Where any notice is given by the objector to the Commissioner under subsection (3)(a) and the Commissioner gives notice to the objector that the Commissioner does not consent to the objection being referred directly to the High Court under this section, then—
- (a) if within one month after the last-mentioned notice is given to the objector by the Commissioner no application is made by the objector to the High Court for the leave of the Court to refer the objection directly to that Court; or
  - (b) if on any such application the High Court refuses to grant such leave,—

the first-mentioned notice shall have effect as if it were a notice requiring the objection to be heard and determined by a Taxation Review Authority, and this Part shall apply accordingly.

Compare: 1976 No 65 s 33; 1993 No 130 s 6(2), (3)

Subsection (2)(a) and (3)(a) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Subsection (5) was amended by section 471 Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “National Office” for the words “Head office”, with application as from the 1997-98 income year.



Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “the Commissioner has given notice of” for the words “may have been notified in writing by the Commissioner”.

Subsection (11) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “has given notice of to the Commissioner” for the words “may have notified to the Commissioner in writing”.

Subsection (17)(a) was amended, by section 236(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amended” for the word “altered”, with application as from the 2002-03 income year.

Subsection (19)(a) was amended, by section 236(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amendment” for the word “alteration”, with application as from the 2002-03 income year.

### **137 Test case procedure**

- (1) Where—
  - (a) an objector has given notice under section 134 or section 136(2)(a) or section 136(3)(a) requiring or requesting that an objection be heard and determined by a Taxation Review Authority, or that a case be stated for the opinion of the High Court in respect of an objection; and
  - (b) the Commissioner considers that determination of the objection, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections,—  
the Commissioner may designate that objection as a test case, and shall notify the objector accordingly.
- (2) The Commissioner may, notwithstanding section 136(4), state a test case for the opinion of the High Court without need for—
  - (a) the objector’s consent; or
  - (b) the leave of the High Court,—and subsections (5) to (19) of section 136 shall apply in respect of any test case as if the Commissioner had determined to state the case under subsection (2)(b) of that section.
- (3) The Commissioner may in relation to any objection, at any time after the objection has been lodged and before it has been determined by a Taxation Review Authority or the High Court,

give notice to the objector that the objection will be stayed by reason of the taking of a test case on a similar objection or challenge before the High Court, if the Commissioner considers that the test case is likely to be determinative of all or a substantial number of the issues in the objection proposed to be stayed.

- (4) Subject to subsection (9), the notice by the Commissioner referred to in subsection (3) shall have the effect of staying the objection pending the determination of the test case.
- (5) Upon receipt by an objector of the notice by the Commissioner referred to in subsection (3), the objector may notify the Commissioner that the objector requires that the objection be heard and determined notwithstanding the stating of a test case for the opinion of the High Court. That notice shall be given at such address as may be specified by the Commissioner in the notice given under subsection (3).
- (6) Within 14 days after the receipt by the Commissioner of the notice from the objector referred to in subsection (5), the Commissioner may apply to the High Court by originating application for an order that the objection be stayed pending the determination of the test case or the further order of the Court.
- (7) An application by the Commissioner under subsection (6) shall be made on notice to the objector whose objection the Commissioner seeks to have stayed.
- (8) Where an objection has been stayed, the objector, the Commissioner, or both of them, may at any time apply to the High Court for an order that the objection cease to be stayed.
- (9) A stay under subsection (4) shall lapse on the expiry of 14 days following the day on which occurs any of the following:
  - (a) the expiry of the 14-day period specified in subsection (6), where the objector has issued a notice under subsection (5) and the Commissioner has not within the 14-day period made an application under subsection (6):
  - (b) the making by the High Court of an order dismissing an application by the Commissioner under subsection (6):
  - (c) the making by the High Court, on an application under subsection (8), of an order that the objection cease to be stayed:

- (d) the determination of the test case which caused the objection to be stayed by the expiration of all rights of appeal.
- (10) For the purposes of this Act,—
- (a) for so long as an objection is stayed under this section, any time limits or periods specified in or under this Act (other than in subsections (5) to (9)) in relation to proceedings on the objection shall not apply:
  - (b) where the stay of an objection lapses under subsection (9), any time limits or periods so specified shall be treated as if they were extended by the period commencing with the date of the Commissioner's notice under subsection (3), and ending with the day on which the stay lapses under subsection (9).
- (11) Service of notices by the Commissioner under subsections (3) and (7) may be effected—
- (a) personally; or
  - (b) by sending a copy of the notice to the objector by registered post to the objector at the objector's usual or last known place of abode or business in New Zealand, in which case it shall be deemed to have been received when in the ordinary course of post it would be delivered; or
  - (c) by service on a solicitor who accepts service in writing on behalf of the objector, which service shall be deemed for the purposes of this section to be personal service on the objector; or
  - (d) by effective delivery to an address for service supplied by the objector to the Commissioner.

Compare: 1976 No 65 s 33A

Subsection (3) was amended, as from 1 October 1996, by section 41 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by inserting, after the words "similar objection" the words "or challenge". See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "give notice to the objector" for the words "notify the objector in writing".

Subsections (4) and (5) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the word "notice" for the words "written notification".

Subsections (5) and 9(a) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Subsection (10)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the word “notice” for the words “written notification”.

### **138 Determination by Taxation Review Authority of objection in relation to allowances**

- (1) If an objection under section 130 is not wholly allowed by the Commissioner, the objector may, within 2 months after the date on which the notice of disallowance is given to the objector by the Commissioner, by notice to the Commissioner, require that the objection be referred to a Taxation Review Authority.
- (2) A Taxation Review Authority shall consider every objection referred to the Authority by the Commissioner under subsection (1) and shall in each case redetermine, in relation to the determination to which the objection is made, the extent (if any) to which the allowance to which that determination applies constitutes a reimbursement of expenditure incurred by that person in deriving the person’s income.
- (3) For the purpose of considering an objection referred to an Authority by the Commissioner under subsection (1), the Taxation Review Authority may call for such evidence as the Authority may require and shall, notwithstanding anything in this or any other Inland Revenue Act, have free access to all records under the control of the Commissioner which relate directly to the remuneration paid to the employee or, as the case may be, the group of employees where any allowance granted or to be granted (to that employee or to the employees in that group) is the allowance to which the objection referred to that Taxation Review Authority by the Commissioner under subsection (1) relates.
- (4) Notwithstanding anything in this or any other Inland Revenue Act, every decision or determination of a Taxation Review Authority made under subsection (2) of this section shall be final and conclusive.

Compare: 1976 No 65 s 73

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Subsection (2) was substituted by section 472 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

## **Part 8A**

### **Challenges**

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### **138A Application of this Part**

- (1) Despite section 1(2), this Part applies to—
  - (a) every notice of disputable decision issued by the Commissioner under a provision of the Inland Revenue Acts on or after 1 October 1996, irrespective of the period to which the notice of disputable decision relates; and
  - (b) any assessment, reassessment, or determination of the Commissioner if a notice of assessment or reassessment to which section 124A(2)(a) applies has been issued before 1 October 1996, irrespective of the period to which the notice of assessment or reassessment relates.
- (2) This Part does not apply to any assessment or reassessment or determination or decision of the Commissioner to which Part 8 applies by virtue of subsection (1) or subsection (2)(b) of section 124A.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was substituted by section 108(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application as from 1 October 1996.

#### **138B When disputant entitled to challenge assessment**

- (1) A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—
  - (a) the assessment includes an adjustment proposed by the Commissioner which the disputant has rejected within the applicable response period; and

- (b) where the assessment is an amended assessment, an adjustment proposed by the Commissioner that is included in the assessment—
    - (i) imposes a fresh liability (being a liability that was not included in an earlier assessment) in respect of a particular; or
    - (ii) increases an existing liability (being a liability that was included in an earlier assessment but to a lesser extent) in respect of a particular; and
  - (c) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or the High Court Rules, within the response period following the issue of the relevant notice of assessment.
- (2) A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—
- (a) the assessment was the subject of an adjustment proposed by the disputant which the Commissioner has rejected by written notice within the applicable response period; and
  - (b) the disputant is subsequently issued with an amended assessment; and
  - (c) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or the High Court Rules, within the response period following the issue of the amended notice of assessment.
- (3) A disputant is entitled to challenge an assessment by commencing proceedings in a hearing authority if—
- (a) the Commissioner rejects, within the applicable response period, an adjustment proposed by the disputant and does not subsequently issue an amended assessment; and
  - (b) the disputant files the proceedings, in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or High Court Rules, within the response period

of the written disputable decision from the Commissioner that the proposed adjustment will not be adjusted; and

- (c) for the purposes of paragraph (b), the written disputable decision from the Commissioner is not limited to the Commissioner's notice of response.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3)(b) was amended, as from 21 December 2004, by section 121 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words "adjusted; and" for the word "adjusted."

Subsection (3)(c) was inserted, as from 21 December 2004, by section 121 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

### **138C When disputant entitled to challenge disputable decision other than assessment**

A disputant is entitled to challenge a disputable decision that is not an assessment by commencing proceedings in a hearing authority if—

- (a) the disputable decision was the subject of an adjustment proposed by the disputant which the Commissioner has rejected; and
- (b) the disputant files the proceedings in accordance with the Taxation Review Authority Regulations 1994 (or any regulations made in substitution for those regulations) or the High Court Rules, within the response period for the notice from the Commissioner rejecting the proposed adjustment.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **138D Challenge may in exceptional circumstances be commenced after response period**

- (1) If a hearing authority considers that exceptional circumstances apply, the hearing authority may, on application by a disputant, allow the disputant to commence a challenge to a notice of a disputable decision after the response period.

- (2) For the purposes of subsection (1), an **exceptional circumstance** is an event or circumstance beyond the control of a disputant that provides the disputant with a reasonable justification for not commencing a challenge to a disputable decision within the response period; but an act or omission of an agent of a disputant is not an exceptional circumstance unless the act or omission was caused by an event or circumstance beyond the control of the agent—
- (a) that could not have been anticipated; and
  - (b) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **138E Certain rights of challenge not conferred**

- (1) This Part does not confer a right of challenge with respect to—
- (a) a decision of the Commissioner under a tax law to enlarge or extend the time for giving notice, making an application, furnishing a tax return, or doing any other act, matter, or thing; or
  - (b) a decision of the Minister under a tax law, or an act, matter, or thing done or omitted by the Minister under a tax law; or
  - (c) a matter in respect of which provision is made by a tax law—
    - (i) for a challenge or objection to the matter to be heard and determined by; or
    - (ii) for the matter to be inquired into, considered, reported upon, heard, decided, determined, or otherwise dealt with by; or
    - (iii) for the matter to be the subject of any recommendation of,—  
a special committee, tribunal, or authority (other than a Taxation Review Authority) established in that behalf or a person or official (other than the Commissioner); or



- (d) a valuation or apportionment made by the Valuer-General or a registered valuer under the Valuation of Land Act 1951 or the Income Tax Act 2007; or
- (e) a matter which by a provision in—
  - (i) the PAYE rules; or
  - (ii) the provisional tax rules; or
  - (iii) Any of sections CD 15, CD 19, HD 2, HD 3(2), HD 5(4), HD 15, HD 24, HD 26 to HD 29, LA 6 to LA 8, LJ 1 to LJ 7, RD 3, RM 2 to RM 4, RM 6, RM 8, and RM 10 of the Income Tax Act 2007 and sections 33, 89, 92A, 139 (insofar as it applies to unpaid tax for periods before 1 April 1997) and 184 of the Tax Administration Act 1994; or
  - (iv) any of sections 21 to 23, 34B, 36 to 46, 58, 62, 63, 78B, 78C, 80, 88, 89C, 89K, 89M, 92, 106, 107, 108A, 108B, 109, 110, 111, 113, 114, 120A to 120U, 138N, 142A, 142C, 146, 150A, 157, 160, 166, 166B, 167, 174AA, 176, 177, 177A to 177D, 183A, 183D, and 183F, 225B of this Act; or
  - (ivb) any of Parts 1 to 3 of the KiwiSaver Act 2006; or
  - (v) any of Parts 4, 6, 7 and 11 (other than section 76) of the Goods and Services Tax Act 1985—is left to the discretion, judgment, opinion, approval, consent, or determination of the Commissioner; or
- (ea) the Commissioner's interpretation of how a taxation law applies to a person, whether or not the person has come into legal existence, and to an arrangement, whether or not a single or a recurring arrangement, as set out in a binding ruling made under Part 5A; or
- (eb) the Commissioner's interpretation of whether the amendment or repeal of a taxation law has changed the way that the law applies in a private or a product ruling, as set out in a status ruling made under section 91GA; or.
- (f) a matter in respect of which a tax law provides that there shall be no right of objection or challenge to the decision of the Commissioner.

- (2) Subsection (1) may be overruled by a tax law or other law that expressly confers a right of objection or challenge in respect of a decision made by any person.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 138E(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 July 1998, by section 54(1) Rating Valuations Act 1998 (1998 No 69) by inserting the words “or a registered valuer”. *See* sections 55 to 63 of that Act for the savings and transitional provisions.

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(e)(i) was amended by section 116(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “(except section NC 17)” with application as from the 2002-03 income year.

Subsection (1)(e)(iii) was substituted by section 87(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application as from 1 April 1995.

Section 138E(1)(e)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e)(iii) was amended by section 87(1)(a) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by omitting the expression “IB 1,” with application as from 1 December 2002.

Subsection (1)(e)(iii) was amended by section 87(1)(b) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the expression “92A,” after the expression “176, 177” with application as from 1 December 2002.

Subsection (1)(e)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the expression “CD 9, CD 11” for the expression “CF 6”.

Subsection (1)(e)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 138E(1)(e)(iv): amended, on 6 October 2009, by section 670 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (1)(e)(iv) was amended by section 87(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by omitting the expression “108,” with application as from 1 April 1995.

Subsection (1)(e)(iv) was amended by section 110(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) by substituting the expression “174AA,” for the expression “174,” with application as from 1 April 1999.

Subsection (1)(e)(iv) was substituted, by section 225(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application from the 2002-03 income year.

Section 138E(1)(e)(iv): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e)(iv) was amended by section 225(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by omitting the expression “183B”, with application as from 1 April 2002.

Subsection (1)(e)(iv) was amended by section 50(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) by omitting the expression “183B,” with application as from 1 April 2002.

Subsection (1)(e)(iv) was amended by section 87(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the expression “177A to 177D,” with application as from 1 July 2002.

Subsection (1)(e)(iv) was amended, as from 1 April 2003, by section 116(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the expression “128A,”.

Subsection (1)(e)(iv) was amended, as from 21 December 2004, by section 122 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “Act; or” for the word “Act,—”.

Subsection (1)(e)(ivb) was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Subsection (1)(e)(v) was inserted, as from 21 December 2004, by section 122 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (1)(ea) and (eb) were inserted, as from 20 May 1999, by section 110(2) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **138F Challenging disputable decisions which are not assessments**

- (1) A disputant may challenge under section 138B an assessment made by the Commissioner that takes account of or relies on a disputable decision, whether or not the disputant has issued a notice of proposed adjustment in respect of the disputable decision.
- (2) Subsection (1) does not apply if—
  - (a) the disputant has issued a notice of proposed adjustment in respect of the disputable decision; and

- (b) the disputant's grounds for challenging the assessment are the same grounds, or substantially the same as the grounds, that were specified in the notice of proposed adjustment.
- (3) In subsection (1), a **disputable decision** does not include an assessment.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended, as from 21 December 2004, by section 123 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words "under section 138B" after the word "challenge".

### **138G Effect of disclosure notice: exclusion of evidence**

- (1) Unless subsection (2) applies, if the Commissioner issues a disclosure notice to a disputant, and the disputant challenges the disputable decision, the Commissioner and the disputant may raise in the challenge only—
  - (a) the facts and evidence, and the issues arising from them; and
  - (b) the propositions of law,—  
that are disclosed in the Commissioner's statement of position and in the disputant's statement of position.
- (2) A hearing authority may, on application by a party to a challenge to a disputable decision, allow the applicant to raise in the challenge new facts and evidence, and new propositions of law, and new issues, if satisfied that—
  - (a) the applicant could not, at the time of delivery of the applicant's statement of position, have, with due diligence, discovered those facts or evidence; or discerned those propositions of law or issues; and
  - (b) having regard to the provisions of section 89A and the conduct of the parties, the hearing authority considers that the admission of those facts or evidence or the raising of those propositions of law or issues is necessary to avoid manifest injustice to the Commissioner or the disputant.
- (3) For the purposes of subsection (1), a statement of position includes any additional information that the Commissioner and

the disputant agree (under section 89M(13)) to add to the statement of position.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **138H Application to strike out proceedings**

The Commissioner may apply to a hearing authority to strike out a challenge commenced by a disputant if the Commissioner considers that the disputant has failed to comply with any of the requirements of section 89M or section 138B.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **138I Payment of disputed tax**

- (1)
- (2) A disputant is not liable to pay—
  - (a) the deferrable tax relating to any tax in dispute; or
  - (b) a shortfall penalty, where the penalty is payable in respect of any tax in dispute; or
  - (c) the interest accruing under Part 7 on that deferrable tax or that shortfall penalty—until the due date for payment of that deferrable tax.
- (2B) Despite subsection (2), the Commissioner may require a disputant to pay all tax in dispute that is the subject of the challenge if the Commissioner considers that there is a significant risk that the tax in dispute will not be paid should the disputant's challenge not be successful.
- (3) The Commissioner must, after the day of determination of final liability, refund or pay to, or apply on behalf of, a disputant whose challenge is successful—
  - (a) the tax in dispute paid in accordance with subsection (2B); and
  - (b) interest accrued on the tax in dispute under Part 7.
- (4) Part 7 applies to interest calculated on deferrable tax on and after 1 April 1997, irrespective of whether the challenge relates to a tax year before the 1997-98 tax year.

- (5) If the challenge relates to the 1996-97 or an earlier tax year, interest must be calculated on deferrable tax on and after the date that the period of deferral starts.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

The heading to section 138I was substituted, as from 1 April 2003, by section 117(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (1) was amended, by section 226(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), by omitting the words “specified in the notice of assessment”, with application as from the 2002-03 income year.

Subsection (1) was repealed, as from 1 April 2003, by section 117(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (2B) was inserted, as from 1 April 2003, by section 117(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (3)(a) and (3)(b) was substituted, as from 1 April 2003, by section 117(4) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsection (4) was inserted by section 73 Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 1 April 1997.

Subsection (4) was amended, as from 1 April 2003, by section 117(5) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “and non-deferrable”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (5) was inserted by section 73 Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 1 April 1997.

Subsection (5) was amended, as from 1 April 2003, by section 117(6) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by omitting the words “or non-deferrable”.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **138J Waiver of payment or security**

*[Repealed]*

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 138J was substituted by section 473 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 138J was substituted, with effect as from 1 October 1996, by section 143(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 138J was repealed, as from 1 April 2003, by section 118 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

### **138K Determination of challenge not to affect other matters**

The determination of a challenge by a hearing authority under this Part—

- (a) relates solely to the matter that is the subject of the disputable decision being challenged; and
- (b) does not affect the right of the Commissioner to make a disputable decision relating to a different matter and to amend the disputable decision being challenged in any way rendered necessary by the later disputable decision.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 138K was substituted, as from 1 October 1996, by section 143(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

### **138L Challenging civil penalties**

- (1) A taxpayer assessed by the Commissioner for a civil penalty—
  - (a) may challenge the penalty in the same way as a taxpayer may challenge the assessment of tax to which the penalty relates; and
  - (b) has the same rights and obligations, in relation to proceedings concerning the penalty, as a person has in relation to proceedings concerning the tax.
- (2) Notwithstanding subsection (1), a taxpayer has no right to challenge—
  - (a) a civil penalty imposed for—

- (i) the late provision of a tax return; or
- (ii) The late payment of tax; or
- (ab) a civil penalty imposed under section 215 of the Kiwi-Saver Act 2006; or
- (b) the percentage applicable to the civil penalty:

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2)(ab) was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 138L(2)(ab): amended, on 1 April 2009, by section 20 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subsection (2)(b) was substituted by section 88 Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

### **138M Wrong PAYE withholding determination a ground for challenge**

A disputant may—

- (a) dispute a notice of proposed adjustment; or
- (b) challenge an assessment—

that is issued by the Commissioner in relation to an amount of tax withheld on the basis of a determination under section RD 3(5) of the Income Tax Act 2007, on the ground that the determination is wrong, whether in fact or in law.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 138M heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 138M: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 138M was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.



**138N Proceedings may be transferred to different hearing authorities**

- (1) If a disputant commences a challenge in the High Court,—
  - (a) the Commissioner may apply to the High Court to have the challenge transferred to a Taxation Review Authority; or
  - (b) the High Court may, of its own motion, transfer the challenge to a Taxation Review Authority.
- (2) If a disputant commences a challenge in a Taxation Review Authority,—
  - (a) the Commissioner may apply to—
    - (i) the authority to transfer a small claims challenge to the general jurisdiction of the Taxation Review Authority; or
    - (ii) the High Court to have the challenge transferred to the High Court; or
  - (b) the Authority may, of its own motion, transfer a small claims challenge to the general jurisdiction of the Taxation Review Authority or to the High Court.
- (3) The High Court may order that any proceedings transferred to the High Court under this section are to be transferred into the Court of Appeal.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**138O Transfer from small claims jurisdiction of Taxation Review Authority**

- (1) If a disputant commences a challenge to a disputable decision in the small claims jurisdiction of a Taxation Review Authority and the Commissioner considers—
  - (a) that the proposed adjustment in dispute between the disputant and the Commissioner will or is likely to arise again in future assessments; or
  - (b) that the challenge involves or may involve significant legal issues of precedent; or
  - (c) that the facts of the challenge are either not clear or are in dispute; or

- (d) for any reason that the Authority acting in its small claims jurisdiction should not determine the challenge,—  
the Commissioner may apply to—
  - (e) the Authority requesting that the challenge be transferred to the general jurisdiction of the Authority; or
  - (f) the High Court requesting that the challenge be transferred to the High Court.
- (2) A Taxation Review Authority acting in its small claims jurisdiction may require a challenge to be transferred to the Authority's general jurisdiction or to the High Court if the Authority considers—
- (a) that the challenge involves or may involve significant legal issues of precedent; or
  - (b) that the facts of the challenge are either not clear or are in dispute; or
  - (c) for any reason, that another hearing authority should hear the challenge.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **138P Powers of hearing authority**

- (1) On hearing a challenge, a hearing authority may—
- (a) confirm or cancel or vary an assessment, or reduce the amount of an assessment, or increase the amount of an assessment to the extent to which the Commissioner was able to make an assessment of an increased amount at the time the Commissioner made the assessment to which the challenge relates; or
  - (b) make an assessment which the Commissioner was able to make at the time the Commissioner made the assessment to which the challenge relates, or direct the Commissioner to make such an assessment.
- (1B) If a taxpayer brings a challenge and proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, a hearing authority must reduce the taxpayer's assessment by the specific amount.

- (2) If the challenge relates to a disputable decision that is not an assessment, the hearing authority—
  - (a) must not make or alter the disputable decision; and
  - (b) may direct the Commissioner to alter the disputable decision to the extent necessary to conform to the decision of the hearing authority with the effect the hearing authority specifies.
- (3) Subject to subsection (4), the Commissioner must make or amend an assessment or other disputable decision in such a way that it conforms to the hearing authority's determination.
- (4) The Commissioner is not required to make or amend an assessment or other disputable decision before the resolution of appeal procedures from the hearing authority.
- (5) The time bars in sections 108, 108A, and 108B do not apply with respect to—
  - (a) a determination of a hearing authority made under subsection (1)(a) or subsection (1B) of this section or an amendment made by the Commissioner to an assessment for the purpose of conforming to such a determination; or
  - (b) an assessment made by a hearing authority under subsection (1)(b) of this section or the Commissioner under subsection (3) of this section.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1B) was inserted by section 119(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a challenge brought as from 26 March 2003.

Subsections (3) and (4) were amended, by section 236(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word "amend" for the word "alter", with application as from the 2002-03 income year.

Subsection (5) was amended, by section 236(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word "amendment" for the word "alteration", with application as from the 2002-03 income year.

Subsection (5)(a) was amended by section 119(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the expression "or subsection (1B)" with application to a challenge brought as from 26 March 2003.

**138Q Challenges designated as test cases**

- (1) The Commissioner may designate a challenge as a test case, if the Commissioner considers that determination of the challenge is likely to be determinative of all or a substantial number of the issues involved in one or more other challenges.
- (2) Test cases are to be heard in the High Court.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**138R Stay of proceedings for similar cases**

- (1) The Commissioner may stay proceedings by issuing a notice notifying a disputant that a challenge is to be stayed because a test case on a similar challenge or objection is to be heard by the High Court.
- (2) The Commissioner may issue a notice staying proceedings under subsection (1) only if—
  - (a) the Commissioner considers that the test case is likely to be determinative of all or a substantial number of the issues in the challenge proposed to be stayed; and
  - (b) the challenge proposed to be stayed has not been determined by a hearing authority.
- (3) When a disputant receives a notice staying proceedings, the disputant may issue a notice requiring that there be no stay of proceedings that notifies the Commissioner that the disputant requires the challenge to be heard even though a test case is to be heard.
- (4) Within 14 days after the Commissioner receives a notice requiring that there be no stay of proceedings, the Commissioner may apply to the High Court for an order that the challenge be stayed pending the determination of the test case or the further order of the Court.
- (5) If a challenge is stayed, the disputant or the Commissioner may apply to the High Court for an order that the challenge cease to be stayed.
- (6) A stay under subsection (1) lapses on the expiry of 14 days following the day on which any of the following occurs:

- (a) the expiry of the 14 day period specified in subsection (4), if the disputant has issued a notice requiring there to be no stay of proceedings and the Commissioner has not within the 14 day period made an application under subsection (4); or
  - (b) the making by the High Court of an order dismissing an application by the Commissioner under subsection (4); or
  - (c) the making by the High Court, on an application under subsection (5), of an order that the challenge cease to be stayed; or
  - (d) the determination of the test case which caused the challenge to be stayed by the expiration of all rights of appeal.
- (7) For so long as a challenge is stayed,—
- (a) any time limits or periods specified in or under this Act (other than in this section) in relation to the challenge are not to apply; and
  - (b) where the stay of a challenge lapses, any time limits or periods so specified are to be treated as if they were extended by the period commencing with the date of the notice staying proceedings, and ending with the day on which the stay lapses.
- (8) The Commissioner may give notices required by this section—
- (a) personally; or
  - (b) by sending a copy of the notice to the disputant by registered post to the disputant at the disputant's usual or last known place of abode or business in New Zealand, in which case it shall be deemed to have been received when in the ordinary course of post it would be delivered; or
  - (c) by service on a solicitor who accepts service in writing on behalf of the disputant, which service shall be deemed for the purposes of this section to be personal service on the disputant; or
  - (d) by effective delivery to an address for service supplied by the disputant to the Commissioner.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **138S Challenge to be heard before Taxation Review Authority**

(1) A challenge to a disputable decision made by the Commissioner under—

- (a) the Student Loan Scheme Act 1992, or any provision of this Act that applies in relation to an employer's obligation under the Student Loan Scheme Act 1992; and
- (b) the Child Support Act 1991, or any provision of this Act that applies in relation to an employer's obligation under the Child Support Act 1991; and
- (c) any other tax law, where that tax law or another tax law specifies that the disputable decision is to be determined by a Taxation Review Authority,—

is to be commenced, heard, and finally determined by a Taxation Review Authority.

(2) Subsection (1) prevails over any other section in this Part.

Part 8A (comprising sections 138A to 138S) was inserted, as from 1 October 1996, by section 42 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **Part 9 Penalties**

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. The previous Part title read as "Additional tax". *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **139 Purposes of this Part**

The purposes of this Part are—

- (a) to encourage taxpayers to comply voluntarily with their tax obligations and to co-operate with the Department; and

- (b) to ensure that penalties for breaches of tax obligations are imposed impartially and consistently; and
- (c) to sanction non-compliance with tax obligations effectively and at a level that is proportionate to the seriousness of the breach.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **139A Late filing penalty for certain returns**

- (1) This section applies to tax returns required to be furnished under sections 33, 41 to 44, and 79 (in this Part, **annual tax returns**), the annual ICA return required to be furnished under section 69(1) and (2)(a) by an Australian ICA company that is not required to furnish a return of income for a tax year, the reconciliation statement required to be provided under regulation 3 of the Accident Rehabilitation and Compensation Insurance (Earnings Definitions) Regulations 1992, and the employer monthly schedule required to be provided under section RD 22(1) to (5) of the Income Tax Act 2007.
- (2) A taxpayer is liable to pay a late filing penalty if—
  - (a) the taxpayer does not complete and provide on time—
    - (i) an annual tax return;
    - (ii) an annual ICA return required to be furnished under section 69(1) and (2)(a);
    - (iii) a reconciliation statement;
    - (iiib) a return required to be furnished under section 57B;
    - (iv) an employer monthly schedule; and
  - (b) The Commissioner notifies the taxpayer that the penalty is payable.
- (3) The late filing penalty for an annual tax return for a taxpayer with net income—
  - (a) below \$100,000, is \$50;
  - (b) between \$100,000 and \$1,000,000 (both figures inclusive), is \$250;
  - (c) above \$1,000,000, is \$500.

- (4) The late filing penalty for annual ICA return or reconciliation statement or employer monthly schedule is \$250.
- (5) Except in the case of a late filing penalty resulting from an employer monthly schedule or from a tax return required under sections 16 to 18 of the Goods and Services Tax Act 1985, the Commissioner must, not less than 30 days before imposing a late filing penalty,—
  - (a) send notice to a taxpayer that a late filing penalty may be imposed if a return specified in the notice is not filed; or
  - (b) publicly notify that a late filing penalty may be imposed on taxpayers who omit to file the required return.
- (6) In the case of a late filing penalty for failing to file an employer monthly schedule by the due date, the Commissioner must—
  - (a) give notice to the taxpayer that a late filing penalty will be payable for a further failure to file an employer monthly schedule on time, if the taxpayer has filed on time all employer monthly schedules due for filing in the period—
    - (i) beginning with the later of 1 April 1999 and the day 12 months before the due date; and
    - (ii) ending before the due date; or
  - (b) give notice to the taxpayer that the penalty is payable, if the taxpayer has not filed on time all employer monthly schedules due for filing in the period referred to in paragraph (a).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 139A heading: amended (with effect from 1 April 1999), on 19 December 2007, by section 241(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 139A(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or any successor to that regulation made under the Accident Insurance Act 1998”.

Subsection (1) was substituted, by section 32(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an em-



employer monthly schedule and a reconciliation statement in relation to tax deductions from source deduction payments made on or after 1 April 1999 and annual tax returns for the 1999-2000 and subsequent income years.

Subsection (1) was amended, as from 1 April 2003, by section 128(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “the annual imputation return required to be furnished under section 69(1) and (1B)(a) by an Australian imputation credit account company that is not required to furnish a return of income for an income year,” before the words “the reconciliation statement”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2)(a) was substituted, by section 32(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an employer monthly schedule and a reconciliation statement in relation to tax deductions from source deduction payments made on or after 1 April 1999 and annual tax returns for the 1999-2000 and subsequent income years.

Subsection (2)(a) was substituted, as from 1 April 2003, by section 128(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 139(2)(a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139A(2)(a)(iiib): inserted, on 1 October 2007, by section 198 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Subsection (4) was substituted, by section 32(3) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an employer monthly schedule and a reconciliation statement in relation to tax deductions from source deduction payments made on or after 1 April 1999 and annual tax returns for the 1999-2000 and subsequent income years.

Section 139(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4) was amended by section 128(3) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “an annual imputation return or” for the word “a”.

Subsection (5) was inserted, as from 23 September 1997, by section 89 Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 139A(5): amended, on 1 April 2008, by section 241(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (5) was amended, by section 32(4) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “Except in the case of a late filing penalty resulting from an employer monthly schedule, the Commissioner must, not less than 30 days before imposing a late filing penalty—” for the words “Not less than 30 days before imposing a late filing penalty, the Commissioner must—” with application to an employer

monthly schedule and a reconciliation statement in relation to tax deductions from source deduction payments made on or after 1 April 1999 and annual tax returns for the 1999-2000 and subsequent income years.

Subsection (5) was amended by section 128(4) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “annual imputation return or” before the words “employer monthly schedule”.

Subsection (5) was amended, as from 21 December 2004, by section 124 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by omitting the words “annual imputation return or”.

Subsection (5)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “written”.

Section 139A(6): added (with effect from 1 April 1999), on 19 December 2007, by section 241(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **139AAA Late filing penalty for GST returns**

- (1) This section applies to a tax return (a **GST return**) required to be furnished by a registered person under sections 16 to 18 of the Goods and Services Tax Act 1985.
- (2) A registered person is liable to pay a late filing penalty if—
  - (a) the registered person does not complete and provide a GST return by the due date for filing the GST return; and
  - (b) the registered person has failed to file on time a GST return due in the period—
    - (i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and
    - (ii) ending before the due date; and
  - (c) the Commissioner notifies the registered person that the penalty is payable.
- (3) The late filing penalty for a GST return for a registered person is—
  - (a) \$250, if on the due date for filing the GST return the registered person accounts for tax payable on an invoice basis or hybrid basis; or
  - (b) \$50, if on the due date for filing the GST return the registered person accounts for tax payable on a payments basis.
- (4) The Commissioner must—

- (a) give notice to the registered person that a late filing penalty will be payable for a further failure to file a GST return on time, if the registered person has filed on time all GST returns due for filing in the period—
  - (i) beginning with the later of 1 April 2008 and the day 12 months before the due date; and
  - (ii) ending before the due date; or
- (b) give notice to the registered person that the penalty is payable, if the registered person has not filed on time all GST returns due for filing in the period referred to in paragraph (a).

Section 139AAA: inserted, on 1 April 2008, by section 242(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **139AA Non-electronic filing penalty**

- (1) This section applies to—
  - (a) an employer who must comply, in a prescribed electronic format, with section RD 22(2) of the Income Tax Act 2007; and
  - (ab) a portfolio investment entity; and
  - (b) a PAYE intermediary.
- (2) A person who is an employer, a portfolio investment entity, a portfolio investor proxy, or a PAYE intermediary is liable to a non-electronic filing penalty if the person furnishes a return required to be in electronic format in a format that is not prescribed.
- (3) Subsection (2) does not apply if the employer is authorised under section 36B(1) to furnish the employer monthly schedule in a format that is not prescribed.
- (4) The non-electronic filing penalty is the greater of \$250 or \$1 for each employee employed at any time during the month to which the employer monthly schedule relates.

Section 139AA was inserted, by section 33(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules required to be furnished as from 1 April 1999.

Subsection (1) was substituted by section 120(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 139AA(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 671(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 139AA(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139AA(1)(ab): inserted, on 1 October 2007, by section 199(1) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 139AA(2): substituted, on 1 October 2007, by section 199(2) of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Subsection (2) was substituted by section 74(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application to employer monthly schedules that must be furnished as from 8 September 1999.

Subsection (2) was substituted by section 120(2)(a) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or a PAYE intermediary” after the words “An employer” with application for pay periods beginning as from 1 April 2004.

Subsection (2) was substituted by section 120(2)(b) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or the PAYE intermediary” after the words “if the employer” with application for pay periods beginning as from 1 April 2004.

### 139B Late payment penalty

- (1) This section applies to a taxpayer if and to the extent that the taxpayer does not pay by the due date (the **default date**) an amount of tax (the **unpaid tax**), calculated by the taxpayer as payable or for which the taxpayer is assessed, and—
- (a) the unpaid tax is provisional tax or a penalty relating to a failure to pay provisional tax;
  - (b) the taxpayer has failed to pay on time an amount of tax due for payment in the period—
    - (i) beginning with the later of 1 April 2008 and the day 2 years before the default date; and
    - (ii) ending before the default date;
  - (c) the taxpayer has paid on time all amounts of tax due for payment in the period referred to in paragraph (b) and—
    - (i) the Commissioner gives the taxpayer a notice setting a further date for payment of the unpaid tax; and

- (ii) the taxpayer does not pay the unpaid tax before the date that is the earlier of the further date and the date that is 1 month after the date of the notice.
- (2) The taxpayer is liable to pay a late payment penalty consisting of—
  - (a) an initial late payment penalty equal to the total of—
    - (i) 1% of the unpaid tax; and
    - (ii) 4% of the amount of tax to pay at the end of the sixth day after the day on which a penalty under subparagraph (i) is imposed; and
  - (b) an incremental late payment penalty equal to 1% of the amount of tax to pay determined on each day that falls 1 month after a day on which a penalty is imposed under—
    - (i) this subsection:
    - (ii) subsection (2A)(a) or (2B) as they were before the enactment of section 243 of the Taxation (Business Taxation and Remedial Matters) Act 2007.
- (2A) *[Repealed]*
- (2B) *[Repealed]*
- (3) An initial late payment penalty is added to the unpaid tax to which it relates—
  - (a) on the day after the default date for the unpaid tax, if it is imposed under subsection (2)(a)(i):
  - (b) at the end of the sixth day after the day referred to in paragraph (a), if it is imposed under subsection (2)(a)(ii).
- (3A) *[Repealed]*
- (3B) The part of an initial late payment penalty imposed under subsection (2)(a)(ii) is not to be added if the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law before the end of the 6th day after the day on which an initial late payment penalty is imposed under subsection (2)(a)(i) and has received the tax withheld or deducted in

- accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers.
- (4) An incremental late payment penalty is to be added to the tax to pay to which it relates on the day after the last day of successive monthly intervals during which the tax to pay remains unpaid.
- (5) If an incremental late payment penalty would, apart from this subsection, be added to any tax to pay on a date that does not exist in a month, the penalty is to be added to the tax to pay on the last day of the month.
- (5A) An incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the Commissioner has exercised powers available under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law and has received the tax withheld or deducted in accordance with the requirements for the month of a notice issued as a result of the Commissioner exercising those powers.
- (5B) A taxpayer is liable to pay a late payment penalty under subsection (2) in relation to a default date if—
- (a) the Commissioner has given the taxpayer a notice of a further date for the payment of unpaid tax under subsection (1)(c)(i); and
  - (b) after giving the notice, the Commissioner becomes aware of a default by the taxpayer that arose before the date of the notice; and
  - (c) the further date for payment referred to in paragraph (a)—
    - (i) falls outside the period referred to in subsection (1)(b); and
    - (ii) should have been given in relation to the default referred to in paragraph (b).
- (5C) If the taxpayer enters into an instalment arrangement for the default under section 177B and a late payment penalty is imposed under section 139BA(1), the taxpayer is treated for the purposes of this section as paying on time, to the extent of the default, the amount of tax due for payment.
- (6) In this section and section 139BA—

- (a) the term **tax to pay** means, at any time, an amount equal to the unpaid tax together with any late payment penalty that has been imposed in whole or in part in respect of the unpaid tax, to the extent that at that time the amount remains unpaid:
- (b) the unpaid tax is deemed to be the last part of any tax to pay, that a taxpayer pays:
- (c) The term **unpaid tax** includes an amount of tax that must be withheld or deducted and paid to the Commissioner under a tax law but does not include a late payment penalty or a shortfall penalty imposed under section 141ED.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 139B(1): substituted, on 1 April 2008, by section 243(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 139B(2): substituted, on 1 April 2008, by section 243(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2)(b) was amended by section 72(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) by substituting the expression “1%” for the expression “2%”, with application to late payment penalties imposed as from 1 April 2001.

Subsection (2) was substituted, by section 51(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application to late payment penalties imposed as from 1 April 2002.

Section 139B(2A): repealed, on 1 April 2008, by section 243(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsections (2A) and (2B) were inserted, by section 51(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application to late payment penalties imposed as from 1 April 2002.

Section 139B(2B): repealed, on 1 April 2008, by section 243(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2B) was amended by section 88(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the words “, or section (2) as it was before the enactment of section 51(1) of the Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001” after the words “this subsection” with application to late payment penalties imposed as from 1 April 2002.

Section 139B(3): substituted, on 1 April 2008, by section 243(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3) was substituted by section 51(2) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4), with application to late payment penalties imposed as from 1 April 2002.

Section 139B(3A): repealed, on 1 April 2008, by section 243(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsections (3A) and (3B) were inserted, by section 51(3) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application to late payment penalties imposed as from 1 April 2002.

Section 139B(3B): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3B)(a) was amended by section 88(2) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by omitting the words “and complies with all of their obligations under the instalment arrangement” with application to instalment arrangements entered into as from 1 April 2002.

Subsection (3B)(b) was amended by section 88(3) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the words “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” with application to late payment penalties imposed as from 1 April 2002.

Subsection (3B) was substituted by section 88(4) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 1 December 2002.

Section 139(3B): amended, on 1 April 2008, by section 243(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 139(3B): amended, on 1 April 2008, by section 243(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (5A) was inserted by section 51(4) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application to instalment arrangements entered into as from 1 April 2002.

Subsection (5A)(b) was amended by section 88(5) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the words “and has received the tax deducted in accordance with the requirements of a notice issued as a result of the Commissioner exercising those powers” with application to instalment arrangements entered into as from 1 April 2002.

Subsection (5A) was substituted by section 88(6) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 1 December 2002.

Section 139B(5A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139B(5B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 672(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 139B(5C): inserted (with effect on 1 April 2008), on 6 October 2009, by section 672(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).



Subsection (6) was amended by section 88(7) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the words “and section 139BA” with application as from 1 July 2002.

Section 139B(6)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 672(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 139B(6)(c)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **139BA Imposition of late payment penalties when financial relief sought**

- (1) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief before the due date, the Commissioner must impose the late payment penalty under section 139B(2)(a)(i) on unpaid tax but must not impose the late payment penalty under section 139B(2)(a)(ii).
- (2) If a taxpayer has outstanding tax and contacts the Commissioner seeking financial relief on or after the due date, the Commissioner must not impose an incremental late payment penalty on unpaid tax on and after the date of the request.
- (3) Subsections (1) and (2) apply until the earlier of—
  - (a) the date that the Commissioner makes a decision not to give financial relief; and
  - (b) the last day of the response period allowed by section 177(4) if the taxpayer does not provide the information sought or respond to a counter offer.
- (4) If an instalment arrangement is entered into, an incremental late payment penalty is not to be added if, for a month during which the tax to pay remains unpaid, the taxpayer complies with all of their obligations under the arrangement.
- (5) If an instalment arrangement is cancelled on the basis of false or misleading information provided by the taxpayer, the Commissioner must impose those late payment penalties not imposed as if the instalment arrangement had not been entered into.
- (6) If financial relief is not given, the Commissioner must impose those late payment penalties not imposed as if the request for financial relief had not been made.

Section 139BA was inserted by section 89(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 1 December 2002.

Section 139BA(1): amended, on 1 April 2008, by section 244(1)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 139BA(1): amended, on 1 April 2008, by section 244(1)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 139BA(3)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 673(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### 139C Late payment penalty and provisional tax

- (1) A late payment penalty will only arise on provisional tax that is unpaid at the expiry of an instalment date, or a Commissioner-set instalment date, to the extent that the provisional tax payable exceeds the provisional tax paid. Subsection (1B) overrides this subsection.
- (1B) Subsection (1C) applies if—
- (a) a person makes an election under section RM 11 of the Income Tax Act 2007 that an amount of a GST refund (**elected amount**) be used to pay an amount of provisional tax due on an instalment date; and
  - (b) the Commissioner reassesses the amount of the GST refund as being less than the elected amount.
- (1C) The person is not liable for a late payment penalty in relation to the amount of any shortfall in the person's payment of provisional tax that arises as a result of the reassessment referred to in subsection (1B) until—
- (a) the date that is 30 days after the date on which the Commissioner gives notice of the reassessment, if the Commissioner does not set a date under paragraph (b); or
  - (b) a date set by the Commissioner that is later than the date referred to in paragraph (a).
- (2) In subsection (1)—
- Commissioner-set instalment date** means a date specified by the Commissioner under section 119(4)(a)
- Provisional tax paid**, in respect of an instalment date or a Commissioner-set instalment date, means the amount of provisional tax paid by the provisional taxpayer on or before the instalment date or Commissioner-set instalment date, in relation

to that instalment date or Commissioner-set instalment date; and includes any amount of provisional tax—

- (a) paid in excess of the amount of provisional tax payable on any earlier instalment date or Commissioner-set instalment date for that tax year; and
- (b) not credited to the amount of provisional tax payable on any earlier instalment date or Commissioner set instalment date for that tax year:

Provisional tax paid: paragraphs (a) and (b) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**Provisional tax payable—**

- (a) in respect of an instalment date and a taxpayer to whom section RC 10 of the Income Tax Act 2007 applies, means the lesser of:
  - (i) the amount calculated as payable under section RC 10 of that Act ; and
  - (ii) the amount calculated as payable under section RC 10 of that Act if the taxpayer’s residual income tax is substituted for the amount of provisional tax payable under section RC 5 of that Act:
- (aa) in respect of an instalment date and a taxpayer to whom sections RC 10 and RC 21 of the Income Tax Act 2007 applies, means the lesser of—
  - (i) the amount calculated as payable under sections RC 10 and RC 21 of that Act; and
  - (ii) the amount calculated as payable under sections RC 10 and RC 21 of that Act if the taxpayer’s residual income tax is substituted for item **residual income tax** in the formula in section RC 10(2) of that Act.
- (ab) for an instalment date and a taxpayer to whom section RC 11 of the Income Tax Act 2007 applies, means the lesser of—
  - (i) the amount calculated under section RC 11 of that Act:
  - (ii) the amount calculated as payable under section RC 11 of that Act, if the GST ratio is substituted for a GST ratio which is calculated using the taxpayer’s residual income tax for the tax year and

taxable supplies for the corresponding income year:

- (b) in respect of a Commissioner-set instalment date, means the provisional tax payable on the Commissioner-set instalment date in accordance with section 119(4)(a).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 139C(1): amended, on 1 October 2007, by section 247(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 139C(1B): inserted, on 1 October 2007, by section 247(2) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 139C(1B)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(1C): inserted, on 1 October 2007, by section 247(2) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (a) of this definition was substituted, by section 73(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from the 1998-99 income year.

Section 139C(2) **provisional tax payable** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(2) **provisional tax payable** paragraph (a): amended, on 1 October 2007, by section 247(3)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (a) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 139C(2) **provisional tax payable** paragraph (a)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(2) **provisional tax payable** paragraph (a)(i): amended, on 1 October 2007, by section 247(3)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (a)(i) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of that Act”.

Section 139C(2) **provisional tax payable** paragraph (a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(2) **provisional tax payable** paragraph (a)(ii): amended, on 1 October 2007, by section 247(3)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 139C(2) **provisional tax payable** paragraph (a)(ii): amended, on 1 October 2007, by section 247(3)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (a)(ii) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of that Act” after the words “section MB 5”.

provisional tax payable: paragraph (a)(ii) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “of that Act” for the words “, or sections MB 2AA or MB 2AB”.

provisional tax payable: paragraph (aa) of this definition was inserted, by section 73(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from the 1998-99 income year.

Section 139C(2) **provisional tax payable** paragraph (aa): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(2) **provisional tax payable** paragraph (aa): amended, on 1 October 2007, by section 247(3)(d) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (aa) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 139C(2) **provisional tax payable** paragraph (aa)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(2) **provisional tax payable** paragraph (aa)(i): amended, on 1 October 2007, by section 247(3)(d) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (aa)(i) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of that Act”.

Section 139C(2) **provisional tax payable** paragraph (aa)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 139C(2) **provisional tax payable** paragraph (aa)(ii): amended, on 1 October 2007, by section 247(3)(d) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 139C(2) **provisional tax payable** paragraph (aa)(ii): amended, on 1 October 2007, by section 247(3)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

provisional tax payable: paragraph (aa)(ii) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of that Act” after the words “section MB 5A” and after the words “MB 5A(7)”.

Section 139C(2) **provisional tax payable** paragraph (ab): inserted (with effect from 1 October 2007), on 19 December 2007, by section 245(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**140 Where another person withholds RWT**

For the purposes of determining a person's liability to pay a late payment penalty, the person is treated as having withheld or accounted for an amount of tax if—

- (a) they are liable to pay the late payment penalty for—
  - (i) not withholding resident withholding tax (RWT) under the RWT rules; or
  - (ii) not accounting for RWT under the RWT rules; and
- (b) they can satisfy the Commissioner that another person, under the RWT rules,—
  - (i) withheld the RWT; or
  - (ii) accounted for the RWT.

Section 140: substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**140A Underestimation penalty where income tax underestimated as at final instalment date**

*[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 90(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by omitting the word “applicable”. *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (2) was substituted by section 90(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 140A was repealed by section 91 Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application as from the 1998-99 income year.

**140B Imputation penalty tax payable where end of year debit balance**

- (1) A company that is liable to pay further income tax under section OB 65 or OC 30 of the Income Tax Act 2007 in respect of an end of year debit balance or imputation additional tax under section OB 72 of that Act is also liable to pay a special tax known as imputation penalty tax.
- (2) The amount of the imputation penalty tax payable by a company is 10% of the amount of—
  - (a) further income tax that gives rise to the liability for further imputation penalty tax:
  - (b) imputation additional tax that gives rise to the liability for further imputation penalty tax.
- (3) The amount given by subsection (2) for the year ending 31 March 2010 is reduced by the amount of imputation penalty tax payable under section 140BB.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 140B(1): amended (with effect on 30 June 2009), on 6 October 2009, by section 674(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140B(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 16 November 2004, by section 146(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by inserting the words “or additional income tax under section ME 9C of that Act” after the words “debit balance”.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was substituted, as from 16 November 2004, by section 146(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 140(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 140B(3): added (with effect from 1 October 2007), on 19 December 2007, by section 246 (1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

**140BB Transitional imputation penalty tax payable in some circumstances**

- (1) This section applies when a company has an end of year debit balance under section OA 3(3) and (4) of the Income Tax Act 2007 for its imputation credit account as at 31 March 2010, if the company is treated, for the purposes of this section, as having only the balances and adjustments referred to in subsections (1B) and (1C).
- (1B) For the purposes of subsection (1), for the transitional period, the following adjustments must be made to the company's ICA balance at the end of the company's 2007–08 income year for transactions occurring after the end of that income year:
- (a) first, the company must subtract any overpayment of income tax for the 2007–08 or earlier income year in which the company was an ICA company:
  - (b) secondly, the company must subtract—
    - (i) any payment for an income year after the 2007–08 income year:
    - (ii) any amount that is or would be refundable for an income year after the 2007–08 income year:
  - (c) thirdly, the company must add any income tax paid for the 2007–08 or earlier income year in which the company was an ICA company.
- (1C) For the purposes of subsection (1), the company must include in its ICA balance the following debits arising in the transitional period for transactions occurring after the end of the company's 2007–08 income year:
- (a) any debit arising from a dividend paid under section OZ 8 of the Income Tax Act 2007 when the ratio is greater than 30/70:
  - (b) any debit that relates to the company's ICA balance at the end of the company's 2007–08 income year—
    - (i) including any adjustment under subsection (1B):
    - (ii) excluding any debit for an imputation credit attached to a dividend at an imputation ratio of 30/70 or less.
- (2) The company is liable for a special tax known as imputation penalty tax.



- (3) The amount of imputation penalty tax is 10% of the positive difference between zero and the end of year debit balance described in subsection (1).
- (4) Despite subsection (2), the company is not liable for imputation penalty tax for the transitional period unless it pays a dividend with imputation credits attached when—
- (a) the imputation ratio is greater than 30/70; and
  - (b) the payment is made after the earlier of—
    - (i) the date on which the company's 2007–08 return of income was filed; or
    - (ii) 25 March 2009.

Section 140BB: inserted (with effect from 1 October 2007), on 19 December 2007, by section 247(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 140BB heading: amended (with effect on 1 October 2007), on 6 October 2009, by section 675(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140BB(1): amended (with effect on 1 October 2007), on 6 October 2009, by section 675(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140BB(1)(a): repealed (with effect on 1 October 2007), on 6 October 2009, by section 675(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140BB(1)(b): repealed (with effect on 1 October 2007), on 6 October 2009, by section 675(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140BB(1B): inserted (with effect on 1 October 2007), on 6 October 2009, by section 675(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140BB(1C): inserted (with effect on 1 October 2007), on 6 October 2009, by section 675(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140BB(4): added (with effect on 1 October 2007), on 6 October 2009, by section 675(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **140C FDP penalty tax payable where end of year debit balance** *[Repealed]*

Section 140C: repealed (with effect on 30 June 2009), on 6 October 2009, by section 676(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application

of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 140C heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 140C(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 140C(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 140C(3): added (with effect from 1 October 2007), on 19 December 2007, by section 248(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **140CA Transitional FDP penalty tax payable in some circumstances**

*[Repealed]*

Section 140CA: repealed (with effect on 30 June 2009), on 6 October 2009, by section 678(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA: inserted (with effect from 1 October 2007), on 19 December 2007, by section 249(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 140CA heading: amended (with effect on 1 October 2007), on 6 October 2009, by section 677(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA(1): amended (with effect on 1 October 2007), on 6 October 2009, by section 677(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA(1)(a): repealed (with effect on 1 October 2007), on 6 October 2009, by section 677(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA(1)(b): repealed (with effect on 1 October 2007), on 6 October 2009, by section 677(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA(1B): inserted (with effect on 1 October 2007), on 6 October 2009, by section 677(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA(1C): inserted (with effect on 1 October 2007), on 6 October 2009, by section 677(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 140CA(4): added (with effect on 1 October 2007), on 6 October 2009, by section 677(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**140CB Maori authority distribution penalty tax payable where end of year debit balance**

- (1) A Maori authority that is liable to pay further income tax under sections OK 21 and OK 22 of the Income Tax Act 2007 for an end of year debit balance is also liable to pay a special tax known as Maori authority distribution penalty tax.
- (2) The amount of the Maori authority distribution penalty tax is 10% of the amount of further income tax that gives rise to the liability for the Maori authority distribution penalty tax.

Section 140CB was inserted by section 121(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004-05 income year.

Section 140CB(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

**140D Application of other provisions of Act to imputation penalty tax and dividend withholding payment penalty tax**

*[Repealed]*

Section 140D: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**140DB Application of other provisions of Act to Maori authority distribution penalty tax**

*[Repealed]*

Section 140DB: repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**141 Tax shortfalls**

- (1) Tax shortfalls are to be calculated by the Commissioner in accordance with this section.
- (2) A tax shortfall calculation is required each time a taxpayer is liable to pay a shortfall penalty, subject to section 141AA(1).
- (3) A separate tax shortfall calculation is required—
  - (a) for each return period; and
  - (b) for each tax type; and
  - (c) for each tax position taken by a taxpayer.

- (4) Each tax deemed to be another tax is a separate tax type.
- (5) If, in a return period—
- (a) a taxpayer is liable to pay one or more shortfall penalties in respect of the same tax type; and
  - (b) the taxpayer's liability to the tax is overstated in one or more respects—
- the tax shortfall for a tax type shall be calculated by—
- (c) setting off the tax effects of the overstatements against the understatement, in the case of one tax shortfall; and
  - (d) setting off the tax effects of the overstatements pro-rated against the understatements, in the case of more than one tax shortfall.
- (6) If—
- (a) a taxpayer's tax position in respect of a tax type (in this subsection referred to as **tax one**) in a return period is adjusted by the Commissioner, and the tax effect of the adjustment is a tax shortfall; and
  - (b) as a result or consequence of the adjustment, the Commissioner also adjusts the taxpayer's tax position in respect of another type of tax (in this subsection referred to as **tax two**) in the same return period, and the tax effect of the further adjustment is an entitlement to a refund or to an increased refund of tax,—
- the Commissioner may, for the purpose of imposing a penalty, treat an amount up to the refund, or increased refund, of tax two as though it were tax one paid by the taxpayer in the return period, and in so doing reduce the tax shortfall for tax one.
- (7) If—
- (a) a taxpayer's tax position in respect of a tax type in a return period is adjusted by the Commissioner, and the tax effect of the adjustment is a tax shortfall; and
  - (b) linked to the adjustment, the Commissioner adjusts another taxpayer's tax position in respect of the same tax type in the same return period, and the tax effect of the further adjustment is an entitlement to a refund or an increased refund of tax or a reduction in tax to pay; and
  - (c) the 2 taxpayers are associated persons within the meaning of sections YB 2, YB 8 to YB 14, YB 16, YB 17, and YB 19 of the Income Tax Act 2007,—

the Commissioner may, for the purpose of imposing a penalty, treat an amount up to the refund, or increased refund, or reduction, of tax as though it were tax paid by the taxpayer referred to in paragraph (a) in the return period, and in so doing reduce that taxpayer's tax shortfall.

- (7B) The Commissioner may exercise the discretion under subsection (7) in relation to a taxpayer and an associated person having a different return period if—
- (a) subsection (7) would apply to the taxpayer in the absence of this subsection if the associated person's return period were the same as the taxpayer's return period; and
  - (b) the taxpayer's return period affected by the adjustment referred to in subsection (7)(a) overlaps the associated person's return period affected by the adjustment referred to in subsection (7)(b); and
  - (c) the taxpayer's tax position is not an abusive tax position and does not involve evasion or a similar act.
- (7C) Subsection (7D) applies if—
- (a) the Commissioner makes an adjustment to a taxpayer's tax position (**taxpayer A**) for a tax credit under section LH 2 of the Income Tax Act 2007 relating to internal software development as that term is defined in section LH 17 of that Act; and
  - (b) the adjustment described in paragraph (a) results in a tax shortfall; and
  - (c) the Commissioner makes an adjustment to another taxpayer's tax position (**taxpayer B**) for a tax credit under section LH 2 of that Act relating to internal software development as defined in section LH 17 of that Act; and
  - (d) the adjustment described in paragraph (c) is for the same tax year as the adjustment described in paragraph (a); and
  - (e) for taxpayer B, an entitlement to an amount of refund or increased refund of tax (the **refund amount**) results from the adjustment described in paragraph (c); and
  - (f) for the period to which the adjustments described in paragraphs (a) and (c) relate, taxpayer A and taxpayer B are members of the same internal software development

- group, as that term is defined in section LH 17 of that Act; and
- (g) the tax credits described in paragraphs (a) and (c) relate to expenditure or depreciation loss under subpart LH incurred while taxpayer A and taxpayer B are members of the same internal software development group, as that term is defined in section LH 17 of that Act.
- (7D) If this subsection applies because of subsection (7C) of this Act, then, for the purposes of imposing a penalty, the Commissioner may treat an amount that is less than or equal to taxpayer B's refund amount, described in subsection (7C)(e), as an amount of tax paid by taxpayer A. Treating the amount as tax paid by taxpayer A for the purposes of imposing a penalty reduces taxpayer A's shortfall.
- (8) The Commissioner may treat the companies in a wholly-owned group as if they were a single taxpayer for the purposes of determining a tax shortfall.
- (9) If, in the application of subsection (6), 2 types of tax have different return periods, the Commissioner may, for the purpose of determining a tax shortfall, specify that part of one or more return periods for one of the tax types is to be treated as the same return period for the other tax type.
- (10) If—
- (a) in a return period, a taxpayer takes a taxpayer's tax position—
- (i) in respect of, or as a consequence of entering into, an arrangement; or
- (ii) in respect of an article, item, or matter; and
- (b) in the same return period, the taxpayer takes a similar or identical taxpayer's tax position—
- (i) in respect of, or as a consequence of entering into, a similar or identical arrangement; or
- (ii) in respect of a similar or identical article, item, or matter,—
- the tax shortfalls arising from the taxpayer's tax positions are to be aggregated and deemed to be one tax shortfall.

- (11) *[Repealed]*
- (12) The tax effect of a tax position taken by a taxpayer in a return period is to be calculated having regard to—
- (a) the marginal rate or rates of tax applicable to the taxpayer during the return period; and
  - (b) where the taxpayer has no tax to pay in the return period, the rate of tax or lowest marginal rate of tax that would apply to the taxpayer during the return period, if the taxpayer had tax to pay.
- (12A) Where a life insurer derives policyholder income in a tax year and the life insurer's tax position in respect of the policyholder base income tax liability gives rise to a tax shortfall, the Commissioner shall not assess under sections 141A to 141EB a penalty on the proportion of the tax shortfall that is attributable to the life insurer's tax position in respect of the amount of underwriting income represented by underwriting result in the formula in section EY 43(1) of the Income Tax Act 2007.
- (13) In this section, **tax** does not include a civil penalty.
- (14) For the purposes of determining the amount of a tax shortfall in relation to an instalment date and a provisional taxpayer, the tax shortfall shall be the difference between—
- (a) the lesser of—
    - (i) the amount of provisional tax payable on the instalment date if an estimate had not applied at that instalment date; and
    - (ii) the amount that would have been payable on that instalment date if the taxpayer's provisional tax payable for the tax year had been the taxpayer's residual income tax liability for the tax year; and
  - (b) the amount of provisional tax payable on that instalment date as determined by the estimate applying as at that instalment date.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended, as from 21 December 2004, by section 125(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “, subject to section 141AA(1)” after the word

“penalty” with application for withholding payments made on or after 1 April 2005.

Subsection (3) was substituted by section 92(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (5) was substituted by section 92(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 141(7): amended, on 1 April 2008, by section 250(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141(7)(b): amended, on 1 April 2008, by section 250(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141(7)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (7)(c) was amended by section 74(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) by substituting the expression “section OD 8(1)” for the expression “section OD 8”, with application as from 10 October 2000.

Subsection (7)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 141(7B): inserted, on 1 April 2008, by section 250(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141(7C): inserted, on 19 December 2007, by section 250(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141(7D): inserted, on 19 December 2007, by section 250(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (9) was amended by section 92(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by substituting the words “If, in the application of subsection (6),” for the word “If”. *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (11) was substituted by section 474(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (11) was repealed, by section 227 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the first day of the 2002-03 income year.

Subsection (12A) was inserted by section 474(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 141(12A): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (12A) was amended by section 123(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “141EB” for the expression “141E” with application to an arrangement that a taxpayer enters into as from 26 March 2003.



Subsection (12A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (12A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “underwriting result in the formula in section EY 42(1) of the Income Tax Act 2004” for the words “item ‘u’ in the formula in section CM 15(1)”.

Subsection (14) was inserted by section 92(4) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (14) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**141AA Shortfall penalty if non-resident contractor relieved from all liability to pay tax on contract payment**

- (1) If a person makes a schedular payment that is a contract payment to a person who is a non-resident contractor and the non-resident contractor is not liable to pay income tax on the contract payment, whether because of a double tax agreement or otherwise, the person who makes the contract payment to the non-resident contractor is liable to pay a shortfall penalty of \$250 for each return period—
  - (a) for which the person is required to deliver to the Commissioner an employer monthly schedule; and
  - (b) in which the person fails to withhold an amount of tax that is required from a contract payment to the non-resident contractor.
- (2) A person who is liable to pay a shortfall penalty under subsection (1) is not liable to pay a shortfall penalty based on the tax shortfall that, but for this section, would be calculated under section 141 in relation to the amount of tax required to be withheld.
- (3) The liability under subsection (1) of a person is limited to a total of \$1,000 for each return period for which the person is required to deliver to the Commissioner an employer monthly schedule.

Section 141AA was inserted, as from 21 December 2004, by section 126 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for withholding payments made as from 1 April 2005.

Section 141AA(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141AA(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141AA(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **141A Not taking reasonable care**

- (1) A taxpayer is liable to pay a shortfall penalty if the taxpayer does not take reasonable care in taking a taxpayer's tax position (referred to as **not taking reasonable care**) and the taking of that tax position by that taxpayer results in a tax shortfall.
- (2) The penalty payable for not taking reasonable care is 20% of the resulting tax shortfall.
- (2B) A taxpayer who, in taking a tax position, relies on an action or advice of a tax advisor engaged by the taxpayer, or by a company in the same group of companies as the taxpayer, takes reasonable care in relying on the action or advice except if the taxpayer—
  - (a) is the employer of the tax advisor:
  - (b) does not provide to the tax advisor adequate information relating to the tax position:
  - (c) does not provide to the tax advisor adequate instructions relating to the tax position:
  - (d) has reason to believe that the action or advice is incorrect:
  - (e) has previously, for a period ending less than 4 years before the beginning of the period to which the tax position relates, had a tax shortfall for the same type of tax arising from a corresponding tax position and does not take reasonable care to avoid the further tax shortfall.
- (3) A taxpayer who takes an acceptable tax position is also a taxpayer who has taken reasonable care in taking the taxpayer's tax position.
- (4) Subsection (3) and section 141B(1B) do not exclude a taxpayer who makes a mistake in the calculation or recording of numbers in a return from being liable for a penalty for not taking reasonable care.
- (5) If the Commissioner assesses a shortfall penalty under this section in relation to a tax position of a taxpayer after deciding

under section 141KB(1) that the taxpayer is not liable to pay a shortfall penalty that has been assessed under section 141B in relation to the tax position, the liability for the shortfall penalty under this section is treated as arising at the time of the decision under section 141KB(1).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 93(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by substituting the words “a taxpayer’s tax position” for the words “the taxpayer’s tax position”. *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 141A(2B): inserted, on 1 April 2008, by section 251(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3) was substituted by section 93(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (3) was amended by section 124(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “takes an acceptable tax position” for the words “, in taking a taxpayer’s tax position, has used an acceptable interpretation of the tax law” with application to a tax position that a taxpayer takes as from 1 April 2003.

Subsection (4) was inserted by section 124(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Section 141A(5): added, on 1 October 2007, by section 250(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

### **141B Unacceptable tax position**

- (1) A taxpayer takes an unacceptable tax position if, viewed objectively, the tax position fails to meet the standard of being about as likely as not to be correct.
- (1B) A taxpayer does not take an unacceptable tax position merely by making a mistake in the calculation or recording of numbers used in, or for use in preparing, a return.
- (1C) A taxpayer does not take an unacceptable tax position if—
  - (a) the taxpayer adopts IFRSs for the purposes of financial reporting before the 2007–08 income year; and
  - (b) the taxpayer’s tax position relates to a period—

- (i) starting on and including the first day of the first income year for which a person adopts IFRSs for the purposes of financial reporting; and
    - (ii) finishing on and including the last day of the 2006–07 income year; and
  - (c) a tax shortfall for a return period in the period described in paragraph (b) arises from actual or potential accounting under IFRSs; and
  - (d) the tax shortfall is due to an application of IFRSs which, if viewed objectively, passes the standard of being about as likely as not to represent acceptable accounting practice under IFRSs; and
  - (e) the taxpayer has fully-disclosed the IFRS-related tax position.
- (2) A taxpayer is liable to pay a shortfall penalty if the taxpayer takes an unacceptable tax position in relation to income tax and the tax shortfall arising from the taxpayer's tax position is more than both—
- (a) \$50,000;
  - (b) 1 % of the taxpayer's total tax figure for the relevant return period.
- (3) For the purposes of this section, a taxpayer's total tax figure is—
- (a) the amount of tax paid or payable by the taxpayer in respect of the return period for which the taxpayer takes the taxpayer's tax position before, in the case of income tax, any group offset election or subvention payment; or
  - (b) where the taxpayer has no tax to pay in respect of the return period, an amount equal to the product of—
    - (i) the net loss of the taxpayer in respect of the return period, ascertained in accordance with the provisions of the Income Tax Act 2007 and treated as having a positive value; and
    - (ii) the basic rate of income tax for companies in the relevant return period,—that is shown as tax paid or payable, or as net losses of the taxpayer, or as a refund to which the taxpayer is entitled, in a tax return provided by the taxpayer for the return period.

- (4) Where subsection (2) applies, the shortfall penalty payable is 20% of the resulting tax shortfall.
- (5) For the purposes of this section, the question whether any tax position is acceptable or unacceptable shall be determined as at the time at which the taxpayer takes the taxpayer's tax position.
- (6) The time at which a taxpayer takes a tax position for a return period is—
  - (a) the time at which the taxpayer provides the return containing the taxpayer's tax position, if the taxpayer provides a tax return for the return period;
  - (b) the due date for providing the tax return for the return period, if the taxpayer does not provide a tax return for the return period.
- (7) The matters that must be considered in determining whether the taxpayer has taken an unacceptable tax position include—
  - (a) the actual or potential application to the tax position of all the tax laws that are relevant (including specific or general anti-avoidance provisions); and
  - (b) decisions of a court or a Taxation Review Authority on the interpretation of tax laws that are relevant (unless the decision was issued up to one month before the taxpayer takes the taxpayer's tax position).
- (8) For the purpose of determining whether the resulting tax shortfall is in excess of the amounts specified in subsection (2),—
  - (a) a tax return provided by—
    - (i) a partnership; or
    - (ii) any other group of persons that derive or incur amounts jointly or that are assessed together,—  
is to be treated as if it were a tax return of every taxpayer who is a partner in the partnership or person in such group; and
  - (b) the tax rate in a return period applying to a partnership is deemed to be the same as the basic rate of income tax for companies for the relevant period.
- (9) The amounts or the percentage specified in subsection (2) may be varied from time to time by the Governor-General by Order in Council.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

The heading to section 141B was substituted by section 125(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Subsection (1) was substituted by section 94(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (1) was substituted by section 125(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Subsection (1B) was inserted by section 125(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Section 141B(1B): amended, on 1 April 2008, by section 252(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141B(1C): inserted (with effect from 1 April 2007), on 19 December 2007, by section 252(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141B(2): substituted, on 1 April 2008, by section 252(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2) was substituted by section 125(4) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Subsection (3) was amended by section 475(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “that is shown as tax paid or payable, or as net losses of the taxpayer, or as a refund to which the taxpayer is entitled, in a tax return provided on time by the taxpayer for the return period.” for the words after paragraph (b) with application as from the 1997-98 income year.

Subsection (3) was amended by section 94(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by omitting the words “on time”. *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (3)(a) was amended by section 94(3) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by inserting the words “, in the case of income tax,”. *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 141(3)(b): substituted, on 1 April 2008, by section 252(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3)(b)(i)(A) and (B) was substituted by section 475(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (3)(b)(i)(A) was substituted by section 94(4) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (3)(b)(i)(A) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (5) was amended, as from 21 June 2005, by section 147(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “tax position” for the words “interpretation of a tax law”.

Subsection (6) was substituted, as from 21 June 2005, by section 147(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Subsection (7) (that part before paragraph (a)) was substituted by section 125(5) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Section 141B(8): amended (with effect on 1 April 2008), on 6 October 2009, by section 680(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (8)(a)(ii) was substituted by section 475(3) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (8)(b) was substituted by section 475(4) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

### **141C Gross carelessness**

- (1) A taxpayer is liable to pay a shortfall penalty if the taxpayer is grossly careless in taking a taxpayer’s tax position (referred to as **gross carelessness**).
- (2) The penalty payable for gross carelessness is 40% of the resulting tax shortfall.
- (3) For the purposes of this Part, gross carelessness means doing or not doing something in a way that, in all the circumstances, suggests or implies complete or a high level of disregard for the consequences.
- (4) A taxpayer who takes an acceptable tax position is also a taxpayer who has not been grossly careless in taking the taxpayer’s tax position.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 95(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74) by substituting the words “a taxpayer’s tax position” for the words “the taxpayer’s tax position”. See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (4) was inserted by section 95(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74). See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (4) was amended by section 126(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “takes an acceptable tax position” for the words “, in taking a taxpayer’s tax position, has used an acceptable interpretation of tax law” with application to a tax position that a taxpayer takes as from 1 April 2003.

#### **141D Abusive tax position**

- (1) The purpose of this section is to penalise those taxpayers who, having taken an unacceptable tax position, have entered into or acted in respect of arrangements or interpreted or applied tax laws with a dominant purpose of taking, or of supporting the taking of, tax positions that reduce or remove tax liabilities or give tax benefits.
- (2) A taxpayer is liable to pay a shortfall penalty if the taxpayer takes an abusive tax position (referred to as an **abusive tax position**).
- (3) The penalty payable for taking an abusive tax position is 100% of the resulting tax shortfall.
- (3B) The penalty payable for taking an abusive tax position is reduced to 20% of the resulting tax shortfall if—
  - (a) the taxpayer is a party to an arrangement to which section 141EB applies and becomes liable to a shortfall penalty for an abusive tax position as a result of that arrangement, irrespective of whether a promoter penalty has been imposed in respect of the arrangement; and
  - (b) the sum of the tax shortfall from the arrangement for the taxpayer and the tax shortfalls from the arrangement for persons with whom the taxpayer is associated under subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions) is less than \$50,000; and



- (c) the taxpayer has independent advice stating that the taxpayer's tax position is not an abusive tax position.
- (4) This section applies to a taxpayer if the taxpayer has taken an unacceptable tax position.
- (5) Section 141B(6) applies for determining the time when a taxpayer takes an abusive tax position.
- (6) A taxpayer's tax position may be an abusive tax position if the tax position is an incorrect tax position under, or as a result of, either or both of—
  - (a) a general tax law; or
  - (b) a specific or general anti-avoidance tax law.
- (7) For the purposes of this Part and section 177C, an **abusive tax position** means a tax position that,—
  - (a) is an unacceptable tax position at the time at which the tax position is taken; and
  - (b) viewed objectively, the taxpayer takes—
    - (i) in respect, or as a consequence, of an arrangement that is entered into with a dominant purpose of avoiding tax, whether directly or indirectly; or
    - (ii) where the tax position does not relate to an arrangement described in subparagraph (i), with a dominant purpose of avoiding tax, whether directly or indirectly.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 127(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words "having taken an acceptable tax position" for the words "having applied an unacceptable interpretation to a tax law" with application to a tax position that a taxpayer takes as from 1 April 2003.

Subsection (3B) was inserted by section 127(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to arrangements entered into as from 26 March 2003.

Section 141D(3B)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3B)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Section 141D(4): substituted, on 1 April 2008, by section 253(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (4) was substituted by section 127(3) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

Subsection (7) was amended by section 90(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) by inserting the words “and section 177C” after the words “this Part” with application as from 1 December 2002.

Subsection (7)(a) was substituted by section 127(4) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

#### **141E Evasion or similar act**

- (1) A taxpayer is liable to pay a shortfall penalty if, in taking a tax position, the taxpayer—
  - (a) evades the assessment or payment of tax by the taxpayer or another person under a tax law; or
  - (b) knowingly applies or permits the application of the amount of a deduction or withholding of tax made or deemed to be made under a tax law for any purpose other than in payment to the Commissioner; or
  - (c) knowingly does not make a deduction or withholding of tax required to be made by a tax law; or
  - (d) obtains a refund or payment of tax, knowing that the taxpayer is not lawfully entitled to the refund or payment under a tax law; or
  - (da) attempts to obtain a refund or payment of tax, knowing that the taxpayer is not lawfully entitled to the refund or payment under a tax law; or
  - (e) enables another person to obtain a refund or payment of tax, knowing that the other person is not lawfully entitled to the refund or payment under a tax law; or
  - (f) attempts to enable another person to obtain a refund or payment of tax, knowing that the other person is not lawfully entitled to the refund or payment under a tax law—

(referred to as **evasion or a similar act**).
- (2) No person shall be chargeable with a shortfall penalty under subsection (1)(b) if that person satisfies the Commissioner that the amount of the deduction or withholding has been

accounted for, and that the person's failure to account for it within the prescribed time was due to illness, accident, or some other cause beyond the person's control.

- (2B) No person shall be chargeable with a shortfall penalty under subsection (1)(b) for taking a tax position if the person is chargeable with a shortfall penalty under section 141ED for taking the tax position.
- (3) If a taxpayer enables or attempts to enable another person to obtain a refund or payment of tax, knowing that the other person is not lawfully entitled to the refund or payment under a tax law, the taxpayer is liable to pay to the Commissioner an amount equal to the shortfall penalty that would have been imposed if the other person's tax position had been the taxpayer's tax position.
- (4) The penalty payable for evasion or a similar act described in subsection (1) is 150% of the resulting tax shortfall.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1)(da) was inserted, by section 52(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4). *See* section 52(4) of that Act as to when this amendment applies. *See* section 52(5) of that Act as to when this amendment does not apply.

Subsection (1)(e) was amended by section 52(2) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) (by substituting the words "law; or" for the expression "law,—").

Subsection (1)(f) was inserted, by section 52(2) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) *See* section 52(4) of that Act as to when this amendment applies. *See* section 52(5) of that Act as to when this amendment does not apply.

Section 141E(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141E(2B): inserted, on 1 April 2008, by section 254(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (3) was amended, by section 52(3) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) by substituting the words "enables or attempts to enable" for the word "enables". *See* section 52(4) of that Act as to when this amendment applies. *See* section 52(5) of that Act as to when this amendment does not apply.

**141EA Shortfall penalty and provisional tax**

Despite sections 141A to 141E, a provisional taxpayer who uses a GST ratio in a tax year to determine the amount of an instalment of provisional tax payable for the tax year is not liable to pay a shortfall penalty in the following circumstances:

- (a) the taxpayer pays by the instalment date the amount, determined using the GST ratio, of the instalment but underpays their annual liability;
- (b) the taxpayer pays by the instalment date the amount, determined using the GST ratio, of the instalment but the GST ratio is changed after the instalment date by a reassessment of their residual income tax.

Section 141EA: inserted, on 1 October 2007, by section 251(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

**141EB Promoter penalties**

- (1) The promoter of an arrangement is liable to a promoter penalty if—
  - (a) a taxpayer becomes a party to the arrangement and a shortfall penalty for an abusive tax position is imposed on the taxpayer as a result of the arrangement; and
  - (b) the arrangement is offered, sold, issued or promoted to 10 or more persons in a tax year.
- (2) For the purpose of subsection (1)(b), an arrangement is treated as being offered, sold, issued or promoted to 10 or more persons if 10 or more persons claim tax-related benefits as a result of the arrangement.
- (3) An arrangement is treated as being offered, sold, issued or promoted to all shareholders of a loss-attributing qualifying company and partners of a partnership if the arrangement is offered, sold, issued or promoted to the loss-attributing qualifying company or partnership respectively.
- (4) The amount of the promoter penalty is the greater of nil and the sum of tax shortfalls resulting from taking an abusive tax position on the arrangement, for which the promoter would have been liable if the promoter had—

- (a) been a party to the arrangement in the place of each party to the arrangement to whom the arrangement was offered, sold, issued or promoted; and
  - (b) taken a tax position under which the arrangement is treated as producing for the promoter the taxation-related benefits that were intended by the parties to the arrangement; and
  - (c) had the taxation-related characteristics that would, under the tax position referred to in paragraph (b), produce for the promoter the maximum taxation-related benefits from the arrangement.
- (5) A promoter who satisfies paragraph (a) of the definition of **promoter** in section 141EC is liable for the promoter penalty associated with the arrangement—
- (a) jointly and severally with the other such promoters of the arrangement, for the whole promoter penalty;
  - (b) jointly and severally with each promoter of the arrangement who is liable for part of the promoter penalty under subsection (6), for the part of the promoter penalty for which the other promoter is liable.
- (6) A promoter who does not satisfy paragraph (a) of the definition of **promoter** in section 141EC is jointly and severally liable, with the other promoters of the arrangement, for the portion of the promoter penalty that is associated with the arrangement entered into by taxpayers to whom the promoter offered, sold, issued or promoted the arrangement.

Sections 141EB and 141EC were inserted by section 128(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to arrangements entered into as from 26 March 2003.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Section 141EB(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4)(b) was amended by section 129(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “taken a tax position under which the arrangement is treated as producing” for the words “taken the tax position that the arrangement produced” with application to arrangements entered into as from 26 March 2003.

**141EC Definition of promoter**

- (1) In section 141EB, **promoter** of an arrangement means—
- (a) a person who is a party to, or is significantly involved in formulating, a plan or programme from which an arrangement is offered; or
  - (b) a person who is aware of material and relevant aspects of the arrangement and who sells, issues or promotes the selling or issuing of, the arrangement, whether or not for remuneration.
- (2) For the purpose of subsection (1), **promoter** does not include a person whose involvement with the arrangement is limited to providing legal, accounting, clerical or secretarial services to a promoter.

Sections 141EB and 141EC were inserted by section 128(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to arrangements entered into as from 26 March 2003.

**141ED Not paying employer monthly schedule amount**

- (1) A taxpayer is liable to pay a shortfall penalty (referred to as a penalty for not paying employer monthly schedule amount) if—
- (a) the taxpayer—
    - (i) completes an employer monthly schedule showing an amount of tax (the **returned amount**) payable by the taxpayer to the Commissioner for the return period; and
    - (ii) provides the employer monthly schedule to the Commissioner; and
    - (iii) fails to pay to the Commissioner by the due date an amount owing to the Commissioner (the **unpaid amount**) of the returned amount; and
  - (b) the Commissioner, after the due date for the returned amount, gives to the taxpayer a notice (the **Commissioner's notice**)—
    - (i) that the taxpayer is liable to pay a penalty for failing to pay the unpaid amount by the due date and how the penalty is calculated; and

- (ii) of the circumstances in which further penalties will be imposed and how a further penalty will be calculated; and
    - (iii) of actions that the taxpayer may take to avoid the imposition of further penalties; and
  - (c) subsection (3) does not apply to the taxpayer.
- (2) Before giving to the taxpayer the first Commissioner's notice in relation to the returned amount, the Commissioner must give to the taxpayer a notice that a penalty may be imposed under this section if the unpaid amount is not paid.
- (3) A taxpayer is not liable to pay a penalty for not paying employer monthly schedule amount in relation to an unpaid amount if—
  - (a) the taxpayer is a receiver or liquidator—
    - (i) appointed after the end of the return period referred to in subsection (1)(a); and
    - (ii) having insufficient funds available to pay the unpaid amount:
  - (ab) during the period, the taxpayer is negotiating an instalment arrangement with the Commissioner to pay the unpaid amount:
  - (b) the taxpayer—
    - (i) agrees with the Commissioner, before the penalty date under subsection (4) for the due amount, to an instalment arrangement (the **instalment arrangement**), of the same type as an instalment arrangement referred to in section 177B, to pay the unpaid amount; and
    - (ii) pays the unpaid amount under the instalment arrangement.
- (4) A penalty payable for not paying employer monthly schedule amount in relation to an unpaid amount has a due date (the **penalty date**) that is—
  - (a) the date of the Commissioner's notice, if the penalty is the first penalty in relation to the returned amount; or
  - (b) one month after the penalty date for the preceding penalty, if paragraph (a) does not apply.
- (5) The amount of the penalty for not paying employer monthly schedule amount in relation to an unpaid amount is—

- (a) 10% of the unpaid amount on the day before the penalty date, if the taxpayer—
    - (i) fails to agree to an instalment arrangement with the Commissioner before the day that is 1 month after the penalty date; and
    - (ii) fails to pay the unpaid amount before the day that is 1 month after the penalty date; or
  - (b) 10% of the unpaid amount on the day before the penalty date, if the taxpayer—
    - (i) agrees to an instalment arrangement with the Commissioner before the penalty date; and
    - (ii) fails to comply with the instalment arrangement before the day that is 1 month after the penalty date; or
  - (c) 5% of the unpaid amount on the day before the penalty date, if—
    - (i) the taxpayer pays the unpaid amount, or agrees to an instalment arrangement with the Commissioner, after the penalty date and before the day that is 1 month after the penalty date; and
    - (ii) paragraph (b) does not apply.
- (5B) For the purposes of subsection (5), if the returned amount is varied or corrected by the taxpayer or the Commissioner in the period that starts on the date when the employer monthly schedule is provided to the Commissioner and ends on the day before the penalty date, the amount of the penalty that relates to the unpaid amount is based on the varied or corrected amount.
- (5C) An amount paid by the taxpayer or applied by the Commissioner on account of the taxpayer in relation to the taxpayer's liability to pay unpaid tax and a penalty under this section must first be applied towards payment of the penalty.
- (6) A taxpayer may be liable to pay more than 1 penalty for not paying employer monthly schedule amount arising from an employer monthly schedule.
- (7) The maximum amount of penalties under this section that may be imposed is 150% of the returned amount that is unpaid when the first penalty is imposed under this section.



- (8) If the penalty date for a penalty would, in the absence of this subsection, be a date in a month that does not exist in the month, the penalty date is the date of the last day in the month.

Section 141ED: inserted, on 1 April 2008, by section 255(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141ED(3)(ab): inserted (with effect on 1 April 2008), on 6 October 2009, by section 683(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 141ED(5B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 683(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 141ED(5C): inserted (with effect on 1 April 2008), on 6 October 2009, by section 683(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

**141F Commissioner to determine portions in which shortfall penalty payable by taxpayer and officers of taxpayer**

- (1) If—
- (a) a taxpayer is required to make or account for a deduction or withholding of tax under a tax law; and
  - (b) an officer of the taxpayer fails to make a deduction or withholding of tax under a tax law or applies or permits to be applied the amount of the deduction or withholding of tax other than in payment to the Commissioner,—
- one shortfall penalty, calculated in accordance with this Part, may be imposed in respect of each tax position taken by the taxpayer.
- (2) If the Commissioner determines that a shortfall penalty is required to be imposed, the Commissioner may determine the portion that each of the taxpayer and the officers is to be liable for that penalty having regard to—
- (a) the acts or omissions of the taxpayer and the officers; and
  - (b) whether those acts or omissions were reasonable in the circumstances of the case.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 141F was substituted by section 96 Taxation (Remedial Provisions) Act 1997 (1997 No 74). See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

### **141FB Reduction of penalties for previous behaviour**

- (1) A shortfall penalty (called the **current penalty**) for which a taxpayer is liable under section 141E is reduced, to 50% of the amount that would be payable by the taxpayer in the absence of this section, if the taxpayer is not—
  - (a) convicted of an offence that is a disqualifying offence:
  - (b) liable for another shortfall penalty that is a disqualifying penalty for the purpose of this subsection.
- (2) A shortfall penalty (called the **current penalty**) for which a taxpayer is liable under any of sections 141A to 141D is reduced, to 50% of the amount that would be payable by the taxpayer in the absence of this section, if the taxpayer is not—
  - (a) convicted of an offence that is a disqualifying offence:
  - (b) liable for another shortfall penalty that is a disqualifying penalty for the purpose of this subsection.
- (3) For the purpose of this section **disqualifying offence** means—
  - (a) an offence under section 143A, 143B, 143F, 143G, 143H or 145 for which a conviction is entered—
    - (i) on or after 26 March 2003; and
    - (ii) before the taxpayer takes the tax position to which the current penalty relates:
  - (b) an offence under section 143 or 144 that relates to the type of tax to which the current penalty relates and for which a conviction is entered—
    - (i) on or after 26 March 2003; and
    - (ii) after the date that precedes, by the period specified in subsection (4), the date on which the taxpayer takes the tax position to which the current penalty relates; and
    - (iii) before the taxpayer takes the tax position to which the current penalty relates

**disqualifying penalty** means—

  - (a) for the purpose of subsection (1), a shortfall penalty that—

- (i) relates to the type of tax to which the current penalty relates; and
  - (ii) is for evasion or a similar act; and
  - (iii) is not reduced for voluntary disclosure by the taxpayer; and
  - (iv) relates to a tax position that is taken on or after 26 March 2003 and before the date on which the taxpayer takes the tax position to which the current penalty relates:
- (b) for the purpose of subsection (2), a shortfall penalty that—
- (i) relates to the type of tax to which the current penalty relates; and
  - (ii) if the current penalty is—
    - (A) for gross carelessness or taking an abusive tax position, is a shortfall penalty for evasion or a similar act or for gross carelessness or taking an abusive tax position:
    - (B) for not taking reasonable care or taking an unacceptable tax position, is a shortfall penalty of any sort; and
  - (iii) is not reduced for voluntary disclosure by the taxpayer; and
  - (iv) relates to a tax position that is taken—
    - (A) on or after 26 March 2003; and
    - (B) after the date that precedes, by the period specified in subsection (4), the date on which the taxpayer takes the tax position to which the current penalty relates; and
    - (C) before the date on which the taxpayer takes the tax position to which the current penalty relates.
- (4) The period referred to in the definitions of **disqualifying offence** and **disqualifying penalty**, in subsection (3), and in subsection (5) is—
- (a) 2 years, if the current penalty relates to—
    - (i) the taxpayer's application of the PAYE rules:
    - (ii) FBT
    - (iii) GST

- (iv) RWT
  - (b) 4 years, if the period is not given by paragraph (a).
- (5) For the purpose of subsections (1 and (2), a shortfall penalty that relates to a tax shortfall arising from a tax position taken by a taxpayer is determined as if the taxpayer were not liable for a shortfall penalty that relates to a tax shortfall arising from another tax position taken by the taxpayer, if—
- (a) the Commissioner becomes aware of both tax shortfalls as a consequence of a single investigation or voluntary disclosure; and
  - (b) the taxpayer—
    - (i) takes both tax positions on the same date;
    - (ii) is not liable for a shortfall penalty at any time in the period specified in subsection (4) that ends on the earliest date on which the taxpayer takes a tax position that gives rise to a tax shortfall of which the Commissioner becomes aware as a consequence of the investigation or disclosure to which paragraph (a) refers.

Section 141FB was inserted by section 129(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5). See section 129(2) of that Act as to its application.

Subsection (2)(b)(i) was repealed, as from 26 March 2003, by section 130 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 141FB was substituted, as from 21 December 2004, by section 127 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 141FB(4)(a)(ii): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FB(4)(a)(iii): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FB(4)(a)(iv): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5) was amended, as from 21 December 2004, by section 148 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “subsections (1) and (2)” for the expression “subsection (2)”.

### **141FC Loss attributing qualifying companies-reduction of shortfall penalties**

*[Repealed]*

Section 141FC was inserted, as from 1 April 1998, by section 131(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122)r.

Section 141FC was repealed, as from 21 December 2004, by section 128 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

### **141FD Shareholders of loss-attributing qualifying companies**

- (1) This section applies to a shortfall penalty under Part 9 that arises because—
  - (a) a loss-attributing qualifying company attributes a tax loss to a person who, on any day in the income year for which the company had the tax loss, is a shareholder of the loss-attributing qualifying company; and
  - (b) the tax loss is subsequently reduced because—
    - (i) deductions claimed by the loss-attributing qualifying company for the income year are disallowed;
    - (ii) the gross income of the loss-attributing qualifying company for the income year is increased.
- (2) The shortfall penalty that would be imposed on the loss-attributing qualifying company in the absence of this section may not be imposed on the loss-attributing qualifying company.
- (3) A shortfall penalty may be imposed on the shareholder in relation to the amount of a deduction of the shareholder for the amount of the tax loss attributed to them.
- (4) No shortfall penalty under Part 9 relating to the reduction of the attributed net loss of the company may be imposed on the shareholder other than the shortfall penalty permitted by subsection (3).

Section 141FD was inserted, as from 21 December 2004, by section 129 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application in respect of a shortfall penalty that is imposed in relation to a return period beginning on or after 1 April 2005.

Section 141FD heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FD(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FD(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FD(1)(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FD(1)(b)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FD(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 141FD(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **141G Reduction in penalty for voluntary disclosure of tax shortfall**

- (1) A shortfall penalty payable by a taxpayer under any of sections 141A to 141EB may be reduced if, in the Commissioner's opinion, the taxpayer makes a full voluntary disclosure to the Commissioner of all the details of the tax shortfall, either—
  - (a) before the taxpayer is first notified of a pending tax audit or investigation (referred to in this section as **pre-notification disclosure**); or
  - (b) after the taxpayer is notified of a pending tax audit or investigation, but before the Commissioner starts the audit or investigation (referred to in this section as **post-notification disclosure**).
- (2) The Commissioner may from time to time—
  - (a) specify the information required for a full voluntary disclosure; and
  - (b) the form in which it must be provided.
- (3) The level by which the shortfall penalty is reduced—
  - (a) for pre-notification disclosure is—
    - (i) 100%, if the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for an unacceptable interpretation; or
    - (ii) 75%, if subparagraph (i) does not apply;
  - (b) For post-notification disclosure is 40%.
- (4) A taxpayer is deemed to have been notified of a pending tax audit or investigation, or that the tax audit or investigation has started, if—
  - (a) The taxpayer; or
  - (b) an officer of the taxpayer; or

- (c) a shareholder of the taxpayer, if the taxpayer is a close company; or
  - (d) a tax adviser acting for the taxpayer; or
  - (e) a partner in partnership with the taxpayer; or
  - (f) a person acting for or on behalf of or as a fiduciary of the taxpayer,—
- is notified of the pending tax audit or investigation, or that the tax audit or investigation has started.
- (5) An audit or investigation starts at the earlier of—
- (a) the end of the first interview an officer of the Department has with the taxpayer or the taxpayer's representative after the taxpayer receives the notice referred to in subsection (4); and
  - (b) the time when—
    - (i) an officer of the Department inspects information (including books or records) of the taxpayer after the taxpayer receives the notice referred to in subsection (4); and
    - (ii) the taxpayer is notified of the inspection.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 130(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression "141EB" for the expression "141E" with application to an arrangement that a taxpayer enters into as from 26 March 2003.

Section 141G(3)(a): substituted (with effect from 17 May 2007), on 19 December 2007, by section 256(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **141H Reduction for disclosure of unacceptable tax position**

- (1) A shortfall penalty payable by a taxpayer under section 141B or section 141D maybe reduced if, in the Commissioner's opinion, the taxpayer makes adequate disclosure of the taxpayer's tax position at the time, determined under section 141B(6), the taxpayer takes the taxpayer's tax position.
- (2) The level by which a shortfall penalty is to be reduced for adequate disclosure is 75%.

- (3) The Commissioner may from time to time specify—
- (a) the type of information required for adequate disclosure; and
  - (b) the form in which the information must be provided.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

The heading to section 141H was amended by section 131(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “tax position” for the word “interpretation” with application to a tax position that a taxpayer takes as from 1 April 2003.

#### **141I Reduction where temporary shortfall**

- (1) A shortfall penalty payable by a taxpayer under any of sections 141A to 141EB must be reduced if and to the extent that the tax shortfall is temporary.
- (2) The level by which a shortfall penalty is to be reduced for a temporary tax shortfall is 75% of the penalty that applies to all or that part of the tax shortfall that is a temporary tax shortfall.
- (3) A tax shortfall is a temporary tax shortfall for the return period of a tax position if, when the Commissioner considers the assessment of a shortfall penalty, the Commissioner is satisfied that—
  - (a) the tax shortfall has been or will be, in an earlier or later return period, permanently reversed or corrected—
    - (i) before the end of the 4-year period beginning after the day on which the taxpayer took the tax position; and
    - (ii) with the effect that the taxpayer pays or returns for the relevant return periods the correct total amount of tax, not including penalties and interest, in respect of the tax position; and
    - (iii) as a result of actions taken by the taxpayer or by the operation of law or circumstances; and
  - (b) no tax shortfall will arise in a later return period in respect of a similar tax position; and



- (c) no arrangement exists with the purpose or effect of creating for another return period a tax deferral or advantage related to the tax position.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 132(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “141EB” for the expression “141E” with application to an arrangement that a taxpayer enters into as from 26 March 2003.

Section 141I(3): substituted, on 1 April 2008, by section 257(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **141J Limitation on reduction of shortfall penalty**

- (1) This section applies to a shortfall penalty payable by a taxpayer if—
  - (a) the taxpayer makes a voluntary disclosure; and
  - (b) the shortfall penalty is payable in respect of a temporary tax shortfall; and
  - (c) the shortfall penalty would be reduced under section 141G or 141H in the absence of this section.
- (2) The shortfall penalty is reduced by—
  - (a) 100%, if—
    - (i) the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position, or for taking a tax position involving an unacceptable interpretation of a tax law; and
    - (ii) the tax shortfall is voluntarily disclosed under section 141G before notification of a pending tax audit or investigation; or
  - (b) 75%, if paragraph (a) does not apply.
- (3) *[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 141J(1): substituted (with effect from 17 May 2007), on 19 December 2007, by section 258(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141J(2): added (with effect from 17 May 2007), on 19 December 2007, by section 258(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 141J(3): repealed (with effect on 17 May 2007), on 6 October 2009, by section 684(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 141J(3): added (with effect from 17 May 2007), on 19 December 2007, by section 258(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **141JAA Shortfall penalty for not taking reasonable care or for taking unacceptable tax position may not be more than \$50,000**

- (1) Despite section 141J, a shortfall penalty payable by a taxpayer for not taking reasonable care, or for taking an unacceptable tax position, may not be more than \$50,000 if the taxpayer voluntarily discloses the shortfall, or the Commissioner determines the shortfall, no later than the date that is the later of—
  - (a) the date that is 3 months after the due date of the return to which the shortfall relates; and
  - (b) the date that follows the due date of the return to which the shortfall relates by the lesser of—
    - (i) 1 return period; and
    - (ii) 6 months.
- (2) This section does not apply if section 141K applies.

Section 141JAA was inserted by section 133(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application to a tax position that a taxpayer takes as from 1 April 2003.

### **141JA Application of Part 9 to non-filing taxpayers**

Part 9 does not apply to a person who is a non-filing taxpayer for a tax year if the person—

- (a) is an employee to whom section RD 4(2) of the Income Tax Act 2007 applies in the year; and
- (b) receives an income statement that the person considers is incorrect and informs the Commissioner in the way required by section 80F.

Section 141JA was inserted by section 53(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from the 1999-2000 income year.

Section 141JA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Section 141JA(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **141JB Application of Part 9 to PAYE intermediaries**

- (1) The provisions relating to the late filing penalty, the late payment penalty and shortfall penalties apply to a person acting as a PAYE intermediary for an employer in relation to an employee and a pay period as if the person were the employer, unless the employer has failed for the pay period to—
  - (a) pay to the person the salary or wages relating to the employee as required by sections RP 9 to RP 11 of the Income Tax Act 2007:
  - (b) provide the information required by the person as required by section RP 8(b) of that Act.
- (2) The provisions relating to the late filing penalty, the late payment penalty and shortfall penalties do not apply to a PAYE intermediary but continue to apply to the employer if an employer has not paid gross salary or wages to the intermediary or has not supplied the information required by the intermediary within the agreed time.

Section 141JB was inserted by section 134(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Section 141JB(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 21 December 2004, by section 130(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1)” for the words “section NBB 4(1)(b)” with application for pay periods beginning on or after 1 April 2004.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1) of the Income Tax Act 2004” for the words “section NBB 4(1) of the Income Tax Act 1994”.

Section 141JB(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 21 December 2004, by section 130(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1B)(b)” for the words “section NBB 4(1)(d)” with application for pay periods beginning on or after 1 April 2004.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1B)(b) of the Income Tax Act 2004” for the words “section NBB 4(1B)(b) of the Income Tax Act 1994”.

### **141K Increased penalty for obstruction**

- (1) A shortfall penalty payable by a taxpayer under any of sections 141AA to 141EB may be increased by the Commissioner if the taxpayer obstructs the Commissioner in determining the correct tax position in respect of the taxpayer’s tax liabilities.
- (2) The level by which a shortfall penalty may be increased for obstruction is 25%.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 135(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “141EB” for the expression “141E” with application to an arrangement that a taxpayer enters into as from 26 March 2003.

Subsection (1) was amended, as from 1 April 2005, by section 149 Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the expression “141AA” for the expression “141A”.

### **141KB Discretion to cancel some shortfall penalties**

*[Repealed]*

Section 141KB: repealed, on 1 April 2008, by section 259(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **141L Duty of Commissioner to report on application of penalties**

- (1) The Commissioner shall, as soon as practicable after the end of each financial year, report in writing to the Minister on the

manner in which the penalties provided for in sections 141A to 141EB have been applied in that financial year.

- (2) The Minister shall, as soon as practicable, lay a copy of that report before the House of Representatives.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended, as from 26 March 2003, by section 136(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the expression “141EB” for the expression “141E” with application to an arrangement that a taxpayer enters into as from 26 March 2003.

#### **142 Due date for payment of late filing penalty**

- (1) Except in the case of an employer monthly schedule or a return required by sections 16 to 18 of the Goods and Services Tax Act 1985, the due date for payment of a late filing penalty is the later of a date specified by the Commissioner (being a date not less than 30 days after the day on which the Commissioner notifies the taxpayer that the penalty is payable), and—
- (a) the terminal tax date for the tax year to which the annual tax return relates; or
  - (b) *[Repealed]*
  - (c) for the reconciliation statement that is required by regulation 3 of the Accident Rehabilitation and Compensation Corporation Insurance (Earnings Definitions) Regulations 1992 or regulation 15 of the Accident Insurance (Premium Payment Procedures) Regulations 1999 or any successor to that regulation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001, the date by which the employer is required to furnish the reconciliation statement; or
  - (d) for an annual ICA return required to be furnished under section 69(1) and (2)(a) by an Australian ICA company that is not required to furnish a return of income for a tax year, the date by which the company is required to furnish the annual ICA return.
  - (e)

- (1A) The due date for the payment of a late filing penalty in respect of an employer monthly schedule is—
- (a) the 5th day of the month next following the month in which the employer was required to furnish the employer monthly schedule for an employer to which section RD 22(2)(b) of the Income Tax Act 2007 applies; and
  - (b) the 20th day of the month next following the month in which the employer was required to furnish the employer monthly schedule for an employer to which section RD 22(3) or (4) of that Act applies.
- (1B) The due date for the payment of a late filing penalty for a return required by sections 16 to 18 of the Goods and Services Tax Act 1985 for a taxable period is—
- (a) the 28th day of the second month following the end of the taxable period, if paragraphs (b) and (c) do not apply; or
  - (b) the 15th day of February, if the month following the end of the taxable period is December; or
  - (c) the 7th day of June, if the month following the end of the taxable period is April.
- (2) In subsection (1), **annual tax return**, **employer monthly schedule**, and **reconciliation statement** have the meanings given to them in section 139A.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 142(1): amended, on 1 April 2008, by section 260(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1) was amended by section 34(1)(a) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “Except in the case of an employer monthly schedule, the” for the word “The” with application as from 1 April 1999.

Subsection (1)(a) was substituted by section 34(1)(b) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an annual tax return required to be furnished by an employee for the 1997-98 and subsequent income years.

Subsection (1)(a) was substituted by section 137(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(b) was repealed by section 137(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002–03 income year

Subsection (1)(c) was substituted by section 34(1)(c) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an annual tax return and reconciliation statements required to be furnished for the 1999-2000 and subsequent income years.

Subsection (1)(c) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by substituting the words “or regulation 15 of the Accident Insurance (Premium Payment Procedures) Regulations 1999 or any successor to that regulation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001” for the words “or any successor to that regulation made under the Accident Insurance Act 1998”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1)(c) was amended, as from 1 April 2003, by section 132 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by substituting the words “reconciliation statement; or” for the words “reconciliation statement”.

Subsection (1)(d) was repealed by section 34(1)(c) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an annual tax return and reconciliation statements required to be furnished for the 1999-2000 and subsequent income years.

Subsection (1)(d) was inserted, as from 1 April 2003, by section 132 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 142(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (1)(e) was repealed by section 34(1)(c) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to an annual tax return and reconciliation statements required to be furnished for the 1999-2000 and subsequent income years.

Subsection (1A) was inserted by section 34(2) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

Section 142(1A)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1A)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 142(1A)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1A)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of the Income Tax Act 2004” after the expression “section NC 15(1)(c) or (d)”.

Section 142(1B): inserted, on 1 April 2008, by section 260(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2) was amended by section 34(3) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by inserting the words “employer monthly schedule” after the words “annual tax return” with application as from 1 April 1999.

#### **142A New due date for payment of tax that is not a penalty**

- (1) This section applies if the Commissioner makes for a taxpayer—
- (a) an assessment (the new assessment) of tax for which the taxpayer has not been assessed earlier:
  - (b) an amended assessment (the **increased assessment**)—
    - (i) of an amount of tax exceeding the amount for which the taxpayer is liable immediately before the increased assessment; and
    - (ii) 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.
- (1B) *[Repealed]*
- (2) The Commissioner must—
- (a) fix a date that is 30 or more days after the date of the notice of the assessment for the payment of—
    - (i) the tax under a new assessment:
    - (ii) the increase of tax under an increased assessment; and
  - (b) give notice of the date to the taxpayer in the notice of the assessment.
- (3) Subsection (2) does not apply—
- (a) to any provisional tax that remains unpaid on an instalment date; or
  - (ab) if the assessment referred to in subsection (1)(a) is a default assessment; or



- (b) if the Commissioner has notified the taxpayer before the due date for the payment of the tax that subsection (2) 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
  - (c) if the Commissioner considers that setting a new due date may prejudice the Commissioner's ability to recover the tax or increased tax.
- (4) *[Repealed]*
- (5) In this section, **tax** does not include a civil penalty.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 142A(1): substituted, on 1 April 2008, by section 261(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1)(b) was substituted by section 97 Taxation (Remedial Provisions) Act 1997 (1997 No 74). See section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsection (1) was substituted, by section 228(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

Subsection (1) was substituted by section 138(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Section 142A(1B): repealed, on 1 April 2008, by section 261(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1B) was inserted by section 138(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Section 142A(2): substituted, on 1 April 2008, by section 261(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2) was amended, by section 228(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word "assessment" for the word "reassessment", with application as from the 2002-03 income year.

Section 142A(3): amended, on 1 April 2008, by section 261(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 142A(3)(ab): inserted, on 6 October 2009, by section 685 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 142A(3)(b): amended, on 1 April 2008, by section 261(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 142A(4): repealed, on 1 April 2008, by section 261(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (4) was amended, by section 228(3) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by omitting the words “or reassessment”, with application as from the 2002-03 income year.

### **142B Due date for shortfall penalties**

- (1) A shortfall penalty is due and payable—
- (a) if the tax shortfall is an amount of unpaid tax—
    - (i) for which no new due date is set, on such date as the Commissioner notifies the taxpayer to be the due date for payment of the penalty (which date shall be not less than 30 days after the date on which the Commissioner issues the taxpayer with a notice of assessment for the penalty); or
    - (ii) which has a new due date set under section 142A, on the due date for payment of the unpaid tax:
  - (b) in all other cases, on the date the Commissioner notifies the taxpayer to be the due date for payment of the penalty.
- (2) Subsection (1)(a) does not apply for a shortfall penalty assessed under section 141A if section 141A(5) determines the time at which liability for the shortfall penalty is treated as arising.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was inserted, as from 3 April 2006, by section 253(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application for a tax position taken by a taxpayer after 1 April 2003.

### **142C Due date for payments by officers**

The due date for payment of an amount payable by an officer under section 141F is the due date for payment of the shortfall penalty by the taxpayer.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application

of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**142D Due date for repayment of excess refund or credit of tax**

- (1) Where the Commissioner is satisfied that a credit of tax (**excess tax credit**) allowed or credited under a tax law is in excess of the amount properly allowable or able to be credited under that tax law and the excess tax credit has been paid as a refund, the amount of the excess shall be repayable and due on the later of—
  - (a) the day specified by the Commissioner in the notice to the person requiring payment of the refund to the Commissioner; and
  - (b) 30 days after the date of that notice.
- (2) If—
  - (a) the Commissioner refunds too much tax to a taxpayer or credits a taxpayer with the payment of too much tax; and
  - (b) a tax law provides for that tax to be repayable to the Commissioner on a set date or on a date to be specified by the Commissioner; and
  - (c) the Commissioner considers that applying that tax law may prejudice the Commissioner's ability to recover that tax,—tax is repayable to the Commissioner on the date specified by the Commissioner in a notice to the taxpayer given under this section.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**142E Due dates for payment of imputation penalty tax**

- (1) Imputation penalty tax is due and payable on 20 June following the end of the tax year in which occurred the end of year debit balance giving rise to the liability for the further income tax and the imputation penalty tax.

(2) *[Repealed]*

(3) *[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 142E heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 686(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 142E heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 142E(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 142E(2): repealed (with effect on 30 June 2009), on 6 October 2009, by section 686(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 142E(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was repealed section 98 Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application as from the 1998-99 income year.

## **142F Due date for payment of deferrable tax**

Deferrable tax is due and payable on the day which is the 30th day after the last day of the relevant period of deferral.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **142G Due date for payment of non-electronic filing penalty**

1A non-electronic filing penalty under section 139AA is due and payable on the 5th day of the month following the month in which the employer was required to furnish an employer monthly schedule in a prescribed electronic format.

Section 142G was inserted by section 35(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to employer monthly schedules required to be furnished as from 1 April 1999.

*Criminal penalties*

**143 Absolute liability offences**

- (1) A person commits an offence against this Act if the person—
- (a) does not keep the books and documents required to be kept by a tax law; or
  - (b) does not provide information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law; or
  - (ba) does not provide a tax invoice as required by section 24 of the Goods and Services Tax Act 1985; or
  - (c) does not apply for registration as required under section 51 of the Goods and Services Tax Act 1985.
- (1B) No person who is a resident foreign trustee may be convicted of an offence against subsection (1)(a) for not keeping books and documents required to be kept under section 22 if the person proves that—
- (a) the person did not know of the requirements of section 22;
  - (b) another resident foreign trustee has been appointed under section 22(2C) as agent of the resident foreign trustees for the purposes of section 22 and the Commissioner has been notified of the appointment.
- (1C) No person who is a resident foreign trustee may be convicted of an offence against subsection (1)(b) for not disclosing information required to be disclosed under section 59B if the person proves that—
- (a) the person did not know of the requirements of section 59B;
  - (b) another resident foreign trustee has been appointed under section 59B(7) as agent of the resident foreign trustees for the purposes of section 59B and the Commissioner has been notified of the appointment.
- (2) No person may be convicted of an offence against subsection (1)(b) for not providing information (other than tax returns and tax forms) to the Commissioner if the person proves that, as and when the person was required by the Commissioner to provide the information—
- (a) the person did not have the information in the person's knowledge, possession or control; and

- (b) no non-resident, who under section 17(1C) was controlled directly or indirectly by the person, had the information in the non-resident's knowledge, possession or control.
- (3) A person who is convicted of an offence against subsection (1) is liable—
- (a) the first time the person is convicted in relation to a particular type of offence, to a fine not exceeding \$4,000:
  - (b) the second time the person is convicted of the same type of offence, to a fine not exceeding \$8,000:
  - (c) on every other occasion the person is convicted of the same type of offence, to a fine not exceeding \$12,000.
- (4) In this section and in sections 143A and 143B, **tax return** includes an income statement.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1)(ba) was inserted by section 75(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from 10 October 2000.

Subsections (1B) and (1C) were inserted, as from 1 October 2006, by section 254 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (2) was substituted, as from 25 November 2003, by section 133 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (4) was inserted by section 36(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 1999.

#### 143A Knowledge offences

- (1) A person commits an offence against this Act if the person—
- (a) knowingly does not keep the books and documents required to be kept by a tax law; or
  - (b) knowingly does not provide information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law; or
  - (c) knowingly provides altered, false, incomplete, or misleading information (including tax returns and tax

- forms) to the Commissioner or any other person in respect of a tax law or a matter or thing relating to a tax law; or
- (d) knowingly applies or permits the application of the amount of a deduction or withholding of tax made or deemed made under a tax law for any purpose other than in payment to the Commissioner; or
  - (e) knowingly does not make a deduction or withholding of tax required to be made by a tax law; or
  - (f) knowingly issues 2 tax invoices (as defined in the Goods and Services Tax Act 1985) in respect of the same taxable supply.
- (2) No person may be convicted of an offence against subsection (1)(b) for knowingly not providing information (other than tax returns and tax forms) to the Commissioner if the person proves that, as and when the person was required by the Commissioner to provide the information—
- (a) the person did not have the information in the person's knowledge, possession or control; and
  - (b) no non-resident, who under section 17(1C) was controlled directly or indirectly by the person, had the information in the non-resident's knowledge, possession or control.
- (3) *[Repealed]*
- (4) No person may be convicted of an offence under subsection (1)(d) for knowingly applying or permitting the application of an amount of withholding or deduction of tax for a purpose other than in payment to the Commissioner, if the person satisfies the Court that the amount of the deduction or withholding has been accounted for, and that the person's failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the person's control.
- (5) Without limiting any other provision of this Act the term **withholding or deduction of tax** in subsection (4) includes—
- (a) a PAYE income payment:
  - (b) a combined tax and earner-related payment:
  - (c) an amount of tax withheld for—
    - (i) resident passive income:
    - (ii) non-resident passive income:

- (iii) an employer's superannuation contribution:
  - (d) a deduction of contribution that was payable under Part 3, subpart 1 of the KiwiSaver Act 2006:
  - (e) *[Repealed]*
  - (f) *[Repealed]*
  - (g) an amount of RSCT withheld.
  - (h) amounts of compulsory employer contributions that must be paid under Part 3, subpart 3A of the KiwiSaver Act 2006 to the Commissioner, including an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of that Act.
- (6) *[Repealed]*
- (7) Subject to subsections (8) and (9), a person who is convicted of an offence against subsection (1) is liable—
- (a) the first time the person is convicted in relation to a particular type of offence, to a fine not exceeding \$25,000; and
  - (b) on every other occasion the person is convicted for the same type of offence, to a fine not exceeding \$50,000.
- (8) A person who is convicted of a knowledge offence against subsection (1)(d), where the offence does not relate to—
- (a) Section 157 of this Act; or
  - (b) Section 43 of the Goods and Services Tax Act 1985; or
  - (c) another tax law specifying obligations in relation to withholdings or deductions of tax that operates by incorporating, or by reference to, section 157 of this Act,—
- is liable on each occasion the person is convicted of that type of offence to—
- (d) imprisonment for a term not exceeding 5 years; or
  - (e) a fine not exceeding \$50,000; or
  - (f) both.
- (9) A person who is convicted of an offence against subsection (1)(b) or subsection (1)(c) relating to information required to be provided under section 59 or section 61 of this Act is liable to a fine not exceeding \$50,000.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April



1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was substituted, as from 25 November 2003, by section 134 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application as from the 2003-04 income year.

Section 143A(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 687(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 143A(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(5)(a): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(5)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (5)(b) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by adding the words “or a combined tax and earner levy deduction”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Section 143A(5)(c): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(5)(d): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(5)(e): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(5)(f): repealed, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(5)(f): amended (with effect from 1 April 2007), on 19 December 2007, by section 262(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (5)(f) was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 143A(5)(g): substituted, on 1 April 2008, by section 262(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 143A(5)(g): added (with effect from 1 April 2007), on 19 December 2007, by section 262(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 143A(5)(h): added, on 1 April 2009, by section 21 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 143A(6): repealed (with effect on 30 June 2009), on 6 October 2009, by section 687(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 143A(6): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(6)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143A(6)(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6)(b)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

### **143B Evasion or similar offence**

- (1) A person commits an offence against this Act if the person—
- (a) knowingly does not keep the books and documents required to be kept by a tax law; or
  - (b) knowingly does not provide information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law; or
  - (c) knowingly provides altered, false, incomplete, or misleading information (including tax returns and tax forms) to the Commissioner or any other person in respect of a tax law or a matter or thing relating to a tax law; or
  - (d) knowingly does not make a deduction or withholding of tax required to be made by a tax law; or
  - (e) pretends to be another person for any purpose or reason relating to a tax law,—
- and does so—
- (f) intending to evade the assessment or payment of tax by the person or any other person under a tax law; or
  - (g) to obtain a refund or payment of tax in the knowledge that the person is not lawfully entitled to the refund or payment under a tax law; or
  - (h) to enable another person to obtain a refund or payment of tax in the knowledge that the other person is not lawfully entitled to the refund or payment under a tax law.
- (2) A person who evades or attempts to evade the assessment or payment of tax by the person or another person under a tax law commits an offence against this Act.

- (3) *[Repealed]*
- (4) A person who is convicted of an offence against subsection (1) or subsection (2) is liable to—
- (a) imprisonment for a term not exceeding 5 years; or
  - (b) a fine not exceeding \$50,000; or
  - (c) both.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 143B(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 688(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 143B(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143B(3)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 143B(3)(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3)(b)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **143C Offence for failure of officers of Department to maintain secrecy**

- (1) A person who knowingly acts in contravention of a provision of section 81 commits an offence against this Act.
- (2) A person who is convicted of an offence under subsection (1) is liable to—
- (a) imprisonment for a term not exceeding 6 months; or
  - (b) a fine not exceeding \$15,000; or
  - (c) both.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **143D Offence for failure of other persons to maintain secrecy**

- (1) If a person—

- (a) to whom section 86 applies, being an employer or the principal of an agent, knowingly or negligently allows; or
- (b) who is a director, manager, secretary, member, or principal officer of that employer or principal, or a person purporting to act in any of those capacities, knowingly allows—

an officer, employee, or agent of that employer or principal to acquire, have access to, or be given any of the information referred to in section 86(5) before the officer, employee, or agent has given a certificate to the effect and in the manner prescribed in section 86, that employer or principal or, as the case may be, the director, manager, secretary, member, or principal officer, or person purporting to act in any of those capacities, commits an offence against this Act.

- (2) A person who is convicted of an offence against subsection (1) is liable to a fine not exceeding \$15,000.
- (3) A person to whom section 86 applies who knowingly acts in contravention of a provision of that section commits an offence against this Act.
- (4) A person who is convicted of an offence against subsection (3) is liable to—
  - (a) imprisonment for a term not exceeding 6 months; or
  - (b) a fine not exceeding \$15,000; or
  - (c) both.
- (5) Subsections (3) and (4) do not apply to an offence against subsection (1).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **143E Secrecy requirements where information given by Department**

- (1) A person commits an offence against this Act if the person—
  - (a) knowingly fails to comply with section 87(1)(a) before acquiring or obtaining access to any restricted information; or

- (b) having certified in the manner prescribed by section 87(3), knowingly communicates any restricted information in contravention of section 87(1)(b).
- (2) A person who is convicted of an offence against subsection (1) is liable to—
  - (a) imprisonment for a term not exceeding 6 months; or
  - (b) a fine not exceeding \$15,000; or
  - (c) both.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### **143F Offence in relation to inquiries**

- (1) A person commits an offence against this Act if the person—
  - (a) is summoned under section 18 and refuses or wilfully neglects to appear before the District Court Judge or to take oath as a witness before the District Court Judge; or
  - (b) is sworn as a witness at an inquiry under section 18 and refuses or wilfully neglects to answer any question put to the person touching upon the subject-matter of the inquiry; or
  - (c) is required to give evidence under section 19 and refuses or wilfully neglects to appear before the Commissioner or authorised officer or to take an oath as witness before the Commissioner or authorised officer; or
  - (d) is sworn as a witness at an inquiry under section 19 and refuses or wilfully neglects—
    - (i) to answer any question put to the person touching upon the subject-matter of the inquiry; or
    - (ii) to produce to the Commissioner or authorised officer a document required to be produced under section 19(1).
- (2) A person who is convicted of an offence against subsection (1) is liable—
  - (a) the first time the person is convicted of that type of offence to—

- (i) a fine not exceeding \$2,000; or
  - (ii) a fine not exceeding \$50 for each day of default;  
or
  - (iii) both; and
- (b) the second time the person is convicted of the same type of offence to—
- (i) a fine not exceeding \$4,000; or
  - (ii) a fine not exceeding \$100 for each day of default;  
or
  - (iii) both; and
- (c) on every other occasion the person is convicted of the same type of offence to—
- (i) a fine not exceeding \$6,000; or
  - (ii) a fine not exceeding \$150 for each day of default;  
or
  - (iii) both.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **143G Offence in relation to court orders**

- (1) A person who fails to comply with the terms of a Court order made under section 17A commits an offence against this Act.
- (2) A person who is convicted of an offence under subsection (1) is liable to the same penalties that may be imposed under section 112 of the District Courts Act 1947 for offences to which that section applies.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **143H Obstruction**

- (1) A person who obstructs the Commissioner or an officer of the Department acting in the lawful discharge of the duties or in

the exercise of the Commissioner's or officer's powers under a tax law commits an offence against this Act.

- (2) A person who is convicted of an offence under subsection (1) is liable—
- (a) the first time the person is convicted of that type of offence, to a fine not exceeding \$25,000; and
  - (b) on every other occasion the person is convicted of the same type of offence, to a fine not exceeding \$50,000.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### 144 Certain offences in relation to Stamp and Cheque Duties Act 1971

- (1) A person commits an offence against this Act if the person—
- (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) *[Repealed]*
  - (d) being a bank licensed under section 81 of the Stamp and Cheque Duties Act 1971, fails to comply with a provision of that section or of any licence granted under that section; or
  - (e) being a printer licensed under section 82 of the Stamp and Cheque Duties Act 1971, fails to comply with a provision of that section or of a licence granted under that section; or
  - (f) fails to comply with a provision of section 84 of the Stamp and Cheque Duties Act 1971; or
  - (g) being licensed under section 83 of the Stamp and Cheque Duties Act 1971, or being a printer authorised under that section, fails to comply with a provision of that section, or of a licence or authority granted under that section; or
  - (h) *[Repealed]*
  - (i) *[Repealed]*
  - (j) *[Repealed]*
- (2) A person commits an offence against this Act if the person—

- (a) *[Repealed]*
- (b) without first being licensed or authorised under Part 6 of the Stamp and Cheque Duties Act 1971 to do so, prints on a bill of exchange or bill of exchange form an inscription indicating that the cheque duty for the bill or form has been paid.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) A person who is convicted of an offence against subsection (1) is liable to a fine not exceeding \$12,000.
- (6) A person who is convicted of an offence against subsection (2) is liable to a fine not exceeding \$20,000.
- (7) *[Repealed]*

The definition of item x in subsection (1) was substituted, as from 1 July 1996, by section 13 Tax Administration Amendment Act 1996 (1996 No 19).

Subsection (3) was substituted, as from 1 April 1995, by section 9 Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsections (1)(a) to (c) and (1)(h) to (j), (2)(a), (3), (4) and (7) were repealed by section 7 Stamp Duty Abolition Act 1999 (1999 No 61) with application to instruments executed after 20 May 1999; and instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the transactions to which the instruments relate are not completed or, in the case of leases are not carried into effect, on or before 20 May 1999.

#### **145 Penalties for offences for which no specific penalty imposed**

A person who is convicted of an offence against this Act or any other Inland Revenue Act for which no penalty is prescribed is liable—

- (a) the first time the person is convicted of that type of offence, to a fine not exceeding \$15,000; and
- (b) on every other occasion the person is convicted of the same type of offence, to a fine not exceeding \$25,000.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application



of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### 146 Publication of names

*[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 146 was repealed, as from 21 June 2005, by section 150(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application to publication that, but for section 150 of that Act, would be required after 21 June 2005.

#### 147 Employees and officers

- (1) An employee, agent, or officer of a body corporate commits an offence against this Act if—
  - (a) the body corporate commits an offence against this Act (the **principal offence**); and
  - (b) the principal offence—
    - (i) was caused by an act done or carried out by, or by an omission of, or through knowledge attributable to, the employee, agent, or officer; or
    - (ii) is evasion committed by the employee, agent, or officer.
- (2) An employee, agent, or officer who does or carries out the act or omission, or has the knowledge or intent referred to in subsection (1), is liable on conviction for up to the same maximum fine or term of imprisonment, or both, that could apply to an individual, if an individual had committed the principal offence.
- (2B) A natural person is not liable under this section in relation to an offence by a resident foreign trustee that is a body corporate if section 147B imposes liability for an offence relating to the offence of the resident foreign trustee.
- (3) An employee or officer of a body corporate includes a person who, by reason of the person's employment with, or position in relation to, the body corporate, is responsible by law, contract,

or otherwise for undertaking an action on behalf of the body corporate.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2B) was inserted, as from 1 October 2006, by section 255 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

#### **147B Directors and officers of resident foreign trustee**

A natural person who is resident in New Zealand commits an offence against this Act if—

- (a) the natural person, in relation to a resident foreign trustee that is not a natural person, is—
  - (i) a director of the resident foreign trust;
  - (ii) in a position in the resident foreign trustee allowing significant influence over the management or administration of the resident foreign trustee; and
- (b) the resident foreign trustee commits an offence against section 143A (**principal offence**); and
- (c) the cause of the principal offence was—
  - (i) an act done or carried out by the person;
  - (ii) an omission of the person;
  - (iii) through knowledge attributable to the person.

Section 147B was inserted, as from 1 October 2006, by section 256 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

#### **148 Aiding or abetting**

- (1) A person who aids, abets, incites, or conspires with another person to commit an offence (the **principal offence**) against this Act also commits an offence against this Act.
- (2) A person convicted of an offence of aiding, abetting, inciting, or conspiring under subsection (1) is liable for up to the same maximum fine or term of imprisonment, or both, that could apply to a person who commits the principal offence.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application

of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### *Proceedings and evidence*

#### **149 Imposition of civil and criminal penalties**

- (1) Each time a taxpayer breaches a tax obligation the taxpayer may be liable to a civil penalty or, on conviction, to a criminal penalty, or to both.
- (2) A taxpayer is liable to only one shortfall penalty, other than under section 141ED, for each tax shortfall.
- (3) If a taxpayer could, apart from subsection (2), be liable to more than one shortfall penalty for a tax shortfall, the highest shortfall penalty is to be imposed.
- (4) The Commissioner may assess and impose civil penalties after a taxpayer has been prosecuted for an offence under this Act, whether or not the prosecution is successful.
- (5) If a shortfall penalty, other than under section 141ED, has been imposed on a taxpayer for taking an incorrect tax position, the Commissioner may not subsequently prosecute the taxpayer for taking the incorrect tax position.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 149(2): amended, on 1 April 2008, by section 263(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 149(5): amended, on 1 April 2008, by section 263(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

#### **149A Standard of proof and onus of proof**

- (1) The standard of proof in civil proceedings relating to the imposition of penalties is the balance of probabilities.
- (2) The onus of proof in civil proceedings—
  - (a) relating to evasion or similar act to which section 141E applies or to obstruction rests with the Commissioner:
  - (b) relating to any other matter or thing rests with the taxpayer.

- (3) The standard of proof in criminal proceedings relating to the imposition of penalties is beyond reasonable doubt.
- (4) The onus of proof in criminal proceedings relating to any matter or thing rests with the Commissioner.
- (5) The standard of proof for the purposes of an application for a Court order under section 17A is the balance of probabilities.
- (6) The onus of proof for the purposes of an application for a Court order under section 17A rests with the Commissioner.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### **149B Proceedings for offences**

- (1) The offences specified in—
  - (a) Sections 143A(1)(d) and 143B(1) and (2); and
  - (b) Sections 147(1) and 148(1), where the principal offence is triable on indictment,—are triable on indictment on the information of the Commissioner.
- (2) The other offences specified in this Act are triable summarily on the information of the Commissioner.
- (3) Nothing in subsection (1) or subsection (2) applies to offences against section 143G.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### **150 Information may charge several offences**

- (1) An information may charge the defendant with any number of offences against this Act (other than offences against any of sections 143A(1)(b), 143B(1)(b), 143C(1), 143D(1), 143E(1), 143F(1), 143H(1), and 147(1)), or against the provisions of any former Act, if those offences are founded on the same set of facts, or form or are part of a series of offences of the same or a similar character.

- (2) If an information charges more than one offence, particulars of each offence charged shall be set out separately in the information.
- (3) All charges shall be heard together unless the Court, either before or at any time during the hearing, considers it just that a charge should be heard separately and makes an order to that effect.
- (4) In this section and in sections 150A, 150B, and 152, references—
  - (a) to an offence against section 143A(1)(b) or section 143H(1) means an offence relating to any of sections 6 to 12, 16 to 20, 35, 40, 81 to 87, 105, 147, 150C, 224(1), and 227 of this Act; and
  - (b) to an offence against section 147(1) means an offence relating to any of sections 16 to 19, 35, and 40 of this Act,—

and references to sections 143A(1)(b), 143H(1), and 147(1), are to be construed accordingly.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **150A Information may be laid within 10 years for income tax and GST offences**

- (1) An information for an offence against—
  - (a) this Act (other than an offence against any of sections 143A(1)(b), 143B(1)(b), 143C(1), 143D(1), 143E(1), 143F(1), 143H(1), and 147(1)); or
  - (b) any regulation made under section 225 of this Act or under the Income Tax Act 2007 or the Goods and Services Tax Act 1985—may be laid at any time within 10 years after the termination of the year in which the offence was committed.
- (2) Subsection (1) applies only where the offence against this Act relates to a tax law that is a provision of the Income Tax Act 2007 or the Goods and Services Tax Act 1985, or to an obligation that exists in relation to either of those Acts.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 150A(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 150A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (1)(b) and (2) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **150B Information may be laid within 4 years for stamp duty and gaming duty offences**

- (1) An information for an offence against—
- (a) this Act (other than an offence against any of sections 143A(1)(b), 143B(1)(b), 143C(1), 143D(1), 143E(1), 143F(1), 143H(1), and 147(1)); or
  - (b) any regulation made under the Gaming Duties Act 1971—

may be laid at any time within 4 years after the date on which the offence was committed.

- (2) Subsection (1) applies only if the offence against this Act relates to a tax law that is a provision of the Gaming Duties Act 1971, or to an obligation that exists under that Act.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1)(b) was amended by section 7 Stamp Duty Abolition Act 1999 (1999 No 61) by omitting the words “the Stamp and Cheque Duties Act 1971 or” with application to instruments executed after 20 May 1999; and instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the transactions to which the instruments relate are not completed or, in the case of leases are not carried into effect, on or before 20 May 1999.

Subsection (2) was substituted by section 7 Stamp Duty Abolition Act 1999 (1999 No 61) with application to instruments executed after 20 May 1999; and instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the transactions to which the instruments relate are not completed or, in the case of leases are not carried into effect, on or before 20 May 1999.

### **150C Authority to lay information**

The fact that an officer of the Department authorised in that behalf by the Commissioner lays an information for an offence against this Act or any other tax law is conclusive evidence of the officer's authority to do so.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **150D Evidence in proceedings for failure to furnish returns or information**

In any proceedings against a person for refusing or failing to provide a tax return or written information or to produce for inspection any books or documents as and when required by any Act or by the Commissioner, a certificate signed by the Commissioner, that the tax return, information, books, or documents have not been received at the time required shall, in the absence of proof to the contrary, be sufficient evidence that the person has refused or failed to furnish the return, information, books, or documents, as the case may be.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **150E Evidence inconsistent with instrument not admissible to reduce stamp duty**

*[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 150E was repealed by section 7 Stamp Duty Abolition Act 1999 (1999 No 61) with application to instruments executed after 20 May 1999; and instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the transactions to which the instruments relate are not completed or, in the case of leases are not carried into effect, on or before 20 May 1999.

**151 Non-presentation of instrument for stamping***[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 151 was repealed by section 7 Stamp Duty Abolition Act 1999 (1999 No 61) with application to instruments executed after 20 May 1999; and instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the transactions to which the instruments relate are not completed or, in the case of leases are not carried into effect, on or before 20 May 1999.

**152 Evidence of financial or property transactions**

- (1) A record, or entry in a record, made in the regular course of business by a person (not being a bank as defined in section 2 of the Banking Act 1982) in carrying on any business is admissible in any specified proceedings (as defined in subsection (16) of this section) as evidence of the transactions, dealings, matters, and amounts disclosed in that record or entry.
- (2) Subject to this section, a copy of a record, or of an entry in a record, that would be admissible in evidence under subsection (1), or a copy of any such copy, is admissible as evidence of the record or entry and of the transactions, dealings, matters, and amounts disclosed in that record or entry, whether or not notice to produce the record or entry or copy has been given.
- (3) The circumstances of the making of a record, entry, or copy that would be admissible in evidence under subsection (1) or subsection (2) does not affect its admissibility; but, in estimating the weight, if any, to be attached to it, regard is to be had to all the circumstances from which an inference can reasonably be drawn as to its accuracy or otherwise, and in particular to the question whether or not it was made contemporaneously with the occurrence or existence of the facts stated in it or within a reasonable time thereafter, and to the question of whether or not the maker had an incentive to conceal or misrepresent facts.
- (4) Where the original of a record is in the custody or control of the record holder, a copy of the record or of an entry in the



record shall be admissible in evidence under this section, if it is first proved—

- (a) that the record is in the custody or control of the record holder; which proof may be given, either orally or by affidavit, by the record holder or by any of the record holder's officers or employees or by such other person as the Court thinks fit; and
  - (b) that the copy has been examined with the original record or entry, as the case may be, and is a correct copy; which proof shall be given, either orally or by affidavit, by some person who has examined the copy with the original record.
- (5) Where the original of a record is not in the custody or control of the record holder, but a copy (whether a counterpart, a carbon copy, or other copy) purporting to be a copy of the original record and appearing to have been made in the regular course of business is in the custody or control of the record holder, that purported copy or a copy of it or of any entry in it shall be admissible in evidence under this section, if it is first proved—
- (a) that the original of the record is not in the custody or control of the record holder, and that the purported copy of the original record is in the custody or control of the record holder and in the belief of the witness or deponent, as the case may be, would have been made in the regular course of business at or about the same time as the original record would have been made; which proof may be given, either orally or by affidavit, by the record holder or by any of the record holder's officers or employees or by such other person as the Court thinks fit; and
  - (b) that, in the case of a copy of the purported copy of the original record or a copy of an entry in that purported copy, the copy has been examined with the purported copy or the entry in it, as the case may be, and is a correct copy; which proof shall be given, either orally or by affidavit, by some person who has examined the copy with the purported copy.
- (6) An affidavit for the purposes of this section may be sworn before a person authorised to take affidavits.

- (7) The death of a person by whom an affidavit has been made for the purposes of this section shall not affect the admissibility of the affidavit.
- (8) Where an affidavit sworn for the purposes of this section is filed in a Court, the Court may, of its own motion or on the application of the defendant in the proceedings, order that the deponent attend for cross-examination before the Court at the hearing; and, unless the deponent attends accordingly, the deponent's affidavit is not to be admissible in evidence under this section except where the Court in any special case otherwise orders.
- (9) Where, in any specified proceedings, a record or copy of a record or entry in a record or in a copy of any record that is admissible in evidence under this section is tendered in evidence, the Court may require the production by a person of a record or copy of a record in the person's possession or under the person's control that the Court considers is or may be relevant.
- (10) In any specified proceedings, the following provisions of this subsection shall apply for the purposes of section 5 of the Evidence Amendment Act 1952 (which relates to proof of photographic copies of documents), namely:
  - (a) every record holder is to be deemed to be an authorised person, whether or not the record holder is already an authorised person as defined in section 3 of that Act:
  - (b) every record to which this section relates, and every copy purporting to be a copy of an original record that would have been admissible in evidence in accordance with subsection (5) if it were available for that purpose and proof had been given as provided in that subsection or, where applicable, in subsection (8), shall be deemed to be a document to which section 5 of the Evidence Amendment Act 1952 applies.
- (11) Where, in any specified proceedings, the Commissioner intends to tender in evidence under this section a record or copy of a record or entry in a record or in a copy of a record, the Commissioner shall give to the other party or parties, as the case may be, notice of that intention not less than 7 days before

the hearing, specifying the record or copy or entry intended to be tendered in evidence.

- (12) Where a notice is given by the Commissioner under subsection (11), the other party or parties, as the case may be, may at any time before the hearing apply to the Court for an order that a record or copy or entry specified in the notice is not to be admitted in evidence upon the ground that it is or is likely to be false or fraudulent or that for any other reason it is inexpedient in the interests of justice that the record or copy or entry should be admitted, and if the Court is satisfied as to the grounds of the application it shall order accordingly.
- (13) Subsections (9) and (10), and also subsection (8) where an affidavit has been filed, shall, with the necessary modifications, apply with respect to the hearing of an application under subsection (12) as if it were the hearing of the information for the offence and as if the record or copy or entry had been tendered in evidence.
- (14) Nothing in this section affects the provisions of section 5 of the Banking Act 1982, and that section shall apply to all specified proceedings.
- (15) For the purposes of this section, where it appears to the Court that a record or a copy of a record is part of the records kept or held in relation to a business, the court may infer that the record or copy and entries in the record or copy were made in the regular course of business by a person in carrying on that business.
- (16) This section applies with respect to the following:
  - (a) all records and copies of records to which this section relates, whether the records or copies came into existence before or after the date of the passing of this Act:
  - (b) all proceedings for offences against any of the Inland Revenue Acts, or any former Inland Revenue Act which continues to apply by virtue of a provision of an Inland Revenue Act, and all proceedings in the course of which the Commissioner has the burden of proving any such offence commenced whether before or after the date of the passing of this Act (such proceedings collectively referred to in this section as **specified proceedings**):

- (c) all offences alleged to have been committed against any of the Inland Revenue Acts, or any former Inland Revenue Act which continues to apply by virtue of a provision of an Inland Revenue Act, whether before or after the date of the passing of this Act.
- (17) This section does not apply in relation to offences against any of sections 143A(1)(b), 143B(1)(b), 143C(1), 143D(1), 143E(1), 143F(1), 143H(1), and 147(1).
- (18) In this section—

**Business** means—

- (a) in respect of offences that do not relate to GST, a business, profession, trade, manufacture, occupation, or calling of any kind; and includes the activities of a Department of State or of an organisation or society:
- (b) in respect of offences that relate to GST, a taxable activity as defined in section 6 of the Goods and Services Tax Act 1985:

**Record** means—

- (a) a book of account or accounting record recording receipts, payments, sales, purchases, income, expenditure, or other financial or property transactions, dealings, or matters:
- (b) a voucher, invoice, receipt, or other document or paper recording receipts, payments, sales, purchases, income, expenditure, or other financial or property transactions, dealings, or matters, or verifying, explaining, or relating to any entry in any such book of account or accounting record:
- (c) a wages book or wages record:

**Record holder**, in relation to a record or to a copy of a record, means—

- (a) the person carrying on the business in the regular course of which the record or the copy of the record was made:
- (b) a person carrying on a business and having the custody or control of the record or of the copy of the record, being a record or copy that was made in the regular course of a business of which the first-mentioned business is wholly or in part the successor:

- (c) a person carrying on a business and having the custody or control of the record or of the copy of the record, being a record or copy that was made in the regular course of that business by any predecessor of that person in carrying on that business or part of that business:
- (d) a person having the custody or control of the record or of the copy of the record, being a record or copy that was made in the regular course of a business that has terminated.

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (11) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

### *Special additional taxes*

#### **153 Imputation penalty tax payable where end of year debit balance of imputation credit account**

*[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

#### **154 Dividend withholding payment penalty tax payable where end of year debit balance**

*[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**155 Application of other provisions of that Act to imputation penalty tax and dividend withholding payment penalty tax**

*[Repealed]*

Part 9 (comprising sections 139 to 152) was substituted for the previous Part 9 (comprising sections 139 to 155) by section 43 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**Part 10  
Recoveries***General***156 Mode of recovery of unpaid tax**

- (1) All unpaid tax shall be recoverable by the Commissioner on behalf of the Crown by suit in the Commissioner's official name.
- (2) Notwithstanding anything in the District Courts Act 1947, any Court constituted under that Act shall have jurisdiction to hear and determine proceedings by the Commissioner for the recovery of tax, whatever the amount involved.

Compare: 1976 No 65 s 399

**156A Recovery of civil penalties**

- (1) For all purposes relating to the recovery of an unpaid civil penalty by the Commissioner, the civil penalty is deemed to be a tax of the same type as the tax—
  - (a) for which the penalty is imposed; or
  - (b) if the penalty is a late filing penalty, for which the tax return is to be provided; or
  - (c) if the penalty is a non-electronic filing penalty, for which the return is provided.
- (2) A late filing penalty payable in respect of a reconciliation statement that is to be provided under regulation 3 of the Accident Rehabilitation and Compensation Insurance (Earnings Definition) Regulations 1992 (or any successor to that regulation) or under section 457(2) of the Accident Insurance Act 1998 or regulation 15 of the Accident Insurance (Premium Payment

Procedures) Regulations 1999 or any successor to that regulation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001 is deemed to be a tax in the nature of income tax for all purposes relating to the recovery of the penalty by the Commissioner.

- (3) Without limiting subsection (1), a civil penalty is recoverable from a taxpayer—
- (a) at any time after it has become payable:
  - (b) whether or not the taxpayer has been convicted of an offence under this Act or a former Act in relation to any act, omission, matter, or thing that gives rise to the liability to pay the civil penalty, or otherwise.
- (4) Subsection (3) applies to a person acting as a PAYE intermediary if section 141JB(1) applies, and references to a “taxpayer” are to be read as references to a “PAYE intermediary”.

Section 156A was inserted by section 44 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 156A(1)(a): substituted, on 6 October 2009, by section 689 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 156A(1)(b): substituted, on 6 October 2009, by section 689 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 156A(1)(c): added, on 6 October 2009, by section 689 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (2) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or under section 457(2) of the Accident Insurance Act 1998 or regulations made under that Act”.

Subsection (2) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by substituting the words “the Accident Insurance Act 1998 or regulation 15 of the Accident Insurance (Premium Payment Procedures) Regulations 1999 or any successor to that regulation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001” for the words “the Accident Insurance Act 1998 or regulations made under that Act”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (4) was inserted by section 139(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

### **157 Deduction of tax from payments due to defaulters**

- (1) Where a taxpayer has made default in the payment to the Commissioner of any income tax (or a part of any income tax) or any interest under Part 7 payable by the taxpayer or any civil penalty (or a part of any civil penalty) incurred by the taxpayer, the Commissioner may from time to time by notice require any person to—
- (a) deduct or extract, in one sum, from any amount that is, or becomes, an amount payable in relation to the taxpayer such sum as is equal to the lesser of—
    - (i) the amount that, according to the notice, is required to be deducted or extracted:
    - (ii) the amount that, at the time at which the deduction or extraction is required to be made in compliance with the notice, is the amount payable in relation to the taxpayer:
  - (b) subject to subsection (3), deduct or extract from time to time, by way of instalment, from any amount that is, or from time to time becomes, an amount payable in relation to the taxpayer such sum as is equal to the lesser of—
    - (i) the amount that, at the time at which the deduction or extraction is required to be made in compliance with the notice, is the amount required to be so deducted or extracted:
    - (ii) The amount that, at the time at which, according to the notice, the amount of the instalment is required to be deducted or extracted, is the amount payable,—  
and require that person to pay to the Commissioner, within such time as is specified in the notice, every sum so deducted or extracted, to the credit of,—
  - (c) to the extent that that sum is in respect of or in relation to income tax (or any part of any income tax) or any interest under Part 7 assessed on an income tax liability, the taxpayer who has that income tax liability:



- (d) to the extent that that sum is in respect of or in relation to the whole or any part of an amount of tax withheld or deducted or interest payable to the Commissioner or a civil penalty, an account maintained by the Commissioner in relation to that amount of tax or that interest or that civil penalty.
- (1A) A notice of amount to be deducted or extracted issued under subsection (1) may include a daily amount of interest as well as the amount required to be deducted or extracted.
- (1B) The daily amount of interest notified under subsection (1A) shall be calculated for each day, commencing on the date of the notice and ending on the day on which the sum required by the notice is deducted or extracted.
- (2) This section shall bind the Crown.
- (3) Where any notice under this section relates to any amount payable that consists of wages or salary, the sums required to be deducted from that amount shall be computed so as to not exceed the greater of—
  - (a) an amount equal to the lesser of—
    - (i) an amount calculated at the rate of 10% per week of the income tax due and payable by the taxpayer at the date of the notice;
    - (ii) an amount calculated at the rate of 20% of the wages or salary payable;
  - (b) \$10 per week.
- (4) Any notice under this section may be at any time revoked by the Commissioner by a subsequent notice to the person to whom the original notice was given (in this section referred to as the **debtor**), and shall be so revoked at the request, by notice, of the taxpayer (being a taxpayer who is a taxpayer otherwise than as an employer) at any time when the Commissioner is satisfied that all income tax then due and payable by the taxpayer has been paid, and that the Commissioner holds to the credit of the taxpayer an amount not less than the amount of the income tax (if any) to become due and payable by the taxpayer during the then current tax year.

- (5) A copy of every notice given, under subsection (1) or subsection (4), to any person in respect of any taxpayer shall be given forthwith by the Commissioner to the taxpayer.
- (6) Whenever by virtue of a notice under this section any deduction or extraction is made from any amount payable to any taxpayer, the taxpayer shall be entitled to receive from the debtor a notice of the fact of the deduction or extraction and of the purpose for which it was made.
- (7) Any person making any deduction, extraction, or payment in accordance with a notice under this section shall be deemed to have been acting under the authority of the taxpayer to whom the notice relates and of all other persons concerned and is by this subsection indemnified in respect of such deduction, extraction, or payment.
- (8) The sum deducted or extracted from any amount in accordance with a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were income tax payable by the debtor.
- (9) Where, in relation to any notice under this section and during any period, that period being—
  - (a) where a notice under subsection (1) requires any person, being a bank, to deduct or extract no more than one sum, the period that commences on the day on which the notice to the person is given and expires with the day on which the deduction or extraction is required to be made in compliance with the notice:
  - (b) where a notice under subsection (1) requires any person, being a bank, to deduct or extract more than one sum, by way of instalment,—
    - (i) in relation to the sum first required to be deducted or extracted in compliance with the notice, the period that commences on the day on which the notice to the person is given and expires with the day on which the deduction or extraction is so required to be made:
    - (ii) in relation to each succeeding sum required to be deducted or extracted in compliance with the no-

tice, the period that commences on the day immediately following the day on which the previous deduction or extraction (being the deduction or extraction that, in relation to that succeeding sum, was the deduction or extraction last required to be made) was required to be made in compliance with the notice and expires with the day on which that succeeding sum is so required to be deducted or extracted,—

any amount is, or becomes, an amount payable in relation to the taxpayer, that amount, or the aggregate of all such amounts, shall, until the expiry of that period and to the extent of an amount equal to the sum that, in compliance with the notice, is required to be deducted or extracted, be deemed to be an amount held in trust for the Crown, and without prejudice to any other remedies against the debtor or any person, shall, if the deduction or extraction required to be made under the notice is not so made, be recoverable in the same manner in all respects as if it were income tax payable by the debtor.

(10) In this section—

**Amount payable**, in relation to a person and to any taxpayer, means—

- (a) any amount that, on the day on which a notice to the person is given under subsection (1) in relation to the taxpayer, is payable by the person (whether on the person's own account, or as an agent, or as a trustee, or otherwise however) to the taxpayer:
- (b) any amount that, on any day following the day referred to in paragraph (a), is, or becomes, before any revocation (under subsection (4)) of the notice so given, payable by the person (whether on the person's own account, or as an agent, or as a trustee, or otherwise), to the taxpayer;—

and includes—

- (c) where the person is a bank, money (including any interest on that money) that—
  - (i) on the day on which a notice to the person is given under subsection (1) in relation to the tax-

payer, is on deposit or is deposited with the person to the credit of the taxpayer; or

- (ii) on any day following the day referred to in subparagraph (i) is on deposit or is deposited, before any revocation (under subsection (4)) of the notice so given, with the person to the credit of the taxpayer,—

whether the deposit or the depositing is on current account, or so as to bear interest for a fixed term or without limitation of time, and whether or not the taxpayer has made any application to withdraw or uplift the money;—

but does not include money deposited in any account that is—

- (d) a Home Lay-by Account within the meaning of the Post Office Act 1959; or
- (e) a Home Ownership Account within the meaning of the Home Ownership Savings Act 1974; or
- (f) a Farm Ownership Account within the meaning of the Farm Ownership Savings Act 1974; or
- (g) a Fishing Vessel Ownership Account within the meaning of the Fishing Vessel Ownership Savings Act 1977:

**Bank** means—

- (a) any building society registered under the Building Societies Act 1965, in respect of any deposits with the building society;
- (b) any person (not being a person of the kind referred to in paragraph (a)) that is a bank within the meaning of the Banking Act 1982:

**Income tax** includes—

- (a) income tax payable under the Income Tax Act 2007 and the Income Tax Act 2004 and the Income Tax Act 1994 and the Income Tax Act 1976.
- (b) an amount of tax withheld, or combined tax and earner-related payment, to which section RD 4(1) of the Income Tax Act 2007 applies, or a tax deduction or combined tax and earner premium deduction or combined tax and earner levy deduction to which section NC 15 of the Income Tax Act 2004 or of the Income Tax Act 1994 and, where applicable, section 115 of the Accident Re-

- habilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 applies or a tax deduction to which section 353 of the Income Tax Act 1976 applied:
- (bb) amounts paid to an intermediary in accordance with sections RP 17 to RP 21 of the Income Tax Act 2007 or subpart MBA of the Income Tax Act 2004:
  - (c) an amount to which section RD 4(2)(a) of the Income Tax Act 2007 or section NC 16(b) of the Income Tax Act 2004 or of the Income Tax Act 1994 applies or section 355(b) of the Income Tax Act 1976 applied:
  - (d) an amount which, under section 168 of this Act or section 366 of the Income Tax Act 1976, constitutes a debt payable to the Commissioner:
  - (e) an amount that under sections RA 10 and RD 70 of the Income Tax Act 2007 or section NE 5 of the Income Tax Act 2004 or of the Income Tax Act 1994 or section 336ZF of the Income Tax Act 1976 constitutes a debt payable to the Commissioner:
  - (f) an amount of unpaid tax subject to Part 10A:
  - (g) an amount of unpaid contribution that was payable under subpart 1 of Part 3 of the KiwiSaver Act 2006:
  - (h) an amount of short payment under Part 3, subpart 3 of the KiwiSaver Act 2006 that relates to a compulsory employer contribution:
  - (i) an amount of compulsory employer contributions unpaid, specified in a notice under section 101I(5) of the KiwiSaver Act 2006.

**Penalty***[Repealed]*

Penalty: this definition was repealed by section 45(2) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

*[Repealed]*

**taxpayer**—

- (a) in relation to income tax within the meaning of paragraphs (b) and (d) of the definition of **income tax** in

this subsection, includes an employer and a PAYE intermediary; and

- (b) in relation to income tax within the meaning of paragraph (e) of the definition of **income tax** in this subsection, includes an employer.

Taxpayer: this definition was substituted by section 140(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Compare: 1976 No 65 s 400; 1994 No 76 s 72

Subsection (1) was substituted by section 45(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was substituted, as from 1 April 1997, by section 99(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

Subsection (1)(c) was substituted by section 476(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 157(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (1A) and (1B) were inserted, as from 1 April 1997, by section 99(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (4) was amended, by section 229 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the words “income year” for the words “year of assessment”, with application as from the 2002-03 income year.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “, by notice,” after the word “request”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (5) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “; and for the purposes of section 14 every such copy shall be deemed to be a notice required by this Act to be given by the Commissioner to the taxpayer”.

Subsection (6) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the word “notice” for the words “statement in writing”.

Income Tax: paragraph (a) of this definition was substituted, as from 1 April 1995, by section 99(2) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Income Tax: paragraph (a) of this definition was substituted, by section 476(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 157(10) **income tax** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Income Tax: paragraph (a) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “Income Tax Act 2004 and the” after the words “payable under the”.

Section 157(10) **income tax** paragraph (b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Income Tax: paragraph (b) of this definition was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or section 285 of the Accident Insurance Act 1998”.

Income Tax: paragraph (b) of this definition was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting after the word “deduction” in the second place where it occurs, the words “or combined tax and earner levy deduction”.

Income Tax: paragraph (b) of this definition was amended by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting after the words “the Accident Insurance Act 1998” the words “or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Income Tax: paragraph (b) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of the Income Tax Act 2004 or of the” after the words “section NC 15”. The new words “of the” have been editorially omitted where they were to be inserted for the second time.

Income Tax: paragraph (bb) of this definition was inserted, as from 1 April 2003, by section 140(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Section 157(10) **income tax** paragraph (bb): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Income Tax: paragraph (bb) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart MBA of the Income Tax Act 2004” for the words “Part MBB of the Income Tax Act 1994”.

Section 157(10) **income tax** paragraph (c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Income Tax: paragraph (c) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of the Income Tax Act 2004 or of the” after the words “section NC 16(b)”. The new words “of the” have been editorially omitted where they were to be inserted for the second time.

Section 157(10) **income tax** paragraph (e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Income Tax: paragraph (e) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by inserting the words “of the Income Tax Act 2004 or of the” after the words “section NE 5”. The new words “of the” have been editorially omitted where they were to be inserted for the second time.

Income Tax: paragraph (f) of this definition was inserted, as from 20 May 1999, by section 111(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Income Tax: paragraph (g) of this definition was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 157(10) **income tax** paragraph (h): added, on 1 April 2008, by section 22 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 157(10) **income tax** paragraph (i): added, on 1 April 2008, by section 22 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

### **157A Application of Parts VII and IX to defaulters**

- (1) A person, not being an employer, who—
- (a) receives a notice requiring the person to deduct or extract an amount from payments to a taxpayer from the Commissioner under—
    - (i) Section 157 of this Act; or
    - (ii) Section 43 of the Goods and Services Tax Act 1985; or
    - (iii) Section 154 of the Child Support Act 1991; or
    - (iv) Section 46 of the Student Loan Scheme Act 1992; or
    - (v) another tax law specifying obligations in relation to withholdings or deductions of tax that operates by incorporating, or by reference to, section 157 of this Act; and
  - (b) fails to comply with the Commissioner’s notice,—  
is liable to prosecution for an offence under Part 9 of this Act but is not liable—
  - (c) to pay interest on the amount of unpaid tax under Part 7; or
  - (d) to pay a civil penalty under Part 9.
- (2) Subsection (1) overrides all other provisions of this Act.

Section 157A was inserted by section 46 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of



that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**158 Procedure in High Court where defendant absent from New Zealand**

In any action in the High Court for the recovery of tax from a defendant absent from New Zealand the High Court may grant leave to serve the writ out of New Zealand, or to proceed without service in the same manner as may be provided in other cases by the rules of the High Court for the time being in force, save that no security shall be required from the Commissioner.

Compare: 1976 No 65 s 401

**159 Procedure in District Court where defendant absent from New Zealand**

In an action in a District Court for the recovery of tax, if the defendant is absent from New Zealand or cannot after reasonable inquiry be found, service of the summons may, with the leave of a District Court Judge, be effected by posting a duplicate or sealed copy of the summons in a letter addressed to the defendant at the defendant's present or last known place of abode or business, whether in New Zealand or elsewhere.

Compare: 1976 No 65 s 402

**160 Commissioner may appear in legal proceedings by officer of Public Service**

In any action in a District Court for the recovery of tax, the Commissioner may, if the Commissioner thinks fit, appear by some officer in the Public Service, and the statement of any person so appearing that the person is such an officer and that the person appears for the Commissioner shall be sufficient evidence of the facts so stated and of the person's authority in that behalf.

Compare: 1976 No 65 s 403

**161 Costs against Commissioner**

In all proceedings in any Court for the recovery of tax, costs may be awarded to or against the Commissioner in the same

manner as in other cases, but all costs so awarded against the Commissioner shall be payable out of money appropriated by Parliament, and not otherwise.

Compare: 1976 No 65 s 404

**162 Proceedings not affected by vacancy or change in office of Commissioner**

No action instituted by the Commissioner for the recovery of tax, and no proceedings objecting to or challenging an assessment of tax or other disputable decision, shall abate by reason of any vacancy in the office of Commissioner, or shall be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding shall be continued in the ordinary course as if the Commissioner and the Commissioner's successors in office were a corporation sole.

Compare: 1976 No 65 s 405

Section 162 was amended, as from 1 October 1996, by section 47 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words "no proceedings objecting to or challenging an assessment of tax or other disputable decision" for the words "no proceedings on objection to an assessment of tax". See section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

**163 No limitation of action to recover tax**

No statute of limitations shall bar or affect any action or remedy for the recovery of tax.

Compare: 1976 No 65 s 406

**164 Crown Proceedings Act 1950 not affected**

Nothing in this Act or the Income Tax Act 2007 shall be so construed as to limit or affect the operation of the Crown Proceedings Act 1950, and all rights and remedies conferred upon the Crown by that Act and by this Act and the Income Tax Act 2007 shall co-exist, and may be exercised independently of one another, and tax may be recovered accordingly.

Compare: 1976 No 65 s 407

Section 164: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 164 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in both places they appear.

**165 Recovery of tax paid by one person on behalf of another**

Every person who under this Act pays any tax for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, or to retain or deduct that amount out of or from any money which is or becomes payable by the person to that other person; and if the person has paid the tax as mortgagee, then, until repaid, it shall be deemed to form part of the money secured by the mortgage, and shall bear interest at the same rate accordingly.

Compare: 1976 No 65 s 408

**165AA Recovery of tax paid by superannuation fund**

(1) If a withdrawal is made in respect of a person’s membership in a superannuation fund and the withdrawal is one to which section CS 1 of the Income Tax Act 2007 applies, the trustee of the superannuation fund may recover from the member or the other person making the withdrawal an amount according to the formula in subsection (2).

(2) The formula is:

$$\text{tax rate} \times \text{income}$$

where

tax rate is the basic tax rate set out in schedule 1, part A, clause 3 of the Income Tax Act 2007:

income is the amount of income of the superannuation fund under section CS 1 of the Income Tax Act 2007

(3) A trustee of a superannuation fund may recover an amount from the member or the other person making the withdrawal irrespective of the superannuation fund’s trust deed.

(4) For the purpose of section 165, a trustee is treated as paying tax on a withdrawal to which section CS 1 of the Income Tax Act 2007 applies on behalf of the member or the other person who made the withdrawal.

Section 165AA was inserted by section 39(1) Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) with application as from 14 September 2000.

Section 165AA(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CS 1 of the Income Tax Act 2004” for the words “section CL 4 of the Income Tax Act 1994”.

Section 165AA(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “schedule 1, part A, clause 4 of the Income Tax Act 2004” for the words “Schedule 1, Part A, clause 4 of the Income Tax Act 1994”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross” wherever it appeared.

Subsection (2) and (4) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CS 1 of the Income Tax Act 2004” for the words “section CL 4 of the Income Tax Act 1994”.

Section 165AA(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **165A Recovery of excess tax credits allowed**

- (1) If the Commissioner is satisfied that a credit of tax allowed or credited to a person under a tax law exceeded the amount properly allowable or able to be credited to the person under that tax law, the Commissioner may recover the amount of the excess from the person in the same manner, with any necessary modifications, as if the excess were income tax payable under the Income Tax Act 2007.
- (2) Subsection (1) is subject to sections LA 3 to LA 5, LJ 7, and LK 4 of the Income Tax Act 2007.

Section 165A was inserted by section 48 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 165A was repealed, by section 230 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), as from the first day of the 2002-03 income year.

A new section 165A was inserted by section 141(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2002-03 income year.

Section 165A(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section 257 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 165A(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 26 March 2003, by section 135 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by inserting the words “of the Income Tax Act 1994” after the words “sections LC 3, LC 4(11) and LD 1(6)”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

### **165B Recovery of overpaid refunds: NRWT**

- (1) This section applies for the purposes of the NRWT rules when the amount of a refund made to a person is more than the amount properly refundable to them.
- (2) The Commissioner may recover the amount overpaid as if it were income tax.
- (3) If the person has led the Commissioner by wilful default or neglect to pay the refund, the amount of the overpayment is due on the date the refund was paid. In every other case, the amount of the overpayment is due on the 5th working day of the month after that in which the Commissioner notifies the person that the amount of the overpayment is payable.

Compare: 2004 No 35 s NG 16(5)

Section 165B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **166 Tax paid in excess may be set off against additional tax when assessment reopened**

- (1) Subject to sections IA 3(2)(c), OA 2(5), RA 19, RA 20, RM 3, RM 13 to RM 21, RM 32, and RZ 6 of the Income Tax Act 2007 and sections 71B and 104B, in any case where, upon the investigation by the Commissioner of the liability of a taxpayer for tax over a group of successive years,—
  - (a) the Commissioner assesses the taxpayer with tax for a tax year in respect of which no assessment has been made previously, or amends an assessment for any year so as to increase the amount of the assessment; and

- (b) the Commissioner is satisfied that in respect of a tax year within that group of years tax has been paid in excess of the amount properly payable,—  
the Commissioner may, to the extent that in the Commissioner's opinion is equitable, allow any amount so paid in excess to be deducted from or set off against any tax due and unpaid for any year or years within that group of years, notwithstanding that the time limited for the making of a refund of any tax so paid in excess may have expired.
- (2) This section shall apply with respect to tax assessed whether before or after the commencement of this Act and whether under this Act or under the income tax provisions of any former Act.

Compare: 1976 No 65 s 410

Section 166(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1), before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Subsection (1)(a) was amended, by section 231(1)(a) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the words "an income year" for the words "any year of assessment", with application as from 2002-03 income year.

Subsection (1)(a) was amended, by section 231(1)(b) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word "amends" for the word "alters", with application as from 2002-03 income year.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "a tax year" for the words "an income year".

Subsection (1)(b) was amended, by section 231(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the words "an income year" for the words "any year or years of assessment", with application as from 2002-03 income year.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "a tax year" for the words "an income year".

### **166B Shipping business of absentee taxpayer**

- (1) This section applies if an assessment is made in relation to—
- (a) an absentee who carries on a shipping business carrying goods or passengers; or
  - (b) a person who—

- (i) is the master of a ship owned by or under charter to the absentee; and
  - (ii) is treated as an agent under section HD 21 of the Income Tax Act 2007.
- (2) The Commissioner may require a Customs officer to withhold the clearance of the ship pending the payment of any tax assessed.

Compare: 2004 No 35 s HK 18

Section 166B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### *Deductions*

#### **167 Recovery of tax and payments from employers or PAYE intermediaries**

- (1) Every amount of tax or combined tax and earner-related payment withheld or deducted under the PAYE rules and, where applicable, section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, shall be held in trust for the Crown, and any amount so held in trust shall not be property of the employer liable to execution, and, in the event of the bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation, or assignment.
- (2) When an amount of tax or combined tax and earner-related payment has been withheld or deducted under the PAYE rules and, where applicable, section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, and the employer has failed to deal with the amount of the tax or payment withheld or deducted (or any part of it) in the manner required by subsection (1) or the PAYE rules, the amount of the tax or payment for the time being unpaid to the Commissioner shall, in the application of the assets of the employer, rank as follows:

- (a) where the employer is, or one of whom is, an individual, upon the employer's bankruptcy or upon the employer's making an assignment for the benefit of the employer's creditors, the amount of the tax or payment shall rank without limitation in amount, and notwithstanding anything in any other Act, in order of priority immediately after preferential claims for wages or other sums payable to or on account of any servant or worker or apprentice or articed clerk, and in priority to all other claims:
  - (b) where the employer is a company, upon the liquidation of the company, the amount of the tax or payment shall have the ranking provided for in Schedule 7 to the Companies Act 1993 (whether or not the company has been incorporated or registered under that Act); and
  - (c) where the employer is a company, upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company, or upon possession being taken on behalf of the debenture holder of the property, the amount of the tax or payment shall have the ranking provided for in Schedule 7 to the Companies Act 1993 (whether or not the company has been incorporated or registered under that Act), as if the receiver were a liquidator.
- (2B) This section applies to a person instead of an employer if—
- (a) the person is acting as a PAYE intermediary for the employer in relation to an employee and a pay period; and
  - (b) the employer, for the pay period, has—
    - (i) paid to the person the salary or wages relating to the employee as required by sections RP 9 to RP 11 of the Income Tax Act 2007;
    - (ii) provided the information required by the person as required by section RP 8(b) of that Act.
- (2C) For the purpose of applying this section to a person acting as a PAYE intermediary, a reference to an “employer” is to be read as a reference to a “person acting as a PAYE intermediary”.



- (3) This section shall apply notwithstanding anything in any other Act, and in particular section 308 of the Companies Act 1955 shall apply subject to this section.

(3) *[Repealed]*

- (4) In this section—

**Floating charge***[Repealed]*

Floating charge: this definition was repealed, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). See also Part 12 of that Act for transitional provisions. See also clause 2 Personal Property Securities Act Commencement Order 2002 (SR 2002/60).

*[Repealed]*

**Tax deduction, or combined tax and earner-related payment**, does not include any late payment penalty or any short-fall penalty.

- (4) *[Repealed]*

Compare: 1976 No 65 s 365; 1994 No 76 s 56

Section 167 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 167 was amended by section 142(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or PAYE intermediaries” after the word “employers” with application for pay periods beginning as from 1 April 2004.

Section 167(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2000, by section 9(1) Accident Insurance Amendment Act 2000 (2000 No 6) by inserting, after the words “section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992”, the words “or section 285 of the Accident Insurance Act 1998”.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting, after the word “deduction” in the second place where it occurs, the words “or combined tax and earner levy deduction” and by inserting, after the words “the Accident Insurance Act 1998”, the words “or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Section 167(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting the words “or section 285 of the Accident Insurance Act 1998”.

Subsection (2) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting after the word “deduction” in the second place where it occurs, the words “or

combined tax and earner levy deduction”, and by inserting the words “or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001” after the words “the Accident Insurance Act 1998”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Section 167(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 167(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 167(2)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2B) was inserted by section 136(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application to pay periods as from 1 April 2004.

Section 167(2B)(b)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2B)(b)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1) of the Income Tax Act 2004” for the words “section NBB 4(1) of the Income Tax Act 1994”.

Subsection (2B)(b)(i) was amended, as from 21 December 2004, by section 131(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1)” for the words “section NBB 4(1)(b)” with application to pay periods as from 1 April 2004.

Section 167(2B)(b)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2B)(b)(ii) was amended, as from 21 December 2004, by section 131(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1B)(b)” for the words “section NBB 4(1)(d)” with application to pay periods as from 1 April 2004.

Subsection (2B)(b)(ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1B)(b) of the Income Tax Act 2004” for the words “section NBB 4(1B)(b) of the Income Tax Act 1994”.

Subsection (2C) was inserted by section 136(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application to pay periods as from 1 April 2004.

Second subsections (3) and (4) were inserted by section 142(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Section 167(4) **tax deduction, or combined tax and earner-related payment**: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Tax deduction, or combined tax and earner premium deduction: this definition was amended by section 49 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “late payment penalty or any shortfall

penalty” for the words “additional tax or any penal tax”. *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Tax deduction or combined tax and earner levy deduction: this definition was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by inserting, after the word “deduction” in the second place where it occurs, the words “or combined tax and earner levy deduction”. *See* Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsections (3) and (4), as inserted by section 142(2) of the Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003, were repealed by section 136(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) with application to pay periods as from 1 April 2004.

**168 Employer or PAYE intermediary failing to withhold or deduct tax or payments**

- (1) Where an employer fails to withhold or deduct an amount of tax or combined tax and earner-related payment in accordance with the employer’s obligations under the PAYE rules and, where applicable, section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Commissioner, and shall be deemed to have become due and payable to the Commissioner on the date on which under section RD 4 of the Income Tax Act 2007 the employer would have been required to pay to the Commissioner the tax or combined tax and earner-related payment.
- (2) The right of the Commissioner to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Commissioner to recover that amount from the employee under the PAYE rules; and nothing in those rules shall be construed as preventing the Commissioner from taking such steps as the Commissioner thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly

from the employer or from the employee or partly from the employer and partly from the employee.

- (3) Where any amount, including a penalty, recoverable in accordance with the PAYE rules from the employee is in fact paid by the employer, the amount so paid may be recovered by the employer from the employee.
- (4) This section applies to a person instead of an employer if the person is acting as a PAYE intermediary for the employer in relation to an employee and a pay period, and the employer, for the pay period, has—
  - (a) paid to the person the salary or wages relating to the employee as required by sections RP 9 to RP 11 of the Income Tax Act 2007:
  - (b) provided the information required by the person as required by section RP 8 of that Act.
- (5) For the purpose of applying this section to a person acting as a PAYE intermediary, references to an “employer” are to be read as references to a “person acting as a PAYE intermediary”.

Compare: 1976 No 65 s 366

Section 168 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 168 was amended by section 143(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or PAYE intermediary” after the word “Employer” with application for pay periods beginning as from 1 April 2004.

Section 168(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114) by inserting the words “or section 285 of the Accident Insurance Act 1998”.

Subsection (1) was amended by section 37(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) by substituting the words “paragraphs (a), (b), (c), and (d)” for the words “paragraphs (a), (b), and (c)” with application as from 1 April 1999.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting the words “or combined tax and earner levy deduction” after the word “deduction” in the second place where it occurs.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting the words “or combined tax and earner levy deduction” after the word “deduction” in the second place where it occurs.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting the words “or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001” after the words “the Accident Insurance Act 1998”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (4) was inserted by section 143(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Section 168(4)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4)(a) was amended, as from 21 December 2004, by section 132(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1)” for the words “section NBB 4(1)(b)” with application for pay periods beginning on or after 1 April 2004.

Subsection (4)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1) of the Income Tax Act 2004” for the words “section NBB 4(1) of the Income Tax Act 1994”.

Section 168(4)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (4)(b) was amended, as from 21 December 2004, by section 132(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1B)(b)” for the words “section NBB 4(1)(d)” with application for pay periods beginning on or after 1 April 2004.

Subsection (4)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1B)(b) of the Income Tax Act 2004” for the words “section NBB 4(1B)(b) of the Income Tax Act 1994”.

Subsection (5) was inserted by section 143(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

**169 Unpaid tax payments, etc, to constitute charge on employer’s or PAYE intermediary’s property**

- (1) Where an employer fails wholly or in part to withhold or deduct an amount of tax or combined tax and earner-related payment in accordance with the employer’s obligations under the PAYE rules and, where applicable, section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998

or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, or is liable to pay any sum to the Commissioner under the PAYE rules and, where applicable, that section 115 or that section 285 or that section 221, an amount equal to the total for the time being unpaid to the Commissioner in respect of that tax, payment, or sum, (including any late payment penalty or shortfall penalty), and in respect of any judgment obtained for that tax, payment, or sum, (including any costs, fees, or expenses included in the judgment or otherwise payable by the employer to the Commissioner in respect of the judgment) shall be a charge on all the real and personal property of the employer.

- (1B) This section applies to a person instead of an employer if the person is acting as a PAYE intermediary for the employer in relation to an employee and a pay period, and the employer, for the pay period, has—
- (a) paid to the person the salary or wages relating to the employee as required by sections RP 9 to RP 11 of the Income Tax Act 2007:
  - (b) provided the information required by the person as required by section RP 8(b) of that Act.
- (1C) For the purpose of applying this section to a person acting as a PAYE intermediary, references to an “employer” are to be read as references to a “person acting as a PAYE intermediary”.
- (2) Every charge created by this section shall be subject to all mortgages, charges, or encumbrances existing at the time of the creation of the charge, but, subject to this section, shall have priority over all other mortgages, charges, or encumbrances. Notwithstanding anything in any other Act, if any property subject to the charge created by this section is also subject to a charge created by that other Act, the charges shall rank equally with each other unless by virtue of that Act the charge so created would be deferred to the charge created by this section.
- (3) Despite section 23(b) of the Personal Property Securities Act 1999, if a charge affects property of a particular kind and the provisions of a registration Act applicable to the property provide for the registration of charges or security interests over property of that kind, the Commissioner may have particulars

of that charge recorded on the register without payment of any fee.

- (4) Particulars recorded under subsection (3) are to operate and take priority according to the provisions of the applicable registration Act.
- (4B) If a mortgage that affects the same property is registered before the registration of the charge under this section and money secured by the mortgage is advanced after the registration of the charge under this section, the charge has priority over the mortgage in respect of that money.
- (5) On the satisfaction of a registered charge, the Commissioner must release the charge in the manner required by the Act under which it was registered, with such modifications as may be necessary, and without being required to pay a fee.
- (6) Any charge created by this section which is registered against any property shall operate to secure any amount secured by any prior unregistered charge and unpaid at the time of the registration of the charge, and also to secure any amount secured by any charge coming into existence after the registration of the charge, to the intent that the registered charge shall operate to secure the total of all amounts for the time being owing by the employer under all charges created by this section.
- (7) If any amount constitutes by virtue of this section a charge on any property the High Court may make such order as it thinks fit, either for the sale of that property or any part of that property, or for the appointment of a receiver of the rents, profits, or income of that property, and for the payment of the amount of the charge and the costs of the Commissioner out of the proceeds of the sale or out of the rents, profits, or income.
- (8) Where any property has been sold under any such order, the High Court may, on the application of the purchaser or the Commissioner, make an order vesting the property in the purchaser.
- (9) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as

is specified in the order, ; and in the case of land which is subject to the Land Transfer Act 1952 the purchaser's title to that land shall be registered accordingly.

- (10) This section shall apply subject to section 167.
- (11) In this section, **registration Act**, in relation to any property, includes—
- (a) the Statutory Land Charges Registration Act 1928, in every case where the property is land or an interest in land (including a mortgage):
  - (b) the Personal Property Securities Act 1999.

Compare: 1976 No 65 s 367; 1994 No 76 s 57

Section 169 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

The heading to section 169 was amended by section 144(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by inserting the words “or PAYE intermediary’s” after the word “employer’s” with application for pay periods beginning as from 1 April 2004.

Section 169(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 50 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “late payment penalty or shortfall penalty” for the words “additional tax or penal tax”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended, as from 19 December 1998, by section 416 Accident Insurance Act 1998 (1998 No 114), by inserting the words “or section 285 of the Accident Insurance Act 1998”, and “or that section 285” respectively.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting the words “or combined tax and earner levy deduction” after the word “deduction” in the second place where it occurs.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting the words “or section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001” after the words “the Accident Insurance Act 1998”.

Subsection (1) was amended, as from 1 April 2002, by section 338 Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) by inserting the words “or that section 221” after the words “or that section 285”. See Part 10 of that Act for provisions relating to transition from competitive provisions of workplace accident insurance. See Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

Subsection (1B) was inserted by section 144(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.



Section 169B(1B)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1B)(a) was amended, as from 21 December 2004, by section 133(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1)” for the words “section NBB 4(1)(b)” with application for pay periods beginning as from 1 April 2004.

Subsection (1B)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1) of the Income Tax Act 2004” for the words “section NBB 4(1) of the Income Tax Act 1994”.

Section 169(1B)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1B)(b) was amended, as from 21 December 2004, by section 133(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section NBB 4(1B)(b)” for the words “section NBB 4(1)(d)” with application for pay periods beginning as from 1 April 2004.

Subsection (1B)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 4(1B)(b) of the Income Tax Act 2004” for the words “section NBB 4(1B)(b) of the Income Tax Act 1994”.

Subsection (1C) was inserted by section 144(2) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Subsections (3) and (4) were substituted, as from 25 November 2003, by section 137(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (4B) was inserted, as from 25 November 2003, by section 137(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (5) was substituted, as from 25 November 2003, by section 137(1) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Subsection (9) was amended, as from 25 November 2003, by section 137(2) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122) by omitting the words “and the order shall be subject to stamp duty accordingly;”.

Subsection (11) was substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See also* Part 12 of that Act for transitional provisions. *See also* clause 2 Personal Property Securities Act Commencement Order 2002 (SR 2002/60).

Subsection (11) was substituted, as from 25 November 2003, by section 137(3) Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

## **170 Recovery of RWT**

- (1) The amount of RWT withheld under the RWT rules by any person shall be held in trust for the Crown, and any amount

so held in trust shall not be property of the person liable to execution, and, in the event of the bankruptcy or liquidation of the person or an assignment for the benefit of the person's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation, or assignment.

- (2) The provisions of section 167(2) shall apply to any amount of RWT made in accordance with the RWT rules by any person as if it were tax to which that section refers and as if the person were the employer to which that section refers.
- (3) This section shall apply notwithstanding anything in any other Act, and in particular section 308 of the Companies Act 1955 shall apply subject to this section.

Compare: 1976 No 65 s 327Q

Section 170 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 170(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 170(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **171 Person failing to withhold RWT**

- (1) Where a person fails to withhold RWT in accordance with that person's obligations under the RWT rules, the amount in respect of which default has been made shall constitute a debt payable by that person to the Commissioner, and shall be deemed to have become due and payable to the Commissioner on the day on which it would have been due to be paid to the Commissioner had the tax been correctly withheld.
- (2) The right of the Commissioner to recover from the person the amount in respect of which default has been made shall be in addition to any right of the Commissioner to recover from the recipient of that amount any income tax in respect of an income tax liability that would have arisen if the only income of the recipient were resident passive income of which that amount formed part; and nothing in the RWT rules shall be construed as preventing the Commissioner from taking such steps as the Commissioner thinks fit to recover that amount from both of those persons concurrently, or from recovering

that amount wholly from one of those persons, or partly from one and partly from the other of those persons.

- (3) Notwithstanding subsections (1) and (2), where and to the extent to which any person (in this subsection referred to as the **first person**) otherwise liable to make payment of any amount in accordance with this section can satisfy the Commissioner that any other person has withheld RWT from the resident passive income which the first person failed to withhold, for the purposes of this section and section 172 only in determining any liability of the first person under this section or section 172, that tax made by the other person shall be deemed to be made by the first person.

Compare: 1976 No 65 s 327S

Section 171 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 171(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was substituted by section 477 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 171(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the word “gross”.

Section 171(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **172 Unpaid RWT constitutes charge on payer’s property**

- (1) Where a person fails wholly or in part withhold RWT in accordance with that person’s obligations under the RWT rules, or is liable to pay any sum to the Commissioner under the RWT rules, an amount equal to the total for the time being unpaid to the Commissioner in respect of that tax or that sum (including any late payment penalty or shortfall penalty), and in respect of any judgment obtained for that amount or sum (including any costs, fees, or expenses included in the judgment or otherwise payable by the person to the Commissioner in respect of it) shall be a charge on all the real and personal property of the person.
- (2) Subject to subsection (3), the provisions of section 169 (except subsection (10)) shall apply to every charge created by

this section as if that charge were a charge created by section 169(1).

- (3) Any amount secured by a charge under this section shall rank in any liquidation or receivership of a person that is a company, or any bankruptcy or assignment for the benefit of creditors of a person that is an individual, equally with any amounts secured under section 169.

Compare: 1976 No 65 s 327R

Section 172 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 172(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended by section 51 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “late payment penalty or shortfall penalty” for the words “additional tax or penal tax”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **173 Overpayment of family credit of tax, etc**

*[Repealed]*

Subsection (2) was amended, as from 1 July 1996, by section 14 Tax Administration Amendment Act 1996 (1996 No 19) by substituting the words “family certificate of entitlement” for the words “family support certificate of entitlement”.

Section 173 was repealed, as from 7 October 1998, by section 38 Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101).

## **Part 10A**

### **Tax recovery agreements**

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **173A Application of Part**

This Part applies to tax recovery agreements negotiated between the Government of a territory outside New Zealand and the Government of New Zealand.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### 173B Definitions

In this Part—

**Competent authority** has the meaning provided in a double tax agreement or in a tax recovery agreement and includes the Commissioner

**Contested act of assistance** means an act of or on behalf of a competent authority that a person affected by the act considers is inconsistent with a tax recovery agreement or this Part

**Contested tax** means an amount of tax that is contested because—

- (a) a time limit on a right to object to or to challenge the amount of a tax assessed by the competent authority of the territory outside New Zealand has not expired; or
- (b) the time limit in paragraph (a) has expired and the person assessed with the amount of tax has made a valid objection or challenge to the amount of the tax assessed; and
- (c) if paragraph (b) applies, the objection or challenge has not been finally determined by a court or tribunal of competent jurisdiction in the territory:

**Tax recovery agreement** means—

- (a) a convention or an agreement negotiated to assist in the recovery of unpaid tax due to either or both of the Governments that are parties to the convention or the agreement that has—
  - (i) been brought into effect by Order in Council under section 173C; and
  - (ii) entered into force according to its tenor; or
- (b) a double tax agreement, to the extent that it provides for the recovery of unpaid tax.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### 173C Tax recovery agreements

- (1) The Governor-General may, by Order in Council, declare that a tax recovery agreement has effect for unpaid tax.
- (2) A tax recovery agreement has effect—

- (a) even if a provision in the agreement is inconsistent with a provision in this Act or in any other enactment; and
- (b) subject to this Part.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **173D Taxes that may be recovered**

- (1) To the extent that the taxes are prescribed in a tax recovery agreement, the agreement may provide for assistance in the recovery of taxes that are imposed by the laws of New Zealand and the territory with which the agreement is negotiated.
- (2) For the purposes of this Part, assistance in the recovery of taxes includes assistance in the recovery of charges associated with the taxes, whether interest, administrative penalties, costs of collection or conservancy, or another related amount.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 173D(2): added (with effect on 1 April 2008), on 6 October 2009, by section 690(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **173E Requests for assistance**

- (1) A competent authority may make a request for assistance under a tax recovery agreement.
- (2) A request for assistance must be accompanied by—
  - (a) written particulars of—
    - (i) the amount of unpaid tax to which the request for assistance in recovery relates; and
    - (ii) the extent, if any, to which the requesting party considers the unpaid tax is contested; and
  - (b) a declaration made by the applicant's competent authority that the unpaid tax is a tax prescribed in the agreement and that any other conditions in the tax recovery agreement concerning the making of a request have been complied with; and
  - (c) a certified or notarized copy of the instrument that allows enforcement of the unpaid tax in the state of the applicant.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**173F Scope of assistance**

- (1) Subject to subsections (2) and (3), when assisting a competent authority in response to a request made under a tax recovery agreement, the Commissioner may apply any provision or exercise any authority, discretion, power, provision, or right that is available to the Commissioner under the laws of New Zealand.
- (2) Parts 4A, 5, 5A, 6, 7, 8, 8A, 9, except sections 143C to 143E, and Part 12, except sections 203 to 205, do not apply to this Part
- (3) Part 11 applies to this Part.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**173G Limitations on assistance in recovery**

- (1) The Commissioner must not assist in recovering an amount of unpaid tax that is contested.
- (2) Subsection (1) does not apply if, after consultation, the competent authorities determine that the taxpayer to whom the request for assistance relates—
  - (a) acknowledges that the amount of unpaid tax will no longer be contested; or
  - (b) may leave New Zealand in order to defeat recovery action; or
  - (c) may take steps in relation to the existence or location of the taxpayer's assets that make it more difficult for the Commissioner to recover the unpaid tax; or
  - (d) is contesting the assessment solely to delay or frustrate recovery action.
- (3) Assistance must not be given—
  - (a) for an amount of unpaid tax that became uncontested more than 6 years before the tax recovery agreement entered into force in New Zealand; or

- (b) if the request for assistance is first made more than 15 years after the date on which the unpaid tax became uncontested.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **173H Contested act of assistance**

- (1) This section applies to a contested act of assistance and applies whether or not another remedy is available under the laws of New Zealand or the laws of the other party to a tax recovery agreement.
- (2) A person that claims to be affected by a contested act of assistance may advise the competent authority of the reasons why the person considers the act is a contested act of assistance.
- (3) On receipt of a request under subsection (2), the competent authority must, without undue delay,—
  - (a) endeavour to resolve with the person the dispute concerning the contested act of assistance; or
  - (b) refer the request, together with reasons, to the competent authority of the other territory, and endeavour, by mutual agreement, to resolve the dispute.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **173I Rights of appeal**

- (1) A taxpayer may appeal to the District Court on a question of law or fact that arises from the exercise of any authority, discretion, power, provision, or right by the Commissioner or another competent authority under this Part.
- (2) The District Court may reverse or modify the effect of the authority, discretion, power, provision, or right exercised, or refer the matter back to the Commissioner or the other competent authority for further consideration.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).



**173J Certificates given by Commissioner**

- (1) The Commissioner may sign a certificate on any matter referred to in subsection (2) if the Commissioner first determines that assistance may be given under this Part.
- (2) A certificate under subsection (1) may include the following:
  - (a) that the request is made under section 173E;
  - (b) that the request complies with this Part.
- (3) In all proceedings concerning an act of the Commissioner to which section 173F(1) refers, a certificate purporting to be given under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the matters certified by the certificate.

Part 10A (comprising sections 173A to 173J) was inserted, as from 20 May 1999, by section 112(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

**Part 10B**  
**Transfers of excess tax**

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). *See* section 91(2) of that Act as to its application.

**173K Application**

- (1) This Part applies if tax has been paid in excess of the amount properly payable—
  - (a) to the extent that the tax paid in excess by or on behalf of a taxpayer is refundable and after the date the tax was paid, and before it is transferred under this Part, has not been applied to satisfy a tax liability or other amount due;
  - (b) to allow the Commissioner to transfer all or part of the excess at the taxpayer's request.
- (2) For the purpose of the Inland Revenue Acts—
  - (a) tax transferred by the transferor is treated as a refund to the transferor on the date of transfer; and
  - (b) tax transferred to the transferee is treated as tax paid by the transferee on the date of transfer, except for the purpose of imposing a shortfall penalty under Part 9.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

### *Transfer rules*

#### **173L Transfer of excess tax within taxpayer's accounts**

- (1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another period or another tax type of the taxpayer.
- (2) The taxpayer may choose the date on which all or part of the excess is transferred, being—
  - (a) in the case of a GST refund, a day after the end of the GST return period in which the refund arose:
  - (b) in the case of tax withheld or deducted on the taxpayer's behalf, a day after the end of the accounting year in which the amount was withheld or deducted occurred:
  - (bb) in the case of a tax credit for expenditure on research and development, a day after the end of the accounting year to which the credit relates:
  - (c) in any other case, a date that occurs on or after the date the excess tax is paid.
- (3) Despite subsection (2)(b) and (bb), a taxpayer who has an early balance date must, for tax withheld or deducted on their behalf or a tax credit for expenditure on research and development, choose a day after the end of the tax year in which the amount was withheld or deducted or the tax year corresponding to the accounting year to which the credit relates.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

Subsection (2)(a) was amended, as from 1 April 2005, by section 134 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words "GST return period" for the words "taxable period".

Section 173L(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173L(2)(bb): inserted (with effect on 1 April 2008), on 6 October 2009, by section 691(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 173L(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 691(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 173L(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

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

- (1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another taxpayer.
- (2) A request may be made for a transfer between a taxpayer and—
  - (a) a company in the same group of companies; or
  - (b) a shareholder employee of the taxpayer; or
  - (c) a company in which the taxpayer is a shareholder employee; or
  - (d) a partner in the same partnership; or
  - (e) a relative; or
  - (f) a trustee of a family trust of which the taxpayer is a beneficiary; or
  - (fb) a tax pooling intermediary's tax pooling account; or
  - (g) another taxpayer not listed in paragraphs (a) to (fb).
- (3) A taxpayer, being a trustee of a family trust, may request a transfer to a beneficiary of the trust.
- (4) The taxpayer may choose the date on which all or part of the excess is transferred, being—
  - (a) if subsection (2)(a) to (2)(f) or subsection (3) applies, a date allowed by section 173L:
  - (ab) if subsection (2)(fb) applies, a date that occurs on or after the date of the request:
  - (b) if subsection (2)(g) applies, the later of the following dates:
    - (i) a date that occurs on or after the date of the request; and
    - (ii) a date that occurs after the date that the relevant return is filed for the period in which the excess arose.
- (5) In this section—

**family trust** means a trust that is established primarily to benefit—

  - (a) a natural person for whom the settlor has natural love and affection; or

- (b) an organisation or a trust whose income is exempt under section CW 41 or CW 42 of the Income Tax Act 2007; or
- (c) a natural person that satisfies paragraph (a) and an organisation or a trust that satisfies paragraph (b)

**relative** means, in relation to a person, another person connected with the person by blood relationship, marriage, civil union or de facto relationship, or adoption.

- (6) For the purpose of the **relative** definition—
  - (a) persons are connected by blood relationship if one is the child of the other:
  - (b) persons are connected by marriage, civil union or de facto relationship if one person is in a marriage, civil union or de facto relationship with the other:
  - (c) persons are connected by adoption if one has been adopted as the child of the other.

(7) *[Repealed]*

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

Section 173M(2)(fb): inserted, on 6 October 2009, by section 692(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 173M(2)(g): substituted, on 6 October 2009, by section 692(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 173M(4)(ab): inserted, on 6 October 2009, by section 692(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (5) family trust: paragraph (b) of this definition was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CW 34 or CW 35 of the Income Tax Act 2004” for the words “section CB 4(1)(c) or CB 4(1)(e) of the Income Tax Act 1994”.

Subsection (5) relative: this definition was amended, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22) by substituting the words “marriage, civil union or de facto relationship,” for the word “marriage”.

Section 173M(5)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (6)(b) was substituted, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22).

Subsection (7) was repealed, as from 26 April 2005, by section 3(1) Tax Administration Amendment Act 2005 (2005 No 22).

**173MB Limitation on transfer by PAYE intermediary**

Despite sections 173L and 173M, and section RP 6(4) of the Income Tax Act 2007, interest on a payment made by a person to the Commissioner in acting as a PAYE intermediary for an employer—

- (a) may not be treated as tax overpaid by the person other than as a PAYE intermediary for the employer; and
- (b) may not be transferred to the person in another capacity or to another taxpayer.

Section 173MB was inserted by section 145(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

Section 173MB: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173MB, before the paragraphs, was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section NBA 6(4) of the Income Tax Act 2004” for the words “section NBB 6(4) of the Income Tax Act 1994”.

**173N Transfer of excess tax—tax credits**

Despite sections 173L and 173M, if a taxpayer makes a request to transfer a refund arising from a tax credit referred to in section 41A, the taxpayer may choose only the later of the following dates:

- (a) a date that occurs on or after the date of the request; and
- (b) a date that occurs after the date on which the taxpayer applies for a refund under section 41A.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). *See* section 91(2) of that Act as to its application.

Section 173N heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173N: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**173O Transfer of excess tax if no date specified by taxpayer**

- (1) If a taxpayer or their agent requests a transfer under this Part but does not choose the date on which the excess is transferred, the Commissioner may transfer the excess on a date on which the Commissioner considers appropriate.

- (2) Even if the Commissioner transfers the excess on a date on which the Commissioner considers appropriate, the taxpayer or their agent may subsequently choose a date allowed by sections 173L and 173M, and request that the Commissioner transfer the excess on that date.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

*Application of transfer rules to excess  
provisional tax*

**173P Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment**

- (1) This section applies in respect of excess provisional tax if—
- (a) a taxpayer or their agent requests a transfer allowed by section 173L, section 173M(2)(a) to 173M(2)(f), or section 173M(3); and
  - (b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax for a tax year than the provisional tax payable by that date; and
  - (c) the request is actioned before an assessment is made under Part 6.
- (2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:
- provisional tax paid — refunds — provisional tax liability
- where—
- provisional tax paid is the provisional tax paid for a tax year on or before date A, including:
- (a) voluntary payments made under section RC 12 of the Income Tax Act 2007; and
  - (b) tax transferred to the taxpayer:
- refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
- provisional tax liability is the provisional tax payable by date A.

- (3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would not satisfy their provisional tax liability in respect of the tax year on a date (**date B**) that falls after date A, unless the taxpayer requests a transfer back to their account to satisfy their provisional tax liability on date B.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

Subsections (1)(b) and (2) were amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 173P(2) formula item **provisional tax paid** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173P(2) formula item **provisional tax paid** paragraph (a): amended, on 1 October 2007, by section 258(1) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

### **173Q Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment**

- (1) This section applies in respect of excess provisional tax if—
- (a) a taxpayer or their agent requests a transfer allowed by section 173L, section 173M(2)(a) to 173M(2)(f), or section 173M(3); and
  - (b) on the date that the Commissioner actions the request, the taxpayer—
    - (i) has paid provisional tax for a tax year based on an estimate of their residual income tax and, as a result of a revised estimate for the year, the taxpayer has paid more provisional tax than the revised estimate for the year; or
    - (ii) pays provisional tax for a tax year in accordance with section RC 5(2) and (3) of the Income Tax Act 2007 and, as a result of estimating their residual income tax for the year, the taxpayer has

- paid more provisional tax than the estimated residual income tax for the year; and
- (c) the request is actioned before an assessment is made under Part 6.
- (2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:  

$$\text{provisional tax paid} - \text{refunds} - \text{estimated RIT}$$
 where—  
 provisional tax paid is the provisional tax paid for a tax year on or before date A, including:  
 (a) voluntary payments made under section RC 12 of the Income Tax Act 2007; and  
 (b) tax transferred to the taxpayer;  
 refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax;  
 estimated RIT is the taxpayer's estimated residual income tax or revised estimated residual income tax that would be due by date A for the purpose of calculating interest under Part 7, calculated as if the estimated residual income tax or revised estimated residual income tax were residual income tax and section 120KE(1) did not apply.
- (3) The Commissioner must not transfer an amount on date A if, as a result,—  
 (a) a taxpayer to whom subsection (1)(b)(i) applies would not have paid, on a date (**date B**) that falls after date A, the amount of their revised estimated residual income tax that would have been due on date B under Part VII, calculated as if the revised estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B; or  
 (b) a taxpayer to whom subsection (1)(b)(ii) applies would not have paid, on a date (**date B**) that falls after date A, the amount of their estimated residual income tax that would have been due on date B under Part 7, calculated



as if the estimated residual income tax were residual income tax and section 120K(4) did not apply, unless the taxpayer requests a transfer back to their account on or before date B.

- (4) The amount that may be transferred under subsection (2) may not be more than—
- (a) if subsection (1)(b)(i) applies, the net provisional tax paid less the revised estimated residual income tax for the tax year:
  - (b) if subsection (1)(b)(ii) applies, the net provisional tax paid less the estimated residual income tax for the tax year.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

Subsection (1)(b)(i) and (ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Section 173Q(1)(b)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173Q(1)(b)(ii): amended, on 1 October 2007, by section 259(1)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (1)(b)(ii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 173Q(2) formula item **provisional tax paid** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173Q(2) formula item **provisional tax paid** paragraph (a): amended, on 1 October 2007, by section 259(1)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 173Q(2) formula item **estimated RIT**: amended, on 1 October 2007, by section 259(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (4)(a) and (b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**173R Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment**

- (1) This section applies in respect of excess tax if—
- (a) a taxpayer or their agent requests a transfer allowed by section 173L, section 173M(2)(a) to 173M(2)(f), or section 173M(3); and
  - (b) on the date that the Commissioner actions the request, the taxpayer has paid more provisional tax than the taxpayer's residual income tax for a tax year.
- (2) The excess provisional tax that may be transferred on a particular date (**date A**) is calculated according to the formula:
- provisional tax paid — refunds — residual income tax
- where—
- provisional tax paid is the provisional tax paid for the tax year on or before date A, including:
- (a) voluntary payments made under section RC 12 of the Income Tax Act 2007; and
  - (b) tax transferred to the taxpayer:
- refunds are the refunds of the provisional tax that are paid to the taxpayer on or before date A, including transfers by the taxpayer or offsets by the Commissioner against unpaid tax:
- residual income tax is the taxpayer's residual income tax that would be due by date A for the purpose of calculating interest under Part 7, calculated as if section 120KE(1) did not apply.
- (3) The Commissioner must not transfer an amount on date A if, as a result, the taxpayer would be liable to pay interest on unpaid tax under Part 7 or would have a late payment penalty imposed under Part 9 in respect of their provisional tax payments for the tax year on a date (**date B**) that falls after date A, unless the taxpayer requests a transfer back to their account so as to prevent interest or a late payment penalty being imposed on date B in respect of their provisional tax payments.
- (4) The amount that may be transferred under subsection may not be more than the net provisional tax paid for a tax year less the residual income tax for the year.

Part 10B (comprising sections 173K to 173U) was inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32). See section 91(2) of that Act as to its application.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 173R(2) formula item **provisional tax paid** paragraph (a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 173R(2) formula item **provisional tax paid** paragraph (a): amended, on 1 October 2007, by section 260(1)(a) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 173R(2) formula item **residual income tax**: amended, on 1 October 2007, by section 260(1)(b) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (4) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “a tax year” for the words “an income year”.

### *Miscellaneous*

#### **173S Transfers of interest on overpaid tax**

- (1) If the Commissioner is liable to pay interest to a taxpayer under Part 7, a taxpayer or their agent may request the Commissioner to transfer all or part of the interest to another period, another tax type of the taxpayer or to another taxpayer.
- (2) The Commissioner may only transfer the interest on the date that it would have been payable under Part 7, as if a transfer request had not been made.

Part 10B (comprising sections 173K to 173U) were inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to: (a) tax paid in excess, being tax on income derived as from the 2002-03 income year; (b) tax paid in excess, if— (i) the excess arises from an assessment made on or after 1 April 2002 and before 17 October 2002; and (ii) the taxpayer notifies the Commissioner that Part 10B of the Tax Administration Act 1994 should apply to the excess; (c) tax paid in excess, if the excess arises from an assessment made on or after 17 October 2002; (d) tax deducted on behalf of another taxpayer and paid on or after 1 April 2002; (e)

a dividend withholding payment paid on or after 1 April 2002; (f) an application for a refund made under section 41A of the Tax Administration Act 1994 on or after 17 October 2002; (g) goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002; (h) gift duty, cheque duty, totalisator duty, lottery duty, gaming machine duty or casino duty paid in excess, being duty paid on or after 1 April 2002.

### **173T Application of excess tax if taxpayer has unsatisfied tax liability**

If a taxpayer has excess tax and the Commissioner applies all or part of the excess in satisfaction of tax or another amount due, the taxpayer or their agent may request the Commissioner to apply all or part of the excess on a date allowed by section 173L.

Part 10B (comprising sections 173K to 173U) were inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to: (a) tax paid in excess, being tax on income derived as from the 2002-03 income year; (b) tax paid in excess, if— (i) the excess arises from an assessment made on or after 1 April 2002 and before 17 October 2002; and (ii) the taxpayer notifies the Commissioner that Part 10B of the Tax Administration Act 1994 should apply to the excess; (c) tax paid in excess, if the excess arises from an assessment made on or after 17 October 2002; (d) tax deducted on behalf of another taxpayer and paid on or after 1 April 2002; (e) a dividend withholding payment paid on or after 1 April 2002; (f) an application for a refund made under section 41A of the Tax Administration Act 1994 on or after 17 October 2002; (g) goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002; (h) gift duty, cheque duty, totalisator duty, lottery duty, gaming machine duty or casino duty paid in excess, being duty paid on or after 1 April 2002.

### **173U Transfers of excess financial support**

Despite sections 173L and 173M, a taxpayer may not request a transfer under this Act of excess financial support, as defined in section 2(1) of the Child Support Act 1991.

Part 10B (comprising sections 173K to 173U) were inserted by section 91(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to: (a) tax paid in excess, being tax on income derived as from the 2002-03 income year; (b) tax paid in excess, if— (i) the excess arises from an assessment made on or after 1 April 2002 and before 17 October 2002; and (ii) the taxpayer notifies the Commissioner that Part 10B of the Tax Administration Act 1994 should apply to the excess; (c) tax paid in excess, if the excess arises from an assessment made on or after 17 October 2002; (d) tax deducted on behalf of another taxpayer and paid on or after 1 April 2002; (e) a dividend withholding payment paid on or after 1 April 2002; (f) an application for a refund made under section 41A of the Tax Administration Act 1994

on or after 17 October 2002; (g) goods and services tax paid in excess, being goods and services tax payable on supplies made in taxable periods beginning on or after 1 April 2002; (h) gift duty, cheque duty, totalisator duty, lottery duty, gaming machine duty or casino duty paid in excess, being duty paid on or after 1 April 2002.

## **Part 11**

### **Remission, relief, and refunds**

#### **174 Application of Part to tax years before 1994**

- (1) Despite section 1(2), an application for the remission of a penalty imposed under an Inland Revenue Act must be considered under this Part.
- (2) Despite section 1(2), section 413 of the Income Tax Act 1976 does not apply to an application for remission made on or after 1 April 1997.

The heading to section 174 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax years” for the words “income years”.

Subsection (1)(a) was amended, as from 23 September 1997, by section 100 Taxation (Remedial Provisions) Act 1997 (1997 No 74) by substituting the expression “\$20” for the expression “\$5”.

Subsection (2) was inserted by section 52 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 174 was substituted, and section 174AA was inserted, as from 20 May 1999, by section 113(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

#### **174AA Power of Commissioner in respect of small amounts of refunds or tax payable**

Despite any other provision of this Act or the Income Tax Act 2007, the Commissioner may write off tax, refrain from making an assessment of tax, refrain from collecting tax or refrain from refunding tax if—

- (a) the balance of the tax payable is not more than \$20; or
- (b) the tax paid, withheld, or deducted is \$5 or less than the amount of the tax for which the taxpayer is liable.

Section 174 was substituted, and section 174AA was inserted, as from 20 May 1999, by section 113(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

Section 174AA: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 174AA was amended, by section 232 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the words “making an assessment” for the words “issuing a notice of assessment”, with application as from the 2002-03 income year.

Section 174AA was amended, as from 1 April 2003, by section 146 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “write off tax, refrain from making an assessment of tax, refrain from collecting tax or refrain from” for the words “refrain from either making an assessment, collecting, or”.

Section 174AA was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 174AA(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **174A Partial refunds of GST**

- (1) The Commissioner may refund overpaid GST that a person pays—
  - (a) for a GST return period; or
  - (b) for more than one GST return period, if the return periods are the subject of one notice of proposed adjustment,—  
even if other GST liabilities of the person in respect of the GST return period or periods remain the subject of a notice of proposed adjustment or an outstanding assessment or assessments.
- (2) The Commissioner must not refund overpaid GST under subsection (1) unless—
  - (a) the Commissioner considers there is no risk to the revenue in making the refund; and
  - (b) the person generally complies with all return and payment obligations under the Goods and Services Tax Act 1985; and
  - (c) the person is not in breach in any material respect of any of the taxpayer’s other tax obligations; and
  - (d) after the refund is made, the person will have paid or be credited as having paid GST for the GST return period or periods in an amount at least equal to the GST that remains the subject of the notice of proposed adjustment

or assessment or assessments referred to in subsection (1).

Section 174A was inserted by section 53 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **175 Small amounts of additional tax, etc, not to be charged**

*[Repealed]*

Section 175 was repealed by section 54 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **176 Recovery of tax by Commissioner**

- (1) The Commissioner must maximise the recovery of outstanding tax from a taxpayer.
- (2) Despite subsection (1), the Commissioner may not recover outstanding tax to the extent that—
  - (a) recovery is an inefficient use of the Commissioner’s resources; or
  - (b) recovery would place a taxpayer, being a natural person, in serious hardship.

Subsection (1) was amended, by section 233 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the words “amendments to” for the words “alterations in”, with application as from the 2002-03 income year.

Subsection (1) was amended, by section 236(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the word “amended” for the word “altered”, with application as from the 2002-03 income year.

Subsection (2) was substituted by section 478 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsections (6) was repealed by section 76(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from 1 April 2001.

Subsection (7) was inserted by section 101 Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Subsections (7) was repealed by section 76(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application as from 1 April 2001.

Sections 176 and 177 were substituted by section 92(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application

to tax that is outstanding on and after 1 December 2002. *See* section 92(3) and (4) of that Act as to when this amendment does not apply.

### **177 Taxpayer may apply for financial relief**

- (1) A taxpayer, or a person on a taxpayer's behalf, applies for financial relief by either—
  - (a) making a claim stating why recovery of outstanding tax would place the taxpayer in serious hardship; or
  - (b) requesting to enter into an instalment arrangement with the Commissioner by telephone or in writing.
- (2) The Commissioner may require a taxpayer, or a person on a taxpayer's behalf, to apply for financial relief under subsection (1)(a) by notice.
- (3) Upon receiving a request, the Commissioner may—
  - (a) accept the taxpayer's request; or
  - (b) seek further information from the taxpayer; or
  - (c) make a counter offer; or
  - (d) decline the taxpayer's request.
- (4) A taxpayer has 20 working days, or a longer period allowed by the Commissioner, to provide the information sought or to respond to a counter offer.
- (5) If the Commissioner receives information or a response from a taxpayer outside the time period allowed under subsection (4), the receipt of the information or the response will be treated as a new request for financial relief.

Subsection (1)(a)(i) was substituted by section 479(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1) was amended by section 77(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), by omitting the words "in writing", with application to applications for relief made as from 10 October 2000.

Subsection (1A) was inserted by section 77(2) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39), with application to applications for relief made as from 10 October 2000.

Subsection (2) was substituted by section 479(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (4) was amended, as from 1 October 1996, by section 55 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by inserting, after the words "objection to", the words "and no right to challenge". *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.



Section 177 was substituted by section 78(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application to applications for relief made as from 1 April 2001.

Subsection (4) was amended, by section 234 Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the words “amend an” for the words “issue and amended”, with application as from the 2002-03 income year.

Sections 176 and 177 were substituted by section 92(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to tax that is outstanding on and after 1 December 2002. *See* section 92(3) and (4) of that Act as to when this amendment does not apply.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “by notice” for the words “in writing”.

#### **177A Definition of serious hardship**

- (1) In this section and sections 176, 177, 177B and 177C, **serious hardship**, in relation to a taxpayer, being a natural person,—
- (a) includes significant financial difficulties that arise because of—
    - (i) the taxpayer’s inability to meet minimum living expenses according to normal community standards; or
    - (ii) the cost of medical treatment for an illness or injury of the taxpayer or the taxpayer’s dependant; or
    - (iii) a serious illness suffered by the taxpayer or the taxpayer’s dependant; or
    - (iv) the cost of education for the taxpayer’s dependant; and
  - (b) does not include significant financial difficulties that arise because—
    - (i) the taxpayer is obligated to pay tax; or
    - (ii) the taxpayer may become bankrupt; or
    - (iii) the taxpayer’s, or the taxpayer’s dependant’s, social activities and entertainment may be limited; or
    - (iv) the taxpayer is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.
- (2) The Commissioner may take into account whether the recovery of outstanding tax would place—

- (a) a shareholder who owns, or 2 shareholders who jointly own, 50% or more of the shares in a company in serious hardship; or
  - (b) a shareholder-employee of a close company in serious hardship.
- (3) For the purpose of subsection (2), **close company** means a company that satisfies paragraphs (a) and (c) of the definition of **close company** in section YA 1 of the Income Tax Act 2007.

Sections 177A to 177CA were inserted by section 92(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to tax that is outstanding on and after 1 December 2002. *See* section 92(3) and (4) of that Act as to when this amendment does not apply.

Section 177A(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “paragraphs (a) and (c) of the definition of close company in section OB 1 of the Income Tax Act 2004” for the words “paragraph (a) of the definition of close company in section OB 1 of the Income Tax Act 1994”.

### **177B Instalment arrangements**

- (1) The Commissioner must not enter into an instalment arrangement with a taxpayer to the extent that the arrangement would place the taxpayer in serious hardship.
- (2) The Commissioner may decline to enter into an instalment arrangement if—
  - (a) to do so would not maximise the recovery of outstanding tax from the taxpayer; or
  - (b) the Commissioner considers that the taxpayer is in a position to pay all of the outstanding tax immediately; or
  - (c) the taxpayer is being frivolous or vexatious; or
  - (d) the taxpayer has not met their obligations under a previous instalment arrangement.
- (3) A taxpayer may renegotiate an instalment arrangement at any time.
- (4) The Commissioner may renegotiate an instalment arrangement at any time after the end of 2 years from the date on which the instalment arrangement was entered.

- (5) The renegotiation of an instalment arrangement is treated as if it were a new request for financial relief.
- (6) The Commissioner may cancel an instalment arrangement if—
  - (a) it was entered into on the basis of false or misleading information provided by the taxpayer; or
  - (b) the taxpayer is not meeting their obligations under the arrangement.
- (7) Despite sections LA 6(2) and LH 2(6) of the Income Tax Act 2007, a taxpayer with an instalment arrangement who is meeting their obligations under it may choose to have an amount of refundable tax credit remaining for a tax year paid to them rather than used under the ordering rules set out in those sections.

Sections 177A to 177CA were inserted by section 92(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to tax that is outstanding on and after 1 December 2002. *See* section 92(3) and (4) of that Act as to when this amendment does not apply.

Section 177B(7): added (with effect on 1 April 2008), on 6 October 2009, by section 693(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### **177C Write-off of tax by Commissioner**

- (1) The Commissioner may write off outstanding tax that cannot be recovered.
- (1B) The Commissioner may write off an amount of outstanding tax to the extent to which the amount—
  - (a) is outstanding from the 2008–09 tax year; and
  - (b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting; and
  - (c) is outstanding due to amendments to the family scheme made by the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008.
- (1C) The Commissioner must write off an amount, not exceeding \$100, of outstanding tax to the extent to which the amount—
  - (a) is outstanding from the 2008–09 tax year; and
  - (b) is tax payable under section MF 5(2) or MF 6(2) of the Income Tax Act 2007, or is otherwise the result of WFF tax credit overpayment or overcrediting.

- (2) The Commissioner must write off outstanding tax that cannot be recovered in the following situations:
  - (a) bankruptcy:
  - (b) liquidation:
  - (c) a taxpayer's estate has been distributed.
- (3) Despite subsection (1), the Commissioner must not write off outstanding tax (inclusive of any shortfall penalties), if a taxpayer is liable to pay, in relation to the outstanding tax, a shortfall penalty for an abusive tax position or evasion or a similar act.
- (4) Despite subsection (2), the Commissioner may reinstate all or part of the outstanding tax written off if the Commissioner receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer becomes bankrupt, is liquidated or if additional funds due to the taxpayer's estate are discovered after the taxpayer's estate has been distributed.
- (5) If the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the Commissioner must extinguish all or part of the taxpayer's tax loss, by dividing the amount written off by 33% and reducing the tax loss by that amount.
- (5B) If the Commissioner writes off outstanding tax for a taxpayer who has a tax credit carried forward under section LE 3 of the Income Tax Act 2007, the Commissioner must extinguish an amount of the tax credit on a one-for-one basis.
- (5C) If a taxpayer has both a tax loss to which subsection (5) applies and a tax credit to which subsection (5B) applies, the Commissioner must extinguish the tax loss before extinguishing the tax credit.
- (6) For the purpose of subsection (5), the tax loss that may be extinguished is the tax loss of the taxpayer at the time at which the outstanding tax is written off and the Commissioner may use a figure for that tax loss based on the most recent return of income furnished by the taxpayer.
- (7) The Commissioner may reverse a write-off if—
  - (a) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off—

- (i) declares bankruptcy within a year of the outstanding tax being written off; or
    - (ii) is subject to bankruptcy proceedings brought by a creditor within a year of the outstanding tax being written off; or
  - (b) outstanding tax is written off on the grounds of serious hardship, and the taxpayer for whom the debt was written off is a company which, within a year of the outstanding tax being written off, is, or is in the course of being, liquidated; or
  - (c) the outstanding tax was written off due to false or misleading information provided by the taxpayer.
- (8) If the Commissioner enters into an instalment arrangement that provides for some outstanding tax to be written off, the Commissioner may not reverse the write-off even if, during the term of the instalment arrangement, the taxpayer does not meet the instalment arrangement's terms.

Sections 177A to 177CA were inserted by section 92(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to tax that is outstanding on and after 1 December 2002. *See* section 92(3) and (4) of that Act as to when this amendment does not apply.

Section 177C(1B): inserted (with effect from 1 April 2008), on 15 December 2008, by section 40 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 177C(1C): inserted (with effect from 1 April 2008), on 15 December 2008, by section 40 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section 177C(5): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 177C(5B): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 177C(5C): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsections (5B) and (5C) were inserted, as from 1 October 2005, by section 151(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) with application as from the 2005–06 income year.

Subsection (6) was substituted, as from 21 December 2004, by section 135(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application to tax that is written off on and after the date on which this Act receives the Royal assent.

Section 177C(6): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**177CA Proof of debt**

- (1) This section applies if—
  - (a) a taxpayer has entered into an instalment arrangement with the Commissioner; and
  - (b) the taxpayer is a person who has become bankrupt, or a company which is in the course of being liquidated.
- (2) Any amount outstanding under the instalment arrangement must be included in the Department's proof of debt.

Sections 177A to 177CA were inserted by section 92(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to tax that is outstanding on and after 1 December 2002. *See* section 92(3) and (4) of that Act as to when this amendment does not apply.

**177D Relief to taxpayers to whom new start grants payable**

- (1) This section applies to a taxpayer to whom a new start grant is payable.
- (2) The Commissioner must grant relief—
  - (a) to the taxpayer, or to a person or an entity associated with the taxpayer, to the extent that the Commissioner thinks it appropriate having regard to the matters referred to in section CX 48(4) and (5) or EW 46(4) and (5) of the Income Tax Act 2007; and
  - (b) from the payment of unpaid tax that relates to an income tax liability that would have arisen if the taxpayer's only gross income were derived from—
    - (i) the farming business for which the new start grant was paid; or
    - (ii) land used in carrying on the farming business; or
    - (iii) the sale of the farm.
- (3) If a new start grant is paid to a taxpayer in respect of an event that is a emergency event, as declared by the Governor-General by Order in Council under section 183ABA, the Commissioner must grant additional relief—
  - (a) to the taxpayer; and
  - (b) from the payment of unpaid tax or amounts owing to the Commissioner under the PAYE rules, if the unpaid tax or amounts owing relate to PAYE income payments made for the farming business for which the new start grant was paid.

Section 177D was inserted by section 93(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application as from 1 December 2002.

Section 177D(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(a) was amended, as from 1 February 2004, by section 136(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “section EZ 9(3) and (4)” for the words “section EZ 9(3)” with application as from the 2003–04 income year.

Subsection (2)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “section CX 41B(4) and (5) or section EW 47B(4) and (5) of the Income Tax Act 2004” for the words “section EZ 9(3) and (4) of the Income Tax Act 1994”.

Section 177D(3): amended, on 6 October 2009, by section 694 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (3) was amended, as from 1 February 2004, by section 136(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the words “event that is a qualifying event, as defined by section OB 1 of the Income Tax Act 1994” for the words “adverse event” with application as from the 2003–04 income year.

Section 177D(3)(b): substituted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## 178 Remission of additional tax imposed on underestimation

*[Repealed]*

Subsection (1) was amended by section 56(1)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “underestimation penalty tax under section 140A” for the words “additional tax under section 144”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1) was amended by section 56(1)(c) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “may remit the underestimation penalty tax” for the words “shall remit the additional tax or any appropriate part of the additional tax”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1)(c) was substituted by section 56(1)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended by section 56(2)(a) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “underestimation penalty tax in respect of that income year under section 140A” for the words

“additional tax in respect of that income year under section 144”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended by section 56(2)(b) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “may remit the underestimation penalty tax, or such part of the underestimation penalty tax” for the words “shall remit the additional tax imposed in accordance with section 144, or such parts of the additional tax”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3)(a) was amended, as from 1 April 1995, by section 15 Tax Administration Amendment Act 1995 (1995 No 24) by substituting the word “close” for the word “private”.

Subsection (3)(a) was substituted by section 480(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (4) was repealed, as from 1 April 1995, by section 10 Tax Administration Amendment Act (No 3) 1995 (1995 No 77).

Subsection (5) was substituted by section 56(3) Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. Section 56(3) of that Act also stated that subsection (4) of this section was to be repealed, however subsection (4) was already repealed as above. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (5)(a) and (b) was substituted by section 480(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 178 was repealed by section 102 Taxation (Remedial Provisions) Act 1997 (1997 No 74) with application as from the 1998-99 income year.

## **179 Relief from additional tax or incremental tax**

*[Repealed]*

Section 179 was repealed by section 57 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **180 Remissions and refunds of imputation penalty tax**

- (1) The Commissioner shall remit any imputation penalty tax imposed under section 140B to the extent that the Commissioner is satisfied that—
  - (a) liability for the imputation penalty tax arose by virtue of a debit arising to the company’s imputation credit ac-



- count under section OB 54 of the Income Tax Act 2007 in relation to an arrangement to obtain a tax advantage, and it is established subsequently that, in relation to any such debit, a credit arises to the imputation credit account in accordance with section OB 25 of that Act; or
- (b) liability for the imputation penalty tax arose by virtue of a refund of income tax having been sent but not having been received by the company, or not having been known by the company to have been received, before the end of the tax year.
  - (c) liability for the imputation penalty tax arose by virtue of a debit arising under any of sections OB 33, OB 38, OP 31, OP 36, and OZ 3 of the Income Tax Act 2007, and the taxpayer did not become aware of the arising of the debit in sufficient time to allow it to remove the debit balance before the end of the year.
- (2) Where the Commissioner remits any imputation penalty tax under this section, the Commissioner shall also remit any late payment penalty imposed under section 139B to the extent that the Commissioner is satisfied that the penalty was imposed in respect of the imputation penalty tax so remitted.
  - (3) Where the Commissioner remits any imputation penalty tax under subsection (1)(a), the Commissioner shall also remit any late payment penalty imposed under section 139B to the extent that the Commissioner is satisfied that the penalty was imposed in respect of the amount of further income tax that gave rise to the imposition of the imputation penalty tax so remitted.

Compare: 1976 No 65 s 3940

Subsection (1) was amended, as from 17 August 1995, by section 11 Tax Administration Act (No 3) 1995 (1995 No 77) by adding the expression “; or” to the end of subsection (1)(b) and inserting subsection (1)(c).

Subsection (1) was amended by section 58(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “section 140B” for the expression “section 153”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 180(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 180(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 180(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (2) was amended by section 58(2) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “late payment penalty imposed under section 139B” for the words “penalty by way of additional tax imposed under section 149(1)”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (3) was amended by section 58(3) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “any late payment penalty imposed under section 139B” for the words “any penalty by way of additional tax imposed under section 148”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

## **181 Remissions and refunds of FDP penalty tax**

*[Repealed]*

Section 181: repealed (with effect on 30 June 2009), on 6 October 2009, by section 695(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 181 heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 181(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 17 August 1995, by section 12 Tax Administration Act (No 3) 1995 (1995 No 77) by inserting the expression “; or” to the end of subsection (1)(b) and inserting subsection (1)(c).

Subsection (1) was amended by section 59(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “section 140C” for the expression “section 154”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 181(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in both places they appear.

Section 181(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 17 August 1995, by section 12 Tax Administration Act (No 3) 1995 (1995 No 77) by inserting the expression “; or”.

Subsection (1)(c) was inserted, as from 17 August 1995, by section 12 Tax Administration Act (No 3) 1995 (1995 No 77).

Section 181(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 181(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was amended by section 59(2) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “late payment penalty imposed under section 139B” for the words “penalty by way of additional tax imposed under section 152”. *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 181(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (3) was amended by section 59(3) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “any late payment penalty imposed under section 139B” for the words “any penalty by way of additional tax imposed under section 151”. *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **181B Remissions and refunds of Maori authority distribution penalty tax**

- (1) The Commissioner must remit any Maori authority distribution penalty tax imposed under section 140CB to the extent that the Commissioner is satisfied that—
  - (a) liability for the penalty tax arose because of a debit arising to the Maori authority credit account under section OK 17 of the Income Tax Act 2007 in relation to an arrangement to obtain a tax advantage, and it is established subsequently that, in relation to the debit, a credit

- arises to the Maori authority credit account in accordance with section OK 9 of that Act; or
- (b) liability for the penalty tax arose because of a refund of a Maori authority distribution having been sent but not having been received by the Maori authority, or not having been known by the Maori authority to have been received, before the end of the imputation year; or
  - (c) liability for the penalty tax arose because of a debit arising to the Maori authority credit account under section OK 13 of the Income Tax Act 2007, and the Maori authority did not become aware of the arising of the debit in sufficient time to allow it to remove the debit balance before the end of the year.
- (2) If the Commissioner remits any Maori authority distribution penalty tax under this section, the Commissioner must also remit any late payment penalty imposed under section 139B to the extent that the Commissioner is satisfied that the penalty was imposed in respect of the Maori authority distribution penalty tax so remitted.
- (3) If the Commissioner remits any Maori authority distribution penalty tax under subsection (1)(a), the Commissioner must also remit any late payment penalty imposed under section 139B to the extent that the Commissioner is satisfied that the penalty was imposed in respect of the amount of further income tax that gave rise to the Maori authority distribution penalty tax so remitted.

Section 181B was inserted by section 147(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application as from the 2004–05 income year.

Section 181B(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) and (c) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” wherever they appear.

Section 181B(1)(c): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **181C Remission of late payment penalties and interest incurred due to obligation to pay further income tax**

- (1) This section applies to a company that is liable—

- (a) under section OB 65 of the Income Tax Act 2007 to pay an amount of tax by way of further income tax of an amount equal to a debit balance in the company's imputation credit account at the end of an tax year; and
  - (b) under section 139B to pay a late payment penalty on unpaid income tax that relates to a payment due in the tax year.
- (2) The Commissioner must remit any interest under section 120D payable by the company and the late payment penalty relating to the further income tax, to the extent that the amount of further income tax charged in relation to that imputation year is equal to or is less than the amount of unpaid income tax referred to in subsection (1)(b).

Section 181C was inserted, as from 1 April 1998, by section 138 Taxation (GST, Trans-Tasman Imputation and Miscellaneous Provisions) Act 2003 (2003 No 122).

Section 181C(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words "Income Tax Act 2004" for the words "Income Tax Act 1994".

Section 181C(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

**181D Remission of late payment penalties and interest incurred due to obligation by Maori authority to pay further income tax**

An amount that is interest under section 120D of the Tax Administration Act 1994, or a late payment penalty relating to further income tax, and that is paid or payable by a Maori authority and to which sections OK 23 and 24 of the Income Tax Act 2007 applies must be remitted by the Commissioner to the extent that the amount of further income tax charged in relation to an imputation year is equal to or less than the amount of unpaid income tax

Section 181D was inserted by section 137 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) with application for withholding payments made as from 1 April 2005.

Section 181D: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 181D was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

## **182 Relief from additional tax incurred due to default in payment of tax**

*[Repealed]*

Section 182 was repealed by section 60 Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

## **183 Obligation to pay tax on foreign investment income able to be suspended**

*[Repealed]*

Section 183: repealed, on 6 October 2009, by section 696 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (1)(a) was amended, as from 1 April 2005, by section 152(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “has in a foreign investment fund an attributing interest” for the words “has in a fund an interest” with application as from the 2005–06 income year.

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(c) was substituted by section 481(1) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997–98 income year.

Subsection (1)(c) and (d) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

Subsection (1)(e) was amended by section 481(2) Taxation (Core Provisions) Act 1996 (1996 No 67) by substituting the words “The taxable income of the person for the income year, less the aggregate of—” for the words “The assessable income of the person for the income year, after deduction of the aggregate of—” with application as from the 1997–98 income year.

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(e)(i) was substituted by section 481(2) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997–98 income year.

Section 183(1)(e)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e)(i) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

Subsection (1)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by omitting the words “in writing”.

The definition of quantity c in subsection (1)(g) was substituted by section 481(3) Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Subsection (1)(g) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” wherever they appear.

Subsection (1)(h) was amended by section 61(1) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “Part 7” for the expression “section 121”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended by section 61(2) Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the expression “sections 120S and 142” for the expression “section 139(3)”. See section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. See also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (2) was amended by section 40 Taxation (FBT, SSCWT and Remedial Matters) Act 2000 (2000 No 34) by substituting the expression “120T” for the expression “120S” with application to tax obligations, liabilities, and rights that are to be performed under or arise in respect of the 1997-98 and subsequent income years.

Subsection (2) was amended, by section 235(1) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85) by substituting the expression “Part 7” for the expression “Sections 120T and 142”, with application as from the 2002-03 income year.

Subsection (2)(b)(i)(A) was substituted, by section 235(2) Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85), with application as from the 2002-03 income year.

### **183A Remission for reasonable cause**

- (1) This section applies to—
  - (a) a late filing penalty:
  - (b) a non-electronic filing penalty:
  - (c) a late payment penalty:
  - (d) imputation penalty tax imposed by section 140B:
  - (e) *[Repealed]*
  - (f) Maori authority distribution penalty tax imposed by section 140CB:
  - (g) a shortfall penalty imposed by section 141AA.

- (h) a civil penalty imposed under section 215 of the Kiwi-Saver Act 2006:
  - (i) a penalty for not paying employer monthly schedule amount imposed by section 141ED.
- (1A) The Commissioner may remit the penalty if the Commissioner is satisfied that—
- (a) a penalty to which this section applies arises as a result of an event or circumstance beyond the control of a taxpayer; and
  - (b) as a consequence of that event or circumstance the taxpayer has a reasonable justification or excuse for not furnishing the tax return or an employer monthly schedule, or not furnishing an employer monthly schedule in a prescribed electronic format, or not paying the tax on time; and
  - (c) the taxpayer corrected the failure to comply as soon as practicable.
- (2) Without limiting the Commissioner's discretion under subsection (1), an event or circumstance may include—
- (a) an accident or a disaster; or
  - (b) illness or emotional or mental distress.
- (3) An event or circumstance does not include—
- (a) an act or omission of an agent of a taxpayer, unless the Commissioner is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—
    - (i) that could not have been anticipated; and
    - (ii) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or
  - (b) a taxpayer's financial position.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Sections 183A to 183D were substituted, as from 1 April 1997, by section 104(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (1) was substituted, by section 39(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to penalties that arise as from 1 April 1999.



Subsection (1) was amended by section 148(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) by substituting the words “, a dividend withholding payment penalty tax imposed by section 140C, and a Maori authority distribution penalty tax imposed by section 140CB” for the words “, and a dividend withholding payment penalty tax imposed by section 140C” with application as from the 2004–05 income year.

Subsection (1) was substituted, as from 1 April 2005, by section 138 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Section 183A(1)(e): repealed (with effect on 30 June 2009), on 6 October 2009, by section 697(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 183A(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(h) was inserted, as from 1 December 2006, by section 231 Kiwi-Saver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 183A(1)(h): amended, on 1 April 2009, by section 23 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 183A(1)(h): amended, on 1 April 2008, by section 264 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 183A(1)(i): inserted, on 1 April 2008, by section 264 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (1A) was inserted by section 39(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to penalties that arise as from 1 April 1999.

### **183ABA Remission in circumstances of emergency event**

- (1) This section applies for a taxpayer if—
  - (a) an emergency event physically prevents the taxpayer from making a payment required by a tax law on or before the due date for the payment; and
  - (b) the taxpayer is charged with interest under Part 7 for failing to make the payment by the due date; and
  - (c) the taxpayer is a member of a class of persons to whom a remission under this section is available, if such a class of persons is described in the Order in Council declaring the emergency event.
- (2) The taxpayer may ask the Commissioner to remit the interest.
- (3) The Commissioner may remit the interest if the Commissioner is satisfied that—
  - (a) it is equitable that the interest be remitted; and

- (b) the taxpayer asked for the relief as soon as practicable; and
  - (c) the taxpayer made the payment as soon as practicable.
- (4) The Governor-General may from time to time by Order in Council—
- (a) declare an event that meets the requirements of paragraphs (a) and (b) of the definition of **emergency** in section 4 of the Civil Defence Emergency Management Act 2002, to be an emergency event:
  - (b) describe a class or classes of persons to whom a remission under this section is available in relation to the emergency event.
- (5) An Order in Council (the **Order**) made under subsection (4) or this subsection—
- (a) may relate to an event that occurred after the commencement of this Act and before the commencement of the Order:
  - (b) expires, if not renewed under paragraph (c), after—
    - (i) the period given in the Order, if such a period is given; or
    - (ii) if no such period is given, 6 months from the promulgation of the Order:
  - (c) may be renewed or replaced from time to time by an Order in Council made before or after the date on which the Order would otherwise expire.

Section 183ABA: substituted, on 6 October 2009, by section 698 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 183ABA was inserted by section 8(1) Taxation (Disaster Relief) Act 2004 (2004 No 4). See section 8(2) of that Act as to subsections (1) to (3) coming into force as from 1 February 2004. See section 8(3) of that Act as to subsections (4) and (5) coming into force as from 17 March 2004.

Section 183ABA(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 1 April 2005, by section 153(1) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” with application as from the 2005–06 income year.

Subsection (2) was substituted, as from 3 April 2006, by section 261(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application as from the income year corresponding to the 2005–06 tax year.

Subsection (3) (before paragraph (a)) was amended, as from 3 April 2006, by section 261(2)(a) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by omitting the words “penalty and” with application as from the income year corresponding to the 2005-06 tax year.

Subsection (3)(a) was amended, as from 3 April 2006, by section 261(2)(b) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by omitting the words “penalty or” with application as from the income year corresponding to the 2005-06 tax year.

Subsections (3A) and (3B) were inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 183ABA(3A): amended, on 1 April 2009, by section 24 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subsection (4) was amended, as from 1 April 2005, by section 153(2) Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” with application as from the 2005-06 income year.

Subsection (4) was amended, as from 3 April 2006, by section 261(3) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by omitting the words “and section MB 3B of the Income Tax Act 2004” with application as from the income year corresponding to the 2005-06 tax year.

### **183AB Cancellation of late payment penalties imposed before 1 April 2002**

- (1) The Commissioner must cancel a taxpayer’s liability to pay—
  - (a) 60% of an initial late payment penalty; or
  - (b) an incremental late payment penalty.
- (2) The Commissioner must cancel a taxpayer’s liability under subsection (1) only if—
  - (a) the tax to pay in respect of which the taxpayer would otherwise have had the liability is—
    - (i) tax payable in one or more payments under an arrangement with the Commissioner; or
    - (ii) tax in respect of which deductions are to be made and paid to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any other similar tax law; and
  - (b) the taxpayer complies with the taxpayer’s obligations under the arrangement; and

- (c) the liability would otherwise have arisen after—
- (i) the arrangement was entered into; or
  - (ii) the Commissioner exercised powers available to the Commissioner under section 157 of this Act or section 43 of the Goods and Services Tax Act 1985 or any similar tax law.

Section 183AB was inserted by section 94(1) Taxation (Relief, Refunds and Miscellaneous Provisions) Act 2002 (2002 No 32) with application to arrangements entered into before 1 April 2002.

### **183B Cancellation of late payment penalties under instalment arrangement**

*[Repealed]*

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Sections 183A to 183D were substituted, as from 1 April 1997, by section 104(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (2)(a)(i) was substituted by section 54(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from 1 April 2001.

Section 183B was repealed by section 54(2) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from 1 April 2002.

### **183C Cancellation of interest**

- (1) Subject to subsection (3), a taxpayer's liability to pay interest under Part 7 is cancelled for the period from the date of a notice of assessment until the due date specified in the notice if—
- (a) the Commissioner issues the taxpayer with a notice of assessment; and
  - (b) the tax assessed in the notice, together with any interest payable under Part 7 in respect of the period before the date of the notice, is paid to the Commissioner by the due date for payment specified in the notice.
- (2) *[Repealed]*
- (3) Where—

- (a) the Commissioner issues a notice of assessment to a taxpayer before the original due date for payment of the tax to which the assessment relates; and
- (b) the tax assessed in the notice, together with any interest payable under Part 7 in respect of the period before the date of the notice, is paid to the Commissioner on or before the 30th day after the date on which the notice of assessment is issued—

the Commissioner shall cancel the taxpayer's liability to pay interest under Part 7 for the period commencing on the day after the date on which the notice of assessment is issued and ending with the day on which payment is made, or the due date of the tax, whichever occurs first.

(4) Where—

- (a) the Commissioner issues a statement of account to a taxpayer after the original due date for payment of tax to which the statement of account relates; and
- (b) the tax referred to in the statement of account, together with any interest payable under Part 7 in respect of the period before the date of the statement of account, is paid to the Commissioner on or before the 30th day after the date on which the statement of account is issued, or the due date of the tax, whichever occurs first,—

the Commissioner shall cancel the taxpayer's liability to pay interest under Part 7 for the period commencing on the day after the date on which the statement of account is issued and ending with the day on which payment is made.

- (5) If the Commissioner issues both a notice of assessment and a statement of account to a taxpayer and the 30th day referred to in subsection (3) occurs on or before the 30th day referred to in subsection (4), the Commissioner must cancel a taxpayer's liability to pay interest under Part 7 for the period starting on the day after the date on which the notice of assessment is issued and ending on the date on which payment is made if payment is made on or before the 30th day referred to in subsection (3).
- (6) For the purpose of subsection (5), a payment that is made is a payment of the tax assessed in the notice of assessment, together with any interest payable under Part 7 for the period before the date of the notice.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Sections 183A to 183D were substituted, as from 1 April 1997, by section 104(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 104(2) of that Act.

Subsection (2) was repealed, as from 1 April 2003, by section 149 Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5).

Subsections (4) and (5) were amended by section 79(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) by substituting the expression “30th” for the expression “15th”, with application to statements of account issued on or after 1 April 2001.

Subsection (5) was substituted, and subsection (6) was inserted, by section 55(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application to interest cancellations made as from 27 March 2001.

### **183CA Cancellation of interest charged on unpaid provisional tax**

- (1) If interest has been charged on unpaid provisional tax under Part 7 and it is more than the interest that would have been charged if section 120L(2) and (3) had applied to the 1997-98 tax year, the taxpayer may apply to the Commissioner to—
  - (a) have their liability to pay the excess interest cancelled; and
  - (b) have the excess interest, to the extent that the taxpayer has paid it, refunded.
- (2) A taxpayer’s application must be made in writing.
- (3) Upon receiving an application, the Commissioner must—
  - (a) cancel the taxpayer’s liability to pay the excess interest; and
  - (b) refund to the taxpayer the excess interest to the extent that it has been paid by the taxpayer.

Section 183CA was inserted by section 114(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59) with application to the 1997-98 income year.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year”.

**183D Remission consistent with collection of highest net revenue over time**

- (1) The Commissioner may remit—
- (a) a late filing penalty; and
  - (aa) a non-electronic filing penalty; and
  - (b) a late payment penalty; and
  - (bb) a shortfall penalty imposed by section 141AA; and
  - (bc) a civil penalty imposed under section 215 of the Kiwi-Saver Act 2006; and
  - (bd) a penalty for not paying employer monthly schedule amount imposed by section 141ED; and
  - (c) interest under Part 7—
- payable by a taxpayer if the Commissioner is satisfied that the remission is consistent with the Commissioner's duty to collect over time the highest net revenue that is practicable within the law.
- (2) In the application of this section, the Commissioner must have regard to the importance of the penalty, and interest under Part 7, in promoting compliance, especially voluntary compliance, by all taxpayers and other persons with the Inland Revenue Acts.
- (3) The Commissioner must not consider a taxpayer's financial position when applying this section.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Sections 183A to 183D were substituted, as from 1 April 1997, by section 104(1) Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Subsection (1)(aa) was inserted by section 40(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application to penalties that arise as from 1 April 1999.

Subsection (1)(bb) was inserted, as from 1 April 2005, by section 139 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111).

Subsection (1)(bc) was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Section 183D(1)(bc): amended, on 1 April 2009, by section 25 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section 183D(1)(bd): inserted, on 1 April 2008, by section 265 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subsection (2) was substituted, as from 1 December 2006, by section 231 Kiwi-Saver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

### **183E Remission of interest if unpaid tax remitted**

The Commissioner shall remit interest if—

- (a) an amount of tax payable by a taxpayer is remitted by the Commissioner under a tax law; and
- (b) the taxpayer is liable for the interest under Part 7 in respect of the remitted tax.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **183F Small amounts of penalties and interest not to be charged**

- (1) Despite any other provision in this Act,—
  - (a) a taxpayer is not liable to pay a late payment penalty if an amount of income tax or ancillary tax that remains outstanding after the due date is \$100 or less;
  - (b) a taxpayer is not liable to pay interest under Part 7 if an amount of income tax or ancillary tax that remains outstanding after the due date is \$100 or less;
  - (c) a taxpayer is not liable to pay a penalty for not paying an employer monthly schedule amount if the unpaid amount on the day before the date of the Commissioner's notice under section 141ED(1)(b) is \$100 or less;
  - (d) the Commissioner is not liable to pay interest under Part 7 on overpaid tax of \$100 or less.
- (2) An amount specified in subsection (1) may be varied from time to time by the Governor-General by Order in Council.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.



Section 183F(1): substituted, on 6 October 2009, by section 699 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subsection (1)(ba) was inserted by section 105 Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

Section 183F(1)(bb): inserted, on 1 April 2008, by section 266 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

### **183G Refunds by Commissioner**

If—

- (a) an amount of interest or a civil penalty payable by a taxpayer is remitted, or a liability to pay the amount is cancelled, by the Commissioner under a tax law; and
- (b) the taxpayer has already paid the amount,—  
the Commissioner will—
- (c) refund the amount to the taxpayer; or
- (d) apply the amount towards meeting another tax liability.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **183H Remission on application**

A taxpayer seeking the remission of an amount or of a liability to pay an amount of interest or tax under section 183A or 183D must—

- (a) make a written request to the Commissioner, if the requested remission is of—
  - (i) imputation penalty tax imposed by section 140B;
  - (ii) *[Repealed]*
  - (iii) Maori authority distribution penalty tax imposed by section 140CB;
  - (iv) a shortfall penalty imposed by section 141AA;
  - (v) interest under Part 7; and
- (b) produce such information as the Commissioner requires in relation to the request.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as

from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 183H was substituted by section 106 Taxation (Remedial Provisions) Act 1997 (1997 No 74). *See* section 66(1) of that Act as to the application of this amendment as from 1 April 1997.

The heading to section 183H was amended, as from 3 April 2006, by section 262(1) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) by omitting the word “written” with application for requests made after 3 April 2006.

Section 183H was amended, as from 27 March 1998, by section 48 Taxation (Remedial Provisions) Act 1998 (1998 No 7) by inserting the words “under section 183A or 183D”.

Paragraph (a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “give notice” for the word “write”.

Paragraph (a) was substituted, as from 3 April 2006, by section 262(2) Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3) with application for requests made after 3 April 2006.

Section 183H(a)(ii): repealed (with effect on 30 June 2009), on 6 October 2009, by section 700(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 183H(a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **183I Time when cancellation takes effect**

- (1) Where a taxpayer’s tax liability or obligation is cancelled under this Part, the cancellation is deemed to take effect at the time the tax liability or obligation arose.
- (2) Without limiting subsection (1), a taxpayer is never liable to pay interest or a civil penalty in respect of a tax liability or obligation that is cancelled.

Sections 183A to 183I were inserted by section 62 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

### **184 Refund of tax paid on income subsequently exempted by Order in Council**

If a double tax agreement exempts from tax any income derived before the date of the Order in Council that gives effect to the double tax agreement, and the Commissioner is satisfied tax has been paid in relation to that income, and written

application is made by or on behalf of the taxpayer at any time within 4 years after the date of the Order in Council, then notwithstanding anything in sections LA 6 to LA 8, RM 2, RM 4 to RM 6, RM 8, and RM 10 of the Income Tax Act 2007 the Commissioner may refund the tax paid.

Section 184 was substituted by section 482 Taxation (Core Provisions) Act 1996 (1996 No 67) with application as from the 1997-98 income year.

Section 184 was substituted, as from 23 September 1997, by section 107 Taxation (Remedial Provisions) Act 1997 (1997 No 74).

Section 184: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 184 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

#### **184A Refund of tax paid in excess made by direct credit to bank account**

- (1) Unless subsection (3) applies, a refund of tax paid in excess must be made by direct credit to a bank account nominated by the taxpayer entitled to the refund.
- (2) When a taxpayer claims a refund, the taxpayer must provide to the Commissioner the particulars of a bank account in New Zealand to which a direct credit of the amount of the refund is to be made.
- (3) If the Commissioner is satisfied that the application of subsections (1) and (2) would result in undue hardship to a taxpayer, or is not practicable, a refund of tax paid in excess may be made by other means acceptable to the Commissioner.
- (4) In this section, **bank account** means an account with a bank that is a registered bank or a private savings bank or a credit union or a Building Society or the Public Service Investment Society Limited.
- (5) In this section, **tax** means—
  - (a) an amount defined as tax in section 3(1)(a):
  - (b) a refund allowed under section 41A:
  - (c) *[Repealed]*
  - (d) cheque duty, as provided for in section 77 of the Stamp and Cheque Duties Act 1971:
  - (e) financial support, as defined in section 2 of the Child Support Act 1991:

- (f) a repayment obligation, as defined in section 2 of the Student Loan Scheme Act 1992, if the borrower has elected a refund under section 56(1A) of that Act.
- (6) This section applies to the direct crediting of a type of tax once an Order in Council has been promulgated specifying the date from which the type of tax may be refunded by direct credit.

Section 184A was inserted by section 41(1) Taxation (Simplification and Other Remedial Matters) Act 1998 (1998 No 101) with application as from 1 April 2000.

Subsection (5) was substituted by section 80(1) Taxation (GST and Miscellaneous Provisions) Act 2000 (2000 No 39) with application as from 1 April 2000. See Section 80(2) of that Act which proposed to make the substitution with application as from the 1999-2000 income year. Section 184A however, was only inserted with application as from 1 April 2000.

Subsection (5)(c) was repealed by section 56(1) Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act 2001 (2001 No 4) with application as from 27 March 2001.

Subsection (6) was inserted by section 75(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 1 April 2000. See Section 75(2) of that Act which proposed to make the insertion with application as from 8 September 1999. Section 184A however, was only inserted with application as from 1 April 2000.

### **184B Tax type that may be direct credited to bank account**

The Governor-General may, by Order in Council, specify the date from which a type of tax may be refunded by direct credit under section 184A to a bank account nominated by the taxpayer.

Section 184B was inserted by section 76(1) Taxation (Remedial Matters) Act 1999 (1999 No 98) with application as from 8 September 1999.

### **185 Payment out of Crown Bank Account**

- (1) All money payable by the Commissioner—
- (a) by way of refund under this Act or the Income Tax Act 2007 or the Goods and Services Tax Act 1985; or
  - (b) under sections LA 6 and LF 8 of the Income Tax Act 2007 by way of a refund of FDP credit; or
  - (c) by way of interest under this Act; or
  - (d) *[Repealed]*
  - (e) by way of credits of tax under subparts MA to MF and MZ of the Income Tax Act 2007; or
  - (f) in accordance with section RM 8 of that Act; or

(g) in accordance with section RP 4 of that Act—  
shall be paid out of the Crown Bank Account without further appropriation than this section.

- (2) On the recovery under Part 10A of an amount of unpaid tax, the amount recovered may be paid to the Government of the territory outside New Zealand out of the Crown Bank Account without further appropriation than this section.

Compare: 1976 No 65 ss 34A(6), 185(6), 185F(3), 326A(6), 327G(6), 374K, 394ZMG(4)(c), 413A(11), 415

Section 185(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(a) was amended, as from 21 December 2004, by section 140 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or the Goods and Services Tax Act 1985” after the words “Income Tax Act 1994”.

Subsection (1)(a) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 185(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(b) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(c) was substituted, by section 63 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Subsection (1)(d) was repealed by section 63 Tax Administration Amendment Act (No 2) 1996 (1996 No 56). *See* section 2(1) of that Act as to the application of that Act with respect to tax obligations, liabilities, and rights as from 1 April 1997. *See* also section 2(3) of that Act as to the application of the amendment in relation to other provisions of this Act.

Section 185(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(e) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD of the Income Tax Act 2004” for the words “Part KD of the Income Tax Act 1994”.

Section 185(1)(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(f) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Subsection (1)(f) was amended, as from 3 April 2006, by section 263 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions)

Act 2006 (2006 No 3) by substituting the words “Income Tax Act 2004; or” for the words “Income Tax Act 2004—”.

Subsection (1)(g) was inserted, as from 3 April 2006, by section 263 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 185(1)(g): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2) was inserted, as from 20 May 1999, by section 115(1) Taxation (Accrual Rules and Other Remedial Matters) Act 1999 (1999 No 59).

### **185B Application of particular provisions in this Part to PAYE intermediaries**

- (1) Section 183A applies to a PAYE intermediary as if the references to a “taxpayer” in subsections (1A) and (3) were references to a “PAYE intermediary”.
- (2) Sections 183C, 183D to 183F, 183H, 183I, 184A and 184B apply to a PAYE intermediary as if the references to a “taxpayer” were read as references to a “PAYE intermediary”.
- (3) Section 183G applies to a PAYE intermediary as if—
  - (a) the references to a “taxpayer” were read as references to a “PAYE intermediary”; and
  - (b) paragraph (d) had not been enacted.

Section 185B was inserted by section 150(1) Taxation (Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003 (2003 No 5) with application for pay periods beginning as from 1 April 2004.

### **185C Establishment of Listed PAYE Intermediary Bank Account**

An account called the Listed PAYE Intermediary Bank Account is established by this section.

Sections 185C and 185D were inserted, as from 3 April 2006, by section 264 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

### **185D Payments into, and out of, Listed PAYE Intermediary Bank Account**

- (1) All payments received by the Commissioner from a listed PAYE intermediary and made under sections RP 2 to RP 5 of the Income Tax Act 2007 must be paid into the Listed PAYE Intermediary Bank Account.

- (2) Such amount as is necessary to meet the payments required to be made under section RP 4 of the Income Tax Act 2007 must be paid into the Listed PAYE Intermediary Bank Account.
- (3) The money standing to the credit of the Listed PAYE Intermediary Bank Account must be applied in making payments under section RP 4 of the Income Tax Act 2007.

Sections 185C and 185D were inserted, as from 3 April 2006, by section 264 Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 185D(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 701 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 185D(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 185D(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 185D(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **Part 12**

### **Offences and penalties**

Part 12 (comprising sections 186 to 223): repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

#### *Penal tax*

#### **186 Penal tax for evasion of deficient tax**

*[Repealed]*

Section 186: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

#### **187 Penal tax deemed to be of the same nature as deficient tax**

*[Repealed]*

Section 187: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

#### **188 Assessment of penal tax**

*[Repealed]*

Section 188: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**189 Date for payment of penal tax***[Repealed]*

Section 189: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**190 Objections to assessments of penal tax***[Repealed]*

Section 190: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**191 Recovery of penal tax***[Repealed]*

Section 191: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**192 Recovery of penal tax from executors or administrators***[Repealed]*

Section 192: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**193 Recovery of penal tax not affected by conviction of taxpayer***[Repealed]*

Section 193: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**194 Penal tax for default in making or paying tax deduction***[Repealed]*

Section 194: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**195 Penal tax for failure to deduct specified superannuation contribution withholding tax***[Repealed]*

Section 195: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).



**196 Penal tax for default in making or paying resident withholding tax deductions**

*[Repealed]*

Section 196: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**197 Penal tax for default in making or paying deductions of non-resident withholding tax**

*[Repealed]*

Section 197: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

*Offences*

**198 Offences relating to obstruction of Departmental functions**

*[Repealed]*

Section 198: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**199 Penalty for failure to furnish returns etc**

*[Repealed]*

Section 199: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**200 Offence for failure to provide information requested by Commissioner**

*[Repealed]*

Section 200: amended, on 1 April 1995, by section 16 of the Tax Administration Amendment Act 1995 (1995 No 24).

Section 200: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**201 Offence for officers and employees of corporate bodies**

*[Repealed]*

Section 201: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**202 Further offences for officers and employees of corporate bodies***[Repealed]*

Section 202: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**203 Offence for failure of officers of Department to maintain secrecy***[Repealed]*

Section 203: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**204 Offence for failure of other persons to maintain secrecy***[Repealed]*

Section 204: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**205 Secrecy requirements where information given by Department***[Repealed]*

Section 205: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**206 Offences relating to tax deductions***[Repealed]*

Section 206: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**207 Offences for failure to deduct specified superannuation contribution withholding tax***[Repealed]*

Section 207: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**208 Offences relating to resident withholding tax***[Repealed]*

Section 208: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**209 Offences for failure to deduct non-resident withholding tax**

*[Repealed]*

Section 209: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**210 Offences relating to dividend withholding payments**

*[Repealed]*

Section 210: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**211 Offences for failure to make deductions**

*[Repealed]*

Section 211: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**212 Offences relating to family support**

*[Repealed]*

Section 212: repealed, by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

Section 212(b): amended, on 1 July 1996, by section 15(a) of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 212(b): amended, on 1 July 1996, by section 15(b) of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 212(d): amended, on 1 July 1996, by section 15(a) of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 212(d): amended, on 1 July 1996, by section 15(b) of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 212(e): amended, on 1 July 1996, by section 15(a) of the Tax Administration Amendment Act 1996 (1996 No 19).

Section 212(e): amended, on 1 July 1996, by section 15(b) of the Tax Administration Amendment Act 1996 (1996 No 19).

**213 Offences in relation to inquiry before a District Court Judge**

*[Repealed]*

Section 213: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**214 Offences in relation to inquiry by Commissioner***[Repealed]*

Section 214: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

*Proceedings***215 Proceedings to be taken summarily***[Repealed]*

Section 215: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**216 Information may charge several offences***[Repealed]*

Section 216: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**217 Information may be laid within 10 years***[Repealed]*

Section 217: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**218 Authority to lay information***[Repealed]*

Section 218: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

*Evidence***219 Evidence in proceedings for failure to furnish returns or information***[Repealed]*

Section 219: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**220 Evidence of financial or property transactions***[Repealed]*

Section 220(14): amended, on 30 June 1995, by section 2(4) of the Banking Act Repeal Act 1995 (1995 No 32).

Section 220: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**221 Penalties for offences**

*[Repealed]*

Section 221(2): amended, on 12 December 1995, by section 13 of the Tax Administration Act (No 3) 1995 (1995 No 77).

Section 221: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**222 Penalties for failure to meet various tax obligations**

*[Repealed]*

Section 222: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**223 Publication of names of tax evaders**

*[Repealed]*

Section 223: repealed by section 64 of the Tax Administration Amendment Act (No 2) 1996 (1996 No 56).

**Part 13  
Miscellaneous**

**224 Regulations—Inland Revenue Acts generally**

- (1) The Governor-General may, by Order in Council, make regulations for the due administration of the Inland Revenue Acts and for the conduct of all persons concerned in the administration of those Acts and generally for carrying the Inland Revenue Acts into effect.
- (2) Regulations made under this section may prescribe fines for offences against the regulations not exceeding \$500 in any case.

Compare: 1974 No 133 s 48(1), (3)

**225 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act or the Income Tax Act 2007 or Goods and Services Tax Act 1985, for all or any of the following purposes:
  - (a) prescribing the form of returns to be made, the particulars to be set forth in those returns, the persons by whom and the time when or within which those returns are to be made, and the forms of the assessments, notices, and

- other documents referred to in this Act or the Income Tax Act 2007 or Goods and Services Tax Act 1985 or necessary in order to give effect to them:
- (b) prescribing the procedure to be followed in applying for a determination and making any provision which may be desirable in relation to the issuing or the publication of the determination or to enable the Commissioner to set fees for dealing with applications for determinations:
  - (c) providing for the appointment and prescribing the powers and procedure of one or more co-operative marketing company appeal authorities, any such authority to consist of not less than 2 members, one of whom shall be an officer of the new Ministry:
  - (d) conferring such rights of objection or challenge and rights of appeal to any such appeal authority from decisions made by the Commissioner under regulations made under section 225AA or Goods and Services Tax Act 1985 as may be deemed necessary or desirable:
  - (e) providing, where there is no provision in this Act or the Income Tax Act 2007 or Goods and Services Tax Act 1985, or no sufficient provision, in respect of any matter or thing necessary to give effect to this Act or the Income Tax Act 2007 or Goods and Services Tax Act 1985, in what manner and form the deficiency shall be supplied:
  - (f) making any provision which may be convenient for the administration of this Act or the Income Tax Act 2007 or Goods and Services Tax Act 1985 or which may be desirable or necessary in order to carry their objects into full effect.
- (2) Regulations made under subsection (1)(c) and (d) may make different provision, and provide for different appeal authorities, in respect of different classes of co-operative marketing companies.

Compare: 1976 No 65 s 197H(7)(d), (e), (8)

The heading to section 225 was amended, as from 21 December 2004, by section 141(1) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by substituting the word “Regulations” for the words “Regulations—income tax related”.

Section 225(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1) was amended, as from 21 December 2004, by section 141(2) Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or Goods and Services Tax Act 1985” after the words “Income Tax Act 1994” wherever they appear.

Subsection (1) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” wherever they appear.

Section 225(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(c) was amended, as from 1 July 1995, pursuant to section 6(1)(b) Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31) by substituting the words “responsible Ministry” for the words “Ministry of Agriculture and Fisheries”.

Subsection (1)(c) was amended, as from 1 March 1998, pursuant to section 5(1)(c) Ministries of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100) by substituting the words “new Ministry” for the words “responsible Ministry”.

Section 225(1)(d): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (1)(d) was amended, as from 1 October 1996, by section 65 Tax Administration Amendment Act (No 2) 1996 (1996 No 56) by substituting the words “objection or challenge and rights of appeal” for the words “objection and appeal”.

Section 225(1)(e): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 225(1)(f): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **225AA Regulations: co-operative dairy and marketing companies**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for the type of company described in subsection (2) for the purposes described in subsection (3).
- (2) The type of company to which this section applies is a company that—
  - (a) is 1 of the following:
    - (i) a co-operative dairy company;
    - (ii) a co-operative milk marketing company, as defined in section 2 of the Co-operative Companies Act 1956:

- (iii) a co-operative pig marketing company, as defined in section 2 of the Co-operative Companies Act 1956; and
  - (b) is registered under Part 2 or Part 3 of the Co-operative Companies Act 1996; and
  - (c) was in existence at the start of the 1988–89 income year; and
  - (d) was a company to which any of sections 201 to 203 of the Income Tax Act 1976, in force at the time, applied at the time.
- (3) The purposes for which the regulations can be made are—
  - (a) authorising the Commissioner to classify as income, other than as a dividend, of a shareholder of the company some or all of an amount paid to the shareholder on the surrender of a share in the company, or for a share on the liquidation of the company, that is more than the available subscribed capital per share, calculated under the slice rule, of the share:
  - (b) authorising the Commissioner to allocate the income to an income year or income years as the Commissioner thinks fit:
  - (c) conferring on the Commissioner a discretionary power necessary for the purposes of the regulations.
- (4) The regulations made may apply different rules in relation to different classes of companies.

Compare: 2004 No 35 s OC 4

Section 225AA: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **225A Power to make interim payments of WFF tax credit**

- (1) The Governor-General may from time to time, by Order in Council—
  - (a) specify a class of persons being paid an income-tested benefit to whom the chief executive of the administering department may make payments under section 80KP, or to whom the chief executive must stop making such payments:
  - (b) appoint a date on which the chief executive of that department may start making payments under section



- 80KP or a date on which the chief executive must stop making such payments.
- (2) An Order in Council made under subsection (1) may—
- (a) provide that the chief executive of that department may make payments, or must stop making payments, under section 80KP to all persons receiving an income-tested benefit; or
  - (b) specify a class of persons being paid an income-tested benefit to whom the chief executive of that department may make payments, or must stop making payments, under section 80KP, by reference to one or more of the following:
    - (i) the type of income-tested benefit received by the person:
    - (ii) the amount of the income-tested benefit received by the person:
    - (iii) the amount of the WFF tax credit to which the person may be entitled, as determined by the chief executive of that department:
    - (iv) any amount used or calculated by the chief executive of that department in determining the amount of the WFF tax credit to which a person may be entitled.
- (3) Every Order in Council made under subsection (1) is treated as being a regulation for the purpose of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

Section 225A was inserted, as from 1 July 1996, by section 16 Tax Administration Amendment Act 1996 (1996 No 19).

Section 225A was substituted, as from 1 October 1998, by section 11 Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 225A was substituted by section 21 Taxation (Parental Tax Credit) Act 1999 (1999 No 62) with application as from 1 October 1999.

Section 225A heading: amended, on 1 April 2008, by section 267(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 225A heading: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 225A was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” wherever they appear.

Section 225A(1)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 225A(1)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 225A(2)(a): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 225A(2)(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 225A(2)(b)(iii): amended (with effect on 1 April 2008), on 6 October 2009, by section 702(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 225(2)(b)(iii): amended, on 1 April 2008, by section 267(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 225(2)(b)(iii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(b)(iii) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD credit under that Act” for the words “Part KD credit”.

Section 225A(2)(b)(iv): amended (with effect on 1 April 2008), on 6 October 2009, by section 702(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 225(2)(b)(iv): amended, on 1 April 2008, by section 267(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section 225(2)(b)(iv): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Subsection (2)(b)(iv) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “subpart KD credit under that Act” for the words “Part KD credit”.

## **225B Order in Council amending schedule 27**

- (1) The Governor-General may from time to time, by Order in Council, amend schedule 27 of the Income Tax Act 2007 by—
  - (a) adding a country or territory outside New Zealand:
  - (b) adding types of income for a country or territory outside New Zealand:
  - (c) omitting a country or territory outside New Zealand:
  - (d) omitting types of income for a country or territory outside New Zealand.
- (2) An amendment by Order in Council under subsection (1)(a) or (b) is repealed on 31 December in the tax year following the tax year in which the Order in Council is made, unless Parliament otherwise enacts.

Compare: 2004 No 35 s LC 1A(1), (2)

Section 225B: inserted, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **226 Power to extend time for doing anything under Act**

- (1) If anything required by or under this Act or the Income Tax Act 2007 or the Goods and Services Tax Act 1985 to be done at or within a fixed time cannot be or is not so done, the Governor-General, by Order in Council, may from time to time appoint a further or other time for doing that thing, whether the time at or within which that thing ought to have been done has or has not expired.
- (2) Anything done at or, as the case may be, within the time prescribed by any such Order in Council shall be as valid as if it had been done at or within the time fixed by or under this Act or the Income Tax Act 2007 or the Goods and Services Tax Act 1985.

Compare: 1976 No 65 s 434

Section 226 was amended, as from 21 December 2004, by section 142 Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 (2004 No 111) by inserting the words “or the Goods and Services Tax Act 1985” after the words “Income Tax Act 1994” in both places where they appear.

Section 226 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in both places where they appear.

Section 226(1): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 226(2): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **226B Business group amnesties**

- (1) The Commissioner may declare an amnesty (a **business group amnesty**) under this section in relation to a group of persons, each of whom carries on a type of activity as the person’s main business (the **affected business**), if the Commissioner considers that declaring the amnesty is consistent with—
  - (a) protection of the integrity of the tax system; and
  - (b) collection over time of the highest net revenue that is practicable within the law.
- (2) The Commissioner, when declaring a business group amnesty, must announce the days that begin and end the period for which the business group amnesty is available.

- (3) The Commissioner may change a day that begins or ends the period for which a business group amnesty is available by an announcement made on or before the day.
- (4) A person is eligible to benefit from a business group amnesty if the person—
  - (a) is carrying on the affected business when the amnesty becomes available; and
  - (b) has carried on the affected business throughout the period of 3 income years ending before the income year in which the amnesty becomes available; and
  - (c) has not previously benefited from a business group amnesty; and
  - (d) has not been notified of a pending tax audit or investigation before the amnesty becomes available.
- (5) During the period for which a business group amnesty is available, a person may give a notice to the Commissioner in a form prescribed by the Commissioner—
  - (a) stating that the person wishes to benefit from the amnesty; and
  - (b) stating that the person is carrying on the affected business; and
  - (c) stating the period for which, and the place at which, the person has carried on the affected business as a business; and
  - (d) providing a statement of assets and liabilities for the income year ending before the income year in which the business group amnesty becomes available; and
  - (e) giving details of actions and omissions relating to the business that the person considers might give rise to an assessment, amended assessment, or prosecution if the person did not benefit from the amnesty; and
  - (f) providing any other information required by the Commissioner.
- (6) A person who is eligible under subsection (4) and gives a notice under subsection (5) is a person (an affected person) who benefits from the amnesty.
- (7) The Commissioner may, as if the business group amnesty were not declared,—

- (a) investigate the financial affairs of an affected person for the period of—
    - (i) the income year ending before the income year in which the Commissioner declares the amnesty; and
    - (ii) the income year in which the Commissioner declares the amnesty; and
  - (b) make an assessment or amended assessment of the affected person for the income years referred to in paragraph (a).
- (8) After an affected person gives a notice under subsection (5), the Commissioner must not, in relation to income years before the income years referred to in subsection (7)(a),—
- (a) begin an investigation of the income and deductions of the affected person relating to the affected business:
  - (b) make an assessment or amended assessment of the affected person based on figures for income and deductions relating to the affected business that differ from the figures for income and deductions relating to the affected business included by the affected person in a return of income provided before the date of the notice under subsection (5), except if subsection (10) applies.
- (9) After an affected person gives a notice under subsection (5), the Commissioner must not begin under this or another Act a prosecution of the affected person for an action or omission before or in giving the notice if—
- (a) the affected person provides information relating to the action or omission to the Commissioner; and
  - (b) subsection (10) does not apply.
- (10) The Commissioner may make an assessment, make an amended assessment, or bring a prosecution, that would otherwise be contrary to subsection (8) or (9), if the assessment or prosecution arises from an investigation of which the person is given notice, and that the Commissioner begins, before the affected person gives the notice under subsection (5).
- (11) The Commissioner must report in writing to the Minister on the results of a business group amnesty in a report accompanying a report under section 141L.

- (12) The Minister must lay a copy of the report before the House of Representatives at the same time as the report under section 141L.

Section 226B: inserted, on 19 December 2007, by section 268 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

## Part 14

### Transitional provisions and savings

#### 227 Transitional provisions and savings

- (1) The continuity of the operation of the law relating to income tax and every other tax imposed under the enactments repealed by section YB 3 of the Income Tax Act 1994 (in this section referred to as the **repealed enactments**) shall not be affected by the substitution of this Act, the Income Tax Act 1994, and the Taxation Review Authorities Act 1994 for the repealed enactments.
- (2) For all purposes in respect of any tax which at the commencement of this Act has been already assessed or paid or is still assessable or payable in or for the 1994-95 tax year or any previous tax year in accordance with the provisions of the repealed enactments, all the provisions of those enactments, including their penal provisions, and all regulations, warrants, and other acts of authority originating under them, shall, notwithstanding the repeal of those enactments, be deemed to remain in full force and effect; and all proceedings under any of those enactments, including proceedings for the recovery of any fine or penalty in respect of any offence committed, whether before or after the commencement of this Act, may be instituted or continued accordingly as if the enactment concerned had not been repealed.
- (3) All proceedings in respect of offences committed or alleged to have been committed, whether before or after the commencement of this Act, against any of the repealed enactments may be instituted or continued as if this Act had not been passed.
- (4) Any express or implied reference in any enactment, instrument, or document (including this Act) to any provision of this Act, or to things done or to be done or failing to be done under or for the purposes of any provision of this Act, shall, if and so

far as the nature of the reference permits, be construed as including, in relation to the times, circumstances, or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or to things done or to be done or failing to be done under or for the purposes of, that corresponding provision.

- (5) Any express or implied reference in any enactment, instrument, or document (including the repealed enactments and enactments, instruments, and documents passed or made after the passing of this Act) to, or to things done or to be done or failing to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or to things done or to be done or failing to be done under or for the purposes of, that corresponding provision.
- (6) For the purpose of determining the punishment which may be imposed on a person in respect of the commission of an offence under a provision of this Act, an offence committed by that person under a corresponding repealed enactment is deemed to have been committed under that provision.

Subsection (2) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “tax year” for the words “income year” in both places they appear.

## **228 Commissioner and Department**

The person who, on 1 April 1995, holds office as Commissioner of Inland Revenue is deemed to have been appointed Commissioner of Inland Revenue under section 6A.

Section 228 was substituted, as from 1 April 1995, by section 43 Taxation (Remedial Provisions) Act 1996 (1996 No 159).

## **229 References to Department, etc**

- (1) All references in any enactment, regulation, rule, order, deed, agreement, instrument, notice, or other document to the Land and Income Tax Department or to the Stamp Duties Office shall, unless the context otherwise requires, be deemed to be references to the Inland Revenue Department.

- (2) All references in any enactment, regulation, rule, order, deed, agreement, instrument, notice, or other document to the Minister of Stamp Duties shall, unless the context otherwise requires, be deemed to be references to the Minister of Finance.
- (3) All references in any enactment, regulation, rule, order, deed, agreement, instrument, notice, or other document to the Commissioner of Taxes or to the Commissioner of Stamp Duties shall, unless the context otherwise requires, be deemed to be references to the Commissioner of Inland Revenue.
- (4) All references in any enactment, regulation, rule, order, deed, agreement, instrument, notice, or other document to the Deputy Commissioner of Stamp Duties or to the Second Deputy Commissioner of Taxes shall, unless the context otherwise requires, be deemed to be references to an officer of the Department.
- (5) All references in any enactment, regulation, rule, order, deed, agreement, instrument, notice, or other document to the Chief Deputy Commissioner of Inland Revenue shall, unless the context otherwise requires, be deemed to be references to an officer of the Department.
- (6) All references in any enactment, regulation, rule, order, agreement, instrument, notice, or other document to—
  - (a) a Superintendent appointed under section 3 of the Land and Income Tax Amendment Act 1944; or
  - (b) a District Commissioner of Taxes; or
  - (c) an Assistant Commissioner of Stamp Duties; or
  - (d) a District Commissioner of Stamp Duties—shall, unless the context otherwise requires, be deemed to be references to an officer of the Department.

Compare: 1974 No 133 ss 3(2), 4(2), 6(5), (8), 8(2), 49(3)

Subsections (4) and (5) were amended, as from 1 April 1995, by section 44(4) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the words “an officer of the Department” for the words “a Deputy Commissioner of Inland Revenue”.

Subsection (6) was amended, as from 1 April 1995, by section 44(5) Taxation (Remedial Provisions) Act 1996 (1996 No 159) by substituting the words “an officer of the Department” for the words “a District Commissioner of Inland Revenue”.



**Schedule**  
**Inland Revenue Acts**

s 3

Estate and Gift Duties Act 1968.  
Stamp and Cheque Duties Act 1971.  
Gaming Duties Act 1971.  
Goods and Services Tax Act 1985.  
Land Tax Abolition Act 1990.  
Child Support Act 1991.  
Student Loan Scheme Act 1992.  
Estate Duty Abolition Act 1993.  
Income Tax Act 1994.  
Tax Administration Act 1994.  
Taxation Review Authorities Act 1994.  
Stamp Duty Abolition Act 1999.  
Estate Duty Repeal Act 1999.  
Income Tax Act 2004  
KiwiSaver Act 2006  
Income Tax Act 2007

The item relating to the Stamp Duty Abolition Act 1999 was inserted, as from 20 May 1999, by section 10 Stamp Duty Abolition Act 1999 (1999 No 61).

The item relating to the Estate Duty Repeal Act 1999 was inserted, as from 24 May 1999, by section 17 Estate Duty Repeal Act 1999 (1999 No 64).

The item relating to the Income Tax Act 2004 was inserted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

The item relating to the KiwiSaver Act 2006 was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Schedule Income Tax Act 2007: added, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006**

Public Act 2006 No 3  
Date of assent 3 April 2006  
Commencement see section 2

### **1 Title**

This Act is the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006.

### **2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) Sections 267 and 279(6) are treated as coming into force on 1 April 1995.
- (3) Sections 274 and 278 are treated as coming into force on 1 April 2003.
- (4) Section 231 is treated as coming into force on 25 November 2003.
- (5) Sections 121 and 122 are treated as coming into force on 4 June 2004.
- (6) Section 281 is treated as coming into force on 1 July 2004.
- (7) Sections 230(1), 234, and 270 are treated as coming into force on 21 December 2004.
- (8) Sections 11(1), 12, 40, 57, 65, 80, 93, 104, 105, 143(5), 180(1), (2), and (3), 187, 191(9), (12), (21), (49), and (60), 193, 199, 202, 206, 207, 208, 210(19), 211(1) to (4) and (6) to (8), 212, 223 to 229, 237, 240, 257, 284(1) and (3), 287(4) and (5), and 303 are treated as coming into force on 1 April 2005.
- (9) Section 73 is treated as coming into force on 19 May 2005.
- (10) Sections 144(1) and (7), 146, and 191(5) are treated as coming into force on 21 July 2005.
- (11) Sections 13, 15(2) and (3), 21, 22, 23, 25, 50, 51, 53, 68, 75, 81, 83(2), 84, 85, 87, 88, 94, 95, 100, 106, 113, 116, 117(1) and (2), 120, 123, 141, 150, 188, 191(10), (15), (17), (18) to

- (20), (43), (46), (47), (53), (57), and (69), and 198 are treated as coming into force on 1 October 2005.
- (12) Section 191(2) and (72) is treated as coming into force on 21 December 2005.
- (13) Sections 8(2), 15(1), 16, 17, 28, 29 to 37, 45, 91, 92, 97, 98, 111, 125, 131 to 134, 166 to 178, 191(6), (11), (22), (31), (51), and (70), 194(1) and (2), 197(a), and 200 come into force on 1 April 2006.
- (14) Sections 7, 8(1), 14, 20, 39, 41, 44, 59, 66, 67, 83(1), 86, 110, 112, 124, 128 to 130, 142, 143(1) and (3), 145, 147(2) and (4), 148(1) and (3), 152, 153, 155, 156, 179, 180(1) and (6), 181 to 184, 185(1), 186, 191(8), (27), (28), (38), (40), (42), (52), (55), (58), and (59), 197(b), 205, and 214 come into force on 1 July 2006.
- (15) Sections 5, 42, 43, 103, 108, 117(3), 119, 191(48), (54), and (68), 210(3), (9), and (11), 211(2), (5), (7), (8)(a), and (9), 221, 222, 230(2), 254, 255, and 256 come into force on 1 October 2006.
- (16) Sections 292, 293, and 297(1)(a) come into force on 31 March 2007.
- (17) Section 180(7) comes into force on 1 April 2007.
- (18) Sections 77, 114, 115, 118, 137 to 140, 143(2) and (4), 147(1) and (3), 148(2), 149, 160 to 163, 165, 190, 191(4), (7), (16), (26), (29), (30), (44), (45), (50), (56), (61), and (65) to (67), 194(3), 204, 210(4), (5) to (7), (8), (10), (12), (14), (17), and (18), 217, 218, 241 to 251, 258 to 260, 283(4) to (9), 291, 294 to 296, and 300 come into force on 1 October 2007.
- (19) Sections 18, 19, 26, 47, 49, 127, 192, 215, 216, and 297(1)(b) come into force on 1 April 2008.
- (20) Sections 61 to 64, 101, 301, and 302 come into force on 1 August 2006.

## **Part 2**

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

#### **210 Interpretation**

- (1) This section amends section 3.

- (2) Subsections (3) to (18) amend 3(1).
- (3) *Amendment incorporated in the principal Act*
- (4) *Amendment incorporated in the principal Act*
- (5) *Amendment incorporated in the principal Act*
- (6) *Amendment incorporated in the principal Act*
- (7) *Amendment incorporated in the principal Act*
- (8) *Amendment incorporated in the principal Act*
- (9) *Amendment incorporated in the principal Act*
- (10) *Amendment incorporated in the principal Act*
- (11) *Amendment incorporated in the principal Act*
- (12) *Amendment incorporated in the principal Act*
- (13) *Amendments incorporated in the principal Act*
- (14) *Amendment incorporated in the principal Act*
- (15) *Amendment incorporated in the principal Act*
- (16) *Amendment incorporated in the principal Act*
- (17) *Amendment incorporated in the principal Act*
- (18) *Amendment incorporated in the principal Act*
- (19) *Amendments incorporated in the principal Act*
- (20) Subsection (19) applies for income years corresponding to the 2005–06 and subsequent tax years.
- (21) Subsection (13) applies for an initiating notice that is issued
  - (a) in relation to a GST return period commencing on or after 1 April 2005:
  - (b) on or after 1 April 2005, if the initiating notice is issued other than in relation to a GST return period.
- (22) Subsections (4), (5) to (7), (8), (10), (12), (14), (17), and (18) apply for income years corresponding to the 2008–09 and subsequent tax years.

**217 Consequential adjustments on change in balance date**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**218 New section 39B inserted**

- (1) *Amendment incorporated in the principal Act*

- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**241 Commissioner may determine amount of provisional tax**

- (1) *Amendments incorporated in the principal Act*  
(2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**242 Definitions**

- (1) *Amendments incorporated in the principal Act*  
(2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**243 Section 120K replaced**

- (1) *Amendments incorporated in the principal Act*  
(2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**244 Meaning of unpaid tax and overpaid tax for provisional tax purposes**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**245 Where provisional tax paid by company does not count as overpaid tax**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**246 Due date for underestimation penalty tax**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**247 Late payment penalty and provisional tax**

- (1) *Amendment incorporated in the principal Act*

- (2) *Amendments incorporated in the principal Act*
- (3) *Amendments incorporated in the principal Act*
- (4) Subsections (1) to (3) apply for income years corresponding to the 2008–09 and subsequent tax years.

**248 Application of other provisions of Act to imputation penalty tax and dividend withholding payment penalty tax**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**249 Application of other provisions of Act to Maori authority distribution penalty tax**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**250 Not taking reasonable care**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for a tax position taken by a taxpayer after 1 April 2003.

**251 New section 141EA inserted**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**258 Transfer of excess provisional tax if provisional tax paid is more than taxpayer's provisional tax liability, determined before assessment**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**259 Transfer of excess provisional tax if taxpayer estimates or revises estimate of residual income tax, determined before assessment**

- (1) *Amendments incorporated in the principal Act*
- (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.

**260 Transfer of excess tax if provisional tax is more than taxpayer's residual income tax, determined after assessment**

- (1) *Amendments incorporated in the principal Act*
  - (2) Subsection (1) applies for income years corresponding to the 2008–09 and subsequent tax years.
-

## **Taxation (Savings Investment and Miscellaneous Provisions) Act 2006**

Public Act 2006 No 81  
Date of assent 18 December 2006  
Commencement see section 2

### **1 Title**

This Act is the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006.

### **2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) Section 209 is treated as coming into force on 30 November 1993.
- (3) Section 201 is treated as coming into force on 1 April 1995.
- (4) Section 207(2) is treated as coming into force on 26 July 1996.
- (5) Section 207(4) is treated as coming into force on 20 May 1999.
- (6) Section 206 is treated as coming into force on 1 April 2000.
- (7) Section 218(1), (3), (4), and (5) is treated as coming into force on 1 October 2001.
- (8) Section 205 is treated as coming into force on 26 March 2003.
- (9) Sections 202, 204, and 207(3) are treated as coming into force on 1 April 2003.
- (10) Section 25(1), (2), (4), (5), and (7) are treated as coming into force on 1 February 2004.
- (11) Sections 6, 12, 13, 16, 17, 20(1)(a), 27, 31, 40, 58, 59(1), 60, 62, 63, 77(4), 78(1)(a), (3), (4)(a), (6), and (7), 80(1)(c) and (2), 82, 85, 88, 94, 96, 129, 138, 139, 140, 141, 152(1) and (3), 155(3), (4), (10), (11), (17), (19)(a), (21), (22), (36), and (45), 156, 158(2)(a), 166, 167, 169(3), 170, 171, 172, 179, 183, and 218(2) are treated as coming into force on 1 April 2005.
- (12) Sections 19 and 195 are treated as coming into force on 21 June 2005.
- (13) Sections 14, 32, 33, 37, 38, 43, 48, 49, 50, 54, 55, 56, 77(3), 86, 87, 90, 91, 92(1), (2), (4), and (6), 95, 102, 147(1) and (2),



- 148, 155(2), (9), and (33), 159, and 163 are treated as coming into force on 1 October 2005.
- (14) Sections 22, 110, 119, 137, 155(23), and 161(2) are treated as coming into force on 1 April 2006.
- (15) Sections 34, 35, 36, 135, 136, 149, 153, 155(32), 157, 177, 186, 187, and 208 are treated as coming into force on 3 April 2006.
- (16) Sections 29, 39, 44, 45, 46, 92(3), (5), and (7), and 131(1) are treated as coming into force on 17 May 2006.
- (17) Sections 117, 132, 151, 155(24), and 178 are treated as coming into force on 1 July 2006.
- (18) Section 11 comes into force 3 months after the date on which this Act receives the Royal assent.
- (19) Sections 191 and 216 come into force on 31 March 2007.
- (20) Sections 5(1) and (2), 8(2), (3), (4), and (5), 24(1), 25(3), (6), (8), and (9), 26(1), 61(1), 64(1) to (3), 65(1) to (3), 66(1), 67(1) and (2), 68(1), 69(1) to (3), 70(1), 71(1), 72(1), 73(1), 74(1) to (3), 75(1) to (3), 76(1) to (3), 77(1), (2), and (6), 78(1)(b), (2), (4)(b), (5), and (8), 79(1), 80(1)(a) and (b), (3), (4), and (5), 81(1) and (2), 83(1), 89(1), 93(1) and (2), 99(1), 101(1) and (2), 142, 143, 144, 145(1), 155(5), (7), (13), (15), (16), (18), (19)(b), (29), (42), (44), and (46), 160, 162, 181, 189, and 193 come into force on 1 April 2007.
- (21) Sections 145(2) to (6), 146, 155(26) and (27), and 220 to 227 come into force on 1 July 2007.
- (22) Sections 4, 7, 10, 15, 18, 21, 28, 51, 97, 98, 100, 103(1), 112, 113, 114, 115, 116, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 131(2), 133, 134, 147(3), 150, 152(2), 154, 155(20), (25), (30), (35), (37), (39), (43), and (47), 158(2)(b), 165, 176, 180, 182, 184, 185, 188, 196, 197, 198, 199, 214, 215, 219, 229, 230, 232, 233, 240, 241, 243, 244, 246, and 247 come into force on 1 October 2007.

---

**Part 2**  
**Amendments to Tax Administration Act**  
**1994**

**196 Example: Section 120KC**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**197 Example: Section 120KD**

- (1) *Amendment incorporated in the principal Act*
  - (2) Subsection (1) applies for the 2008–09 and later income years.
-

## **Income Tax Act 2007**

Public Act 2007 No 97  
Date of assent 1 November 2007  
Commencement see section 2

### **A 1 Title**

This Act is the Income Tax Act 2007.

Compare: 2004 No 35 s A 1

### **A 2 Commencement**

*1 April 2008*

- (1) This Act comes into force on 1 April 2008.

*Charitable entities*

- (1B) Despite subsection (1), sections CW 41(2) and CW 42(1)(b) come into force on 1 July 2008.

*Act effective for 2008–09 income year and later*

- (2) However, except when the context requires otherwise, this Act applies only with respect to the tax on income derived in the 2008–09 income year and later income years.

Defined in this Act: income year, tax

Compare: 2004 No 35 s A 2

Section A 2(1B): inserted, on 1 April 2008, by section 307 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

## **Part Z**

### **Repeals, amendments, and savings**

#### **ZA 2 Consequential amendments to other enactments**

*Schedules 49 and 50*

- (1) *Amendments incorporated into principal Act and regulations.*

*Amendments effective only for 2008–09 income year and later*

- (2) However, unless the context requires otherwise, the amendments to the Tax Administration Act 1994 apply only in relation to the tax on income derived in the 2008–09 income year and later income years.

Defined in this Act: income, income year, tax

Compare: 2004 No 35 s YA 1

**ZA 3 Transitional provisions***When reference to this Act includes earlier Act*

- (1) A reference in an enactment or document to this Act, or to a provision of it, is to be interpreted as a reference to the Income Tax Act 2004, or the Income Tax Act 1994, or the Income Tax Act 1976, or to the corresponding provision of the earlier Act, to the extent necessary to reflect sensibly the intent of the enactment or document.

*When reference to earlier Act includes this Act*

- (2) A reference in an enactment or document to the Income Tax Act 2004, or the Income Tax Act 1994, or the Income Tax Act 1976, or to a provision of that earlier Act, is to be interpreted as a reference to this Act, or to the corresponding provision in this Act, to the extent necessary to reflect sensibly the intent of the enactment or document.

*Intention of new law*

- (3) The provisions of this Act, including any amendments made by this Act to the Tax Administration Act 1994, are the provisions of the Income Tax Act 2004 in rewritten form, and are intended to have the same effect as the corresponding provisions of the Income Tax Act 2004. Subsection (5) overrides this subsection.

*Using old law as interpretation guide*

- (4) Unless a limit in subsection (5) applies, in circumstances where the meaning of a taxation law that comes into force at the commencement of this Act (the **new law**) is unclear or gives rise to absurdity—
- (a) the wording of a taxation law that is repealed by section ZA 1 and that corresponds to the new law (the **old law**) must be used to determine the correct meaning of the new law; and
  - (b) it can be assumed that a corresponding old law provision exists for each new law provision.

*Limits to subsections (3) and (4)*

- (5) Subsections (3) and (4) do not apply in the case of—
- (a) a new law listed in schedule 51 (Identified changes in legislation); or

- (b) a new law that is amended after the commencement of this Act, with effect from the date on which the amendment comes into force.

Defined in this Act: taxation law

Compare: 2004 No 35 s YA 3

#### **ZA 4 Saving of binding rulings**

*When, and extent to which, this section applies*

- (1) This section applies when, and to the extent to which,—
  - (a) either—
    - (i) an applicant has applied for a private ruling, a product ruling, or a status ruling, before the beginning of the 2008–09 income year on an arrangement that is entered into, or that the applicant seriously contemplates will be entered into before the commencement of this Act; or
    - (ii) a public ruling is issued before the beginning of the 2008–09 income year; and
  - (b) the binding ruling is about—
    - (i) a taxation law that is repealed by section ZA 1 (the **old law**); or
    - (ii) a taxation law in the Income Tax Act 1994 that preceded and corresponded to the old law; and
  - (c) a new taxation law that corresponds to the old law (the **new law**) comes into force at the commencement of this Act; and
  - (d) in the absence of this section, the commencement of this Act would mean that the binding ruling would cease to apply because of section 91G of the Tax Administration Act 1994.

*Ruling about new law*

- (2) The binding ruling is treated as if it were made about the new law, so that the effect of the ruling at the commencement of this Act is the same as its effect before the commencement.

*No confirmation rulings*

- (3) To the extent to which a binding ruling continued by subsection (2) exists and applies to an arrangement, or to a person

and an arrangement, the Commissioner must not make a binding ruling on how—

- (a) the new law applies to the arrangement or to the person and the arrangement; or
- (b) this subsection applies to the arrangement or to the person and the arrangement.

Defined in this Act: arrangement, binding ruling, commencement of this Act, Commissioner, taxation law

Compare: 2004 No 35 s YA 4

## **ZA 5 Saving of accrual determinations**

*When, and extent to which, this section applies*

- (1) This section applies when—
  - (a) a determination has been made before the beginning of the 2008–09 income year under—
    - (i) section 90 or 90AC of the Tax Administration Act 1994; or
    - (ii) section 64E of the Income Tax Act 1976; and
  - (b) the determination has not been cancelled before the beginning of the 2008–09 income year; and
  - (c) the determination is about—
    - (i) a taxation law that is repealed by section ZA 1 (the **old law**); or
    - (ii) a taxation law in the Income Tax Act 1994 or the Income Tax Act 1976 that preceded and corresponded to the old law; and
  - (d) a new taxation law that corresponds to the old law (the **new law**) comes into force at the commencement of this Act; and
  - (e) in the absence of this section, the commencement of this Act would mean that that determination would cease to apply because the taxation law to which it applied had ceased to exist.

*Determination about new law*

- (2) The determination is treated as if it were made about the new law, so that the effect of the determination at the commencement of this Act is the same as its effect before the commencement.

*No confirmation determinations*

- (3) To the extent to which a determination continued by subsection (2) applies, the Commissioner must not make a determination on how the new law applies.

Defined in this Act: commencement of this Act, Commissioner, taxation law

Compare: 2004 No 35 s YA 5

---

## **Taxation (Business Taxation and Remedial Matters) Act 2007**

Public Act 2007 No 109  
Date of assent 19 December 2007  
Commencement see section 2

### **1 Title**

This Act is the Taxation (Business Taxation and Remedial Matters) Act 2007.

### **2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) Section 284 is treated as coming into force on 1 April 1995.
- (3) Sections 286 and 287 are treated as coming into force on 1 April 1997.
- (4) Sections 241(1) and (3) and 269(1) are treated as coming into force on 1 April 1999.
- (5) Sections 281 and 282(3) are treated as coming into force on 1 April 2001.
- (6) Section 273(2), (4), and (5) are treated as coming into force on 24 October 2001.
- (7) Section 285 is treated as coming into force on 1 April 2002.
- (8) Section 269(3) is treated as coming into force on 1 April 2003.
- (9) Section 133(1) is treated as coming into force on 4 June 2004.
- (10) Section 288(3) is treated as coming into force on 16 November 2004.
- (11) Sections 6, 7, 8, 9, 10, 13, 18, 19, 22, 23, 24, 25, 35, 39, 40, 41, 54, 55, 56, 76, 77, 79, 102, 128, 154, 165, 167, 182(25), (28), (33), and (55), 185(2), 230(1) and (2), and 272(1) are treated as coming into force on 1 April 2005.
- (12) Section 129(1) is treated as coming into force on 1 July 2005.
- (13) Sections 176 and 177 are treated as coming into force on 1 April 2006.
- (14) Sections 130, 182(44), and 185(1) are treated as coming into force on 1 December 2006.



- (15) Sections 4, 16, 26, 27, 31, 32, 38, 43, 44, 45, 46, 47, 49, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 100, 104, 131, 132, 135(2), 136, 138, 140, 153, 178, 179(1) and (3), 181, 182(5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (18), (19), (20), (22), (24), (27), (29), (30), (43), (45), (46), (47), (48)(a) and (b), (49), (50), (51), (52), (53), (54), and (56), 184, 189(2) and (5), 192, 193(1), 194(1), 202, 210, 224(1) and (4), 227(1), 228(1) and (3), 231(1), 252(2), 262(1), 295, 299, 300, 302, 304, and 305 are treated as coming into force on 1 April 2007.
- (16) Sections 156(1) and (2), 256, 258, 273(1) and (3), and 274 are treated as coming into force on 17 May 2007.
- (17) Sections 50, 51, 52, 78, 101, and 182(17), (26), and (59) are treated as coming into force on 20 June 2007.
- (18) Sections 5, 12, 28, 29, 30, 34, 75, 98, 99, 103, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 134, 135(1), 139, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 157, 158, 159, 160, 161, 162, 163, 164(2), 166(2), 168, 169, 170, 171, 172, 173, 174, 175, 179(2), 180, 182(2), (4), (23), (31), (35), (36), (37), (38), (39), (40), (41), and (42), 186, 190, 195, 196(1), (2), and (4), 207(2), (5), (6), (8), and (9), 208(1), 236, 237, 238, 239, 240, 245, 246, 247, 248, 249, and 279(1) are treated as coming into force on 1 October 2007.
- (19) Section 275 is treated as coming into force on 30 November 2007.
- (20) Sections 191, 193(2) and (3), 194(2) and (3), 196(3) and (5), 201, 203(2), 204(1), 205, 206(2) and (3), 207(1), (3), (4), (7), and (10), 208(2), 211, 212, 213, 214, 215, 216, 217, 218, 219, 222, 223, 224(2), (3), and (5), 227(2), 228(2), 231(2) to (4), 241(2), 242, 243, 244, 250(1) to (3), 251, 252(1), (3), and (4), 253, 254, 255, 257, 259, 260, 261, 262(2), 263, 264, 265, 266, 267, 269(2) and (4), 272(2), 278, 279(2), 290, 294, 307 to 318, 321 to 328, 330 to 342, 344 to 437, 438(1), 439 to 538, 540 to 549, 550(2) to (41) and (43) to (68), 551 to 553, 554(1) and (2), and 555 to 562 come into force on 1 April 2008.

- (21) Sections 14, 15, 21, 36, 37, 137, 182(32), 183, 197(1) to (3), 198, 303, 319, 320, 329, 343, 438(2), 539, 550(42), and 554(3) come into force on 1 July 2008.
- (22) Sections 220(1), 293, 297, and 298 come into force on the earlier of the following:
  - (a) a date to be fixed by the Governor-General by Order in Council:
  - (b) 1 April 2009.
- (23) Section 229 comes into force on the earlier of the following:
  - (a) a date to be fixed by the Governor-General by Order in Council:
  - (b) 1 April 2010.

## Part 2

### Amendments to Tax Administration Act 1994

#### **189 Keeping of business records**

- (1) *Amendment incorporated in the principal Act*
- (2) *Amendment incorporated in the principal Act*
- (3) *Amendment incorporated in the principal Act*
- (4) *Amendment incorporated in the principal Act*
- (5) *Amendment incorporated in the principal Act*
- (6) *Amendment incorporated in the principal Act*
- (7) Subsections (1) to (6) apply for the 2008–09 and later income years.

#### **197 Annual returns of income not required**

- (1) *Amendment incorporated in the principal Act*
- (2) *Amendment incorporated in the principal Act*
- (3) *Amendment incorporated in the principal Act*
- (4) *Amendment incorporated in the principal Act*
- (5) Subsection (4) applies for the 2008–09 and later income years.

#### **202 Annual returns by persons who receive subpart KD credit**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2007–08 and later income years.

**204 Non-active companies may be excused from filing returns**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**209 New sections 68D and 68E inserted**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**210 Particulars to be included in income statement**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2007–08 and later income years.

**224 Disclosure of information in relation to family income assistance**

- (1) *Amendment incorporated in the principal Act*
- (2) *Amendments incorporated in the principal Act*
- (3) *Amendment incorporated in the principal Act*
- (4) Subsection (1) applies for the 2007–08 and later income years.
- (5) Subsections (2) and (3) apply for the 2008–09 and later income years.

**230 Taxation laws in respect of which binding rulings may be made**

- (1) *Amendment incorporated in the principal Act*
- (2) *Amendment incorporated in the principal Act*
- (3) *Amendment incorporated in the principal Act*
- (4) Subsections (1) and (2) apply for the 2005–06 and later income years.
- (5) Subsection (3) applies for the 2008–09 and later income years.

**233 Extension of time bars**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**234 Commissioner may at any time amend assessments**

- (1) *Amendment incorporated in the principal Act*

- (2) Subsection (1) applies for the 2008–09 and later income years.

**235 New section 113D inserted**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**236 Residual income tax of new provisional taxpayer**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**238 Provisional tax instalments in transitional years**

- (1) *Amendment incorporated in the principal Act*  
(2) *Amendment incorporated in the principal Act*  
(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

**240 Provisional tax and rules on use of money interest**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**241 Late filing penalties**

- (1) *Amendment incorporated in the principal Act*  
(2) *Amendment incorporated in the principal Act*  
(3) *Amendment incorporated in the principal Act*  
(4) Subsections (1) and (3) apply for employer monthly schedules due on or after 1 April 1999.  
(5) Subsection (2) applies for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**242 New section 139AAA inserted**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**243 Late payment penalty**

- (1) *Amendments incorporated in the principal Act*
- (2) *Amendments incorporated in the principal Act*
- (3) Subsections (1) and (2) apply for unpaid tax that on or after 1 April 2008 becomes due for payment.

**244 Imposition of late payment penalties when financial relief sought**

- (1) *Amendments incorporated in the principal Act*
- (2) Subsection (1) applies for unpaid tax that on or after 1 April 2008 becomes due for payment.

**245 Late payment penalty and provisional tax**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**246 Imputation penalty tax payable where end of year debit balance**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**247 New section 140BB inserted**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**248 Dividend withholding payment penalty tax payable where end of year debit balance**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**249 New section 140CA inserted**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**250 Tax shortfalls**

- (1) *Amendment incorporated in the principal Act*
- (2) *Amendment incorporated in the principal Act*

- (3) *Amendment incorporated in the principal Act*
- (4) *Amendment incorporated in the principal Act*
- (5) Subsections (1) to (3) apply for tax positions taken on or after 1 April 2008.
- (6) Subsection (4) applies for the 2008–09 and later income years.

**251 Not taking reasonable care**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**252 Unacceptable tax position**

- (1) *Amendment incorporated in the principal Act*
- (2) *Amendment incorporated in the principal Act*
- (3) *Amendment incorporated in the principal Act*
- (4) *Amendment incorporated in the principal Act*
- (5) Subsections (3) and (4) apply for tax positions taken on or after 1 April 2008.

**253 Abusive tax position**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**254 Evasion or similar act**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**255 New section 141ED inserted**

- (1) *Amendment incorporated in the principal Act*
- (2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**256 Reduction in penalty for voluntary disclosure of tax shortfall**

- (1) *Amendment incorporated in the principal Act*

- (2) Subsection (1) applies for voluntary disclosures made on or after 17 May 2007.

**257 Reduction where temporary shortfall**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**258 Limitation on reduction of shortfall penalty**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for voluntary disclosures made on or after 17 May 2007.

**259 Section 141KB repealed**

- (1) *Amendment incorporated in the principal Act*  
(2) Subsection (1) applies for tax positions taken on or after 1 April 2008.

**260 Due date for payment of late filing penalty**

- (1) *Amendment incorporated in the principal Act*  
(2) *Amendment incorporated in the principal Act*  
(3) Subsections (1) and (2) apply for a tax return required to be furnished under sections 16 to 18 of the Goods and Services Tax Act 1985 and due on or after 1 April 2008.

**263 Imposition of civil and criminal penalties**

- (1) *Amendment incorporated in the principal Act*  
(2) *Amendment incorporated in the principal Act*  
(3) Subsections (1) and (2) apply for tax positions taken on or after 1 April 2008.
-

---

## **Taxation (Limited Partnerships) Act 2008**

Public Act 2008 No 2  
Date of assent 13 March 2008  
Commencement see section 2

### **1 Title**

This Act is the Taxation (Limited Partnerships) Act 2008.

### **2 Commencement**

This Act comes into force on 1 April 2008.

## **Part 2**

### **Amendments to other revenue Acts**

*Tax Administration Act 1994*

#### **28 Keeping of business records**

(1) *Amendments incorporated in the principal Act*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

#### **29 Section 42 replaced**

(1) *Amendment incorporated in the principal Act*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

---



## **Taxation (Urgent Measures and Annual Rates) Act 2008**

Public Act 2008 No 105  
Date of assent 15 December 2008  
Commencement see section 2

### **1 Title**

This Act is the Taxation (Urgent Measures and Annual Rates) Act 2008.

### **2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) In Part 1, other than sections 3, 4, and 15,—
  - (a) the subsections (1) of the sections come into force on 1 April 2009:
  - (b) the subsections (2) of the sections come into force on 1 April 2010:
  - (c) the subsections (3) of the sections come into force on 1 April 2011.
- (3) In Part 2,—
  - (a) sections 24, 27, and 28 are treated as coming into force on 19 December 2007:
  - (b) section 19(1)(a) and (b) is treated as coming into force on 1 April 2008:
  - (c) sections 19(1)(c), 21, 25, and 26 come into force on 1 April 2009:
  - (d) sections 19(1)(d), 20(2) to (7), and 22 come into force on 1 October 2009.
- (4) In Part 3,—
  - (a) sections 33(1) and 40 are treated as coming into force on 1 April 2008:
  - (b) section 41 is treated as coming into force on 29 May 2008:
  - (c) sections 34 and 35 are treated as coming into force on 1 October 2008:
  - (d) sections 29, 31, 33(2), 36(2), 37, and 39 come into force on 1 April 2009:

- 
- (e) section 32 comes into force on 1 April 2010.
- (5) In Part 4, sections 43, 44, 45, 46, 48, 50, 52, 53, 54, 55, 56(2) and (3), 57, and 58 come into force on 1 April 2009.

**Part 2**  
**Research and development tax credits**  
**repeal**

*Amendments to Tax Administration Act 1994*

- 26 Non-active companies may be excused from filing returns**
- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2009–10 income year and later income years.
-

## **Taxation (Business Tax Measures) Act 2009**

Public Act 2009 No 5  
Date of assent 30 March 2009  
Commencement see section 2

### **1 Title**

This Act is the Taxation (Business Tax Measures) Act 2009.

### **2 Commencement**

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) In Part 1, the sections, other than sections 3 and 24, come into force on 1 April 2009.
- (3) In Part 2,—
  - (a) section 32 is treated as coming into force on 19 December 2007:
  - (b) sections 29(1), 30(1), and 31(1) come into force on 1 April 2009:
  - (c) sections 29(2), 30(2), and 31(2) come into force on 1 April 2010.

## **Part 1**

### **Business tax measures**

*Amendment to Tax Administration Act 1994*

### **23 Provisional tax and rules on use of money interest**

- (1) *Amendment(s) incorporated in the Act(s).*
  - (2) Subsection (1) applies for the 2009–10 income year and later income years.
-

## **Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009**

Public Act 2009 No 34  
Date of assent 6 October 2009  
Commencement see section 2

### **1 Title**

This Act is the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009.

### **2 Commencement**

- (1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.
- (2) Sections 74, 108, 319, 320, 322, 323, 502, 510, 546, 549, 557(26), (45), (53), (132), (145), and (147), 605(1), and (3), 606, 610, 682, 862, and 863 are treated as coming into force 3 months after this Act receives the Royal assent.
- (3) Section 704(5) is treated as coming into force—
  - (a) in relation to the Parliamentary Service, on 1 October 1986;
  - (b) in relation to the Office of the Clerk of the House of Representatives, on 1 August 1988.
- (4) Section 855 is treated as coming into force on 1 April 1993.
- (5) Section 850 is treated as coming into force on 1 April 1995.
- (6) Sections 851 and 860 are treated as coming into force on 1 April 1997.
- (7) Sections 847, 848, 849, 852, 853, 854, and 856 are treated as coming into force on 1 October 2001.
- (8) Sections 628(1), 646(1) and (4), 647(1), (3), and (6), 712, 735, 736, 738, 741, 742, 743, 746, 747, 748, 749, 750, 751, 754, 759, 760, 761, 764(2), 767, 769, 770, 771, 772, 773, 789(2) and (4), 832, 844(2), (9), (15), (23), (25), (31), and (33), 845, 858(1) and (3), and 864 are treated as coming into force on 1 April 2005.
- (9) Section 647(2) is treated as coming into force on 1 October 2005.

- (10) Sections 744, 768, and 844(3), (13), (14), (22), and (32) are treated as coming into force on 1 April 2006.
- (11) Sections 646(2) and 647(4) are treated as coming into force on 3 April 2006.
- (12) Sections 706, 739, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789(1) and (3), 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 819(2), 841, and 844(8), (11), (18), (21), and (35) are treated as coming into force on 1 April 2007.
- (13) Section 684 is treated as coming into force on 17 May 2007.
- (14) Sections 720, 731, 733(2) and (4), and 844(6) and (17) are treated as coming into force on 1 July 2007.
- (15) Sections 612, 625, 675, 677, 756, 808, 809, 811, 812, 813, 814, 815, 816, 817, 818, 819(1), 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 833, 834, 835, 836, 837, 838, 839, 840, 842, 843, and 844(26) are treated as coming into force on 1 October 2007.
- (16) Section 764(1) and (3) is treated as coming into force on 1 December 2007.
- (17) Sections 638(2), 757, 830, and 831 are treated as coming into force on 19 December 2007.
- (18) Section 758 is treated as coming into force on 1 January 2008.
- (19) Section 737, 740, 755, 762, 790, 791, 792, 803, 804, 805, 806, 807, 810, and 844(4), (5), (7), (10), (12), (16), and (27) to (30) are treated as coming into force on 25 February 2008.
- (20) Section 763 is treated as coming into force on 4 March 2008.
- (21) Sections 5(1), (2), (4), (5), and (7), 11, 12, 15(1)(b), 16, 18, 19(1), (2), (3) and (5), 20(3), 24, 25, 26, 32, 34, 35, 36, 37, 38, 41(1) and (2), 42, 43, 44, 45, 47, 48, 52, 53, 54, 56(1) and (4), 60, 62, 68, 72, 73(3), 76, 81, 82, 83, 84, 85, 93, 96(1) and (3), 97, 98(1), (3), and (4), 99, 100, 101, 102(1), (3), (5), and (7), 103(1), (3), and (5), 104(1) and (3), 105(1), (3), and (5), 106(1), (3), and (5), 107, 109, 111, 117, 118, 119, 120, 121, 127, 128, 129, 130, 131, 133, 134, 135, 136(1) and (3), 137(1), (2), (3), and (5), 138, 140, 141, 142, 143, 144, 145, 146, 147, 150, 151, 152(1), 161(7) and (15), 166, 167, 168, 169, 170, 171, 172, 173(1) to (3), (5) to (7), and (11), 174, 176(1), 177(1), (2) to (4), and (6) to (10), 178(1) to (5), and (7) to (11), 179, 180(1), 181(1), (2), and (5), 182, 183, 188, 196,

197, 198, 201, 202(1) and (3), 203, 204, 205(1), (4), and (5), 209(2), (3), and (5), 211(3) and (6), 215(1) and (3), 218(1), (4), (5), (7), and (9), 227, 230(4), 232, 233, 234, 235, 236, 238(1) and (4), 239(1), 241, 242(1), 251, 253, 254, 255, 256, 257, 258, 261, 262(1), 263, 264(2) and (4), 265, 266, 268, 269, 270, 271, 272, 273, 274, 275, 277, 280, 281, 282(1), (3), (4), and (5), 283, 284(1), (2), (4), and (6), 285, 286, 287, 288, 289, 290, 291, 293, 294, 296(2), (3), and (8), 297(2) and (5), 298(1) and (4), 299, 300, 302(2) and (4), 304, 306, 308(1), 309, 311, 312, 314, 317, 318, 321, 324(1), (2), (4), and (6), 329, 330, 331, 332, 333, 334, 335, 336(1), (3), (5), and (6), 337, 338, 339, 340(1), (3), (4), and (7), 341, 344, 345, 349, 350, 352, 353, 354, 355, 356, 357, 358, 359, 360(1) and (3), 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 376, 378(1), (2), (4), (5), and (7), 379, 381(2) and (4), 383, 387, 388(2) and (5), 389(2) and (3), 390, 391, 393, 394, 397, 398, 399(1), (4), and (8), 400(2) and (6), 409, 420(1) and (3), 421(1) and (3), 422, 427, 431(1) and (3), 440, 441, 442, 443, 444, 446, 447(2) and (5), 452(3) and (6), 453, 455, 457, 460(2), (4), and (7), 466, 470, 486, 489, 490(2), (3) and (5), 491(1), (3), and (5), 492(1) and (5), 493, 494, 495, 496, 497, 500, 503(2), (3), and (4), 504, 505, 506, 507, 509, 511, 512, 513, 514(1) to (4), (7), and (9) to (11), 515, 516, 517(1) and (3) to (5), 518(1) and (3) to (5), 519(1) to (6) and (8) to (13), 520, 521, 522, 523, 524, 525, 526, 529, 530, 531(1), (2), and (4) to (7), 532, 533, 534, 536, 537, 538, 539, 541, 542, 543, 544, 545, 547, 548, 554, 555, 556, 557(5), (7), (10), (25), (28), (29), (36), (37), (39), (42), (49), (50), (51), (52), (54), (55), (57), (58), (59), (62), (63), (64), (68), (69), (76), (84), (85), (88), (93), (95), (98), (99), (109), (114), (118), (119), (130), (134), (137), (138), (139), (140), (141), (142), (143), (144), (146), (149), (156), (157), (164), (170), (171), (175), (176), (184), (187), (191), (193), (195), (197), (198), (199), (200), (202), (204), (210), (214), (217), (219), (222), (224), (225), and (228), 559, 560, 561, 562, 564, 567, 568, 569, 570, 571(1) and (3), 572, 573, 574, 575, 576, 579(3) to (8), 580, 581, 582, 583, 585, 590, 591, 592, 593, 596(3), (4), (7), and (8), 597(4), 598(1) and (3), 599(1), 609, 614, 615, 616(2), 619(2), (3), (6), and (7), 620, 624, 627, 628(2) to (4), 630(1), 631, 632, 633, 636, 637, 640, 642, 643,

- 644, 646(3) and (5), 647(5) and (7), 648, 649, 650, 651(1) and (3), 654, 659, 660, 661, 664, 665, 669, 671, 672, 673, 680, 683, 690, 691, 693, 701, 702, 715(1) to (3), 717, 719, 724, 725, 726, 727, 729, 730, 733(3) and (5), 765, 766, 774, 775, 776, 777, 778, 844(19), (20), (24), and (34), 858(2) and (4), 859, and 865 are treated as coming into force on 1 April 2008.
- (22) Sections 88, 315, 316, 360(2), 503(1), 557(148), 732, 867, and 868 are treated as coming into force on 1 July 2008.
- (23) Sections 40, 58, 61, 243, 244, 745, 752, and 753 are treated as coming into force on 26 September 2008.
- (24) Section 137(4) and (6) are treated as coming into force on 1 October 2008.
- (25) Sections 10, 80, 112(2) and (3), 115, 116, 132(2) and (4), 173(8), (13), and (15), 557(32), (48), (60), (82), (105), (127), (131), (159), (160), (181), (186), and (206), and 704(2) and (4) are treated as coming into force on 1 January 2009.
- (26) Sections 9, 27, 50, 64, 92, 114, 136(2), (4), (5), and (6), 139, 173(9), 176(2) and (3), 181(4) and (8), 184, 276, 278, 279, 282(2), 284(3), (5), (7), and (8), 301, 347(1), 399(2) and (6), 445(1) and (4), 462, 463, 464, 465, 492(2), 508, 514(5), (6), and (8), 517(2), 518(2), 519(7), 550, 557(92), (158), (165), (166), (188), and (209), 571(2), (4), and (5), 587, 607, 608, 619(1), (4), and (5), 623, 715(4), and 721 are treated as coming into force on 1 April 2009.
- (27) Sections 5(3), (6), and (8), 6, 14, 17(2), (3) and (5), 20(1), (2), and (4), 22, 23, 29, 30, 39, 41(3) and (6), 69, 70, 71, 79, 90, 91, 110, 152(2) and (3), 153, 154, 155, 156, 160, 161(1) to (6), (9) to (14), (16), and (17), 162, 163, 164, 165, 175, 180(2) to (4), 195, 202(2) and (4), 206, 207, 208, 209(1) and (4), 210, 211(1), (2), (4), (5), and (7), 212, 213, 214, 215(2), (4), and (5), 216, 217, 218(3) and (10), 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230(1) to (3), and (5) to (7), 231, 237, 238(2), (3), and (5), 240, 246, 247, 248, 249, 250, 252, 259, 260, 302(1) and (3), 303, 305, 340(2), (5), and (6), 342, 343, 346, 377, 385, 395, 399(3) and (7), 400(3) and (7), 401(2) and (5), 403, 404, 405, 406, 407, 408, 412, 413, 414, 415, 416, 417, 419, 421(2) and (4), 423, 424, 425, 426, 428, 429, 430, 431(2) and (4), 432, 433, 434, 435, 436, 437, 448, 456, 459(1)

and (3), 460(3) and (8), 461(1) and (3), 468, 469(1) and (3), 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 485, 488, 490(1) and (4), 491(2), (4) and (6), 492(3), (4), and (6), 527, 528, 540, 557(8), (9), (11), (14), (16), (22), (23), (30), (34), (38), (40), (41), (43), (61), (70), (71), (74), (75), (77), (78), (79), (80), (89), (94), (96), (104), (117), (123), (128), (129), (182), (183), (185), (203), (208), (211), (212), (213), (215), (216), and (229), 558, 577(2), 584, 586, 596(5) and (9), 597(1) to (3), (5) and (6), 605(2) and (4), 617, 634, 635, 651(2) and (5), 652, 655, 656, 657, 658, 666, 668, 674, 676, 678, 686, 687, 688, 695, 697, and 700 are treated as coming into force on 30 June 2009.

- (28) Sections 46, 56(2), (3), and (5), 59, 86, 87, and 89 come into force on 1 October 2009.
- (29) Sections 95, 123, 124, 125, 126, 557(108), and (110) come into force on 1 January 2010.
- (30) Sections 4, 7, 8, 13, 15(1)(a) and (2), 17(1) and (4), 19(4), (6), and (7), 21, 28, 41(4), (5), and (7), 51, 63, 65, 66, 67, 73(1), (2), and (4), 75, 77, 78, 96(2), (4), and (5), 98(2), (5), and (6), 102(2), (4), (6), and (8), 103(2), (4), and (6), 104(2) and (4), 105(2), (4), and (6), 106(2), (4), and (6), 112(1), 113, 122, 149, 157, 158, 159, 161(8) and (18), 173(4), (10), (12), and (14), 177(5), (11), and (12), 178(6), (12), and (13), 181(3), (6), and (7), 191, 192, 218(2), (6), (8), and (11), 239(2) and (3), 242(2) to (4), 245, 262(2) and (3), 264(1) and (3), 267, 292, 295, 296(4), (6), and (9), 298(2), (3), and (5), 308(2) and (3), 313, 324(3), (5), and (7), 328, 336(2), (4), and (7), 347(2), 348, 351, 378(3), (6), and (8), 384, 401(1), (3), and (4), 438, 498, 531(3) and (8), 535, 557(2), (3), (4), (13), (15), (17), (18), (19), (21), (24), (31), (44), (66), (73), (81), (83), (91), (97), (100), (101), (102), (103), (106), (107), (111), (115), (116), (121), (126), (133), (136), (150), (154), (155), (167), (177), (179), (180), (192), (196), (220), (221), (223), and (227), 563, 565, 566, 579(1) and (2), 588, 594, 599(2), 611, 613, 618, 621, 622, 626, 628(5) and (6), 645, 651(4) and (6), 679, 681, 710(3), 713, and 861 come into force on 1 April 2010.
- (31) Sections 200 and 487 come into force on 30 June 2010.
- (32) Sections 33, 49, 55, 94, 132(1), (3), (5), and (6), 185, 186, 187, 189, 190, 193, 194, 199, 296(1), (5), and (7), 297(1), (3),



and (4), 307, 310, 325, 326, 327, 372, 373, 374, 375, 380, 381(1), (3), and (5), 382, 386, 388(1), (3), and (4), 392, 396, 399(5) and (9), 400(1), (4), and (5), 402, 410, 411, 418, 420(2) and (4), 439, 445(2), (3), and (5), 447(1), (3), and (4), 449, 450, 451, 452(1), (2), (4), and (5), 454, 458, 459(2) and (4), 460(1), (5), and (6), 461(2) and (4), 467, 469(2) and (4), 483, 484, 557(6), (12), (20), (27), (33), (35), (46), (56), (65), (67), (72), (87), (90), (112), (113), (120), (122), (124), (151), (152), (153), (161), (162), (163), (168), (169), (172), (178), (189), (190), (194), (201), (205), (207), (218), and (226), 577(1) and (3), 629, and 663 come into force on 1 July 2010.

## **Part 2**

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

#### **596 Interpretation**

- (1) This section amends section 3(1).
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) *Amendment(s) incorporated in the Act(s).*
- (5) *Amendment(s) incorporated in the Act(s).*
- (6) Subsection (2) applies for a challenge—
  - (a) commenced on or after the date on which this Act receives the Royal assent:
  - (b) commenced before the date on which this Act receives the Royal assent if,—
    - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and
    - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been

given that there be no case management conference or directions hearing.

- (7) Subsection (3), for a tax return required to be filed under sections 16 to 18 of the Goods and Services Tax Act 1985, applies for a return due on or after 1 April 2008.
- (8) Subsection (4) applies for the 2008–09 and later income years.
- (9) Subsection (5) applies for all income years beginning on or after 1 July 2009.

**597 Construction of certain provisions**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) *Amendment(s) incorporated in the Act(s).*
- (5) *Amendment(s) incorporated in the Act(s).*
- (6) Subsections (1) to (3) and (5) apply for all income years beginning on or after 1 July 2009.

**598 Part 2B replaced**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Subsection (1) applies for the tax on income derived in the 2008–09 or later income years.

**600 No requirement to disclose tax advice document**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for a challenge—
  - (a) commenced on or after the date on which this Act receives the Royal assent:
  - (b) commenced before the date on which this Act receives the Royal assent if,—
    - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and

- (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing.

**601 Treatment of book or document**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) Subsections (1) to (3) apply for a challenge—
  - (a) commenced on or after the date on which this Act receives the Royal assent:
  - (b) commenced before the date on which this Act receives the Royal assent if,—
    - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and
    - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing.

**602 Claim that book or document is tax advice document**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for a challenge—
  - (a) commenced on or after the date on which this Act receives the Royal assent:

- (b) commenced before the date on which this Act receives the Royal assent if,—
  - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and
  - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing.

**603 Person must disclose tax contextual information from tax advice document**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) Subsections (1) to (3) apply for a challenge—
  - (a) commenced on or after the date on which this Act receives the Royal assent:
  - (b) commenced before the date on which this Act receives the Royal assent if,—
    - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and
    - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been

given that there be no case management conference or directions hearing.

**604 Challenge to claim that book or document is tax advice document**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) *Amendment(s) incorporated in the Act(s).*
- (5) Subsections (1) to (4) apply for a challenge—
  - (a) commenced on or after the date on which this Act receives the Royal assent:
  - (b) commenced before the date on which this Act receives the Royal assent if,—
    - (i) at that date, a court or Taxation Review Authority has not held a case management conference or directions hearing or other hearing for the challenge and has not directed that there be no case management conference or directions hearing for the challenge; and
    - (ii) the issues raised by the challenge are not substantially similar to issues being considered by a court or Taxation Review Authority in another challenge for which, at that date, a case management conference or directions hearing or other hearing has been held or a direction has been given that there be no case management conference or directions hearing.

**605 Keeping of business and other records**

- (1) After section 22(2)(ec), the following is inserted:

“(ed) is an employer to whom section RD 13B of that Act applies in relation to the treatment of a tax credit for a payroll donation:”.
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) After section 22(2)(kd), the following is inserted:

“(ke) the transfer under section 24Q of an amount of an employee’s payroll donation to the recipient of the donation; and”.

- (4) Subsection (2) applies for all income years beginning on or after 1 July 2009.

**607 PAYE tax codes**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2009–10 and later income years.

**608 Special tax code certificates**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2009–10 and later income years.

**609 Variation of requirements**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**614 Records to be provided by employer who contributes to superannuation fund**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**615 Certification requirements for withdrawals subject to section CS 1 of Income Tax Act 2007**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**617 Heading and section 32N repealed**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**619 Annual returns of income not required**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) *Amendment(s) incorporated in the Act(s).*  
(3) *Amendment(s) incorporated in the Act(s).*

- (4) *Amendment(s) incorporated in the Act(s).*
- (5) Subsections (1) and (4) apply for the 2009–10 and later income years.
- (6) Subsection (2) applies for the 2008–09 income year.
- (7) Subsection (3) applies for the 2008–09 and later income years.

**620 Electronic format of employer monthly schedule and PAYE payment form**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Subsection (1) applies for the 2008–09 and later income years.

**631 Statements in relation to research and development tax credits: single persons**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) *Amendment(s) incorporated in the Act(s).*
- (5) Subsections (1) to (4) apply for the 2008–09 and later income years.

**632 Section 68E replaced**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**633 New section 68F inserted**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**634 Section 78E repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**635 Section 78F repealed**

- (1) *Amendment(s) incorporated in the Act(s).*

- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**636 New section 80KLB inserted**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**637 Effect of extra instalment on entitlement to tax credit**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) *Amendment(s) incorporated in the Act(s).*  
(3) *Amendment(s) incorporated in the Act(s).*  
(4) *Amendment(s) incorporated in the Act(s).*  
(5) *Amendment(s) incorporated in the Act(s).*  
(6) Subsections (1) to (5) apply for the 2008–09 and later income years.

**640 Disclosure of information in relation to Working for Families tax credits**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) *Amendment(s) incorporated in the Act(s).*  
(3) Subsection (2) applies for the 2008–09 and later income years.

**642 New section 89AB inserted**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**643 Taxpayers and others with standing may issue notices of proposed adjustment**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.

**644 Taxpayer may issue notice of proposed adjustment for taxpayer assessment**

- (1) *Amendment(s) incorporated in the Act(s).*  
(2) Subsection (1) applies for the 2008–09 and later income years.



**646 Determination on economic rate**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) Subsections (1) and (2) apply for the 2005–06 and later income years.
- (5) Subsection (3) applies for the 2008–09 and later income years.

**647 Determination on special rates and provisional rates**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) *Amendment(s) incorporated in the Act(s).*
- (5) *Amendment(s) incorporated in the Act(s).*
- (6) Subsections (1) to (4) apply for the 2005–06 and later income years.
- (7) Subsection (5) applies for the 2008–09 and later income years.

**648 Commissioner may decline to issue special rate or provisional rate**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**649 Notice of setting of economic rate**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**650 Applications for determinations**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**651 Determination on type of interest in FIF and use of fair dividend rate method**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) *Amendment(s) incorporated in the Act(s).*

- (4) Section 91AAO(3C) and (3D) are replaced by the following:  
“(3C) Subsection (3D) applies to a multi-rate PIE that calculates and pays its income tax liability under the quarterly calculation option as set out in section HM 43 of the Income Tax Act 2007.  
“(3D) A determination does not apply for the multi-rate PIE for a quarter beginning before the date of the determination unless the PIE chooses that the determination apply for the quarter and all following quarters in the income year.”
- (5) Subsection (2) applies for all income years beginning on or after 1 July 2009.
- (6) Subsection (4) applies for the 2010–11 and later income years.

**654 Assessment of shortfall penalties**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for a tax position taken on or after 1 April 2008.

**655 Section 102 repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**656 Section 103 repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**657 Section 103A repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**658 Section 104 repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**659 Time bar for amendment of income tax assessment**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

**660 Extension of time bars**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**661 Amended assessments for research and development tax credits**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**664 Provisional tax instalments in transitional years**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**666 Variation to definition of date interest starts**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**668 Section 120R repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**671 Non-electronic filing penalty**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for tax on income derived in the 2008–09 and later income years.

**672 Late payment penalty**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*

- (3) Subsection (1) applies for unpaid tax that becomes due for payment on or after 1 April 2008.
- (4) Subsection (2) applies for a tax position taken on or after 1 April 2008.

**673 Imposition of late payment penalties when financial relief sought**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

**674 Imputation penalty tax payable where end of year debit balance**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**676 Section 140C repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**678 Section 140CA repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**680 Unacceptable tax position**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for a tax position taken on or after 1 April 2008.

**683 Not paying employer monthly schedule amount**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Subsections (1) and (2) apply for a tax position taken on or after 1 April 2008.

**684 Limitation on reduction of shortfall penalty**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for voluntary disclosures made on or after 17 May 2007.

**686 Due dates for payment of imputation penalty tax, FDP penalty tax, and underestimation penalty tax**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

**687 Knowledge offences**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**688 Evasion or similar offence**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**690 Taxes that may be recovered**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies in relation to events and periods occurring before or after 1 April 2008.

**691 Transfer of excess tax within taxpayer's accounts**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Subsections (1) and (2) apply for the 2008–09 and later income years.

**693 Instalment arrangements**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for the 2008–09 and later income years.

---

**695 Section 181 repealed**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**697 Remission for reasonable cause**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

**700 Remission on application**

- (1) *Amendment(s) incorporated in the Act(s).*
  - (2) Subsection (1) applies for all income years beginning on or after 1 July 2009.
-

## **Contents**

- 1 General
  - 2 About this eprint
  - 3 List of amendments incorporated in this eprint (most recent first)
- 

## **Notes**

### **1 *General***

This is an eprint of the Tax Administration Act 1994. It incorporates all the amendments to the Act as at 6 October 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 11 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *About this eprint***

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

### **3 *List of amendments incorporated in this eprint (most recent first)***

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): sections 596–702

Taxation (Business Tax Measures) Act 2009 (2009 No 5): sections 23 and 32

Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105): sections 16(1), 17(1), 24, 26, 27, 39 and 40

Policing Act 2008 (2008 No 72): section 130(1)

Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36): sections 10, 11, 18(1), 54, 55, 56

Taxation (Limited Partnerships) Act 2008 (2008 No 2): sections 28 and 29

Taxation (KiwiSaver) Act 2007 (2007 No 110): sections 14–25

Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109): Part 2

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

---

Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19): sections 52–55

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81): sections 176, 180, 182, 184, 185, 188, 196, 197, 198, 199

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3): sections 210(4)-(8), (10), (12), (14), (17), (18), 217, 218, 241–251, 258–260

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

---