



## ANALYSIS

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1996, No. 18

**An Act to amend the Income Tax Act 1976**

[10 May 1996

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 1996, 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. Commencement**—Sections 3 and 4 of this Act shall apply with respect to the income tax on taxable income—

- (a) For the 1992–93 income year; and
- (b) The 1991–92 income year, in the case of a taxpayer whose corresponding non-standard accounting year ends after 2 July 1992; and
- (c) Every subsequent income year.

**3. Interpretation**—(1) Section 245R (1) of the principal Act (as substituted by section 49 (1) of the Income Tax Amendment Act (No. 2) 1993) is amended by inserting, in its appropriate alphabetical order, the following definition:

“‘Qualifying foreign private annuity’ means an entitlement of a natural person to benefit from a

pension or annuity provided by a foreign entity while the person is resident in New Zealand, if—

“(a) The consideration for the entitlement to the pension or annuity is provided to the foreign entity—

“(i) At a time when the person is not resident in New Zealand; or

“(ii) At a time when the person is resident in New Zealand falling before the first day of the 4th income year succeeding the income year in which the person last becomes a resident of New Zealand; or

“(iii) From the accumulated balance or proceeds of an interest of the person in a superannuation fund and that interest is commuted or transferred in anticipation of, or following, the person ceasing to be a resident of New Zealand; and

“(b) The future benefits of the person arising from the entitlement are not assignable (except to a spouse under a matrimonial property arrangement) unless the value of the future benefits is substantially decreased as a consequence of the assignment; and

“(c) The future benefits of the person arising from the entitlement are not able to be surrendered, charged, or borrowed against, in exchange for a current receipt of cash or other property unless the value of the cash or other property received is substantially less than the decrease in the value of the future benefits as a consequence of the surrender, charge, or borrowing.”.

(2) Section 245R (1) of the principal Act (as so substituted) is further amended by omitting from the definition of “interest in an employment-related foreign superannuation scheme” the words “the entitlement is attributable”, and substituting the words “the entitlement is not a qualifying foreign private annuity and is attributable”.

**4. What constitutes an interest in a foreign investment fund**—(1) Section 245RA (2) of the principal Act (as amended by section 65 (1) of the Income Tax Amendment Act (No. 3) 1993) is amended by adding the following paragraph:

“(g) If, at the time, the interest is a qualifying foreign private annuity.”

(2) Section 245RA (2) (f) of the principal Act is consequentially amended by adding the expression “; or”.

(3) Section 245<sup>RA</sup> of the principal Act is further amended by adding the following subsection:

“(3) Notwithstanding subsection (2) (g), a qualifying foreign private annuity held by a person at any time during an income year shall be treated as an interest in a foreign investment fund, if—

- “(a) The entitlement is not excluded from being treated as an interest in a foreign investment fund by any of sections 245<sup>RA</sup> (2) (c), 245<sup>RA</sup> (2) (d), 245<sup>RA</sup> (2) (e), and 245<sup>RA</sup> (2) (f); and
- “(b) The person acquires the entitlement before the end of the 1994–95 income year; and
- “(c) The person discloses the entitlement as an interest in a foreign investment fund, as required by section 245<sup>W</sup> of this Act, beginning with the first income year in which such disclosure would be required if subsection (2) (g) did not apply, and ending with the income year in which the person disposes of the entitlement; and
- “(d) The person includes in a return of income the foreign investment fund income or loss with respect to the entitlement for each income year, beginning with the first income year in which the person would be required to calculate such a foreign investment fund income or loss if subsection (2) (g) did not apply, and ending with the income year in which the person disposes of the entitlement; and
- “(e) The person gives to the Commissioner the written notice required by section CG 15 (3) (d) of the Income Tax Act 1994.”

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This Act is administered in the Inland Revenue Department.

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