



ANALYSIS

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1995, No. 20

An Act to amend the Income Tax Act 1976

[10 April 1995]

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

1. Short Title—This Act may be cited as the Income Tax Act 1976 Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the Income Tax Act 1976 (hereinafter referred to as the principal Act), and that Act shall, in respect of matters to which it applied before its repeal by section YB 3 of the Income Tax Act 1994, be read as amended by the provisions of this Act.

2. Meaning of term “dividends”—(1) Section 4 of the principal Act is amended by inserting, after subsection (8), the following subsection:

“(8A) Where any amount arises as a dividend under paragraph (c) or paragraph (d) of subsection (1) of this section (or any corresponding dividend arises under paragraph (l) of that subsection) by reason of a difference between the market value of any property passing between a company and a shareholder and the consideration provided in respect of that property by the shareholder or the company, the Commissioner may, in making or amending any assessment, disregard the amount so arising if the Commissioner is satisfied that—

“(a) The consideration paid was an amount which the company considered was the market value of the property after having taken reasonable steps at the time the property was distributed, sold, otherwise disposed of, or acquired by the company to ascertain a market value; and

“(b) The shareholder (or the associated person, where appropriate) has subsequently paid to the company—

“(i) Any additional consideration necessary to reflect the market value of the property at the time of its distribution, sale, or other disposition to the shareholder; or

“(ii) A refund of any consideration provided by the company in excess of the market value of the property at the time it was acquired from the shareholder; and

“(c) Any necessary adjustments have been made to the accounts of the company or the shareholder (or, where appropriate, the associated person) in respect of that additional consideration or that refund.”

(2) This section shall come into force on the day on which this Act receives the Royal assent and shall apply in relation to any deemed dividend ascertained on or after that date.

3. Exclusions from term “dividends”—
(1) Section 4A(4A)(e) of the principal Act (as inserted by section 5(9) of the Income Tax Amendment Act 1994) is amended by omitting the expression “paragraph (c)”, and substituting the expression “paragraph (d)”.

(2) Section 4A of the principal Act is further amended by inserting, after subsection (11A) (as inserted by section 5 (11) of the Income Tax Amendment Act 1994), the following subsection:

“(11B) For the purposes of calculating the excess return amount on liquidation of a company, where and to the extent that—

“(a) The company had previously subscribed for shares in another company; and

“(b) The consideration for the subscription was excluded from the available subscribed capital of the other company due to any of paragraphs (vi) to (viii) of item b of the definition of the term ‘available subscribed capital’ in subsection (3) of this section,—
the consideration is to be excluded from the cost of those shares when calculating the capital gain amount on sale of the shares or the excess over cost of the value of any distribution in specie of the shares.”

(3) This section is deemed to have come into force on the 1st day of July 1994.

4. Meaning of term “source deduction payment”—

(1) Section 6 of the principal Act is amended by repealing subsection (4) (as added by section 6 (2) of the Income Tax Amendment Act 1994), and substituting the following subsection:

“(4) In this section, in respect of any time before the 1st day of April 1997, the term ‘close company’ includes a company with 25 or fewer shareholders.”

(2) Section 6 (2) of the Income Tax Amendment Act 1994 is consequentially repealed.

(3) This section is deemed to have come into force on the 1st day of July 1994.

5. Defining when a company is under the control of any persons—(1) Section 7 of the principal Act (as inserted by section 7 of the Income Tax Amendment Act 1994) is amended by repealing subsection (2), and substituting the following subsection:

“(2) For the purposes of this section, where any person (referred to in this subsection as the nominee) holds any rights at any time—

“(a) On behalf of or to the order of another person; or

“(b) Being a relative at the time of another person,—

the rights shall be deemed to be held at the time by the other person as well as by the nominee, as if the nominee, the other person, and all other such nominees of the other person were at the time a single person.”

(2) This section is deemed to have come into force on the 1st day of July 1994.

6. Income and expenditure where financial arrangement redeemed or disposed of—(1) Section 64F (1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) The term ‘social assistance suspensory loan’ means a loan—

“(i) Made by a department or instrument of the Executive Government of New Zealand; and

“(ii) Under whose terms the issuer’s liability may be remitted in whole or in part if the issuer satisfies conditions intended to further a social policy objective of the Government of New Zealand; and

“(iii) Of a kind that is declared by the Governor-General by Order in Council to be a social assistance suspensory loan.”.

(2) Section 64F (7c) (a) of the principal Act is amended by omitting from the end of subparagraph (ii) the word “and”, and substituting the word “or”.

(3) Section 64F (7c) (a) of the principal Act is further amended by inserting, after subparagraph (ii), the following subparagraph:

“(iii) Under a social assistance suspensory loan by virtue of that person satisfying the conditions referred to in subparagraph (ii) of section 64F (1) (ba); and”.

(4) This section applies with respect to the tax on income derived in the 1985–86 income year and subsequent years.

7. Profits or gains from land transactions—(1) Section 67 (2) (b) of the principal Act (as substituted by section 13 (1) of the Income Tax Amendment Act 1994) is amended by inserting in subparagraph (iv), before the words “such spouse”, the words “the person or for”.

(2) This section is deemed to have come into force on the 1st day of July 1994.

8. Deduction for expenditure or loss incurred in providing fringe benefit—(1) The principal Act is amended by repealing section 105A.

(2) Section 15 (1) of the Income Tax Amendment Act (No. 2) 1992 is consequentially repealed.

(3) Subject to subsection (4) of this section, this section applies with respect to expenditure or loss incurred on or after the 1st day of April 1992.

(4) This section does not apply to any expenditure or loss of a taxpayer to the extent that the expenditure or loss has been claimed as a deduction in a return furnished by the taxpayer to the Commissioner on or before the 26th day of October 1994.

9. Interpretation—depreciation—(1) Section 107A (2) of the principal Act is amended by inserting, before the words “of this Act”, the words “or section 117”.

(2) This section applies with respect to the tax on income derived in the 1993–94 income year (including non-standard 1993–94 income years) and subsequent years.

10. Year in which accident compensation levy, earner premium, and employer premium are deductible—Section 140A of the principal Act is amended by adding the following subsection:

“(6) For the avoidance of doubt, references in this section to income years include references to corresponding non-standard accounting years.”

11. Credits arising to imputation credit account of group—(1) Section 191SA of the principal Act is amended by omitting from both subsection (1)(b) and subsection (2)(b) the expression “section 383”, and substituting in each case the expression “section 387”.

(2) This section applies with respect to the tax on income derived in the 1994–95 income year and subsequent years.

12. Debits arising to imputation credit account of group—(1) Section 191SB of the principal Act is amended by omitting from both subsection (1)(c) and subsection (2)(c) the expression “section 383”, and substituting in each case the expression “section 387”.

(2) This section applies with respect to the tax on income derived in the 1994–95 income year and subsequent years.

13. Amalgamation of companies—(1) Section 191WD (2) of the principal Act (as inserted by section 29 of the Income Tax Amendment Act 1994) is amended by inserting, after the definition of the term “controlled foreign company”, the following definition:

“‘Depreciating property’ means, in respect of any taxpayer, property in respect of which the taxpayer has previously claimed or will claim in calculating the taxpayer’s assessable income a deduction on account of—

“(a) Depreciation under section 108 of this Act; or

“(b) Amortisation of expenditure under section 137 or section 142 of this Act or under any other provision of this Act which has similar intent and application to sections 108, 137, and 142 of this Act.”.

(2) Section 191WD (as so inserted) is further amended by repealing subsection (9), and substituting the following subsection:

“(9) Where—

“(a) An amalgamating company ceases to exist on a qualifying amalgamation; and

“(b) Another company has borrowed money to acquire shares in the amalgamating company; and

“(c) The amalgamating company and the other company were members of the same group of companies immediately before the amalgamation,—

interest payable, in the income year in which the amalgamation takes place or subsequently, on the money borrowed will be deductible in calculating the assessable income of the other company.”

(3) Section 191WD (as so inserted) is further amended by inserting, after subsection (10), the following subsection:

“(10A) Sections 78 (1) and 188 (6) of this Act will not apply merely by virtue of an amalgamated company succeeding to a liability of an amalgamating company on an amalgamation.”

(4) Section 191WD (as so inserted) is further amended by inserting, after subsection (12), the following subsection:

“(12A) Where any amalgamated company, on a qualifying amalgamation, acquires any property of an amalgamating company, then for the purposes of this Act and except where otherwise provided in the succeeding subsections of this section,—

“(a) The amalgamating company shall be deemed to have disposed of the property immediately before the amalgamation; and

“(b) The amalgamating company shall be deemed not to derive any assessable income or to have incurred any expenditure or loss in respect of that disposition under section 117 of this Act.”

(5) This section is deemed to have come into force on the 1st day of July 1994.

14. Treatment of financial arrangements between amalgamating companies—(1) The principal Act is amended by inserting, after section 191WD (as inserted by section 29 of the Income Tax Amendment Act 1994), the following section:

“191WE. (1) This section will apply for the purposes of this Act where a financial arrangement exists at the time of an amalgamation and to the extent to which the holder and the issuer are amalgamating companies.

“(2) If, immediately before the amalgamation, the issuer is solvent or otherwise likely (including due to the existence of security) to be able to meet its obligations under the financial arrangement, the financial arrangement will be deemed for the purposes of section 64F of this Act to have been discharged immediately before the amalgamation and the issuer will be deemed to have paid to the holder, in consideration for the discharge,—

“(a) In the case of a qualifying amalgamation, the issuer’s outstanding accrued balance of the financial arrangement:

“(b) In the case of any other amalgamation, an amount equal to the market value of the financial arrangement at that time.

“(3) In any case where subsection (2) of this section applies, the holder of the financial arrangement will be deemed for the purposes of item a of section 64F (2) of this Act not to have remitted any amount merely by virtue of the deemed discharge.

“(4) If, immediately before the amalgamation, the issuer is insolvent and unlikely to be able to meet its obligations under the financial arrangement, the financial arrangement will be deemed for the purposes of section 64F of this Act to have been discharged immediately before the amalgamation and the issuer will be deemed to have paid to the holder, in

consideration for the discharge, an amount equal to the market value of the financial arrangement at that time.

“(5) In any case where subsection (4) of this section applies, the holder of the financial arrangement will be deemed for the purposes of item a of section 64F(2) of this Act to have remitted the excess (if any), over the market value, of the holder’s outstanding accrued balance of the financial arrangement.

“(6) For the purposes of this section—

“(a) The issuer’s outstanding accrued balance of a financial arrangement at the time of an amalgamation will be calculated under the following formula:

$$a + b + c - d - e$$

where—

“a is the acquisition price of the financial arrangement in relation to the issuer calculated under section 64BA of this Act; and

“b is the amount (if any) of all expenditure deemed to be incurred by the issuer, less the amount (if any) of all income deemed to be derived by the issuer, in respect of the financial arrangement under section 64c or section 64I of this Act in all previous income years since the issue of the financial arrangement; and

“c is the amount (if any) of expenditure accrued by the issuer in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated—

“(i) In any case where the issuer was a party to the financial arrangement in one or more prior income years, using the method used by the issuer under section 64c of this Act to calculate income and expenditure in respect of the financial arrangement in those years; and

“(ii) In any other case, using a method which the issuer chooses, being a method which could have been used under section 64c of this Act if the income year had ended immediately before the amalgamation; and

“d is the amount (if any) of income accrued by the issuer in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated as required by paragraphs (i) and (ii) of item c of this formula; and

“e is the amount of all consideration paid by the issuer in respect of the financial arrangement before the amalgamation:

“(b) The holder’s outstanding accrued balance of a financial arrangement at the time of an amalgamation will be calculated under the following formula:

$$a + b + c - d - e$$

where—

“a is the acquisition price of the financial arrangement in relation to the holder calculated under section 64BA of this Act; and

“b is the amount (if any) of all income deemed to be derived by the holder, less the amount (if any) of all expenditure deemed to be incurred by the holder, in respect of the financial arrangement under section 64c or section 64i of this Act in all previous income years since the issue of the financial arrangement; and

“c is the amount (if any) of income accrued by the holder in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated—

“(i) In any case where the holder was a party to the financial arrangement in one or more prior income years, using the method used by the holder under section 64c of this Act to calculate income and expenditure in respect of the financial arrangement in those years; and

“(ii) In any other case, using a method which the holder chooses, being a method which could have been used under section 64c of this Act if the income year had ended immediately before the amalgamation; and

“d is the amount (if any) of expenditure accrued by the holder in respect of the financial arrangement for the period from the start of the income year in which the amalgamation occurs until the time of the amalgamation, calculated as required by paragraphs (i) and (ii) of item c of this formula; and

“e is the amount of all consideration paid to the holder in respect of the financial arrangement before the amalgamation:

“(c) Terms defined in section 191WD (2) of this Act have the same meaning in this section:

“(d) A company will be treated as insolvent if it does not satisfy the solvency test in section 4 of the Companies Act 1993.”

(2) This section is deemed to have come into force on the 1st day of July 1994.

15. Insurance business effected with persons not carrying on business in New Zealand—(1) Section 209 of the principal Act is amended by inserting, after subsection (4), the following subsection:

“(4A) Where—

“(a) A person who is treated as an agent of an insurer under subsections (4) to (6) of this section pays any premium to which subsection (2) of this section applies to an insurer or to any other person not carrying on business in New Zealand through a fixed establishment in New Zealand; and

“(b) That insurer or that other person is treated as being resident in Switzerland or resident in the Netherlands for the purposes of any arrangements having effect under section 294 of this Act between the Government of New Zealand and the Government of Switzerland, or between the Government of New Zealand and the Government of the Netherlands,—

the person shall, in addition to any other obligation imposed under subsections (4) to (6) of this section, disclose to the Commissioner details of premiums paid to the insurer or other person resident in Switzerland or the Netherlands in such manner as the Commissioner may prescribe.”

(2) This section applies with respect to premiums paid during the 1994–95 income year and subsequent years.

16. Deduction to lessee under specified lease—(1) The principal Act is amended by repealing section 222D, and substituting the following section:

“222D. Notwithstanding anything in this Act, in calculating the assessable income derived in any income year by any lessee, no deduction shall be allowed of any expenditure incurred by the lessee under a specified lease except to the extent that the expenditure—

“(a) Would be allowable as a deduction to the lessee under section 104 or any other provision of this Act; and

“(b) Does not exceed the sum of such of the amounts (being amounts calculated in accordance with section 222c (2) (a) of this Act) as are calculated in relation to the initial period (if any) and to each instalment period that ends in that income year.”

(2) This section applies with respect to lease payments incurred under any specified lease entered into on or after the 6th day of August 1982, other than any lease payment that has been claimed as a tax deduction in a return furnished to the Commissioner before the 6th day of December 1994.

17. Classes of income deemed to be derived from New Zealand—(1) Section 243 (2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Payments of compensation or allowances of any of the kinds referred to in section 65 (2) (c) and (ca) of this Act:”.

(2) This section applies with respect to the tax on income derived in the 1992–93 income year and subsequent years.

18. Interpretation—fringe benefit tax—(1) Section 336N (3B) of the principal Act is amended by inserting, after the words “this Part of this Act”, the words “and section 104 of this Act”.

(2) This section applies with respect to expenditure or loss incurred on or after the 1st day of April 1992.

19. Interpretation—pay-period taxpayers—(1) Section 356 (2) of the principal Act is amended by inserting in paragraph (g), after the words “income derived from employment”, the words “(excluding New Zealand superannuation)”.

(2) This section applies with respect to the tax on income derived in the 1992–93 income year and subsequent years.

20. Remission of additional tax imposed on underestimation—(1) Section 386 (3) of the principal Act (as substituted by section 71 of the Income Tax Amendment Act (No. 2) 1993) is amended by omitting the word “private”, and substituting the word “close”.

(2) This section is deemed to have come into force on the 1st day of July 1994.

21. Debits arising to imputation credit account—

(1) Section 394E of the principal Act is amended—

(a) By inserting in subsection (1)(g), after the words “cancelled out by a”, the words “prior or”:

(b) By inserting in subsection (4)(b), after the words “cancelled out by a”, the words “prior or”:

(c) By inserting in subsection (4)(c), after the words “cancelled out by any”, the words “prior or”.

(2) This section is deemed to have come into force on the 6th day of December 1994.

22. Dividends from grey list companies—(1) Section 394ZME (2) of the principal Act is amended—

(a) By omitting from paragraph (a)(v) of item a the expression “tax; and”, and substituting the expression “tax.”:

(b) By inserting at the end of paragraph (a) of item a the following proviso:

“Provided that, in the case of a company that carries on the business of providing life insurance, this paragraph shall apply as if the amounts referred to in subparagraphs (i) to (v) were limited to such amounts as are actuarially determined to be part of the profit or loss of the company which the shareholders (and not the policyholders in the company) are attributed with, except where the Commissioner considers that the amounts so determined are not a reasonable and fair reflection of the relevant part of the profit or loss, or has requested but has not received sufficient information to allow the Commissioner to review the actuarial calculation of the amount; and”.

(2) This section applies with respect to dividends paid on or after the 28th day of September 1993.

23. Debits arising to dividend withholding payment account—(1) Section 394zw of the principal Act is amended—

- (a) By inserting in subsection (1)(f), after the words “cancelled out by a”, the words “prior or”:
- (b) By inserting in subsection (4)(b), after the words “cancelled out by a”, the words “prior or”:
- (c) By inserting in subsection (4)(c), after the words “cancelled out by any”, the words “prior or”:

(2) This section is deemed to have come into force on the 6th day of December 1994.

24. Interest to be charged where residual income tax exceeds provisional tax—(1) Section 398A (1) of the principal Act (as substituted by section 80 (1) of the Income Tax Amendment Act (No. 2) 1993) is amended by repealing the definition of the term “income tax payable”, and substituting the following definition:

“‘Income tax payable’, in relation to a person and an income year, means the person’s residual income tax for that year within the meaning of section 375 of this Act, as—

“(a) Increased by any amount calculated in relation to the person and the income year under section 374F (2) (d) of this Act; or

“(b) Reduced by any amount calculated in relation to the person and the income year under section 374F (2) (e) of this Act.”.

(2) Section 398A (8) of the principal Act (as so substituted) is amended by inserting in both paragraph (a) and paragraph (b), in each case after the words “day of the month”, the words “preceding that”.

(3) This section applies with respect to the tax on income derived in the 1994–95 income year and subsequent years.

25. Interest on tax overpaid—(1) Section 413A (1) of the principal Act (as substituted by section 81 (1) of the Income Tax Amendment Act (No. 2) 1993) is amended by repealing the definition of the term “residual income tax”, and substituting the following definition:

“‘Residual income tax’, in relation to a person and an income year, means the person’s residual income tax for that year within the meaning of section 375 of this Act, as—

“(a) Increased by any amount calculated in relation to the person and the income year under section 374_F(2)(d) of this Act; and

“(b) Reduced by any amount calculated in relation to the person and the income year under section 374_F(2)(e) of this Act:”.

(2) This section applies with respect to the tax on income derived in the 1994–95 income year and subsequent years.

26. Repeal of amendments effected by this Act—The amendments effected by this Act shall be deemed to be repealed with effect from the commencement of the Income Tax Act 1994, and sections YB 4 and YB 5 of that Act shall apply in relation to those amendments as if they were enactments repealed by section YB 3 of that Act.

This Act is administered in the Inland Revenue Department.
