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## TAX

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## PENDING LEGISLATIVE CHANGES

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Significant changes are underway to New Zealand's tax regime. Some recent changes and proposed future changes to the Income Tax Act 2007 are briefly summarised in this update and apply to partnership tax rules, stapled-stock instruments, the controlled foreign companies (CFC) regime and the associated persons regime.

### Revised partnership tax rules

**Applies to:** all partnerships, including new limited partnerships.

**Key changes:**

- Clarification of the flow-through taxation approach for partnerships (including limited partnerships).
- No longer any ability to stream different types of income/gain to different partners.
- New rules clarify the effect of the entry and exit of partners.
- Partners are deemed to have the status/intention of the partnership in relation to partnership property. This change could affect the taxation of land developments carried on by individual partners.

- Net loss flow-through restrictions will apply to limited partners of a limited partnership. Generally, a limited partner's share of the partnership net loss can only be utilised to the extent of the amount at risk in the partnership.

Changes were effective from 1 April 2008.

### Stapled-stock instruments

**Applies to:** stapled-stock issued on or after 25 February 2008.

**Key changes:**

- Debt "stapled" to a share will be treated as equity for tax purposes.
- Deductions for interest payments on the debt component will no longer be available.

This change will be included in the next tax bill (expected May/June 2008).

### Revised CFC Regime

**Applies to:** New Zealand residents with an interest of 10% or more in controlled foreign companies (CFC).

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### Key changes:

- No income will be required to be attributed from CFCs that have “passive income” of less than 5% of total income (referred to as the “active business” test).
- New Zealand residents with interests in CFCs which breach the 5% passive income threshold will only pay New Zealand tax on the passive income produced by the CFC in proportion to their interest in that CFC.

Detailed rules are yet to be developed in relation to what constitutes “active” and “passive” income.

Distributions from a CFC to New Zealand investors are likely to be exempt from tax.

Draft legislation is yet to be introduced. The current expectation is that new rules will come into force from the 2009-2010 tax year.

### Associated Persons Regime

#### Key changes:

- The definition of “associated persons” will be extended but exactly how is not yet known.
- The changes are likely to have most impact for land sales/developments and trusts. The amendments may also affect a taxpayer’s ability to utilise the approved issuer levy regime.

Draft legislation is likely to be released in May/June 2008. The amendments are likely to take effect from the 2009-2010 income year.

### Miscellaneous

There are likely to be ongoing legislative amendments to the Income Tax Act 2007 (ITA 2007) to redress unintended policy changes which depart from the Income Tax

Act 2004.

These amendments will be back-dated to 1 April 2008 (the effective date of the ITA 2007).