

Income Tax Amendment Act (No 2) 1990

Public Act 1990 No 63
Date of assent 1 August 1990

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An Act to amend the Income Tax Act 1976

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

1 Short Title and commencement

- (1) This Act may be cited as the Income Tax Amendment Act (No. 2) 1990, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act).
- (2) Except as this Act otherwise provides, this Act shall come into force on the day on which this Act receives the Royal assent.

2 Interpretation

- (1) Section 2 of the principal Act is hereby amended by omitting from the definition of the term “company” the words “a local authority or a public authority or”.
- (2) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “leasehold interest”, the following definition:

“‘Life insurance’ means insurance (including reinsurance and the provision of annuities for a term contingent upon human life) whereby and to the extent that a person provides to another person for consideration (whether such consideration is provided by the person deriving the benefits or by any other person) benefits contingent upon the death or survival of a human being or human beings; but does not include—

“(a) Medical or accident insurance where the only benefits provided which are contingent upon the death or survival of a human being or human beings are—

“(i) The provision of benefits contingent upon death from a specified cause; or

“(ii) The provision of benefits contingent upon death from a specified cause or causes as an incidental element to the provision of medical or accident insurance; or

“(b) The provision of benefits by a superannuation fund where the only benefits provided by that superannuation fund to beneficiaries are the return as a lump sum of superannuation contributions made by or for the benefit of the beneficiaries together with allocated investment earnings or other allocation from profits of the superannuation fund attributable to contributions made by or for the benefit of the beneficiaries:”.

- (3) Section 2 of the principal Act is hereby amended by inserting after the definition of the term “local authority”, the following definition:
- “Major shareholder”, in relation to a private company (as defined in section 2 of the Companies Act 1955), means any person who—
- “(a) Owns or has in any way the power to control (whether directly or indirectly), or has the right to acquire, 10 percent or more of the ordinary shares of the private company:
- “(b) Owns, or has in any way the power to control (whether directly or indirectly), or has the right to acquire, 10 percent or more of the voting rights of the private company:
- “(c) Has, by any other means whatever, 10 percent or more of the control of the private company:”.
- (4) Section 2 of the principal Act is hereby amended by omitting from the definition of the term “pay period taxpayer” the expression “section 356(1)”, and substituting the expression “section 356(2)”.
- (5) The principal Act is hereby consequentially amended—
- (a) By omitting from the definition of the term “expenditure on account of an employee” (as inserted by section 34(3) of the Income Amendment Act (No. 2) 1985 and amended by section 30(1) of the Income Tax Amendment Act (No. 5) 1988) in section 2 the words “(within the meaning of the definition of the expression ‘major shareholder’ in section 336n(1) of this Act)”:
- (b) By omitting from section 65a(1) (as inserted by section 6 of the Income Tax Amendment Act 1989), the definition of the term “major shareholder”:
- (c) By omitting from section 105a(2) (as inserted by section 15(1) of the Income Tax Amendment Act 1986, and amended by section 34 of the Income Tax Amendment Act (No. 5) 1988), the words “, within the meaning of section 336n(1) of this Act,”:
- (d) By omitting from section 106(1)(j) (as amended by section 35 of the Income Tax Amendment Act (No. 5) 1988), the words “(within the meaning of the definition of the expression ‘major shareholder’ in section 336n(1) of this Act)”.
- (e) By omitting from section 106b(2) (as inserted by section 17(1) of the Income Tax Amendment Act (No. 5) 1988), the words “within the meaning of the definition of the expression “major shareholder” in the said section 336n(1)”:
- (f) By omitting from section 108(1) (as amended by section 37 of the Income Tax Amendment Act (No. 5) 1988), the words “(within the meaning of the definition of the expression ‘major shareholder’ in section 336n(1) of this Act)”:

- (g) By omitting from section 374b(1)(g) (as inserted by section 17(1) of the Income Tax Amendment Act (No. 2) 1986), the words “(within the meaning of the definition of the expression ‘major shareholder’ in section 336n(1) of this Act)”:
 - (h) By repealing the definition of the term “major shareholder” in section 374e(1) (as inserted by section 17(1) of the Income Tax Amendment Act (No. 2) 1986).
- (6) The Income Tax Amendment Act (No. 5) 1988 is hereby consequentially amended by repealing section 52(2).
- (7) Subsection (1) of this section shall apply—
- (a) In relation to local authorities, with respect to the tax on income derived in the income year commencing on the 1st day of April 1989 and in every subsequent year:
 - (b) In relation to public authorities, with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

3 Meaning of term “dividends”

- (1) Section 4(10)(b) of the principal Act (as inserted by section 3(3) of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by inserting, after the words “whenever it accrues,”, the words “is payable”.
- (2) This section shall be deemed to have come into force on the 1st day of October 1989.

4 Commissioner to make assessments, determinations of loss, and other determinations

- (1) Section 19(1a) of the principal Act (as inserted by section 32(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the words “section 394zzv”, the words “or Part XIId”.
- (2) Section 19(5) of the principal Act (as amended by section 32(2) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the words “section 394zzr”, the words “or section 394zzzd”.

5 Rebate for savings in special farm, fishing vessel, and home ownership accounts

- (1) Section 49(1) of the principal Act is hereby amended by repealing the definition of the term “increase in savings”, and substituting the following definition:

“‘Increase in savings’, in relation to any special account of any taxpayer and to any income year, means the aggregate of—

- “(a) The amount by which the amount standing to the credit of that special account at the end of that income year or the date of the closure of that

account, whichever is the earlier, exceeds the amount standing to the credit of that account, if any, at the end of the income year immediately preceding that income year; and

“(b) The amount of resident withholding tax deducted during that income year from interest paid in respect of that account:”.

6 Rebate in respect of gifts of money and school fees

- (1) Section 56a(2) of the principal Act (as amended by section 2(1) of the Income Tax Amendment Act 1990) is hereby amended by adding the following paragraphs:

“(zc) Water for Survival:

“(zd) International Christian Aid (ICA):

“(ze) Christian Children’s Fund of New Zealand Limited (CCFNZ).”

- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

7 Incomes wholly exempt from tax

- (1) Section 61 of the principal Act is hereby amended by repealing paragraph (59) (as inserted by section 4(3) of the Income Tax Amendment Act 1989), and substituting the following paragraph:

“(59) Annuities paid on or after the 1st day of April 1990 in respect of a policy of life insurance—

“(a) Offered or entered into in New Zealand by a life insurer (as that term is defined in section 204 of this Act); or

“(b) Offered or entered into outside New Zealand by a life insurer (as so defined) that is resident in New Zealand:”.

- (2) Section 4(3) of the Income Tax Amendment Act 1989 is hereby consequentially repealed.

- (3) Section 61 of the principal Act is hereby amended by repealing the paragraph (63) that was inserted by section 16(3) of the Social Welfare (Transitional Provisions) Act 1990, and substituting the following paragraph:

“(64) Any portable guaranteed retirement income or portable veteran’s pension.”

- (4) Section 16(3) of the Social Welfare (Transitional Provisions) Act 1990 is hereby consequentially repealed.

8 Exemption of dividends from tax

- (1) Section 63(3) of the principal Act (as substituted by section 10(1) of the Income Tax Amendment Act 1986) is hereby amended by repealing paragraph (a).

- (2) Section 63(3) of the principal Act (as so substituted and as amended by section 6(1) of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by adding the following paragraph:

“(f) Dividends derived by a local authority (not being a local authority trading enterprise as defined in section 594b of the Local Government Act 1974 or a port company as defined in section 2 of the Port Companies Act 1988) from any local authority trading enterprise (as so defined).”

- (3) Subsection (1) of this section shall apply in respect of income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.
- (4) Subsection (2) of this section shall apply in respect of income derived in the income year commencing on the 1st day of April 1989 and in every subsequent year.

9 Interpretation—accruals

- (1) Section 64b(1) of the principal Act (as inserted by section 2(1) of the Income Tax Amendment Act 1987) is hereby amended by omitting from the definition of the term “specified option” (as inserted by section 3(1) of the Income Tax Amendment Act (No. 5) 1988) the words “where the option is not related (directly or indirectly) to any other financial arrangement”.
- (2) Section 64b(1) of the principal Act (as so inserted) is hereby amended by repealing paragraph (a) of the definition of the term “excepted financial arrangement”, and substituting the following paragraph:

“(a) An annuity for a term contingent upon human life or an annuity to which section 204(2) of this Act applies.”

- (3) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

10 New start grants for farmers

- (1) Section 64fb(1) of the principal Act (as inserted by section 37(1) of the Income Tax Amendment Act 1989) is hereby amended by adding to the definition of the term “adverse event” (as inserted by section 6(1) of the Income Tax Amendment Act (No. 4) 1989) the expression “; and” and the following paragraph:

“(c) The drought conditions that occurred during the years 1988 and 1989 which affected parts of the East Coast of the North Island and resulted in the parts so affected—

“(i) Being designated by the Minister of Agriculture as an adverse climatic event area; or

“(ii) Being designated by a local appeals committee established by the Minister of Agriculture as having been subjected to adverse climatic conditions.”.

- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

11 Losses incurred may be set off against future profits

- (1) Section 188 of the principal Act is hereby amended by inserting in both subsection (7)(a) and subsection (7a), after the words “excluding any company”, in each case the words “having the liability of its members limited by its memorandum of association to the amount, if any, unpaid on the shares respectively held by them”.
- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1989 and in every subsequent year.

12 Excessive remuneration by proprietary company to shareholder, director, or relative

- (1) Section 190 of the principal Act (as amended by section 38(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding after paragraph (b) of the proviso the expression “; and”.
- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1989 and in every subsequent income year.

13 New heading and sections inserted

- (1) The principal Act is hereby amended by repealing section 204, and substituting the following heading and sections:

“Business of Life Insurance

“204 Interpretation

- “(1) For the purposes of this section and sections 204a to 206 of this Act, unless the context otherwise requires,—

“‘Actuary’ means a person who is—

“(a) A Fellow of the New Zealand Society of Actuaries; or

“(b) A Fellow of the Institute of Actuaries of Australia; or

“(c) A Fellow of the Institute of Actuaries (of London); or

“(d) The holder of any equivalent professional qualification approved by the Commissioner for the purposes of this definition:

“‘Actuarial reserves’, at any time with respect to any life insurer, means the actuarial reserves of the life insurer at that time calculated in accordance with section 204i of this Act:

“‘Claim’, with respect to any life insurer and any policy of life insurance for which the life insurer is the insurer,—

“(a) Means any payment or distribution made by the life insurer with respect to that policy (prior to deduction of any amounts payable to the life insurer on account of advances against the security of the policy or unpaid premiums with respect to that policy and interest thereon) whether by way of claim, cash bonus, payment on surrender, annuity, benefit other than in cash, or otherwise howsoever; but

“(b) Does not include an advance against the security of that policy or an amount credited to a holder of a policy in the actuarial reserves of the life insurer:

“‘Financial arrangement’ means a financial arrangement (as defined in section 64b of this Act) to which sections 64b to 64l of this Act apply:

“‘Holder’, with respect to any policy of life insurance, means the person beneficially entitled to the rights of ownership of that policy:

“‘Life Insurance Fund’, with respect to any life insurer, means the Life Insurance Fund within the meaning of section 15 of the Life Insurance Act 1908 of the life insurer:

“‘Life insured’, with respect to any policy of life insurance, means the human being or human beings upon whose death or survival benefits payable under that policy are contingent:

“‘Life insurer’ means, subject to section 204n of this Act, any person who carries on the business of providing life insurance:

“‘Policy’ includes a contract for a policy:

“‘Policyholder income’ means assessable income referred to in section 205 of this Act:

“‘Policyholder loss’ means a loss referred to in section 205 of this Act:

“‘Premium’, with respect to any policy of life insurance provided by any life insurer, means any consideration howsoever described payable under that policy to the life insurer; but does not include interest on an unpaid premium:

“‘Property’ includes any real or personal property:

“‘Specified base cost for 1983 income year property’, with respect to any property, means the greater of—

“(a) The cost price or acquisition value of the property; or

“(b) The market value of the property on the last day of the income year that commenced on the 1st day of April 1982:

“‘Specified mortgage repayment insurance policy’ means a single premium non-profit policy of life insurance issued on or before the 31st day of March 1983, under which the sum assured is related to the amount outstanding on a mortgage of land:

“‘Superannuation policy’ means a policy of life insurance upon human life in New Zealand—

“(a) That is vested in the trustees of a superannuation fund that was or was deemed to be a superannuation category 1 scheme on or before the 17th day of December 1987, not being a scheme that was classified by the Government Actuary as a personal pension superannuation scheme and that admitted new members after that date; or

“(b) That was—

“(i) Effected for the purposes of the trustees of any such superannuation fund; or

“(ii) Accepted by the trustees of any such superannuation fund for the purposes of the fund,—

not being in any case a policy that has ceased to be a policy for the purposes of any such superannuation fund:

“‘Underwriting income’, with respect to any life insurer and any income year, means the amount of item u of the formula set out in section 204b of this Act.

“(2) For the purposes of this section and sections 204a to 205f and section 61(59) of this Act, where any person (hereafter in this subsection called the “first person”)—

“(a) Provides to any other person for consideration an annuity for a term not contingent upon human life; and

“(b) At the time when the first person entered into the agreement to provide that annuity, the first person was carrying on the business of providing life insurance,—

the provision of that annuity shall be treated as if it were the provision of life insurance.

“(3) Every reference in this section or in sections 204a to 205f of this Act to an income year in relation to a person shall, where the person furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and, in every such case, this section and those sections shall, with any necessary modifications, apply accordingly.

“204a Assessable income of life insurers

For the purpose of assessing income tax payable under this Act by any life insurer,—

- “(a) The assessable income derived or loss incurred by the life insurer in any year in carrying on the business of providing life insurance shall be determined in accordance with sections 204b to 204q of this Act; and
- “(b) The life insurer shall, in addition to any other amount of assessable income derived or loss incurred in any year, be deemed in respect of benefits accruing to policyholders to derive an amount of assessable income, or to incur a loss, determined in accordance with sections 205 to 205f of this Act.

“204b Calculation of life insurer base income or loss

Subject to sections 204c to 204q of this Act, the assessable income derived or loss incurred by a life insurer in any income year in carrying on the business of providing life insurance shall be deemed to be equal to the amount calculated in accordance with the following formula:

$$i + u - e$$

where—

- i is the aggregate of all amounts of assessable income (calculated in accordance with the provisions of this Act, and before taking into account any deductions or allowances permitted under this Act) derived by the life insurer in that income year from carrying on that business, other than the amount of any—
- “(a) Premium; or
- “(b) Claim with respect to any policy of life reinsurance; or
- “(c) Underwriting income; or
- “(d) Policyholder income; and
- u is the underwriting income derived by the life insurer in that income year from carrying on that business, being the aggregate, in respect of that business and that income year, of—
- “(a) The mortality profit (calculated in accordance with section 204f of this Act);
- “(b) The premium loading (calculated in accordance with section 204g of this Act); and
- “(c) The discontinuance profit (calculated in accordance with section 204h of this Act); and
- e is the aggregate of all such amounts of expenditure or loss incurred by the life insurer and allowances available to the life insurer in that income year in carrying on that business as are deductible in calculating the assessable income of the life insurer in accordance with the provisions of this Act, other than any—
- “(a) Premium with respect to any policy of life reinsurance; or

“(b) Expenditure or loss being claims or amounts credited to holders of policies in the actuarial reserves of the life insurer.

“204c Profit or loss on disposal of property

“(1) For the purposes of section 204b of this Act, the amounts of assessable income derived or loss incurred by a life insurer in any income year from carrying on the business of providing life insurance shall include any profits or gains derived or losses incurred by the life insurer in that income year on the sale or other disposal of any property of that business, subject to subsections (2) and (3) of this section and to section 232b of this Act ascertained as follows:

“(a) In any case where the property was acquired on or before the last day of the income year that commenced on the 1st day of April 1982, by calculating the amount of the difference between—

“(i) The amount of the consideration received or receivable on the sale or other disposal of the property; and

“(ii) The specified base cost for 1983 income year property:

“(b) In any other case, by calculating the amount of the difference between—

“(i) The amount of the consideration received or receivable on the sale or other disposal of that property; and

“(ii) The cost price or acquisition value of that property.

“(2) Paragraphs (a) and (b) of subsection (1) of this section shall not apply to ascertain the amount of profit or gain derived or loss incurred in the case of any sale or other disposal of property which is—

“(a) A financial arrangement; or

“(b) Property where the cost of acquisition of that property has been taken into account (other than by way of a deduction in respect of the depreciation of the property) in calculating the assessable income of the life insurer for any income year.

“(3) Paragraphs (a) and (b) of subsection (1) of this section shall not apply to ascertain the amount of profit or gain derived or loss incurred in the case of any sale or other disposal of property where—

“(a) The property consists of land or buildings acquired on or before the last day of the income year that commenced on the 1st day of April 1989, and is not property to which subsection (2) of this section applies; and

“(b) If that property had been disposed of at a profit on or before the last day of the income year that commenced on the 1st day of April 1989, that profit would have been a capital profit or gain and not a profit on disposal of an investment subject to income tax in accordance with

section 204 of this Act prior to its repeal and substitution by section 13(1) of the Income Tax Amendment Act (No. 2) 1990,—

and any profit or gain derived or loss incurred on the sale or other disposal of that property shall instead be ascertained by calculating the difference between—

“(c) The amount of the consideration received or receivable on the sale or other disposal of the property; and

“(d) The market value of the property on the last day of the income year that commenced on the 1st day of April 1989.

“(4) For the purposes of section 204b of this Act, the amount of assessable income derived by a life insurer by virtue of the application of section 117 of this Act on sale or other disposal of an asset shall be calculated on the basis that the value to which that asset has or would have been reduced by the allowance of deductions in respect of the depreciation of that asset shall be equal to the cost price or acquisition value of that asset less all such deductions.

“204d Distribution of property to policyholders, etc.

For the purposes of sections 91 and 197 of this Act (which relate to the sale of trading stock for inadequate consideration, and the distribution of trading stock to shareholders of companies), where any life insurer sells or otherwise disposes of any property (other than any financial arrangement) in the course of carrying on a business of providing life insurance,—

“(a) That property shall be deemed to be trading stock; and

“(b) The life insurer shall be deemed to be a company; and

“(c) Holders of policies of life insurance for which the life insurer is the insurer shall be deemed to be shareholders of the life insurer.

“204e Adjustment for superannuation policies in respect of property acquired before 1 April 1988

“(1) For the purposes of section 204b of this Act, in determining the assessable income derived or loss incurred by any life insurer in any income year in carrying on a business of providing life insurance (being a life insurer that first commenced carrying on such a business on or before the last day of the income year that commenced on the 1st day of April 1988), there shall be deducted an amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the amount of so much of the liabilities of the life insurer in respect of policies of life insurance at the last day of the income year that

last ended before the 1st day of April 1988 as, in the opinion of the Commissioner, relate to—

“(a) Superannuation policies included in the Life Insurance Fund of the life insurer; and

“(b) Specified mortgage repayment insurance policies included in that Fund; and

“(c) Annuities granted included in that Fund; and

b is the amount of the liabilities of the life insurer in respect of policies of life insurance at the last day of the income year that last ended before the 1st day of April 1988; and

c is the amount, or aggregate amount, in respect of property (other than property whose cost of acquisition has been taken into account in calculating the assessable income of the insurer for any income year other than by way of a deduction in respect of the depreciation of that asset or pursuant to sections 64b to 64l of this Act) sold or disposed of by the life insurer in the income year first referred to in this section (being property acquired before the 1st day of April 1988) ascertained as follows:

“(a) In respect of any such property acquired on or before the last day of the income year that commenced on the 1st day of April 1982, the amount shall be the amount obtained by subtracting from the market value of that property on the 1st day of April 1988 the specified base cost for 1983 income year property; and

“(b) In respect of any such property acquired after the end of the income year that commenced on the 1st day of April 1982, the amount shall be,—

“(i) Where the property is not a financial arrangement, the amount obtained by subtracting from the market value of the property on the 1st day of April 1988 the cost price or acquisition value of the property:

“(ii) Where the property is a financial arrangement, an amount equal to the amount that would be the base price adjustment of the property, calculated in accordance with section 64f(2) of this Act, if the property had matured on the 1st day of April 1988.

“(2) This section shall not apply in the case of any sale or other disposal of property to which section 204c(3) or section 206 of this Act applies.

“204f Calculation of mortality profit

“(1) For the purposes of section 204b of this Act, the mortality profit derived by a life insurer in any income year from the business of providing life insurance shall, subject to this section, be deemed to be equal to the amount calculated by aggregating, with respect to each life insured under each policy of life

insurance in existence at the beginning of that income year for which the life insurer is the insurer, the amount calculated in accordance with the following formula:

$$(q \times (s_0 - v_0)) - (s_1 - v_0)$$

where—

q is the probability of a claim becoming payable on death of that life insured under that policy during that income year, expressed as a decimal and determined at the beginning of that income year in accordance with the mortality assumptions referred to in section 204i of this Act; and

s_0 is the claim (including a nil amount) payable contingent upon death of that life insured under that policy determined at the beginning of that income year; and

v_0 is the amount in the actuarial reserves of the life insurer in respect of that life insured under that policy determined at the beginning of that income year; and

s_1 is—

“(a) In any case where death of that life insured has occurred—

“(i) During that income year; or

“(ii) During a previous income year (being an income year commencing on or after the 1st day of April 1990), and the amount of the claim payable has not been included in this item in calculating mortality profit for any such previous income year,—

the claim (including a nil amount) payable contingent upon that death under that policy; or

“(b) In any other case, an amount equal to item v_0 .

“(2) Where in respect of any policy there is more than one life insured, the life insurer may at the life insurer’s option, for the purposes of applying the formula set out in subsection (1) of this section, use as item q a common factor in respect of each of the lives insured under that policy, provided that the common factor is a reasonable approximation of the average probability of a claim becoming payable on death of the lives insured under that policy, weighted where necessary to take account of differing claims payable and actuarial reserves held in respect of individual lives insured.

“(3) In any case where a life insurer commences during any income year to carry on a business of providing life insurance, for the purposes of calculating the mortality profit of the life insurer for that income year—

“(a) The formula set out in subsection (1) of this section shall be applied to each life insured under each policy of life insurance for which the life

insurer is the insurer that is in existence at any time during that income year; and

“(b) Each reference in items q and s0 of the formula to the beginning of the income year shall be deemed to be a reference to the date upon which the policy is entered into; and

“(c) The reference in item v0 of the formula to the beginning of the income year shall be deemed to be a reference to the end of the income year.

“(4) For the purposes of this section in respect of any life insurer, in any case where and to the extent to which in any income year a policy provides for payment of an annuity the commencement of which is contingent upon death of a life insured,—

“(a) A claim shall be deemed to be payable on death of that life insured; and

“(b) The amount of that claim shall be deemed to be equal to the amount, determined on the assumption that such death occurred at the beginning of that income year and in accordance with the same interest, mortality, and other assumptions and bases of calculation as are used to calculate the actuarial reserves of the life insurer in respect of that income year, which is the net present value (determined at the beginning of that income year) of the annuity.

“(5) In respect of any income year and any life insured under a policy, the mortality profit shall never be less than zero, except in any case where—

“(a) Death of the life insured has occurred—

“(i) During that income year; or

“(ii) During a previous income year (being an income year commencing on or after the 1st day of April 1990), and the amount of the claim payable contingent upon that death has not been included in item s1 of the formula set out in subsection (1) of this section in calculating mortality profit for any such previous income year; or

“(b) Where and to the extent to which the benefits from that policy are an annuity in the course of payment at any time during that income year.

“204g Calculation of premium loading

“(1) For the purposes of section 204b of this Act, the premium loading derived by a life insurer in any income year from the business of providing life insurance shall, subject to this section, be deemed to be equal to the amount calculated by aggregating, with respect to each life insured under each policy of life insurance in existence at the beginning of that income year for which the life insurer is the insurer, the amount calculated —

“(a) In the case of any policy not being a policy to the extent to which the benefits from that policy are an annuity in the course of payment at any time during that income year, in accordance with the following formula:

$$0.2 \times q \times (s_0 - v_0)$$

“(b) In the case of any policy to the extent to which the benefits from that policy are an annuity in the course of payment at any time during that income year, in accordance with the following formula:

$$0.01 \times q \times v_0$$

where in each formula—

q is the probability of a claim becoming payable on the death of that life insured under that policy during that income year expressed as a decimal and determined at the beginning of that income year in accordance with the mortality assumptions referred to in section 204i of this Act; and

s₀ is the claim (including a nil amount) payable under that policy that is contingent only upon death of that life insured or, if there is no such amount, survival of that life insured to a specified date or age, determined at the beginning of that income year; and

v₀ is the amount in the actuarial reserves of the life insurer in respect of that life insured under that policy determined at the beginning of that income year.

“(2) Where in respect of any policy there is more than one life insured, the life insurer may at the life insurer’s option, for the purposes of applying the appropriate formula set out in subsection (1) of this section, use as item q a common factor in respect of each of the lives insured under that policy, provided that the common factor is a reasonable approximation of the average probability of a claim becoming payable on death of the lives insured under that policy weighted where necessary to take account of differing claims payable and actuarial reserves held in respect of individual lives insured.

“(3) In any case where a life insurer commences during any income year to carry on a business of providing life insurance, for the purposes of calculating the premium loading of the life insurer in respect of that income year—

“(a) The formula set out in subsection (1) of this section shall be applied to each life insured under each policy of life insurance for which the life insurer is the insurer that is in existence at any time during that income year; and

“(b) Each reference in items q and s₀ of the formula to the beginning of the income year shall be deemed to be a reference to the date upon which the policy is entered into; and

“(c) The reference in item v₀ of the formula to the beginning of the income year shall be deemed to be a reference to the end of the income year.

“(4) For the purposes of this section in respect of any life insurer, in any case where and to the extent to which in any income year a policy provides for payment

of an annuity the commencement of which is contingent upon death of a life insured—

“(a) A claim shall be deemed to be payable on death of that life insured; and

“(b) The amount of that claim shall be deemed to be equal to the amount, determined on the assumption of death of the life insured at the beginning of that income year and in accordance with the same interest, mortality, and other assumptions and bases of calculation as are used to calculate the actuarial reserves of the life insurer in respect of that income year, which is the net present value (determined at the beginning of that income year) of that annuity.

“(5) For the purposes of this section in respect of any life insurer, in any case where and to the extent to which in any income year a policy provides for payment of an annuity commencing upon survival of the life insured to a specified date or age,—

“(a) A claim shall be deemed to be payable on death of that life insured; and

“(b) The amount of the claim shall be deemed to be equal to the amount which is the net present value of that annuity, determined at that specified date or age, on the assumption of the survival of the life insured to that specified date or age and in accordance with the same interest, mortality, and other assumptions and bases of calculation as are used to calculate the actuarial reserves of the life insurer in respect of that income year.

“(6) The premium loading in any income year shall never be less than zero for any life insured under any policy.

“204h Calculation of discontinuance profit

“(1) For the purposes of section 204b of this Act, the discontinuance profit derived by a life insurer in any income year from the business of providing life insurance shall, subject to this section, be deemed to be equal to the amount calculated by aggregating, with respect to each policy of life insurance that was in existence at any time during that income year as a policy for which the life insurer was the insurer—

“(a) In any case where—

“(i) That policy was in existence at the beginning of that income year; and

“(ii) The policy wholly or partly terminates during that income year, or where in respect of the policy a claim is paid during that income year, in either case for any reason other than the death of the life insured or survival of the life insured to a specified date or age,—

the amount calculated in accordance with the following formula:

$$va - vb - sv$$

where—

- va is the amount in the actuarial reserves of the life insurer in respect of that policy, determined immediately prior to the time of termination or the time the claim is payable (as the case may be) and calculated using the same interest, mortality and other assumptions and bases of calculation as were used to calculate for the purposes of this Act the actuarial reserves of the life insurer in respect of that policy determined at the beginning of that year; and
- vb is the amount in the actuarial reserves of the life insurer in respect of that policy, determined immediately after the time of termination or the time the claim is payable (as the case may be) and having regard to the termination or claim and calculated using the same interest, mortality and other assumptions and bases of calculation as were used to calculate for the purposes of this Act the actuarial reserves of the life insurer in respect of that policy determined at the beginning of that income year; and
- sv is the amount (including a nil amount) payable by the life insurer upon such termination of the policy or the claim (as the case may be):

“(b) In any case where—

- “(i) That policy was not in existence as at the beginning of the income year; and
- “(ii) The policy terminates during that income year for any reason other than death of the life insured or survival of the life insured to a specified date or age,—

the amount calculated in accordance with the following formula:

$$p - sv$$

where—

- p is the aggregate of any premiums paid in respect of that policy and of the existence of that policy prior to such termination; and
- sv is the amount (including a nil amount) payable by the life insurer upon such termination.

“(2) The discontinuance profit in any income year shall never be less than zero for any policy.

“204i Calculation of actuarial reserves

“(1) For the purposes of sections 204 to 205f of this Act, and subject to this section, the actuarial reserves at any time of any life insurer, whether in respect of the whole of the life insurer’s business of providing life insurance or in respect of any one or more policies of life insurance for which the life insurer is the

insurer, shall be calculated by an actuary using such interest, mortality, and other assumptions and bases of calculation as are—

- “(a) Based upon the same principles as those used in the actuarial advice upon which is calculated the level of surplus funds available for allotment or payment to shareholders or holders of policies or (in the case of a superannuation scheme) allotment to other objects of the scheme; and
- “(b) In conformity with commercially acceptable practice; and
- “(c) Likely to produce a reasonable estimation of the future experience of the life insurer with respect to policies of life insurance for which the life insurer is the insurer, having regard to the past experience (if any) of the life insurer in carrying on that business.

“(2) For the purposes of this section,—

- “(a) The actuarial reserves—
 - “(i) In respect of any policy at any time shall never be less than zero; and
 - “(ii) Aggregated at any time in respect of all policies for which that life insurer is the insurer at that time shall never be less than the aggregate surrender values at that time of those policies:
- “(b) In respect of each policy for which a life insurer is the insurer and the income year commencing on the 1st day of April 1990, during that income year the actuarial reserves calculated at different times shall be calculated for that life insurer using the same interest, mortality, and other assumptions and bases of calculation:
- “(c) In respect of any income year and each policy for which a life insurer is the insurer which was in existence at the end of the immediately preceding income year, the actuarial reserves at the beginning of that income year shall be equal to the actuarial reserves at the end of the immediately preceding income year:
- “(d) The actuary responsible for actuarial control of the life insurer shall provide with the life insurer’s return of income for any income year, in such form as the Commissioner may require, a declaration stating—
 - “(i) The specific interest, mortality, and other assumptions and bases of calculation applied in determination of the life insurer’s assessable income for that income year; and
 - “(ii) That such assumptions and bases of calculation meet the requirements of this section.

“(3) The Commissioner may, if the Commissioner thinks fit, seek the advice of the Government Actuary or any other actuary with respect to interest, mortality, and other assumptions and bases of calculation used for the purposes of this section, or of section 204o(1)(d) of this Act, and the Commissioner may, if the Commissioner thinks fit, and whether or not the Commissioner has sought or

obtained such advice, make assessments in respect of a life insurer and any income year on the basis of interest, mortality, and other assumptions and bases of calculation different from those used by the actuary acting on behalf of the life insurer.

“204j No double deductions

“(1) Where—

“(a) Any life insurer is required to calculate the assessable income derived or loss incurred by the life insurer in any year in carrying on the business of providing life insurance in accordance with section 204b of this Act; and

“(b) Any amount of expenditure or loss incurred by the life insurer or allowance available to the life insurer in that income year is included in the total of item e of the formula set out in that section,—

no deduction shall be made in calculating the assessable income derived by the life insurer in respect of that amount except in accordance with that section.

“204k Certain property not trading stock

Where in carrying on a business of providing life insurance any life insurer acquires or holds any property, being property that is either—

“(a) A financial arrangement (as that term is defined in section 64b of this Act) to which sections 64b to 64l of this Act would apply but for the application of any of paragraphs (a), (b), and (d) of section 64m of this Act; or

“(b) An excepted financial arrangement (as that term is defined in section 64b of this Act),—

then, for the purposes of this Act (with the exception of section 204d) and the calculation of the life insurer’s assessable income, that property shall be deemed not to be trading stock and any expenditure or loss incurred in acquiring that property shall be deemed to be capital (but without limiting the ability of the life insurer to take such expenditure or loss in acquiring that property into account when calculating in accordance with section 204c of this Act any profit or gain derived or loss incurred on sale or other disposal of that property).

“204l Non-resident life insurer issuing policies in New Zealand

“(1) Notwithstanding section 204b of this Act, where any life insurer not resident in New Zealand carries on a business of providing life insurance in any income year, to the extent to which that business consists of or relates to any one or more policies of life insurance for which that life insurer is the insurer which were offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment in New Zealand or has an agent in New Zealand) the assessable income derived or loss incurred by the life insurer in that income year in carrying on that business

shall be deemed to be equal to the amount calculated in accordance with the following formula:

$$i + u - e$$

where—

i is the aggregate of all amounts of assessable income (calculated in accordance with the provisions of this Act, and before taking into account any deductions or allowances permitted under this Act) derived by the life insurer in that income year (whether from New Zealand or elsewhere) from carrying on that business to the extent to which that business consists of or relates to any one or more policies of life insurance for which that life insurer is the insurer which were offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment in New Zealand or has an agent in New Zealand), other than the amount of any—

“(a) Premium; or

“(b) Claim with respect to any policy of life reinsurance; or

“(c) Underwriting income; or

“(d) Policyholder income; and

u is the underwriting income that would be calculated in respect of the life insurer and that income year if the only policies of life insurance for which the life insurer is the insurer were those policies which were offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment or agent in New Zealand); and

e is the aggregate of all such amounts of expenditure or loss incurred by the life insurer and allowances available to the life insurer in that income year in carrying on that business as are deductible in calculating the assessable income of the life insurer in accordance with the provisions of this Act, other than—

“(a) Any premium with respect to any policy of life reinsurance; or

“(b) Expenditure or loss being claims or amounts credited to holders of policies in the actuarial reserves of the life insurer,—

and in each case being expenditure or loss incurred in gaining or producing, or allowances made available in respect of gaining or producing, the amounts of assessable income referred to in items i and u of this formula,—

and any such amount of assessable income derived by the life insurer shall for the purposes of section 242 of this Act be deemed to be derived from New Zealand.

“(2) To the extent to which that life insurer not resident in New Zealand derives in that income year—

“(a) Amounts of assessable income from New Zealand other than the amounts of assessable income referred to in item i of the formula set out in subsection (1) of this section and other than policyholder income; or

“(b) Non-resident withholding income not included in assessable income by virtue of section 317 of this Act,—

the life insurer shall be assessable and liable to income tax in accordance with the provisions of this Act as if it were not a person carrying on in that income year a business of providing life insurance.

“204m Non-resident may elect to be treated as resident

“(1) Any life insurer that is not resident in New Zealand may elect, with the approval of the Commissioner, that with effect from the first day of a specified income year and thereafter the life insurer shall be deemed to be resident in New Zealand with respect to its business of life insurance to the extent to which that business consists of or relates to any one or more policies of life insurance for which that life insurer is the insurer which were offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment in New Zealand or has an agent in New Zealand).

“(2) Any notice of an election in accordance with this section shall be in writing and given to the Commissioner not less than 20 working days prior to the commencement of the specified income year, except that in the case of the income year commencing on the 1st day of April 1990 the notice must be given not later than the 30th day of September 1990.

“(3) Where an election is made and approved under this section, for the purposes of this Act—

“(a) With effect from the first day of the specified income year, the life insurer’s business of providing life insurance shall, to the extent to which that business consists of or relates to any one or more policies of life insurance for which that life insurer is the insurer which were offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment in New Zealand or has an agent in New Zealand), be deemed to be carried on by a company resident in New Zealand in which company the life insurer holds all the allotted shares; and

“(b) The life insurer shall be deemed to carry on such business as agent for that company resident in New Zealand, and shall be liable to pay any amounts payable to the Commissioner and to provide any returns and other information to the Commissioner as agent for that company; and

“(c) The life insurer and that company shall in respect of such business be deemed to be separate persons.

“204n Full reinsurance

Notwithstanding any other provision of sections 204 to 205f of this Act, where any life insurer in any income year is the holder of any one or more policies of life reinsurance that—

“(a) Are offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the insurer under the policy of reinsurance is resident in New Zealand, has a fixed establishment in New Zealand, or has an agent in New Zealand); and

“(b) Fully relieve or fully secure the life insurer against all liability to provide in that income year benefits contingent upon the death or survival of human beings assumed by the life insurer—

“(i) As part of that life insurer’s business; or

“(ii) In the case of a life insurer not resident in New Zealand, as part of that life insurer’s business to the extent to which that business consists of or relates to any one or more policies of life insurance for which that life insurer is the insurer which were offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment in New Zealand or has an agent in New Zealand),—

the life insurer shall be deemed for the purposes of this Act in respect of that income year not to carry on the business of providing life insurance; and in calculating the income derived or loss incurred by the life insurer in accordance with the provisions of this Act in respect of that income year—

“(c) Claims and, with respect to any policy of life reinsurance, premiums payable by the life insurer shall not be deductible; and

“(d) Premiums and, with respect to any policy of life reinsurance, claims receivable by the life insurer shall not be assessable.

“204o Partial reinsurance

“(1) Notwithstanding any other provision of sections 204 to 204p of this Act, where any life insurer is the holder of any one or more policies of life reinsurance offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the insurer under the policy of life reinsurance is resident in New Zealand, has a fixed establishment in New Zealand, or has an agent in New Zealand),—

“(a) For the purposes of sections 204f and 204g of this Act, the claim payable at any time upon death of the life insured under the relevant policy of insurance referred to in those sections shall be reduced by any claim

receivable at that time upon such death under any such policy of life reinsurance; and

“(b) For the purposes of section 204g of this Act, the claim payable during any period upon continuing survival of the life insured under the relevant policy of life insurance referred to in that section shall be reduced by any claim receivable during that period upon such survival under any such policy of life reinsurance; and

“(c) For the purposes of section 204h of this Act,—

“(i) The aggregate premiums receivable in respect of relevant policies of life insurance referred to in that section during any income year shall be reduced by the aggregate amount of any premiums payable by the life insurer during that income year as holder of any such policies of life reinsurance; and

“(ii) The claim payable upon termination of the relevant policy of life insurance referred to in that section shall be reduced by the claim receivable upon such termination under any such policy of life reinsurance; and

“(d) For the purposes of section 204i of this Act, the actuarial reserves at any time of the life insurer shall be reduced by such amount as the actuary responsible for actuarial control of the life insurer considers appropriate having regard to the nature of such policies of life reinsurance.

“(2) Where a life insurer is a life insurer to which section 204l of this Act applies, subsection (1) of this section shall apply as if the only such policies of life reinsurance of which the life insurer is the holder were those policies of life reinsurance which relate exclusively to policies of life insurance offered or entered into by the life insurer in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment or agent in New Zealand).

“204p Mutual associations and trusts

Where and to the extent that any person, whether that person is a body, an association of persons, a trustee or otherwise howsoever, provides to another person for consideration (other than natural love and affection and whether that consideration is provided by that other person or some third person) benefits contingent upon the death or survival of a human being or beings (not being benefits of the type referred to in paragraphs (a) and (b) of the definition of the term ‘life insurance’ in section 2 of this Act),—

“(a) For the purposes of this Act, the person shall be deemed to be carrying on a business of providing life insurance; and

“(b) Section 199 of this Act shall not apply in respect of that business of that person; and

“(c) For the purposes of this Act, any policy of life insurance entered into by the person shall be deemed to be entered into with an unrelated third party, and no regard shall be had to whether any other party to the policy is a member of an association being the person, or a beneficiary of the trust of which the person is the trustee, or otherwise related howsoever to the person.

“204q Superannuation schemes

“(1) For the purposes of sections 204 to 205f of this Act, where any person is the trustee of a superannuation scheme and provides any life insurance to members or beneficiaries of that scheme, the provision by that trustee of any benefit to any member or beneficiary of that scheme shall, subject to subsections (2) to (5) of this section, be treated as if it were the provision of life insurance.

“(2) Notwithstanding subsection (1) of this section or any other provision of sections 204 to 205f of this Act, where any person is the trustee of a superannuation fund (other than a superannuation fund to which property is transferred pursuant to an arrangement approved by the Government Actuary under Part VI of the Superannuation Schemes Act 1989), in respect of the income year commencing on the 1st day of April 1990 that person shall be deemed in respect of that superannuation fund not to carry on the business of life insurance.

“(3) Notwithstanding subsection (1) of this section or any other provision of sections 204 to 205f of this Act, where in any income year any person is the trustee of a superannuation fund which is in respect of that income year a qualifying superannuation scheme (within the meaning of subsection (4) of this section), that person shall be deemed in respect of that superannuation fund and that income year not to carry on the business of life insurance.

“(4) For the purposes of this section, a superannuation fund shall be a qualifying superannuation scheme in respect of any income year where at all times during that income year—

“(a) The superannuation fund is registered by the Government Actuary under the Superannuation Schemes Act 1989; and

“(b) No trustee of the superannuation fund is a company carrying on the business of providing life insurance to which the Life Insurance Act 1908 applies; and

“(c) The superannuation fund was—

“(i) Established by an employer or group of employers who are associated persons to provide benefits only to persons who are, in respect of any such employer or in respect of any other associated person who is an employer and subsequent to the establishment of the superannuation fund agrees to make contributions to the fund,—

- “(A) Employees; or
 - “(B) In the case of deferred benefits relating to a previous period of employment, former employees; or
 - “(C) In the case of benefits arising in respect of membership of the superannuation fund by such employees or former employees, relatives or dependants of such employees or former employees; or
- “(ii) Constituted under or pursuant to any Act relating to the National Provident Fund or the Government Superannuation Fund and provides benefits to persons who are, in respect of any employer who agrees to or is required to make contributions to the fund or is accepted as a contributor to the fund or on whose behalf contributions are made to the fund,—
- “(A) Employees; or
 - “(B) In the case of deferred benefits relating to a previous period of employment, former employees; or
 - “(C) In the case of benefits arising in respect of membership of the superannuation fund by such employees or former employees, relatives or dependants of such employees or former employees; and
- “(d) The only beneficiaries of the superannuation fund are natural persons to whom any of subparagraphs (A) to (C) of subparagraph (i) or subparagraph (ii) of paragraph (c) of this subsection applies, except to the extent that an employer of employees who are members of the superannuation fund may have a contingent interest in any surplus in the superannuation fund; and
- “(e) Each employer—
- “(i) Is required by the trust deed of the superannuation fund or by any Act under or pursuant to which the superannuation fund is constituted to make; or
 - “(ii) In that income year is making; or
 - “(iii) In that income year is having made on the employer’s behalf—
superannuation contributions to the superannuation fund to provide to a significant extent the benefits payable by the superannuation fund, not being merely nominal contributions or contributions only to meet the costs of administration and management of investments of the superannuation fund; and

“(f) The superannuation fund has not been established or utilised in a manner which has the effect of defeating the intent and application of sections 204 to 205f of this Act,—

and where an application in writing has been made for the purposes of this subsection to the Government Actuary by the trustee of that superannuation fund and the Government Actuary is satisfied that the superannuation fund is in respect of that income year a superannuation fund to which the preceding paragraphs of this subsection apply.

“(5) Where the Government Actuary ceases to be satisfied that any superannuation fund is a superannuation fund to which paragraphs (a) to (f) of subsection (4) of this section apply, that superannuation fund shall cease to be a qualifying superannuation scheme from such date as the Government Actuary may specify.

“205 Policyholder base income or loss

“(1) Subject to sections 205a to 205f of this Act, every life insurer shall, in addition to any other amount of assessable income derived or loss incurred by the life insurer, be deemed in respect of any year in which it carries on the business of providing life insurance to derive an amount of assessable policyholder income or to incur a policyholder loss equal to an amount calculated in accordance with the following formula:

$$\frac{(c + (v1 - v0) - (p - u))}{(1 - r)}$$

where—

c is the aggregate of—

- “(a) All claims first due and payable by the life insurer in that income year; and
- “(b) All claims due and payable by the life insurer in any previous income year, to the extent to which such claims relate to deaths or other contingencies which have occurred or been satisfied in a previous income year (being an income year commencing on or after the 1st day of April 1990) and the amount of the claims have not been included in this item of the calculation of policyholder income or policyholder loss for any such previous income year; and

v1 is the aggregate of the actuarial reserves of the life insurer in respect of all policies of life insurance for which the life insurer is the insurer determined at the end of that income year; and

v0 is the aggregate of the actuarial reserves of the life insurer in respect of all policies of life insurance for which the life insurer is the insurer determined at the beginning of that income year; and

p is the aggregate of all premiums due and payable to the life insurer in that income year (not being premiums due and payable to the life insurer in any earlier income year); and

u is the underwriting income derived by the life insurer in that income year from that business as determined in accordance with sections 204 to 204q of this Act; and

r is the rate of tax specified in clause 2a of Part A of the First Schedule to this Act expressed as a decimal.

“(2) Any life insurer that derives policyholder income in any income year shall be liable for income tax in respect of that policyholder income at the rate specified in clause 2a of Part A of the First Schedule to this Act.

“205a Non-resident life insurer issuing policies in New Zealand

Where a life insurer not resident in New Zealand is in any income year the insurer under policies of life insurance offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment or agent in New Zealand), in calculating under section 205 of this Act the policyholder income derived or policyholder loss incurred by that life insurer in that income year in carrying on the business of providing life insurance,—

“(a) The amounts of items c, v1, v0, and p of the formula set out in that section shall be calculated in respect of the life insurer and that income year as if the only policies of life insurance for which the life insurer is the insurer were those policies which were offered or entered into in New Zealand; and

“(b) Any amount of policyholder income so calculated derived by the life insurer shall for the purposes of section 242 of this Act be deemed to be derived from New Zealand.

“205b Partial reinsurance

“(1) Where any life insurer is the holder of policies of life reinsurance offered or entered into in New Zealand (whether or not executed in New Zealand and whether or not the insurer under the policy of life reinsurance is resident in New Zealand, has a fixed establishment in New Zealand, or has an agent in New Zealand), in calculating under section 205 of this Act the policyholder income derived or policyholder loss incurred by the life insurer in that income year, there shall be deducted from the amount of item p of the formula set out in that section an amount calculated in accordance with the following formula:

$$rp - rc$$

where—

rp is the aggregate of all premiums due and payable by the life insurer in that income year as holder of any such policy of life reinsurance

(not being premiums due and payable by the' life insurer in any earlier income year); and

rc is the aggregate of all claims receivable in that income year under any such policy of life reinsurance (not being claims receivable by the life insurer in any earlier income year).

“(2) Where a life insurer is a life insurer to which section 205a of this Act applies, this section shall apply as if the only such policies of life reinsurance of which the life insurer is the holder were those policies of life reinsurance which relate exclusively to policies of life insurance offered or entered into by the life insurer in New Zealand (whether or not executed in New Zealand and whether or not the life insurer has a fixed establishment or agent in New Zealand).

“205c Carry forward of policyholder loss

“(1) Where a life insurer incurs a policyholder loss in respect of any income year, the life insurer may, notwithstanding section 188(7) of this Act, claim that—

“(a) The loss be carried forward to the income year immediately succeeding the income year in which the loss was incurred, and be deducted from or set off against the policyholder income (if any) of the life insurer in the immediately succeeding income year so far as that policyholder income extends; and

“(b) So far as it cannot then be deducted or set off, the loss be carried forward from that immediately succeeding income year to the next succeeding income year, and be deducted from or set off against the policyholder income (if any) of the life insurer for that next succeeding income year, and so on.

“(2) Where any company to which section 204 of this Act (as in force before its repeal and substitution by section 13(1) of the Income Tax Amendment Act (No. 2) 1990) applied—

“(a) Incurred any loss in carrying on its business of life insurance in the income year that commenced on the 1st day of April 1989; or

“(b) Carried forward any loss (incurred in any earlier income year) to the income year that commenced on the 1st day of April 1989 in accordance with the provisions of section 188 of this Act,—

that loss shall (except to the extent to which it is in the income year that commenced on the 1st day of April 1989 deducted from or set off against any assessable income of any person otherwise than in accordance with this section) be deemed to be a policyholder loss incurred by that company to which subsection (1) of this section applies, and, notwithstanding any provision of this Act, shall not be deductible from or able to be set off against the assessable income derived by that company or any other company in the income year commencing on the 1st day of April 1990 or any subsequent year except as provided in subsection (1) of this section.

“205d No deduction of policyholder losses from other income

Where any life insurer incurs in any income year a policyholder loss,—

- “(a) Except as provided in section 205c of this Act, that loss may not be deducted from or set off against any assessable income of the life insurer; and
- “(b) The provisions of subsections (5) and (7) of section 191 of this Act shall not apply in respect of that loss.

“205e Determination of policyholder losses

“(1) Where any life insurer has furnished a return in respect of any income year and—

- “(a) The return shows that the life insurer has any policyholder loss for the income year; or
- “(b) The Commissioner ascertains that the life insurer has any such policyholder loss,—

the Commissioner shall make a determination of the life insurer’s policyholder loss.

“(2) As soon as is convenient after a determination of a policyholder loss is made, the Commissioner shall cause notice of the determination to be given to the life insurer, which notice may be included in a notice of assessment made pursuant to section 29(1) of this Act, or a notice of determination of loss made pursuant to section 29(2) of this Act.

“(3) The omission to give any such notice shall not invalidate any assessment, or the determination of a policyholder loss.

“205f No deduction of other losses against policyholder income

A life insurer shall not be entitled to claim to deduct from or set off against any policyholder income of the life insurer any expenditure or loss incurred by the life insurer or by any other person except as provided in sections 205 to 205e of this Act.”

(2) The following enactments are hereby consequentially repealed:

- (a) Section 34(1) of the Income Tax Amendment Act (No. 2) 1982:
- (b) Section 11 of the Income Tax Amendment Act 1989:
- (c) Section 29 of the Income Tax Amendment Act (No. 2) 1989.

(3) Subject to subsection (4) of this section, this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

(4) With respect to the tax on income derived in the income year commencing on the 1st day of April 1990, where any company carries on the business of providing life insurance outside New Zealand consisting of—

- (a) The issue by that company of policies of life insurance upon human life outside New Zealand or the entering into contracts of reinsurance in relation to policies of life insurance upon human life outside New Zealand or the granting of annuities upon human life outside New Zealand; and
- (b) The investment and management of money received by way of premiums in respect of those policies and consideration for those contracts and annuities,—

sections 204 to 205f of the principal Act (as inserted by subsection (1) of this section) shall apply as if—

- (c) The amounts of assessable income derived by that company did not include any amounts derived in respect of that business carried on outside New Zealand; and
- (d) The amounts of expenditure or loss incurred by that company or allowances available to that company did not include any amounts incurred or available in respect of that business carried on outside New Zealand; and
- (e) The company had not issued, and had no liabilities or actuarial reserves in respect of, those policies issued or contracts entered into as part of that business carried on outside New Zealand and had neither made nor received any payments in respect of those policies or contracts.

14 Special provisions applying to transfer of assets by life insurer pursuant to arrangement approved under Superannuation Schemes Act 1989

The principal Act is hereby amended by inserting, after section 205f (as inserted by section 13(1) of this Act), the following section:

“206

- “(1) For the purposes of this section—
 - “(a) The term ‘approved arrangement’ means an arrangement approved by the Government Actuary under section 69 of the Superannuation Schemes Act 1989; and
 - “(b) Any transfer of property that is made later than 3 months after the date of the Government Actuary’s approval of such an arrangement is deemed not to have been made pursuant to the approved arrangement.
- “(2) Notwithstanding any provision of this Act, where any life insurer transfers property to the trustee of a registered superannuation scheme pursuant to an approved arrangement, being property that is neither trading stock nor a financial arrangement,—
 - “(a) For the purposes of determining whether the life insurer or the trustee of the scheme is treated as having derived any amount of income, profit, or gain from or in respect of the property or as having incurred any expenditure or loss in respect of the property, the trustee of the scheme

shall be deemed to have acquired the property and the life insurer shall be deemed to have sold the property—

“(i) In the case of any transfer where application was made to the Government Actuary under section 68 of the Superannuation Schemes Act 1989 for approval of the approved arrangement before the later of the 1st day of April 1991 and the last day of the income year of the life insurer commencing on the 1st day of April 1990, on the first day of the income year of the life insurer that commences on the 1st day of April 1990; and

“(ii) In any other case, on the first day of the income year of the life insurer in which the transfer in fact takes place,—

and any amounts of income, profit, or gain derived or expenditure or loss incurred by the life insurer during the period commencing on the date of the deemed sale and ending with the date on which the transfer in fact takes place shall be deemed to have been derived or incurred (as the case may be) by the life insurer as agent on behalf of the trustee of the scheme; and

“(b) For the purposes of determining the amount of any assessable income derived or loss incurred on any subsequent sale or other disposal of the property by the trustee of the scheme, the trustee of the scheme shall be deemed to have acquired the property on the day it was acquired by the life insurer; and

“(c) The trustee of the scheme shall be deemed to have acquired the property at a price equal to—

“(i) In any case where the property was acquired by the life insurer on or before the last day of the income year that commenced on the 1st day of April 1982, the specified base cost for 1983 income year property:

“(ii) In any other case, the aggregate of the following amounts of expenditure incurred by the life insurer in respect of the property before the transfer in fact takes place, being in every case expenditure in respect of which no deduction has been allowed under this Act:

“(A) The original purchase price of the property:

“(B) Any expenditure incurred in purchasing the property:

“(C) Any expenditure incurred in effecting repairs, alterations, or improvements to the property:

“(D) Any expenditure incurred in securing or improving the legal rights of the life insurer in relation to the property; and

- “(d) The trustee of the scheme shall, in respect of or in relation to the property, be deemed to have been allowed (as if in the calculation of the assessable income derived by the trustee of the scheme) under sections 126, 127, and 128 of this Act, or in respect of a deduction for interest, the same amounts of deduction in respect of expenditure of any of the kinds referred to in those sections, and the same amounts of deductions for interest, as, in respect of or in relation to that property, have been allowed in calculating the assessable income derived by—
- “(i) The life insurer; or
- “(ii) Any other person (not being the trustee of the scheme) where the life insurer and that other person are associated persons; or
- “(iii) The life insurer and that last-mentioned other person; and
- “(e) For the purposes of sections 108 and 117 of this Act—
- “(i) The trustee of the scheme shall be deemed to have been allowed (as if in the calculation of the assessable income derived by the trustee) deductions for depreciation of the same amounts as, in respect of or in relation to that property, have been allowed in calculating the assessable income derived by the life insurer; and
- “(ii) In determining the value to which such property has been reduced by the allowance of deductions in respect of depreciation, such deductions shall be taken into account as a reduction from the price at which the trustee of the scheme is deemed to have acquired the property; and
- “(f) Where the property was acquired by the life insurer before the 1st day of April 1988, and was not property whose cost of acquisition was taken into account in calculating the assessable income of the life insurer for any income year other than by way of a deduction in respect of the depreciation of that asset, in determining the assessable income derived or loss incurred by the trustee of the scheme from any subsequent sale or other disposal of the property there shall be deducted an amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the amount of so much of the liabilities of the life insurer in respect of policies of life insurance at the last day of the income year that last ended before the 1st day of April 1988 as, in the opinion of the Commissioner, relate to—
- “(i) Superannuation policies included in the Life Insurance Fund of the life insurer; and

- “(ii) Specified mortgage repayment insurance policies included in that Fund; and
- “(iii) Annuities granted included in that Fund; and
- b is the amount of the liabilities of the life insurer in respect of policies of life insurance at the last day of the income year that last ended before the 1st day of April 1988; and
- c is the amount in respect of the property ascertained as follows:
 - “(i) Where the property was acquired on or before the last day of the income year that commenced on the 1st day of April 1982, the amount shall be the amount obtained by subtracting from the market value of that property on the 1st day of April 1988 the specified base cost for 1983 income year property; and
 - “(ii) Where the property was acquired after the end of the income year that commenced on the 1st day of April 1982, the amount shall be the amount obtained by subtracting from the market value of the property on the 1st day of April 1988 the cost price or acquisition value of the property; and
- “(g) In the case of property acquired by the life insurer before the 1st day of April 1988, where—
 - “(i) The trustee of the scheme subsequently sells or otherwise disposes of the property; and
 - “(ii) Any profit or gain derived or loss incurred on the sale or other disposal would not, but for this subsection, be taken into account in calculating the assessable income of the trustee—

the trustee shall be deemed to have sold the property for a price equal to the market value of the property on the 1st day of April 1988, and any profit or gain so deemed to have been derived or loss so deemed to have been incurred (as the case may be) shall be taken into account in calculating the assessable income derived by the trustee; and
- “(h) For the purposes of determining the amount of any assessable income derived or loss incurred by the life insurer on the transfer of the property, the life insurer shall be deemed to have sold the property, on the relevant date referred to in subparagraph (i) or subparagraph (ii) of paragraph (a) of this subsection, for a consideration equal to the amount of the price referred to in paragraph (c) of this subsection; and
- “(i) The life insurer shall not be treated as having derived any amount of assessable income in respect of the transfer of the property by virtue of section 117(1) of this Act.

- “(3) Notwithstanding any provision of this Act, where any life insurer transfers property that is a financial arrangement to the trustee of a registered superannuation scheme pursuant to an approved arrangement,—
- “(a) The trustee of the scheme shall be deemed to have acquired the property and the life insurer shall be deemed to have sold the property on the date of transfer; and
 - “(b) The price at which the acquisition and sale has taken place shall be deemed to be, at the option of the life insurer, either—
 - “(i) The market value of the financial arrangement on the date of transfer; or
 - “(ii) The adjusted base price, being,—
 - “(A) Where the life insurer is the issuer of the financial arrangement, the acquisition price of the financial arrangement together with all accrued expenditure incurred by the issuer, less consideration paid by the issuer in relation to the financial arrangement before the date of transfer; and
 - “(B) Where the life insurer is the holder of the financial arrangement, the acquisition price of the financial arrangement together with all accrued income derived by the holder, less consideration received by the holder in respect of the financial arrangement before the date of transfer.
- “(4) Notwithstanding any provision of this Act, where any life insurer transfers property to the trustee of a registered superannuation scheme pursuant to an approved arrangement, being property that is trading stock to the life insurer,—
- “(a) The trustee of the scheme shall be deemed to have acquired the property and the life insurer shall be deemed to have sold the property on the date of transfer; and
 - “(b) The price at which the acquisition has taken place shall be deemed to be the value taken into account by the life insurer under section 85 of this Act at the beginning of the income year of the life insurer during which the transfer takes place.
- “(5) Where any life insurer transfers pursuant to an approved arrangement property consisting of shares or an interest in shares to the trustee of a registered superannuation scheme, those shares shall not, by reason of that transfer, be treated as having ceased to be held by or on behalf of the same persons for the purposes of determining whether—
- “(a) Any taxpayer satisfies the requirements of section 188(7)(a) of this Act; or
 - “(b) Any taxpayer is included in a group of companies or a specified group for the purposes of section 191 of this Act; or

“(c) Any debit arises to be recorded in a taxpayer’s imputation credit account, dividend withholding payment account, or branch equivalent tax account under section 394e or section 394zw or section 394zzp of this Act,—

and, for the purposes of determining the application of those sections in relation to any subsequent dealings in those shares, the shares (or interest therein) shall be treated as having been acquired by the trustee of the superannuation scheme at the time they were acquired by the life insurer.

“(6) Section 232b of this Act shall not apply to the trustee of any registered superannuation scheme in respect of property transferred to that trustee by a life insurer pursuant to an approved arrangement.

“(7) For the purposes of section 384 of this Act, where a life insurer has—

“(a) Made application to the Government Actuary under section 68 of the Superannuation Schemes Act 1989 for approval of a transfer of property to the trustee of a registered superannuation scheme; and

“(b) In respect of the income derived in an income year (being an income year of the life insurer during which the transfer might, under subsection (2)(a) of this section, be deemed to take place if approved) paid provisional tax, in accordance with Part XII of this Act, in excess of the amount of the residual income tax in relation to that life insurer and that income year,—

that life insurer may elect, by notice in writing given to the Commissioner within the time within which the life insurer is required to furnish a return of the life insurer’s income derived in that income year or within such further time as the Commissioner in the Commissioner’s discretion may allow, that the amount of that excess (or any part thereof), so far as that excess extends, shall be treated as if it were provisional tax paid by the trustee of the scheme (to the extent that the provisional tax paid by the trustee of the scheme is less than the residual income tax of the trustee of the scheme in respect of that income year), and any provisional tax so treated as being paid by the trustee of the scheme shall be deemed, for the purposes of section 384 of this Act only, to be provisional tax paid by the trustee of the scheme and not by the life insurer.

“(8) Where a life insurer has made application to the Government Actuary under section 68 of the Superannuation Schemes Act 1989 for approval of a transfer of property to the trustee of a registered superannuation scheme, nothing in subsection (4) or any other provision of section 17 of this Act shall apply to require a return of income to be furnished before any specified date where that return of income is in respect of an income year in which that transfer might, under subsection (2)(a) of this section, be deemed to take place if approved.”

15 New sections inserted

The principal Act is hereby amended by inserting, after section 214c, the following headings and sections:

“Petroleum Mining Operations

“214d Interpretation

“(1) For the purposes of this section and sections 214e to 214n of this Act—

“‘Appraisal well’ means a well drilled in a licence area in order to—

“(a) Confirm the existence or non-existence, or the quantities or composition, of petroleum; or

“(b) Ascertain whether or not petroleum is recoverable in commercial quantities:

“‘Consideration’ includes money received or receivable and the market value of property (other than money) received or receivable; but does not include any excess expenditure:

“‘Continental shelf has the same meaning as in the Continental Shelf Act 1964:

“‘Controlled petroleum mining company’ means any company that is a petroleum miner if—

“(a) Ninety percent or more in value of its outstanding shares are held, directly or indirectly, by or for 5 or fewer persons; and

“(b) The market value of any petroleum licence, including licence specific assets attributable to that licence, held by the company is at least 75 percent of the value of its assets less its liabilities as set forth in the company’s audited financial statement or accounts prepared in accordance with generally accepted accounting principles and with the requirements of the Companies Act 1955:

“‘Controlled petroleum mining entity’ means any—

“(a) Controlled petroleum mining company; or

“(b) Controlled petroleum mining holding company; or

“(c) Controlled petroleum mining trust; or

“(d) Controlled petroleum mining holding trust:

“‘Controlled petroleum mining holding company’ means any company if—

“(a) Ninety percent or more in value of its outstanding shares are held, directly or indirectly, by or for 5 or fewer persons; and

“(b) The aggregate market value of—

“(i) All shares in petroleum mining companies; and

“(ii) All shares in petroleum mining holding companies; and

“(iii) All trust interests in petroleum miners that are trusts; and

“(iv) All trust interests in petroleum mining holding trusts—
that are held by the company is at least 75 percent of the value of its assets less its liabilities, as set forth in the company’s audited financial statement or accounts prepared in accordance with generally accepted accounting principles and with the requirements of the Companies Act 1955:

“‘Controlled petroleum mining holding trust’ means any trust that is a petroleum miner if—

“(a) Ninety percent or more in value of the trust is owned, directly or indirectly, by or for 5 or fewer persons; and

“(b) The aggregate market value of—

“(i) All trust interests in petroleum miners that are trusts; and

“(ii) All trust interests in other petroleum mining holding trusts; and

“(iii) All shares in petroleum miners that are companies; and

“(iv) All shares in petroleum mining holding companies,—

that are held by the trust is at least 75 percent of the value of its assets less its liabilities, as set forth in the trust’s accounts prepared in accordance with generally accepted accounting principles:

“‘Controlled petroleum mining trust’ means any trust that is a petroleum miner if—

“(a) Ninety percent or more in value of the trust is owned, directly or indirectly, by or for 5 or fewer persons; and

“(b) The market value of a petroleum licence, including licence specific assets attributable to that licence, held by the trust is at least 75 percent of the value of its assets less its liabilities, as shown in the trust’s accounts prepared in accordance with generally accepted accounting principles:

“‘Date of first commercial production’ means the date on which petroleum commences to be produced from any licence area—

“(a) In a state suitable for delivery to a refinery, buyer, user, consumer, or processor; and

“(b) In commercial quantities; and

“(c) On a continuing basis:

“‘Disposition’ means the sale or transfer of any asset, voluntarily or involuntarily, and includes loss or destruction; and the terms ‘dispose’ and ‘disposal’ have corresponding meanings:

“‘Effective percentage interest’, in relation to a petroleum miner and to a petroleum licence, means the lowest of the petroleum miner’s percentage interests (other than nil) in—

“(a) The petroleum licence, including any replacement licence in relation to that petroleum licence; or

“(b) Petroleum produced under the petroleum licence or replacement licence; or

“(c) Profits from the production of petroleum under the petroleum licence or replacement licence:

“‘Excess expenditure’ means an amount equal to expenditure incurred by a petroleum miner in carrying on petroleum mining operations in a licence area in excess of the amount of expenditure incurred in respect of its effective percentage interest in the petroleum licence, but only to the extent such expenditure is incurred pursuant to a farm-out arrangement which provides to the petroleum miner consideration that is in the form of or is contingent on—

“(a) Production of petroleum from that licence area; or

“(b) Profits from the production of petroleum from that licence area; or

“(c) An interest or right to an interest in that licence area:

“‘Exploratory well’ means a well drilled in a licence area in order to—

“(a) Locate petroleum; or

“(b) Confirm the existence or non-existence, or the quantities or composition, of petroleum; or

“(c) Ascertain whether or not petroleum is recoverable in commercial quantities:

“‘Exploratory well asset’, in relation to a petroleum miner and a petroleum licence, means the aggregate of all undeducted exploratory well expenditure incurred by the petroleum miner in respect of that petroleum licence:

“‘Exploratory well expenditure’, in relation to a petroleum miner, a petroleum licence, and an exploratory well in the licence area, means all expenditure incurred by the petroleum miner, in drilling, testing, completing, and abandoning the exploratory well:

“‘Farm-out arrangement’ means any arrangement under which a person agrees with a petroleum miner to incur excess expenditure:

“‘First year of commercial production’, in respect of any licence area, means the income year in which petroleum commences to be produced from the licence area—

“(a) In a state suitable for delivery to a refinery, buyer, user, consumer, or processor; and

“(b) In commercial quantities; and

“(c) On a continuing basis:

“‘Further processing’ means further treatment of crude oil, condensate, or natural gas (after the wellstream has been separated and stabilised into those substances) by way of liquefaction or compression or for the extraction of constituents or the production of derivative products, but does not include treatment at the production facilities:

“‘Geophysical prospecting’ means prospecting for petroleum by seismic, gravimetric, magnetic, electrical, radioactive, geochemical, or other geological methods:

“‘Land’ means all land within the territorial limits of New Zealand, and includes—

“(a) Land below the territorial sea of New Zealand or any other waters within the territorial limits of New Zealand; and

“(b) The continental shelf; and

“(c) The seabed and subsoil below any sea which is beyond the territorial sea of New Zealand but which, by New Zealand legislation and in accordance with international law, has been or may hereafter be designated as an area in which the rights of New Zealand with respect to natural resources may be exercised:

“‘Licence area’ means the area of land comprised in a petroleum licence:

“‘Licence specific asset’ means any asset which is acquired by a petroleum miner for the purpose of carrying on petroleum mining operations in a licence area or areas and has an estimated useful life which is dependent on and is no longer than the remaining life of the petroleum licence with respect to that area or areas, but does not include—

“(a) Any land; or

“(b) Any exploratory well asset; or

“(c) Any petroleum prospecting information asset; or

“(d) Any petroleum licence:

“‘Mining licence’ has the same meaning as in section 2 of the Petroleum Act 1937:

“‘Natural gas’ means the gaseous mixtures of petroleum, in a stabilised form, which remain after the separation of crude oil or condensate from the wellstream in the production facilities and which have not been subjected to further processing:

“‘Partnership’ includes a joint venture or any other form of association of persons in receipt of income jointly or carrying on activities jointly:

“‘Petroleum’ has the same meaning as in section 2 of the Petroleum Act 1937:

“‘Petroleum licence’ means a prospecting licence or a mining licence:

“‘Petroleum miner’, in relation to a petroleum licence, means any person who carries on petroleum mining operations in that petroleum licence area, but does not include any person who carries on such operations for consideration that is not in the form of or contingent on—

“(a) Production of petroleum from that licence area; or

“(b) Profits from the production of petroleum from that licence area; or

“(c) An interest or a right to an interest in that petroleum licence:

“‘Petroleum mining asset’ means a petroleum licence or a licence specific asset:

“‘Petroleum mining development expenditure’, in relation to a petroleum licence, means any expenditure incurred by a petroleum miner after the date an application for a prospecting licence is submitted with respect to a licence area to the extent that any such expenditure is directly attributable to that licence area and is for the purpose of—

“(a) Obtaining or evaluating petroleum prospecting information; or

“(b) Planning, drilling, testing, or abandoning exploratory wells; or

“(c) Planning, designing, constructing, or acquiring licence specific assets;—
but does not include any expenditure to the extent that such expenditure is—

“(d) Expenditure to which section 144 of this Act applies; or

“(e) Incurred in respect of—

“(i) An application fee payable to the Crown in respect of a petroleum licence; or

“(ii) Insurance premiums, royalties paid under the Petroleum Act 1937, land tax, or rates; or

“(iii) A lease of land or buildings; or

“(iv) A financial arrangement (as defined in section 64b of this Act) to which sections 64b to 64l of this Act apply; or

“(f) Interest:

“‘Petroleum mining operations’ means all activities carried out in connection with—

“(a) Prospecting or exploring for petroleum; or

“(b) Developing a licence area for the production of petroleum; or

“(c) Producing petroleum; or

“(d) Processing, transmitting, or storing petroleum prior to its dispatch to a refinery, a buyer, a user, a consumer, or a processor; or

“(e) Removal and restoration operations;—

but does not include further processing:

“‘Petroleum prospecting information’ means any information which is obtained by geophysical prospecting, a regional reconnaissance survey, drilling an exploratory well, or otherwise in connection with prospecting or exploring for petroleum:

“‘Petroleum prospecting information asset’, in relation to a petroleum miner and a petroleum licence, means the aggregate of all undeducted petroleum prospecting information expenditure incurred by the petroleum miner in respect of that petroleum licence:

“‘Prospecting licence’ has the same meaning as in section 2 of the Petroleum Act 1937:

“‘Regional reconnaissance survey’ means a survey authorised by the Minister of Energy pursuant to section 4(2) of the Petroleum Act 1937:

“‘Relinquishment’, in relation to a petroleum licence, means the surrender, abandonment, forfeiture, revocation, or expiry of the licence otherwise than for a replacement licence, and, in the case of a mining licence, includes the expiry of the initial term without any extension of the initial term or any extension to a specified term; and the terms ‘relinquish’ and ‘relinquished’ have corresponding meanings:

“‘Removal or restoration operations’ means—

“(a) The removal by a petroleum miner of licence specific assets; or

“(b) The restoration by a petroleum miner of any site at which its petroleum mining operations have been carried on—

by reason of the relinquishment of a petroleum licence for the licence area to which those licence specific assets were attributable or in which those petroleum mining operations were carried on:

“‘Replacement licence’, in relation to a petroleum licence, means a licence obtained in exchange, wholly or partly, for that petroleum licence over the same or part of the same area as that licence, and includes a sequential series of replacement licences to the extent that each licence in the series replaces the previous licence in the series:

“‘Seal and abandonment’ means the seal and abandonment of an exploratory well where there has been filed a statutory declaration by a petroleum miner with the Commissioner that the petroleum miner has no intention of utilising that exploratory well in petroleum mining operations or of applying for a mining licence in respect of the area in which that exploratory well is located:

“‘Specified interest rate’, in relation to any income year, means the rate of interest calculated in accordance with the following formula:

$\frac{a}{4}$

where—

a is the sum of the rates of interest declared in regulations made under section 336w of this Act for each quarter falling within that income year:

“‘Subsequent mining licence’, in relation to a petroleum licence, means a mining licence which is a replacement licence with respect to the petroleum licence in existence over an area containing a sealed and abandoned exploratory well in respect of which the petroleum miner (or a person associated with the petroleum miner in the income year in which the replacement licence is obtained) claimed deductions under section 214f(4)(b) of this Act:

“‘Subsequent mining licence period’, in relation to a petroleum miner and to an area containing a sealed and abandoned exploratory well in respect of which the petroleum miner (or a person associated with the petroleum miner in the income year in which the petroleum miner obtains a subsequent mining licence over the area) has claimed deductions under section 214f(4)(b) of this Act, means the period—

“(a) Commencing on the date on which the petroleum licence in force over the area in the income year or years in which the petroleum miner or associated person claimed those deductions was obtained; and

“(b) Ending on the date on which a subsequent mining licence in respect of that petroleum licence is obtained:

“‘Transferee’, in relation to a farm-out arrangement, means the person incurring excess expenditure:

“‘Transferor’, in relation to a farm-out arrangement, means the person for whose benefit the excess expenditure is paid or provided.

“(2) For the purposes of sections 214e to 214n of this Act, except where the context otherwise requires,—

“(a) Every reference to a petroleum mining asset shall also include a share or partial interest in such asset:

“(b) Every reference to a petroleum licence shall also apply to a replacement licence, and all expenditure incurred, deductions claimed, and petroleum mining assets that are attributable to that petroleum licence shall be attributable to the replacement licence:

“(c) A partner in a partnership shall be deemed to have a share or interest in every licence of the partnership and in all other property of the partnership in accordance with the partner’s income interest in the partnership:

“(d) All references to the disposition of an asset shall apply to the disposal of part of an asset.

“(3) In any case in which a petroleum miner furnishes a return of income in accordance with section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, every reference in this section or

in sections 214e to 214p of this Act to an income year shall be deemed to be a reference to the accounting year corresponding with that income year.

“214e Associated persons

- “(1) For the purposes of sections 214d to 214n of this Act, associated persons are—
- “(a) Any 2 companies which consist substantially of the same shareholders or are under the control of the same persons; or
 - “(b) Any company and any person (other than a company) who holds, directly or indirectly, 50 percent or more of the paid-up capital or 50 percent or more in nominal value of the allotted shares of that company; or
 - “(c) Any 2 persons who are relatives; or
 - “(d) A partnership and any person where that person is a partner in the partnership; or
 - “(e) A partnership and any person, where that person and any partner in that partnership are associated persons; or
 - “(f) A trustee of a trust and a trustee of another trust, if the same person is a settlor of both trusts; or
 - “(g) A trustee of a trust and a beneficiary of that trust; or
 - “(h) A person and an organisation which is described in section 61(23) or section 61(25) or section 61(34) of this Act and that is controlled, directly or indirectly, by such person or by a relative of such person.
- “(2) For the purposes of subsection (1) of this section—
- “(a) Shares in a company or interests in a partnership held directly or indirectly by or for a company, partnership, or trust shall be deemed to be held proportionately by or for the shareholders, partners, or beneficiaries in the company, trust, or partnership; and
 - “(b) A person who is an individual shall be deemed to hold the shares in a company or the interests in a partnership which are held, or deemed to be held, by or for the person’s relatives; and
 - “(c) Shares in a company or interests in a partnership deemed to be held by a person by reason of the application of paragraph (a) of this subsection shall, for the purposes of applying paragraph (a) or paragraph (b) of this subsection, be treated as being held directly by that person, but shares or interests deemed to be held by a person by reason of the application of paragraph (b) of this subsection shall not be treated as being held by that person for the purpose of again applying paragraph (b) of this subsection in order to make another person the deemed holder of those shares or interests.

“214f Capitalisation and amortisation of petroleum mining development expenditure

- “(1) Except as otherwise provided in this section and sections 214g to 214j of this Act, no deduction shall be allowed for petroleum mining development expenditure.
- “(2) Petroleum mining development expenditure incurred in any income year shall be treated as deferred deductions and, to the extent such expenditure has not been deducted under subsection (4) or subsection (5) of this section, or under sections 214g to 214j of this Act, shall be deductible by the petroleum miner in equal amounts over the 10 income years beginning with the later of—
- “(a) The first year of commercial production; or
 - “(b) The income year in which the expenditure was incurred.
- “(3) For the purposes of sections 214d to 214n of this Act, deferred deductions in respect of—
- “(a) Expenditure incurred for the purpose of acquiring a licence specific asset shall be attributable to that asset; and
 - “(b) Expenditure incurred for the purpose of acquiring—
 - “(i) A petroleum licence; or
 - “(ii) An exploratory well asset; or
 - “(iii) A petroleum prospecting information asset—
- shall be attributable to the petroleum licence with respect to the area to which the asset relates.
- “(4) In any case where a petroleum miner—
- “(a) Relinquishes a petroleum licence, any deferred deductions attributable to that licence or to any licence specific asset held solely in respect of that licence that have not been deducted previously shall be deductible in the year of relinquishment:
 - “(b) Seals and abandons an exploratory well prior to the date of first commercial production, any exploratory well expenditure incurred in respect of that well that has not been deducted previously shall be deductible in the year the well is sealed and abandoned:
 - “(c) Disposes of a petroleum mining asset for consideration, any deferred deductions that—
 - “(i) Are attributable to the asset or (where the asset was disposed of partly for consideration and partly for excess expenditure) to the relevant proportion of the asset so disposed of for consideration; and

- “(ii) Have not been previously deducted, or previously reduced pursuant to section 214i(2) of this Act,—
- shall be deductible in the year that that consideration is, under section 214h(1) of this Act, assessable income derived by the petroleum miner:
- “Provided that where such income is derived in more than one income year, any deduction allowed in respect of the disposition shall be allocated between the income years in which the income is derived, and the deduction allowed in each year shall bear the same relation to total deductions allowed in respect of the disposition that the assessable income derived in that income year bears to the total assessable income derived in respect of the disposition.
- “(5) In any case in which a petroleum miner disposes of a petroleum mining asset to an associated person—
- “(a) The petroleum miner shall be entitled to deductions under subsection (4)(c) of this section in respect of that asset only to the extent that the deductions do not exceed the assessable income derived by the petroleum miner from that disposition:
- “(b) To the extent that deferred deductions in respect of that petroleum mining asset are not deductible under paragraph (a) of this subsection, the petroleum miner shall reduce any deferred deductions in respect of that petroleum mining asset by the amount which is not deductible under that paragraph.
- “(6) If, in the case of a disposal of a petroleum mining asset to which subsection (5) of this section applies,—
- “(a) An amount is not deductible to a petroleum miner by virtue of subsection (5)(a) of this section; and
- “(b) The purchaser of the petroleum mining asset subsequently disposes of the asset to a person not associated with the petroleum miner—
- then the purchaser shall be entitled to a deduction in respect of the subsequent disposition equal to the amount which was not deductible by the petroleum miner.
- “(7) In any income year in which a subsequent mining licence is obtained, the subsequent mining licence holder shall be deemed to have derived assessable income equal to the total of the following amounts:
- “(a) An amount equal to the lesser of—
- “(i) The amount of exploratory well expenditure of the kind specified in subsection (8) of this section that was deducted by the subsequent mining licence holder under subsection (4)(b) of this section; and
- “(ii) An amount calculated in accordance with the following formula:

$$a \times \frac{b}{c}$$

where—

- a is the amount referred to in subparagraph (i) of this paragraph; and
- b is the effective percentage interest of the subsequent mining licence holder in the subsequent mining licence; and
- c is the effective percentage interest of the subsequent mining licence holder in the prospecting licence over that area in the income year in which the deductions were claimed; and

“(b) The amount of exploratory well expenditure of the kind specified in subsection (8) of this section that was deducted under subsection (4)(b) of this section by any person associated with the subsequent mining licence holder in the income year in which the subsequent mining licence is obtained, to the extent of the effective percentage interest held by the subsequent mining licence holder in the subsequent mining licence that was disposed of by the associated person to the subsequent mining licence holder; and

“(c) Interest at the specified interest rate on any amount determined under paragraphs (a) and (b) of this subsection calculated from the last day of each income year in which the relevant petroleum miner deducted exploratory well expenditure to the last day of the income year in which the subsequent mining licence was obtained, compounded annually.

“(8) The kind of exploratory well expenditure to be taken into account for the purposes of subsection (7)(a) and (b) of this section is exploratory well expenditure attributable to—

“(a) Each exploratory well drilled during the subsequent mining licence period to the extent that such expenditure contributed to defining the scope, character, or size of any deposit of petroleum with respect to which the subsequent mining licence was issued; and

“(b) Each appraisal well drilled during the subsequent mining licence period for the purpose of defining the scope, character, or size of any deposit of petroleum with respect to which the subsequent mining licence was issued.

“(9) For the purposes of this section, the total of the amounts referred to in paragraph (a) and paragraph (b) of subsection (7) of this section shall be treated as petroleum mining development expenditure incurred by the subsequent mining licence holder in the year in which those amounts are deemed to be derived under that subsection, and shall be deductible to the subsequent mining licence holder under the provisions of this section other than subsection (4)(b).

“214g Special rules

- “(1) All expenditure incurred by a petroleum miner for removal or restoration operations shall be allowed as a deduction in the income year or years in which such expenditure is incurred.
- “(2) If a petroleum miner has a loss for any income year in which—
- “(a) Expenditure for removal or restoration operations is incurred; or
 - “(b) A licence is relinquished and deferred deductions are allowable under section 214f(4)(a) of this Act,—
- the amount of any such expenditure or deferred deductions that cannot be deducted in full in that year shall be allowable as a deduction in the years preceding the loss year, beginning with the income year immediately preceding the loss year, and the petroleum miner shall have the right to amend its returns for such income years notwithstanding section 25 of this Act.

“214h Disposal of petroleum mining assets

- “(1) The consideration received by a petroleum miner from the disposal of a petroleum mining asset shall be assessable income to the petroleum miner in the year the consideration is derived and any deferred deductions attributable to the asset shall be deductible under section 214f(4)(c) of this Act.
- “(2) The consideration paid by a person acquiring a petroleum mining asset shall be deemed to be petroleum mining development expenditure incurred by the person in the year the petroleum mining asset is disposed of by the petroleum miner to the person.
- “(3) In any case where a petroleum licence is disposed of, and the Commissioner determines that—
- “(a) The person acquiring the licence holds the licence on behalf of or for the benefit of the petroleum miner or an associated person of the petroleum miner; and
 - “(b) One purpose for which such disposal was made is evasion or avoidance of tax by securing the benefit of a deduction which the petroleum miner would not otherwise obtain,—
- the Commissioner may disallow any deduction under subsection (2) of this section or under section 214f(4)(c) of this Act.

“214i Farm-out arrangements

- “(1) Notwithstanding any other provision of this Act, excess expenditure in relation to a farm-out arrangement shall not constitute assessable income to the transferor under that arrangement.
- “(2) A transferor under a farm-out arrangement shall reduce (but shall not deduct) any deferred deductions attributable to the petroleum licence to which the farm-out arrangement relates and to any licence specific assets held for the pur-

pose of conducting petroleum mining operations in respect of that petroleum licence by the lesser of—

- “(a) The amount of excess expenditure; and
- “(b) An amount calculated in accordance with the following formula:

$$a \times \frac{c-b}{c}$$

where—

- a is an amount equal to the sum of deferred deductions attributable to the petroleum licence and to any licence specific assets held for the purpose of conducting petroleum mining operations in respect of that petroleum licence; and
- b is an amount equal to the excess expenditure; and
- c is an amount equal to the sum of any consideration paid by the transferee which is treated as assessable income of the transferor under section 214h of this Act, and the amount of the excess expenditure,—

and the amount so calculated shall be allocated to the petroleum licence and to each licence specific asset held for the purpose of conducting petroleum mining operations in respect of the petroleum licence in the same proportion that the deferred deductions attributable to the petroleum licence and to each licence specific asset bear to the total deferred deductions attributable to the petroleum licence and the licence specific assets.

- “(3) To the extent that excess expenditure is paid or provided in more than one income year, the reduction in deferred deductions calculated in accordance with subsection (2) of this section shall be allocated between the income years in which the excess expenditure is paid or provided, and the reduction required in each income year shall bear the same relation to the total reduction in deferred deductions required in respect of the farm-out arrangement that the excess expenditure paid or provided in that income year bears to the total excess expenditure paid or provided in respect of the arrangement.
- “(4) Excess expenditure shall be deemed to be petroleum mining development expenditure incurred in the year or years such expenditure is paid or provided and shall be deductible to the transferee under the provisions of section 214f of this Act, other than subsection (4)(b).

“214j Damaged assets

- “(1) Any consideration for damage to a licence specific asset shall be assessable income in the income year such consideration is derived by the petroleum miner.
- “(2) The costs of repair of a damaged licence specific asset shall be deductible in the income year such costs are incurred.

“214k Dispositions of shares or trust interests

- “(1) Any consideration derived from the disposition of shares or trust interests in a controlled petroleum mining entity shall be assessable income to the person disposing of the shares or trust interests.
- “(2) The cost to the person disposing of such shares or trust interests shall be deductible by the person in the year the consideration is assessable income to the person.
- “(3) This section shall not apply to a disposition of shares or trust interests where that disposition, together with all other dispositions in the controlled petroleum mining entity made by the person disposing of the shares or trust interests during the preceding 2 income years, comprises less than 10 percent of the person’s shares or trust interests in the entity calculated in the year of the disposition.
- “(4) Every controlled petroleum mining entity shall furnish to the Commissioner, with its annual return, the following information with respect to dispositions to which this section applies that are made during the relevant income year:
- “(a) The date of the disposition; and
 - “(b) The number of shares, or the proportion of the trust represented by the trust interest, comprised in the disposition; and
 - “(c) The name and address of the person disposing of and the person acquiring the shares or trust interest.
- “(5) For the purposes of this section, persons associated with each other shall be deemed to be one person.

“214l Determinations in relation to petroleum mining operations

- “(1) For the purposes of this Act, if a question arises as to,—
- “(a) In any case where the holder of a petroleum licence disposes of the licence, the proportion of the licence disposed of; or
 - “(b) In any case where a petroleum licence is disposed of together with petroleum mining assets, the consideration and the deferred deductions to be attributed to—
 - “(i) The licence; and
 - “(ii) The licence specific assets; or
 - “(c) Whether, and if so when, a licence has been relinquished; or
 - “(d) The year or date of first commercial production for a licence area in which a petroleum miner holds an interest; or
 - “(e) Whether any expenditure on an exploratory well or an appraisal 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 licence; or
 - “(ii) A mining licence; or
 - “(iii) The extension of a mining licence; or
 - “(iv) The relinquishment of a licence,—
- any such question shall be settled, for the purposes of ascertaining the assessable 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 the Energy Division of the Ministry of Commerce, or any other organisation or person having relevant expertise or information.

- “(2) For the purpose of determining any question under subsection (1) of this section, the Commissioner may consult with the Energy Division of the Ministry of Commerce or with any other organisation or person having relevant expertise or information, and where the organisation consulted is the Energy Division of the Ministry of Commerce or any other government department, the Division or department shall provide whatever assistance or advice the Commissioner requires.

“214m Petroleum mining operations carried on outside New Zealand

- “(1) Sections 214d to 214n of this Act shall apply with any necessary modifications in the case of any petroleum miner carrying on outside New Zealand through a branch petroleum mining operations of substantially the same nature as the activities governed by those sections.
- “(2) For the purposes of this section the Commissioner may determine, by analogy with the Petroleum Act 1937, the equivalents in the context of the relevant foreign regime for the licensing and conduct of petroleum mining operations of—
- “(a) Obtaining—
 - “(i) A prospecting licence; or
 - “(ii) A mining licence; or
 - “(iii) An extension of a mining licence; or
 - “(b) Whether or when a licence has been relinquished; or
 - “(c) Any other relevant document or matter relating to the licensing and conduct of petroleum mining operations.

“214n Application of sections 214d to 214m, and transitional provisions

- “(1) Sections 214d to 214m of this Act shall apply to—
- “(a) Petroleum mining development expenditure incurred or deemed to be incurred on or after the 1st day of October 1990; and
 - “(b) Assessable income derived from the disposal of petroleum mining assets or shares or trust interests in controlled petroleum mining entities on or after the 1st day of October 1990, but only to the extent of the difference between the consideration derived from such disposal and the market value of each such asset on the 1st day of October 1990; and
 - “(c) Farm-out arrangements entered into on or after the 1st day of October 1990.
- “(2) For the purposes of determining the amount of consideration that is assessable income to a petroleum miner from the disposal of petroleum mining assets, petroleum miners shall determine the market value of each petroleum mining asset that they hold on the 1st day of October 1990, and in no event shall the market value of any such asset be less than the value of that asset reported on the petroleum miner’s audited financial statement.
- “(3) For the purposes of determining the amount of consideration that is derived by a person under section 214k of this Act, every holder of a share or trust interest to which that section applies shall determine the market value of such shares or interest on the 1st day of October 1990.

*“Protected Petroleum Mining Companies***“214o Interpretation**

For the purposes of this section and section 214p of this Act,—

“‘Associated persons’ has the meaning ascribed to it in section 8 of this Act:

“‘Associated petroleum mining operations’ means any operations which are carried on in New Zealand in association with petroleum mining operations and which consist of—

- “(a) The recovery of casinghead spirit from natural gas; or
- “(b) The transportation of crude petroleum, casinghead spirit, or natural gas, by pipeline or otherwise, from the point of production to any gathering tank, storage tank, refinery, railway, seaport, or other bulk terminal within New Zealand, or from any such terminal to any other such terminal; or
- “(c) The storage of crude petroleum, casinghead spirit, or natural gas; or
- “(d) The treatment of crude petroleum, casinghead spirit, or natural gas for the purpose of rendering it suitable for storage or for transportation in accordance with paragraph (b) of this definition,—

but does not include any petroleum refining operations or any operations in connection with the establishment of a petroleum refinery:

“‘Development expenditure’, in relation to a petroleum mining company, means any expenditure which, in the opinion of the Commissioner, was incurred by that company on or after the 1st day of October 1990 in performing development work in respect of its petroleum mining operations or associated petroleum mining operations; and includes any expenditure incurred on or after that date which, in the opinion of the Commissioner, was incurred by that company on—

“(a) The acquisition of land as a site for any of that company’s petroleum mining operations or associated petroleum mining operations:

“(b) The preparation of a site for any of that company’s petroleum mining operations or associated petroleum mining operations, or the restoration of the site during such operations (not being expenditure on removal or restoration operations):

“(c) Buildings, wells, onshore or offshore petroleum production installations or other improvements, plant or machinery (including vehicles), production equipment or facilities, or storage facilities necessary, in each case, for the carrying on by that company of its petroleum mining operations or associated petroleum mining operations:

“(d) Vessels or aircraft for use wholly or principally for the purposes of that company’s petroleum mining operations or associated petroleum mining operations, being operations within a field of production of petroleum or in waters extending from an off-shore field of production of petroleum direct to the shore or for the purposes of inspection, repair, or maintenance of any pipeline in New Zealand that is for use for the purpose of the transport of petroleum:

“(e) The provision, or by way of contribution to the cost of the provision, of the means of providing or supplying water, electricity, fuel, or power, or of communication equipment for use on, or access to, or egress from, or communication with, the site of any of that company’s petroleum mining operations or associated petroleum mining operations:

“(f) Buildings or facilities—

“(i) Which are for use in the housing, education, or welfare of, or the supply of meals to, any employees (being employees of that company engaged in, or in connection with, its petroleum mining operations or associated petroleum mining operations) or dependants of such employees; and

“(ii) Which are situated at, or adjacent to, the site of any of that company’s petroleum mining operations,—

not being buildings or facilities provided for the purpose of deriving assessable income other than from petroleum mining:

- “(g) The provision, or by way of contribution to the cost of the provision, of the means of providing or supplying water, electricity, fuel, or power, or of communication equipment for use in, or access to, or egress from, or communication with, the buildings or facilities specified in paragraph (f) of this definition:
- “(h) Plant, machinery, or equipment, or any pipeline, that is for use by that company for the purpose of its transportation of crude petroleum, casinghead spirit, or natural gas within that company’s field of production of that product (being such a field which is in New Zealand, whether on-shore or off-shore), or from that field of production of that product direct to any gathering tank, storage tank, refinery, processing facility, railway, seaport, or other bulk terminal within New Zealand, being a terminal for the initial reception of that product in the state in which it existed at the commencement of that direct transportation:
- “(i) The inspection or maintenance of any pipeline of the kind referred to in paragraph (h) of this definition, where that inspection or maintenance is carried out before the commencement of the use of that pipeline by that company for the purposes of its associated petroleum mining operations:
- “(j) Water, electricity, fuel, or power consumed, or communication maintained, on, with, or in gaining access to, or egress from, the site of any of that company’s petroleum mining operations or associated petroleum mining operations, where that consumption or, as the case may be, that maintenance occurs in, or in respect of, the performing of the development work of which, wholly or partly, those petroleum mining operations consist or, as the case may be, which relates to those associated petroleum mining operations:
- “(k) Water, electricity, fuel, or power consumed, or communication maintained, on, with, by, or in gaining access to or egress from, the buildings or facilities specified in paragraph (f) of this definition, where that consumption or, as the case may be, that maintenance occurs while the employees, for whom those buildings or facilities are used for housing, education, or welfare, or supply of meals, are engaged in, or in connection with, the development work of which, wholly or partly, that company’s petroleum mining operations consist or, as the case may be, which relates to that company’s associated petroleum mining operations,—
- but does not include—
- “(l) Any expenditure on, or in relation to, any office building that is not situated at, or adjacent to, the site of any of that company’s petroleum mining operations; or
- “(m) Any expenditure, on or in relation to the transportation of crude petroleum, casinghead spirit, or natural gas, by pipeline or otherwise, that is

expenditure other than of the kinds referred to in paragraphs (d), (h), and (i) of this definition:

“‘Maui field’ means the area comprised in petroleum mining licence number 381012 granted under the Petroleum Act 1937 and the Continental Shelf Act 1964 to Shell BP and Todd Oil Services Ltd, on the 1st day of October 1973:

“‘Petroleum mining operations’ means operations carried on by or in relation to a protected petroleum mining company in the Maui field:

“‘Protected petroleum mining company’ means—

“(a) Any person or company (each being separately hereafter in this definition referred to as ‘an Individual Maui participant’) for the time being holding a percentage interest under the Maui Joint Venture Agreement; and

“(b) Any other petroleum mining company which is entitled to claim under or through an Individual Maui participant either—

“(i) An immediate vested interest in that Individual Maui participant’s pro rata portion of the product of the Maui field produced as a result of petroleum mining operations; or

“(ii) An assignment from that Individual Maui participant of the whole or any part of that Individual Maui participant’s pro rata portion of the product of the Maui field produced as a result of petroleum mining operations; or

“(iii) A share in the proceeds of realisation of any part of the produce of the Maui field produced as a result of petroleum mining operations:

“Provided that—

“(c) A company shall only be a protected petroleum mining company in respect of petroleum mining operations in connection with the Maui field:

“(d) No holder of any security, charge, or encumbrance given by an Individual Maui participant to secure amounts owing by that Individual Maui participant to such holder shall be deemed to be a protected petroleum mining company by reason only of holding that security.

“214p Further development expenditure in Maui field

“(1) Subject to this subsection, where a protected petroleum mining company will incur, or is likely to incur, development expenditure, primarily or principally for the purposes of the production and supply of petroleum under an agreement entered into by that company before the 1st day of April 1979, and that development expenditure (referred to hereafter in this subsection as ‘the specified development expenditure’) will be in respect of—

“(a) Any development work (referred to hereafter in this subsection as ‘specified development work’) comprised in that company’s offshore petroleum mining operations carried on by it in the Maui field in an area which is continuous, or geologically contiguous, with the area in relation to which that company performed or performs the development work in respect of which it incurred or incurs development expenditure to which section 214b(8) of this Act applied; or

“(b) Associated petroleum mining operations carried on in association with such of those offshore petroleum mining operations as consist of the mining of that petroleum,—

the following provisions shall apply to any election or appropriation made to any development commitment accounts and special development reserve accounts established, or to any deductions claimed in or for any income year or period ending on or after the 31 st day of March 1991:

“(c) Where the protected petroleum mining company, or any other company where that protected petroleum mining company and that other company are associated persons, by notice in accordance with subsection (2) of this section elects that this subsection shall apply to it,—

“(i) That company (referred to hereafter in this subsection as ‘the elector company’) which makes that election shall, in the income year in which it makes that election (that income year being referred to hereafter in this subsection as ‘the year of election’), or in any of the 4 income years immediately succeeding the year of election, enter in a development commitment account kept by it for the purposes of this subsection an amount equal to such amount as is from time to time agreed, between the Commissioner and the elector company, to be an amount which the elector company will contribute, or is likely to contribute, for use by the protected petroleum mining company for the purposes of that specified development expenditure:

“(ii) The elector company shall be entitled to claim in respect of any income year (being the year of election or any of the 4 income years immediately succeeding the year of election) that an amount be deducted, before the deduction of any loss to which the section 188 of this Act applies, from the assessable income derived by the elector company in that income year, equal to the amount appropriated, in respect of that income year, by the elector company, within the time within which it is required to furnish a return of its income for that income year (or within such further time as the Commissioner, in the Commissioner’s discretion, may allow), to a special development reserve account of the elector company for the purposes of that specified development expenditure:

- “(d) The amount or the amounts entered in the development commitment account kept by the elector company shall, following that entry or those entries, be reduced by an amount equal to every amount credited to the special development reserve account of the elector company:
- “(e) The amount of any deduction claimed under paragraph (c)(ii) of this subsection by the elector company in respect of any income year shall not exceed the amount of the assessable income derived by it in that income year or the amount remaining in the development commitment account kept by the elector company, immediately before the claiming of that deduction, whichever is the less:
- “(f) The elector company shall deliver to the Commissioner, with its return of income for every income year in respect of which a deduction is claimed by the elector company under paragraph (c)(ii) of this subsection, a copy of the development commitment account kept by it:
- “(g) Where a deduction (not being a deduction which has subsequently been disallowed pursuant to paragraph (j) or paragraph (k) of this subsection) has been allowed under paragraph (c)(ii) of this subsection from the assessable income derived in any income year by the elector company and the protected petroleum mining company ceases to be a protected mining company before it has used, for the purposes of the specified development expenditure, an amount equal to the amounts so allowed as a deduction, or as the case may be, the aggregate of all such amounts so allowed as a deduction from the assessable income derived in every income year by every elector company, the Commissioner may, to the extent of an amount which is, or amounts which in the aggregate are, equal to the amount so not used, disallow in such proportions as the Commissioner considers fair and equitable, the whole or any part of any such deduction, and, notwithstanding section 25 of this Act, at any time alter any assessment accordingly:
- “(h) Where a deduction (not being a deduction which has subsequently been disallowed pursuant to paragraph (j) or paragraph (k) of this subsection) has been allowed under paragraph (c)(ii) of this subsection from the assessable income derived in any income year by the elector company and the amount so allowed as a deduction or, as the case may be, the aggregate of all such amounts so allowed as a deduction from the assessable income derived in every income year by every elector company exceeds the amount of the specified development expenditure, incurred by the petroleum mining company, for the purposes of which an amount equal to that amount, or the aggregate of both amounts, so allowed as a deduction was to be used, the Commissioner may to the extent of an amount which is, or amounts which in the aggregate are, equal to the amount of that excess, disallow in such proportions as the Commissioner considers fair and equitable, the whole or any part of any such deduction

and, notwithstanding section 25 of this Act, at any time alter any assessment accordingly:

- “(i) Where a deduction has been allowed under paragraph (c)(ii) of this subsection of any amount in respect of the amount appropriated by the elector company, no other deductions will be allowed under any other provision of this Act from, or in calculating, the assessable income derived by the elector company or any other company—
- “(i) Of or in respect of that amount so allowed as a deduction under that paragraph; or
 - “(ii) Of or in respect of the specified development expenditure in relation to which that amount has been so allowed as a deduction, except to the extent (if any) that that specified development expenditure incurred by the protected petroleum mining company exceeds the amount, or, as the case may be, the aggregate of all such amounts so allowed as a deduction; or
 - “(iii) Except as expressly provided in this section, by way of depreciation in respect of any asset that the protected petroleum mining company acquires or becomes possessed of as a result of the specified development expenditure in relation to which the amount has been so allowed as a deduction:
- “(j) Where a deduction has been allowed, under paragraph (c)(ii) of this subsection, from the assessable income derived in any income year by the elector company, and the protected petroleum mining company has not, on or before the last day of the period of the 4 income years immediately succeeding the year of election (that last day being referred to hereinafter in this subsection as ‘the development day’), commenced to incur, in the performing of the specified development work with expedition and in accordance with good oil and gas-field practice, the specified development expenditure,—
- “(i) No deduction shall be allowed under this subsection from the assessable income derived by the elector company in any income year ending after the development day:
 - “(ii) The Commissioner shall disallow any deduction which has been allowed under that paragraph from the assessable income, derived by the elector company, in the year of election, and for this purpose the Commissioner may, notwithstanding section 25 of this Act, at any time make a revised assessment in respect of the year of election:
 - “(iii) The balance remaining, immediately before such disallowance by the Commissioner, in the special development reserve account of the elector company shall be reduced by the elector company by an amount equal to the amount so disallowed:

- “(k) Where in any case paragraph (j) of this subsection has applied, and the protected petroleum mining company has not, on or before the last day of the period of, as the case may be, the 5 income years, or the 6 income years, or the 7 income years, or the 8 income years, or the 9 income years immediately succeeding the year of election commenced to incur, in the performing of the specified development work with expedition and in accordance with good oil and gas-field practice, the specified development expenditure, subparagraphs (ii) and (iii) of that paragraph shall apply as if the reference in the said subparagraph (ii) to the year of election were to the income year which ended on the day which immediately preceded, by 48 months, that last day of that period:
- “(l) Where, on or before the development day, the protected petroleum mining company has commenced to incur, in the performing of the specified development work with expedition and in accordance with good oil and gas-field practice, the specified development expenditure,—
- “(i) The elector company shall, from time to time after the development day, enter into development commitment account kept by it for the purposes of this subsection, an amount not exceeding such amount as is from time to time agreed between the Commissioner and the elector company to be the amount by which the amount of the specified development expenditure will increase, or is likely to increase, as a result of circumstances arising after the development day, and to be the amount which the elector company will contribute, or is likely to contribute, for use by the protected petroleum mining company for the purposes of the amount of that increase in the amount of the specified development expenditure; and paragraphs (c)(ii), (d), (e), (f), (g), (h), and (i) of this subsection shall, so far as they are applicable and with any necessary modifications, apply in respect of any amount so entered as if that amount were an amount entered pursuant to paragraph (c)(i) of this subsection and as if the income year first ending after the development day were the year of election:
- “(ii) No deduction shall be allowed under this subsection from the assessable income derived by the elector company in any income year commencing after the last day of the fifth income year immediately succeeding the income year which ended on the development day:
- “(iii) Where the protected petroleum mining company has not, on or before the last day of the fifth income year immediately succeeding the income year which ended on the development day, ceased to incur the specified development expenditure, the protected petroleum mining company shall, for the purposes of this subsection—

tion, be deemed not to have incurred any specified development expenditure after that last day:

- “(iv) Notwithstanding subparagraph (iii) of this paragraph, where the Commissioner is satisfied that the protected petroleum mining company has continued, after the last day of the fifth income year referred to in that subparagraph, to incur the specified development expenditure, and that that continuation results from special circumstances relating to the performance and the completion of the specified development work and incurring of the specified development expenditure, the Commissioner may determine that the said subparagraph (iii) shall apply as if the reference therein to the fifth income year immediately succeeding the income year which ended on the development day were a reference to the sixth income year immediately succeeding the income year which ended on the development day.

“(2) Every notice under paragraph (c) of subsection (1) of this section by which any company elects that that subsection shall apply to it, shall be irrevocable and shall be given to the Commissioner in writing.

“(3) Any—

“(a) Election or appropriation made; or

“(b) Development commitment accounts and special development reserve accounts established; or

“(c) Deductions claimed—

under section 214b(9) of this Act in or for any income year or period ending on or before the 31st day of March 1991 shall have the same force and effect as if they had been made, established, or claimed under this section.”

16 Amendments consequential upon section 15 of this Act

(1) Section 64b(1) of the principal Act is hereby amended by adding to the definition of the term “excepted financial arrangement” the following paragraph:

“(n) A farm-out arrangement, as defined in section 214d(1) of this Act:”.

(2) The principal Act is hereby amended by inserting, after section 106b, the following section:

“106c Deduction for expenditure or loss incurred by persons associated with petroleum miners

“(1) For the purposes of this section, the term ‘associated person’ has the same meaning as in section 214e of this Act, and the terms ‘consideration’, ‘petroleum licence’, ‘petroleum miner’, and ‘petroleum mining operations’ each have the same meaning as in section 214d of this Act.

“(2) Where—

“(a) An associated person of a petroleum miner carries out any petroleum mining operations in the area comprised in a petroleum licence held wholly or partly by the petroleum miner; and

“(b) The associated person carries out those petroleum mining operations under any contract or arrangement for reward; and

“(c) The associated person is not a petroleum miner in respect of those petroleum mining operations,—

the deductions allowable, under section 104 or any other provision of this Act, to the associated person in calculating its assessable income for any income year on account of expenditure or loss incurred by the associated person in carrying out those petroleum mining operations shall be limited to an amount equal to the amount of consideration, received or receivable by the associated person on account of those petroleum mining operations, which constitutes assessable income derived by the associated person.”

- (3) Section 188(9a) of the principal Act (as inserted by section 41 of the Income Tax Amendment Act 1979) is hereby consequentially amended by omitting all the words and paragraphs preceding paragraph (c), and substituting the following words and paragraphs:

“(9a) Subject to the proviso to subsection (5) of section 214b of this Act and subject to subsection (7) of that section, where the Commissioner is satisfied that the whole or part of any loss incurred by a petroleum mining company in the income year ending on the 31st day of March 1991 or any earlier income year (that income year being referred to in this subsection as ‘the year of loss’) arises from the allowance of—

“(a) A deduction of the amount of any exploration expenditure incurred by that company on or before the 30th day of September 1990 in exploring or searching for petroleum in an area that is or is subsequently comprised in a mining licence or, as the case may be, in 2 or more such areas; or

“(b) A deduction of an amount in respect of the amount of any development expenditure incurred by that company on or before the 30th day of September 1990,—

“(i) In respect of its petroleum mining operations carried on in that licence area or, as the case may be, in each of those licence areas; or

“(ii) In relation to its associated petroleum mining operations carried on in association with those petroleum mining operations,—

the following provisions shall apply:”.

- (4) Section 214a(1) of the principal Act (as inserted by section 29 of the Income Tax Amendment Act 1979) is hereby consequentially amended by omitting

from paragraph (m) of the definition of the term “development expenditure” the word “definition”, and substituting the words “definition; or”.

- (5) Section 214a(1) of the principal Act (as so inserted) is hereby further amended by adding to the definition of the term “development expenditure” the following paragraph:

“(n) Any expenditure incurred on or after the 1st day of October 1990:”.

- (6) Section 214a(1) of the principal Act (as so inserted) is hereby further amended by omitting from paragraph (d) of the term “exploration expenditure” the word “petroleum”, and substituting the words “petroleum; or”.

- (7) Section 214a(1) of the principal Act (as so inserted) is hereby further amended by adding to the definition of the term “exploration expenditure” the following paragraph:

“(e) Any expenditure incurred on or after the 1st day of October 1990:”.

- (8) Section 214a(4) of the principal Act (as so inserted) is hereby further amended by inserting, after the words “any money to the payee company”, the words “before the 1st day of October 1990”.

- (9) Section 214b of the principal Act (as inserted by section 29 of the Income Tax Amendment Act 1979) is hereby consequentially amended by repealing subsection (1), and substituting the following subsection:

“(1) Notwithstanding anything in this Act, this section shall apply to petroleum mining companies with respect to—

“(a) Expenditure incurred or deemed to be incurred, and income derived or deemed to be derived, on or before the 30th day of September 1990; and

“(b) Sales and deemed sales of licence interests and associated assets made on or before the 30th day of September 1990.”

- (10) Section 214b of the principal Act (as so inserted) is hereby further amended—

(a) By inserting in subsection (5), after the words “in any income year”, the words “ending on or before the 31st day of March 1991 and any corresponding income years”:

(b) By omitting from subsection (6) the words “in any income year,”, and substituting the words “in the income year ending on the 31st day of March 1991 or any earlier income year,”:

(c) By omitting from subsection (7) the words “where in any income year”, and substituting the words “where in the income year ending on the 31st day of March 1991 or any earlier income year”:

(d) By inserting in subsection (9), after the words “the following provisions shall apply”, the words “to any election or appropriation made to any development commitment accounts and special development reserve accounts established, or to any deductions claimed in or for any income year or period ending on or before the 31st day of March 1991”:

- (e) By omitting from subsection (12) the words “in any income year”, and substituting the words “in the income year ending on the 31st day of March 1991 or any earlier income year”:
 - (f) By omitting from subsection (13) the words “in any income year”, and substituting the words “in the income year ending on the 31st day of March 1991 or any earlier income year”:
 - (g) By inserting in subsection (14), after the words “is subsequently transferred”, the words “on or before the 30th day of September 1990”:
 - (h) By inserting in subsection (15), after the words “petroleum mining company has”, the words “on or before the 30th day of September 1990”:
 - (i) By inserting in subsection (16), after the words “disposal by a petroleum mining company”, the words “on or before the 30th day of September 1990”:
 - (j) By omitting from subsection (17) the words “in any income year”, and substituting the words “in the income year ending on the 31st day of March 1991 or any earlier income year”:
 - (k) By inserting in subsection (18) after the words “the petroleum mining company”, the words “on or before the 30th day of September 1990”:
 - (l) By inserting in paragraphs (a) and (b) of subsection (19), after the words “petroleum mining company has”, the words “on or before the 30th day of September 1990”:
 - (m) By inserting in paragraph (b) of subsection (23), after the words “that company”, the words “on or before the 30th day of September 1990”:
 - (n) By omitting from subsection (25) the words “an income year”, and substituting the words “the income year ending on the 31st day of March 1991 or any earlier income year”.
- (11) Section 214c of the principal Act (as inserted by section 29 of the Income Tax Amendment Act 1979) is hereby consequentially amended by repealing subsection (1), and substituting the following subsection:
- “(1) Notwithstanding anything in this Act, this section shall apply with respect to—
- “(a) Expenditure incurred or deemed to be incurred, and income derived or deemed to be derived, on or before the 30th day of September 1990; and
 - “(b) Sales and deemed sales of licence interests and associated assets made on or before the 30th day of September 1990.”
- (12) Section 214c(5)(b) of the principal Act (as so inserted) is hereby consequentially amended by omitting the words “any income year”, and substituting the words “the income year ending on the 31st day of March 1991 or any earlier income year”.
- (13) Section 218(1a) of the principal Act (as inserted by section 44 of the Income Tax Amendment Act 1979) is hereby consequentially amended by omitting

from subsection (1a) the words “this section shall, with any necessary modifications, apply also to petroleum mining companies as if—”, and substituting the words “this section shall apply also, in relation to any company selling or otherwise disposing of any share in a petroleum mining company on or before the 30th day of September 1990, with any necessary modifications, as if—”.

- (14) Section 245j(7) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby consequentially amended by adding the following paragraph:

“(d) Sections 214d to 214l, and section 214n.”

- (15) Section 245j(22) of the principal Act (as so inserted) is hereby consequentially amended by omitting the expression “214a”, and substituting the expression “215”.

- (16) Section 245j of the principal Act (as so inserted) is hereby consequentially amended by inserting, after subsection (22), the following subsection:

“(22a) Sections 214d to 214l, and section 214n of this Act shall apply, with any necessary modifications, including those required by section 214m of this Act, where a controlled foreign company carries on petroleum mining activities outside New Zealand of substantially the same nature as petroleum mining activities governed by those sections.”

17 Interpretation—trusts

- (1) Section 226(4) of the principal Act (as substituted by section 11 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the expression “section 245c(3)”, and substituting the expression “section 245c(4)”.
- (2) Section 226 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (10), the following subsection:

“(10a) Where, on or after the 1st day of April 1990, a trust that is deemed for the purposes of this Act to be a company becomes a superannuation fund, the trust shall for the purposes of this Act be deemed to have been wound up on the date that it becomes a superannuation fund.”

18 Trusts settled by persons before becoming resident

Section 226a of the principal Act (as inserted by section 11 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting in subsections (2)(b) and (3)(b), after the words “trustee of the trust”, in each case, the words “on or”.

19 Income assessable to beneficiaries

- (1) Section 227(2) of the principal Act (as substituted by section 11 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the words “that income be”, the words “assessable and”.

- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

20 Trustee income

- (1) Section 228 of the principal Act (as substituted by section 11(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after subsection (2b) (as inserted by section 15(2) of the Income Tax Amendment Act 1989) the following subsections:

“(2c) Notwithstanding any other provision of this Act, where in respect of any income year—

“(a) Any funds of a superannuation fund (hereafter in this section referred to as the first superannuation fund) are invested in whole or in part in another superannuation fund (hereafter in this section referred to as the second superannuation fund); and

“(b) The first superannuation fund has incurred expenditure in respect of developing, marketing, selling, promoting, or advertising for members to the fund, or in respect of management of the fund, not being expenditure incurred in acquiring any plant, machinery, equipment, land, or building, or expenditure which is not income in the hands of the recipient,—

that expenditure may, if and to the extent to which the first superannuation fund so elects by notice in writing given to the Commissioner within the time within which that fund is required to furnish a return of its income for that income year, or within such further time as the Commissioner may allow, be treated as if it were expenditure incurred by the second superannuation fund in gaining or producing assessable income, and for this purpose—

“(c) The expenditure shall be treated as if it were incurred by the second superannuation fund on the day on which it was incurred by the first superannuation fund; and

“(d) That expenditure may be deducted from the assessable income (other than non-resident withholding income of any of the kinds to which section 318 of this Act applies) derived by the second superannuation fund in the relevant income year of the second superannuation fund so far as the balance of that assessable income (after deduction of any loss that the second superannuation fund is entitled to deduct under section 188 of this Act) extends; and

“(e) The amount of the expenditure so deducted from the assessable income derived by the second superannuation fund shall be deemed not to be incurred by the first superannuation fund.”

- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

21 Calculation of control interest

Section 245c(7) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the expression “section 245b of this Act”, and substituting the expression “subsection (3) of this section”.

22 Persons not required to calculate attributed foreign income and loss

- (1) Section 245f(1) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “be required to”.
- (2) Section 245f(1) of the principal Act (as so amended) is hereby further amended by omitting from paragraph (a) the words “resident outside New Zealand”, and substituting the words “not resident in New Zealand”.
- (3) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

23 Branch equivalent income calculation

- (1) Section 245j of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting in subsections (3) and (16), after the word “country”, the words “or territory”.
- (2) Section 245j(4) of the principal Act (as so inserted) is hereby amended by omitting the words “be assumed to”.

24 Foreign tax credits

Section 245k(1) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the words “any other country”, the words “or territory”.

25 Changes of residence of controlled foreign companies

Section 245o(2) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the word “became”, and substituting the words “ceased to be”.

26 Foreign investment fund income and losses

- (1) Section 245r(1) of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by repealing the definition of the term “excepted financial arrangement”.
- (2) Section 245r(1) of the principal Act (as so inserted) is hereby further amended—
 - (a) By omitting from the definition of the term “foreign entity” the words “where policies of life insurance on human life are issued by that natural person (but only in that natural person’s capacity as issuer of

such policies)", and substituting the words "where that natural person is the insurer in respect of policies of life insurance offered and entered into outside New Zealand (but only in that natural person's capacity as insurer)":

- (b) By omitting from the definition of the term "interest in a foreign personal savings scheme" the words "issued by a foreign entity (not being a policy of life insurance issued by that entity as part of a business of life insurance carried on in New Zealand to which business section 204 of this Act applies)", and substituting the words "of which a foreign entity is the insurer (not being a policy of life insurance offered or entered into in New Zealand in respect of which policy the foreign entity is subject to the provisions of sections 205 to 205f of this Act)".
- (3) Section 245r(11) of the principal Act (as so inserted) is hereby amended by omitting the words "resident outside New Zealand", and substituting the words "not resident in New Zealand".
- (4) Section 245r(14) of the principal Act (as so inserted) is hereby amended by adding the following proviso:

"Provided that where this subsection applies and to the extent to which the interest was held by that person on the last day of the preceding income year, no amount shall be included in item c of the calculation required by subsection (3) of this section."
- (5) Subsections (2) and (4) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

27 Cases where assessable income calculations cannot be undertaken

Section 245v of the principal Act (as inserted by section 24 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting from subsection (1)(b) the words "an interest of that taxpayer in a controlled foreign company or a control interest or an income interest of that person in a foreign investment fund", and substituting the words "a control interest or an income interest of that person in a controlled foreign company or an interest of that person in a foreign investment fund".

28 Application of Part relating to non-resident withholding tax

- (1) Section 310(2) of the principal Act (as amended by section 34(2)(c) of the Income Tax Amendment Act (No. 2) 1982) is hereby amended by repealing paragraph (e).
- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

29 Interpretation—resident withholding tax deductions

- (1) Section 327a of the principal Act (as inserted by section 12(1) of the Income Tax Amendment Act (No. 2) 1989) is hereby amended by inserting, after paragraph (e) of the definition of the term “exempt interest”, the following paragraph:

“(ea) Interest payable on National Development Bonds or New Zealand Savings Certificates to the extent that that interest is exempt from tax under section 61(4) of this Act; or”.

- (2) Subsection (1) of this section shall apply to interest paid on or after the 1st day of August 1990.
- (3) Where—
- (a) A deduction of resident withholding tax has been made in accordance with the provisions of Part IXa of the principal Act from a payment of interest made on or after the 1st day of April 1990 and before the 1st day of August 1990 in respect of any National Development Bond or New Zealand Savings Certificate; and
 - (b) The amount so deducted is paid to the Commissioner; and
 - (c) All or part of that interest is exempt from tax under section 61(14) of the principal Act—

the Commissioner shall pay by way of refund to the person deriving the interest an amount equal to the amount of resident withholding tax deducted from that part of the interest which is so exempt; and the provisions of subsections (2) to (6) of section 327g of the principal Act shall, with any necessary modifications, apply in respect of any refund of such an amount as if it were a refund of any excess deduction referred to in subsection (1) of that section.

30 Determination of other income

- (1) Section 336b(1) of the principal Act (as inserted by section 17 of the Income Tax Amendment Act 1984 and amended by section 29 of the Income Tax Amendment Act 1986 and section 16(11) of the Social Welfare (Transitional Provisions) Act 1990) is hereby amended by omitting from item a of the formula the words “from the Life Insurance Fund of a company to which section 204”, and substituting the words “to which section 61(59)”.
- (2) Section 336b(2) of the principal Act (as so inserted and amended) is hereby amended by omitting item f and item h of the formula, and substituting, respectively, the following items:

“f is the number of days in respect of which that guaranteed retirement income was payable to the guaranteed retirement income earner in respect of the income year; and”:

“h is the number of days in the income year.”

- (3) This section shall apply to the guaranteed retirement income earner surcharge in respect of the other income of every guaranteed retirement income earner for the income year commencing on the 1st day of April 1990 and for every subsequent year.

31 Determination of specified exemption

- (1) Section 336ba(1)(a) of the principal Act (as inserted by section 3(1) of the Income Tax Amendment Act 1985 and amended by section 9(1) of the Income Tax Amendment Act (No. 3) 1988 and section 16(11) of the Social Welfare (Transitional Provisions) Act 1990) is hereby amended by repealing items a and b of the formula, and substituting the following items:

“a is the number of days in respect of which that guaranteed retirement income was payable to the guaranteed retirement income earner in respect of the income year; and

“b is the number of days in the income year.”

- (2) Section 336ba(1)(b) of the principal Act (as substituted by section 69(1) of the Income Tax Amendment Act (No. 5) 1988 and amended by section 16(11) of the Social Welfare (Transitional Provisions) Act 1990) is hereby amended by repealing items d and e of the formula, and substituting the following items:

“d is the number of days in respect of which that guaranteed retirement income was payable to the guaranteed retirement income earner in respect of the income year; and

“e is the number of days in the income year.”

- (3) Section 336ba(1)(ba) of the principal Act (as so substituted and amended) is hereby amended by repealing items j and h of the formula, and substituting the following items:

“j is the number of days in respect of which that guaranteed retirement income was payable to the guaranteed retirement income earner in respect of the income year; and

“h is the number of days in the income year.”

- (4) Section 336ba(1)(c) of the principal Act (as substituted by section 2(1) of the Income Tax Amendment Act (No. 4) 1985 and amended by section 9(1) of the Income Tax Amendment Act (No. 3) 1988, section 69(2) of the Income Tax Amendment Act (No. 5) 1988, and section 16(11) of the Social Welfare (Transitional Provisions) Act 1990) is hereby amended by repealing items g and h of the formula, and substituting the following items:

“g is the number of days in respect of which that guaranteed retirement income was payable to the guaranteed retirement income earner in respect of the income year; and

“h is the number of days in the income year.”

- (5) Section 336ba(1)(d) of the principal Act (as so substituted and amended) is hereby amended by inserting, after subparagraph (ii), the following subparagraph:

“(iia) Where that guaranteed retirement income earner is married and where the spouse of the guaranteed retirement income earner is not entitled to receive guaranteed retirement income and where the spouse of the guaranteed retirement income earner has not been a patient in a hospital (being a hospital of the type referred to in paragraph (c) of this subsection) for a period exceeding 13 weeks, an amount of exemption calculated in accordance with the formula in paragraph (ba) of this subsection.”.

- (6) Section 336ba(1)(d)(iii) of the principal Act (as so substituted and amended) is hereby further amended by inserting, after the expression “subparagraph (ii)”, the expression “or subparagraph (iia)”.
- (7) This section shall apply to the guaranteed retirement income earner surcharge in respect of the other income of every guaranteed retirement income earner for the income year commencing on the 1st day of April 1990 and for every subsequent year.

32 Interpretation—fringe benefit tax

- (1) Section 336n(1) of the principal Act (as inserted by section 34(1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by inserting, after the definition of the term “benefit”, the following definition:

“‘Contribution’, in relation to an employer of an employee, includes any contribution whether made directly, or indirectly by reimbursement through another person.”.

- (2) Section 336n(1) of the principal Act (as so inserted) is hereby further amended by repealing the definitions of the terms “contribution to a designated fund” and “contribution to a non-designated fund”.
- (3) Section 336n(1) of the principal Act (as so inserted) is hereby further amended—
- (a) By omitting the word “and” where it appears at the end of subparagraph (ii) of paragraph (a) of the definition of the term “emergency call”, and substituting the word “or”;
- (b) By adding after that subparagraph the following subparagraph:
- “(iii) The services are emergency services relating to the health or safety of any person; and”:
- (c) By inserting at the beginning of paragraph (c) of the definition of the term “emergency call” the words “Except in a case to which subparagraph (iii) of paragraph (a) of this definition applies,”.
- (4) Section 336n(1) of the principal Act (as so inserted) is hereby further amended by repealing paragraphs (da) and (db) of the definition of the term “fringe benefit”, and substituting the following paragraphs:

- “(da) In relation to an employer of an employee, any contribution to any sick, accident, or death benefit fund (as defined in section 60(1) of this Act) which has been approved by the Commissioner for the purposes of section 61(41) of this Act:
- “(db) In relation to an employer of an employee, any contribution to any insurance fund of a friendly society:”.
- (5) Section 336n(1) of the principal Act (as so inserted) is hereby further amended by inserting, after paragraph (dd) in the definition of the term “fringe benefit”, the following paragraph:
- “(de) Any contribution, in relation to an employer of an employee, to any superannuation scheme on or after the 15th day of December 1989”.
- (6) Section 336n(1) of the principal Act (as so inserted and as amended by section 34(1)(a) of the Income Tax Amendment Act 1986) is hereby further amended by repealing paragraph (h) of the term “fringe benefit”.
- (7) Section 336n of the principal Act (as so inserted) is hereby further amended by adding the following subsection:
- “(9) Where any holder (as that term is defined in section 204 of this Act) of a policy of life insurance offered or entered into in New Zealand by a person (hereafter in this subsection referred to as the ‘life insurer’) carrying on a business of providing life insurance owes any loan to that life insurer, this Part of this Act shall apply as if—
- “(a) That life insurer were an employer of that holder in relation to that loan; and
- “(b) That holder were an employee of that life insurer in relation to that loan; and
- “(c) That loan were an employment related loan.”
- (8) Section 17(1) and (6) of the Income Tax Amendment Act (No. 2) 1988 and section 11(1) and (2) of the Income Tax Amendment Act (No. 3) 1988 are hereby consequentially repealed.
- (9) Section 34(1)(a) of the Income Tax Amendment Act 1986 is hereby consequentially repealed.
- (10) Subsections (1), (5), and (8) of this section shall apply with respect to fringe benefit tax on fringe benefits provided or granted on or after the 15th day of December 1989.
- (11) Subsections (3), (6), and (9) of this section shall apply to fringe benefits provided or granted on or after the 1st day of October 1990.
- (12) Subsection (7) of this section shall apply with respect to any loan owing on or after the 1st day of October 1990.

33 Value of fringe benefit

- (1) Section 336o of the principal Act (as inserted by section 34(1) of the Income Tax Amendment Act (No. 2) 1985) is hereby amended by repealing subsection (3b) (as inserted by section 18 of the Income Tax Amendment Act (No. 2) 1988), and substituting the following subsection:

“(3b) For the purposes of this Part of this Act, the value of any fringe benefit, being a benefit that consists of any contribution to a superannuation scheme, or to any fund as specified in paragraphs (da) and (db) of the definition of the term ‘fringe benefit’, made in any quarter by an employer, shall be an amount equal to the amount that, in relation to the contribution, is the amount of the contribution made by the employer.”

- (2) This section shall apply with respect to fringe benefit tax on fringe benefits provided or granted on or after the 15th day of December 1989.

34 Fringe benefit tax imposed

- (1) Section 336s of the principal Act is hereby amended by repealing subsection (1).
- (2) Section 19 of the Income Tax Amendment Act (No. 2) 1988 and section 13 of the Income Tax Amendment Act (No. 3) 1988 are hereby consequentially repealed.
- (3) This section shall apply with respect to fringe benefit tax on fringe benefits provided or granted on or after the 15th day of December 1989.

35 Section renumbered

The section 366zl inserted after section 336zk of the principal Act by section 35(1) of the Income Tax Amendment Act (No. 2) 1989 is hereby renumbered as section 336zl.

36 Interpretation—pay period taxpayers

- (1) Section 356(2) of the principal Act (as substituted by section 15(1) of the Income Tax Amendment Act (No. 3) 1989) is hereby amended by inserting, after the words “if, in that year, the taxpayer”, the words “was a natural person who”.
- (2) Notwithstanding section 9 of the principal Act, the following taxpayers, unless they are required to furnish a return of income pursuant to section 9a of the principal Act (which relates to persons allowed a family support credit of tax), are not required to furnish a return of income for the income year ending on the 31st day of March 1990:
- (a) Any taxpayer who—
- (i) During the period from the 1st day of April 1989 to the 30th day of September 1989 (both dates inclusive) derived no income other than an amount of interest or dividends totalling \$100 or less; and

- (ii) During the period from the 1st day of October 1989 to the 31st day of March 1990 (both dates inclusive) derived no income other than an amount of resident withholding income totalling \$200 or less from which a deduction of resident withholding tax has been made:
- (b) Any taxpayer who—
 - (i) During the period from the 1st day of April 1989 to the 30th day of September 1989 (both dates inclusive) derived an amount of interest or dividends not exceeding \$100 in total; and
 - (ii) During the period from the 1st day of October 1989 to the 31st day of March 1990 (both dates inclusive) derived an amount of resident withholding income totalling \$200 or less from which a deduction of resident withholding tax has been made; and
 - (iii) But for deriving any amount referred to in subparagraph (i) or subparagraph (ii) of this subsection would, in respect of the income year ending on the 31st day of March 1990, have been a pay period taxpayer within the meaning of section 356 of the principal Act (as that section applied before its repeal by section 15(1) of the Income Tax Amendment Act (No. 2) 1989).
- (3) For the purposes of subsection (2) of this section,—
 - (a) The terms “resident withholding income” and “resident withholding tax” have the same meaning as in section 327a of the principal Act; and
 - (b) Where the amount of resident withholding tax deduction required to be made in respect of any dividends is nil by virtue of the application of the formula contained in section 327c(1)(b) of the principal Act, a tax deduction shall be deemed to have been made in respect of that dividend at the time of payment of that dividend.
- (4) Nothing in subsection (2) of this section prevents a taxpayer from furnishing a return of income for the purpose of having the amount of income tax in respect of the income for the year ending on the 31st day of March 1990 assessed under Part IV of the principal Act.

37 Determination of assessable income

- (1) Section 374b(1)(a) of the principal Act (as inserted by section 17(1) of the Income Tax Amendment Act (No. 2) 1986) is hereby amended by inserting, after the expression “paragraphs (13), (14), (15),”, the expression “(36),”.
- (2) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

33 Amendment of term “residual income tax”

- (1) Section 375 of the principal Act (as substituted by section 17(1) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by inserting, after paragraph (i) of the definition of the term “residual income tax” (as inserted by section 53 of the Income Tax Amendment Act (No. 5) 1988), the following paragraph:

“(ia) The amount of any credit deducted from or set off against that income tax in accordance with section 394zzzc or section 394zzzh of this Act.”.

- (2) Notwithstanding anything in Part XII of the principal Act, where any life insurer (as defined in section 204 of the principal Act) transfers property to the trustee of a registered superannuation scheme pursuant to an approved arrangement (as defined in section 206(1) of the principal Act), in respect of the income year in which the transfer occurs and the immediately succeeding income year the trustee of the registered superannuation scheme shall for the purposes of the principal Act be deemed to be a person to whom section 382(2) of the principal Act applies and shall be liable to provisional tax accordingly.
- (3) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

39 Taxpayer to calculate amount of provisional tax, subject to adjustment by Commissioner

- (1) Section 379 of the principal Act (as substituted by section 17(1) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by adding the following subsection:

“(5) Where any person carrying on a business of providing life insurance is liable to income tax in accordance with sections 204 to 205f of this Act, that person shall at the time of making payment of each instalment of provisional tax (being an instalment the amount of which has been calculated by that person and not by the Commissioner) provide to the Commissioner, in such form as the Commissioner may approve, details of the calculation of that instalment of provisional tax, including in particular details of the extent to which the amount of that instalment is referable to income tax to which that person is liable in accordance with each of paragraph (a) (which relates to life insurer base income) and paragraph (b) (which relates to policyholder base income) of section 204a of this Act.”

- (2) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.

40 Interpretation—imputation, etc.

- (1) Section 394a(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the definition of the term “paid”, the following definition:

“‘Policyholder credit account’ and ‘policyholder credit account company’ have the meanings assigned to those terms by section 394zzy of this Act.”.

- (2) Section 394a(1) of the principal Act (as so inserted) is hereby further amended—
- (a) By omitting the expression “and XIIC” (where it occurs at the beginning of that provision), and substituting the expression “XIIC, and XIID”:
- (b) By omitting the expression “and 394zzm” (where it occurs at the end of that provision), and substituting the expression “394zzm, and 394zzy”.
- (3) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

41 Companies required to maintain imputation credit account

- (1) Section 394b of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988 and amended by section 61(1) of the Income Tax Amendment Act 1989) is hereby amended—
- (a) By repealing paragraph (e) of subsection (2), and omitting the word “or” immediately preceding that paragraph:
- (b) By repealing subsection (4).

- (2) Section 394b(2) of the principal Act (as so inserted and amended) is hereby amended by adding the word “or” and the following paragraph:

“(f) A local authority (not being a local authority trading enterprise as defined in section 594b of the Local Government Act 1974 or a port company as defined in section 2 of the Port Companies Act 1988).”

- (3) Subsection (1) of this section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.
- (4) Subsection (2) of this section shall be deemed to have come into force on the 1st day of April 1989.

42 Credits arising to imputation credit account

- (1) Section 394d(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by repealing subparagraph (ii) of paragraph (a), and substituting the following subparagraph:

“(ii) In the case of a company carrying on a business of providing life insurance to which section 205 of this Act applies, income tax that is paid in respect of policyholder income referred to in that section.”.

- (2) Section 394d(1) of the principal Act (as so inserted) is hereby further amended by inserting, at the beginning of paragraph (f), the words “Subject to subsection (3) of this section,”.
- (3) Section 394d(1) of the principal Act (as so inserted) is hereby further amended by adding the following paragraph:
- “(1) Any amount forming all or part of a credit balance in the company’s policyholder credit account that the company elects in accordance with section 394zzzc of this Act to be a credit to the company’s imputation credit account.”
- (4) Section 394d(2) of the principal Act (as so inserted) is hereby amended by adding the following paragraph:
- “(h) In the case of a credit referred to in paragraph (1) of that subsection, on the date that the amount of the credit arises as a debit to the company’s policyholder credit account pursuant to section 394zzzc of this Act.”
- (5) Section 394d of the principal Act (as so inserted) is hereby further amended by adding the following subsection:
- “(3) For the purposes of subsection (1)(f) of this section, a credit shall not arise to the extent that, in accordance with section 394zn(2) of this Act, payment of all or part of a dividend withholding payment is satisfied by reducing a loss.”
- (6) Subsections (1), (3), and (4) of this section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.
- (7) Subsections (2) and (5) of this section shall apply with respect to the imputation year commencing on the 1st day of April 1988 and every subsequent imputation year.

43 Debits arising to imputation credit account

- (1) Section 394e(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (a), the following paragraphs:
- “(aa) In the case of a company carrying on a business of providing life insurance to which sections 204 to 205f of this Act apply, the amount of any credit balance of the company’s imputation credit account which the company elects in accordance with section 394fa of this Act shall be a credit to the company’s policyholder credit account:
- “(ab) In the case of a company carrying on a business of providing life insurance to which sections 204 to 205f of this Act apply which, in carrying on that business, is paid a dividend—
- “(i) In respect of which that company is exempt from income tax by virtue of the application of section 63(2) of this Act; and

“(ii) In respect of which that company is not liable to deduct an amount by way of dividend withholding payment,—
an amount calculated in accordance with subsection (2a) of this section:”.

- (2) Section 394e(2) of the principal Act (as so inserted) is hereby amended by inserting, after paragraph (a), the following paragraphs:

“(aa) In the case of a debit referred to in paragraph (aa) of that subsection, on the date the company makes the election in accordance with section 394fa of this Act:

“(ab) In the case of a debit referred to in paragraph (ab) of that subsection, on the date the relevant dividend is paid:”.

- (3) Section 394e of the principal Act (as so inserted) is hereby amended by inserting, after subsection (2), the following subsections:

“(2a) The amount of any debit arising to a company’s imputation credit account in respect of a dividend referred to in subsection (1)(ab) of this section shall be an amount equal to 18 percent of whichever is the lesser of the following (but shall never be less than zero):

“(a) The aggregate of—

“(i) The amount of the dividend; and

“(ii) The amount of any imputation credit attached to the dividend; and

“(iii) The amount of any dividend withholding payment credit attached to the dividend:

“(b) An amount equal to item a of the formula set out in paragraph (c) of this subsection:

“(c) An amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the amount of policyholder income or policyholder loss which would be calculated in accordance with sections 205 to 205f of this Act in respect of the company and the income year of the company in which the dividend is paid if the only policies of life insurance for which that company is the insurer were those policies of which the holder (or, in the case of joint holders, any one of those holders) is a person resident outside New Zealand; and

b is, subject to subsection (2b) of this section, the amount of policyholder income or policyholder loss calculated in accordance with sections 205 to 205f of this Act in respect of the company and the income year of the company in which the dividend is paid; and

c is the aggregate of the amount of the dividend and any imputation credit and any dividend withholding payment credit attached to the dividend.

“(2b) Where item b of the formula set out in subsection (2a) of this section is a nil amount or (in the case of a policyholder loss) a negative amount, that item shall instead be an amount equal to item a in that formula.”

(4) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

44 Transfer by life insurance company of credit balance to policyholder credit account

(1) The principal Act is hereby amended by inserting, after section 394f (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988), the following section:

“394fa

“(1) Where an imputation credit account company is also a policyholder credit account company, the company may elect that all or any part of the credit balance (if any) in the company’s imputation credit account at the time of election shall be a credit to the company’s policyholder credit account and a debit to its imputation credit account.

“(2) A company shall make an election under this section by recording the amount in respect of which the election is made—

“(a) As a debit in the company’s imputation credit account; and

“(b) As a credit in its policyholder credit account.

“(3) Where a company that may make an election under subsection (1) of this section furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, then—

“(a) Where and to the extent to which, in respect of any imputation year,—

“(i) Any credit has arisen to the company’s imputation credit account in accordance with paragraph (a) of section 394d(1) of this Act on or before the last day of that imputation year and during the accounting year in which the last day of that imputation year falls, by virtue of any amount of provisional tax paid by the company in accordance with Part XII of this Act; and

“(ii) The amount of that credit has not, on or before the last day of that imputation year, been cancelled out by any subsequent debit arising in accordance with paragraph (b) of section 394e(1) of this Act, by virtue of any refund of provisional tax paid during that accounting year; and

“(iii) The company has not, on or before the last day of that imputation year, elected in accordance with this section that the amount of that credit shall be transferred to the company’s policyholder credit account,—

the company shall be deemed to have so elected on the last day of that imputation year:

“(b) Where and to the extent to which, in respect of any imputation year,—

“(i) Any credit has arisen to the company’s imputation credit account in accordance with paragraph (f) of section 394d(1) of this Act on or before the last day of that imputation year and during the accounting year in which the last day of that imputation year falls; and

“(ii) The amount of that credit has not, on or before the last day of that imputation year, been cancelled out by any subsequent debit arising in accordance with paragraph (e) of section 394e(1) of this Act, by virtue of any refund of dividend withholding payment paid during that accounting year; and

“(iii) The company has not, on or before the last day of that imputation year, elected in accordance with this section that the amount of that credit shall be transferred to the company’s policyholder credit account,—

the company shall be deemed to have so elected on the last day of that imputation year:

“(c) Where and to the extent to which in any imputation year any credit has arisen to the company’s imputation credit account in accordance with paragraph (d) or paragraph (e) of section 394d(1) of this Act, then notwithstanding any provision of this section the company may not elect that any part of that credit shall be transferred to that company’s policyholder credit account on any day falling after the last day of that imputation year and during the accounting year in which the last day of that imputation year falls.

“(4) For the purposes of paragraphs (a)(ii) and (b)(ii) of subsection (3) of this section, the amount of any debit referred to in those paragraphs shall be offset against the amount of any credits referred to in those paragraphs in the order in which the credits arise.”

(2) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

45 Annual imputation return

(1) Section 394j of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (e), the following paragraph:

“(ea) Where the company is a policyholder credit account company,—

“(i) The opening balance and closing balance of the company’s policyholder credit account for the imputation year:

“(ii) The amount and source of all credits and debits to the company’s policyholder credit account for the imputation year that have arisen in accordance with section 394zzzb of this Act.”

- (2) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

46 Limits on refund of tax

- (1) Section 394m(6) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by adding the words “or any refund of tax paid in relation to which no credit arose to the company’s imputation credit account by virtue of section 394d(1)(a) of this Act”.
- (2) This section shall come into force on the 1st day of April 1990.

47 Interpretation—dividend withholding payments, etc.

- (1) Section 394zk(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting from the definition of the term “allocation deficit debit” the expression “section 394zy(4)”, and substituting the expression “subsection (4) or subsection (4a) of section 394zy”.
- (2) Section 394zk(1) of the principal Act (as so inserted) is hereby further amended by omitting the expression “and 394zzm” (where it occurs at the end of that provision), and substituting the expression “, 394zzm, and 394zzy”.
- (3) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

48 Company may elect to maintain dividend withholding payment account

- (1) Section 394zt(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “(to the extent that it is not a company to which section 204 of this Act applies)”.
- (2) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

49 Debits arising to dividend withholding payment account

- (1) Section 394zw(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) In the case of a company carrying on a business of providing life insurance to which sections 204 to 205f of this Act apply, the amount of any credit balance of the company’s dividend withholding payment account that the company elects in accordance with section 394zxa of this Act shall be a credit to the company’s policyholder credit account.”.

(2) Section 394zw(1) of the principal Act (as so inserted) is hereby further amended by omitting from paragraph (d) the expression “section 394zy(4)”, and substituting the expression “section 394zy”.

(3) Section 394zw(1) of the principal Act (as so inserted) is hereby further amended by inserting, after paragraph (d), the following paragraph:

“(da) The amount of any allocation deficit debit arising in the account pursuant to section 394zy(4a) of this Act.”.

(4) Section 394zw(2) of the principal Act (as so inserted) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) In the case of a debit referred to in paragraph (aa) of that subsection, on the date the company makes the election in accordance with section 394zxa of this Act.”.

(5) Section 394zw(2) of the principal Act (as so inserted) is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) In the case of a debit referred to in paragraph (da) of that subsection, at the end of the imputation year in respect of which the allocation deficit debit arises.”.

(6) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

50 Transfer by life insurance company of credit balance to policyholder credit account

(1) The principal Act is hereby amended by inserting, after section 394zx (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988), the following section:

“394zxa

“(1) Where a dividend withholding payment account company is also a policyholder credit account company, the company may elect that all or any part of the credit balance (if any) in the company’s dividend withholding payment account at the time of election shall be a credit to the company’s policyholder credit account and a debit to its dividend withholding payment account.

“(2) A company shall make an election under this section by recording the amount in respect of which the election is made—

“(a) As a debit in the company’s dividend withholding payment account; and

“(b) As a credit in its policyholder credit account.

“(3) Where a company that may make an election under subsection (1) of this section furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, then—

“(a) Where and to the extent to which, in respect of any imputation year, —

“(i) Any credit has arisen to the company’s dividend withholding payment account in accordance with paragraph (a) of section 394zv(1) of this Act on or before the last day of that imputation year and during the accounting year in which the last day of that imputation year falls; and

“(ii) The amount of that credit has not, on or before the last day of that imputation year, been cancelled out by any subsequent debit arising in accordance with paragraph (c) of section 394zw of this Act, by virtue of any refund of dividend withholding payment paid during that accounting year; and

“(iii) The company has not, on or before the last day of that imputation year, elected in accordance with this section that the amount of that credit shall be transferred to the company’s policyholder credit account,—

the company shall be deemed to have so elected on the last day of that imputation year:

“(b) Where and to the extent to which in any imputation year any credit has arisen to the company’s dividend withholding payment account in accordance with paragraph (b) of section 394zv(1) of this Act, then notwithstanding any provision of this section the company may not elect that any part of that credit shall be transferred to the company’s policyholder credit account on any day falling after the last day of that imputation year and during the accounting year in which the last day of that imputation year falls.

“(4) For the purposes of subparagraph (ii) of subsection (3)(a) of this section, the amount of any debit referred to in that subparagraph shall be offset against the amount of any credits referred to in that subparagraph in the order in which the credits arise.”

(2) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

51 Allocation rules for dividend withholding payment credits

(1) Section 394zy of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after subsection (4), the following subsections:

“(4a) Where, in respect of any imputation year and any company that is a policyholder credit account company, the dividend withholding payment credit trans-

fer fraction calculated in accordance with subsection (4b) of this section is less than the imputation credit transfer fraction calculated in accordance with subsection (4c) of this section,—

“(a) There shall (separate from and additional to any allocation deficit debit arising to the company’s account under subsection (4) of this section) arise an allocation deficit debit in the company’s dividend withholding payment account in respect of that difference; and

“(b) The amount of that allocation deficit debit shall be equal to the amount that would require to be added to item a of the formula set out in subsection (4b) of this section, in relation to the imputation year, in order for the fraction calculated in accordance with that formula to be equal to the fraction calculated in accordance with the formula set out in subsection (4c) of this section.

“(4b) For the purposes of subsection (4a) of this section, the dividend withholding payment credit transfer fraction in relation to a company and an imputation year shall be the fraction calculated in accordance with the following formula:

$$\frac{a}{b}$$

where—

a is the aggregate of all amounts of credit balance in the company’s dividend withholding payment account that the company has elected in accordance with section 394zxa of this Act shall be a credit to the company’s policyholder credit account in that imputation year; and

b is the aggregate of all credits to the company’s dividend withholding payment account that have arisen in that imputation year in accordance with section 394zv(1) of this Act.

“(4c) For the purposes of subsection (4a) of this section, the imputation credit transfer fraction in relation to a company and an imputation year shall be the fraction calculated in accordance with the following formula:

$$\frac{e - f}{g}$$

where—

e is the aggregate of all amounts of credit balance in the company’s imputation credit account that the company has elected in accordance with section 394fa of this Act shall be a credit to the company’s policyholder credit account in that imputation year; and

f is the aggregate of all amounts of credit balance in the company’s policyholder credit account that the company has elected in accordance with section 394zzzc of this Act shall be a credit to the company’s imputation credit account in that imputation year; and

g is the aggregate of all credits to the company's imputation credit account that have arisen in that imputation year in accordance with subsection (1) of section 394d of this Act (not being credits that have arisen in accordance with paragraph (1) of that subsection)."

- (2) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

52 Interpretation—branch equivalent tax accounts

- (1) Section 394zzm(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended—
- (a) By omitting from the definition of the term “branch equivalent tax account person” the words “other than a company to which section 204 of this Act applies”:
- (b) By omitting the expression “and 394zk” (where it occurs at the end of the subsection), and substituting the expression “, 394zk, and 394zzy”.
- (2) This section shall apply with respect to the imputation year commencing on the 1st day of April 1990 and every subsequent imputation year.

53 Company may elect to maintain branch equivalent tax account

- (1) Section 394zzn(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “(not being a company to which section 204 of this Act applies)”.
- (2) This section shall come into force on the 1st day of April 1990.

54 Person may elect to maintain branch equivalent tax account

- (1) Section 394zzs(1) of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the words “other than a company to which section 204 of this Act applies”.
- (2) This section shall come into force on the 1st day of April 1990.

55 Credits and debits arising to branch equivalent tax account of person

- (1) Section 394zzu of the principal Act (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by repealing subsections (3)(c), (4)(c), and (5).
- (2) This section shall come into force on the 1st day of April 1990.

56 New Part XIId inserted

- (1) The principal Act is hereby amended by inserting, after Part XIIc (as inserted by section 55(1) of the Income Tax Amendment Act (No. 5) 1988), the following Part:

“PART XIId “Policyholder Credit Accounts

“394zzy Interpretation

“(1) In this Part of this Act, unless the context otherwise requires,—

“‘Policyholder credit account’ means the account to be maintained by a policyholder credit account company or a policyholder credit account person pursuant to section 394zzz or section 394zzze of this Act:

“‘Policyholder credit account company’ means a company that is required by section 394zzz of this Act to maintain a policyholder credit account:

“‘Policyholder credit account person’ means a person (not being a company resident in New Zealand) who, having made an election under subsection (1) of section 394zzze of this Act, is required by subsection of that section to maintain a policyholder credit account.

“Terms defined in sections 394a, 394zk, and 394zzm of this Act have the meanings as so defined.

“(2) Every reference in this Part of this Act to an income year in relation to a taxpayer shall, where the taxpayer furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March, be deemed to be a reference to the accounting year corresponding with that income year, and in every such case this Part of this Act shall, with any necessary modifications, apply accordingly.

“(3) For the purposes of this Part of this Act, the balance of a policyholder credit account at any time shall be ascertained by calculating the difference in amount between the aggregate of credits and the aggregate of debits to the account existing at that time, and the account shall have—

“(a) A credit balance to the extent that credits exceed debits:

“(b) A debit balance to the extent that debits exceed credits.

“Policyholder Credit Accounts of Companies

“394zzz Resident life insurance companies to maintain policyholder credit account

A company resident in New Zealand (being a company carrying on a business of providing life insurance to which sections 204 to 205f of this Act apply) shall establish and maintain a policyholder credit account for each imputation year.

“394zzza Policyholder credit account of company

“(1) Every policyholder credit account company shall record in its policyholder credit account for any imputation year—

- “(a) The opening balance of the account for that year, in accordance with subsection (2) of this section:
 - “(b) Credits as they arise in accordance with section 394zzzb(1) and (2) of this Act:
 - “(c) Debits as they arise in accordance with section 394zzzb(3) and (4) of this Act.
- “(2) The opening balance of the policyholder credit account of a company for any imputation year shall be—
- “(a) For the imputation year during which the company commences to be a policyholder credit account company, nil:
 - “(b) For any subsequent imputation year, the amount of the closing balance of the policyholder credit account of the company for the immediately preceding imputation year, and such amount shall be—
 - “(i) A credit arising to the account where the closing balance is a credit balance:
 - “(ii) A debit arising to the account where the closing balance is a debit balance.

“394zzzb Credits and debits arising to policyholder credit account of company

- “(1) There shall arise as credits to be recorded in the policyholder credit account of a policyholder credit account company the following amounts:
- “(a) Any amount forming all or part of a credit balance in the company’s imputation credit account that the company elects in accordance with section 394fa of this Act to be a credit to the company’s policyholder credit account:
 - “(b) Any amount forming all or part of a credit balance in the company’s dividend withholding payment account that the company elects in accordance with section 394zxa of this Act to be a credit to the company’s policyholder credit account.
- “(2) The credits referred to in subsection (1) of this section shall arise—
- “(a) In the case of a credit referred to in paragraph (a) of that subsection, on the date that the amount of the credit arises as a debit to the company’s imputation credit account pursuant to section 394fa of this Act:
 - “(b) In the case of a credit referred to in paragraph (b) of that subsection, on the date that the amount of the credit arises as a debit to the company’s dividend withholding payment account pursuant to section 394zxa of this Act.
- “(3) There shall arise as debits to be recorded in the policyholder credit account of a policyholder credit account company the following amounts:

- “(a) The amount of any credit balance in the account that the company elects in accordance with section 394zzzc of this Act to use as a credit against income tax payable by the company in respect of policyholder income under sections 205 to 205f of this Act:
- “(b) The amount of any credit balance in the account that the company elects in accordance with section 394zzzc of this Act to be a credit to the company’s imputation credit account.
- “(4) The debits referred to in subsection (3) of this section shall arise—
- “(a) In the case of a debit referred to in paragraph (a) of that subsection, on the last day of the income year of the company to which the income tax that is reduced by the relevant amount of the credit balance relates:
- “(b) In the case of a debit referred to in paragraph (b) of that subsection, on the date the company elects in accordance with section 394zzzc of this Act to credit the company’s imputation credit account.

“394zzzc Use of credit balance to reduce income tax, or transfer of credit balance to company’s imputation credit account

- “(1) A policyholder credit account company may elect that all or part of any credit balance in its policyholder credit account at the time of the election shall be credited in payment, so far as the liability extends, of any income tax payable by the company in respect of policyholder income under sections 205 to 205f of this Act.
- “(2) A company shall make an election under subsection (1) of this section by recording the amount in respect of which it makes the election as a debit in its policyholder credit account, and any amount so recorded as a debit in accordance with subsection (1) of this section shall be credited, so far as it extends, in payment of any income tax or provisional tax payable by the company in respect of its policyholder income.
- “(3) A policyholder credit account company may elect that all or part of any credit balance in its policyholder credit account at the time of the election shall be a credit to the company’s imputation credit account and a debit to its policyholder credit account.
- “(4) A company shall make an election under subsection (3) of this section by recording the amount in respect of which it makes the election—
- “(a) As a debit in the company’s policyholder credit account; and
- “(b) As a credit in its imputation credit account.
- “(5) Notwithstanding subsection (3) of this section, no policyholder credit account company may in any imputation year elect that any credit balance in its policyholder credit account shall be a credit to the company’s imputation credit account where and to the extent to which—

- “(a) The company furnishes a return of income under section 15 of this Act for an accounting year ending with an annual balance date other than the 31st day of March; and
 - “(b) That credit balance is an amount of credit arising in that imputation year from an election made by the company in accordance with section 394fa or section 394zxa of this Act during the accounting year of the company in which the last day of that imputation year falls; and
 - “(c) The election would, if made, result in a debit to the company’s policyholder credit account in that imputation year.
- “(6) For the purposes of subsection (5) of this section, a credit balance in a policyholder credit account shall be deemed not to contain the amount of a credit referred to in paragraph (b) of that subsection to the extent that the credit has been cancelled out by any subsequent debit arising to the account, and for this purpose the amount of any debit shall be offset against the amount of any credits in the order in which the credits arise.

“394zzzd Determinations by Commissioner as to credits and debits arising to policyholder credit account

- “(1) Where the Commissioner considers that—
- “(a) Any amount recorded as a credit or a debit arising to a company’s policyholder credit account—
 - “(i) Is not the correct amount that should have been recorded in respect of the credit or debit; or
 - “(ii) Should not have been so recorded; or
 - “(iii) Should not have been recorded as arising at the time it was recorded as arising; or
 - “(b) Any amount that has not been recorded as a credit or debit to a company’s imputation credit account should have been so recorded,—
- the Commissioner shall determine the correct amount (including a nil amount) of the credit or debit properly arising to the account and the time at which such credit or debit arose.
- “(2) Where the Commissioner makes a determination under subsection (1) of this section then, except in so far as the company establishes on objection that any credit or debit was correctly recorded, or not recorded as the case may be, in the policyholder credit account,—
- “(a) The relevant credit or debit shall be deemed to have arisen, or not to have arisen, or to have been the amount determined by the Commissioner under subsection (1) of this section, as the case may require, effective on the date on which the debit or credit originally arose, or is determined by the Commissioner as having arisen:

- “(b) The company shall make such other corrections in respect of any credits or debits or balances recorded as arising to its policyholder credit account or imputation credit account or dividend withholding payment account, whether for the imputation year in which the incorrect record the subject of the determination was made or for any subsequent year, as may be necessary or as may be directed by the Commissioner as a consequence of the determination in relation to the amount incorrectly recorded, or not recorded.
- “(3) As soon as is convenient after a determination is made under subsection (1) of this section (hereafter in this section and in section 19 of this Act referred to as a determination of incorrect entry), the Commissioner shall cause notice of the determination to be given to the company in respect of whose policyholder credit account the determination is made, which notice may be included in a notice of assessment made pursuant to section 29(1) of this Act or a notice of determination of loss made pursuant to section 29(2) of this Act.
- “(4) An omission to give the notice referred to in subsection (3) of this section shall not invalidate the determination of incorrect entry.

“Policyholder Credit Accounts of Other Persons

“394zzze Person may elect to maintain policyholder credit account

- “(1) Any person carrying on a business of providing life insurance (not being a company resident in New Zealand) to which section 205 of this Act applies may at any time during an income year of that person elect to maintain a policyholder credit account for that year.
- “(2) A person who so elects shall notify the Commissioner of that fact in writing within 21 days after the date of the election, or within such further time as the Commissioner may allow in any case or class of cases, and shall maintain a policyholder credit account—
- “(a) For the income year in which the election is made; and
- “(b) Subject to this section, for every subsequent income year.
- “(3) A person who has made an election under subsection (1) of this section may, during any income year subsequent to that in which the election was made, elect to cease to be a policyholder credit account person, and, subject to subsection (4) of this section, any person who so elects shall, as from the commencement of the income year succeeding that in which the election to so cease is made, cease to be a person required to maintain a policyholder credit account.
- “(4) An election made under subsection (3) of this section shall be of no effect unless the person furnishes, within the time provided for in section 394zzzi(3) of this Act, the annual policyholder credit account return required in respect of the income year in which the election is made.

“394zzzf Policyholder credit account of person

- “(1) Every policyholder credit account person shall record in the person’s policyholder credit account for any income year of that person—
- “(a) The opening balance of the account for that year, in accordance with subsection (2) of this section:
 - “(b) Credits as they arise in accordance with section 394zzzg(1), (2), (3), and (6) of this Act:
 - “(c) Debits as they arise in accordance with section 394zzzg(4), (5), and (6) of this Act.
- “(2) The opening balance of the policyholder credit account of a person for any income year shall be—
- “(a) For the income year during which the person commences to be a policyholder credit account person, nil:
 - “(b) For any subsequent income year, the amount of the closing balance of the policyholder credit account of the person for the preceding income year, and such amount shall be—
 - “(i) A credit arising to the account where the closing balance is a credit balance:
 - “(ii) A debit arising to the account where the closing balance is a debit balance.

“394zzzg Credits and debits arising to policyholder credit account of person

- “(1) There shall arise as credits to be recorded in the policyholder credit account of a policyholder credit account person such amounts as would arise as credits if—
- “(a) That policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - “(b) That policyholder credit account were an imputation credit account; and
 - “(c) Section 394d(1)(d), (e), and (1) of this Act did not apply.
- “(2) Subject to subsection (3) of this section, any such credit shall arise on the date on which the credit would have arisen to the imputation credit account of the policyholder credit account person if—
- “(a) That policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - “(b) That policyholder credit account were an imputation credit account.
- “(3) Where any amount of income tax is treated as being paid by the policyholder credit account person by virtue of the provisions of sections 394ze, 394zp or

394zzv of this Act, for the purposes of this section the income tax shall be deemed to be paid on the date upon which the relevant dividend is paid.

- “(4) There shall arise as debits to be recorded in the policyholder credit account of a policyholder credit account person for any income year the following amounts:
- “(a) Any of the credit balance of the account that the person elects in accordance with section 394zzzh of this Act to use as a credit against income tax payable by the person in respect of policyholder income determined under sections 205 to 205f of this Act:
 - “(b) Any amount equal to any debits which would have arisen to the imputation credit account of the policyholder credit account person if—
 - “(i) That policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - “(ii) That policyholder credit account were an imputation credit account; and
 - “(iii) Section 394e(1)(aa), (ab), and (g) of this Act did not apply.
- “(5) The debits referred to in subsection (4) of this section shall arise—
- “(a) In the case of a debit referred to in paragraph (a) of that subsection, on the date the person makes the election in accordance with section 394zzzh of this Act:
 - “(b) In the case of a debit referred to in paragraph (b) of that subsection, on the date the debit would have arisen to the imputation credit account of the policyholder credit account person if—
 - “(i) That policyholder credit account person were, in respect of the business of providing life insurance carried on by that person, an imputation credit account company; and
 - “(ii) That policyholder credit account were an imputation credit account.
- “(6) Notwithstanding any provision of this section, in the case of any policyholder credit account person not resident in New Zealand—
- “(a) A credit shall only arise to that person’s policyholder credit account by virtue of income tax paid in respect of an amount of income derived where that income is—
 - “(i) An amount of assessable income included in item i of the formula specified in section 204l(1) of this Act in calculating in respect of that person the income derived or loss incurred in carrying on a business of providing life insurance to the extent to which that business consists of or relates to any one or more policies of life insurance for which that person is the insurer which were offered or entered into in New Zealand (whether or not executed in New

Zealand and whether or not the person has a fixed establishment in New Zealand or has an agent in New Zealand); or

“(ii) An amount which would have been so included but for the application of section 317 of this Act; and

“(b) No debit shall arise to that person’s policy holder credit account by virtue of any refund of income tax paid to that person if no credit arose to that person’s policyholder credit account in respect of that income tax paid by virtue of paragraph (a) of this subsection.

“394zzzh Use of credit balance to reduce income tax

“(1) A policyholder credit account person may elect that all or any part of the credit balance in the policyholder credit account of that person at the time of election shall be credited in payment, so far as the liability extends, of any income tax payable by the person in respect of policyholder income under sections 205 to 205f of this Act.

“(2) A person shall make an election under this section by recording the amount in respect of which the election is made as a debit in the person’s policyholder credit account, and any amount so recorded as a debit in accordance with this section shall be credited, so far as it extends, in payment of any income tax or provisional tax payable by the person in respect of the person’s policyholder income.

“394zzzi Annual and other returns for policyholder credit account persons

“(1) Every policyholder credit account person shall furnish to the Commissioner an annual policyholder credit account 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 section 394zzzg of this Act:

“(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 17 of this Act for the furnishing of a return of income in respect of the income year.

“(4) The Commissioner may require a policyholder credit account person to furnish, within such time as the Commissioner may allow, a policyholder credit account return in respect of any period specified by the Commissioner.

“(5) A policyholder credit account person may furnish to the Commissioner, at any time, a policyholder credit account 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 policyholder credit account return is furnished to the Commissioner.

“(6) A return referred to in subsection (4) or subsection (5) of this section shall, except as the Commissioner may otherwise specify, contain the information referred to in subsection (2) of this section 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) of this section, references to the period specified by the Commissioner:

“(b) In the case of a return furnished under subsection (5) of this section, references to the period referred to in that subsection.

“394zzzj Refund of income tax not to exceed amount of credit balance

“(1) Where a policyholder credit account person becomes entitled at any time to a refund of income tax in accordance with section 409 of this Act, the amount of the refund to be paid to the person shall not exceed the amount of the credit balance (if any) of the person’s policyholder credit account at the later of—

“(a) The end of the most recently ending income year of the person; or

“(b) The last day of any period (being a period ending before the date upon which the refund is payable) for which the person furnishes a policyholder credit account return pursuant to section 394zzzi(5) of this Act; or

“(c) The last day of any period (being a period ending before the date upon which the refund is payable) for which the person is required by the Commissioner to furnish a policyholder credit account return pursuant to section 394zzzi(4) of this Act.

“(2) Where a person who has ceased to be a policyholder credit account person becomes entitled to a refund of income tax in accordance with section 409 of this Act in respect of any income year during which the person was a policyholder credit account person, the amount of the refund to be paid to the person shall not exceed the amount of the credit balance (if any) of the person’s policyholder credit account immediately before the person ceased to be a policyholder credit account person.

“(3) For the purposes of subsections (1) and (2) of this section, the amount of any credit balance referred to in those subsections shall be deemed to be reduced by any earlier refund paid to the person during the same income year, being a refund of income tax that may not, pursuant to this section, exceed the amount of that credit balance.

“(4) Where an amount of income tax paid in excess is not refunded to a person by reason of subsection (1) or subsection (2) of this section, the amount of income tax not refunded—

“(a) Shall be credited in payment of any income tax or provisional tax payable by the person for the income year during which the entitlement to the refund arose, or for any subsequent income year:

“(b) To the extent that it cannot, for any reason, be credited in accordance with paragraph (a) of this subsection, shall be retained by the Commissioner.

“(5) Nothing in this section shall apply to limit the amount of any refund of tax paid by a person in respect of income derived by the person in the income year ending on the 31st day of March 1990 or in any previous income year.”

(2) This section shall come into force on the 1st day of April 1990, and shall apply on and after that date.

57 Refund of excess tax

Section 409 of the principal Act is hereby amended by omitting from both subsection (1) and subsection (2) (as amended by section 56 of the Income Tax Amendment Act (No. 5) 1988) the expression “and 394zzx”, and substituting in each case the expression “394zzx, and 394zzzj”.

58 Tax paid in excess may be set off against additional tax when assessment reopened

Section 410(1) of the principal Act (as amended by section 57 of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by omitting the expression “and 394zzx”, and substituting the expression “394zzx, and 394zzzd”.

59 Interest on tax overpaid

(1) Section 413a(1) of the principal Act (as inserted by section 20(1) of the Income Tax Amendment Act (No. 3) 1988) is hereby amended by adding to the definition of the term “residual income tax” the following paragraph:

“(k) The amount of any credit deducted from or set off against that income tax in accordance with section 394zzzc or section 394zzzh of this Act:”.

(2) Section 413a(3a) of the principal Act (as inserted by section 58(3) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the expression “section 394zzx”, the words “or section 394zzzj”.

60 Keeping of business records

(1) Section 428(1)(c) of the principal Act (as substituted by section 59(1) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended by inserting, after the expression “Part XIIc”, the words “or Part XIIId”.

(2) Section 428(3)(cb) of the principal Act (as inserted by section 59(2) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended—

- (a) By inserting, after the words “branch equivalent tax account person”, the words “or a policyholder credit account company or a policyholder credit account person”:
 - (b) By omitting the expression “and 394zzm”, and substituting the expression “394zzm, and 394zzy”.
- (3) Section 428(3)(h) of the principal Act (as inserted by section 59(3) of the Income Tax Amendment Act (No. 5) 1988) is hereby amended—
- (a) By inserting, after the words “branch equivalent tax account”, the words “or the policyholder credit account”:
 - (b) By omitting the expression “and 394zzm”, and substituting the expression “394zzm, and 394zzy”.

61 First Schedule amended

- (1) Part A of the First Schedule to the principal Act is hereby amended by repealing clause 2a (as substituted by section 27(1) of the Income Tax Amendment Act 1989), and substituting the following clause:

“2a Policyholder income

On the amount of policyholder income derived by a person in respect of a business of life insurance carried on by that person, calculated in accordance with sections 205 to 205f of this Act, the basic rate of income tax for every \$1 of that amount shall be 33c.”

- (2) Part A of the First Schedule to the principal Act is hereby further amended by repealing clauses 9a and 9b (as substituted by section 27(2) of the Income Tax Amendment Act 1989), and substituting the following clause:

“9a Trustees of superannuation funds

On the amount of taxable income derived by the trustees of any superannuation fund, the basic rate of income tax for every \$ 1 of that amount shall be 33c.”

- (3) Section 27 of the Income Tax Amendment Act 1989 is hereby consequentially amended by repealing subsections (1), (2), and (5).
- (4) Subsection (1) of this section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1990 and in every subsequent year.
- (5) Subject to subsection (6) of this section, subsections (2) and (3) of this section shall apply with respect to the tax on income derived—
- (a) In relation to any trustee of a superannuation fund that furnishes a return of income under section 15 of the principal Act for an accounting year that commences before the 1st day of April 1990 and ends after that date, in that part of that accounting year of the superannuation fund that occurs after the 31st day of March 1990, and in every subsequent income year:

- (b) In any other case, in the income year commencing on the 1st day of April 1990, and in every subsequent year.
- (6) The tax on taxable income derived by the trustee of a superannuation fund to which subsection (5)(a) of this section applies shall, in respect of the accounting year of the superannuation fund that commences before the 1st day of April 1990 and ends after that date, be calculated in accordance with the following formula:

$$\frac{a \times b \times c}{365} + \frac{d \times e \times c}{365}$$

where—

- a is the number of days in the period commencing with the first day of that accounting year and ending with the 31st day of March 1990 (both days inclusive); and
- b is the rate of tax, expressed as a percentage, that, but for the enactment of this section, would have applied to the superannuation fund in respect of income derived by the fund in that accounting year; and
- c is the taxable income of the superannuation fund for that accounting year; and
- d is the number of the days in the period commencing with the 1st day of April 1990 and ending with the last day of that accounting year (both days inclusive); and
- e is the rate of tax, expressed as a percentage, specified in clause 9a of the First Schedule to the principal Act (as substituted by subsection (2) of this section).

62 Amendments to Port Companies Act 1988

- (1) Section 38(2a) of the Port Companies Act 1988 (as inserted by section 14 of the Income Tax Amendment Act 1990) is hereby amended by inserting, after the word “before”, the words “or after”.
- (2) Section 38(2d) of the Port Companies Act 1988 (as so inserted) is hereby amended by repealing paragraphs (a), (b), and (c), and substituting the following paragraphs:
- “(a) From a harbour board to a port company that operates at the same port; or
- “(b) From a harbour board to a port operator that operates at the same port; or
- “(c) From a port operator to a port company that operates at the same port.”
- (3) Section 14(3) of the Income Tax Amendment Act 1990 is hereby amended by omitting the expression “1st day of April 1989”, and substituting the expression “1st day of April 1988”.

- (4) This section shall apply with respect to the tax on income derived in the income year commencing on the 1st day of April 1988 and in every subsequent year.

68 Spent provisions

The enactments set out in the Schedule to this Act are hereby repealed.

Transitional Provisions Relating to Life Insurers

64 Interpretation

In this section and in sections 65 to 67 of this Act, unless the context otherwise requires,—

“Accounting year” means—

“(a) In relation to a company with an early accounting year, the accounting year of that company that corresponds to the income year commencing on the 1st day of April 1990:

“(b) In relation to a company with a late accounting year, the accounting year of that company that corresponds to the income year commencing on the 1st day of April 1989:

“Early accounting year”, in relation to a company that furnishes a return of income under section 15 of the principal Act for a year ending other than on the 31st day of March, means an accounting year whose annual balance date falls in the period commencing with the 1st day of October in any year and ending with the 30th day of March in the following year:

“Late accounting year”, in relation to a company that furnishes a return of income under section 15 of the principal Act for a year ending other than on the 31st day of March, means an accounting year whose annual balance date falls in the period commencing with the 1st day of April in any year and ending with the 30th day of September in the same year:

“Life insurer” has the same meaning as in section 204 of the principal Act:

“Standard accounting year” means an accounting year whose annual balance date falls on the 31st day of March.

65 Resident life insurance companies with non-standard accounting years

- (1) Where any life insurer that is a company resident in New Zealand has an early accounting year in respect of the income year commencing on the 1st day of April 1990, the following provisions shall apply:
- (a) Sections 40 to 51 and section 55 of this Act shall apply with respect to that life insurer with effect from the first day of that accounting year:
 - (b) The life insurer shall establish and maintain an imputation credit account and a policyholder credit account for the period commencing with the

first day of that accounting year and ending with the 31st day of March 1990:

- (c) The life insurer may elect, by notice in writing to the Commissioner given not later than the 30th day of September 1990, to become a dividend withholding payment account company retrospective to the first day of that accounting year, and where it does so shall maintain the appropriate account accordingly:
 - (d) Where in accordance with this subsection the life insurer is required or has elected to maintain an imputation credit account, a policyholder credit account or a dividend withholding payment account—
 - (i) No credits or debits shall arise to any such account in respect of that part of the imputation year commencing on the 1st day of April 1989 that occurs before the first day of the life insurer's accounting year; and
 - (ii) Credits and debits shall arise to any such account only in respect of that part of that imputation year that commences with that first day and ends with the 31st day of March 1990.
- (2) Where any life insurer that is a company resident in New Zealand has a late accounting year in respect of the income year commencing on the 1st day of April 1989, no credits or debits shall arise to the life insurer's imputation credit account, policyholder credit account, or dividend withholding payment account (if any) in respect of the period commencing with the 1st day of April 1990 and ending with the last day of the life insurer's accounting year.

66 Resident life insurance companies and branch equivalent tax accounts

- (1) For the purposes of Part XIIIc of the principal Act, but subject to the provisions of this section, any life insurer that—
- (a) Is a company resident in New Zealand; and
 - (b) Was, in respect of the income year commencing on the 1st day of April 1989, a branch equivalent tax account person; and
 - (c) Has not during that income year elected to cease to be a branch equivalent tax account person,—

shall, unless the company in accordance with subsection (3) of this section otherwise notifies the Commissioner in writing not later than the 30th day of September 1990, be deemed to have elected under section 394zzn of the principal Act to be a branch equivalent tax account company with effect from the imputation year commencing on the 1st day of April 1990.

- (2) Where a company becomes a branch equivalent tax account company pursuant to subsection (2) of this section, the following provisions shall apply:
- (a) In the case of a company with a standard accounting year,—

- (i) The company is required to maintain a branch equivalent tax account as a branch equivalent tax account company on and from the 1st day of April 1990; and
 - (ii) The opening balance of that account shall be equal to the closing balance of the branch equivalent tax account maintained as a branch equivalent tax account person on the 31st day of March 1990:
 - (b) In the case of a company with a late accounting year,—
 - (i) The company shall, not later than the 30th day of September 1990, furnish to the Commissioner pursuant to section 394zzw of the principal Act a return for its branch equivalent tax account for the period commencing with the first day of the company's accounting year and ending with the 31st day of March 1990; and
 - (ii) Nothing in sections 394zzu and 394zzv of the principal Act shall apply in respect of the company on and from the 1st day of April 1990; and
 - (iii) The company is required to maintain a branch equivalent tax account as a branch equivalent tax account company on and from the 1st day of April 1990; and
 - (iv) The opening balance of the account maintained as a company shall be equal to the closing balance of the account maintained as a branch equivalent tax account person on the 31st day of March 1990:
 - (c) In the case of a company with an early accounting year, the provisions of paragraph (b) of this subsection shall apply to the company unless the company elects in accordance with subsection (3) of this section to be treated as if it had been a branch equivalent tax account company with effect from the first day of its accounting year.
- (3) A company resident in New Zealand which is a life insurer with an early accounting year may, by notice in writing to the Commissioner given not later than the 30th day of September 1990, elect that this section and sections 52, 54, 55, and 56 of this Act shall apply with respect to that life insurer with effect from the first day of the company's accounting year, and, where a company so elects,—
 - (a) That company, if previously a branch equivalent tax account person, shall be deemed to have ceased to be a branch equivalent tax account person with effect from the first day of its accounting year, and shall be deemed to be a branch equivalent tax account company for the period commencing with that first day and ending with the 31st day of March 1990; and
 - (b) If the company was previously a branch equivalent tax account person, the opening balance of the company's branch equivalent tax account for

that period shall be equal to the closing balance of its branch equivalent tax account maintained as a branch equivalent tax account person on the last day of the accounting year of the company that corresponds with the income year commencing on the 1st day of April 1989; and

- (c) In respect of the imputation year commencing on the 1st day of April 1989 and the account maintained by the company as a branch equivalent tax account company from the first day of its accounting year,—
 - (i) No credits or debits shall arise to that account in respect of that part of the imputation year that occurs before that first day; and
 - (ii) Credits and debits shall arise to that account only in respect of that part of the imputation year that commences with that first day and ends with the 31st day of March 1990.
- (4) Notwithstanding any provision of this Act or the principal Act, in the case of any company resident in New Zealand which is a life insurer,—
 - (a) No credits shall arise to that company's imputation credit account pursuant to paragraphs (h) or (i) of section 394d(1) of the principal Act; and
 - (b) No debits shall arise to that company's imputation credit account pursuant to paragraph (f) of section 394e(1) of the principal Act,—

where and to the extent to which the amount of credit or debit arises in respect of income tax paid on income derived in the income year that commenced on the 1st day of April 1989 or in any previous income year, and for this purpose—

- (c) A credit arising to an imputation credit account pursuant to paragraph (i) of section 394d(1) shall be deemed to be in respect of income tax paid for any period where the amount of credit balance in the company's branch equivalent tax account applied in reduction of a dividend withholding payment otherwise payable is an amount which arose in respect of income tax paid for that period; and
- (d) The amount of any debit to a branch equivalent tax account shall be offset against the amount of any credits in the order in which the credits arise.

67 Life insurer, other than a resident company, with non-standard accounting year wishing to maintain policyholder credit account

- (1) Section 56 of this Act shall apply with respect to any life insurer that—
 - (a) Is not a company resident in New Zealand; and
 - (b) Has an early accounting year in respect of the income year commencing on the 1st day of April 1989,—

with effect from the first day of that accounting year of the life insurer, and the life insurer may, by notice in writing to the Commissioner given not later than the 30th day of September 1990, elect to become a policyholder credit account

person retrospective to that first day of the accounting year, and where it does so shall maintain a policyholder credit account accordingly.

- (2) Where a life insurer that—
- (a) Is not a company resident in New Zealand; and
 - (b) Has a late accounting year in respect of the income year commencing on the 1st day of April 1989,—

elects to become a policyholder credit account person with effect from any date that is earlier than the first day of the immediately succeeding accounting year, no credits or debits shall arise to the life insurer's policyholder credit account in respect of any period that occurs before the first day of that succeeding accounting year.

Schedule Enactments Repealed

Section 63

1976, No. 65—The Income Tax Act 1976: Sections 42a, 43, 47a, 48a, 48b, 57(2)(ca), (da), and (db), 74a, 81, 86e, 86fa, 88, 93, 114b, 119, 120, 121, 145, 146, 159, 159a, 160, 160a, 161, 188b, 212c, and 224c. (R.S. Vol. 12, p. 1.)

1977, No. 81—The Income Tax Amendment Act (No. 2) 1977: Sections 6 and 20. (R.S. Vol. 12, p. 724.)

1978, No. 28—The Income Tax Amendment Act 1978: Section 26. (R.S. Vol. 12, p. 730.)

1979, No. 18—The Income Tax Amendment Act 1979: Sections 5, 31, 32, 33, 34, 36, 37, 38, 39, and 40. (R.S. Vol. 12, p. 737.)

1980, No. 28—The Income Tax Amendment Act 1980: Section 24. (R.S. Vol. 12, p. 746.)

1981, No. 33—The Income Tax Amendment Act 1981: Section 4. (R.S. Vol. 12, p. 756.)

1982, No. 142—The Income Tax Amendment Act (No. 2) 1982: Sections 18(1), (3), 19, 20, 25, 32, and 38. (R.S. Vol. 12, p. 767.)

1983, No. 10—The Income Tax Amendment Act (No. 2) 1983: Sections 3 and 4.

1983, No. 139—The Income Tax Amendment Act (No. 3) 1983: Sections 15 and 32.

1984, No. 10—The Income Tax Amendment Act 1984: Sections 5, 12, and 13.

1985, No. 59—The Income Tax Amendment Act (No. 2) 1985: Section 19(2).

1986, No. 3—The Income Tax Amendment Act 1986: Section 7.

1986, No. 41—The Income Tax Amendment Act (No. 3) 1986: Sections 2, 3, 9, 15, 16, 17, and 18.

1986, No. 117—The Income Tax Amendment Act (No. 4) 1986: Section 9(4), (5).

1987, No. 104—The Income Tax Amendment Act (No. 2) 1987: Section 22.

1987, No. 190—The Income Tax Amendment Act (No. 3) 1987: Sections 5 and 6.

1988, No. 14—The Income Tax Amendment Act (No. 2) 1988: Sections 10 and 11.

1988, No. 123—The Income Tax Amendment Act (No. 3) 1988: Section 21(8).

This Act is administered in the Inland Revenue Department.