



New Zealand Legislation

Tagged sections/clauses

Westpac Banking Corporation Act 1982 (as at 31 October 2006)

3 Act to bind the Crown and other persons

This Act shall bind the **Crown and every person (including any body politic or corporate)** whose rights are affected by any provision of this Act.

Tax Administration Act 1994 (as at 25 March 2020)

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) Particulars of the determination are treated as correctly reflecting what should have been recorded in the memorandum account.

(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 (effective for 2008–09 income year and later income years, unless the context requires otherwise), by [section ZA 2](#) of the Income Tax Act 2007 (2007 No 97).

Local Government Act 2002 (as at 26 March 2020)

60 Apportionment on transfers to multiple receiving entities

- (1) This clause applies when the assets and liabilities of, or interests in, a transferring entity are transferred to more than 1 receiving entity. For these purposes, a transferring entity that continues in existence after the date of the transfer is treated as a receiving entity.
- (2) A tax loss, loss balance, or credit in a memorandum account of the transferring entity is apportioned among the receiving entities on the basis of the percentage of assets or interests, as applicable, that are transferred to each receiving entity, measured on the date of transfer.
- (3) In relation to the grouping of tax losses and credits, the tax loss, loss balance, or credit is treated as arising on the date of transfer.

Schedule 3 clause 60: inserted, on 22 October 2019, by [section 31](#) of the Local Government Act 2002 Amendment Act 2019 (2019 No 54).

Westpac New Zealand Proposal Approval Order 2011 (as made)

Schedule

cl 3

Proposal between Westpac Banking Corporation and Westpac New Zealand Limited

PROPOSAL BETWEEN WESTPAC BANKING CORPORATION AND WESTPAC NEW ZEALAND

FOR THE VESTING OF CERTAIN ASSETS AND LIABILITIES OF WESTPAC BANKING CORPORATION'S NEW ZEALAND BANKING BUSINESS IN WESTPAC NEW ZEALAND

1. Background

This proposal has been prepared in accordance with [section 6](#) of the Act for the purpose of providing for the vesting of certain assets and liabilities of Westpac Banking Corporation, being principally assets and liabilities of Westpac Banking Corporation's New Zealand institutional banking business, in Westpac New Zealand, having regard to the Reserve Bank of New Zealand's local incorporation policy.

2. Definitions

- (1) In this proposal, unless the context otherwise requires,—

Account Code means a code number allocated to entries in the General Ledger as a means of classifying accounting entries under the headings “assets”, “liabilities”, and “off-balance sheet items”

Act means the Westpac New Zealand Act 2011

Cost Centre means a combination of 6 characters allocated in the General Ledger to a business unit or part of a business unit in Westpac Banking Corporation, or one or more of its subsidiary or associated companies, within which accounting entries are grouped according to Account Codes

Customer Relationship means, [in relation to a customer](#),—

- (a) the relationship (including all legal incidents of that relationship) between Westpac Banking Corporation and a customer that has been, is, or may in the future be liable, or owed an obligation, in respect of a Financial Asset, Financial Liability, Off-Balance Sheet Account, or Undrawn Commitment, or that otherwise acquires, has acquired, or may in the future acquire a service related to any of the aforementioned; and
- (b) any relationship (including all legal incidents of any such relationship) between Westpac Banking Corporation and [any other person that relates to the relationship](#) between Westpac Banking Corporation and the customer referred to in paragraph (a), including any relationship as facility agent, security

- agent or **security trustee in respect of any person**; and
- (c) all contracts, instruments, documents, and information relating to any of the relationships referred to in paragraphs (a) and (b), including security interests, negative pledges, insurance contracts, valuations, solicitors' certificates, directors' certificates, priority agreements, application forms, customer or guarantor information, mandates, account opening authorities, consents, authorisations, credit approvals, correspondence and diary notes

Employment Agreements means the employment agreements for the staff listed on Westpac Banking Corporation's register as "employees transferring to Westpac New Zealand as at the Appointed Day"

Financial Assets means the loans and other assets which are recorded against Account Codes 100000 to 189999 within the Institutional Banking Cost Centres including—

- (a) term loans, on demand loans and overdrafts together with all accrued interest receivable in respect of such loans and overdrafts; and
- (b) provisions for impairment losses on loans; and
- (c) trading securities (including NZ Government Stock and NZ Treasury Bills) which are recorded as **"Trading Securities"**

Financial Liabilities means the deposits and other liabilities which are recorded against Account Codes 200000 to 287999 within the Institutional Banking Cost Centres including—

- (a) term deposits; and
- (b) call deposits; and
- (c) business current accounts; and
- (d) transactional accounts,

together with all accrued interest payable in respect of such deposits and other liabilities

General Ledger means the record of accounting entries relating to Westpac Banking Corporation and its subsidiary and **associated companies** contained on Westpac Banking Corporation's general ledger system

Institutional Banking means:

- (a) the assets, liabilities, and off-balance sheet items which are recorded against Account Codes within the Institutional Banking Cost Centres; and
- (b) the financial services provided by the New Zealand branch of Westpac Banking Corporation to **customers relating** to those assets, liabilities, and off-balance sheet items; and
- (c) **all Customer Relationships** associated with the assets, liabilities, off-balance sheet items and financial services referred to in paragraphs (a) and (b)

Institutional Banking Cost Centres means the following Cost Centres:

- (a) Cost Centre 283616 (Customer Lending); and
- (b) Cost Centre 292663 (Structured Customer Lending); and
- (c) Cost Centre 292615 (Debt Capital Markets Management); and
- (d) Cost Centre 292665 (Loan Syndication and Agency); and
- (e) Cost Centre 283700 (Global Transactional Services – WIB Transactional Banking); and
- (f) Cost Centre 232051 (Global Transactional Services – WIB Transactional Banking); and
- (g) Cost Centre 234960 (Corporate Institutional Banking); and
- (h) Cost Centre 283624 (Corporate Institutional Banking); and
- (i) Cost Centre 292613 (Corporate Advisory); and
- (j) Cost Centre 283670 (International Business – Customer Foreign Currency Accounts)

Intellectual Property Rights means all patents, designs, copyright, know-how, trade secrets, and other intellectual or industrial property rights of any kind that relate exclusively to Institutional Banking, but excluding trade marks, service marks, and domain names

Inward Allocation means any financial accommodation which is provided by the New Zealand branch of Westpac Banking Corporation for a customer, where the primary relationship for that customer or that customer's corporate group is managed by Westpac Banking Corporation other than through the New Zealand branch of Westpac Banking Corporation

Off-Balance Sheet Accounts means contingent liabilities and assets, statistical and **memorandum accounts** and full time equivalent statistics which are recorded against **Account Codes 900000 to 999999** within the Institutional Banking Cost Centres

Personal Property means **all personal property**, whether or not referred to in Westpac Banking Corporation's fixed asset register—

- (a) which is used by the New Zealand branch of Westpac Banking Corporation in providing Institutional Banking services; and
- (b) which is recorded against Account Codes 100000 to 189999 within the Institutional Banking Cost Centres

Specified Time means 12.01 am on the Appointed Day

Undrawn Commitment means any undrawn commitment (whether subject to acceptance, or satisfaction of condition or not) which, if drawn at the Specified Time, would have comprised a Financial Asset

Vested Contracts means all contracts referred to in Westpac Banking Corporation's contract register as "contracts to vest in Westpac New Zealand as at the Appointed Day"

Vested Litigation means all claims, actions, arbitrations, proceedings, decisions and judgments that are referred to in Westpac Banking Corporation's litigation register as "litigation to vest in Westpac New Zealand as at the Appointed Day" unless they are referred to as "not vesting" in Westpac Banking Corporation's litigation register.

- (2) Unless the context otherwise requires, any term or expression that is defined in the [Act](#) and used, but not defined, in this proposal has the same meaning as in the Act.
- (3) In this proposal—
 - (a) headings are inserted for convenience only and do not affect interpretation of this proposal; and
 - (b) unless the context otherwise requires, the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa; and
 - (c) a reference to any legislation includes a reference to any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, or re-enactment or replacement of, that legislation; and
 - (d) a reference to any document includes a reference to that document as modified, novated, supplemented, varied, or replaced from time to time; and
 - (e) a reference to any party to any document includes a reference to that party's successors and permitted assigns; and
 - (f) a reference to a time of day is a reference to New Zealand time; and
 - (g) mentioning anything after include, includes or including does not limit what else might be included.

3. Appointed day and time of vesting

- (1) The Appointed Day is 1 November 2011.
- (2) The Designated Assets and Liabilities vest in Westpac New Zealand at the Specified Time.

4. Description of Designated Assets and Liabilities

- (1) The Designated Assets and Liabilities are, subject to subclauses (2) and (3), all rights and obligations of Westpac Banking Corporation immediately before the Specified Time in respect of the following:
 - (a) all assets, liabilities and off-balance sheet items recorded against Account Codes 100000 to 189999, 200000 to 287999 and [900000 to 999999](#) within the Institutional Banking Cost Centres, including—
 - (i) the Financial Assets; and
 - (ii) the Financial Liabilities; and
 - (iii) the [Off-Balance Sheet Accounts](#); and
 - (b) the following assets and liabilities—
 - (i) any Undrawn Commitment; and
 - (ii) the [Personal Property](#); and
 - (iii) the [Vested Contracts](#); and
 - (iv) the [Intellectual Property Rights](#); and
 - (v) the [Employment Agreements](#); and
 - (vi) all professional advice provided to Westpac Banking Corporation prior to the Specified Time, whether or not provided by third parties, to the extent that it relates to Institutional Banking; and
 - (vii) the [Vested Litigation](#); and
 - (viii) all goodwill and trade reputation attached to the Institutional Banking business not already included in subparagraphs (i) to (vii) and paragraph (c) below, but excluding the goodwill and trade reputation attached to any of Westpac Banking Corporation's trade marks, service marks, and domain names; and
 - (c) all Customer Relationships associated with the assets, liabilities, and off-balance sheet items referred to in paragraph (a) and any Undrawn Commitment referred to in paragraph (b).
- (2) The Designated Assets and Liabilities for:
 - (a) each Inward Allocation; and
 - (b) each loan, overdraft or other asset in respect of which a security interest or negative pledge is held by Westpac Banking Corporation at the Specified Time and in respect of which, if the legal title to the asset were to vest in Westpac New Zealand at the Specified Time, Westpac New Zealand would not have the benefit of the security interest or negative pledge held by Westpac Banking Corporation immediately before the Specified Time,

is the full beneficial interest of Westpac Banking Corporation immediately before the Specified Time in the asset, but not legal title to the asset that from the Specified Time Westpac Banking Corporation holds on bare trust solely for the benefit of Westpac New Zealand.
- (3) For a security interest or negative pledge for an asset or liability referred to in subclause (2), the Designated

Assets and Liabilities comprise a beneficial interest in, but not legal title to, that security interest or negative pledge that is held from the Specified Time by Westpac Banking Corporation on trust in accordance with and subject to [section 10](#) of the Act.

- (4) The assets and liabilities referred to in subclauses (1)(b) and (1)(c) form part of the goodwill and trade reputation attached to the Institutional Banking business.
- (5) Subclauses (1), (2) and (3) apply to any rights and obligations of Westpac Banking Corporation of any kind, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument, an enactment, or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective.

5. Consideration payable by Westpac New Zealand

- (1) **The consideration payable by Westpac New Zealand** for the Designated Assets and Liabilities must be calculated in accordance with the following formula:

$$a - b$$

where—

- a is the aggregate of each balance at the Specified Time recorded against the relevant Account Codes for the assets or classes of assets vesting in Westpac New Zealand, reduced, where applicable, by the balance of any provision recorded against one or more Account Codes in respect of those assets or classes of assets and reduced or increased to the extent of any adjustment as Westpac Banking Corporation and Westpac New Zealand may agree to be necessary to reflect circumstances at the Specified Time relevant to such balances
 - b is the aggregate of each balance at the Specified Time recorded against the relevant Account Codes for the liabilities or classes of liabilities vesting in Westpac New Zealand.
- (2) The consideration calculated in accordance with subclause (1) is payable to Westpac Banking Corporation.

Dated this 26th day of September 2011

Signed on behalf of Westpac Banking Corporation
by David McLean
Chief Executive Officer
Westpac Banking Corporation, New Zealand Branch

Signed on behalf of Westpac New Zealand Limited
by Mariëtte van Ryn
General Manager Regulatory Affairs & General Counsel NZ
Westpac New Zealand Limited