Reprint

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Income Tax Act 2007

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Contents

		Page
A 1	Title	118
A 2	Commencement	118

Part A
Purpose and interpretation

AA 1	Purpose of Act	119
AA 2	Interpretation	119
AA 3	Definitions	120
AA 4	Crown bound	120

Part B
Core provisions

Subpart BA—Purpose

BA 1	Purpose	122

Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered by the Inland Revenue Department.

Subpart BB—Income tax and resulting obligations

BB 1 Imposition of income tax 122
BB 2 Main obligations 123
BB 3 Overriding effect of certain matters 123

Subpart BC—Calculating and satisfying income tax liabilities

BC 1 Non-filing and filing taxpayers 127
BC 2 Annual gross income 127
BC 3 Annual total deduction 127
BC 4 Net income and net loss 128
BC 5 Taxable income 128
BC 6 Income tax liability of filing taxpayer 130
BC 7 Income tax liability of person with schedular income 130
BC 8 Satisfaction of income tax liability 133

Subpart BD—Income, deductions, and timing

BD 1 Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income 134
BD 2 Deductions 135
BD 3 Allocation of income to particular income years 135
BD 4 Allocation of deductions to particular income years 136

Subpart BE—Withholding liabilities

BE 1 Withholding liabilities 137

Subpart BF—Other obligations

BF 1 Other obligations 139

Subpart BG—Avoidance

BG 1 Tax avoidance 140

Subpart BH—Double tax agreements

BH 1 Double tax agreements 140

Part C
Income

Subpart CA—General rules

CA 1 Amounts that are income 142
CA 2 Amounts that are exempt income or excluded income 143

Subpart CB—Income from business or trade-like activities

Business generally

CB 1 Amounts derived from business 145

CB 2 Amounts received on disposal of business assets that include trading stock 146

Schemes for profit

CB 3 Profit-making undertaking or scheme 147

Personal property

CB 4 Personal property acquired for purpose of disposal 147
CB 5 Business of dealing in personal property 147

Land

CB 6 Disposal: land acquired for purpose or with intention of disposal 147
CB 7 Disposal: land acquired for purposes of business relating to land 148
CB 8 Disposal: land used for landfill, if notice of election 149
CB 9 Disposal within 10 years: land dealing business 150
CB 10 Disposal within 10 years: land development or subdivision business 150
CB 11 Disposal within 10 years of improvement: building business 151
CB 12 Disposal: schemes for development or division begun within 10 years 152
CB 13 Disposal: amount from major development or division and not already in income 152
CB 14 Disposal: amount from land affected by change and not already in income 153
CB 15 Transactions between associated persons 155

Exclusions for residential land

CB 16 Residential exclusion from sections CB 6 to CB 11 155
CB 17 Residential exclusion from sections CB 12 and CB 13 156
CB 18 Residential exclusion from section CB 14 157

Exclusions for business premises

CB 19 Business exclusion from sections CB 6 to CB 11 157
CB 20 Business exclusion from sections CB 12 and CB 13 158

Exclusions for farm land

CB 21 Farm land exclusion from sections CB 12 and CB 13 158
CB 22 Farm land exclusion from section CB 14 159

Exclusion for investment land

CB 23 Investment exclusion from sections CB 12 and CB 13 160
CB 23B Land partially sold or sold with other land 160

Timber

CB 24 Disposal of timber or right to take timber 161
CB 25 Disposal of land with standing timber 161

Investments

CB 26 Disposal of certain shares by portfolio investment entities 162

Farming, forestry, or fishing

CB 27 Income equalisation schemes 162
CB 27B Entering partners' livestock income *[Repealed]* 163

Environmental restoration

CB 28 Environmental restoration accounts 163

Minerals

CB 29 Disposal of minerals 165

Intellectual property

CB 30 Sale of patent applications or patent rights 165

Transfer of business

CB 31 Sale of business: transferred employment income obligations 165

Stolen property

CB 32 Property obtained by theft 166

Look-through companies

CB 32B Owners of look-through companies 166
CB 32C Income for first year of look-through company 167

Mutual associations

CB 33 Amounts derived by mutual associations 170
CB 34 Amounts derived by members from mutual associations 170

Partners and partnerships

CB 35 Amounts of income for partners 171

Emissions units under Climate Change Response Act 2002

CB 36 Disposal of emissions units 172

Subpart CC—Income from holding property (excluding equity)

Land use

CC 1 Land 175

CC 2 Non-compliance with covenant for repair 176

Financial instruments

CC 3 Financial arrangements 177
CC 4 Payments of interest 177
CC 5 Annuities 177
CC 6 Prizes received under Building Societies Act 1965 178
CC 7 Consideration other than in money 178
CC 8 Use of money interest payable by Commissioner 179
CC 8B Certain commercial bills: non-resident holders 179

Royalties

CC 9 Royalties 180
CC 10 Films 181

Finance leases

CC 11 Lessee acquiring lease asset on expiry of term of lease 182
CC 12 Lessor acquiring lease asset on expiry of term of lease 182

Hire purchase agreements

CC 13 Amounts paid in income years after hire purchase agreement ends 183

Subpart CD—Income from equity

Income

CD 1 Dividend 186
CD 2 Distribution excluded from being dividend 186

What is a dividend?

CD 3 Meaning of dividend 186
CD 4 Transfers of value generally 186
CD 5 What is a transfer of value? 187
CD 6 When is a transfer caused by a shareholding relationship? 188
CD 7 Bonus issues in lieu of dividend 189
CD 8 Elections to make bonus issue into dividend 189
CD 9 Interests in money or property of foreign unit trust 190
CD 10 Bonus issue by foreign unit trust instead of money or property 190
CD 11 Avoidance arrangements 191
CD 12 Superannuation schemes entering trust rules 191
CD 13 Notional distributions of producer boards and co-operative companies 191
CD 14 Notional distributions of emigrating companies 192
CD 15 Tax credits linked to dividends 192

CD 16 Certain dividends not increased by tax credits 193
CD 17 Credit transfer notice 194
CD 18 Dividend reduced if foreign tax paid on company's income 194
CD 19 Foreign tax credits and refunds linked to dividends 195
CD 20 Benefits of shareholder-employees or directors 196
CD 21 Attributed repatriations from controlled foreign companies *[Repealed]* 197

What is not a dividend?

CD 22 Returns of capital: off-market share cancellations 197
CD 23 Ordering rule and slice rule 201
CD 24 Returns of capital: on-market share cancellations 203
CD 25 Treasury stock acquisitions 203
CD 26 Capital distributions on liquidation or emigration 205
CD 27 Property made available intra-group 206
CD 28 Transfers of certain excepted financial arrangements within wholly-owned groups 208
CD 29 Non-taxable bonus issues 208
CD 30 Transfer by unit trust of legal interest after beneficial interest vests 209
CD 31 Flat-owning companies 209
CD 32 Employee benefits 209
CD 33 Payments corresponding to notional distributions of producer boards and co-operative companies 210
CD 34 Distribution to member of co-operative company based on member's transactions *[Repealed]* 211
CD 34B Distributions to members of co-operative companies 211
CD 35 Resident's restricted amalgamations 214
CD 36 Foreign investment fund income 214
CD 37 Maori authority distributions 216

Calculation rules

CD 38 General calculation rule for transfers of value 216
CD 39 Calculation of amount of dividend when property made available 217
CD 40 Adjustment if dividend recovered by company 221
CD 41 Adjustment if amount repaid later 222
CD 42 Adjustment if additional consideration paid 223
CD 43 Available subscribed capital (ASC) amount 224
CD 44 Available capital distribution amount 231

Attributed repatriation calculation rules [Repealed]

CD 45 When does a person have attributed repatriation from a controlled foreign company? *[Repealed]* 238
CD 46 New Zealand repatriation amount *[Repealed]* 238
CD 47 New Zealand property amount *[Repealed]* 238
CD 48 Cost of tangible property *[Repealed]* 238
CD 49 Cost of associated party equity *[Repealed]* 238
CD 50 Outstanding balances of financial arrangements *[Repealed]* 238
CD 51 Property transfers between associated persons *[Repealed]* 239
CD 52 Unrepatriated income balance *[Repealed]* 239

Prevention of double taxation

CD 53 Prevention of double taxation of share cancellation dividends 239

Returning share transfers

CD 54 Replacement payments 241

Subpart CE—Employee or contractor income

Employment income

CE 1 Amounts derived in connection with employment 241
CE 2 Value and timing of benefits under share purchase agreements 242
CE 3 Restrictions on disposal of shares under share purchase agreements 244
CE 4 Adjustments to value of benefits under share purchase agreements 245

Definitions

CE 5 Meaning of expenditure on account of an employee 246
CE 6 Meaning of share: when share acquired 248
CE 7 Meaning of share purchase agreement 248

Attributed income

CE 8 Attributed income from personal services 248

Restrictive covenants and exit inducement payments

CE 9 Restrictive covenants 249
CE 10 Exit inducements 250

Income protection insurance

CE 11 Proceeds from claims under policies of income protection insurance 250

Tax credits

CE 12 Tax credits for personal service rehabilitation payments 251

Subpart CF—Income from living allowances, compensation, and government grants

CF 1 Benefits, pensions, compensation, and government grants 251
CF 2 Remission of specified suspensory loans 254

Subpart CG—Recoveries

CG 1 Amount of depreciation recovery income 255
CG 2 Remitted amounts 255
CG 3 Bad debt repayment 256
CG 4 Recovered expenditure or loss 256
CG 5 Recoveries or receipts by employers from superannuation schemes 256
CG 5B Receipts from insurance, indemnity, or compensation for interruption or impairment of business activities 257
CG 6 Receipts from insurance, indemnity, or compensation for trading stock 258
CG 7 Recoveries after deduction of payments under lease 258
CG 8 Capital contributions 259

Subpart CH—Adjustments

Matching rules: revenue account property, prepayments, and deferred payments

CH 1 Adjustment for closing values of trading stock, livestock, and excepted financial arrangements 260
CH 2 Adjustment for prepayments 261
CH 3 Adjustment for deferred payment of employment income 261

Change to accounting practice

CH 4 Adjustment for change to accounting practice 261

Goods and services tax (GST)

CH 5 Adjustment for GST 262

Finance leases

CH 6 Adjustments for certain finance and operating leases 262

Avoidance and non-market transactions

CH 7 Adjustment for avoidance arrangements 263
CH 8 Market value substituted 263

Interest apportionment on thin capitalisation

CH 9 Interest apportionment: excess debt entity 264

CH 10 Interest apportionment: reporting bank 264

Subpart CO—Income from voluntary activities

CO 1 Income from voluntary activities 265

Subpart CP—Income from portfolio investment entities

CP 1 Attributed income of investors in multi-rate PIEs 265

Subpart CQ—Attributed income from foreign equity

Attributed controlled foreign company income

CQ 1 Attributed controlled foreign company income 266
CQ 2 When attributed CFC income arises 266
CQ 3 Calculation of attributed CFC income 269

Foreign investment fund income

CQ 4 Foreign investment fund income 269
CQ 5 When FIF income arises 269
CQ 6 Calculation of FIF income 273
CQ 7 Treatment of attributing interests subject to returning share transfer *[Repealed]* 273

Subpart CR—Income from insurance

CR 1 Policyholder base income of life insurer 273
CR 2 Shareholder base income of life insurer 274
CR 3 Income of non-resident general insurer 274
CR 4 Income for general insurance outstanding claims reserve 276

Subpart CS—Superannuation funds

[Repealed]

Withdrawals

[Repealed]

CS 1 Withdrawals *[Repealed]* 277

Exclusions

[Repealed]

CS 2 Exclusions of withdrawals of various kinds *[Repealed]* 278
CS 3 Exclusion of withdrawal on grounds of hardship *[Repealed]* 278
CS 4 Exclusion of withdrawal to settle division of relationship property *[Repealed]* 278
CS 5 Exclusion of withdrawal paid as annuity or pension *[Repealed]* 278
CS 6 Exclusion of withdrawal on partial retirement *[Repealed]* 278
CS 7 Exclusion of withdrawal when member ends employment *[Repealed]* 278

CS 8 Exclusion of withdrawal when member ends employment: lock-in rule *[Repealed]* 279
CS 9 Exclusion of withdrawal from defined benefit fund when member ends employment *[Repealed]* 279
CS 10 When member treated as not ending employment *[Repealed]* 279
CS 10B Exclusion of permitted withdrawals from KiwiSaver schemes and complying superannuation funds *[Repealed]* 279

Transfers to or from superannuation funds and superannuation schemes [Repealed]

CS 11 Transfer by superannuation fund to another superannuation fund *[Repealed]* 279
CS 12 Transfer from superannuation scheme to superannuation fund *[Repealed]* 280
CS 13 Investment by superannuation fund in another superannuation fund *[Repealed]* 280

Treatment of amounts when superannuation fund becomes superannuation scheme or vice versa [Repealed]

CS 14 Superannuation fund becomes superannuation scheme *[Repealed]* 280
CS 15 Superannuation fund becomes foreign superannuation scheme *[Repealed]* 280
CS 16 Superannuation scheme becomes superannuation fund *[Repealed]* 280

Treatment of distributions when superannuation fund wound up [Repealed]

CS 17 Superannuation fund wound up *[Repealed]* 281

Treatment of loans to members [Repealed]

CS 18 Value of loan treated as fund income *[Repealed]* 281

Subpart CT—Income from petroleum mining

CT 1 Disposal of exploratory material or petroleum mining asset 281
CT 2 Damage to assets 282
CT 3 Exploratory well used for commercial production 282
CT 4 Partnership interests and disposal of part of asset 283
CT 5 Petroleum mining operations outside New Zealand 283

Definitions

CT 6 Meaning of petroleum miner 284
CT 6B Meaning of petroleum mining operations 285
CT 7 Meaning of petroleum mining asset 285

Subpart CU—Income from mineral mining

Introductory provision

CU 1 Mining company's 2 kinds of income 287

Income from mining

CU 2 Mining company that processes or manufactures 287
CU 3 Disposal of assets 288
CU 4 Compensation for lost, destroyed, or damaged assets 290
CU 5 Compensation and scrap payment: income from mining 291
CU 6 Compensation and scrap payment: use to replace or repair asset 292
CU 7 Compensation and scrap payment: not income from mining 292
CU 8 Compensation and scrap payment: more than expenditure 292
CU 9 Previous deduction for income appropriated 294
CU 10 Mining asset used to derive income other than income from mining 294
CU 11 Meaning of asset for sections CU 3 to CU 10 295
CU 12 Application of sections to resident mining operators 296
CU 13 Application of sections to non-resident mining operators 296
CU 14 Recovery of reinvestment profit on disposal of mining shares 297
CU 15 Recovery of reinvestment profit not used for mining purposes 298
CU 16 Recovery of reinvestment profit on repayment of loans 298
CU 17 Repayment by mining company of amount written off 299
CU 18 Amount treated as repayment for purposes of section CU 17: excess 300
CU 19 Amount treated as repayment for purposes of section CU 17: net income 301
CU 20 Mining company or mining holding company liquidated 303

Definitions

CU 21 Meaning of income from mining 303
CU 22 Meaning of mining company 304
CU 23 Meaning of mining development expenditure 305
CU 24 Meaning of mining exploration expenditure 306
CU 25 Meaning of mining operations 307

CU 26 Meaning of mining venture 308
CU 27 Meaning of resident mining operator 309
CU 28 Meaning of specified mineral 310
CU 29 Other definitions 310

Subpart CV—Income specific to certain entities

CV 1 Group companies 313
CV 2 Consolidated groups: income of company in group 314
CV 3 Consolidated groups: arrangement for disposal of shares 314
CV 4 Amalgamated companies: amount derived after amalgamation 315
CV 5 Statutory producer boards 315
CV 6 Crown Research Institutes 315
CV 7 Australian wine producer rebate 316
CV 8 Regulations: Australian wine producer rebate 316
CV 9 Supplementary dividend holding companies 317
CV 10 Foreign dividend payment account companies or conduit tax relief companies *[Repealed]* 317
CV 11 Maori authorities 318
CV 12 Trustees: amounts received after person's death 318
CV 13 Amounts derived from trusts 318
CV 14 Distributions from community trusts 319
CV 15 Amounts derived from trusts while person absent from New Zealand 319
CV 16 Non-resident shippers 319
CV 17 Non-resident film renters 320

Subpart CW—Exempt income

Income from business or trade-like activities

CW 1 Forestry companies established by the Crown, Maori owners, and holding companies buying land with standing timber from founders 321
CW 1B Treaty of Waitangi claim settlements: rights to take timber 322
CW 2 Forestry encouragement agreements 322
CW 3 Forestry companies and Maori investment companies 323
CW 3B Pre-1990 forest land units: emissions trading scheme *[Repealed]* 323

Income from holding property (excluding equity)

CW 4 Annuities under life insurance policies 324
CW 5 Payments of interest: post-war credits 324
CW 6 Payments of interest: farm mortgages 324

CW 7 Foreign-sourced interest 325
CW 8 Money lent to government of New Zealand 325

Income from equity

CW 9 Dividend derived from foreign company 326
CW 10 Dividend within New Zealand wholly-owned group 327
CW 11 Dividend of conduit tax relief holding company 329
CW 12 Proceeds of share disposal by qualifying foreign equity investor 329
CW 13 Proceeds from share or option acquired under venture investment agreement 336
CW 14 Dividends derived by qualifying companies 338
CW 15 Dividends paid by qualifying companies 338

Employee or contractor income

CW 16 Allowance of Governor-General and other benefits and privileges 339
CW 17 Expenditure on account, and reimbursement, of employees 339
CW 17B Relocation payments 340
CW 17C Payments for overtime meals and certain other allowances 341
CW 18 Allowance for additional transport costs 343
CW 19 Amounts derived during short-term visits 344
CW 20 Amounts derived by visiting entertainers including sportspersons 345
CW 21 Amounts derived by visiting crew of pleasure craft 346
CW 22 Amounts derived by overseas experts and trainees in New Zealand by government arrangement 347
CW 23 Income for military or police service in operational area 349
CW 24 Deferred military pay for active service 350
CW 25 Value of board for religious society members 351
CW 26 Jurors' and witnesses' fees 351

Certain income of transitional resident

CW 27 Certain income derived by transitional resident 351

Income from living allowances, compensation, and government grants

CW 28 Pensions 351
CW 29 Reinvested amounts from foreign superannuation schemes in Australia 352
CW 30 Annuities from Crown Bank Accounts 353
CW 31 Services for members of Parliament 353

CW 32 Maintenance payments 353
CW 33 Allowances and benefits 354
CW 34 Compensation payments 355
CW 35 Personal service rehabilitation payments 356
CW 36 Scholarships and bursaries 357
CW 37 Film production grants *[Repealed]* 357

Income of certain entities

CW 38 Public authorities 357
CW 39 Local authorities 358
CW 40 Local and regional promotion bodies 359
CW 41 Charities: non-business income 360
CW 42 Charities: business income 361
CW 43 Charitable bequests 365
CW 44 Friendly societies 367
CW 45 Funeral trusts 367
CW 46 Bodies promoting amateur games and sports 368
CW 47 TAB and racing clubs 368
CW 48 Income from conducting gaming-machine gambling 369
CW 49 Bodies promoting scientific or industrial research 369
CW 50 Veterinary services bodies 370
CW 51 Herd improvement bodies 370
CW 52 Community trusts 370
CW 53 Distributions from complying trusts 371
CW 54 Foreign-sourced amounts derived by trustees 371
CW 55 Maori authority distributions 371
CW 55BA Tertiary education institutions 371

Partners and partnerships

CW 55B Amounts of exempt income for partners 371

Income from certain activities

CW 56 Non-resident aircraft operators 372
CW 57 Non-resident company involved in exploration and development activities 373
CW 58 Disposal of companies' own shares 373
CW 59 New Zealand companies operating in Niue 374
CW 59B Income of and distributions by certain international funds 375
CW 59C Life reinsurance outside New Zealand 376
CW 60 Stake money 376
CW 61 Providing standard-cost household service 376
CW 62 Interest paid under the KiwiSaver Act 2006 377
CW 62B Voluntary activities 377

CW 63 Avoidance arrangements 379
CW 64 Exemption under other Acts 379

Subpart CX—Excluded income

Goods and services tax

CX 1 Goods and services tax 379

Fringe benefits

Introductory provisions

CX 2 Meaning of fringe benefit 379
CX 3 Excluded income 380
CX 4 Relationship with assessable income 381
CX 5 Relationship with exempt income 381

Fringe benefits

CX 6 Private use of motor vehicle 382
CX 7 Employer or associated person treated as having right to use vehicle under arrangement 383
CX 8 Private use of motor vehicle: use by more than 1 employee 383
CX 9 Subsidised transport 383
CX 10 Employment-related loans 384
CX 11 Employment-related loans: loans by life insurers 385
CX 12 Services for members of Parliament 385
CX 13 Contributions to superannuation schemes 386
CX 14 Contributions to sickness, accident, or death benefit funds 386
CX 15 Contributions to funeral trusts 386
CX 16 Contributions to life or health insurance 387
CX 17 Benefits provided to employees who are shareholders or investors 389
CX 18 Benefits provided to associates of both employees and shareholders 390

Exclusions and limitations

CX 19 Benefits provided instead of allowances 390
CX 20 Benefits to enable performance of duties 392
CX 21 Business tools 392
CX 22 Benefits to non-executive directors 393
CX 23 Benefits provided on premises 393
CX 24 Benefits related to health or safety 394
CX 25 Benefits provided by charitable organisations 394
CX 26 Non-liable payments 395
CX 27 Assistance with tax returns 395
CX 28 Accommodation 395
CX 29 Entertainment 396

CX 30 Distinctive work clothing 396
CX 31 Contributions to income protection insurance 397
CX 32 Services provided to superannuation fund 397
CX 33 Goods provided at discount by third parties 397

Definitions

CX 34 Meaning of emergency call 398
CX 35 Meaning of employee share loan 399
CX 36 Meaning of private use 399
CX 37 Meaning of unclassified benefit 400
CX 38 Meaning of work-related vehicle 400

Insurance

CX 39 Life insurers and fully reinsured persons *[Repealed]* 401
CX 40 Superannuation fund deriving amount from life insurance policy 401
CX 41 Resident insurance underwriters 401

Petroleum mining

CX 42 Disposal of ownership interests in controlled petroleum mining entities 402
CX 43 Farm-out arrangements for petroleum mining 402

Mineral mining

CX 44 Disposal of mining shares 402
CX 45 Disposal of mining shares acquired with reinvestment profit 403
CX 46 Repayment of loans made from reinvestment profit 405

Government grants

CX 47 Government grants to businesses 405
CX 48 Amounts remitted as condition of new start grant 407
CX 48B Issue of post-1989 forest land units *[Repealed]* 409

Government funding of film and television

CX 48C Government funding additional to government screen production payments 410

Research and development

CX 48D Tax credits for expenditure on research and development 410

Superannuation and savings

CX 49 Employer's superannuation contributions 410
CX 50 Tax credits for KiwiSaver and complying superannuation funds 411

CX 50B Contributions to retirement savings schemes 411

Farming, forestry, or fishing

CX 51 Income equalisation schemes 412

Emissions units under Climate Change Response Act 2002

CX 51B Disposal of pre-1990 forest land emissions units 412
CX 51C Disposal of fishing quota emissions units 413

Environmental restoration

CX 52 Refund from environmental restoration account 413

Inflation-indexed instruments

CX 53 Credits for inflation-indexed instruments 413

Share-lending arrangements

CX 54 Share-lending collateral under share-lending arrangements 414

Portfolio investment income

CX 55 Proceeds from disposal of investment shares 414
CX 56 Attributed income of certain investors in multi-rate PIEs 415
CX 56B Distributions to investors in multi-rate PIEs 417
CX 56C Distributions to investors by listed PIEs 418
CX 57 Credits for investment fees 419

Minors' beneficiary income

CX 58 Amounts derived by minors from trusts 419
CX 59 Taxable distributions from non-complying trusts 420

Transactions between companies in consolidated groups

CX 60 Intra-group transactions 420

Avoidance arrangements

CX 61 Avoidance arrangements 420

Partners and partnerships

CX 62 Amounts of excluded income for partners 421

Look-through companies

CX 63 Dividends derived after company ceased to be look-through company 421

Subpart CZ—Terminating provisions

CZ 1 Share purchase agreement income before 19 July 1968 422
CZ 2 Mining company's 1970–71 tax year 422

CZ 3	Exchange variations on 8 August 1975	423
CZ 4	Mineral mining: company making loan before 1 April 1979	425
CZ 5	Exempt interest: overseas money lent to government or local or public authority before 29 July 1983	426
CZ 6	Commercial bills before 31 July 1986	426
CZ 7	Primary producer co-operative companies: 1987–88 income year	427
CZ 8	Farm-out arrangements for petroleum mining before 16 December 1991	428
CZ 9	Available capital distribution amount: 1965 and 1985–1992	428
CZ 9B	Available capital distribution amount: 1988 to 2010	429
CZ 10	Transitional relief for calculation of attributed repatriation dividends: 2 July 1992	432
CZ 11	Recovery of deductions for software acquired before 1 April 1993	433
CZ 12	General insurance with risk period straddling 1 July 1993	433
CZ 13	Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996	434
CZ 14	Treatment of superannuation fund interests in group investment funds on 1 April 1999	435
CZ 15	Accident insurance contracts before 1 July 2000	435
CZ 16	Interest payable to exiting company: 2001	436
CZ 17	Dividend of exiting company: 2001	436
CZ 18	Benefit provider approved within 6 months of 25 November 2003	436
CZ 19	Community trust receipts in 2004–05 or 2005–06 tax year	437
CZ 20	Disposal of personal property lease asset under specified lease	438
CZ 21	Superannuation fund loans made to members before 1 April 1989	438
CZ 22	Geothermal wells between 31 March 2003 and 17 May 2006	439
CZ 23	Insurance or compensation for buildings replaced as revenue account property affected by Canterbury earthquakes	440
CZ 24	Employee benefits for Canterbury earthquake relief: not fringe benefits	443

Part D
Deductions

Subpart DA—General rules

DA 1	General permission	444
DA 2	General limitations	445
DA 3	Effect of specific rules on general rules	446
DA 4	Treatment of amount of depreciation loss	447

Subpart DB—Specific rules for expenditure types

Taxes and other amounts

DB 1	Taxes, other than GST, and penalties	447
DB 2	Goods and services tax	448
DB 3	Determining tax liabilities	449
DB 3B	Use of money interest	451
DB 4	Chatham Islands dues	451
DB 4B	Fees to purchase funds in tax pooling accounts	452

Financing costs

DB 5	Transaction costs: borrowing money for use as capital	452
DB 6	Interest: not capital expenditure	453
DB 7	Interest: most companies need no nexus with income	453
DB 8	Interest: money borrowed to acquire shares in group companies	455
DB 9	Interest incurred on money borrowed to acquire shares in qualifying companies	456
DB 10	Interest or expenditure connected to profit-related or substituting debentures	457
DB 10B	Interest or expenditure connected to stapled debt security	458

Financial arrangements adjustments

DB 11	Negative base price adjustment	458
DB 12	Base price adjustment under old financial arrangements rules	459
DB 13	Repayment of debt sold at discount to associate of debtor	459
DB 14	Security payment	459
DB 15	Sureties	460

Share-lending arrangements

DB 16	Share-lending collateral under share-lending arrangements	461
DB 17	Replacement payments and imputation credits under share-lending arrangements	461

Premises or land costs

DB 18 Transaction costs: leases 462
DB 19 Expenses of failed or withdrawn application for resource consent 462
DB 20 Destruction of temporary building 463
DB 21 Amounts paid for non-compliance with covenant for repair 463
DB 22 Amounts paid for non-compliance and change in use 464

Revenue account property

DB 23 Cost of revenue account property 465
DB 24 Share losses 466
DB 25 Cancellation of shares held as revenue account property 467
DB 26 Amount from profit-making undertaking or scheme and not already in income 468
DB 27 Amount from major development or division and not already in income 468
DB 28 Amount from land affected by change and not already in income 469
DB 29 Apportionment when land acquired with other property 470
DB 30 Cost of non-specified mineral 470

Bad debts

DB 31 Bad debts 471
DB 32 Bad debts owed to estates 474

Research and development

DB 33 Scientific research 474
DB 34 Research or development 475
DB 35 Some definitions 478
DB 36 Patent expenses 479
DB 37 Expenses of failed or withdrawn patent application 480
DB 38 Patent rights: devising patented inventions 480
DB 39 Patent rights acquired before 1 April 1993 481
DB 40 Patent applications or patent rights acquired on or after 1 April 1993 482

Marketing

DB 41 Charitable or other public benefit gifts by company 483

Theft and bribery

DB 42 Property misappropriated by employees or service providers 484
DB 43 Making good loss from misappropriation by partners 485

DB 44 Restitution of stolen property 486
DB 45 Bribes paid to public officials 486

Pollution control

DB 46 Avoiding, remedying, or mitigating effects of discharge of contaminant 487

Repayments

DB 47 Payments for remitted amounts 490
DB 48 Restrictive covenant breached 491

Matching rules: revenue account property, prepayments, and deferred payments

DB 49 Adjustment for opening values of trading stock, livestock, and excepted financial arrangements 492
DB 50 Adjustment for prepayments 493
DB 51 Adjustment for deferred payment of employment income 493

Adjustments for leases that become finance leases

DB 51B Adjustments for leases that become finance leases 494

Change to accounting practice

DB 52 Adjustment for change to accounting practice 494

Investment income

DB 53 Attributed PIE losses of certain investors 495
DB 54 Treatment of credits for investment fees 496
DB 54B Expenditure incurred by foreign investment PIEs 496

Exempt income

DB 55 Expenditure incurred in deriving exempt dividend 497

Use of motor vehicle under certain arrangements

DB 56 Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 7 498

Payments to spouses, civil union partners, or de facto partners

DB 57 Payments to spouses, civil union partners, or de facto partners other than for services 498

Avoidance and non-market transactions

DB 58 Adjustment for avoidance arrangements 499
DB 59 Market value substituted 500

Emissions units and liabilities under Climate Change Response Act 2002

DB 60 Acquisition of emissions units 500
DB 60B Liabilities for emissions 501
DB 61 Surrender of certain emissions units for post-1989 forest land emissions 502

Legal expenses

DB 62 Deduction for legal expenses 502

Capital contributions

DB 64 Capital contributions 503
DB 65 Allowance for certain commercial buildings 504

Subpart DC—Employee or contractor expenditure

DC 1 Lump sum payments on retirement 506
DC 2 Pension payments to former employees 507
DC 3 Pension payments to former partners 508
DC 3B Payments to working owners 509
DC 4 Payments to working partners 510
DC 5 Payments to spouses, civil union partners, or de facto partners: services 511
DC 6 Contributions to employees' benefit funds 512
DC 7 Contributions to employees' superannuation schemes 512
DC 8 Attribution of personal services 513
DC 9 Restrictive covenants or exit inducements 514
DC 10 Sale of business: transferred employment income obligations 514
DC 11 Transfers of employment income obligations to associates 516
DC 12 Loans to employees under share purchase schemes 516
DC 13 Criteria for approval of share purchase schemes: before period of restriction ends 518
DC 14 Criteria for approval of share purchase schemes: when period of restriction ends 520
DC 15 Some definitions 521

Subpart DD—Entertainment expenditure

DD 1 Entertainment expenditure generally 523
DD 2 Limitation rule 523
DD 3 When limitation rule does not apply 525
DD 4 Employment-related activities 525
DD 5 Promoting businesses, goods, or services 526
DD 6 Entertainment as business or for charitable purpose 528
DD 7 Entertainment outside New Zealand 528

DD 8 Entertainment that is income or fringe benefit 528
DD 9 Relationship with fringe benefit tax rules 528
DD 10 Interpretation: reimbursement and apportionment 529
DD 11 Some definitions 529

Subpart DE—Motor vehicle expenditure

Introductory provisions

DE 1 What this subpart does 530
DE 2 Deductions for business use 530
DE 3 Methods for calculating proportion of business use 533
DE 4 Default method for calculating proportion of business use 533

Actual records

DE 5 Actual records 533

Logbook

DE 6 Using logbook for test period 534
DE 7 Logbook requirements 534
DE 8 Logbook term 535
DE 9 Inadequate logbook 536
DE 10 Variance during logbook term 536
DE 11 Replacement vehicles 537

Mileage rates

DE 12 Mileage rate method 537

Subpart DF—Government grants, funding, and compensation

DF 1 Government grants to businesses 538
DF 2 Repayment of grant-related suspensory loans 540
DF 3 Identifying expenditure for purposes of sections DF 1 and DF 2 541
DF 4 Payments for social rehabilitation 541
DF 5 Government funding additional to government screen production payments 542

Subpart DN—Attributed losses from foreign equity

Attributed controlled foreign company (CFC) loss

DN 1 Attributed controlled foreign company loss 543
DN 2 When attributed CFC loss arises 544
DN 3 Calculation of attributed CFC loss 546
DN 4 Ring-fencing cap on deduction 546

Foreign investment fund (FIF) loss

DN 5 Foreign investment fund loss 547

DN 6 When FIF loss arises 547
DN 7 Calculation of FIF loss 551
DN 8 Ring-fencing cap on deduction: branch equivalent method 551

Subpart DO—Farming and aquacultural business expenditure

Farming

DO 1 Enhancements to land, except trees 552
DO 2 Erosion and shelter plantings 553
DO 3 Trees on farms 553
DO 4 Improvements to farm land 554
DO 5 Expenditure on land: planting of listed horticultural plants 556
DO 6 Expenditure on land: horticultural replacement planting 558
DO 7 Accounting for expenditure on listed horticultural plants under sections DO 5 and DO 6 560
DO 8 Meaning of planting and plot 561
DO 9 Meaning of replaced area fraction 561
DO 10 Farming or horticulture expenditure of lessor or sublessor 562
DO 11 Improvement destroyed or made useless 563
DO 11B Entering partners' livestock deduction *[Repealed]* 563

Aquaculture

DO 12 Improvements to aquacultural business 564
DO 13 Improvement destroyed or made useless 565

Subpart DP—Forestry expenditure

DP 1 Expenditure of forestry business 566
DP 2 Plant or machinery 567
DP 3 Improvements to forestry land 568
DP 4 Improvement destroyed or made useless 570
DP 5 Forestry encouragement agreement: deductions 570
DP 6 Forestry encouragement agreement: no deduction 571
DP 7 Land contouring: no deduction 572
DP 8 Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction 572
DP 9 Cost of acquiring timber: forestry business on land bought from the Crown, Maori owners, or holding company 573
DP 9B Treaty of Waitangi claim settlements: rights to take timber 574
DP 10 Cost of acquiring timber or right to take timber: other cases 574
DP 11 Cost of timber 576

Subpart DQ—Income equalisation schemes and environmental restoration accounts schemes

DQ 1 Main income equalisation scheme 577
DQ 2 Adverse event income equalisation scheme 578
DQ 3 Thinning operations income equalisation scheme 578
DQ 4 Environmental restoration accounts scheme 578

Subpart DR—Life insurance business expenditure

DR 1 Policyholder base allowable deduction of life insurer 579
DR 2 Shareholder base allowable deduction of life insurer 580
DR 3 Life reinsurance outside New Zealand 580
DR 4 Life insurers' claims reserves 581

Subpart DS—Film industry expenditure

DS 1 Acquiring film rights 581
DS 2 Film production expenditure 583
DS 2B Expenditure when film or film right intended for disposal 585
DS 3 Clawback of deductions for film reimbursement schemes 586
DS 4 Meaning of film reimbursement scheme 587

Subpart DT—Petroleum mining expenditure

Petroleum exploration expenditure

DT 1A Ring-fenced allocations 589
DT 1 Petroleum exploration expenditure 590
DT 2 Arrangement for petroleum exploration expenditure and sale of property 590
DT 3 Acquisition of privileges and permits 593
DT 4 Acquisition of exploratory material 593

Petroleum development expenditure

DT 5 Petroleum development expenditure 593
DT 6 Expenditure on petroleum mining assets 594
DT 7 Exploratory well expenditure 595
DT 8 Acquisition of certain petroleum mining assets 595
DT 9 Disposal of petroleum mining asset to associate 595
DT 10 Disposal of petroleum mining asset outside association 596
DT 11 Association ending 597

Other expenditure

DT 12 Damage to assets 598
DT 13 Disposal of ownership interests in controlled petroleum mining entities 599
DT 14 Farm-out arrangements 599
DT 15 Persons associated with petroleum miner 600

DT 16 Removal or restoration operations 601

General provisions

DT 17 Attribution of expenditure 601
DT 18 Replacement permits 602
DT 19 Partnership interests and disposal of part of asset 602
DT 20 Petroleum mining operations outside New Zealand 602

Subpart DU—Mineral mining expenditure

DU 1 Mining exploration expenditure and mining development expenditure 602
DU 2 Mining exploration expenditure or mining development expenditure on acquisition of asset 603
DU 3 Replacing or repairing asset 605
DU 4 Income appropriated to expenditure 606
DU 5 Non-mining asset used to derive income from mining 607
DU 6 Depreciation 608
DU 7 Limit on deduction 609
DU 8 Meaning of asset for sections DU 1 to DU 7 610
DU 9 Application of sections to resident mining operators 611
DU 10 Application of sections to non-resident mining operators 612
DU 11 Disposal of mining shares by company 613
DU 12 Amount written off by holding company 613

Subpart DV—Expenditure specific to certain entities

Superannuation funds

DV 1 Publicising superannuation funds 615
DV 2 Transfer of expenditure to master fund 616
DV 3 Formula for calculating maximum deduction 619
DV 4 Carry forward of expenditure 619
DV 4B Carry forward of expenditure by member funds investing in portfolio investment entities 622

Other entities

DV 5 Investment funds: transfer of expenditure to master funds 623
DV 6 Formula for calculating maximum deduction 626
DV 7 Carry forward of expenditure 627
DV 8 Non-profit organisations 628
DV 9 Trusts 628
DV 10 Building societies 629
DV 11 Distribution to member of co-operative company, excluded from being dividend 629
DV 12 Maori authorities: donations 630
DV 13 Group companies 631

DV 14 Amalgamated company: expenditure on improvements for farming, horticultural, aquacultural, and forestry businesses 632
DV 15 Amalgamated companies: property passing on resident's restricted amalgamation 633
DV 16 Consolidated groups: intra-group transactions 633
DV 17 Consolidated groups: expenditure or loss incurred by group companies 634
DV 18 Statutory producer boards and co-operative companies 635
DV 19 Association rebates 635

Partners and partnerships

DV 20 Partners 637
DV 21 Losses for QCs entering partnership regime 638

Look-through companies

DV 22 Owners of look-through companies 639
DV 23 Losses for QCs entering look-through companies rules 640

Sole traders

DV 24 Losses for QCs becoming sole traderships 641

Subpart DW—Expenditure specific to certain industries

DW 1 Airport operators 643
DW 2 Bloodstock racing 643
DW 3 Non-resident general insurers, shippers, and film renters 644
DW 4 Deduction for general insurance outstanding claims reserve 645

Subpart DX—Other expenditure

DX 1 Testamentary annuities 646
DX 2 Tax credits: conduit financing arrangements *[Repealed]* 648
DX 3 Tax credits: supplementary dividend holding companies 648

Subpart DZ—Terminating provisions

DZ 1 Commercial bills before 31 July 1986 648
DZ 2 Life insurers acquiring property before 1 April 1988 649
DZ 3 Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991 650
DZ 4 Expenditure on abandoned exploratory well before 16 December 1991 651
DZ 5 Farm-out arrangements for petroleum mining before 16 December 1991 652
DZ 6 Partnership interests and disposal of part of asset before 16 December 1991 654

DZ 7	Petroleum mining operations outside New Zealand before 16 December 1991	654
DZ 8	Buying patent rights before 1 April 1993	655
DZ 9	Premium paid on land leased before 1 April 1993	655
DZ 10	General insurance with risk period straddling 1 July 1993	656
DZ 11	Film reimbursement scheme on or before 30 June 2001	656
DZ 12	Mineral mining: 1954–2005	658
DZ 13	Enhancements to land unamortised at end of 2004–05 year	660
DZ 14	Deductions under specified leases	661
DZ 15	Patent applications before 1 April 2005	661
DZ 16	Geothermal wells between 31 March 2003 and 17 May 2006	662
DZ 17	Expenditure on improvements to aquacultural business before 1995–96 income year	663
DZ 18	Expenditure on improvements to forestry land before 1995–96 income year	664
DZ 19	Attributed CFC loss carried back under section EZ 32C	665

Part E
Timing and quantifying rules

Subpart EA—Matching rules: revenue account property, prepayments, and deferred payments

EA 1	Trading stock, livestock, and excepted financial arrangements	665
EA 2	Other revenue account property	666
EA 3	Prepayments	667
EA 4	Deferred payment of employment income	669

Subpart EB—Valuation of trading stock (including dealer's livestock)

Introductory provisions

EB 1	When this subpart applies	671
EB 2	Meaning of trading stock	671
EB 3	Valuation of trading stock	673
EB 4	Trading stock valuation methods	674
EB 5	Transfers of trading stock within wholly-owned groups	674

Standard valuation

EB 6	Cost	675
EB 7	Cost allocation: cost-flow method	676
EB 8	Cost allocation: budgeted method or standard cost method	677
EB 9	Discounted selling price	678

EB 10 Replacement price 679
EB 11 Market selling value 680
EB 12 Valuing closing stock consistently 681

Low-turnover valuation

EB 13 Low-turnover valuation 681
EB 14 Low-turnover valuation methods 682
EB 15 Cost for low-turnover traders 682
EB 16 Cost allocation: cost-flow method for low-turnover traders 682
EB 17 Costs: manufactured or produced stock of low-turnover traders 683
EB 18 Costs: other stock of low-turnover traders 683
EB 19 Discounted selling price for low-turnover traders 684
EB 20 Replacement price for low-turnover traders 685
EB 21 Market selling value for low-turnover traders 686
EB 22 Valuing closing stock consistently for low-turnover traders 686

Low value trading stock

EB 23 Valuing closing stock under $10,000 687

Disposal of business assets

EB 24 Apportionment on disposal of business assets that include trading stock 688

Subpart EC—Valuation of livestock

Introductory provisions

EC 1 Application of this subpart 689
EC 2 Valuation of livestock 689
EC 3 Livestock valuation methods 690
EC 4 Transfers of livestock within wholly-owned groups 690
EC 5 Transfer of livestock because of self-assessed adverse event 691

Valuation of specified livestock

EC 6 Application of sections EC 7 to EC 27 692
EC 7 Valuation methods 692
EC 8 Restrictions on use of herd scheme 693
EC 9 Restrictions on use of national standard cost scheme 694
EC 10 Restrictions on use of cost price method 695
EC 11 Restrictions on making of elections 696
EC 12 Interests in livestock 698
EC 13 Changes in partnership interests 699

Herd scheme

EC 14 Herd scheme 700
EC 15 Determining national average market values 700
EC 16 Valuation under herd scheme 701
EC 17 Herd value ratio 702
EC 18 Inaccurate herd value ratio 703
EC 19 Chatham Islands adjustment to herd value 703
EC 20 Herd livestock disposed of before values determined 704
EC 21 Herd livestock on death before values determined 705

National standard cost scheme

EC 22 National standard cost scheme 705
EC 23 Determining national standard costs 705
EC 24 Methods for determining costs using national standard cost scheme 706

Other methods

EC 25 Cost price, replacement price, or market value 707
EC 26 Bailee's treatment of livestock 707

Partnerships: cost price and national standard cost scheme

EC 26B Entering partners' cost base 708

Definitions

EC 27 Some definitions 710

Valuation of non-specified livestock

EC 28 Application of sections EC 29 to EC 31 710
EC 29 Determining standard values 711
EC 30 Closing value methods 711
EC 31 Enhanced production 711

Valuation of high-priced livestock

EC 32 Application of sections EC 33 to EC 37 712
EC 33 Determining depreciation percentages 713
EC 34 General rule 713
EC 35 Livestock reaching national average market value and livestock no longer used for breeding 714
EC 36 Immature livestock and recently bought livestock 715
EC 37 Bailment 716

Valuation of bloodstock

EC 38 Application of sections EC 39 to EC 48 716
EC 39 First income year in breeding business 716

EC 40 Later income years in breeding business 717
EC 41 Reduction: bloodstock not previously used for breeding in New Zealand other than as shuttle stallions 718
EC 42 Reduction: bloodstock previously used for breeding in New Zealand 719
EC 43 Accident, birth deformity, or infertility 720
EC 44 Other bloodstock 720
EC 45 Residual value of bloodstock 721
EC 46 Use of bloodstock for racing 721
EC 47 Change of use of bloodstock in course of business 722
EC 48 Replacement breeding stock 722

Subpart ED—Valuation of excepted financial arrangements

ED 1 Valuation of excepted financial arrangements 724
ED 1B Valuation of emissions units issued for zero price 730
ED 2 Transfers of certain excepted financial arrangements within wholly-owned groups 733

Subpart EE—Depreciation

Introductory provision

EE 1 What this subpart does 734

Meaning of own

EE 2 Nature of ownership of item 736
EE 3 Ownership of goods subject to reservation of title 736
EE 4 Ownership of lessee's improvements: lessee 737
EE 5 Ownership of lessee's improvements: other person 738

Meaning of depreciable property

EE 6 What is depreciable property? 738
EE 7 What is not depreciable property? 739
EE 8 Election that property not be depreciable 740

How amounts of depreciation loss and depreciation recovery income are calculated

EE 9 Description of elements of calculation 742
EE 10 Calculation rule: item temporarily not available 743
EE 11 Calculation rule: income year in which item disposed of 743

Methods

EE 12 Depreciation methods 744

Amount of depreciation loss under diminishing value method or straight-line method

EE 13 Application of sections EE 14 to EE 19 746
EE 14 Diminishing value or straight-line method: calculating amount of depreciation loss 746
EE 15 Amount of adjusted tax value 746
EE 16 Amount resulting from standard calculation 747
EE 17 Amount resulting from petroleum-related depreciable property calculation 748
EE 18 Cost: change from diminishing value to straight-line method 749
EE 19 Cost: fixed life intangible property 749

Amount of depreciation loss under pool method

EE 20 Application of sections EE 21 to EE 24 750
EE 21 Pool method: calculating amount of depreciation loss 750
EE 22 Cases affecting pool 752
EE 23 Combined pools 754
EE 24 Property ceasing to qualify for pool 754
EE 25 Depreciation loss for plant variety rights application granted in 2005–06 or later income year 754

Depreciation rates

EE 26 Setting of economic depreciation rate 755
EE 27 Economic rate for certain depreciable property 756
EE 28 Economic rate for buildings 758
EE 29 Economic rate for certain aircraft and motor vehicles 759
EE 30 Economic rate for plant, equipment, or building, with high residual value 760
EE 31 Annual rate for item acquired in person's 1995–96 or later income year 761
EE 32 Election in relation to certain depreciable property acquired on or after 1 April 2005 765
EE 33 Annual rate for fixed life intangible property 766
EE 34 Annual rate for patent granted in 2005–06 or later income year 766
EE 35 Special rate or provisional rate 768
EE 36 Using economic rate or provisional rate instead of special rate 769

Improvements, items of low value, or items no longer used

EE 37 Improvements 769
EE 38 Items of low value 772

EE 39 Items no longer used 774

Transfers of depreciable property: associated persons and certain amalgamations

EE 40 Transfer of depreciable property on or after 24 September 1997 776
EE 41 Transfer of depreciable property on certain amalgamations on or after 14 May 2002 778
EE 42 Transfer of radiocommunications licence right on or after 24 September 1997 780
EE 43 Transfer of depreciable intangible property on or after 1 July 1997 781

Disposals and similar events

EE 44 Application of sections EE 48 to EE 52 781
EE 45 Consideration for purposes of section EE 44 782
EE 46 Items for purposes of section EE 44 786
EE 47 Events for purposes of section EE 44 786
EE 48 Effect of disposal or event 788
EE 49 Amount of depreciation recovery income when item partly used for business 791
EE 50 Amount of depreciation loss when item partly used to produce income 792
EE 51 Amount of depreciation recovery income when lost or stolen items recovered 795
EE 52 Amount of depreciation recovery income when compensation received 796
EE 53 Unused geothermal well brought into use 797

Interpretation provisions

EE 54 Cost: GST 797

Adjusted tax value

EE 55 Meaning of adjusted tax value 798
EE 56 Formula 799
EE 57 Base value in section EE 56 when none of sections EE 58, EE 59, and EZ 22(1) applies 799
EE 58 Base value in section EE 56 when no previous deduction 800
EE 59 Base value in section EE 56 when property is petroleum-related depreciable property 801
EE 60 Total deductions in section EE 56 802

Definitions

EE 61 Meaning of annual rate 805

EE 62 Meaning of depreciable intangible property 807
EE 63 Meaning of estimated useful life 808
EE 64 Meaning of excluded depreciable property 808
EE 65 Meaning of maximum pooling value 809
EE 66 Meaning of poolable property 810
EE 67 Other definitions 810

Subpart EF—Taxes and levies

EF 1 Fringe benefit tax 813
EF 2 Employer's superannuation contribution tax 813
EF 3 Accident compensation levies and premiums 814
EF 4 Use of money interest payable by Commissioner 816
EF 5 Use of money interest payable by person 817
EF 6 Different tax years *[Repealed]* 819

Subpart EG—Recognition of accounting treatment

EG 1 Election to use balance date used in foreign country 819
EG 2 Adjustment for changes to accounting practice 822
EG 3 Allocation of income, deductions, and tax credits by portfolio tax rate entity *[Repealed]* 823

Subpart EH—Income equalisation schemes

Introductory provisions

EH 1 Income equalisation schemes 824
EH 2 Income Equalisation Reserve Account 824

Main income equalisation scheme

Application

EH 3 Persons to whom main income equalisation scheme applies 825

Deposits and accounts

EH 4 Main deposit 825
EH 5 Main income equalisation account 827

Interest

EH 6 Interest on deposits in main income equalisation account 828

Deduction

EH 7 Deduction of deposit 829

Refunds: automatic

EH 8 Refund of excess deposit 829
EH 9 Income does not include excess deposit 829
EH 10 Refund at end of 5 years 830

EH 11 Income when refund given at end of 5 years 830

Refunds: on application

EH 12 Application for refund by person, trustee of estate, Official Assignee, or liquidator 830
EH 13 Refund on request 831
EH 14 Income when refund given on request 831
EH 15 Refund for development or recovery 832
EH 16 Income when refund given for development or recovery 833
EH 17 Refund on retirement 834
EH 18 Income when refund given on retirement, and election to allocate amount to earlier year 834
EH 19 Refund on death 835
EH 20 Income when refund given on death 835
EH 21 Income when refund given on death, and election to allocate amount to earlier year 836
EH 22 Income when refund given on death, and election to allocate amount to later year or years 836
EH 23 Refund on bankruptcy 838
EH 24 Income when refund given on bankruptcy 838
EH 25 Refund on liquidation 838
EH 26 Income when refund given on liquidation 839

Refunds: general provisions

EH 27 Amendment of assessment 839
EH 28 Minimum refund 839
EH 29 Deposits from which refunds come 839

Tax credit

EH 30 When person entitled to tax credit 839
EH 31 Kind and amount of refund that entitles person to tax credit 840
EH 32 Kind of person entitled to tax credit 840
EH 33 Amount of tax credit 841

Definitions

EH 34 Meaning of income from forestry 841
EH 35 Meaning of main maximum deposit 842
EH 36 Other definitions 843

Adverse event income equalisation scheme

Application

EH 37 Persons to whom adverse event income equalisation scheme applies 845

Deposits and accounts

EH 38 Adverse event deposit 845
EH 39 Adverse event income equalisation account 846

Interest

EH 40 Interest on deposits in adverse event income equalisation account 847

Deduction

EH 41 Deduction of deposit 848

Refunds: automatic

EH 42 Refund of excess deposit 848
EH 43 Income does not include excess deposit 848

Refunds: on application

EH 44 Application for refund by person, trustee of estate, Official Assignee, or liquidator 849
EH 45 Refund on request 849
EH 46 Income when refund given on request 850
EH 47 Refund on retirement 850
EH 48 Income when refund given on retirement, and election to allocate amount to earlier year 850
EH 49 Refund on death 851
EH 50 Income when refund given on death 851
EH 51 Income when refund given on death, and election to allocate amount to earlier year 852
EH 52 Income when refund given on death, and election to allocate amount to later year or years 852
EH 53 Refund on bankruptcy 854
EH 54 Income when refund given on bankruptcy 854
EH 55 Refund on liquidation 854
EH 56 Income when refund given on liquidation 855

Refunds: general provisions

EH 57 Amendment of assessment 855
EH 58 Minimum refund 855
EH 59 Deposits from which refunds come 856

Transfers

EH 60 Transfer of deposit 856

Definitions

EH 61 Meaning of adverse event maximum deposit 857
EH 62 Other definitions 858

Thinning operations income equalisation scheme

Application

EH 63 Persons to whom thinning operations income equalisation scheme applies 859

Deposits and accounts

EH 64 Thinning operations deposit 860
EH 65 Thinning operations income equalisation account 861

Interest

EH 66 Interest on deposits in thinning operations income equalisation account 862

Deductions

EH 67 Deduction of deposit 863

Refunds: automatic

EH 68 Refund of excess deposit 863
EH 69 Income does not include excess deposit 864

Refunds: on application

EH 70 Application for refund by person or liquidator 864
EH 71 Refund on request 864
EH 72 Income when refund given on request 865
EH 73 Refund for development or recovery 865
EH 74 Income when refund given for development or recovery 866
EH 75 Refund on liquidation 867
EH 76 Income when refund given on liquidation 867

Refunds: general provisions, and tax credits

EH 77 Sections of main income equalisation scheme that apply to thinning operations income equalisation scheme 868

Definitions

EH 78 Meaning of thinning operations maximum deposit 868
EH 79 Other definitions 868

Subpart EI—Spreading of specific income

Farming and forestry

EI 1 Spreading backward of income from timber 870

Inflation-indexed instruments

EI 2 Interest from inflation-indexed instruments 870

Intellectual property

EI 3 Assigning or granting copyright 871

EI 4 Spreading income from patent rights 873

Land

EI 5 Amount paid to lessor for non-compliance with covenant for repair 873
EI 6 Amount paid for non-compliance: when lessor ceases to own land 874
EI 7 Leases: income derived in anticipation 875
EI 8 Disposal of land to the Crown 875

Shareholder-employees

EI 9 Matching rule for employment income of shareholder-employee 876

Subpart EJ—Spreading of specific expenditure

Farming and forestry

EJ 1 Spreading backward of deductions for costs of timber 877
EJ 2 Spreading forward of deductions for repairs to fishing boats 877
EJ 3 Spreading forward of fertiliser expenditure 879

Films

EJ 4 Expenditure incurred in acquiring film rights in feature films 881
EJ 5 Expenditure incurred in acquiring film rights in films other than feature films 882
EJ 6 Certification of New Zealand films 884
EJ 7 Film production expenditure for New Zealand films having no large budget film grant 885
EJ 8 Film production expenditure for other films having no large budget film grant 886
EJ 9 Avoidance arrangements 888

Leases

EJ 10 Personal property lease payments 888
EJ 11 Amount paid by lessee for non-compliance with covenant for repair 889

Petroleum mining

EJ 12 Petroleum development expenditure: default allocation rule 890
EJ 12B Petroleum development expenditure: reserve depletion method 890
EJ 13 Relinquishing petroleum mining permit 892

EJ 13B Dry well drilled 893
EJ 13C Well not producing 893
EJ 14 Spreading deduction backwards 894
EJ 15 Disposal of petroleum mining asset 894
EJ 16 Disposal of petroleum mining asset to associate 895
EJ 17 Partnership interests and disposal of part of asset 895
EJ 18 Petroleum mining operations outside New Zealand 896

Definitions

EJ 19 Meaning of offshore development *[Repealed]* 896
EJ 20 Meaning of petroleum mining development 896

Superannuation contributions

EJ 21 Contributions to employees' superannuation schemes 897

Research, development, and resulting market development

EJ 22 Deductions for market development: product of research, development 898
EJ 23 Allocation of deductions for research, development, and resulting market development 898

Subpart EK—Environmental restoration accounts

EK 1 Environmental Restoration Funds Account 900
EK 2 Persons who may make payment to environmental restoration account 900
EK 3 Payments to environmental restoration account 901
EK 4 Environmental restoration account 902
EK 5 Details to be provided with payment to environmental restoration account 903
EK 6 Interest on payments to environmental restoration account 904
EK 7 Deduction for payment 904
EK 8 Deduction for transfer 905
EK 9 Refund of payment if excess, lacking details 906
EK 10 Certain refunds not income 907
EK 11 Application for refund 907
EK 12 Refund if request or excess balance 908
EK 13 Income when refund given on request 910
EK 14 Application for transfer 910
EK 15 Transfer on request 910
EK 16 Transfer on death, bankruptcy, or liquidation 911
EK 17 Minimum refund or transfer 912
EK 18 Payments from which refunds come 913
EK 19 Environmental restoration account of amalgamating company 913

EK 20 Environmental restoration account of consolidated group company 914
EK 21 Notices in electronic format 914
EK 22 Meaning of maximum payment 915
EK 23 Other definitions 916

Subpart EW—Financial arrangements rules

Introductory provisions

EW 1 What this subpart does 917
EW 2 Relationship of financial arrangements rules with other provisions 918

Meaning of financial arrangement and excepted financial arrangement

EW 3 What is a financial arrangement? 918
EW 4 What is not a financial arrangement? 919
EW 5 What is an excepted financial arrangement? 920
EW 6 Relationship between financial arrangements and excepted financial arrangements 926
EW 7 Change from private or domestic purpose 926
EW 8 Election to treat certain excepted financial arrangements as financial arrangements 927

Application of financial arrangements rules

EW 9 Persons to whom financial arrangements rules apply 928
EW 10 Financial arrangements to which financial arrangements rules apply 929
EW 11 What financial arrangements rules do not apply to 930

Calculation and allocation of income and expenditure over financial arrangement's term

EW 12 When use of spreading method required 930
EW 13 When use of spreading method not required 930
EW 14 What spreading methods do 931
EW 15 What is included when spreading methods used 932
EW 15B Applying IFRSs to financial arrangements 934
EW 15C Preparing and reporting methods 935
EW 15D IFRS financial reporting method 935
EW 15E Determination alternatives 937
EW 15F Expected value method 940
EW 15G Modified fair value method 942
EW 15H Mandatory use of some determinations 945
EW 15I Mandatory use of yield to maturity method for some arrangements 946

EW 16 Yield to maturity method or alternative 947
EW 17 Straight-line method 948
EW 18 Market valuation method 949
EW 19 Choice among some spreading methods 950
EW 20 Determination method or alternative 951
EW 21 Financial reporting method 952
EW 22 Default method 953
EW 23 Failure to use method for financial reporting purposes 954
EW 24 Consistency of use of spreading method 955
EW 25 Consistency of use of straight-line method and market valuation method 956
EW 25B Consistency of use of IFRS method 957
EW 26 Change of spreading method 958
EW 27 Spreading method adjustment formula 961

Calculation and allocation of income and expenditure when rights and obligations under financial arrangement cease

EW 28 How base price adjustment calculated 962
EW 29 When calculation of base price adjustment required 962
EW 30 When calculation of base price adjustment not required 965
EW 31 Base price adjustment formula 966

Consideration

Consideration when financial arrangement involves property or services

EW 32 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease 969
EW 33 Consideration for hire purchase agreement or finance lease 970
EW 34 Consideration in foreign currency 971
EW 35 Value relevant for non-financial arrangements rule 972

Consideration treated as paid to person

EW 36 Consideration when person exits from rules: accrued entitlement 972
EW 37 Consideration when person enters rules: accrued obligation 973
EW 38 Consideration when disposal for no, or inadequate, consideration 974
EW 39 Consideration affected by unfavourable factors 975

Consideration treated as paid by person

EW 40 Consideration when person exits from rules: accrued obligation 976
EW 41 Consideration when person enters rules: accrued entitlement 977
EW 42 Consideration when acquisition for no, or inadequate, consideration 978
EW 43 Consideration when debt sold at discount to associate of debtor 978
EW 44 Consideration when debt forgiven for natural love and affection 979
EW 45 Consideration when debtor released from obligation 980
EW 46 Consideration when debtor released as condition of new start grant 981
EW 46B Consideration when party changes from fair value method 983

Consideration when legal defeasance has occurred

EW 47 Legal defeasance 983

Consideration when anti-avoidance provision applies

EW 48 Anti-avoidance provisions 984

Income and deduction provisions specifically related to financial arrangements

EW 49 Income and deduction when debt sold at discount to associate of debtor 985
EW 50 Income when debt forgiven to trustee 986
EW 51 Deduction for security payment 987

Treatment of original share acquired under financial arrangement

EW 52 Share supplier under share-lending arrangement 988

One kind of avoidance

EW 53 Adjustment required 989

Application of financial arrangements rules to cash basis persons

EW 54 Meaning of cash basis person 990
EW 55 Effect of being cash basis person 991
EW 56 Natural person *[Repealed]* 991
EW 57 Thresholds 991

EW 58 Financial arrangements, income, and expenditure relevant to criteria 994
EW 59 Exclusion by Commissioner 996
EW 60 Trustee of deceased's estate 996
EW 61 Election to use spreading method 997
EW 62 When and how calculation of cash basis adjustment required 998
EW 63 Cash basis adjustment formula 999

Subpart EX—Controlled foreign company and foreign investment fund rules

Controlled foreign company (CFC) rules

When is a company a controlled foreign company?

EX 1 Meaning of controlled foreign company 1001

Calculation of person's control interest

EX 2 Four categories for calculating control interests 1002
EX 3 Control interest: total of direct, indirect, and associated person interests 1003
EX 4 Limits to requirement to include associated person interests 1004
EX 5 Direct control interests 1004
EX 6 Direct control interests include options and similar rights 1005
EX 7 Indirect control interests 1006

Calculation of person's income interest

EX 8 Income interests: total of direct and indirect interests 1008
EX 9 Direct income interests 1009
EX 10 Indirect income interests 1010
EX 11 Options and similar rights in certain cases 1010
EX 12 Reduction of total income interests 1012
EX 13 Income interests of partners *[Repealed]* 1012

Ten percent threshold and variations in income interest level

EX 14 Attribution: 10% threshold 1012
EX 15 Associates and 10% threshold 1012
EX 16 Income interests for certain purposes 1013
EX 17 Income interest if variations within period 1014

Calculation of attributed CFC income or loss

EX 18A Scheme for finding person's attributed CFC income or loss 1014
EX 18 Formula for calculating attributed CFC income or loss 1016

EX 19 Taxable distribution from non-complying trust 1016
EX 20 Reduction in attributed CFC loss 1018

Attributable CFC amount and net attributable CFC income or loss

EX 20B Attributable CFC amount 1018
EX 20C Net attributable CFC income or loss 1028
EX 20D Adjustment of fraction for excessively debt funded CFC 1032
EX 20E Relative debt-asset ratio for CFC 1034

Calculation of branch equivalent income or loss [Repealed]

EX 21 Attributable CFC amount and net attributable CFC income or loss: calculation rules 1036

Non-attributing active CFCs

EX 21B Non-attributing active CFCs 1048

Tests for non-attributing active CFCs

EX 21C Applicable accounting standards for section EX 21E 1049
EX 21D Non-attributing active CFC: default test 1052
EX 21E Non-attributing active CFC: test based on accounting standard 1056

Non-attributing Australian CFCs

EX 22 Non-attributing Australian CFCs 1064
EX 23 Tax concession grey list CFCs *[Repealed]* 1065

Change of residence of companies

EX 24 Companies moving to or from New Zealand 1065

Change of CFC's balance date

EX 25 Change of CFC's balance date 1066

Ownership measurement concession

EX 26 Use of quarterly measurement 1067

Anti-avoidance rule: stapled stock

EX 27 Anti-avoidance rule: stapled stock 1068

Foreign investment fund (FIF) rules

What is a foreign investment fund?

EX 28 Meaning of FIF 1068

Attributing interests in FIFs

EX 29 Attributing interests in FIFs 1069

EX 30 Direct income interests in FIFs 1070
EX 31 Exemption for ASX-listed Australian companies 1071
EX 32 Exemption for Australian unit trusts with adequate turnover or distributions 1073
EX 33 Exemption for Australian regulated superannuation savings 1075
EX 34 CFC rules exemption 1076
EX 35 Exemption for 10% or greater interest in grey list company 1076
EX 36 Venture capital company emigrating to grey list country: 10-year exemption 1077
EX 37 Grey list company owning New Zealand venture capital company: 10-year exemption 1078
EX 37B Share in grey list company acquired under venture investment agreement 1079
EX 38 Exemption for employee share purchase scheme of grey list company 1080
EX 39 Terminating exemption for grey list company with numerous New Zealand shareholders 1080
EX 40 Foreign exchange control exemption 1082
EX 41 Income interest of non-resident or transitional resident 1082
EX 42 New resident's accrued superannuation entitlement exemption 1083
EX 43 Non-resident's pension or annuity exemption 1085

Calculation of FIF income or loss

EX 44 Six calculation methods 1086
EX 45 Exclusion of amounts of death benefit 1086
EX 46 Limits on choice of calculation methods 1087
EX 47 Method required for certain non-ordinary shares 1095
EX 48 Default calculation method 1095
EX 49 Accounting profits method 1096
EX 50 Branch equivalent method 1098
EX 51 Comparative value method 1101
EX 52 Fair dividend rate method: usual method 1103
EX 53 Fair dividend rate method for unit-valuing funds and others by choice 1108
EX 54 Fair dividend rate method and cost method: when periods affected by share reorganisations 1114
EX 55 Deemed rate of return method 1116
EX 56 Cost method 1120
EX 57 Conversion of foreign currency amounts: most methods 1125
EX 58 Additional FIF income or loss if CFC owns FIF 1126

Relationship with other provisions in Act

EX 59 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method 1128
EX 60 Top-up FIF income: deemed rate of return method 1130
EX 61 Top-up FIF income: 1 April 1993 uplift interests 1131

Changing calculation method

EX 62 Limits on changes of method 1132
EX 63 Consequences of changes in method 1136

Cases of entry into and exit from FIF rules

EX 64 Migration of persons holding FIF interests 1139
EX 65 Changes in application of FIF exemptions 1140
EX 66 Entities emigrating from New Zealand 1143
EX 66B Entities ceasing to be FIFs 1144
EX 67 FIF rules first applying to interest on or after 1 April 2007 1145

Measurement of cost

EX 68 Measurement of cost 1147

Change of FIF's balance date

EX 69 Change of FIF's balance date 1149

Market value rules

EX 70 Market value of life policy and superannuation entitlements 1150
EX 71 Non-market transactions in FIF interests 1151

Commissioner's default assessment power

EX 72 Commissioner's default assessment power 1151

Subpart EY—Life insurance rules

Introductory provisions

EY 1 What this subpart does 1152
EY 2 Policyholder base 1153
EY 3 Shareholder base 1154
EY 4 Apportionment of income of particular source or nature, and of tax credits 1155
EY 5 Part-year tax calculations 1156
EY 6 Actuarial advice and guidance 1158
EY 7 Meaning of claim 1158
EY 8 Meaning of life insurance 1160
EY 9 Meaning of life insurance policy 1161
EY 10 Meaning of life insurer 1161
EY 11 Superannuation schemes providing life insurance 1162

EY 12 Meaning of life reinsurance 1166
EY 13 Meaning of life reinsurance policy 1169
EY 14 Life insurance and life reinsurance: how sections relate 1169

Policyholder base

Non-participation policies

EY 15 Policyholder base income: non-participation policies 1170
EY 16 Policyholder base allowable deductions: non-participation policies 1171

Profit participation policies

EY 17 Policyholder base income: profit participation policies 1172
EY 18 Policyholder base allowable deductions: profit participation policies 1174

Shareholder base

Non-participation policies

EY 19 Shareholder base income: non-participation policies 1175
EY 20 Shareholder base allowable deductions: non-participation policies 1176

Profit participation policies

EY 21 Shareholder base income: profit participation policies 1177
EY 22 Shareholder base allowable deductions: profit participation policies 1178

Non-participation policies: reserves

EY 23 Reserving amounts for life insurers: non-participation policies 1179
EY 24 Outstanding claims reserving amount: non-participation policies not annuities 1181
EY 25 Premium smoothing reserving amount: non-participation policies not annuities 1183
EY 26 Unearned premium reserving amount: non-participation policies not annuities 1185
EY 27 Capital guarantee reserving amount: non-participation policies not annuities 1186

Shareholder base other profit: profit participation policies

EY 28 Shareholder base other profit: profit participation policies that are existing business 1187
EY 29 Shareholder base other profit: profit participation policies that are new business 1190

Transitional adjustments and annuities

EY 30 Transitional adjustments: life risk 1193
EY 31 Annuities 1202
EY 32 Mortality profit formula: when partial reinsurance exists *[Repealed]* 1203
EY 33 Mortality profit formula: individual result may be negative only in some cases *[Repealed]* 1203
EY 34 Mortality profit formula: negative result *[Repealed]* 1203
EY 35 How discontinuance profit is calculated *[Repealed]* 1204
EY 36 Discontinuance profit for income year *[Repealed]* 1204
EY 37 Discontinuance profit formula (existing policies) *[Repealed]* 1204
EY 38 Discontinuance profit formula (new policies) *[Repealed]* 1204
EY 39 Discontinuance profit formula (existing policies): when partial reinsurance exists *[Repealed]* 1204
EY 40 Discontinuance profit formula (new policies): when partial reinsurance exists *[Repealed]* 1204
EY 41 Discontinuance profit formulas: individual result may never be negative *[Repealed]* 1205
EY 42 How policyholder income is calculated *[Repealed]* 1205
EY 43 Policyholder income formula *[Repealed]* 1205
EY 43B Policyholder income formula: FDR adjustment *[Repealed]* 1205
EY 43C Policyholder income formula: PILF adjustment *[Repealed]* 1205
EY 44 Policyholder income formula: when partial reinsurance exists *[Repealed]* 1205
EY 45 Policyholder income formula: when life insurance business transferred *[Repealed]* 1206
EY 46 Income from disposal of property *[Repealed]* 1206
EY 47 Deductions for disposal of property *[Repealed]* 1206

Non-resident life insurers

EY 48 Non-resident life insurers with life insurance policies in New Zealand 1206
EY 49 Non-resident life insurer becoming resident 1207

Subpart EZ—Terminating provisions

Life insurance

EZ 1 Life insurers acquiring property before 1 April 1988 1208
EZ 2 Deductions for disposal of property: 1982–83 and 1989–90 income years 1210

Petroleum mining

EZ 3 Petroleum development expenditure from 1 October 1990 to 15 December 1991 1211

Livestock

EZ 4 Valuation of livestock bailed or leased as at 2 September 1992 1212

EZ 5 Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006 1213

EZ 6 Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006 1215

Patent rights

EZ 7 Buying patent rights before 1 April 1993 1216

Leases of land

EZ 8 Premium paid on land leased before 1 April 1993 1217

Depreciation

EZ 9 Pool method for items accounted for by globo method for 1992–93 income year 1217

EZ 10 Pool items accounted for by globo method for 1992–93 income year 1218

EZ 11 Amounts of depreciation recovery income and depreciation loss for part business use up to 2004–05 income year 1218

EZ 12 Amount of depreciation loss for item acquired from associated person on or before 23 September 1997 1219

EZ 13 Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year 1220

EZ 14 Pre-1993 depreciation rate 1221

EZ 15 Annual rate for excluded depreciable property: 1992–93 tax year 1223

EZ 16 Amount of depreciation loss for plant or machinery additional to section EZ 15 amount 1225

EZ 17 Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994 1226

EZ 18 Section EZ 17 amount of depreciation loss when items transferred between companies in wholly-owned group before 1 April 1993 1227

EZ 19 Section EZ 17 amount of depreciation loss when person previously exempt from tax acquires item 1228

EZ 20 Adjusted tax value for software acquired before 1 April 1993 1229

EZ 21 Sections EE 45 and EE 47: permanent removal: allowance before 1 April 1995 1229
EZ 22 Base value and total deductions in section EE 56: before 1 April 1995 1230
EZ 23 Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005 1231
EZ 23B Property acquired after depreciable property affected by Canterbury earthquakes 1232

Definitions

EZ 24 Meaning of new asset 1237
EZ 25 Meaning of New Zealand-new asset 1239
EZ 26 Meaning of qualifying capital value 1240
EZ 27 Meaning of qualifying improvement 1241
EZ 28 Meaning of qualifying asset 1242

Accident insurance

EZ 29 Private insurers under Accident Insurance Act 1998 1243
EZ 30 Base premium for 1998–99 premium year under Accident Insurance Act 1998 1244

Controlled foreign company and foreign investment fund rules

EZ 31 Disclosure restrictions on grey list CFCs before 2011–12 *[Repealed]* 1245
EZ 32 Terminating exemption for grey list FIF investing in Australasian listed equities 1245
EZ 32B Transitional rule for IFRS reporting *[Repealed]* 1247
EZ 32C Treatment in section EX 20C of currency effects on CFC's borrowing 1247

Old financial arrangements rules

EZ 33 Application of old financial arrangements rules 1253
EZ 34 Election to apply financial arrangements rules in subpart EW 1253
EZ 35 Accruals in relation to income and expenditure in respect of financial arrangements 1254
EZ 36 Excepted financial arrangement that is part of financial arrangement 1261
EZ 37 Cash basis holder 1261
EZ 38 Income and expenditure where financial arrangement redeemed or disposed of 1266
EZ 39 Forgiveness of debt 1271
EZ 40 Accrued income written off 1273

EZ 41 Sale of debt to associate of debtor 1273
EZ 42 Post facto adjustment 1274
EZ 43 Variable principal debt instruments 1276
EZ 44 Relationship with rest of Act 1276
EZ 45 Application of old financial arrangements rules 1277
EZ 46 Election to treat short term trade credit as financial arrangement 1278
EZ 47 Election to continue to treat certain excepted financial arrangements as financial arrangements 1279
EZ 48 Definitions 1279
EZ 49 Determination of core acquisition price where consideration for property denominated in foreign currency 1293
EZ 50 Rules for non-market transactions 1294
EZ 51 Transitional adjustment when changing to financial arrangements rules 1295
EZ 52 References to new rules include old rules 1297
EZ 52B Consistency of use of IFRS method: *Determination G3* change allowed 1298
EZ 52C Change of spreading method: *Determination G22* to *Determination G22A* 1299
EZ 52D Base price adjustment: financial arrangements to which *Determination G22* and *Determination G22A* applied 1300

Life insurance transitional adjustment: expected death strain

Expected death strain formulas

EZ 53 How expected death strain is calculated 1302
EZ 54 Expected death strain formulas 1303
EZ 55 Expected death strain formulas: option when more than 1 life insured 1304
EZ 56 Expected death strain formula (life): when annuity payable on death 1305
EZ 57 Expected death strain formulas: when annuity payable on survival to date or age specified in policy 1305
EZ 58 Expected death strain formula (life): when partial reinsurance exists 1306

Actuarial reserves

EZ 59 Meaning of actuarial reserves 1306
EZ 60 Actuarial reserves: calculation 1307

Entry to new life insurance regime: transitional and miscellaneous provisions

EZ 61 Allowance for cancelled amount: spreading 1309
EZ 62 Reinsurance transition: life financial reinsurance may be life reinsurance 1310
EZ 63 Disposal and acquisition upon entry 1311

Part F
Recharacterisation of certain transactions

Subpart FA—Recharacterisation of certain commercial arrangements

Introductory provision

FA 1 What this subpart does 1312

Debentures and shares

FA 2 Recharacterisation of certain debentures 1312
FA 2B Stapled debt securities 1315
FA 3 Recharacterisation of certain dividends: recovery of cost of shares held on revenue account 1317
FA 4 Recharacterisation of shareholder's base: company repurchasing share 1317

Leases

FA 5 Assets acquired and disposed of after deduction of payments under lease 1319

Finance leases

FA 6 Recharacterisation of amounts derived under finance leases 1320
FA 7 Determining amount of loan 1321
FA 8 Deductibility of expenditure under finance lease 1321
FA 9 Treatment when lease ends: lessee acquiring asset 1322
FA 10 Treatment when lease ends: lessor acquiring asset 1323
FA 11 Adjustments for leases that become finance leases 1324
FA 11B Adjustments for certain operating leases 1325

Hire purchase agreements

FA 12 Recharacterisation of amounts derived under hire purchase agreements 1327
FA 13 Agreements recharacterised as sale with finance provided 1327
FA 14 Deductibility of expenditure or loss under hire purchase agreement 1328
FA 15 Treatment when agreement ends: seller acquiring property 1328

FA 16 Treatment when agreement ends: when seller is cash basis person 1330
FA 17 Treatment when agreement ends: when buyer is cash basis person 1331
FA 18 Treatment of amounts paid in income years after agreement ends 1331

Subpart FB—Transfers of relationship property

FB 1 What this subpart does 1332
FB 2 Personal property 1333
FB 3 Land acquired for certain purposes or under certain conditions 1333
FB 4 Land under scheme for major development or division 1334
FB 5 Disposal of land 1335
FB 6 Timber or right to take timber 1335
FB 7 Land with standing timber 1336
FB 8 Patent applications and patent rights 1336
FB 9 Financial arrangements rules 1337
FB 10 Continuity provisions: shares and options 1337
FB 10B Look-through companies 1338
FB 11 Pension payments to former employees 1338
FB 12 Pension payments to former partners 1338
FB 13 Trading stock 1339
FB 14 Specified livestock 1340
FB 15 Specified livestock valued under herd scheme 1341
FB 16 Non-specified livestock 1341
FB 17 High-priced livestock 1342
FB 18 Bloodstock 1343
FB 19 Leased assets 1343
FB 20 Mining assets 1344
FB 21 Depreciable property 1346

Subpart FC—Distribution, transmission, and gifts of property

Introductory provisions

FC 1 What this subpart does 1347
FC 2 Transfer at market value 1349

Exceptions for property transferred on death of person

FC 3 Property transferred to spouse, civil union partner, or de facto partner 1349
FC 4 Property transferred to charities or to close relatives and others 1350

FC 5 Land transferred to close relatives 1351
FC 6 Forestry assets transferred to close relatives 1352
FC 7 Transfer of prepaid property 1352
FC 8 Transfer of certain financial arrangements 1353

Subpart FE—Interest apportionment on thin capitalisation

Introductory provisions

FE 1 What this subpart does 1353
FE 2 When this subpart applies 1354
FE 3 Interest apportionment for individuals 1356
FE 4 Some definitions 1358

Interest apportionment rules

FE 5 Thresholds for application of interest apportionment rules 1359
FE 6 Apportionment of interest by excess debt entity 1362
FE 7 Apportionment of interest by reporting bank 1366
FE 8 Measurement dates 1367
FE 9 Elections 1368
FE 10 Currency 1368
FE 11 Temporary increases or decreases in value 1369

Calculations

FE 12 Calculation of debt percentages 1370
FE 13 Financial arrangements entered into with persons outside group 1372

Debt percentage of New Zealand group

FE 14 Consolidation of debts and assets 1373
FE 15 Total group debt 1375
FE 16 Total group assets 1377

Debt percentage of worldwide group

FE 17 Consolidation of debts and assets 1379
FE 18 Measurement of debts and assets of worldwide group 1379

New Zealand banking group

FE 19 Banking group's equity threshold 1382
FE 20 Financial value and regulatory value 1382
FE 21 Banking group's New Zealand net equity 1383
FE 22 Notional offshore investment 1389
FE 23 Banking group's funding debt 1390
FE 24 Regulations 1391

Determining membership of groups

New Zealand group

FE 25 New Zealand group for excess debt entity that is a company 1392
FE 26 Identifying New Zealand parent 1392
FE 27 Establishing companies under parent's control 1396
FE 28 Identifying members of New Zealand group 1398
FE 29 Combining New Zealand groups owned by natural persons and trustees 1399
FE 30 Ownership interests in companies outside New Zealand group 1400

Worldwide group

FE 31 Worldwide group for corporate excess debt entity if not excess debt outbound company 1402
FE 31B Worldwide group for excess debt outbound companies 1404
FE 31C CFCs in worldwide group for natural persons or trustees described in section FE 2(1)(g) 1404
FE 32 Joint venture parties 1405

New Zealand banking group

FE 33 New Zealand banking group 1406
FE 34 Identifying ultimate parent 1406
FE 35 Persons who may be excluded from banking groups 1407
FE 36 Identifying members of New Zealand banking group 1408
FE 37 Reporting bank for New Zealand banking group 1410

Measuring ownership interests in companies

FE 38 Measuring ownership interests in companies 1411
FE 39 Direct ownership interests 1411
FE 40 Tiered ownership interests 1411
FE 41 Treatment of associated persons' interests 1412

Subpart FF—Interest apportionment for conduit investment

[Repealed]

Introductory provisions

[Repealed]

FF 1 What this subpart does *[Repealed]* 1413
FF 2 When interest apportionment rule applies *[Repealed]* 1413
FF 3 Steps required to determine treatment of excessive interest expenditure *[Repealed]* 1413

Interest apportionment rule [Repealed]

FF 4 Threshold for application of interest apportionment rule *[Repealed]* 1413
FF 5 Determination of excess amount of interest expenditure of group *[Repealed]* 1413
FF 6 Conduit tax relief *[Repealed]* 1414
FF 7 Surplus to foreign dividends *[Repealed]* 1414

Membership and debt percentages of foreign groups [Repealed]

FF 8 Identifying members of foreign groups *[Repealed]* 1414
FF 9 Calculating debt percentage of New Zealand foreign groups *[Repealed]* 1414
FF 10 Calculating debt percentage of consolidated foreign groups *[Repealed]* 1414
FF 11 Changes in foreign group membership *[Repealed]* 1415

Subpart FL—Emigration of resident companies

FL 1 What this subpart does 1415
FL 2 Treatment of emigrating companies and their shareholders 1416

Subpart FM—Consolidated groups of companies

Introductory provisions

FM 1 What this subpart applies to 1417
FM 2 Consolidation rules 1417
FM 3 Liability of consolidated groups and group companies 1418
FM 4 Limiting joint and several liability of group companies 1419
FM 5 Liability when company leaves consolidated group 1420
FM 6 Some general rules for treatment of consolidated groups 1421

Calculating taxable income for consolidated group returns

Accounting generally

FM 7 Treatment of amounts derived or expenditure incurred 1423
FM 8 Transactions between group companies: income 1423
FM 9 Amounts that are company's income 1424
FM 10 Expenditure: intra-group transactions 1424
FM 11 Expenditure: nexus with income derivation 1425
FM 12 Expenditure when deduction would be denied to consolidated group 1425
FM 13 Capital expenditure 1426
FM 14 Part-year financial statements 1427

Accounting for particular property

FM 15 Amortising property and revenue account property 1428
FM 16 Land or business: certain farming or forestry expenditure 1429
FM 17 Trading stock 1430
FM 18 Financial arrangements: transfer from company A to company B 1431
FM 19 Financial arrangements: transfer for fair and reasonable consideration 1432
FM 20 Financial arrangements: transfer at market value 1433
FM 21 Property transfers when companies leave consolidated groups 1433
FM 22 Arrangements to avoid consolidation rules 1434
FM 23 Arrangements for disposal of shares 1434

Treatment of foreign dividends [Repealed]

FM 24 General treatment of foreign dividends *[Repealed]* 1436
FM 25 Reduction in payments for foreign dividends *[Repealed]* 1436
FM 26 Using tax losses to pay FDP *[Repealed]* 1436
FM 27 Refunds of FDP 1436
FM 28 Refund when consolidated group has loss 1437
FM 29 Treatment of credit balance in consolidated group's FDP account 1438
FM 30 Application of certain provisions to consolidated groups 1439

Membership of consolidated groups

Eligibility and restrictions

FM 31 Eligibility rules 1441
FM 32 Restriction on membership of consolidated groups 1442
FM 33 When membership is reduced 1443

Nominated companies

FM 34 Nominated companies 1443

Forming, joining, or leaving consolidated groups

FM 35 Forming consolidated group 1444
FM 36 Joining existing consolidated group 1445
FM 37 Leaving consolidated group 1445

When membership starts and stops

FM 38 Notice requirements on forming or joining consolidated group 1445
FM 39 Choosing to leave consolidated group 1447

FM 40 Losing eligibility or entitlement to be part of consolidated group 1448
FM 41 No nominated company 1449
FM 42 When company liquidated 1449

Subpart FN—Imputation groups of companies

FN 1 When this subpart applies 1450
FN 2 Imputation rules 1450
FN 3 Liabilities of companies in imputation group 1450
FN 4 Eligibility rules 1451
FN 5 Imputation groups with reduced numbers 1452
FN 6 Nominated companies 1453
FN 7 Forming imputation groups 1454
FN 8 Trans-Tasman imputation groups and resident imputation subgroups 1454
FN 9 Joining existing imputation group 1455
FN 10 When membership of imputation group ends 1456
FN 11 Company choosing to leave imputation group 1456
FN 12 Company no longer eligible or entitled to membership 1457
FN 13 Imputation group with no nominated company 1458
FN 14 Effect of liquidation of company 1458

Subpart FO—Amalgamation of companies

Introductory provisions

FO 1 What this subpart does 1458
FO 2 Amalgamation rules 1459
FO 3 Resident's restricted amalgamations 1459
FO 4 Rights and obligations of amalgamated companies 1460
FO 5 Amalgamations and remitted liabilities 1461

Treatment of shares, income, expenditure, and bad debts

FO 6 Cancellation of shares 1461
FO 7 Income derived after amalgamation 1462
FO 8 Bad debts and expenditure or loss on resident's restricted amalgamation 1462
FO 9 Unexpired portion of prepaid expenditure 1463

Property passing to amalgamated company on amalgamation

FO 10 When property passes on resident's restricted amalgamation 1463
FO 11 When property passes on amalgamation other than resident's restricted amalgamation 1465

FO 12 Financial arrangements: resident's restricted amalgamation, companies in wholly-owned group 1465
FO 13 Financial arrangements: resident's restricted amalgamation, calculation method unchanged 1467
FO 14 Financial arrangements: resident's restricted amalgamation, other cases 1467
FO 15 Financial arrangements: amalgamation other than resident's restricted amalgamation 1468
FO 16 Amortising property 1468
FO 17 Land 1470

Treatment of financial arrangements between amalgamating companies

FO 18 When amalgamating companies are parties to financial arrangement 1470
FO 19 Calculation of outstanding accrued balance: consideration for discharge 1473
FO 20 Calculation of outstanding accrued balance: amounts remitted 1474

Subpart FZ—Terminating provisions

Debentures

FZ 1 Treatment of interest payable under debentures issued before certain date 1475

Leases

FZ 2 Effect of specified lease on lessor and lessee 1476
FZ 3 Income of lessor under specified lease 1478
FZ 4 Deductions under specified leases 1480

Relationship property

FZ 5 Commercial bills 1480

Estate property

FZ 6 Transitional valuation rule for estate property 1480

Part G
Avoidance and non-market transactions

Subpart GA—Avoidance: general

GA 1 Commissioner's power to adjust 1482
GA 2 Commissioner's power to adjust: fringe benefit tax 1483

Subpart GB—Avoidance: specific

Arrangements involving dividend stripping

GB 1 Arrangements involving dividend stripping 1484

Arrangements involving transfer pricing

GB 2 Arrangements involving transfer pricing 1485

Arrangements involving tax losses

GB 3 Arrangements for carrying forward loss balances: companies 1485

GB 4 Arrangements for grouping tax losses: companies 1486

Arrangements to defeat continuity provisions

GB 5 Arrangements involving trust beneficiaries 1487

Arrangements involving qualifying companies

GB 6 Arrangements involving qualifying companies 1487

Arrangements involving controlled foreign companies

GB 7 Arrangements involving CFC control interests 1488

GB 8 Arrangements involving attributed repatriation from CFCs 1488

GB 9 Temporary disposals of direct control or income interests 1489

GB 10 Temporary acquisitions of direct control or income interests 1490

GB 11 Temporary increases in totals for control interest categories 1491

GB 12 Temporary reductions in totals for control interest categories 1492

GB 13 When combination of changes reduces income 1493

GB 14 When combination of changes increases loss 1494

GB 15 CFC income or loss: arrangements related to quarterly measurement 1495

GB 15B Supplies affecting default test for non-attributing active CFC 1495

GB 15C Arrangements related to accounting test for non-attributing active CFC 1496

Arrangements involving foreign investment funds

GB 16 FIF income or loss: arrangements for measurement day concessions 1497

Arrangements involving film rights

GB 17 Excessive amounts for film rights or production expenditure 1497

GB 18 Arrangements to acquire film rights or incur production expenditure 1498

GB 19 When film production expenditure payments delayed or contingent 1499

Arrangements involving petroleum mining

GB 20 Arrangements involving petroleum mining 1500

Arrangements involving financial arrangements

GB 21 Dealing that defeats intention of financial arrangements rules 1502

Arrangements involving trust beneficiary income

GB 22 Arrangements involving trust beneficiary income 1502

Excessive remuneration

GB 23 Excessive remuneration to relatives 1503
GB 24 Exemption for genuine contracts 1505
GB 25 Close company remuneration to shareholders, directors, or relatives 1506
GB 25B Excessive effective look-through interests 1507

Arrangements involving repatriation of commercial bills

GB 26 Arrangements involving repatriation of commercial bills 1508

Attribution rule for income from personal services

GB 27 Attribution rule for income from personal services 1509
GB 28 Interpretation of terms used in section GB 27 1512
GB 29 Attribution rule: calculation 1514

Arrangements involving restrictive covenants

GB 30 Arrangements to avoid taxation of restrictive covenant payments 1517

Arrangements involving fringe benefit tax

GB 31 FBT arrangements: general 1518
GB 32 Benefits provided to employee's associates 1518

Arrangements involving depreciation loss

GB 33 Arrangements involving depreciation loss 1519

Arrangements involving imputation rules

GB 34 ICA arrangements for carrying amounts forward 1520
GB 35 Imputation arrangements to obtain tax advantage 1520
GB 36 Reconstruction of imputation arrangements to obtain tax advantage 1522
GB 37 Arrangements for payment of dividend by other companies 1523
GB 38 When sections GB 35 to GB 37 apply to consolidated groups 1524

Arrangements involving foreign dividends

GB 39 FDP arrangements: general *[Repealed]* 1525
GB 40 BETA arrangements for carrying amounts forward 1525
GB 41 FDPA arrangements for carrying amounts forward 1525

Arrangements involving Maori authority credits

GB 42 Maori authority credit arrangements to obtain tax advantage 1526
GB 43 Reconstruction of Maori authority credit arrangements to obtain tax advantage 1527

Arrangements involving tax credits for families

GB 44 Arrangements involving tax credits for families 1528

Arrangements involving money not at risk

GB 45 Arrangements involving money not at risk 1529
GB 46 Deferral of surplus deductions from arrangements 1531
GB 47 Calculation rules for sections GB 45 and GB 46 1533
GB 48 Defined terms for sections GB 45 and GB 46 1534

Arrangements involving returning share transfers

GB 49 Arrangements involving returning share transfers 1536

Arrangements involving partners

GB 50 Arrangements involving partners 1536

Subpart GC—Market value substituted

Disposals of trading stock or similar property

GC 1 Disposals of trading stock at below market value 1537
GC 2 Disposals of timber rights or standing timber 1538
GC 3 Disposals by life insurers 1539
GC 3B Disposals of emissions units 1539
GC 4 Disposals and acquisitions of FIF attributing interests 1540
GC 4B Disposals of ETS units at below market value *[Repealed]* 1541

Leases

GC 5 Leases for inadequate rent 1541

Transfer pricing arrangements

GC 6 Purpose of rules and nature of arrangements 1542
GC 7 Excess amount payable by person 1543
GC 8 Insufficient amount receivable by person 1544
GC 9 Compensating arrangement: person paying less than arm's length amount 1545

GC 10 Compensating arrangement: person receiving more than arm's length amount 1546
GC 11 Requests for matching treatment 1547
GC 12 Effect on person's withholding obligations 1548
GC 13 Calculation of arm's length amounts 1549
GC 14 Definitions for sections GC 6 to GC 13 1550

Subpart GZ—Terminating provisions

GZ 1 Limitation on section GB 20: petroleum mining arrangements 1550
GZ 2 Arrangements involving cancellation of conduit tax relief credits 1551
GZ 3 Donations of trading stock for relief of Canterbury earthquakes 1551

Part H
Taxation of certain entities

Subpart HA—Qualifying companies (QC) and loss-attributing qualifying companies (LAQC)

Introductory provisions

HA 1 What this subpart does 1552
HA 2 Meaning of qualifying company 1553
HA 3 Meaning of loss-attributing qualifying company *[Repealed]* 1553
HA 4 Conditions applying 1553

Qualifying company status

HA 5 Elections to become qualifying company 1554
HA 6 Corporate requirements 1555
HA 7 Shareholding requirements 1556
HA 7B Grandparenting requirement 1557
HA 8 Shareholders' personal liability 1558
HA 8B No CFC income interests or FIF direct income interests of 10% or more 1559
HA 9 Limit on foreign non-dividend income 1559
HA 10 Nature of LAQC shares *[Repealed]* 1560
HA 11 When requirements no longer met: qualifying companies 1560
HA 11B When requirements no longer met: LAQCs 1562
HA 12 Avoidance arrangements 1562

Treatment of profits, dividends, and tax losses

HA 13 Qualifying companies' distributions 1563
HA 14 Dividends paid by qualifying companies 1563
HA 15 Fully imputed distributions 1564

HA 16 Dividends paid by qualifying companies to trustee shareholders 1566
HA 17 Dividends derived by qualifying companies 1567
HA 18 Treatment of dividends when qualifying company status ends 1567
HA 19 Credit accounts and dividend statements 1568
HA 20 Attribution of tax losses *[Repealed]* 1569
HA 21 Loss balances not carried forward 1569
HA 22 Group companies using tax losses 1570
HA 23 Treatment of tax losses on amalgamation 1570

Special tax matters for loss-attributing qualifying companies [Repealed]

HA 24 Treatment of tax losses other than certain foreign losses *[Repealed]* 1571
HA 25 Treatment of certain foreign losses *[Repealed]* 1572
HA 26 Attribution when balance dates differ *[Repealed]* 1572
HA 27 Attribution when loss results in reduction in value of shares *[Repealed]* 1572

Elections: qualifying companies

HA 28 Elections by trustee shareholders 1572
HA 29 Elections by majority shareholders 1573
HA 30 When elections take effect 1573
HA 31 Revocation of directors' elections 1574
HA 32 Revocation of shareholders' elections: by notice 1574
HA 33 Revocation of shareholders' elections: by event 1575
HA 33B Transitional rules for look-through companies, partnerships, and sole traderships 1576
HA 34 Period of grace following death of shareholder 1577
HA 35 Period of grace following revocation of election 1577
HA 36 Period of grace following revocation of joint election 1578
HA 37 Period of grace for new shareholder 1578

Elections: loss-attributing qualifying companies [Repealed]

HA 38 Elections by directors and shareholders required *[Repealed]* 1579
HA 39 Revocation of elections *[Repealed]* 1579

Qualifying company election tax

HA 40 Liability for qualifying company election tax 1579
HA 41 Calculating qualifying company election tax 1580

HA 42 Paying qualifying company election tax 1582

Effective interests in qualifying companies

HA 43 Meaning of effective interest 1582
HA 44 Measuring effective interests 1582

Subpart HB—Look-through companies

HB 1 Look-through companies are transparent 1584
HB 2 Previous income and expenditure or loss 1586
HB 3 Loss balances extinguished 1587
HB 4 General provisions relating to disposals 1587
HB 5 Disposal of owner's interests 1588
HB 6 Disposal of trading stock 1590
HB 7 Disposal of depreciable property 1591
HB 8 Disposal of financial arrangements and certain excepted financial arrangements 1592
HB 9 Disposal of short-term agreements for sale and purchase 1593
HB 10 Disposal of livestock 1594
HB 11 Limitation on deductions by persons with interests in look-through companies 1595
HB 12 Limitation on deductions by owners of look-through companies: carry-forward 1598
HB 13 LTC elections 1600

Subpart HC—Trusts

Introductory provisions

HC 1 What this subpart does 1602
HC 2 Obligations of joint trustees for calculating income and providing returns 1603
HC 3 Multiple settlements 1604
HC 4 Corpus of trust 1604

Trust income

HC 5 Amounts derived by trustees 1605
HC 6 Beneficiary income 1605
HC 7 Trustee income 1607
HC 8 Amounts received after person's death 1608

Classification of trusts

HC 9 Classifying trusts 1608
HC 10 Complying trusts 1608
HC 11 Foreign trusts 1609
HC 12 Non-complying trusts 1610
HC 13 Charitable trusts 1610

Distributions from trusts

HC 14 Distributions from trusts 1610
HC 15 Taxable distributions from non-complying and foreign trusts 1611
HC 16 Ordering rule for distributions from non-complying and foreign trusts 1613

Tax treatment of amounts that beneficiaries derive from trusts

HC 17 Amounts derived as beneficiary income 1615
HC 18 Taxable distributions from foreign trusts 1616
HC 19 Taxable distributions from non-complying trusts 1616
HC 20 Distributions from complying trusts 1616
HC 21 Distributions from community trusts 1617
HC 22 Use of tax losses to reduce taxable distributions from non-complying trusts 1618
HC 23 Temporary absences of beneficiaries 1618

Tax treatment of trustee income

HC 24 Trustees' obligations 1619
HC 25 Foreign-sourced amounts: non-resident trustees 1620
HC 26 Foreign-sourced amounts: resident trustees 1622

Settlors and their liabilities

HC 27 Who is a settlor? 1623
HC 28 Activities treated as those of settlor 1625
HC 29 Settlors' liability to income tax 1626

Treatment of transition situations

HC 30 Treatment of foreign trusts when settlor becomes resident 1627

Valuation of property, trading stock, and financial arrangements

HC 31 When existing trusts come into tax base 1629

Rate and payment of income tax

HC 32 Liability of trustee as agent 1631
HC 33 Choosing to satisfy income tax liability of trustee 1631
HC 34 Taxable distributions from non-complying trusts 1632
HC 35 Beneficiary income of minors 1632
HC 36 Trusts and minor beneficiary rule 1634
HC 37 Testamentary trusts and minor beneficiary rule 1636

Subpart HD—Agents

Introductory provisions

HD 1 What this subpart does 1636
HD 2 Joint liability of principal and agent for tax obligations 1637
HD 3 Agents' duties and liabilities 1637
HD 4 Treatment of principals 1638
HD 5 Matters between principals and agents 1638
HD 6 When relationship effectively that of principal and agent 1639
HD 7 Rate and amount of tax 1639

Particular cases

HD 8 Circumstances giving rise to agency 1640
HD 9 Guardians 1640
HD 10 Mortgagees in possession 1640
HD 11 Nominated companies 1640
HD 12 Trusts 1641
HD 13 Unit trusts 1641
HD 14 Companies issuing debentures 1641
HD 15 Asset stripping of companies 1643
HD 16 Non-resident general insurers 1646
HD 17 Agent paying premiums to residents of Switzerland 1647

Absentees

HD 18 Agency in relation to absentees generally 1648
HD 19 Persons receiving absentees' income 1648
HD 20 Persons carrying on business for absentees 1649
HD 20B General partners and partners carrying on with or managing business involving absentees 1649
HD 21 Companies 1650
HD 22 Banking companies 1650
HD 23 Trustees of group investment funds 1650
HD 24 Shipping businesses 1651
HD 25 Persons remitting amounts outside New Zealand 1651

Non-residents

HD 26 Agency in relation to non-residents generally 1651
HD 27 Employers 1652
HD 28 Government pensions and payments under superannuation schemes 1652
HD 29 Persons buying goods from overseas 1653

Subpart HE—Mutual associations

HE 1 Income and deductions of mutual associations 1654
HE 2 Classes of mutual transaction 1654

HE 3	Association rebates	1655
HE 4	Apportionment when transactions with members and non-members	1655
HE 5	Association rebates paid by shares or credit	1656

Subpart HF—Maori authorities

Introductory provisions

HF 1	Maori authorities and the Maori authority rules	1656
HF 2	Who is eligible to be a Maori authority?	1657
HF 3	Applying provisions to Maori authorities	1659

Maori authority distributions

HF 4	What constitutes a Maori authority distribution?	1660
HF 5	Notional distributions of co-operative companies	1661
HF 6	Tax treatment of Maori authority distributions	1661
HF 7	Taxable Maori authority distributions	1661
HF 8	Proportional allocation	1662

Changing status

HF 9	Treatment of companies and trusts that choose to apply this subpart	1664
HF 10	Market value calculations	1665
HF 11	Choosing to become Maori authority	1665

Subpart HG—Joint venturers, partners, and partnerships

Joint venturers

HG 1	Joint venturers	1666

Partners and partnerships

HG 2	Partnerships are transparent	1667
HG 3	General provisions relating to disposals	1668
HG 4	Disposal upon final dissolution	1669
HG 5	Disposal of partner's interests	1670
HG 6	Disposal of trading stock	1673
HG 7	Disposal of depreciable property	1674
HG 8	Disposal of financial arrangements and certain excepted financial arrangements	1675
HG 9	Disposal of short-term agreements for sale and purchase	1676
HG 10	Disposal of livestock	1678
HG 11	Limitation on deductions by partners in limited partnerships	1679
HG 12	Limitation on deductions by partners in limited partnerships: carry-forward	1682

Subpart HL—Portfolio investment entities
[Repealed]

Introductory provisions
[Repealed]

HL 1 Intended effect on portfolio tax rate entities and investors *[Repealed]* 1683
HL 2 Scheme of subpart *[Repealed]* 1684

Eligibility requirements: portfolio investment entities and foreign investment vehicles
[Repealed]

HL 3 Eligibility requirements for entities *[Repealed]* 1684
HL 4 Effect of failure to meet eligibility requirements for entities *[Repealed]* 1684
HL 5 Foreign investment vehicles *[Repealed]* 1685
HL 5B Meaning of investor and portfolio investor class *[Repealed]* 1685
HL 5C Income interest requirement *[Repealed]* 1685
HL 6 Investor membership requirement *[Repealed]* 1685
HL 7 Investor return adjustment requirement: portfolio tax rate entity *[Repealed]* 1685
HL 8 Imputation credit distribution requirement: portfolio listed company *[Repealed]* 1685
HL 9 Investor interest size requirement *[Repealed]* 1686
HL 10 Further eligibility requirements relating to investments *[Repealed]* 1686

Becoming and ceasing to be portfolio investment entity
[Repealed]

HL 11 Election to become portfolio investment entity and cancellation of election *[Repealed]* 1686
HL 12 Unlisted company choosing to become portfolio listed company *[Repealed]* 1686
HL 13 Becoming portfolio investment entity *[Repealed]* 1687
HL 14 Tax consequences from transition *[Repealed]* 1687
HL 15 Ceasing to be portfolio investment entity *[Repealed]* 1687

Periods relevant to calculation of portfolio entity tax liability
[Repealed]

HL 16 Portfolio allocation period and portfolio calculation period *[Repealed]* 1687

Allocation of income in some cases
[Repealed]

HL 17 Treatment of income from interest when entitlement conditional or lacking *[Repealed]* 1688
HL 18 Certain new investors treated as part of existing portfolio investor class *[Repealed]* 1688

Calculating portfolio entity tax liability [Repealed]

HL 19 Portfolio class net income and portfolio class net loss for portfolio allocation period *[Repealed]* 1688
HL 19B Treatment of certain provisions made by portfolio tax rate entity 1688
HL 20 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period *[Repealed]* 1690
HL 21 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period *[Repealed]* 1690

Payment by portfolio tax rate entity of tax for tax year [Repealed]

HL 22 Payments of tax by portfolio tax rate entity making no election *[Repealed]* 1690
HL 23 Payments of tax by portfolio tax rate entity choosing to pay provisional tax *[Repealed]* 1690
HL 24 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves *[Repealed]* 1690
HL 25 Optional payments of tax by portfolio tax rate entities *[Repealed]* 1691

Results for investors [Repealed]

HL 26 Portfolio investor allocated income and portfolio investor allocated loss *[Repealed]* 1691
HL 27 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period *[Repealed]* 1691

Tax credits for entity [Repealed]

HL 28 Treatment of portfolio investor allocated loss for other investors *[Repealed]* 1691
HL 29 Credits received by portfolio tax rate entity or portfolio investor proxy *[Repealed]* 1692

Treatment of losses for entity [Repealed]

HL 30 Portfolio entity formation loss *[Repealed]* 1692

HL 31 Portfolio class taxable income and portfolio class taxable loss for tax year *[Repealed]* 1692
HL 32 Treatment of portfolio class taxable loss and portfolio class land loss for tax year *[Repealed]* 1692

Portfolio investor proxies [Repealed]

HL 33 Portfolio investor proxies *[Repealed]* 1693

Subpart HM—Portfolio investment entities

Introductory provisions

HM 1 Outline of subpart and relationship with other Parts 1694
HM 2 What is a portfolio investment entity? 1697
HM 3 Foreign PIE equivalents 1699
HM 4 Who is an investor? 1699
HM 5 What is an investor class? 1700
HM 6 Intended effects for multi-rate PIEs and investors 1701
HM 6B Optional look-through rules for PIEs 1703

Entry rules

HM 7 Requirements 1704

Requirements

HM 8 Residence in New Zealand 1704
HM 9 Collective schemes 1705
HM 10 Exclusion: life insurance business 1706
HM 11 Investment types 1706
HM 12 Income types 1707
HM 13 Maximum shareholdings in investments 1708
HM 14 Minimum number of investors 1710
HM 15 Maximum investor interests 1711
HM 16 Associates combined 1711
HM 17 Same rights to all investment proceeds 1711
HM 18 Requirements for listed PIEs: unlisted companies 1712
HM 19 Requirements for listed PIEs: fully crediting distributions 1713
HM 19B Modified rules for foreign investment zero-rate PIEs 1714
HM 19C Modified rules for foreign investment variable-rate PIEs 1714
HM 20 Re-entering as PIE: 5-year rule 1715

Exceptions

HM 21 Exceptions for certain investors 1715
HM 22 Exceptions for certain funds 1717
HM 23 Exceptions for foreign PIE equivalents 1717

Exit rules

HM 24 Ending of New Zealand residence 1718
HM 25 When entity no longer meets investment or investor requirements 1718
HM 26 Starting life insurance business 1719
HM 27 When multi-rate PIE no longer meets investor interest adjustment requirements 1719
HM 28 When listed PIE no longer meets crediting requirement 1720
HM 29 Choosing to cancel status 1720
HM 30 When foreign PIE equivalent no longer meets requirements 1720

Rules for multi-rate PIEs

Introductory provisions

HM 31 Rules for multi-rate PIEs 1721
HM 32 Rules for and treatment of investors in multi-rate PIEs 1722
HM 33 Proxies for PIE investors 1723

Attributing income to investors

HM 34 Attribution periods 1724
HM 35 Determining net amounts and taxable amounts 1725
HM 35B Treatment of certain provisions made by multi-rate PIEs 1727
HM 35C Determining amounts for notified foreign investors 1728
HM 36 Calculating amounts attributed to investors 1729
HM 37 When income cannot be attributed 1731
HM 38 When superannuation fund investor has conditional entitlement 1732
HM 39 New investors in existing investor classes 1733
HM 40 Deductions for attributed PIE losses for zero-rated and exiting investors 1733

Calculating and paying tax liability

HM 41 Options for calculation and payment of tax 1734
HM 42 Exit calculation option 1735
HM 42B Part-year tax calculations for PIEs under the exit calculation option for the 2010–11 tax year 1736
HM 43 Quarterly calculation option 1737
HM 44 Provisional tax calculation option 1738
HM 44B NRWT calculation option 1739
HM 45 Voluntary payments 1740
HM 46 Calculation process 1741
HM 47 Calculation of tax liability or tax credit of multi-rate PIEs 1741

Adjusting investors' interests

HM 48 Adjustments to investor interests or to distributions 1744

Using tax credits

HM 49 Tax credits: when sections HM 50 to HM 55 apply 1745
HM 50 Attributing credits to investors 1746
HM 51 Use of foreign tax credits by PIEs 1747
HM 52 Use of foreign tax credits by zero-rated and certain exiting investors 1748
HM 53 Use of tax credits other than foreign tax credits by PIEs 1749
HM 54 Use of tax credits other than foreign tax credits by investors 1751
HM 55 Tax credits for losses 1751

Special rules for foreign investment PIEs

HM 55C Modified source rules 1752
HM 55D Requirements for investors in foreign investment PIEs 1752
HM 55E Changes in status of investors in foreign investment PIEs 1754
HM 55F Treatment of income attributed to notified foreign investors 1755
HM 55G Allowable amounts and thresholds for income with New Zealand source 1755
HM 55H Treatment when certain requirements for foreign investment PIEs not met 1756

Prescribed and notified rates for investors in multi-rate PIEs

HM 56 Prescribed investor rates: schedular rates 1757
HM 57 Prescribed investor rates for certain investors: 0% 1759
HM 58 Transition of rate for certain investors 1759
HM 59 Prescribed investor rates for certain investors: 0% *[Repealed]* 1760
HM 60 Notified investor rates 1760
HM 61 Certain exiting investors zero-rated 1763

Exit levels and periods

HM 62 Exit levels for investors 1764
HM 63 Exit periods 1764

Treatment of losses by PIEs

Losses of certain multi-rate PIEs

HM 64 Use of investor classes' losses 1765
HM 65 Use of land losses of investor classes 1766

Formation losses

HM 66 Formation losses carried forward to tax year 1768
HM 67 Formation losses carried forward to first quarter 1769
HM 68 When formation losses carried forward are less than 5% of formation investment value 1769
HM 69 When formation losses carried forward are 5% or more of formation investment value: 3-year spread 1770
HM 70 Maximum amount of formation losses allocated by multi-rate PIEs to investor classes 1771

Elections and consequences

HM 71 Choosing to become PIE 1772
HM 71B Choosing to become foreign investment PIE 1772
HM 72 When elections take effect 1773
HM 73 Transition: provisional tax 1774
HM 74 Transition: entities with non-standard income years 1775
HM 75 Transition: treatment of shares held in certain companies 1775
HM 76 Transition: FDPA companies 1776

Subpart HR—Other entities

Partnerships and joint ventures

[Repealed]

HR 1 Partnerships and joint ventures *[Repealed]* 1777

Funds

HR 2 Group investment funds 1777
HR 3 Definitions for section HR 2: group investment funds 1778
HR 4 Government Superannuation Fund 1781
HR 4B Crown activities through New Zealand Superannuation Fund 1781

Airport operators

HR 5 Airport operators: general 1782
HR 6 Airport operator's assets 1783
HR 7 Meaning of airport operator's activities 1784

Transitional residents

HR 8 Transitional residents 1785

Financial institution special purpose vehicles

HR 9 Financial institution special purpose vehicles are transparent 1788
HR 9B Bankruptcy-remote property during application of section HR 9 1790

HR 10 What happens when vehicle stops being financial institution special purpose vehicle? 1791

Subpart HZ—Terminating provisions

HZ 1 Distributions from trusts of pre-1989 tax reserves 1793
HZ 2 Trusts that may become complying trusts 1794
HZ 3 Special partnerships: transition into limited partnerships and limited partnerships deduction rules 1794
HZ 4 Overseas limited partnerships: transition into limited partnerships deduction rules 1795
HZ 4B Qualifying companies: transition into partnership 1796
HZ 4C Qualifying companies: transition into look-through companies 1799
HZ 4D Qualifying companies: transition into sole traderships 1801
HZ 5 Transitional provisions for PIE rules 1803
HZ 6 Saving of binding rules relating to portfolio investment entities 1804
HZ 7 Saving of binding rulings relating to settlements on trusts 1805

Part I
Treatment of tax losses

Subpart IA—General rules for tax losses

IA 1 What this subpart does 1806
IA 2 Tax losses 1807
IA 3 Using tax losses in tax year 1810
IA 4 Using loss balances carried forward to tax year 1811
IA 5 Restrictions on companies' loss balances carried forward 1811
IA 6 Restrictions on companies grouping tax losses 1813
IA 7 Restrictions relating to ring-fenced tax losses 1814
IA 8 Restrictions relating to schedular income 1817
IA 9 Ordering rules 1818
IA 10 Amended assessments 1818

Subpart IC—Grouping tax losses

Introductory provisions

IC 1 Company A making tax loss available to company B 1819
IC 2 Threshold levels for grouping tax losses in tax year 1820
IC 3 Common ownership: group of companies 1820
IC 4 Common ownership: wholly-owned groups of companies 1824

Requirements and methods

IC 5 Company B using company A's tax loss 1824
IC 6 Common ownership for period 1826
IC 7 Residence of company A 1826

IC 8	Limitations on amounts used	1827
IC 9	Date for payment and notice to Commissioner	1828
IC 10	When companies have different balance dates	1828
IC 11	Reduction of amounts used by companies	1829
IC 12	Bad debts or decline in value of shares	1830
IC 13	Variation of requirements for development companies in Niue	1831

Subpart ID—Use of tax losses by consolidated groups

ID 1	Treatment of tax losses by consolidated groups	1832
ID 2	Pre-consolidation losses: general treatment	1833
ID 3	Pre-consolidation losses: use by group companies	1834
ID 4	Pre-consolidation losses on entry: part-year rule	1835
ID 5	Pre-consolidation losses on exit: part-year rule	1836

Subpart IE—Treatment of tax losses on amalgamation of companies

IE 1	When this subpart applies	1837
IE 2	Treatment of tax losses by amalgamating company	1838
IE 3	Treatment of tax losses by amalgamated company	1838
IE 4	Group companies' treatment of tax losses on amalgamation	1839
IE 5	Applying the continuity provisions when companies amalgamate	1840

Subpart IP—Meeting requirements for part-years

Introductory provisions

IP 1	When this subpart applies	1841
IP 2	Group companies' common span	1841

Tax loss components carried forward

IP 3	Continuity breach: tax loss components of companies carried forward	1842

Grouping part-year tax losses

IP 4	Breach in income year in which tax loss component arises	1843
IP 5	Breach in tax year in which loss balance is grouped	1845

Statements and notices

IP 6	Financial statements required	1846
IP 7	Notices required	1847

Subpart IQ—Attributed controlled foreign company net losses and foreign investment fund net losses

IQ 1A	When this subpart applies	1847

IQ 1 General treatment 1848
IQ 1B Losses carried forward to tax year 1849
IQ 2 Ring-fencing cap on attributed CFC net losses 1849
IQ 2B Effect of attributed CFC net loss and FIF net loss from before first affected year 1852
IQ 3 Ring-fencing cap on FIF net losses 1858
IQ 4 Group companies using attributed CFC net losses 1860
IQ 5 Group companies using FIF net losses *[Repealed]* 1862
IQ 6 Pre-consolidation losses: general treatment 1862
IQ 7 When group membership lacking in loss period 1863
IQ 8 When group membership lacking in tax year of use 1865
IQ 9 When attributed CFC net loss becomes FIF net loss 1866

Subpart IS—Mining companies' and petroleum miners' tax losses

IS 1 General treatment of mining companies' net losses 1867
IS 2 Treatment of net losses resulting from certain expenditure 1868
IS 3 Holding companies' tax losses 1869
IS 4 Adjustments in certain circumstances 1870
IS 5 Petroleum miners' tax losses 1871
IS 6 When company stops being mining company 1872

Subpart IT—Cancellation of life insurer's losses

IT 1 Cancellation of life insurer's policyholder net losses 1872
IT 2 Cancellation of life insurer's tax loss when allowed into policyholder base 1873

Subpart IV—Treatment of certain supplementary dividends

IV 1 Supplementary dividend holding companies 1874

Subpart IW—Use of tax losses to pay shortfall penalties

IW 1 Shortfall penalties 1875

Subpart IZ—Terminating provisions

IZ 1 Use of specified activity net losses 1876
IZ 2 Petroleum mining companies: treatment of payments from shareholders 1881
IZ 3 Petroleum mining companies: use of loss balances 1882
IZ 4 Tax losses for tax years before 1977–78 tax year 1884
IZ 5 Companies' tax losses for tax years before 1991–92 tax year 1884
IZ 6 Companies' tax losses for 1990–91 and 1991–92 tax years 1885

IZ 7 Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92 1886

Part L
Tax credits and other credits

Subpart LA—General rules for tax credits

LA 1 What this Part does 1887
LA 2 Satisfaction of income tax liability 1887
LA 3 When total tax credit less than or equal to income tax liability 1888
LA 4 When total tax credit more than income tax liability 1888
LA 5 Treatment of remaining credits 1889
LA 6 Remaining refundable credits: PAYE, RWT, and certain other items 1889
LA 7 Remaining refundable credits: tax credits under social policy schemes 1891
LA 8 Remaining refundable credits: non-resident withholding tax 1892
LA 8B General rules particular to life insurers 1892
LA 9 Use of tax credits 1893
LA 10 Meaning of tax credit 1894

Subpart LB—Tax credits for payments, deductions, and family payments

LB 1 Tax credits for PAYE income payments 1894
LB 2 Tax credits for provisional tax payments 1895
LB 3 Tax credits for resident withholding tax 1895
LB 4 Tax credits for families 1897
LB 5 Tax credits for non-resident withholding tax 1898
LB 6 Tax credits for RSCT 1898
LB 7 Tax credits related to personal service rehabilitation payments: providers 1899
LB 8 Tax credits related to personal service rehabilitation payments: payers 1901

Subpart LC—Tax credits for natural persons

Tax credits for persons on low incomes

[Repealed]

LC 1 When net income under low income amount *[Repealed]* 1902
LC 2 When net income in low income abatement range *[Repealed]* 1902

Tax credits for children

LC 3 Child's income 1903

Tax credits for transitional circumstances

LC 4 Tax credits for transitional circumstances 1905
LC 5 Meaning of engaged in full-time work 1906

Tax credits for housekeeping

LC 6 Tax credits for housekeeping 1909
LC 7 Meaning of housekeeper 1910
LC 8 Some definitions 1911

Tax credits for absentees

LC 9 Tax credits for absentees 1912

Adjustments to certain tax credits

LC 10 Adjustment for change in return date 1913
LC 11 Adjustment when person is non-resident for part of tax year 1913
LC 12 Assessment when person is non-resident 1914

Tax credits for independent earners

LC 13 Tax credits for independent earners 1915

Subpart LD—Tax credits for gifts and donations

Charitable and other public benefit gifts

LD 1 Tax credits for charitable or other public benefit gifts 1917
LD 2 Exclusions 1918
LD 3 Meaning of charitable or other public benefit gift 1919

Payroll donations

LD 4 Tax credits for payroll donations 1920
LD 5 Calculating amount of tax credit and filing particulars 1921
LD 6 When donation is paid to ineligible recipient 1922
LD 7 When donation returned to person 1923
LD 8 Meaning and ranking of payroll donation 1923

Subpart LE—Tax credits for imputation credits

LE 1 Tax credits for imputation credits 1924
LE 2 Use of remaining credits by companies and trustees 1926
LE 2B Use of remaining credits by life insurer on policyholder base 1928
LE 3 Use of remaining credits by others 1928
LE 4 Trustees for minor beneficiaries 1929
LE 5 Beneficiaries of trusts 1929
LE 6 Partners in partnerships 1930
LE 7 Credit transfer notices 1931
LE 7B Credit of RSCT for imputation credit 1932

LE 8 Application of imputation ratio 1932
LE 9 Application of combined imputation and FDP ratio 1933
LE 10 When income tax unpaid 1933
LE 11 Evidential requirements 1934

Subpart LF—Tax credits for foreign dividend payment (FDP) credits

LF 1 Tax credits for FDP credits 1934
LF 2 Trustees for minor beneficiaries 1936
LF 3 Beneficiaries of trusts 1936
LF 4 Partners in partnerships 1937
LF 5 Credit transfer notices 1938
LF 6 Application of FDP ratio 1938
LF 7 Application of combined imputation and FDP ratio 1939
LF 8 Credits for persons who are non-resident or who receive exempt income 1939
LF 9 When income tax unpaid 1940
LF 10 Evidential requirements 1941

Subpart LH—Tax credits for expenditure on research and development

LH 1 Who this subpart applies to *[Repealed]* 1941
LH 2 Tax credits relating to expenditure on research and development *[Repealed]* 1942
LH 3 Requirements *[Repealed]* 1942
LH 4 Calculation of amount of credit *[Repealed]* 1943
LH 5 Adjustments to eligible expenditure *[Repealed]* 1943
LH 6 Research and development activities outside New Zealand *[Repealed]* 1944
LH 7 Research and development activities and related terms 1944
LH 8 Orders in Council *[Repealed]* 1945
LH 9 Internal software development: general *[Repealed]* 1945
LH 10 Internal software development: no associated internal software developer *[Repealed]* 1946
LH 11 Internal software development: associated internal software developer with same income year *[Repealed]* 1946
LH 12 Internal software development: associated internal software developer with different income year *[Repealed]* 1946
LH 13 Internal software development: limit *[Repealed]* 1946
LH 14 Treatment of depreciation loss for certain depreciable property *[Repealed]* 1946
LH 14B Recovery of overpaid tax credit 1947
LH 15 Listed research providers *[Repealed]* 1947

LH 16 Industry research co-operatives *[Repealed]* 1947
LH 17 Some definitions 1947

Subpart LJ—Tax credits for foreign income tax

LJ 1 What this subpart does 1949
LJ 2 Tax credits for foreign income tax 1951
LJ 3 Meaning of foreign income tax 1953
LJ 4 Meaning of segment of foreign-sourced income 1953
LJ 5 Calculation of New Zealand tax 1953
LJ 6 Taxable distributions and NRWT rules 1956
LJ 7 Repaid foreign tax: effect on income tax liability 1957
LJ 8 Repaid foreign tax: effect on FDP liability 1958

Subpart LK—Tax credits relating to attributed controlled foreign company income

Amounts of credits

LK 1 Tax credits relating to attributed CFC income 1960
LK 2 Calculation of amount of credit 1964
LK 3 Currency conversion 1965

Use of credits in later tax years

LK 4 Use of remaining credits 1965
LK 5 Companies' credits carried forward 1965
LK 5B Credits from tax year before first affected year 1966
LK 6 Use of credits by group companies 1970

Treatment of taxable distributions

LK 7 Taxable distributions and NRWT rules 1971

Consolidated companies

LK 8 Tax credits of consolidated companies 1972
LK 9 Use of company's credits carried forward 1972
LK 10 When group membership lacking in tax year in which credit arises 1973
LK 11 When group membership lacking in tax year in which credit used 1974

Amalgamations of companies

LK 12 Treatment of credits when companies amalgamate 1975
LK 13 Use of credits by amalgamated company 1975
LK 14 Use by amalgamated company of credits carried forward 1976
LK 15 Use of amalgamating company's credits 1977

Subpart LL—Underlying foreign tax credits (UFTC)

[Repealed]

LL 1	What this subpart does *[Repealed]*	1977
LL 2	Tax credits for underlying foreign tax *[Repealed]*	1977
LL 3	Meaning of grey list dividend *[Repealed]*	1977
LL 4	Tracking accounts *[Repealed]*	1978
LL 5	Meaning of foreign dividend company net earnings *[Repealed]*	1978
LL 6	Foreign dividend company lower tier UFTCs *[Repealed]*	1978
LL 7	Conduit financing arrangements *[Repealed]*	1978
LL 8	Currency conversion *[Repealed]*	1978
LL 9	Some definitions *[Repealed]*	1978

Subpart LO—Tax credits for Maori authority credits

LO 1	Tax credits for Maori authority credits	1979
LO 2	Beneficiaries of trusts	1979
LO 2B	Credit of RSCT for Maori authority credit	1980
LO 3	Application of Maori authority distribution ratio	1980
LO 4	When income tax unpaid	1981
LO 5	Evidential requirements	1982

Subpart LP—Tax credits for supplementary dividends

Introductory provision

LP 1	What this subpart does	1982

Use of credits

LP 2	Tax credits for supplementary dividends	1982
LP 3	Use of remaining credits	1985
LP 4	Continuity rules for carrying credits forward	1986
LP 5	Application of benchmark dividend rules and imputation credit ratio	1987
LP 6	Deriving supplementary dividend and breach of terms of trust	1987

Supplementary dividend holding companies

LP 7	Requirements for supplementary dividend holding companies	1988
LP 8	Relationship with exempt income rules	1988
LP 9	Relationship with RWT rules	1990
LP 10	Limitation on deductions	1990

Subpart LQ—Tax credits of conduit tax relief companies

LQ 1	Tax credits of CTR companies *[Repealed]*	1992
LQ 2	Limitation on amount of credit *[Repealed]*	1992
LQ 3	Determining percentage of non-resident shareholders *[Repealed]*	1992

LQ 4 Date for determining percentage of non-resident shareholders *[Repealed]* 1992
LQ 5 CTR additional dividends 1992

Subpart LR—Tax credits for policyholder income

LR 1 Tax credits for policyholder income 1993

Subpart LS—Tax credits for multi-rate PIEs and investors

LS 1 Tax credits for multi-rate PIEs 1994
LS 2 Tax credits for investors in multi-rate PIEs 1995
LS 3 Tax credits for zero-rated investors 1997
LS 4 Tax credits for certain exiting investors 1998

Subpart LZ—Terminating provisions

Underlying foreign tax credits

LZ 1 Low tax jurisdiction companies 1999

Credits for certain non-resident investment companies

LZ 2 Certain development projects 2000
LZ 3 Interest derived from development investments 2000
LZ 4 Dividends derived from development investments 2001
LZ 5 Some definitions 2002

Credits for interest on home vendor mortgages

LZ 6 Interest on home vendor mortgages 2002
LZ 7 Maximum amount of credit under section LZ 6 2003
LZ 8 Meaning of home vendor mortgage 2003

Credits for savings in special home ownership accounts

LZ 9 Savings in special home ownership accounts 2004
LZ 10 Maximum amount for 1 special home ownership account for 1 tax year 2004
LZ 11 Maximum amount for all special home ownership accounts for all tax years 2005
LZ 12 Meaning of increase in savings 2005

Part M
Tax credits paid in cash

Subpart MA—General provisions

MA 1 What this Part does 2006
MA 2 Relationship with core provisions 2006
MA 3 Excluded income 2006
MA 4 Calculation of amounts of credit producing negative amounts 2007
MA 5 Advice from outside agencies 2007

MA 6	Avoidance arrangements	2007
MA 7	Meaning of full-time earner for family scheme	2007
MA 8	Some definitions for family scheme	2008

Subpart MB—Adjustment of net income for family scheme

MB 1	Adjustments for calculation of family scheme income	2011
MB 2	Adjustment for period that is less or more than 1 year	2015
MB 3	When person carries on 1 or more businesses or investment activities	2016
MB 4	Family scheme income of major shareholders in close companies	2017
MB 5	Treatment of distributions from superannuation schemes	2018
MB 6	Treatment of distributions from retirement savings schemes	2019
MB 7	Family scheme income of settlor of trust	2019
MB 8	Family scheme income from fringe benefits	2021
MB 9	Family scheme income from deposits in main income equalisation accounts	2022
MB 10	Family scheme income from certain pensions and annuities	2022
MB 11	Family scheme income from amounts derived by dependent children	2023
MB 12	Family scheme income from non-residents' foreign-sourced income	2024
MB 13	Family scheme income from other payments	2024

Subpart MC—Entitlements under family scheme

MC 1	What this subpart does	2026
MC 2	Who qualifies for entitlements under family scheme?	2028
MC 3	First requirement: person's age	2028
MC 4	Second requirement: principal care	2029
MC 5	Third requirement: residence	2029
MC 6	When person does not qualify	2030
MC 7	When spouse or partner entitled under family scheme	2031
MC 8	Continuing requirements	2032
MC 9	Credits for person aged 18	2033
MC 10	Principal caregiver	2034
MC 11	Relationship periods and entitlement periods	2036

Subpart MD—Abating WFF tax credits

Calculating amount of credit

MD 1	Abating WFF tax credit	2037

MD 2 Calculating net contributions to credits 2039

Family tax credit

MD 3 Calculation of family tax credit 2040

In-work tax credit

MD 4 Entitlement to in-work tax credit 2044
MD 5 First requirement: person's age 2044
MD 6 Second requirement: principal care 2045
MD 7 Third requirement: residence 2045
MD 8 Fourth requirement: person not receiving benefit 2046
MD 9 Fifth requirement: full-time earner 2047
MD 10 Calculation of in-work tax credit 2050

Parental tax credit

MD 11 Entitlement to parental tax credit 2051
MD 12 Calculation of parental tax credit 2053

Credit abatement

MD 13 Calculation of family credit abatement 2054
MD 14 Person receiving protected family tax credit 2055
MD 15 Family scheme income for purposes of section MD 14 2056
MD 16 Calculation of parental tax credit abatement 2057

Subpart ME—Minimum family tax credit

ME 1 Minimum family tax credit 2058
ME 2 Meaning of employment for this subpart 2059
ME 3 Meaning of net family scheme income 2061

Subpart MF—Payment of credits

MF 1 Application for payment of tax credit by instalment 2062
MF 2 When person not entitled to payment by instalment 2063
MF 3 Calculating amount of interim WFF tax credit 2064
MF 4 Requirements for calculating instalment of tax credit 2065
MF 4B Calculation of instalments: 1 April 2008 to 30 September 2008 *[Repealed]* 2066
MF 4C Calculation of instalments: 1 October 2008 to 31 March 2009 *[Repealed]* 2066
MF 4D Calculation of instalments: 1 April 2010 to 30 September 2010 2066
MF 4E Calculation of instalments: 1 October 2010 to 31 March 2011 2070
MF 5 Recovery of overpaid tax credit 2074
MF 6 Overpayment or underpayment of tax credit 2075
MF 7 Orders in Council 2076

Subpart MK—Tax credits for KiwiSaver schemes and complying superannuation funds

MK 1 Tax credits for superannuation contributions 2080

Tax credits for fund providers

MK 2 Eligibility requirements 2081
MK 3 Payment of tax credits 2082
MK 4 Amount of tax credit 2083
MK 5 Crown contributions for members 2085
MK 6 Credit given by fund providers 2085
MK 7 Amounts paid in excess 2085
MK 8 Treatment of tax credits on permanent emigration 2086

Tax credits for employers

[Repealed]

MK 9 Eligibility requirements *[Repealed]* 2087
MK 10 Amount of credit *[Repealed]* 2087
MK 11 When tax credits arise *[Repealed]* 2087
MK 12 Using tax credits *[Repealed]* 2087
MK 13 When short payment and unpaid compulsory employer contributions found after tax credit used *[Repealed]* 2087
MK 14 Employees opting out *[Repealed]* 2087
MK 15 Groups of persons 2087
MK 16 Private domestic workers 2088

Subpart ML—Tax credits for redundancy payments

ML 1 What this subpart does 2088
ML 2 Tax credit for redundancy payments 2089
ML 3 Payment by Commissioner 2090

Subpart MZ—Terminating provisions

MZ 1 Entitlement to child tax credit 2090
MZ 2 Calculation of child tax credit 2091
MZ 3 Exclusions from determination of family scheme income 2092

Part O
Memorandum accounts

Subpart OA—General provisions

Introductory provisions

OA 1 What this Part does 2093
OA 2 Memorandum accounts 2093
OA 3 General rules for maintaining memorandum accounts 2094
OA 4 Certain credits and debits arising only in group accounts 2095

Credits and debits

OA 5 Credits 2095
OA 6 Debits 2097

Opening balances

OA 7 Opening balances of memorandum accounts 2099

Shareholder continuity requirements

OA 8 Shareholder continuity requirements for memorandum accounts 2100

Treatment of credits and debits on resident's restricted amalgamation

General provision

OA 9 General treatment of credits and debits on resident's restricted amalgamation 2103

When companies amalgamate

OA 10 When credits or debits due to amalgamating company but not recorded 2104
OA 11 FDP account on resident's restricted amalgamation 2106
OA 12 CTR account on resident's restricted amalgamation *[Repealed]* 2106
OA 13 Policyholder credit account on resident's restricted amalgamation 2106

Amalgamation of companies in consolidated groups

OA 14 Continuity of shareholding when group companies amalgamate 2107
OA 15 When credits or debits due to consolidated group but not recorded 2109
OA 16 When FDP account ends on resident's restricted amalgamation 2110
OA 17 When policyholder credit account ends on resident's restricted amalgamation 2111

Maximum permitted ratios

OA 18 Calculation of maximum permitted ratios 2112

Subpart OB—Imputation credit accounts (ICA)

Introductory provisions

OB 1 General rules for companies with imputation credit accounts 2113
OB 2 Australian companies with imputation credit accounts 2115
OB 3 Imputation credit accounts 2117

OB 3B General rule for life insurer's policyholder base 2118

Imputation credits

OB 4 ICA payment of tax 2118
OB 5 ICA deposit in tax pooling account 2120
OB 6 ICA transfer from tax pooling account 2121
OB 7 ICA payment of further income tax 2121
OB 7B ICA payment of qualifying company election tax 2122
OB 7C ICA expenditure on research and development 2122
OB 8 ICA resident withholding tax withheld 2123
OB 9 ICA dividend derived with imputation credit 2123
OB 9B ICA attributed PIE income with imputation credit 2124
OB 10 ICA dividend derived with FDP credit 2124
OB 11 ICA payment of FDP *[Repealed]* 2125
OB 12 ICA transfer from FDP account 2125
OB 13 ICA transfer of debit balance on leaving wholly-owned group 2125
OB 14 ICA payment of tax on leaving wholly-owned group 2127
OB 15 ICA payment of tax on joining wholly-owned group 2127
OB 16 ICA attribution for personal services 2128
OB 17 ICA transfer from policyholder credit account *[Repealed]* 2128
OB 18 ICA transfer from ASC account 2129
OB 19 ICA transfer to master fund 2129
OB 20 ICA distribution with Maori authority credit 2130
OB 21 ICA balance of Maori authority credit account 2130
OB 22 ICA replacement payment to company under share-lending arrangement 2131
OB 23 ICA credit transfer to company 2131
OB 24 ICA credit on resident's restricted amalgamation 2132
OB 25 ICA reversal of tax advantage arrangement 2133
OB 26 ICA elimination of double debit 2134
OB 27 ICA non-resident withholding tax withheld 2135
OB 28 ICA payment of amount of tax for schedular payment 2135
OB 29 ICA payment of schedular income tax 2136

Imputation debits

OB 30 ICA payment of dividend 2136
OB 31 ICA allocation of provisional tax 2137
OB 32 ICA refund of income tax 2137
OB 33 ICA amount applied to pay other taxes 2139
OB 34 ICA refund from tax pooling account 2140
OB 35 ICA transfer within tax pooling account 2142

OB 35B ICA debit for transfer from tax pooling account for policyholder base liability 2143
OB 36 ICA refund of FDP 2144
OB 37 ICA refund of tax credit 2144
OB 38 ICA overpayment of FDP 2145
OB 39 ICA transfer for net foreign attributed income *[Repealed]* 2146
OB 40 ICA attribution for personal services 2146
OB 41 ICA debit for loss of shareholder continuity 2147
OB 42 ICA on-market cancellation 2148
OB 43 ICA breach of imputation ratio 2149
OB 44 ICA debit on leaving wholly-owned group 2150
OB 45 ICA redemption debit 2151
OB 46 ICA transfer from member fund 2153
OB 47 Debit for policyholder base imputation credits 2154
OB 48 ICA credit balance when Maori authority credit account starts 2154
OB 49 ICA replacement payment by company under share-lending arrangement 2155
OB 50 ICA returning share transfer 2155
OB 51 ICA credit transfer by company 2156
OB 52 ICA imputation credit of consolidated imputation group 2156
OB 53 ICA debit on resident's restricted amalgamation 2157
OB 54 ICA tax advantage arrangement 2158
OB 55 ICA retrospective imputation credit 2158
OB 56 ICA final balance 2159
OB 57 ICA refund of NRWT 2159
OB 58 ICA refund of amount of tax for schedular payment 2160
OB 59 ICA refund of schedular income tax 2160

Imputation credits attached to dividends

OB 60 Imputation credits attached to dividends 2161
OB 61 ICA benchmark dividend rules 2162
OB 62 Retrospective attachment of imputation credits 2164
OB 63 Australian dividends 2166
OB 64 Replacement payments 2167

Further income tax

OB 65 Further income tax for ICA closing debit balance 2167
OB 66 Further income tax when company stops being ICA company 2168
OB 67 Reduction of further income tax 2169
OB 68 Income tax paid satisfying liability for further income tax 2170
OB 69 Further income tax paid satisfying liability for income tax 2171

OB 70 Application of other provisions 2172

Imputation additional tax

OB 71 Imputation additional tax on leaving wholly-owned group 2173
OB 72 Imputation additional tax on joining wholly-owned group 2176
OB 72B Limit on using entitlement to refund after joining wholly-owned group 2179

Distributions of statutory producer boards and co-operative companies

OB 73 Statutory producer boards attaching imputation credits to cash distributions 2182
OB 74 Statutory producer boards attaching imputation credits to notional distributions 2184
OB 75 Statutory producer boards' notional distributions that are dividends 2186
OB 76 Statutory producer boards attaching FDP credits 2187
OB 77 When and how statutory producer board makes election 2187
OB 78 Co-operative companies attaching imputation credits to cash distributions 2188
OB 79 Co-operative companies attaching imputation credits to notional distributions 2190
OB 80 Co-operative companies' notional distributions that are dividends 2191
OB 81 Co-operative companies attaching FDP credits 2192
OB 82 When and how co-operative company makes election 2193

Tables of credits and debits in memorandum accounts

Subpart OC—Foreign dividend payment accounts (FDPA)

Introductory provisions

OC 1 General rules for companies with FDP accounts 2202
OC 2 FDP accounts 2203
OC 2B General rule for life insurer's policyholder base 2204
OC 3 Choosing to become FDPA company 2204
OC 4 When company chooses to stop being FDPA company 2204
OC 5 When company emigrates 2205

FDP credits

OC 6 FDPA payment of FDP *[Repealed]* 2205
OC 7 FDPA dividend derived with FDP credit 2205
OC 8 FDPA payment of FDP for transfer from CTR account *[Repealed]* 2206
OC 9 FDPA transfer for net foreign attributed income *[Repealed]* 2206

OC 10 FDPA payment of FDP for conduit debit balance *[Repealed]* 2206
OC 11 FDPA credit transfer to company 2206
OC 12 FDPA reversal of tax advantage arrangement 2207

FDP debits

OC 13 FDPA payment of dividend 2207
OC 14 FDPA refund of FDP 2208
OC 15 FDPA overpayment of FDP 2208
OC 16 FDPA refund of tax credit 2209
OC 17 FDPA credit transfer by company 2209
OC 18 FDPA transfer to imputation credit account 2210
OC 19 FDPA transfer to CTR account 2211
OC 20 Debit for policyholder base FDP credits 2212
OC 21 FDPA transfer to group account 2213
OC 22 FDPA breach of FDP ratio 2213
OC 23 FDPA breach of FDP ratio by PCA company *[Repealed]* 2214
OC 24 FDPA debit for loss of shareholder continuity 2214
OC 25 FDPA tax advantage arrangement 2215
OC 26 FDPA final balance 2216

FDP credits attached to dividends

OC 27 FDP credits attached to dividends 2216
OC 28 FDPA benchmark dividend rules 2217
OC 29 FDP credits and imputation credits attached to dividends 2219

Further income tax

OC 30 Payment of further income tax for closing debit balance 2220
OC 31 Payment of further income tax when company no longer New Zealand resident 2221
OC 32 Reduction of further income tax 2223
OC 33 Income tax paid satisfying liability for further income tax 2224
OC 34 Further income tax paid satisfying liability for income tax 2224

Some definitions [Repealed]

OC 35 Meaning of FDP reference period *[Repealed]* 2225
OC 36 Meaning of maximum deficit debit *[Repealed]* 2225
OC 37 Meaning of policyholder FDP ratio *[Repealed]* 2225
OC 38 Meaning of reduced deficit debit *[Repealed]* 2225
OC 39 Meaning of shareholder FDP ratio *[Repealed]* 2226

Table O3: FDP credits
Table O4: FDP debits

Subpart OD—Conduit tax relief accounts (CTRA)

Introductory provisions

OD 1 General rules for companies with CTR accounts 2229
OD 2 CTR accounts 2230
OD 3 Choosing to become CTR company 2230
OD 4 When company stops being CTR company 2231

CTR credits

OD 5 CTRA tax credit for conduit tax relief *[Repealed]* 2232
OD 6 CTRA transfer from FDP account 2232
OD 7 CTRA dividend derived with CTR credit 2233
OD 8 CTRA reduction of FDP *[Repealed]* 2233
OD 9 CTRA reversal of tax advantage arrangement 2233

CTR debits

OD 10 CTRA payment of dividend 2234
OD 11 CTRA transfer to FDP account *[Repealed]* 2234
OD 12 CTRA transfer to group account 2234
OD 13 CTRA adjustment for conduit tax relief 2235
OD 14 CTRA break in shareholding chain for group company 2235
OD 15 CTRA break in shareholding chain for company 2236
OD 16 CTRA increase in resident shareholding 2238
OD 17 CTRA breach of CTR ratio 2239
OD 18 CTRA tax advantage arrangement 2240
OD 19 CTRA final balance 2241

CTR credits attached to dividends

OD 20 CTR credits attached to dividends 2241
OD 21 CTRA benchmark dividend rules 2242
OD 22 CTR credits and imputation credits attached to dividends 2244

Payment of FDP and refunds

OD 23 FDP payable for CTR debits *[Repealed]* 2245
OD 24 FDP payable on resident's restricted amalgamation *[Repealed]* 2245
OD 25 Refunds on transfers to CTR account 2245

Table O5: conduit tax relief credits
Table O6: conduit tax relief debits

Subpart OE—Branch equivalent tax accounts (BETA)

Introductory provision

OE 1 General rules for companies and other persons with branch equivalent tax accounts 2248

Companies with branch equivalent tax accounts

Introductory provisions

OE 2 Branch equivalent tax accounts of companies 2249
OE 3 Choosing to become BETA company 2250
OE 4 When company stops being BETA company 2251
OE 5 Treatment of attributed CFC income and FIF income in this subpart 2251

Branch equivalent tax credits

OE 6 BETA payment of income tax on foreign income 2251
OE 7 BETA payment of income tax 2253
OE 8 BETA unused amount of debit balance *[Repealed]* 2256
OE 9 BETA refund of FDP 2256
OE 10 BETA credit for loss of shareholder continuity 2257
OE 11 BETA final balance 2257

Treatment of debits from conduit relief

OE 11B Company with debit balance, including debits from conduit relief, in some income years 2258

Branch equivalent tax debits
[Repealed]

OE 12 BETA payment of FDP *[Repealed]* 2260
OE 13 BETA reduction in FDP *[Repealed]* 2260
OE 14 BETA refund of income tax *[Repealed]* 2260
OE 15 BETA debit for loss of shareholder continuity *[Repealed]* 2260
OE 16 BETA final balance *[Repealed]* 2261

Debit if credit balance at beginning of first affected income year
[Repealed]

OE 16B Company with credit balance at beginning of first affected income year *[Repealed]* 2261

Persons with branch equivalent tax accounts

Introductory provisions

OE 17 Person choosing to become BETA person 2261

OE 18 When person stops being BETA person 2262

Branch equivalent tax credits

OE 19 BETA person's payment of income tax on foreign income 2262

Branch equivalent tax debits

OE 20 BETA person's payment of income tax 2263
OE 21 BETA person's refund of income tax 2264
OE 22 BETA person's final balance 2265

Table O7 branch equivalent tax credits
Table O8 branch equivalent tax debits [Repealed]

Table O9 person's equivalent tax credits
Table O10 person's equivalent tax debits

Subpart OF—Available subscribed capital accounts (ASCA)

Introductory provisions

OF 1 General rules for companies with ASC accounts 2267
OF 2 ASC accounts 2268
OF 3 Choosing to become ASC account company 2268

ASC credits

OF 4 ASCA redemption credit 2269

ASC debits

OF 5 ASCA transfer to imputation credit account 2269

Table O11 ASC credits
Table O12 ASC debits

Subpart OJ—Policyholder credit accounts (PCA)
[Repealed]

Introductory provision
[Repealed]

OJ 1 General rules for companies and other persons with policyholder credit accounts *[Repealed]* 2272

Companies with policyholder credit accounts
[Repealed]

Introductory provision
[Repealed]

OJ 2 Policyholder credit accounts of companies *[Repealed]* 2272

Policyholder credits of PCA company
[Repealed]

OJ 3 PCA transfer from imputation credit account *[Repealed]* 2272
OJ 4 PCA transfer from FDP account *[Repealed]* 2273
OJ 5 PCA transfer of life insurance business *[Repealed]* 2273
OJ 6 PCA credit for maximum deficit in FDP account *[Repealed]* 2273
OJ 7 PCA credit for reduced deficit in FDP account *[Repealed]* 2273

Policyholder debits of PCA company
[Repealed]

OJ 8 PCA payment of tax relating to policyholder base *[Repealed]* 2273
OJ 9 PCA transfer to imputation credit account *[Repealed]* 2273
OJ 10 PCA transfer to group account *[Repealed]* 2274
OJ 11 PCA company's transfer of life insurance business *[Repealed]* 2274

Persons with policyholder credit accounts
[Repealed]

Introductory provisions
[Repealed]

OJ 12 Choosing to become PCA person *[Repealed]* 2274
OJ 13 Choosing to stop being PCA person *[Repealed]* 2274

Policyholder credits of PCA person
[Repealed]

OJ 14 PCA person's equivalent credit *[Repealed]* 2275
OJ 15 PCA person's credit for transfer of life insurance business *[Repealed]* 2275

Policyholder debits of PCA person
[Repealed]

OJ 16 PCA person's payment of tax relating to policyholder base *[Repealed]* 2275
OJ 17 PCA person's equivalent debit *[Repealed]* 2275
OJ 18 PCA person's debit for transfer of life insurance business *[Repealed]* 2275

Table O13 policy holder credits
[Repealed]

Table O14 policyholder debits
[Repealed]

Table O15 person's policyholder credits [Repealed]

Table O16 person's policyholder debits [Repealed]

Subpart OK—Maori authority credit accounts (MACA)

Introductory provision

OK 1 General rules for Maori authorities with Maori authority credit accounts 2276

Maori authority credits

OK 2 MACA payment of tax 2277
OK 3 MACA payment of tax to other Maori authorities 2278
OK 4 MACA payment of further income tax 2278
OK 4B MACA expenditure on research and development 2279
OK 5 MACA distribution with Maori authority credit 2279
OK 6 MACA dividend derived with imputation credit 2280
OK 6B MACA attributed PIE income with imputation credit 2280
OK 7 MACA dividend derived with FDP credit 2281
OK 8 MACA resident withholding tax withheld 2281
OK 9 MACA reversal of tax advantage arrangement 2281

Maori authority debits

OK 10 MACA distribution 2282
OK 11 MACA allocation of provisional tax 2282
OK 12 MACA refund of income tax 2283
OK 13 MACA payment of other taxes 2284
OK 14 MACA refund of FDP 2285
OK 14B MACA refund of tax credit 2285
OK 15 MACA debit for loss of shareholder continuity 2286
OK 16 MACA breach of Maori authority credit ratio 2287
OK 17 MACA tax advantage arrangement 2288
OK 18 MACA final balance 2289

Maori authority credits attached to distributions

OK 19 Maori authority credits attached to distributions 2289
OK 20 MACA benchmark distribution rules 2290

Further income tax

OK 21 Further income tax for closing debit balance 2291
OK 22 Further income tax paid when Maori authority no longer Maori authority 2292
OK 23 Further income tax paid satisfying liability for income tax 2293
OK 24 Income tax paid satisfying liability for further income tax 2293

Table O17 Maori authority credits
Table O18 Maori authority debits

Subpart OP—Memorandum accounts of consolidated groups

Introductory provisions

OP 1 Memorandum accounts of consolidated groups 2296
OP 2 When credits and debits arise only in group accounts 2297

Consolidated groups and imputation credit accounts

Introductory provisions

OP 3 Changes in consolidated imputation groups 2298
OP 4 Resident imputation subgroups 2299
OP 5 When credits and debits arise only in consolidated imputation group accounts 2299
OP 6 Provisions applying to consolidated imputation groups 2301

Imputation credits of consolidated imputation groups

OP 7 Consolidated ICA payment of tax 2304
OP 8 Consolidated ICA deposit in tax pooling account 2306
OP 9 Consolidated ICA transfer from tax pooling account 2306
OP 10 Consolidated ICA allocation from company with overpaid provisional tax 2307
OP 11 Consolidated ICA payment of further income tax 2308
OP 11B Consolidated ICA expenditure on research and development 2308
OP 12 Consolidated ICA dividend derived with imputation credit 2309
OP 13 Consolidated ICA dividend derived with FDP credit 2309
OP 14 Consolidated ICA payment of FDP *[Repealed]* 2310
OP 15 Consolidated ICA replacement payment to company under share-lending arrangement 2310
OP 16 Consolidated ICA credit transfer to company 2310
OP 17 Consolidated ICA resident withholding tax withheld 2311
OP 18 Consolidated ICA transfer from group company's FDP account 2312
OP 19 Consolidated ICA transfer from group's FDP account 2312
OP 20 Consolidated ICA transfer from group company's policyholder credit account *[Repealed]* 2313
OP 21 Consolidated ICA transfer from group's policyholder credit account *[Repealed]* 2313
OP 22 Consolidated ICA group company's credit 2313
OP 23 Consolidated ICA elimination of double debit 2314
OP 24 Consolidated ICA reversal of tax advantage arrangement 2315

OP 25 Consolidated ICA non-resident withholding tax withheld 2316
OP 26 Consolidated ICA payment of amount of tax for schedular payment 2316
OP 27 Consolidated ICA payment of schedular income tax 2317

Imputation debits of consolidated imputation groups

OP 28 Consolidated ICA payment of dividend 2317
OP 29 Consolidated ICA allocation of provisional tax 2318
OP 30 Consolidated ICA refund of income tax 2318
OP 31 Consolidated ICA amount applied to pay other taxes 2320
OP 32 Consolidated ICA refund from tax pooling account 2321
OP 33 Consolidated ICA transfer within tax pooling account 2322
OP 33B Consolidated ICA debit for transfer from tax pooling account for policyholder base liability 2323
OP 34 Consolidated ICA refund of FDP 2323
OP 35 Consolidated ICA refund of tax credit 2324
OP 36 Consolidated ICA overpayment of FDP 2325
OP 37 Consolidated ICA group company's debit 2326
OP 38 Consolidated ICA transfer for net foreign attributed income *[Repealed]* 2327
OP 39 Consolidated ICA replacement payment by company under share-lending arrangement 2327
OP 40 Consolidated ICA returning share transfer 2327
OP 41 Consolidated ICA credit transfer by company 2328
OP 42 Consolidated ICA debit for loss of shareholder continuity 2328
OP 43 Consolidated ICA breach of imputation ratio 2329
OP 44 Consolidated ICA debit for policyholder base imputation credits 2330
OP 45 Consolidated ICA redemption debit 2331
OP 46 Consolidated ICA tax advantage arrangement 2333
OP 47 Consolidated ICA final balance 2334
OP 48 Consolidated ICA refund of NRWT 2334
OP 49 Consolidated ICA refund of amount of tax for schedular payment 2335
OP 50 Consolidated ICA refund of schedular income tax 2335

Table O19 imputation credits of consolidated imputation groups

Table O20 imputation debits of consolidated imputation groups

Consolidated groups and FDP accounts

Introductory provisions

OP 51 FDP accounts of consolidated FDP groups 2342

OP 52 Choosing to stop being consolidated FDP group 2342
OP 53 When group company emigrates 2343
OP 54 When credits and debits arise only in consolidated FDP group accounts 2344
OP 55 Provisions applying to consolidated FDP groups 2345

FDP credits of consolidated FDP groups

OP 56 Consolidated FDPA payment of FDP *[Repealed]* 2345
OP 57 Consolidated FDPA payment of further FDP *[Repealed]* 2346
OP 58 Consolidated FDPA dividend derived with FDP credit 2346
OP 59 Consolidated FDPA group company's credit 2346
OP 60 Consolidated FDPA credit transfer to company 2347
OP 61 Consolidated FDPA transfer from group's CTR account *[Repealed]* 2348
OP 62 Consolidated FDPA transfer for net foreign attributed income *[Repealed]* 2348
OP 63 Consolidated FDPA reversal of tax advantage arrangement 2348

FDP debits of consolidated FDP groups

OP 64 Consolidated FDPA payment of dividend 2349
OP 65 Consolidated FDPA credit transfer by company 2349
OP 66 Consolidated FDPA refund of FDP 2350
OP 67 Consolidated FDPA overpayment of FDP 2350
OP 68 Consolidated FDPA refund of tax credit 2351
OP 69 Consolidated FDPA transfer to imputation credit account 2352
OP 70 Consolidated FDPA transfer to group's CTR account 2352
OP 71 Consolidated FDPA group company's debit 2353
OP 72 Consolidated FDPA breach of FDP ratio 2353
OP 73 Consolidated FDPA debit for loss of shareholder continuity 2354
OP 74 Consolidated FDPA debit for policyholder base FDP credits 2354
OP 75 Consolidated FDPA breach of FDP ratio by PCA company 2355
OP 76 Consolidated FDPA tax advantage arrangement 2355
OP 77 Consolidated FDPA final balance 2356

Table O21 : credits of consolidated FDP groups

Table O22 : FDP debits of consolidated FDP groups

Consolidated groups and CTR credits

Introductory provisions

OP 78 CTR accounts of consolidated groups 2359
OP 79 When credits and debits arise only in CTR group accounts 2360

OP 80 Provisions applying to consolidated groups with CTR accounts 2361

CTR credits of consolidated groups

OP 81 Consolidated CTRA tax credit for conduit tax relief *[Repealed]* 2361
OP 82 Consolidated CTRA reduction of FDP *[Repealed]* 2361
OP 83 Consolidated CTRA dividend derived with CTR credit 2362
OP 84 Consolidated CTRA group company's credit 2362
OP 85 Consolidated CTRA transfer from group's FDP account 2363
OP 86 Consolidated CTRA reversal of tax advantage arrangement 2364

CTR debits of consolidated groups

OP 87 Consolidated CTRA payment of dividend 2365
OP 88 Consolidated CTRA transfer to group's FDP account *[Repealed]* 2365
OP 89 Consolidated CTRA adjustment for conduit tax relief 2366
OP 90 Consolidated CTRA group company's debit 2366
OP 91 Consolidated CTRA increase in resident shareholding 2367
OP 92 Consolidated CTRA breach of CTR ratio 2368
OP 93 Consolidated CTRA tax advantage arrangement 2369
OP 94 Consolidated CTRA final balance 2369

Consolidated groups' FDP payments and refunds

OP 95 FDP payable for credits and debits in group's CTR account *[Repealed]* 2370
OP 96 Refund on transfer from group's FDP account 2370

Table O23 : conduit tax relief credits of consolidated groups

Table O24 : conduit tax relief debits of consolidated groups

Consolidated groups and branch equivalent tax accounts

Introductory provisions

OP 97 Branch equivalent tax accounts of consolidated BETA groups 2372
OP 98 Choosing to stop being consolidated BETA group 2373
OP 99 When credits and debits arise only in branch equivalent tax group accounts *[Repealed]* 2373

Branch equivalent tax credits of consolidated BETA groups

OP 100 Consolidated BETA payment of income tax on foreign income 2374
OP 101 Consolidated BETA payment of income tax 2375
OP 102 Consolidated BETA remaining debit balances *[Repealed]* 2379
OP 103 Consolidated BETA refund of FDP 2379
OP 104 Consolidated BETA credit for loss of shareholder continuity 2380

Treatment by consolidated BETA groups of BETA debits from conduit relief

OP 104B Consolidated BETA group with debit balance, including debits from conduit relief, in certain income years 2381

Branch equivalent tax debits of consolidated BETA groups [Repealed]

OP 105 Consolidated BETA payment of FDP *[Repealed]* 2383
OP 106 Consolidated BETA reduction of FDP *[Repealed]* 2383
OP 107 Consolidated BETA refund of income tax *[Repealed]* 2384
OP 108 Consolidated BETA debit for loss of shareholder continuity *[Repealed]* 2384

Debit if credit balance at beginning of first affected income year
[Repealed]

OP 108B Consolidated BETA group with credit balance at beginning of first affected income year *[Repealed]* 2384

Table O25 : branch equivalent tax credits of consolidated BETA groups

Table O26 : branch equivalent tax debits of consolidated BETA groups
[Repealed]

Consolidated groups and policyholder credit accounts [Repealed]

Introductory provision
[Repealed]

OP 109 Policyholder credit accounts of consolidated groups *[Repealed]* 2386

Policyholder credits of consolidated groups
[Repealed]

OP 110 Consolidated PCA transfer from imputation credit account *[Repealed]* 2386
OP 111 Consolidated PCA transfer from FDP account *[Repealed]* 2386
OP 112 Consolidated PCA group company's credit *[Repealed]* 2386
OP 113 Consolidated PCA maximum deficit debit in FDP account *[Repealed]* 2386
OP 114 Consolidated PCA reduced deficit debit in FDP account *[Repealed]* 2387

Policyholder debits of consolidated groups [Repealed]

OP 115 Consolidated PCA payment of tax relating to policyholder base *[Repealed]* 2387
OP 116 Consolidated PCA transfer to imputation credit account *[Repealed]* 2387

Table O27: policyholder credits of consolidated groups [Repealed]

Table O28: policyholder debits of consolidated groups [Repealed]

Subpart OZ—Terminating provisions

OZ 1 No imputation credit for pre-imputation tax paid 2388
OZ 2 No imputation debit for pre-imputation refund 2388
OZ 3 Overpaid income tax or foreign dividend payment for pre-imputation income year 2388
OZ 4 Terminating modifications to debits for loss of shareholder continuity 2389
OZ 5 ASCA lost excess available subscribed capital 2389
OZ 6 ASCA redemption of unused investments 2392
OZ 7 Memorandum accounts in transitional period 2392
OZ 7B Maori authority credit ratios for transitional period 2392
OZ 8 Attaching imputation credits and FDP credits: maximum permitted ratio 2395
OZ 9 Benchmark dividends: ratio change 2395
OZ 10 Modifying ratios for imputation credits and FDP credits 2396
OZ 11 Tax credits for imputation credits and FDP credits 2398
OZ 12 Tax credits for non-resident investors 2400
OZ 13 Fully credited dividends: modifying actual ratio 2402
OZ 14 Dividends from qualifying companies 2402
OZ 15 Attaching imputation credits and notional distributions: modifying amounts 2403
OZ 16 BETA reductions 2404

OZ 17 CTRA reductions 2405
OZ 18 Credit-back of PCA balance 2405

Part R
General collection rules

Subpart RA—General withholding and payment obligations

Introductory provisions

RA 1 What this Part does 2406
RA 2 Amounts treated as income tax 2407

Payment and withholding obligations

RA 3 Terminal tax obligations 2408
RA 4 Provisional tax obligations 2408
RA 5 Tax obligations for employment-related taxes 2408
RA 6 Withholding and payment obligations for passive income 2409
RA 6B Withholding and payment obligations for retirement scheme contributions 2410
RA 7 Payment of tax by public authorities 2410
RA 8 Liability of persons receiving payments or benefits 2410
RA 9 Treatment of amounts withheld as received 2411
RA 10 When obligations not met 2411
RA 11 Adjustment to correct errors: certain underpayments 2412
RA 12 Adjustment to correct errors: certain excess amounts 2413

Payment dates

RA 13 Payment dates for terminal tax 2415
RA 14 Payment dates for provisional tax 2416
RA 15 Payment dates for interim and other tax payments 2416
RA 16 Payment date when taxable activity ends 2419
RA 17 Payment date when RWT exemption certificate expires 2420
RA 18 Payment date for emigrating companies 2420

Refunds

RA 19 Refunds of excess amounts or when amounts mistakenly paid 2421

Amalgamations

RA 20 Amalgamation of companies 2421

Regulations

RA 21 Regulations 2423

Application of other provisions

RA 22 Limits on application of other provisions for purposes of PAYE rules 2424
RA 23 Application of other provisions for purposes of ESCT rules and NRWT rules 2425
RA 24 Application of other provisions for purposes of RSCT rules 2426

Subpart RB—Terminal tax

RB 1 Payment of terminal tax 2426
RB 2 Income tax liability for non-filing taxpayers for non-resident passive income 2426
RB 3 Schedular income tax liability for filing taxpayers for non-resident passive income 2427
RB 4 Using refunds to satisfy tax liabilities 2427

Subpart RC—Provisional tax

Introductory provisions

RC 1 What this subpart does 2428
RC 2 Provisional tax rules and their application 2428
RC 3 Who is required to pay provisional tax? 2429
RC 4 Choosing to pay provisional tax 2430

Calculating provisional tax liability

RC 5 Methods for calculating provisional tax liability 2430
RC 6 Standard method 2432
RC 7 Estimation method 2433
RC 8 GST ratio method 2435

Instalments of provisional tax

RC 9 Provisional tax payable in instalments 2438
RC 10 Calculating amount of instalment under standard and estimation methods 2441
RC 11 Calculating amount of instalment using GST ratio 2445
RC 12 Voluntary payments 2446
RC 13 Paying 2 instalments for tax year 2447
RC 14 Paying 1 instalment for tax year 2448

Requirements for using GST ratio

RC 15 Choosing to use GST ratio 2449
RC 16 Who may use GST ratio? 2449
RC 17 When GST ratio must not be used 2450
RC 18 Changing calculation method 2452
RC 19 Disposal of assets 2453

Transitional years

RC 20 Calculating residual income tax in transitional years 2455
RC 21 Paying provisional tax in transitional years 2456
RC 22 Calculating instalments in transitional years: standard method 2457
RC 23 Calculating instalments in transitional years: estimation method 2459
RC 24 Calculating instalments in transitional years: GST ratio method 2460
RC 25 Consequences of change in balance date 2460

When persons start or stop paying GST, or change taxable periods

RC 26 Registering for GST or cancelling registration 2462
RC 27 Payment of provisional tax instalments when GST cycle changed 2463

Treatment of groups of companies and amalgamated companies

RC 28 Provisional tax rules and consolidated groups 2464
RC 29 Residual income tax of consolidated groups 2465
RC 30 Consolidated groups using estimation method 2465
RC 31 Consolidated groups using GST ratio method 2466
RC 32 Wholly-owned groups of companies 2467
RC 33 Amalgamated companies: calculating residual income tax 2468

Attribution rule for income from personal services

RC 34 Attribution rule for income from personal services 2469

Credits

RC 35 Further income tax credited to provisional tax liability 2472

Disaster relief
[Repealed]

RC 36 Persons affected by adverse events *[Repealed]* 2472

Early-payment discounts

RC 37 Availability of early-payment discounts 2473
RC 38 Crediting income tax with early-payment discount 2473
RC 39 Credit treated as payment of income tax 2474
RC 40 Some definitions 2474

Subpart RD—Employment-related taxes

Introductory provision

RD 1 What this subpart does 2475

PAYE rules and PAYE income payments

Introductory provisions

RD 2 PAYE rules and their application 2476
RD 3 PAYE income payments 2476
RD 4 Payment of amounts of tax to Commissioner 2478

Types of PAYE income payments

RD 5 Salary or wages 2479
RD 6 Certain benefits and payments 2483
RD 7 Extra pay 2484
RD 8 Schedular payments 2485

Calculating amounts of tax

RD 9 Maximum amount 2486
RD 10 Amounts of tax for PAYE income payments 2486
RD 11 Reduction in certain circumstances 2488

Adjustments for certain PAYE income payments

RD 12 Multiple payments of salary or wages 2489
RD 13 Advance payments of salary or wages 2490
RD 13B Adjustments for payroll donations 2491
RD 14 Changes to tax rates for salary or wages 2491
RD 15 Payments of salary or wages in pay periods 2492
RD 16 Payments to private domestic workers 2493
RD 17 Payment of extra pay with other PAYE income payments 2494
RD 18 Schedular payments without notification 2496
RD 19 Schedular payments to non-resident entertainers 2497
RD 20 Schedular payments to subcontractors 2498

Paying amounts of tax

RD 21 When amounts of tax not withheld or payment insufficient 2499
RD 22 Returns for amounts of tax paid to Commissioner 2499
RD 23 Bonds given by employers of certain non-resident employees 2503
RD 24 Exemption certificates for non-resident contractors 2504

Fringe benefit tax (FBT) rules and fringe benefits

Introductory provisions

RD 25 FBT rules and their application 2505
RD 26 Liability for FBT 2506

Value of fringe benefits

RD 27 Determining fringe benefit values 2506
RD 28 Private use of motor vehicle: calculation methods 2507

RD 29 Private use of motor vehicle: formulas 2508
RD 30 Private use of motor vehicle: 24-hour period 2510
RD 31 Motor vehicle test period 2511
RD 32 Replacement motor vehicles 2512
RD 33 Subsidised transport 2513
RD 34 Employment-related loans: value using prescribed interest rates 2513
RD 35 Employment-related loans: value using market interest rates 2514
RD 36 Repayment of employment-related loans 2516
RD 37 Contributions to superannuation schemes 2517
RD 38 Contributions to funds, trusts, and insurance premiums 2517
RD 39 Benefits provided by charitable organisations 2518
RD 40 Goods 2519
RD 41 Services 2520
RD 42 Goods at staff discount 2522
RD 43 Goods on special with staff discount 2522
RD 44 Goods sold by group companies 2523
RD 45 Unclassified benefits 2523
RD 46 Adjustments for unclassified benefits on amalgamation 2525

Attributing fringe benefits to employees

RD 47 Attribution of certain fringe benefits 2527
RD 48 When attributed benefits provided to more than 1 employee 2528
RD 49 Application of thresholds to attributed benefits 2529
RD 50 Employer's liability for attributed benefits 2529
RD 51 Calculation of all-inclusive pay 2531
RD 52 Calculation for certain employees when information lacking 2533
RD 53 Pooling non-attributed benefits 2534

Taxable value of fringe benefits

RD 54 Value of and payments towards fringe benefits 2535
RD 55 Private use of motor vehicle: taxable value in cases of part ownership 2536
RD 56 Private use of motor vehicle: when schedular value not used 2536
RD 57 Private use of motor vehicle: when schedular value used 2538

Options for payment of FBT

RD 58 Single rate option 2539
RD 59 Alternate rate option 2539
RD 60 Close company option 2540

RD 61 Small business option 2543
RD 62 Changes in payment periods 2544
RD 63 When employer stops employing staff 2546

Employer's superannuation contribution tax (ESCT) rules and employer's superannuation contributions

Introductory provisions

RD 64 ESCT rules and their application 2546
RD 65 Employer's superannuation cash contributions 2547
RD 66 Complying fund rules 2551

Calculating amounts of tax

RD 67 Calculating amounts of tax for employer's superannuation cash contributions 2551
RD 68 Choosing to have amount treated as salary or wages 2552
RD 69 Choosing different rates for employer's superannuation cash contributions 2553
RD 70 Calculating amounts of tax on failure to withhold 2553
RD 71 Amounts of tax treated as paid to and received by superannuation funds 2554

Tax on certain withdrawals from superannuation funds [Repealed]

RD 72 Recovery of tax paid by superannuation funds *[Repealed]* 2555

Subpart RE—Withholding tax on resident passive income (RWT)

Introductory provisions

RE 1 RWT rules and their application 2556
RE 2 Resident passive income 2556

Withholding obligations

RE 3 Obligation to withhold RWT 2561
RE 4 Persons who have withholding obligations 2561
RE 5 No withholding obligation in certain circumstances 2563
RE 6 When obligation to withhold unreasonable 2564
RE 7 When resident passive income paid to trustees 2565
RE 8 When resident passive income paid to nominees 2565
RE 9 Agents' or trustees' obligations in relation to certain dividends 2566
RE 10 Special rule relating to payments of interest 2567
RE 10B Amounts withheld from distributions to holders of FIF attributing interests 2568
RE 11 Notification by companies 2569

Calculating amounts of tax

RE 12 Interest 2569
RE 13 Dividends other than non-cash dividends 2571
RE 14 Non-cash dividends other than bonus issues in lieu 2573
RE 15 Bonus issues in lieu 2574
RE 16 Taxable Maori authority distributions 2575
RE 17 Replacement payments under share-lending arrangements 2576
RE 18 Payments made by RWT proxies 2577
RE 19 Choosing other rates 2577

Paying amounts of tax

RE 20 Paying RWT 2578
RE 21 Basis for payment of RWT 2579
RE 22 When payment treated as non-resident passive income 2580
RE 23 When amount of tax treated as FDP credit 2581
RE 24 When amount of tax treated as Maori authority credit 2581
RE 25 When amount of tax treated as imputation credit 2581
RE 26 Payment by proxy 2582

RWT exemption certificates

RE 27 RWT exemption certificates 2582
RE 28 When certificates expire 2583
RE 29 Establishing whether person holds certificate 2583
RE 30 When unincorporated bodies hold certificates 2585

Subpart RF—Withholding tax on non-resident passive income (NRWT)

Introductory provisions

RF 1 NRWT rules and their application 2586
RF 2 Non-resident passive income 2588

Withholding obligations

RF 3 Obligation to withhold amounts of tax for non-resident passive income 2591
RF 4 Non-resident passive income received by agents and others 2591
RF 5 When amounts of tax already withheld 2592
RF 6 When amounts of tax not withheld or partly withheld 2592

Calculating amounts of tax

RF 7 General rate for NRWT 2593
RF 8 Certain dividends 2594
RF 9 When dividends fully imputed or fully credited 2594
RF 10 Non-cash dividends 2596

RF 11 Dividends paid to companies associated with non-residents 2599
RF 11B Certain dividends paid to certain non-residents 2599
RF 12 Interest paid by approved issuers or transitional residents 2600
RF 12B Interest derived jointly with residents 2601
RF 12C Amount derived from non-resident life insurer becoming resident 2602

Paying amounts of tax

RF 13 Basis for payment of amounts of tax for non-resident passive income 2602
RF 14 Treatment of FDP credits 2603
RF 15 Commissioner's power to vary amounts of tax 2603
RF 16 Relationship with RSCT rules 2604

Subpart RG—Payments for foreign dividends (FDP) *[Repealed]*

Introductory provisions [Repealed]

RG 1 FDP rules and their application *[Repealed]* 2604
RG 2 Foreign dividends *[Repealed]* 2605

Obligation to make payments [Repealed]

RG 3 Obligation to pay FDP *[Repealed]* 2605

Calculation of payments [Repealed]

RG 4 Calculating amount of FDP *[Repealed]* 2605

Adjustments to payments [Repealed]

RG 5 Credit balance in branch equivalent tax account *[Repealed]* 2606
RG 6 Using loss balances *[Repealed]* 2606
RG 7 Reduction of payments for conduit tax relief *[Repealed]* 2606

Subpart RH—Withholding tax on retirement scheme contributions

RH 1 RSCT rules and their application 2606
RH 2 Retirement scheme contributions 2607
RH 3 Retirement savings schemes 2608
RH 4 Retirement scheme contributors 2609

Calculating amounts of tax

RH 5 Calculating amounts of tax for retirement scheme contribution 2610
RH 6 Calculating amounts of tax on failure to withhold 2610

Subpart RM—Refunds

Introductory provision

RM 1 What this subpart does 2611

Refunds for overpaid amounts

RM 2 Refunds for overpaid tax 2611
RM 3 Refunds for overpaid FDP 2612
RM 4 Overpayment on amended assessment 2612
RM 5 Overpayment on income statements 2613
RM 6 Refunds after 4-year period ends 2614
RM 7 Refunds to PAYE intermediaries 2614
RM 8 Overpaid RWT or NRWT 2615
RM 9 Calculations for attributed and non-attributed fringe benefits 2617

Use of refunds

RM 10 Using refund to satisfy tax liability 2618
RM 11 Using GST refund to pay instalment of provisional tax 2619
RM 12 Reduction in provisional tax liability 2619

Limits on refunds and transfers

ICA companies

RM 13 Limits on refunds for ICA companies 2621
RM 14 Limits on refunds when company stops being ICA company 2621
RM 15 Changes in credit balances 2622
RM 16 Treatment of amounts not refunded 2622
RM 17 Treatment of further income tax paid 2623

Companies receiving foreign dividends

RM 18 Limits on refunds related to foreign dividends 2624
RM 19 Treatment of financial arrangements 2625
RM 20 Treatment of amounts not refunded 2625
RM 21 Refunds when loss balances used to reduce net income 2626

Maori authorities

RM 22 Limits on refunds for Maori authorities 2628
RM 23 Limits on refunds when Maori authority stops being Maori authority 2629

RM 24 Increase in credit balances 2629
RM 25 Treatment of amounts not refunded 2630
RM 26 Treatment of further income tax paid 2630
RM 27 Application when no credits arise 2631

Persons with policyholder credit accounts

RM 28 Limits on refunds for PCA persons 2631
RM 29 Limits on refunds when person no longer PCA person 2631
RM 30 Changes in credit balances 2632
RM 31 Treatment of amounts not refunded 2632

Qualifying companies

RM 32 Application of sections RM 13 to RM 17 to qualifying companies 2633

Certain unit trusts and group investment funds

RM 33 Limits on refunds for certain unit trusts and group investment funds 2633

Subpart RP—Intermediaries

Introductory provision

RP 1 What this subpart does 2634

PAYE intermediaries

Obligations and treatment of PAYE intermediaries

RP 2 PAYE intermediaries 2635
RP 3 Requirements for listed PAYE intermediaries 2635
RP 4 Payment of subsidies to certain PAYE intermediaries 2636
RP 5 Subsidy claims 2637
RP 6 Operation of PAYE intermediaries' trust accounts 2638

Employers' responsibilities

RP 7 General responsibilities of employers 2639
RP 8 Information required from employers 2640
RP 9 Authorised transfers from accounts 2641
RP 10 When transfers from accounts not authorised 2641
RP 11 Employer's superannuation cash contributions 2642
RP 12 When payments made directly to employees 2642

PAYE intermediaries' responsibilities

RP 13 General responsibilities of PAYE intermediaries 2643
RP 14 Collection, payment, and information requirements 2644
RP 15 When employers have authorised transfers from accounts 2644
RP 16 Obligations for employer's superannuation contributions 2645

Tax pooling intermediaries

RP 17 Tax pooling intermediaries 2645
RP 17B Tax pooling accounts and their use 2646
RP 18 Deposits in tax pooling accounts 2651
RP 19 Transfers from tax pooling accounts 2652
RP 19B Transfers for certain expected tax liabilities 2654
RP 20 Declining, amending, or reversing transfers 2655
RP 21 Refunds from tax pooling accounts 2656

Subpart RZ—Terminating provisions

Provisional tax

RZ 1 Certain elections to become person with provisional tax liability 2657
RZ 2 Amount of provisional tax based on 1997–98 or earlier tax year 2657
RZ 3 Standard method: 2010–11 to 2012–13 income years 2658
RZ 4 GST ratio method: 2010–11 to 2013–14 income years 2659
RZ 5 Calculating amounts under standard method: 2010–11 to 2012–13 income years 2661
RZ 5B Standard method: new personal tax rate persons from 1 October 2008 to end 2009–10 income year *[Repealed]* 2663
RZ 5C GST ratio method: new personal tax rate persons from 1 October 2008 to end 2009–10 income year *[Repealed]* 2663
RZ 5D Standard method or GST method: transition for Maori authorities 2663

Refunds

RZ 6 Limits on refunds: transitional dates 2664

Withdrawal income

RZ 7 Withdrawal income 2665
RZ 8 Payment and rate of withdrawal tax 2665
RZ 9 Relief in certain cases 2666
RZ 10 Recovery of amounts payable to Commissioner 2666
RZ 11 Refunds for life insurers 2667

Part Y
Definitions and related matters

Subpart YA—General definitions

YA 1 Definitions 2667
YA 2 Meaning of income tax varied 2909

YA 3 Treatment of qualifying company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax *[Repealed]* 2910

Table Y1 Associated person rules

Subpart YB—Associated persons and nominees

Associated persons

YB 1 What this subpart does 2911
YB 2 Two companies 2912
YB 3 Company and person other than company 2914
YB 4 Two relatives 2915
YB 5 Person and trustee for relative 2915
YB 6 Trustee and beneficiary 2916
YB 7 Two trustees with common settlor 2916
YB 8 Trustee and settlor 2916
YB 9 Settlor and beneficiary 2917
YB 10 Who is a settlor? 2917
YB 11 Trustee and person with power of appointment or removal 2917
YB 12 Partnership and partner 2918
YB 13 Look-through companies and owners of interests 2918
YB 14 Tripartite relationship 2919
YB 15 Exceptions for employee trusts 2920
YB 16 Exceptions for certain trusts and charitable organisations 2921
YB 17 Partnerships: partnership and associate of partner *[Repealed]* 2922
YB 18 Persons habitually acting together: 1988 version provisions *[Repealed]* 2922
YB 19 Person and controlled non-profit organisation: 1990 version provisions *[Repealed]* 2922
YB 20 Some definitions *[Repealed]* 2922

Nominees

YB 21 Transparency of nominees 2923

Subpart YC—Measurement of company ownership

Control

[Repealed]

YC 1 Meaning of control *[Repealed]* 2924

Voting and market value interests

YC 2 Voting interests 2924
YC 3 Market value interests 2924
YC 4 Look-through rule for corporate shareholders 2925

YC 5 Treatment of special corporate entities 2926
YC 6 Disregarding certain securities 2927

Voting and market value interests: modifications for continuity provisions

YC 7 When sections YC 8 to YC 19 apply 2928
YC 8 Death of share or option holder 2928
YC 9 Shares or options held by trustees 2928
YC 10 Shareholders holding less than 10% direct interests 2930
YC 11 No look-through rule for companies in certain cases 2930
YC 12 Public unit trusts 2931
YC 13 Corporate spin-outs 2932
YC 14 Disregarding concessionary rules 2935
YC 15 Directors' knowledge of failure to meet requirements of continuity provision 2935
YC 16 Disregarding market value changes 2937
YC 17 Demutualisation of insurers 2937
YC 18 Reverse takeovers 2941
YC 18B Corporate reorganisations not affecting economic ownership 2943
YC 19 Legislative conversion of foreign company of proprietors 2945
YC 20 Credit account continuity provisions: excluded fixed rate securities 2946

Subpart YD—Residence and source in New Zealand

Residence

YD 1 Residence of natural persons 2946
YD 2 Residence of companies 2948
YD 3 Country of residence of foreign companies 2949
YD 3B Crown 2950

Source

YD 4 Classes of income treated as having New Zealand source 2950
YD 5 Apportionment of income derived partly in New Zealand 2954
YD 6 Apportionment of income from sea transport 2955
YD 7 Apportionment of film rental income 2956
YD 8 Apportionment of premiums derived by non-resident general insurers 2957

Conduit tax relief companies: special residence rules

YD 9 Residence of CTR company shareholders 2959
YD 10 Meaning of CTR holding company 2960
YD 11 Meaning of CTR group member 2961

Subpart YE—References to balance dates and years

YE 1 References to balance dates and years 2962

Subpart YF—Currency conversion

YF 1 General rules for currency conversion 2963
YF 2 Other rules for currency conversion: approved alternatives 2965

Subpart YZ—Terminating provisions

YZ 1 Source rule for interest 2966
YZ 2 Saving of effect of section 394L(4A) of Income Tax Act 1976 2966
YZ 3 Saving effect of section DF 5 of Income Tax Act 1994 2967

Part Z
Repeals, amendments, and savings

ZA 1 Repeals 2967
ZA 2 Consequential amendments to other enactments 2968
ZA 3 Transitional provisions 2968
ZA 4 Saving of binding rulings 2969
ZA 5 Saving of accrual determinations 2970
ZA 6 Comparative tables of old and new provisions 2971

Schedule 1 2972
Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits

Schedule 2 2986
Basic tax rates for PAYE income payments

Schedule 3 2990
Payment of provisional tax and terminal tax

Schedule 4 2994
Rates of tax for schedular payments

Schedule 5 3004
Fringe benefit values for motor vehicles

Schedule 6 3009
Prescribed rates: PIE investments and retirement scheme contributions

Schedule 10 3015
Straight-line equivalents of diminishing value rates of depreciation

Schedule 11 3020
New banded rates of depreciation

Schedule 12 3021
Old banded rates of depreciation

Schedule 13 3023
Depreciable land improvements

Schedule 14 3024
Depreciable intangible property

Schedule 17 3025
Types and classes of livestock

Schedule 18 3029
Categories of livestock for which national standard costs to be declared

Schedule 19 3031
Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant

Schedule 20 3033
Expenditure on farming, horticultural, aquacultural, and forestry improvements

Schedule 21 3040
Expenditure and activities related to research and development
[Repealed]

Schedule 24 3041
International tax rules: grey list countries

Schedule 25 3043
Foreign investment funds

Schedule 26 3043
Low tax jurisdictions or territories

Schedule 27 3050
Countries and types of income with unrecognised tax

Schedule 28 3051
Requirements for complying fund rules

Schedule 29 3053
Portfolio investment entities: listed investors

Schedule 31 3055
Annualised equivalent amount for Part M

Schedule 32 3061
Recipients of charitable or other public benefit gifts

Schedule 36 3065
State enterprises

Schedule 37 3066
Statutory producer boards

Schedule 38 3066
Acts exempting income from tax: income included in family scheme income

Schedule 39 3066
Items for purposes of definition of special excluded depreciable property

Schedule 48 3067
Enactments repealed

Schedule 49 3067
Enactments amended

Schedule 50 3112
Amendments to Tax Administration Act 1994

Schedule 51 3221
Identified changes in legislation

Schedule 52 3228
Comparative tables of old and rewritten provisions

A 1 Title

This Act is the Income Tax Act 2007.

Compare: 2004 No 35 s A 1

A 2 Commencement

1 April 2008

(1) This Act comes into force on 1 April 2008.

Charitable entities

(1B) Despite subsection (1), sections CW 41(2) and CW 42(1)(b) come into force on 1 July 2008.

Act effective for 2008–09 income year and later

(2) However, except when the context requires otherwise, this Act applies only with respect to the tax on income derived in the 2008–09 income year and later income years.

Defined in this Act: income year, tax

Compare: 2004 No 35 s A 2

Section A 2(1B) heading: inserted, on 1 April 2008, by section 307 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section A 2(1B): inserted, on 1 April 2008, by section 307 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Part A
Purpose and interpretation

Contents

		Page
AA 1	Purpose of Act	119
AA 2	Interpretation	119
AA 3	Definitions	120
AA 4	Crown bound	120

AA 1 Purpose of Act

The main purposes of this Act are—

(a) to define, and impose tax on, net income:

(b) to impose obligations concerning tax:

(c) to set out rules for calculating tax and for satisfying the obligations imposed.

Defined in this Act: net income, tax

Compare: 2004 No 35 s AA 1

AA 2 Interpretation

Aids to interpretation

(1) Diagrams, flowcharts, readers' notes, and the lists of defined terms following sections are included in this Act only as interpretational aids. If there is conflict between an interpretational aid and a provision of this Act, the provision prevails.

Defined terms

(2) If a defined term is used in a section and is not included in the list of defined terms following the section, the term is nevertheless used in the section as defined.

Compare: 1994 No 164 s AA 2

AA 3 Definitions

Role of Part Y

(1) Definitions of terms that apply generally for the purposes of this Act, and general provisions on the interpretation and construction of this Act, appear in Part Y (Definitions and related matters).

Role of Interpretation Act

(2) The Interpretation Act 1999 also contains definitions of terms, including in particular the term **person**, and other provisions that apply to the interpretation and construction of this Act.

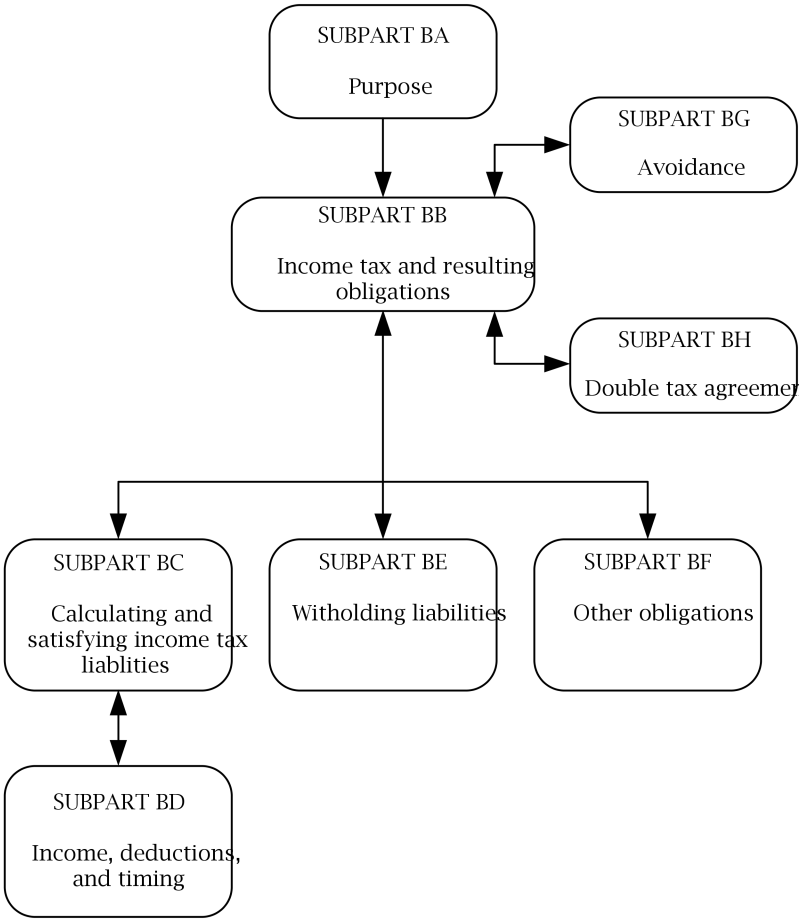
Compare: 2004 No 35 s AA 3(2)

AA 4 Crown bound

This Act binds the Crown.

Part B
Core provisions

Flowchart B1: Outline of Part



Subpart BA—Purpose

Contents

Page

BA 1 Purpose 122

BA 1 Purpose

The purposes of this Part are—

(a) to impose income tax, provisional tax, withholding liabilities, and other tax obligations concerning taxes:

(b) to set out procedures to be followed for calculating tax and satisfying the obligations imposed under this Act:

(c) to provide a basis for applying the other Parts:

(d) generally to set up the scheme of the Act and the main links between its Parts.

Defined in this Act: income tax, provisional tax, tax

Compare: 2004 No 35 s BA 1

Subpart BB—Income tax and resulting obligations

Contents

Page

BB 1 Imposition of income tax 122
BB 2 Main obligations 123
BB 3 Overriding effect of certain matters 123

BB 1 Imposition of income tax

Income tax is imposed on taxable income, at the rate or rates of tax fixed by an annual taxing Act, and is payable to the Crown under this Act and the Tax Administration Act 1994.

Defined in this Act: annual taxing Act, income tax, pay, tax, taxable income

Compare: 2004 No 35 s BB 1

BB 2 Main obligations

Income tax liability

(1) A person's income tax liability for a tax year must be calculated, and satisfied by the person, under subpart BC (Calculating and satisfying income tax liabilities).

Non-filing taxpayer

(2) Despite subsection (1), a non-filing taxpayer is not required to file a return of income.

Provisional tax

(3) A person liable to pay provisional tax must pay provisional tax for a tax year under the provisional tax rules.

Withholding liabilities

(4) A person who has a withholding liability must satisfy it under subpart BE (Withholding liabilities).

Other obligations

(5) A person who has an obligation in relation to another ancillary tax under subpart BF (Other obligations) must satisfy it under that subpart.

Defined in this Act: ancillary tax, income tax liability, non-filing taxpayer, pay, provisional tax rules, provisional tax, return of income, tax year

Compare: 2004 No 35 s BB 2

BB 3 Overriding effect of certain matters

Tax avoidance arrangements: subpart BG

(1) Under Part G (Avoidance and non-market transactions), the Commissioner may counteract a tax advantage from a tax avoidance arrangement.

Double tax agreements: subpart BH

(2) Under subpart BH (Double tax agreements) a double tax agreement has effect in relation to—

(a) income tax; or

(b) any other tax imposed by this Act; or

(c) the exchange of information that relates to a tax, as defined in paragraphs (a)(i) to (v) of the definition of **tax** in section 3 of the Tax Administration Act 1994.

Defined in this Act: Commissioner, double tax agreement, income tax, tax, tax avoidance arrangement

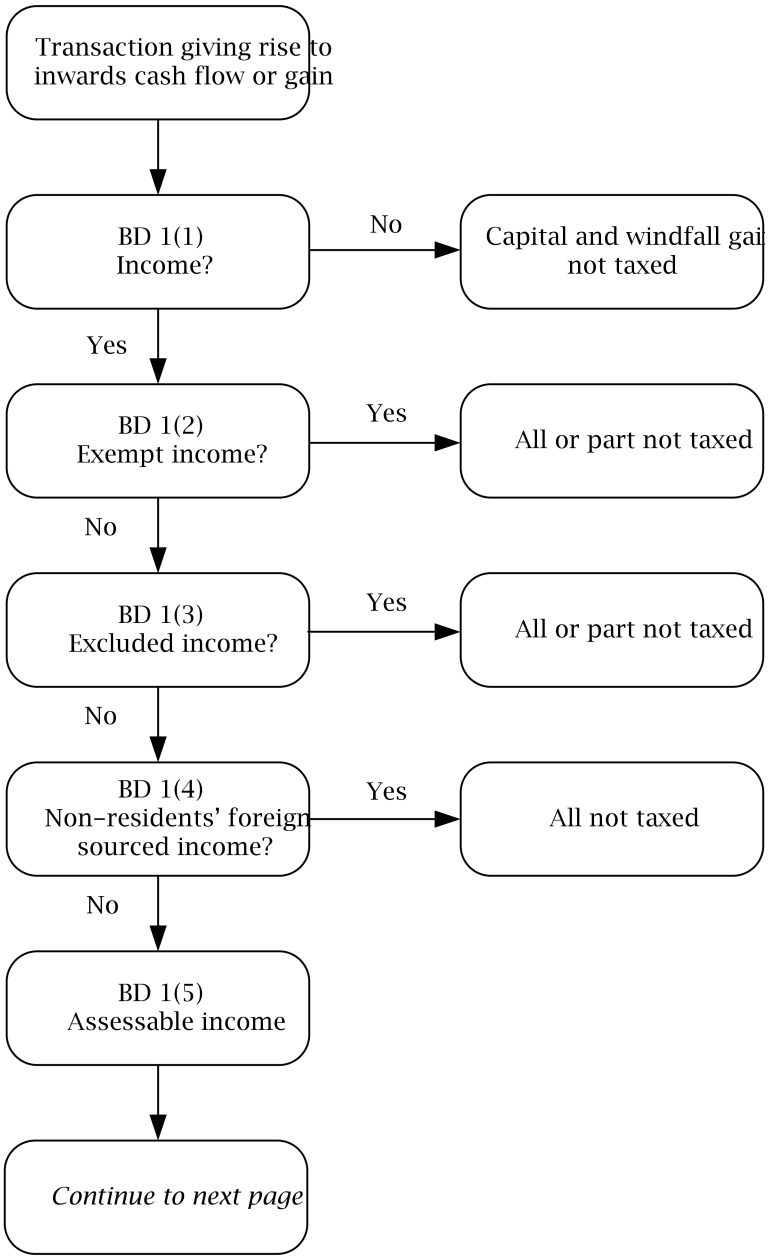
Compare: 2004 No 35 s BB 3

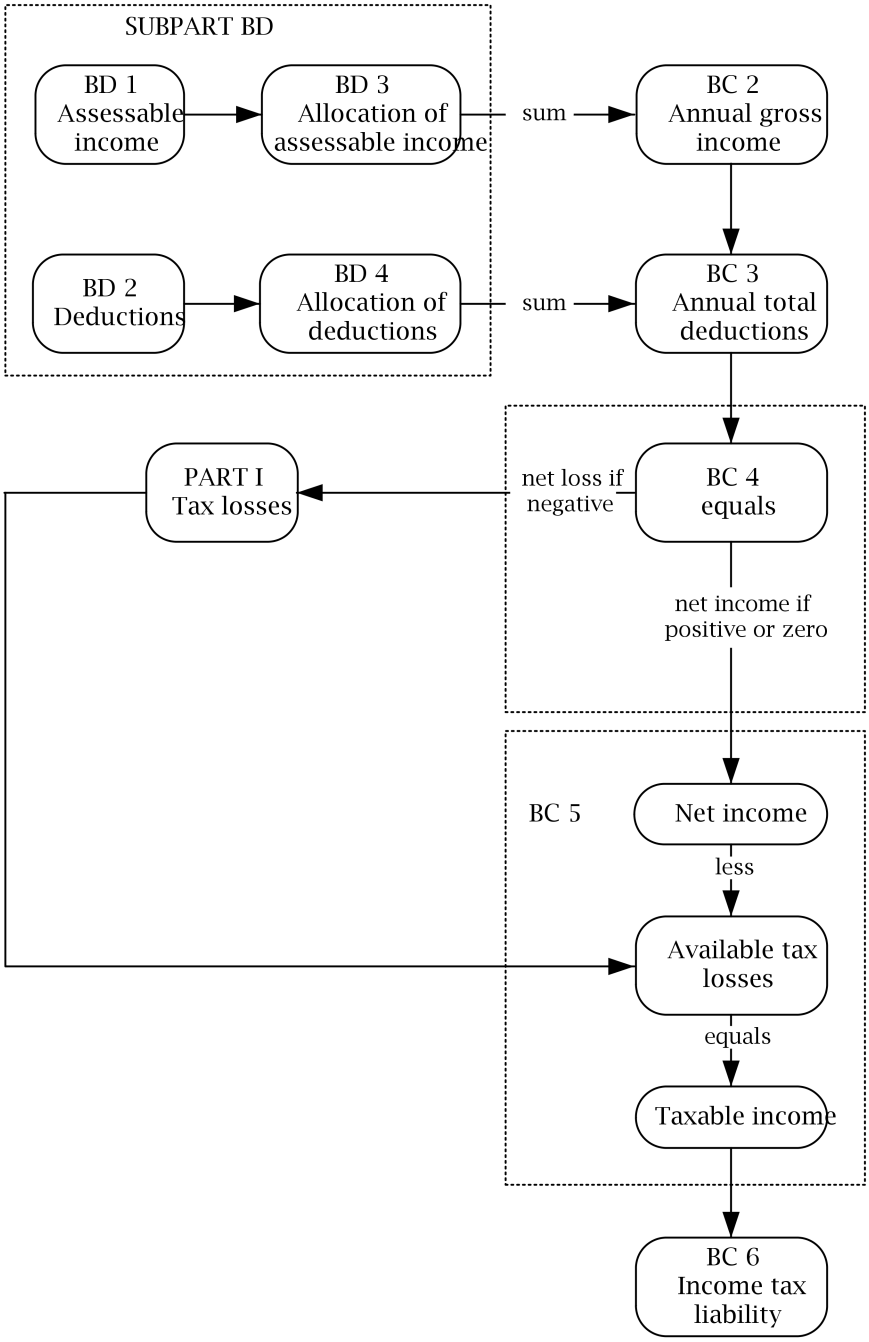
Subpart BC—Calculating and satisfying income tax liabilities

Contents

		Page
BC 1	Non-filing and filing taxpayers	127
BC 2	Annual gross income	127
BC 3	Annual total deduction	127
BC 4	Net income and net loss	128
BC 5	Taxable income	128
BC 6	Income tax liability of filing taxpayer	130
BC 7	Income tax liability of person with schedular income	130
BC 8	Satisfaction of income tax liability	133

Flowchart B2: Calculating and satisfying income tax liabilities




SUBPART BD
BD 1
Assessable income
BD 3
Allocation of assessable income
sum
BC 2
Annual gross income
BD 2
Deductions
BD 4
Allocation of deductions
sum
BC 3
Annual total deductions
PART I
Tax losses
net loss if negative
BC 4
equals
net income if positive or zero
BC 5
Net income
less
Available tax losses
equals
Taxable income
BC 6
Income tax liability

Flowchart B2: amended (with effect on 1 April 2008), on 7 December 2009, by section 4 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

BC 1 Non-filing and filing taxpayers

Non-filing taxpayer

(1) The income tax liability of a non-filing taxpayer for a tax year is the total tax withheld from amounts of income included in the taxpayer's annual gross income for the year.

Filing taxpayer

(2) The income tax liability of a filing taxpayer for a tax year is calculated under sections BC 2 to BC 6.

Filing taxpayer with schedular income

(3) If a filing taxpayer has schedular income, their income tax liability calculation is modified by section BC 7.

Defined in this Act: amount, annual gross income, filing taxpayer, income, income tax liability, non-filing taxpayer, schedular income, tax, tax year

Compare: 2004 No 35 s BC 1

BC 2 Annual gross income

A person's **annual gross income** for a tax year is the total of their assessable income that is allocated to the corresponding income year.

Defined in this Act: annual gross income, assessable income, corresponding income year, tax year

Compare: 2004 No 35 s BC 2

BC 3 Annual total deduction

A person's **annual total deduction** for a tax year is the total of their deductions that are allocated to the corresponding income year.

Defined in this Act: annual total deduction, corresponding income year, deduction, tax year

Compare: 2004 No 35 s BC 3

BC 4 Net income and net loss

Income more than deductions

(1) If, for a tax year, a person's annual gross income is more than their annual total deduction, the difference is their **net income** for the year.

Income equal to deductions

(2) If, for a tax year, a person's annual gross income equals their annual total deduction, their **net income** for the year is zero.

Deductions more than income

(3) If, for a tax year, a person's annual total deduction is more than their annual gross income, the difference is their **net loss** for the year, and their net income for the year is zero.

Treatment of net loss

(4) A person's net loss for a tax year is included under Part I (Treatment of tax losses) in their tax loss for the tax year that may, under Part I, be—

(a) subtracted from their net income for a future tax year:

(b) made available to another person to subtract from that other person's net income for that or a future tax year:

(c) used in certain other ways.

Defined in this Act: annual gross income, annual total deduction, net income, net loss, tax loss, tax year

Compare: 2004 No 35 s BC 4

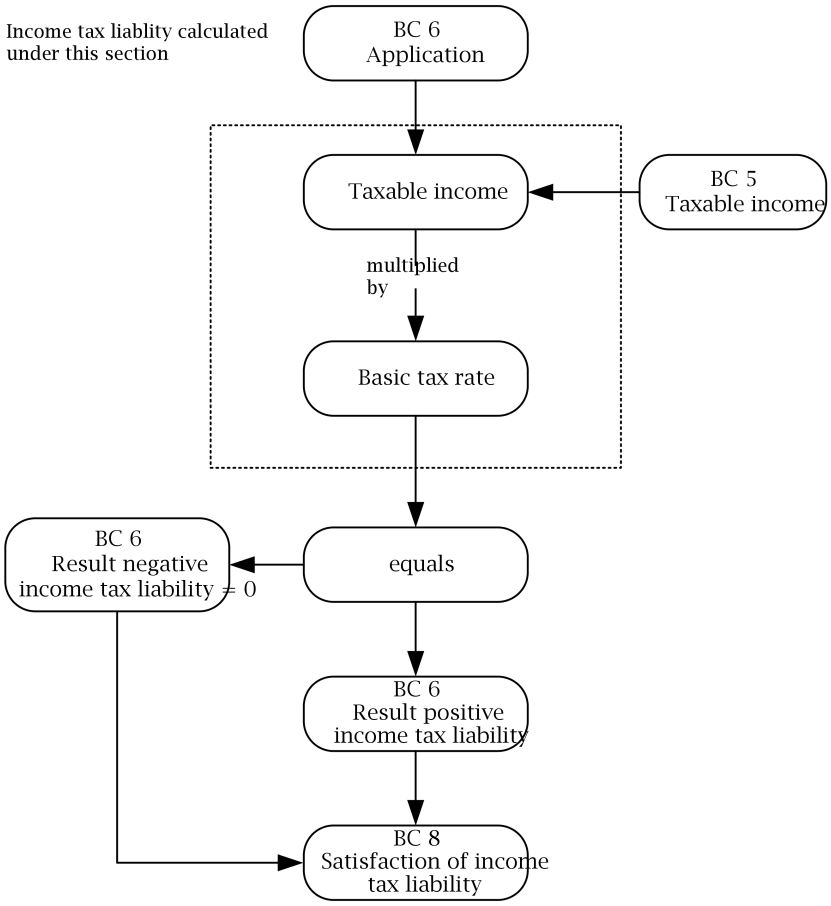
BC 5 Taxable income

A person's **taxable income** for a tax year is determined by subtracting any available tax loss that the person has from their net income under Part I (Treatment of tax losses).

Defined in this Act: available tax loss, net income, tax loss, taxable income, tax year

Compare: 2004 No 35 s BC 5

Flowchart B3: Calculating income tax liability



BC 6 Income tax liability of filing taxpayer

Calculation of amount

(1) The income tax liability of a filing taxpayer for a tax year is the amount calculated by multiplying their taxable income for the tax year by the basic tax rate. The income tax liability of a filing taxpayer with schedular income is determined under section BC 7.

When liability zero or negative

(2) If the income tax liability calculated under subsection (1) is zero or negative, the filing taxpayer's income tax liability for the tax year is zero.

Defined in this Act: amount, basic tax rate, filing taxpayer, income tax liability, schedular income, tax year, taxable income

Compare: 2004 No 35 s BC 6

BC 7 Income tax liability of person with schedular income

Modified income tax liability

(1) The income tax liability for a tax year of a person who has schedular income for the year is the total of—

(a) their schedular income tax liability for the year calculated under subsection (2) or (3); and

(b) the amount that would be their income tax liability for the year if they had no schedular income.

Schedular income tax liability

(2) If a person has 1 kind of schedular income for a tax year, their **schedular income tax liability** for the year is the amount that would be the income tax liability for the year if their only income for the year were that schedular income.

Multiple schedular income

(3) If a person has more than 1 kind of schedular income for a tax year, their **schedular income tax liability** for the year is the total of the amounts calculated for each kind of schedular income.

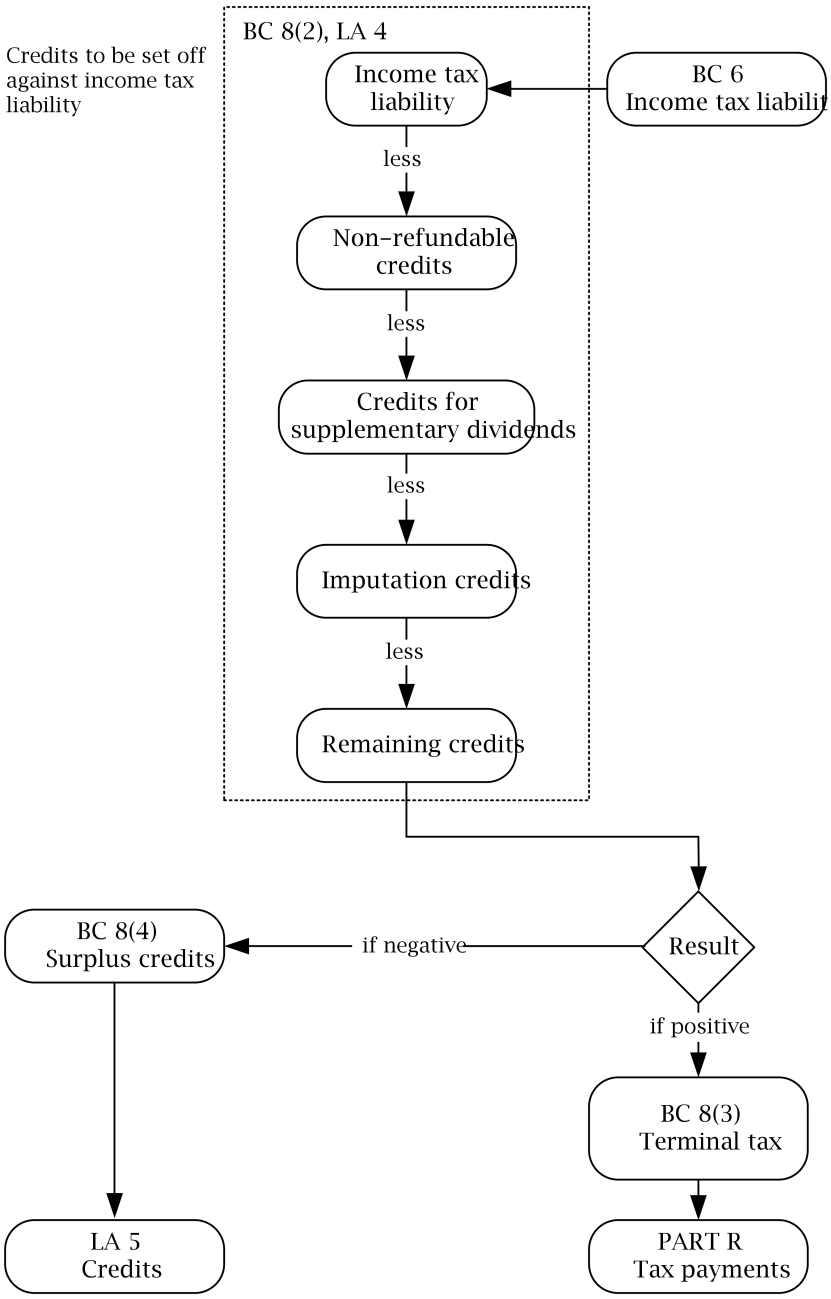
Income tax liability of multi-rate PIEs

(4) The income tax liability for a tax year of a multi-rate PIE is determined under subpart HM (Portfolio investment entities).

Defined in this Act: amount, income, income tax liability, multi-rate PIE, schedular income, schedular income tax liability, tax year

Compare: 2004 No 35 s BC 7

Flowchart B4: Satisfying income tax liability



Section BC 7(4) heading: added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 4(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BC 7(4): added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 4(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BC 7 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 4(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

BC 8 Satisfaction of income tax liability

Use of tax credits

(1) Credits for tax paid, tax withheld, or other circumstances, calculated under Parts L (Tax credits and other credits) and M (Tax credits paid in cash), satisfy a person's income tax liability for a tax year as far as the credits extend.

Ordering rule

(2) The order in which the person uses their credits is set out in section LA 4 (When total tax credit more than income tax liability).

Terminal tax

(3) If the person's income tax liability is more than the total of their credits, the difference is the person's **terminal tax**. The person must pay the terminal tax to complete the satisfaction of their income tax liability.

Remaining credits

(4) The treatment of any credits remaining after the person's income tax liability is satisfied is dealt with in section LA 5 (Treatment of remaining credits).

Defined in this Act: income tax liability, pay, tax, tax credit, tax year, terminal tax

Compare: 2004 No 35 s BC 9

Subpart BD—Income, deductions, and timing

Contents

Page

BD 1 Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income 134

BD 2 Deductions 135
BD 3 Allocation of income to particular income years 135
BD 4 Allocation of deductions to particular income years 136

BD 1 Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income

Amounts of income

(1) An amount is income of a person if it is their income under a provision in Part C (Income).

Exempt income

(2) An amount of income of a person is **exempt income** if it is their exempt income under a provision in subpart CW (Exempt income) or CZ (Terminating provisions).

Excluded income

(3) An amount of income of a person is **excluded income** if—

(a) it is their excluded income under a provision in subpart CX (Excluded income) or CZ; and

(b) it is not their non-residents' foreign-sourced income.

Non-residents' foreign-sourced income

(4) An amount of income of a person is **non-residents' foreign-sourced income** if—

(a) the amount is a foreign-sourced amount; and

(b) the person is a non-resident when it is derived; and

(c) the amount is not income of a trustee to which section HC 25(2) (Foreign-sourced amounts: non-resident trustees) applies.

Assessable income

(5) An amount of income of a person is **assessable income** in the calculation of their annual gross income if it is not income of any of the following kinds:

(a) their exempt income:

(b) their excluded income:

(c) their non-residents' foreign-sourced income.

Defined in this Act: amount, annual gross income, assessable income, excluded income, exempt income, foreign-sourced amount, income, non-resident, non-residents' foreign-sourced income

Compare: 2004 No 35 s BD 1

BD 2 Deductions

An amount is a **deduction** of a person if they are allowed a deduction for the amount under Part D (Deductions).

Defined in this Act: amount, deduction

Compare: 2004 No 35 s BD 2

BD 3 Allocation of income to particular income years

Application

(1) Every amount of income must be allocated to an income year under this section.

General rule

(2) An amount of income is allocated to the income year in which the amount is derived, unless a provision in any of Parts C or E to I provides for allocation on another basis.

Interpretation of derive

(3) When the time of derivation of an amount of income is being determined, regard must be had to case law, which—

(a) requires some people to recognise income on an accrual basis; and

(b) requires other people to recognise income on a cash basis; and

(c) more generally, defines the concept of derivation.

Income credited in account

(4) Despite subsection (3), income that has not previously been derived by a person is treated as being derived when it is credited in their account or, in some other way, dealt with in their interest or on their behalf.

Role of Part E

(5) Part E (Timing and quantifying rules) contains a number of provisions that—

(a) specifically modify the allocation of income or have the effect of modifying the allocation of income; or

(b) allocate income as part of the process of quantifying it.

Single allocation

(6) An amount of income may be allocated only once.

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s BD 3

BD 4 Allocation of deductions to particular income years

Application

(1) Every deduction must be allocated to an income year under this section.

General rule

(2) A deduction for an amount of expenditure or loss is allocated to the income year in which the expenditure or loss is incurred, unless a provision in any of Parts D to I provides for allocation on another basis.

Interpretation of incur

(3) When the time of incurrence of an amount of expenditure or loss is being determined, regard must be had to case law, which—

(a) requires some people to recognise expenditure or loss on an accrual basis; and

(b) requires other people to recognise expenditure or loss on a cash basis; and

(c) more generally, defines the concept of incurrence.

Role of Part E

(4) Part E (Timing and quantifying rules) contains a number of provisions that—

(a) specifically modify the allocation of deductions or have the effect of modifying the allocation of deductions; or

(b) allocate deductions as part of the process of quantifying them.

Allocation

(5) If an expenditure or loss gives rise to more than 1 deduction, the deductions are allocated to income years to the extent that their total is no more than the amount of the expenditure or loss.

Defined in this Act: amount, deduction, income year, loss

Compare: 2004 No 35 s BD 4

Subpart BE—Withholding liabilities

Contents

Page

BE 1 Withholding liabilities 137

BE 1 Withholding liabilities

PAYE income payments

(1) A person who makes a PAYE income payment must withhold an amount from the payment under the PAYE rules.

Resident passive income

(2) A person who makes a payment of resident passive income must withhold an amount from the payment under the RWT rules.

Non-resident passive income

(3) A person who makes a payment of non-resident passive income must withhold an amount from the payment under the NRWT rules.

Fringe benefits

(4) A person who provides a fringe benefit to another person must pay fringe benefit tax under the FBT rules.

Employer's superannuation cash contributions

(5) A person who makes an employer's superannuation cash contribution must pay ESCT under the ESCT rules.

Retirement scheme contributions

(5B) A person who makes a retirement scheme contribution to a retirement savings scheme must pay RSCT under the RSCT rules.

FDP

[Repealed]

(6) *[Repealed]*

Defined in this Act: amount, dividend, employer's superannuation cash contribution, ESCT, ESCT rules, FBT rules, fringe benefit, fringe benefit tax, non-resident passive income, NRWT rules, pay, PAYE income payment, PAYE rules, resident passive income, retirement savings scheme, retirement scheme contribution, RSCT, RSCT rules, RWT rules, superannuation fund

Compare: 2004 No 35 s BE 1

Section BE 1(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 5(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 5(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1(5) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 5(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 5(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1(5B) heading: inserted, on 1 April 2008, by section 308(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section BE 1(5B): inserted, on 1 April 2008, by section 308(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section BE 1(6) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 5(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1(6): repealed (with effect on 30 June 2009), on 6 October 2009, by section 5(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 5(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 5(5)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 5(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **FDP rules**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 5(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **PAYE income payment**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 5(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **PAYE payment**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 5(5)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BE 1 list of defined terms **retirement savings scheme**: inserted, on 1 April 2008, by section 308(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section BE 1 list of defined terms **retirement scheme contribution**: inserted, on 1 April 2008, by section 308(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section BE 1 list of defined terms **RSCT**: inserted, on 1 April 2008, by section 308(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section BE 1 list of defined terms **RSCT rules**: inserted, on 1 April 2008, by section 308(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart BF—Other obligations

Contents

Page

BF 1 Other obligations 139

BF 1 Other obligations

A person must pay the following types of income or ancillary tax under the relevant Part:

(a) qualifying company election tax under Part H (Taxation of certain entities):

(b) income tax on taxable distributions from non-complying trusts under Part H:

(c) further income tax under Part O (Memorandum accounts):

(d) *[Repealed]*

(e) withdrawal tax under Part R (General collection rules).

Defined in this Act: ancillary tax, further income tax, income tax, non-complying trust, pay, qualifying company election tax, taxable distribution, withdrawal tax

Compare: 2004 No 35 s BF 1

Section BF 1(d): repealed (with effect on 30 June 2009), on 6 October 2009, by section 6(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section BF 1 list of defined terms **further FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 6(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart BG—Avoidance

Contents

Page

BG 1 Tax avoidance 140

BG 1 Tax avoidance

Avoidance arrangement void

(1) A tax avoidance arrangement is void as against the Commissioner for income tax purposes.

Reconstruction

(2) Under Part G (Avoidance and non-market transactions), the Commissioner may counteract a tax advantage that a person has obtained from or under a tax avoidance arrangement.

Defined in this Act: Commissioner, income tax, tax avoidance arrangement

Compare: 2004 No 35 s BG 1

Subpart BH—Double tax agreements

Contents

Page

BH 1 Double tax agreements 140

BH 1 Double tax agreements

Meaning

(1) **Double tax agreement** means an agreement that—

(a) has been negotiated for 1 or more of the purposes set out in subsection (2); and

(b) has been agreed between—

(i) the government of any territory outside New Zealand and the government of New Zealand; or

(ii) the Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office; and

(c) has entered into force as a result of a declaration by the Governor-General by Order in Council under subsection (3).

Purposes

(2) The following are the purposes for which a double tax agreement may be negotiated:

(a) to provide relief from double taxation:

(b) to provide relief from tax:

(c) to tax the income derived by non-residents from any source in New Zealand:

(d) to determine the income to be attributed to non-residents or their agencies, branches, or establishments in New Zealand:

(e) to determine the income to be attributed to New Zealand residents who have special relationships with non-residents:

(f) to prevent fiscal evasion:

(g) to facilitate the exchange of information:

(h) to assist in recovering unpaid tax.

Entry into force

(3) An agreement to which subsection (1)(a) and (b) apply enters into force on the date specified by the Governor-General by Order in Council.

Overriding effect

(4) Despite anything in this Act, except subsection (5), or in any other Inland Revenue Act or the Official Information Act 1982 or the Privacy Act 1993, a double tax agreement has effect in relation to—

(a) income tax:

(b) any other tax imposed by this Act:

(c) the exchange of information that relates to a tax, as defined in paragraphs (a)(i) to (v) of the definition of **tax** in section 3 of the Tax Administration Act 1994.

Agreement for recovery of tax

(5) An agreement that provides for the recovery of unpaid tax is subject to Part 10A of the Tax Administration Act 1994.

Reference to profits

(6) A reference in a double tax agreement to the profits of an activity or business is to be read, if possible, as a reference to the amount that would be a person's net income if that activity or business were their only activity or business.

Reference to unrelated persons

(7) A reference in a double tax agreement to 2 persons being unrelated is to be read, if possible, as a reference to 2 persons being not associated.

Defined in this Act: associated, business, double tax agreement, income, income tax, Inland Revenue Acts, net income, New Zealand, New Zealand resident, non-resident, pay, source in New Zealand, tax

Compare: 2004 No 35 s BH 1

Section BH 1(7) heading: added, on 8 December 2009, by section 5 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section BH 1(7): added, on 8 December 2009, by section 5 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section BH 1 list of defined terms **associated**: inserted, on 8 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Part C
Income

Subpart CA—General rules

Contents

		Page
CA 1	Amounts that are income	142
CA 2	Amounts that are exempt income or excluded income	143

CA 1 Amounts that are income

Amounts specifically identified

(1) An amount is income of a person if it is their income under a provision in this Part.

Ordinary meaning

(2) An amount is also income of a person if it is their income under ordinary concepts.

Defined in this Act: amount, income

Compare: 2004 No 35 s CA 1

CA 2 Amounts that are exempt income or excluded income

What this section does

(1) This section identifies the subparts in this Act that deal with exempt income and excluded income.

Exempt income

(2) An amount of income of a person is **exempt income** if it is their exempt income under a provision in subpart CW (Exempt income) or CZ (Terminating provisions).

Excluded income

(3) An amount of income of a person is **excluded income** if—

(a) it is their excluded income under a provision in subpart CX (Excluded income) or CZ; and

(b) it is not their non-residents' foreign-sourced income.

Defined in this Act: amount, excluded income, exempt income, non-residents' foreign-sourced income

Compare: 2004 No 35 s CA 2

Subpart CB—Income from business or trade-like activities

Contents

Page

Business generally

CB 1 Amounts derived from business 145

CB 2 Amounts received on disposal of business assets that include trading stock 146

Schemes for profit

CB 3 Profit-making undertaking or scheme 147

Personal property

CB 4 Personal property acquired for purpose of disposal 147

CB 5 Business of dealing in personal property 147

Land

CB 6 Disposal: land acquired for purpose or with intention of disposal 147
CB 7 Disposal: land acquired for purposes of business relating to land 148
CB 8 Disposal: land used for landfill, if notice of election 149
CB 9 Disposal within 10 years: land dealing business 150
CB 10 Disposal within 10 years: land development or subdivision business 150
CB 11 Disposal within 10 years of improvement: building business 151
CB 12 Disposal: schemes for development or division begun within 10 years 152
CB 13 Disposal: amount from major development or division and not already in income 152
CB 14 Disposal: amount from land affected by change and not already in income 153
CB 15 Transactions between associated persons 155

Exclusions for residential land

CB 16 Residential exclusion from sections CB 6 to CB 11 155
CB 17 Residential exclusion from sections CB 12 and CB 13 156
CB 18 Residential exclusion from section CB 14 157

Exclusions for business premises

CB 19 Business exclusion from sections CB 6 to CB 11 157
CB 20 Business exclusion from sections CB 12 and CB 13 158

Exclusions for farm land

CB 21 Farm land exclusion from sections CB 12 and CB 13 158
CB 22 Farm land exclusion from section CB 14 159

Exclusion for investment land

CB 23 Investment exclusion from sections CB 12 and CB 13 160
CB 23B Land partially sold or sold with other land 160

Timber

CB 24 Disposal of timber or right to take timber 161
CB 25 Disposal of land with standing timber 161

Investments

CB 26 Disposal of certain shares by portfolio investment entities 162

Farming, forestry, or fishing

CB 27 Income equalisation schemes 162

CB 27B Entering partners' livestock income *[Repealed]* 163

Environmental restoration

CB 28 Environmental restoration accounts 163

Minerals

CB 29 Disposal of minerals 165

Intellectual property

CB 30 Sale of patent applications or patent rights 165

Transfer of business

CB 31 Sale of business: transferred employment income obligations 165

Stolen property

CB 32 Property obtained by theft 166

Look-through companies

CB 32B Owners of look-through companies 166
CB 32C Income for first year of look-through company 167

Mutual associations

CB 33 Amounts derived by mutual associations 170
CB 34 Amounts derived by members from mutual associations 170

Partners and partnerships

CB 35 Amounts of income for partners 171

Emissions units under Climate Change Response Act 2002

CB 36 Disposal of emissions units 172

Business generally

CB 1 Amounts derived from business

Income

(1) An amount that a person derives from a business is income of the person.

Exclusion

(2) Subsection (1) does not apply to an amount that is of a capital nature.

Defined in this Act: amount, business, income

Compare: 2004 No 35 s CB 1

CB 2 Amounts received on disposal of business assets that include trading stock

When this section applies

(1) This section applies in an income year when—

(a) a person (**person A**) who owns or carries on a business disposes of some or all of the assets of the business to another person (**person B**); and

(b) the disposal is made outside the ordinary course of the business, or to put an end to the business or a part of it; and

(c) the assets consist of or include trading stock of the business, or a share or interest in trading stock.

Assessable income of person A

(2) An amount that person A receives from the disposal of the trading stock is taken into account in determining their income for the income year. The amount is derived at the time of disposal referred to in subsection (1).

Price of acquisition by person B

(3) In the calculation of the taxable income of person B for the income year or a later income year, person B is treated as acquiring the trading stock for the amount of the disposal referred to in subsection (2).

Disposal

(4) In this section, a disposal—

(a) includes the passing of property by an exchange, gift, distribution under a will or on intestacy; and

(b) does not include a disposal under any of sections FC 3 to FC 8 (which relate to distributions after death) that is not at market value.

Relationship with section CB 1

(5) This section overrides section CB 1.

Defined in this Act: amount, assessable income, business, dispose, distribution, income year, market value, property, taxable income trading stock

Compare: 2004 No 35 s FB 3

Schemes for profit

CB 3 Profit-making undertaking or scheme

An amount that a person derives from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit is income of the person.

Defined in this Act: amount, income

Compare: 2004 No 35 s CB 2

Personal property

CB 4 Personal property acquired for purpose of disposal

An amount that a person derives from disposing of personal property is income of the person if they acquired the property for the purpose of disposing of it.

Defined in this Act: amount, income, personal property

Compare: 2004 No 35 s CB 3

CB 5 Business of dealing in personal property

An amount that a person derives from disposing of personal property is income of the person if their business is to deal in property of that kind.

Defined in this Act: amount, business, income, personal property

Compare: 2004 No 35 s CB 4

Land

CB 6 Disposal: land acquired for purpose or with intention of disposal

Income

(1) An amount that a person derives from disposing of land is income of the person if they acquired the land—

(a) for 1 or more purposes that included the purpose of disposing of it:

(b) with 1 or more intentions that included the intention of disposing of it.

Exclusions

(2) Subsection (1) is overridden by the exclusions for residential land in section CB 16 and for business premises in section CB 19.

Land partially sold or sold with other land

(3) This section and sections CB 7 to CB 23 apply whether the land disposed of—

(a) is part only of the land to which the relevant section applies:

(b) is the whole of the land to which the relevant section applies:

(c) is the whole of the land to which the relevant section applies, together with other land.

Defined in this Act: amount, business, dispose, income, land

Compare: 2004 No 35 ss CB 5, OB 1 "land" paragraph (a)(i)

CB 7 Disposal: land acquired for purposes of business relating to land

Income

(1) An amount that a person (**person A**) derives from disposing of land is income of person A if—

(a) both the following apply:

(i) at the time person A acquired the land they, or an associated person, carried on a business of dealing in land; and

(ii) person A acquired the land for the purpose of the business; or

(b) both the following apply:

(i) at the time person A acquired the land they, or an associated person, carried on a business of developing land or dividing land into lots; and

(ii) person A acquired the land for the purpose of the business; or

(c) all the following apply:

(i) at the time person A acquired the land they, or an associated person, carried on a business of erecting buildings; and
(ii) person A acquired the land for the purpose of the business; and
(iii) before or after acquiring the land person A, or the associated person, made improvements to it.

Exclusions

(2) Subsection (1) is overridden by the exclusions for residential land in section CB 16 and for business premises in section CB 19.

Defined in this Act: amount, associated person, business, dispose, improvements, income, land

Compare: 2004 No 35 s CB 6

CB 8 Disposal: land used for landfill, if notice of election

An amount that a person derives from disposing of land is income of the person if—

(a) the person uses the land as a landfill before disposing of the land; and
(b) at the time of disposal, the land is not being used as a landfill; and
(c) the person acquiring the land is not an associated person; and
(d) the person gives written notice to the Commissioner of an election that the land be subject to this section by the day that is the later of the following:
  (i) the day that is 12 months after the day on which the person acquires the land:
  (ii) 24 June 2006; and
(e) the person makes an election under paragraph (d) for all land that the person acquires and uses as a landfill; and
(f) any person associated with the person makes an election under paragraph (d) for all land that the associated person acquires and uses as a landfill.

Defined in this Act: associated person, Commissioner, dispose

Compare: 2004 No 35 s CB 6B

Section CB 8(c): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 7(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CB 9 Disposal within 10 years: land dealing business

Income

(1) An amount that a person derives from disposing of land is income of the person if—

(a) they dispose of the land within 10 years of acquiring it; and

(b) at the time they acquired the land, they carried on a business of dealing in land, whether or not the land was acquired for the purpose of the business.

Income: associated person in business of dealing in land

(2) An amount that a person (**person A**) derives from disposing of land within 10 years of acquiring it is income of person A if a person (**person B**) associated with them at the time the land was acquired carried on a business of dealing in land, whether or not—

(a) person A carried on a business of dealing in land; or

(b) the land was acquired for the purpose of person B's business.

Exclusions

(3) Subsections (1) and (2) are overridden by the exclusions for residential land in section CB 16 and for business premises in section CB 19.

Defined in this Act: amount, associated person, business, dispose, income, land, year

Compare: 2004 No 35 s CB 7

CB 10 Disposal within 10 years: land development or subdivision business

Income

(1) An amount that a person derives from disposing of land is income of the person if—

(a) they dispose of the land within 10 years of acquiring it; and

(b) at the time they acquired the land, they carried on a business of developing land or dividing land into lots, whether or not the land was acquired for the purpose of the business.

Income: associated person in business of developing or subdividing land

(2) An amount that a person (**person A**) derives from disposing of land within 10 years of acquiring it is income of person A if a person (**person B**) associated with them at the time the land was acquired carried on a business of developing land or dividing land into lots, whether or not—

(a) person A carried on a business of developing land or dividing land into lots:

(b) the land was acquired for the purpose of person B's business.

Exclusions

(3) Subsections (1) and (2) are overridden by the exclusions for residential land in section CB 16 and for business premises in section CB 19.

Defined in this Act: amount, associated person, business, dispose, income, land, year

Compare: 2004 No 35 s CB 8

CB 11 Disposal within 10 years of improvement: building business

Income

(1) An amount that a person derives from disposing of land is income of the person if—

(a) they dispose of the land within 10 years of completing improvements to it; and

(b) at the time they began the improvements, they carried on a business of erecting buildings, whether or not the land was acquired for the purpose of the business.

Income: associated person in business of erecting buildings

(2) An amount that a person (**person A**) derives from disposing of land within 10 years of completing improvements on it is income of person A if another person (**person B**) associated with person A at the time the improvements were begun carried on a business of erecting buildings, whether or not—

(a) person A carried on a business of erecting buildings; or

(b) the land was acquired for the purpose of person B's business.

Exclusions

(3) Subsections (1) and (2) are overridden by the exclusions for residential land in section CB 16 and for business premises in section CB 19.

Defined in this Act: amount, associated person, business, dispose, improvements, income, land, year

Compare: 2004 No 35 s CB 9

CB 12 Disposal: schemes for development or division begun within 10 years

Income

(1) An amount that a person derives from disposing of land is income of the person if the amount is derived in the following circumstances:

(a) an undertaking or scheme, which is not necessarily in the nature of a business, is carried on; and

(b) the undertaking or scheme involves the development of the land or the division of the land into lots; and

(c) the person, or another person for them, carries on development or division work on or relating to the land; and

(d) the development or division work is not minor; and

(e) the undertaking or scheme was begun within 10 years of the date on which the person acquired the land.

Exclusions

(2) Subsection (1) is overridden by the exclusions for residential land in section CB 17, for business premises in section CB 20, for farm land in section CB 21, and for investment land in section CB 23.

Defined in this Act: amount, business, dispose, income, land, year

Compare: 2004 No 35 s CB 10

CB 13 Disposal: amount from major development or division and not already in income

Income

(1) An amount that a person derives from disposing of land is income of the person if—

(a) the amount is not income under any of sections CB 6 to CB 12 and CB 14; and

(b) the amount is derived in the following circumstances:

(i) an undertaking or scheme, which is not necessarily in the nature of a business, is carried on; and

(ii) the undertaking or scheme involves the development of the land or the division of the land into lots; and

(iii) the person, or another person for them, carries on development or division work on or relating to the land; and

(iv) the development or division work involves significant expenditure on channelling, contouring, drainage, earthworks, kerbing, levelling, roading, or any other amenity, service, or work customarily undertaken or provided in major projects involving the development of land for commercial, industrial, or residential purposes.

Exclusions

(2) Subsection (1) is overridden by the exclusions for residential land in section CB 17, for business premises in section CB 20, for farm land in section CB 21, and for investment land in section CB 23.

Relationship with section DB 27

(3) Section DB 27 (Amount from major development or division and not already in income) deals with a deduction for the value of the land.

Defined in this Act: amount, business, deduction, dispose, income, land

Compare: 2004 No 35 s CB 11

Section CB 13(2) heading: substituted, on 1 April 2008, by section 309 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CB 13(2): substituted, on 1 April 2008, by section 309 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CB 14 Disposal: amount from land affected by change and not already in income

Income

(1) An amount that a person derives from disposing of land is income of the person if—

(a) the amount is not income under any of sections CB 6 to CB 12 ; and

(b) the person disposed of the land within 10 years of acquiring it; and

(c) the total amount that they derive from its disposal is more than the cost of the land; and

(d) at least 20% of the excess arises from a factor, or more than 1 factor, that—

(i) relates to the land; and

(ii) is described in subsection (2); and

(iii) occurs after the person acquired the land, for the factors described in subsection (2)(c), (e), (g), and (i).

Factors for purposes of subsection (1)(d)

(2) The factors referred to in subsection (1)(d) are—

(a) the rules of an operative district plan under the Resource Management Act 1991:

(b) the likelihood of the imposition of rules:

(c) a change to the rules:

(d) the likelihood of a change to the rules:

(e) a consent granted under the Resource Management Act 1991:

(f) the likelihood of a consent being granted:

(g) a decision of the Environment Court made under the Resource Management Act 1991:

(h) the likelihood of a decision being made:

(i) the removal of a condition, covenant, designation, heritage order, obligation, prohibition, or restriction under the Resource Management Act 1991:

(j) the likelihood of the removal of a condition, covenant, designation, heritage order, obligation, prohibition, or restriction:

(k) an occurrence of a similar nature to any of the occurrences described in any of paragraphs (a) to (j):

(l) the likelihood of an occurrence of a similar nature to any of the occurrences described in any of paragraphs (a) to (j).

Exclusions

(3) Subsection (1) is overridden by the exclusions for residential property in section CB 18 and for farm land in section CB 22.

Defined in this Act: amount, dispose, income, land, year

Compare: 2004 No 35 s CB 12

CB 15 Transactions between associated persons

Income

(1) An amount that a person (the **transferee**) derives from disposing of land is income of the transferee under whichever is applicable of sections CB 6 to CB 14 if—

(a) the land has been transferred to the transferee from another person (the **transferor**); and

(b) the transferor and the transferee are associated persons at the time of the transfer; and

(c) the amount derived is more than the cost of the land to the transferee; and

(d) the amount derived would have been income of the transferor under any of sections CB 6 to CB 14 if the transferor had retained and disposed of the land.

Date on which some transferees acquire land

(2) For the purposes of sections CB 7 to CB 12and CB 14, if the transferor and transferee are associated persons at the time of the transfer, the transferee is treated as having acquired the land on the date on which the transferor acquired it.

Defined in this Act: amount, associated person, dispose, income, land

Compare: 2004 No 35 s CB 13

Exclusions for residential land

CB 16 Residential exclusion from sections CB 6 to CB 11

Exclusion

(1) Sections CB 6 to CB 11 do not apply if—

(a) the person—

(i) acquired the land with a dwellinghouse on it; or

(ii) acquired the land and erected a dwellinghouse on it; and

(b) the dwellinghouse was occupied mainly as a residence by—

(i) the person and any member of their family living with them; or

(ii) if the person is a trustee, 1 or more beneficiaries of the trust.

What exclusion applies to

(2) The exclusion applies to the land that has the dwellinghouse on it. It also applies to land related to the land that has the dwellinghouse on it if the total area of the related land is—

(a) 4,500 square metres or less; or

(b) more than 4,500 square metres, if the larger area is required for the reasonable occupation and enjoyment of the dwellinghouse.

Who exclusion does not apply to

(3) The exclusion does not apply to a person who has engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of dwellinghouses.

Defined in this Act: dispose, land, trustee

Compare: 2004 No 35 s CB 14

CB 17 Residential exclusion from sections CB 12 and CB 13

Exclusion: developing or dividing land for residential use

(1) Sections CB 12 and CB 13 do not apply if—

(a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and

(b) the development, division, or improvement is for use in, and for the purposes of, the residing on the land of the person or any member of their family living with them.

Exclusion: dividing residential land

(2) Sections CB 12 and CB 13 do not apply if—

(a) the land is a lot that came out of a larger area of land that the person divided into 2 or more lots; and

(b) the larger area of land—

(i) was 4,500 square metres or less immediately before it was divided; and

(ii) was occupied by the person mainly as residential land for themselves and a member of their family living with them.

Defined in this Act: land

Compare: 2004 No 35 s CB 15

Section CB 17(1): amended, on 1 April 2008, by section 310 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CB 18 Residential exclusion from section CB 14

Exclusion

(1) Section CB 14 does not apply if—

(a) the person acquired the land and used it or intended to use it for residential purposes; and

(b) they disposed of the land to another person who acquired it for residential purposes.

Purpose of acquisition for purposes of subsection (1)(b)

(2) For the purposes of subsection (1)(b), the purpose of the acquisition by the other person is ascertained from the circumstances of the disposal and other relevant matters.

Meaning of residential purposes

(3) In this section, **residential purposes**—

(a) means a purpose that the person has of using the land or intending to use the land mainly as a residence for themselves and members of their family living with them; and

(b) includes the purpose of erecting a dwellinghouse on the land to be occupied as such a residence.

Defined in this Act: dispose, land, residential purposes

Compare: 2004 No 35 s CB 16

Exclusions for business premises

CB 19 Business exclusion from sections CB 6 to CB 11

Exclusion

(1) Sections CB 6 to CB 11 do not apply to a disposal of land if—

(a) the land is the premises of a business; and

(b) the person acquired and occupied, or erected and occupied, the premises mainly to carry on a substantial business from them.

Who exclusion does not apply to

(2) The exclusion does not apply to a person who has engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of premises for businesses.

Meaning of land

(3) In this section, **land** includes land that—

(a) is reserved, with the premises, for the use of the business; and

(b) is of an area no greater than that required for the reasonable occupation of the premises and the carrying on of the business.

Defined in this Act: business, dispose, land

Compare: 2004 No 35 s CB 17

CB 20 Business exclusion from sections CB 12 and CB 13

Sections CB 12 and CB 13 do does not apply if—

(a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and

(b) the development, division, or improvement is for use in, and for the purposes of, the carrying on of a business by the person on the land; and

(c) the business does not consist of the undertaking or scheme.

Defined in this Act: business, land

Compare: 2004 No 35 s CB 18

Section CB 20: amended, on 1 April 2008, by section 311(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CB 20 heading: amended, on 1 April 2008, by section 311(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Exclusions for farm land

CB 21 Farm land exclusion from sections CB 12 and CB 13

Exclusion

(1) Sections CB 12 and CB 13 do not apply if—

(a) the land is a lot resulting from the division of a larger area of land into 2 or more lots; and

(b) immediately before the land was divided, the larger area of land was occupied or used by the person, their spouse, civil union partner or de facto partner, or both of them, mainly for the purposes of a farming or agricultural business carried on by either or both of them; and

(c) the area and nature of the land disposed of mean that it is then capable of being worked as an economic unit as a farming or agricultural business; and

(d) the land was disposed of mainly for the purpose of using it in a farming or agricultural business.

Circumstances for purposes of subsection (1)(d)

(2) The circumstances of the disposal of the land are relevant to the decision on whether the land was disposed of mainly for the purpose of using it in a farming or agricultural business. The circumstances include—

(a) the consideration for the disposal of the land:

(b) current prices paid for land in that area:

(c) the terms of the disposal:

(d) a zoning or other classification relating to the land:

(e) the proximity of the land to any other land being used or developed for uses other than farming or agricultural uses.

Defined in this Act: business, dispose, land, pay

Compare: 2004 No 35 s CB 19

CB 22 Farm land exclusion from section CB 14

Exclusion

(1) Section CB 14 does not apply if—

(a) the person (**person A**) acquired the land, and they, their spouse, civil union partner or de facto partner, or both of them used or intended to use the land mainly for the purposes of a farming or agricultural business carried on by them, their spouse, civil union partner, or de facto partner, or both of them; and

(b) they disposed of the land to another person (**person B**) mainly for the purposes of the continuing use of the land in a farming or agricultural business.

Purposes of acquisition for purposes of subsection (1)(b)

(2) For the purposes of subsection (1)(b), person B's purposes in acquiring the land are ascertained from circumstances of the disposal arising after person A acquired the land and other relevant matters, not including the factors described in section CB 14(1).

Defined in this Act: business, dispose, land

Compare: 2004 No 35 s CB 20

Exclusion for investment land

CB 23 Investment exclusion from sections CB 12 and CB 13

Sections CB 12 and CB 13 do does not apply if—

(a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement; and

(b) the development, division, or improvement is for use in, and for the purposes of, the person's deriving from the land income of the kind described in section CC 1 (Land).

Defined in this Act: income, land

Compare: 2004 No 35 s CB 21

Section CB 23: amended, on 1 April 2008, by section 312(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CB 23 heading: amended, on 1 April 2008, by section 312(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CB 23B Land partially sold or sold with other land

Sections CB 6 to CB 23 apply to an amount derived from the disposal of land if the land is—

(a) part of the land to which the relevant section applies:

(b) the whole of the land to which the relevant section applies:

(c) disposed of together with other land.

Defined in this Act: amount, dispose, land

Compare: 2004 No 35 s CB 5A

Section CB 23B: inserted, on 1 April 2008, by section 313 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Timber

CB 24 Disposal of timber or right to take timber

Income

(1) An amount is income of a person if they derive it from—

(a) disposing of timber; or

(b) disposing of a right to take timber.

Whether or not person owns land

(2) Subsection (1) applies whether or not the person owns the land on which the timber is situated.

Disposal for below market value

(3) Section GC 2 (Disposals of timber rights or standing timber) may apply to treat a person as deriving an amount on the grant of a right to take timber or disposal of standing timber.

Defined in this Act: amount, dispose, income, own, right to take timber, standing timber

Compare: 2004 No 35 s CB 22

CB 25 Disposal of land with standing timber

When this section applies

(1) This section applies when a person disposes of land with standing timber on it.

Exclusions

(2) This section does not apply when the standing timber is of 1 of the following kinds:

(a) trees that are ornamental or incidental, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994; or

(b) trees in a crop subject to a forestry right, as defined in section 2 of the Forestry Rights Registration Act 1983, registered under the Land Transfer Act 1952; or

(c) trees subject to a right to take a benefit (in the form of a profit a prendre) granted before 1 January 1984.

Income

(3) The amount that the person derives from disposing of the standing timber is income of the person.

Defined in this Act: amount, dispose, income, standing timber

Compare: 2004 No 35 s CB 23

Investments

CB 26 Disposal of certain shares by portfolio investment entities

When this section applies

(1) This section applies when—

(a) the income from the disposal by a person (the **entity**) of the share is excluded income under section CX 55 (Proceeds from disposal of investment shares); and

(b) a dividend from the share is—

(i) declared before the disposal; and

(ii) paid to a holder of the share who, after the disposal, becomes entitled to the dividend.

Income

(2) The entity is treated as deriving an amount of income calculated using the formula—

(shares at declaration – shares on distribution) × dividend.

Definition of items in formula

(3) In the formula,—

(a) **shares at declaration** is the number of shares held by the entity when the dividend is declared:

(b) **shares on distribution** is the number of shares for which the entity derives a dividend:

(c) **dividend** is the amount of the dividend per share or, for a share issued by an ICA company, the amount of the dividend per share that is not fully imputed.

Positive result

(4) The result of the formula must be a positive amount.

Defined in this Act: amount, company, dividend, excluded income, fully imputed, ICA company, income, pay, portfolio investment entity, share

Compare: 2007 No 97 s CB 26

Section CB 26: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 8(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Farming, forestry, or fishing

CB 27 Income equalisation schemes

Income derived by a person, as timed and quantified under any of the following provisions, is income of the person:

(a) sections EH 11, EH 14, EH 16, EH 18, EH 20 to EH 22, EH 24, and EH 26 (which relate to the main income equalisation scheme):

(b) sections EH 46, EH 48, EH 50 to EH 52, EH 54, and EH 56 (which relate to the adverse event income equalisation scheme):

(c) sections EH 72, EH 74, and EH 76 (which relate to the thinning operations income equalisation scheme).

Defined in this Act: adverse event income equalisation scheme, income, main income equalisation scheme, person, thinning operations income equalisation scheme

Compare: 2004 No 35 s CB 24

CB 27B Entering partners' livestock income

[Repealed]

Section CB 27B: repealed (with effect on 1 April 2009), on 6 October 2009, by section 9(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Environmental restoration

CB 28 Environmental restoration accounts

Income from refund

(1) A person who receives a refund for a tax year under section EK 12 (Refund if request or excess balance) derives for the person's corresponding income year an amount of income calculated using the formula—

$$\frac{\text{refund}}{\text{tax rate}}.$$

Income from transfer from environmental restoration account

(2) If there is a transfer from a person's environmental restoration account under section EK 15, EK 16, or EK 19 (which relate to environmental restoration accounts), the person derives for the corresponding income year an amount of income calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate}}.$$

Definitions of items in formulas

(3) The items in the formulas are defined in subsections (4) to (6).

Refund

(4) **Refund** is the amount of the refund.

Tax rate

(5) **Tax rate** is the highest rate of income tax on taxable income that—

(a) is set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); and

(b) would apply to the person for the tax year if the person had sufficient taxable income.

Transfer

(6) **Transfer** is the amount in the environmental restoration account that is transferred.

Income arising from renewal of resource consent

(7) A person who incurs expenditure of a type listed in schedule 19, part A, clauses 2 to 5 (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 19, part C derives income under subsection (8) if—

(a) the deduction under section DB 46 (Avoiding, remedying, or mitigating effects of discharge of contaminant) for the expenditure is determined by the period for which a resource consent is granted; and

(b) the period of the grant of the resource consent is extended by more than 50% in a later income year or a new resource consent is granted for a period that is more than 50% of the total period of the resource consent.

Amount of income

(8) The person derives for the income year in which the period of the resource consent is extended, or the new resource consent is granted, an amount of income equal to the greater of zero and the difference between—

(a) the total deduction under section DB 46 for the person for the period from the grant of the resource consent to the beginning of the income year:

(b) the total deduction for the expenditure that the person would have had under section DB 46 for the period re-

ferred to in paragraph (a), if the period of the resource consent at the time of the grant had been 35 years.

Defined in this Act: corresponding income year, environmental restoration account, income, income tax, resource consent, taxable income, tax year

Compare: 2004 No 35 s CB 24B

Section CB 28(5)(a): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Minerals

CB 29 Disposal of minerals

Income

(1) An amount that a person derives from disposing of minerals taken from land is income of the person.

Whether or not person owns land

(2) Subsection (1) applies whether or not the person owns the land from which the minerals are taken.

Defined in this Act: amount, dispose, income, mineral, own

Compare: 2004 No 35 s CB 25

Intellectual property

CB 30 Sale of patent applications or patent rights

If a person derives an amount from the sale of a patent application with a complete specification or from the sale of patent rights, the amount is income of the person.

Defined in this Act: amount, income, patent rights

Compare: 2004 No 35 s CB 26

Transfer of business

CB 31 Sale of business: transferred employment income obligations

When this section applies

(1) This section applies when section DC 10 (Sale of business: transferred employment income obligations) applies and the reduction in the consideration is more than the amount the buyer actually pays for the transferred obligation.

Income

(2) The excess is income of the buyer.

Timing of income

(3) The income is allocated to the income year in which the reduction of the transferred provision is required to be recognised by the buyer under generally accepted accounting practice.

Defined in this Act: amount, generally accepted accounting practice, income, income year, pay

Compare: 2004 No 35 s CB 27

Stolen property

CB 32 Property obtained by theft

Income

(1) If a person obtains possession or control of property without claim of right, an amount equal to the market value of the property is income of the person.

Timing of income

(2) The income is allocated to the income year in which the person obtains possession or control of the property.

Whether or not constructive trust

(3) Subsection (1) applies whether or not the person holds the property as a trustee under a constructive trust.

Defined in this Act: amount, claim of right, income, income year, possession, property, trustee

Compare: 2004 No 35 s CB 28

Look-through companies

Heading: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 26(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

CB 32B Owners of look-through companies

A person who has an effective look-through interest for a look-through company has an amount of income to the extent to which an amount of income results from the application of subpart HB (Look-through companies) to them and the look-through company.

Defined in this Act: amount, effective look-through interest, income, look-through company

Section CB 32B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 26(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

CB 32C Income for first year of look-through company

Income

(1) A person has an amount of income for an income year equal to the amount given by the formula in subsection (3) if the income year is one in which the person has,—

(a) on the first day of that year, an effective look-through interest for a look-through company (**LTC**), and the company existed in the previous income year, but was not a look-through company in that previous year:

(b) on the day after a look-through company amalgamates in that year with a company that ceases to exist after the amalgamation (the **amalgamating company**), an effective look-through interest for the LTC, and the amalgamating company was not a look-through company immediately before the amalgamation.

Exclusion

(2) A person does not have income under this section if the income year is 1 of the first or second income year that starts on or after 1 April 2011, and—

(a) the LTC was a qualifying company that first becomes a look-through company for the income year; and

(b) subsection (1)(b) does not apply for the income year.

Income formula

(3) For the purposes of subsection (1), the amount of income is a positive amount calculated using the following formula:

untaxed reserves × effective interest.

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **untaxed reserves** is the amount given by the formula in subsection (5):

(b) **effective interest** is the person's effective look-through interest for a look-through company on the relevant day under subsection (1)(a) or (b).

Untaxed reserves formula

(5) For the purposes of subsections (3) and (4), the amount of untaxed reserves is calculated using the following formula:

$$\text{dividends} + \text{balances} - \text{assessable income} - \frac{\text{balances}}{\text{tax rate}} - \text{exit exemption.}$$

Definition of items in formula

(6) The items in the formula in subsection (5) are defined in subsections (7) to (11).

Dividends

(7) **Dividends** is the sum of the amounts that would be dividends if the following events occurred for the company or the amalgamating company (the **company**), immediately before it became a look-through company or amalgamated with a look-through company:

(a) it disposed of all of its property, other than cash, to an unrelated person at market value for cash; and

(b) it met all of its liabilities at market value, excluding income tax payable through disposing of the property or meeting the liabilities; and

(c) it was liquidated, with the amount of cash remaining being distributed to shareholders without imputation credits or FDP credits attached.

Balances

(8) **Balances** is the sum of the following amounts:

(a) the balance in the company's imputation credit account:

(b) the balance in the company's FDP account:

(c) an amount of income tax payable for an earlier income year but not paid before the relevant date, less refunds due for the earlier income year but paid after the relevant date.

Assessable income

(9) **Assessable income** is the total assessable income that the company would derive by taking the actions described in subsection (7)(a) and (b) less the amount of any deduction that the company would have for taking those actions.

Tax rate

(10) **Tax rate** is the basic tax rate for the income year of the company that contains the relevant day described in subsection (12).

Exit exemption

(11) **Exit exemption** is the amount given by the formula in section CX 63(2) (Dividends derived after ceasing to be look-though company), treating the amount described in subsection (7) as a dividend paid by the company for the purposes of section CX 63(1), if section CX 63 would apply to a dividend paid by the company.

Relevant day

(12) In subsections (7) to (9) and (11), the relevant day for measuring items in the formula is—

(a) the last day of the income year before the income year described in subsection (1)(a), as applicable; or

(b) the day of the amalgamation described in subsection (1)(b) as applicable.

Income tax and refund

(13) For the purposes of subsection (8)(c),—

(a) income tax payable is income tax that would, when paid, give rise to a credit in the company's imputation credit account under sections OB 4 to OB 29 (which relate to imputation credits):

(b) a refund of income tax due is the amount that would, when paid, give rise to a debit to the company's imputation credit account under sections OB 30 to OB 59 (which relate to imputation debits).

Defined in this Act: amalgamating company, amalgamation, amount, assessable income, basic tax rate, company, deduction, dispose, dividend, effective look-through interest, FDP account, FDP credit, imputation credit, imputation credit account, income, income tax, income year, liquidation, look-through company, qualifying company

Section CB 32C: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 26(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Mutual associations

CB 33 Amounts derived by mutual associations

When this section applies

(1) This section applies when an association enters into a transaction of a kind described in section HE 2 (Classes of mutual transaction) with—

(a) 1 or more members; or

(b) 1 or more members along with 1 or more persons who are not members of the association.

Income: other income provisions

(2) If the association derives from the transaction an amount that would, in the absence of this subsection, be income under a provision in this Part but for the mutual character of the transaction, the amount is income of the association.

Defined in this Act: amount, association, income, income year, member

Compare: 2004 No 35 s HF 1(1)

Section CB 33(2) heading: substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008-09 and later income years), by section 5(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 33(2): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008-09 and later income years), by section 5(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CB 34 Amounts derived by members from mutual associations

When this section applies

(1) This section applies when an association, in relation to a mutual transaction, pays an association rebate to a member in an income year in circumstances where a payment for the transaction would be taken into account in determining the taxable income of the member.

Income

(2) The amount of the association rebate is income of the member in the income year but only to the extent of the amount of the association's deduction under section DV 19 (Association rebates).

Statutory producer boards: timing of payment

(3) If a statutory producer board pays an association rebate to a member that is a mutual association, the association is treated as deriving the amount in the income year in which the producer board chooses under section DV 19(7) to have the amount as the deduction.

When amount paid

(4) For the purposes of this section, an amount is treated as having been paid to a person when it is credited in account or dealt with in some way in their interest or on their behalf. Subsection (3) overrides this subsection.

Relationship with dividend rules

(5) An association rebate—

(a) is not a dividend to the extent to which it is a payment of the kind described in subsection (2) and is no more than the amount of the deduction the association is allowed under section DV 19; and

(b) for an association that is not a company, and to the extent to which it is more than the amount of the deduction the association is allowed under section DV 19, is income of the member.

Defined in this Act: amount, association, association rebate, deduction, dividend, income, income year, member, pay, statutory producer board

Compare: 2004 No 35 s HF 1(3)(c), (5), (6)

Partners and partnerships

Heading: added, on 1 April 2008, by section 5(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

CB 35 Amounts of income for partners

A person who is a partner has an amount of income to the extent to which an amount of income results from the application of subpart HG (Joint venturers, partners, and partnerships) to them and their partnership.

Defined in this Act: amount, income, partner, partnership

Section CB 35: added, on 1 April 2008, by section 5(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Emissions units under Climate Change Response Act 2002

Heading: substituted (with effect on 1 January 2009), on 6 October 2009, by section 10 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CB 36 Disposal of emissions units

When this section applies

(1) This section applies when a person disposes of an emissions unit.

Income

(2) The amount that the person derives on the disposal is income.

Surrender of unit: deemed sale at given value

(3) If the disposal is by surrender under the Climate Change Response Act 2002, the person is treated as having sold the unit, at the time of the surrender, to an unrelated person for an amount equal to—

- (a) the unit's cost, if none of paragraphs (b) to (f) applies; or
- (b) the unit's value under section ED 1(7B) (Valuation of excepted financial arrangements), if that subsection applies and none of paragraphs (c) to (f) apply; or
- (c) zero, if subsection (4) applies; or
- (d) zero, if subsection (5) applies; or
- (e) the unit's market value, if subsection (6) applies; or
- (f) the unit's market value, if subsection (7) applies.

Surrender of unit: emissions relating to post-1989 forest land

(4) The person is treated as selling the unit for an amount of zero if the person surrenders the emissions unit for emissions in relation to post-1989 forest land.

Surrender of unit: under forest sink covenant

(4B) The person is treated as selling the unit for an amount of zero if the person transfers the emissions unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.

Surrender of unit: deforestation of some pre-1990 forest land

(5) The person is treated as selling the unit for an amount of zero if—

(a) the person surrenders the emissions unit in relation to the deforestation of pre-1990 forest land; and

(b) the person would derive income, other than exempt income or excluded income, from a disposal of the land without timber at the time of the surrender.

Surrender of post-1989 forest land emissions unit or forest sink emissions unit: for other purposes

(6) The person is treated as selling a post-1989 forest land emissions unit or forest sink emissions unit for an amount equal to the unit's market value if the person surrenders the emissions unit other than—

(a) for emissions in relation to post-1989 forest land:

(b) by a transfer to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.

Surrender of unit: free unit other than forest land unit

(7) The person is treated as selling a unit that is not a forest land emissions unit for an amount equal to the unit's market value if—

(a) the person surrenders the unit when it has a value of zero; and

(b) the unit was transferred to the person under Part 4, subpart 2 of the Climate Change Response Act 2002 at a price of zero.

Converted unit treated as sold

(8) If a person converts a New Zealand emissions unit, other than a forest land emissions unit, into a Kyoto unit as defined in section 4(1) of the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to—

(a) the unit's value under section ED 1(7B), if that subsection applies; or

(b) the unit's cost, otherwise.

Excluded income: pre-1990 forest land emissions unit

(9) Section CX 51B (Disposal of pre-1990 forest land emissions units) applies to the disposal to another person of a pre-1990 forest land emissions unit.

Excluded income: fishing quota emissions unit

(10) Section CX 51C (Disposal of fishing quota emissions units) applies to the disposal to another person of a fishing quota emissions unit.

Defined in this Act: amount, convert, emissions unit, employee, employer, exempt income, fishing quota emissions unit, forest land emissions unit, forest sink emissions unit, income, Kyoto emissions unit New Zealand emissions unit, overtime, pay, pre-1990 forest land emissions unit, post-1989 forest land emissions unit, surrender

Section CB 36: substituted (with effect on 1 January 2009), on 6 October 2009, by section 10 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CB 36(4B) heading: inserted (with effect on 1 January 2009), on 7 September 2010, by section 6(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36(4B): inserted (with effect on 1 January 2009), on 7 September 2010, by section 6(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36(6) heading: substituted (with effect on 1 January 2009), on 7 September 2010, by section 6(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36(6): substituted (with effect on 1 January 2009), on 7 September 2010, by section 6(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36(7): substituted (with effect on 1 July 2010), on 21 December 2010, by section 27 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CB 36(9) heading: substituted (with effect on 1 January 2009), on 7 September 2010, by section 6(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36(10) heading: added (with effect on 1 July 2010), on 7 September 2010, by section 6(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36(10): added (with effect on 1 July 2010), on 7 September 2010, by section 6(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36 list of defined terms **fishing quota emissions unit**: inserted (with effect on 1 July 2010), on 7 September 2010, by section 6(5)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CB 36 list of defined terms **forest sink emissions unit**: inserted (with effect on 1 January 2009), on 7 September 2010, by section 6(5)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart CC—Income from holding property (excluding equity)

Contents

Page

Land use

CC 1 Land 175
CC 2 Non-compliance with covenant for repair 176

Financial instruments

CC 3 Financial arrangements 177
CC 4 Payments of interest 177
CC 5 Annuities 177
CC 6 Prizes received under Building Societies Act 1965 178
CC 7 Consideration other than in money 178
CC 8 Use of money interest payable by Commissioner 179
CC 8B Certain commercial bills: non-resident holders 179

Royalties

CC 9 Royalties 180
CC 10 Films 181

Finance leases

CC 11 Lessee acquiring lease asset on expiry of term of lease 182
CC 12 Lessor acquiring lease asset on expiry of term of lease 182

Hire purchase agreements

CC 13 Amounts paid in income years after hire purchase agreement ends 183

Land use

CC 1 Land

Income

(1) An amount described in subsection (2) is income of the owner of land if they derive the amount from—

(a) a lease, licence, or easement affecting the land; or

(b) the grant of a right to take the profits of the land.

Amounts

(2) The amounts are—

(a) rent:

(b) a fine:
(c) a premium:
(d) a payment for the goodwill of a business:
(e) a payment for the benefit of a statutory licence:
(f) a payment for the benefit of a statutory privilege:
(g) other revenues.

Relationship with section GC 5

(3) The treatment of leases of property to related parties for less than an adequate rent is dealt with in section GC 5 (Leases for inadequate rent).

Defined in this Act: amount, business, income, lease, own, pay

Compare: 2004 No 35 s CC 1

CC 2 Non-compliance with covenant for repair

When this section applies

(1) This section applies when a person who is a lessor of land derives an amount for non-compliance by the lessee with an obligation under a lease of the land—
(a) to maintain the land; or
(b) to make repairs to improvements on the land.

Income

(2) The amount is income of the lessor.

Timing of income

(3) The income is allocated to the income year in which the lessor receives the amount.

Relationship with sections EI 5 and EI 6

(4) Subsection (3) is overridden by sections EI 5 (Amount paid to lessor for non-compliance with covenant for repair) and EI 6 (Amount paid for non-compliance: when lessor ceases to own land).

Defined in this Act: amount, income, income year, lease, repairs

Compare: 2004 No 35 s CC 2

Financial instruments

CC 3 Financial arrangements

Income: party to financial arrangement

(1) If a person who is a party to a financial arrangement is treated as deriving an amount of income under the financial arrangement under subpart EW (Financial arrangements rules), the amount is income of the person.

Income: trustee

(2) Income derived by a trustee in the circumstances described in section EW 50 (Income when debt forgiven to trustee) is income of the trustee.

Defined in this Act: amount, financial arrangement, income, trustee

Compare: 2004 No 35 s CC 3

CC 4 Payments of interest

Income

(1) Interest derived by a person is income of the person.

Apportionment

(2) Interest due but unpaid on the date on which a person disposes of a security is apportioned between the person disposing of the security and the person acquiring it.

Defined in this Act: income, interest, pay

Compare: 2004 No 35 s CC 4

CC 5 Annuities

Income

(1) An annuity derived by a person is income of the person.

Apportionment

(2) Income under an annuity due but unpaid on the date on which a person disposes of the annuity is apportioned between the person disposing of the annuity and the person acquiring it.

Relationship with sections CW 4 and CW 30

(3) This section is overridden by sections CW 4 (Annuities under life insurance policies) and CW 30 (Annuities from Crown Bank Accounts).

Defined in this Act: income, pay

Compare: 2004 No 35 s CC 5

CC 6 Prizes received under Building Societies Act 1965

Income

(1) A prize received by a person under section 31A of the Building Societies Act 1965 is income of the person, whether they take it as cash or as an advance.

Timing of income

(2) The income is allocated as follows:

(a) a cash prize is allocated to the day on which the bonus ballot giving rise to the prize is held; and

(b) an advance is allocated to the day on which the advance is made or, if the advance is made in a series of advances, to the first day on which an advance is made.

Defined in this Act: income

Compare: 2004 No 35 s CC 6

CC 7 Consideration other than in money

When this section applies

(1) This section applies when—

(a) a lender provides money to a borrower for use in a business that the borrower carries on in New Zealand; and

(b) the borrower provides to the lender, as some or all of the consideration, a tangible or intangible benefit that—

(i) is not interest; and

(ii) may or may not be relief from an obligation; and

(iii) may or may not be convertible into money; and

(c) the borrowing is a commercial transaction under which the borrower would have been liable to pay interest at the current commercial rate, given the nature and term of the loan, if the borrower had not provided the benefit, whether or not the contract between the borrower and the lender provides for the payment of interest if the benefit is not provided.

Income

(2) The amount described in subsection (3) is income of the lender.

Amount of income

(3) The amount is the interest that the borrower would have been liable to pay if the lender had lent the money to the borrower in consideration of the payment of interest at the current com-

mercial rate, given the nature and term of the loan, reduced by the amount of any interest that the borrower pays.

Defined in this Act: amount, business, income, interest, New Zealand, pay

Compare: 2004 No 35 s CC 7

CC 8 Use of money interest payable by Commissioner

Income

(1) Interest payable by the Commissioner to a person under Part 7 of the Tax Administration Act 1994 is income of the person.

Timing of income

(2) Interest to which this section applies is allocated under section EF 4 (Use of money interest payable by Commissioner).

Relationship with financial arrangements rules

(3) Interest to which this section applies is disregarded for the purposes of the financial arrangements rules.

Defined in this Act: Commissioner, financial arrangements rules, income, interest, pay

Compare: 2004 No 35 s CC 8

CC 8B Certain commercial bills: non-resident holders

When this section applies

(1) This section applies when a non-resident holder of a commercial bill who is required to calculate and allocate income and expenditure under neither the financial arrangements rules nor the old financial arrangements rules because of the application of section EW 9(2) to (4) or EZ 45(e) (which relate to the application of the rules)—

(a) disposes of the commercial bill other than by redemption; or

(b) redeems a commercial bill whose issuer is an associated person of the non-resident.

Income: disposal

(2) The value of the commercial bill on the day the non-resident holder disposes of it is income of the person.

Income: redemption

(3) The amount that the non-resident holder receives on redemption is income of the person.

Defined in this Act: amount, commercial bill, financial arrangements rules, income, non-resident, old financial arrangements rules

Compare: 2004 No 35 s CZ 8

Section CC 8B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 11(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Royalties

CC 9 Royalties

Income

(1) A royalty derived by a person is income of the person.

Meaning of royalty

(2) **Royalty** includes a payment of any kind derived as consideration for—

- (a) the use of, or right to use, a copyright, patent, plant variety rights, trademark, design or model, plan, secret formula or process, or other similar property or right:
- (b) the use of, or right to use, a mine or quarry:
- (c) the extraction, removal, or other exploitation of standing timber or a natural resource:
- (d) the right to extract, remove, or otherwise exploit standing timber or a natural resource:
- (e) the use of, or right to use, a film, a videotape, or a tape in connection with radio broadcasting:
- (f) the supply of scientific, technical, industrial, or commercial knowledge or information:
- (g) the total or partial forbearance of the use of, or the grant of a right to use, property or a right referred to in any of paragraphs (a) to (e):
- (h) the supply of assistance that enables the application or use of anything in any of paragraphs (a) to (f):
- (i) the total or partial forbearance of the supply of knowledge or information or assistance referred to in paragraph (f) or (h).

Relevance of description of payment

(3) For the purposes of subsection (2), none of the following is relevant:

(a) how the payment is described or computed:

(b) whether the payment is periodical or otherwise:

(c) whether the payment is an instalment of the purchase price of real property:

(d) whether the payment is an instalment of the purchase price of personal property.

Defined in this Act: income, natural resource, pay, royalty, standing timber

Compare: 2004 No 35 s CC 9

Section CC 9 list of defined terms **natural resource**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

CC 10 Films

When this section applies

(1) This section applies when a person has a right or interest of any of the kinds described in subsection (2) in or to—

(a) a film; or

(b) a print of the film; or

(c) publicity material for the film; or

(d) any other tangible asset relating to the film.

Right or interest

(2) The right or interest is a right or interest, including a future or contingent right or interest, of any of the following kinds:

(a) copyright in the film:

(b) a licence relating to the copyright:

(c) an equitable right in the copyright:

(d) an equitable right in a licence relating to the copyright:

(e) any other right existing in or attaching to the film:

(f) a right to income, or a share of income, from the rental, sale, use, or other exploitation of the film.

Income

(3) The following amounts are income of the person:

(a) an amount received or receivable by the person for—

(i) the use of, or the right to use, the film or a right or interest in a right in the film:

(ii) the granting of a licence for a future right in the film:
(iii) the disposal of some or all of a right or interest in a right in the film:
(iv) the assignment of a right or an interest in a right:
(v) the assignment of a right to derive income from the use of a right or interest; and

(b) an amount derived by the person from the rental, sale, use, or other exploitation of the film.

Relationship with sections CV 17 and YD 7

(4) This section is overridden by sections CV 17 and YD 7 (which relate to film rental income).

Defined in this Act: amount, film, income

Compare: 2004 No 35 s CC 10

Finance leases

CC 11 Lessee acquiring lease asset on expiry of term of lease

When this section applies

(1) This section applies for the purposes of section FA 9 (Treatment when lease ends: lessee acquiring asset), when, after the term of a finance lease, a lessee acquires the personal property lease asset and then disposes of it.

Income of lessee

(2) If the lessee disposes of the lease asset for an amount that is more than the consideration paid for it, the difference is income of the lessee in the income year in which they dispose of the asset.

Defined in this Act: consideration, finance lease, income, lessee, pay, personal property lease asset, tax year

Compare: 2004 No 35 s FC 8E

CC 12 Lessor acquiring lease asset on expiry of term of lease

When this section applies

(1) This section applies for the purposes of section FA 10(3) (Treatment when lease ends: lessor acquiring asset), when, after the term of a finance lease,—

(a) a lessor under the lease sells, assigns, or leases the personal property lease asset to another person under another finance lease; and

(b) the consideration is more than the amount determined under section FA 10(2).

Income of lessor

(2) To the extent to which the difference between the amount determined under section FA 10(2) and the consideration is not paid by the lessor to the lessee under the original finance lease, the amount is income of the lessor in the income year in which the original lease term ends.

Defined in this Act: consideration, finance lease, income, lessee, lessor, pay, personal property lease asset, tax year

Compare: 2004 No 35 s FC 8D(2)

Hire purchase agreements

CC 13 Amounts paid in income years after hire purchase agreement ends

When this section applies

(1) This section applies for the purposes of section FA 18 (Treatment of amounts paid in income years after agreement ends), when an amount that is liable to be paid under a hire purchase agreement is paid in an income year that is later than the income year in which the agreement ends.

Income of seller

(2) An amount that the buyer is liable to pay under the terms of the agreement is income of the seller in the income year in which they receive it.

Income of buyer

(3) An amount paid by the seller to the buyer under section FA 18(3)(b) is income of the buyer in the income year in which the amount is paid.

Defined in this Act: amount, hire purchase agreement, income, income year, pay

Compare: 2004 No 35 s FC 10(5)(d)–(f)

Subpart CD—Income from equity

Contents

Page

Income

CD 1 Dividend 186
CD 2 Distribution excluded from being dividend 186

What is a dividend?

CD 3 Meaning of dividend 186
CD 4 Transfers of value generally 186
CD 5 What is a transfer of value? 187
CD 6 When is a transfer caused by a shareholding relationship? 188
CD 7 Bonus issues in lieu of dividend 189
CD 8 Elections to make bonus issue into dividend 189
CD 9 Interests in money or property of foreign unit trust 190
CD 10 Bonus issue by foreign unit trust instead of money or property 190
CD 11 Avoidance arrangements 191
CD 12 Superannuation schemes entering trust rules 191
CD 13 Notional distributions of producer boards and co-operative companies 191
CD 14 Notional distributions of emigrating companies 192
CD 15 Tax credits linked to dividends 192
CD 16 Certain dividends not increased by tax credits 193
CD 17 Credit transfer notice 194
CD 18 Dividend reduced if foreign tax paid on company's income 194
CD 19 Foreign tax credits and refunds linked to dividends 195
CD 20 Benefits of shareholder-employees or directors 196
CD 21 Attributed repatriations from controlled foreign companies *[Repealed]* 197

What is not a dividend?

CD 22 Returns of capital: off-market share cancellations 197
CD 23 Ordering rule and slice rule 201
CD 24 Returns of capital: on-market share cancellations 203
CD 25 Treasury stock acquisitions 203
CD 26 Capital distributions on liquidation or emigration 205
CD 27 Property made available intra-group 206
CD 28 Transfers of certain excepted financial arrangements within wholly-owned groups 208
CD 29 Non-taxable bonus issues 208

CD 30 Transfer by unit trust of legal interest after beneficial interest vests 209
CD 31 Flat-owning companies 209
CD 32 Employee benefits 209
CD 33 Payments corresponding to notional distributions of producer boards and co-operative companies 210
CD 34 Distribution to member of co-operative company based on member's transactions *[Repealed]* 211
CD 34B Distributions to members of co-operative companies 211
CD 35 Resident's restricted amalgamations 214
CD 36 Foreign investment fund income 214
CD 37 Maori authority distributions 216

Calculation rules

CD 38 General calculation rule for transfers of value 216
CD 39 Calculation of amount of dividend when property made available 217
CD 40 Adjustment if dividend recovered by company 221
CD 41 Adjustment if amount repaid later 222
CD 42 Adjustment if additional consideration paid 223
CD 43 Available subscribed capital (ASC) amount 224
CD 44 Available capital distribution amount 231

Attributed repatriation calculation rules [Repealed]

CD 45 When does a person have attributed repatriation from a controlled foreign company? *[Repealed]* 238
CD 46 New Zealand repatriation amount *[Repealed]* 238
CD 47 New Zealand property amount *[Repealed]* 238
CD 48 Cost of tangible property *[Repealed]* 238
CD 49 Cost of associated party equity *[Repealed]* 238
CD 50 Outstanding balances of financial arrangements *[Repealed]* 238
CD 51 Property transfers between associated persons *[Repealed]* 239
CD 52 Unrepatriated income balance *[Repealed]* 239

Prevention of double taxation

CD 53 Prevention of double taxation of share cancellation dividends 239

Returning share transfers

CD 54 Replacement payments 241

Income

CD 1 Dividend

A dividend derived by a person is income of the person.

Defined in this Act: dividend, income

Compare: 2004 No 35 s CD 1

CD 2 Distribution excluded from being dividend

A distribution, derived by a member of a co-operative company, that is excluded by section CD 34B from being a dividend is income of the member.

Defined in this Act: co-operative company, dividend, income

Compare: 2004 No 35 s CD 1B

Section CD 2: amended (with effect on 1 April 2010), on 7 September 2010, by section 7 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

What is a dividend?

CD 3 Meaning of dividend

Sections CD 4 to CD 21 define what is a **dividend**.

Defined in this Act: dividend

Compare: 2004 No 35 s CD 2

CD 4 Transfers of value generally

Transfers of value from company

(1) A transfer of value from a company to a person is a dividend if—

(a) the cause of the transfer is a shareholding in the company, as described in section CD 6; and

(b) none of the exclusions in sections CD 22 to CD 37 applies to the transfer.

Calculation rules

(2) Sections CD 38 to CD 42 apply for the purposes of calculating the amount of the dividend.

Defined in this Act: company, dividend, transfer of value

Compare: 2004 No 35 s CD 3

CD 5 What is a transfer of value?

General test

(1) A **transfer of value** from a company to a person occurs when—

(a) the company provides money or money's worth to the person; and

(b) if the person provides any money or money's worth to the company under the same arrangement, the market value of what the company provides is more than the market value of what the person provides.

Release of debt

(2) A company provides money's worth to a person if the person is released from an obligation to pay money to the company, either by agreement or by operation of law.

When shares are cancelled

(2B) The market value of any transfer from the shareholder to the company on the cancellation of a share of the shareholder's rights as a shareholder is zero.

Provision of services for less than market value

(3) Despite subsection (1), a transfer of value does not occur to the extent to which the money's worth provided by the company is only the provision of services.

Limit to subsection (3)

(4) Subsection (3) does not apply to the provision of services by a company that is a close company, if the provision is the benefit of expenditure of the company.

Defined in this Act: arrangement, close company, company, market value, pay, services, share, shareholder, transfer of value

Compare: 2004 No 35 s CD 4

Section CD 5(2B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 12(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 5(2B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 12(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 5 list of defined terms **market value**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 12(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 5 list of defined terms **share**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 12(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 5 list of defined terms **shareholder**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 12(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 6 When is a transfer caused by a shareholding relationship?

General test

(1) A transfer of value from a company to a person (the **recipient**) is caused by a shareholding in the company if—

(a) the recipient at any relevant time—

(i) holds shares in the company; or

(ii) is associated with a shareholder; and

(iii) *[Repealed]*

(b) the company makes the transfer because of that shareholding of the relevant shareholder.

Indication that test met

(2) One indication that a transfer is caused by a shareholding is if the terms of the arrangement that results in the transfer are different from the terms on which the company would enter into a similar arrangement if no shareholding were involved.

Deductible distributions of producer boards

(3) Despite subsection (1), a transfer of value by a statutory producer board to a member is not caused by a shareholding if—

(a) the transfer is a cash distribution; and

(b) the distribution is a deduction under subpart HE (Mutual associations) or any other provision of this Act; and

(c) the board does not choose to treat the distribution as a dividend under section OB 73 (Statutory producer boards attaching imputation credits to cash distributions).

Deductible distributions of co-operative companies

(4) Despite subsection (1), a transfer of value by a co-operative company to a shareholder is not caused by a shareholding if—

(a) the transfer is a cash distribution; and

(b) the distribution is a deduction under subpart HE or any other provision of this Act; and

(c) the company does not choose to treat the distribution as a dividend under section OB 82 (When and how co-operative company makes election).

Relationship with section DV 18 and subpart HE

(5) For the purposes of subsections (3)(b) and (4)(b), subpart HE is not overridden by section DV 18 (Statutory producer boards and co-operative companies).

Defined in this Act: arrangement, associated person, company, co-operative company, deduction, share, shareholder, statutory producer board, transfer of value, trustee

Compare: 2004 No 35 s CD 5

Section CD 6(1)(a)(ii): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 13(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 6(1)(a)(iii): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 13(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 7 Bonus issues in lieu of dividend

Bonus issues in lieu

(1) A bonus issue in lieu is a dividend.

Amount of dividend

(2) The amount of the dividend is the money or money's worth offered as an alternative, minus any resident withholding tax (RWT) payable in relation to the dividend.

Defined in this Act: amount, bonus issue in lieu, dividend, pay, RWT

Compare: 2004 No 35 s CD 6

CD 8 Elections to make bonus issue into dividend

Treating bonus issues as dividends

(1) A bonus issue that is not a bonus issue in lieu is a dividend if—

(a) the bonus issue—

(i) is issued fully paid from reserves of the company:

(ii) if a dividend, would not be exempt income under section CW 10 (Dividend within New Zealand wholly-owned group) or CW 11 (Dividend of conduit tax relief holding company); and

(b) the company chooses under this section to treat the bonus issue as a dividend.

Form of election

(2) A company chooses to treat a bonus issue as a dividend by—

(a) resolving, when it makes the bonus issue, that it is a dividend; and

(b) resolving, when it makes the bonus issue, the amount to be treated as a dividend, which must be more than zero; and

(c) giving notice to the Commissioner under section 63 of the Tax Administration Act 1994 of the election and the amount.

Amount of dividend

(3) The amount of the dividend is the amount chosen by the company.

Defined in this Act: amount, bonus issue, bonus issue in lieu, Commissioner, company, dividend, notice, pay

Compare: 2004 No 35 s CD 7

CD 9 Interests in money or property of foreign unit trust

Interest absolutely vested in unit holder

(1) If a beneficial interest in money or property of a unit trust that is a foreign company vests absolutely in a unit holder, the money or property is a dividend for the unit holder.

Amount of dividend

(2) The amount of the dividend is the value of the money or property.

Defined in this Act: dividend, foreign company, unit holder, unit trust

Compare: 2004 No 35 s CD 7B

CD 10 Bonus issue by foreign unit trust instead of money or property

Interest absolutely vested in unit holder

(1) A bonus issue made to a unit holder by a unit trust that is a foreign company is a dividend for the unit holder if the issue is made under an arrangement or decision that the unit trust will make the bonus issue instead of causing a beneficial interest in money or property of the unit trust to vest absolutely in the unit holder.

Amount of dividend

(2) The amount of the dividend is the value of the money or property in which a beneficial interest would have vested in the unit holder if the bonus issue had not been made.

Defined in this Act: bonus issue, dividend, foreign company, unit holder, unit trust

Compare: 2004 No 35 s CD 7C

CD 11 Avoidance arrangements

An amount treated as a dividend under any of the following sections is a dividend:

(a) section GB 1 (Arrangements involving dividend stripping):

(b) section GB 23(7) (Excessive remuneration to relatives):

(c) section GB 25 (Close company remuneration to shareholders, directors, or relatives).

Defined in this Act: amount, close company, director, dividend, relative, shareholder

Compare: 2004 No 35 ss GB 1(3), GD 3(1), (2), GD 5

CD 12 Superannuation schemes entering trust rules

When this section applies

(1) This section applies when a superannuation scheme that is treated as a company because it is a unit trust becomes a superannuation fund.

Treatment as liquidated

(2) The company is treated as liquidated immediately before the date on which the scheme becomes a superannuation fund.

Defined in this Act: company, liquidation, superannuation fund, superannuation scheme

Compare: 2004 No 35 s HH 1(9)

CD 13 Notional distributions of producer boards and co-operative companies

Notional distributions of producer boards

(1) A notional distribution of a statutory producer board is a dividend if the board determines to attach an imputation credit to the notional distribution under section OB 74 (Statutory pro-

ducer boards attaching imputation credits to notional distributions).

Calculation: section OB 75

(2) The amount of the dividend is calculated under section OB 75 (Statutory producer boards' notional distributions that are dividends).

Notional distributions of co-operative companies

(3) A notional distribution of a co-operative company is a dividend if the company determines to attach an imputation credit to the notional distribution under section OB 79 (Co-operative companies attaching imputation credits to notional distributions).

Calculation: section OB 80

(4) The amount of the dividend is calculated under section OB 80 (Co-operative companies' notional distributions that are dividends).

Corresponding payments not dividends

(5) Section CD 33 means that a payment that corresponds to a notional distribution may not be a dividend.

Defined in this Act: amount, co-operative company, dividend, imputation credit, pay, statutory producer board

Compare: 2004 No 35 s CD 8

CD 14 Notional distributions of emigrating companies

Dividend

(1) A notional distribution of an emigrating company under section FL 2 (Treatment of emigrating companies and their shareholders) is a dividend for a shareholder of the company.

Amount of dividend

(2) The amount of the dividend is determined by a shareholder's entitlement in the circumstances set out in section FL 2.

Defined in this Act: amount, dividend, emigrating company, shareholder

Compare: 2004 No 35 s FCB 2(b)

CD 15 Tax credits linked to dividends

Imputation and FDP credits

(1) The amount of a dividend is increased by—

(a) an imputation credit attached to the dividend:

(b) a foreign dividend payment (FDP) credit attached to the dividend.

Relationship with sections CD 16 and CD 17

(2) Subsection (1) is overridden by sections CD 16 and CD 17.

When subsection (1) does not apply

(3) Subsection (1) does not apply in—

(a) Part L (Tax credits and other credits), except for subpart LP (Tax credits for supplementary dividends); or

(b) Part M (Tax credits paid in cash); or

(c) Part O (Memorandum accounts); or

(d) Part R (General collection rules).

Arrangement for dividend from another company

(4) Section GB 37 (Arrangements for payment of dividend by other companies) may apply to treat an imputation credit as not being included in the amount of a dividend.

Defined in this Act: amount, arrangement, dividend, FDP credit, imputation credit, income, tax

Compare: 2004 No 35 s CD 9

CD 16 Certain dividends not increased by tax credits

When this section applies

(1) This section applies when a unit trust manager, in the ordinary course of their management activities for a unit trust,—

(a) acquires units from unit holders under the terms on which the units were offered to potential unit holders; and

(b) derives a dividend from the redemption or other cancellation of units in the unit trust.

Credit not included

(2) For the purposes of Parts B, C, E, and F, the dividend derived does not include an amount of imputation credit attached to it to the extent to which the dividend (exclusive of the imputation credit) recovers the price paid by the unit trust manager to acquire the units.

Relationship with section FA 3

(3) To the extent to which subsection (2) applies, section FA 3 (Recharacterisation of certain dividends: recovery of cost of shares held on revenue account) does not apply.

Some definitions

(4) In this section,—

imputation credit includes an FDP credit

unit trust manager includes—

(a) a person nominated by the unit trust manager; or

(b) a trustee or a manager of a group investment fund that derives category A income; or

(c) a person nominated by the trustee or the manager of the group investment fund.

Defined in this Act: amount, cancellation, dividend, FDP credit, imputation credit, pay, tax, unit trust, unit trust manager

Compare: 2004 No 35 s CD 10

CD 17 Credit transfer notice

When this section applies

(1) This section applies when a share user under a share-lending arrangement—

(a) derives a dividend for the original share, with an imputation credit attached; and

(b) issues a credit transfer notice for the dividend.

Credit not included

(2) The dividend derived by the share user does not include the amount of the imputation credit.

Income

(3) The amount of the imputation credit is income derived by the share supplier when the credit transfer notice is issued.

Meaning of imputation credit

(4) In this section, **imputation credit** includes an FDP credit.

Defined in this Act: amount, credit transfer notice, dividend, FDP credit, imputation credit, original share, share-lending arrangement, share supplier, share user

Compare: 2004 No 35 s CD 10B

CD 18 Dividend reduced if foreign tax paid on company's income

When this section applies

(1) This section applies when a person—

(a) derives a dividend from a company that is a foreign company; and

(b) has a liability under the laws of a country or territory outside New Zealand for income tax on income of the company corresponding to the liability that the person would have under the laws of New Zealand for income tax on income of the company if the company were a partnership in which the person were a partner; and

(c) pays the income tax; and

(d) provides to the Commissioner upon request, in the time allowed by the Commissioner, sufficient information to satisfy the Commissioner as to the amount of income tax paid.

Amount of dividend reduced

(2) The amount of the dividend is reduced by the greater of zero and the amount calculated using the formula—

total tax paid − earlier reductions.

Definition of items in formula

(3) In the formula,—

(a) **total tax paid** is the total amount of income tax on income of the company that the person has paid in the country by the time that the person derives the dividend:

(b) **earlier reductions** is the total amount of reductions under this section that, by the time that the person derives the dividend, have affected other dividends derived by the person from the company.

Defined in this Act: Commissioner, company, dividend, foreign company, income, income tax, New Zealand, pay

Compare: 2004 No 35 s CD 10C

CD 19 Foreign tax credits and refunds linked to dividends

Foreign tax credits

(1) If a double tax agreement gives a person a tax credit in a foreign country when they derive a dividend from that country, the amount of the dividend is increased by the tax credit.

Foreign tax refunds

(2) When a person who has derived a dividend from outside New Zealand also derives a refund of income tax of a foreign country, the refund is treated as a dividend if—

(a) the company paying the dividend was entitled to deduct the tax from the dividend; and

(b) the person was not personally liable to pay the tax.

Defined in this Act: amount, company, dividend, double tax agreement, income tax, New Zealand, pay, tax

Compare: 2004 No 35 s CD 11

CD 20 Benefits of shareholder-employees or directors

Unclassified fringe benefits

(1) A non-cash benefit provided by a company to an employee is a dividend if—

(a) the benefit is an unclassified benefit; and

(b) the employee is a shareholder in the company; and

(c) the company chooses, under section CX 17(2) (Benefits provided to employees who are shareholders or investors), to treat the benefit as a dividend.

Non-executive directors' non-cash benefits

(2) A non-cash benefit provided by a company to a non-executive director of the company is a dividend if the director is a shareholder in the company, even if the benefit is provided solely because the director is a non-executive director.

Other shareholder-employee benefits

(3) In any other case of a non-cash benefit provided by a company to a person who is both an employee and a shareholder, the benefit is not a dividend if—

(a) the application of section CX 17(2) means it is a fringe benefit; and

(b) section CD 32 accordingly excludes it from being a dividend.

Meaning of non-executive director

(4) In this section, **non-executive director** means a person whose only services to the company as an employee are the formal

occupation of the role of director and compliance with the associated statutory obligations.

Defined in this Act: company, director, dividend, employee, fringe benefit, non-executive director, shareholder, unclassified benefit

Compare: 2004 No 35 s CD 12

CD 21 Attributed repatriations from controlled foreign companies

[Repealed]

Section CD 21: repealed (with effect on 30 June 2009), on 6 October 2009, by section 14(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

What is not a dividend?

CD 22 Returns of capital: off-market share cancellations

When this section applies

(1) This section applies when a company pays an amount to a shareholder because of the off-market cancellation of a share in the company, other than on liquidation of the company.

Ordering rule

(2) The amount is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the ordering rule, if—

(a) 1 of the bright line tests in subsection (3) is met; and

(b) the company is not an unlisted trust that has chosen the slice rule for the share under subsection (4); and

(c) the anti-avoidance rule in subsection (6) does not apply.

Bright line tests

(3) The bright line tests referred to in subsection (2)(a) are as follows:

(a) the cancellation is part of a pro rata cancellation that results in a fifteen percent capital reduction for the company:

(b) the cancellation is part of a pro rata cancellation that results in a ten percent capital reduction for the company and the Commissioner has given a notice under subsection (8):

(c) the cancellation is not part of a pro rata cancellation and results in the shareholder suffering a fifteen percent interest reduction:

(d) the company is an unlisted trust and the cancellation is not part of a pro rata cancellation:

(e) the share is a non-participating redeemable share.

Unlisted trusts choosing slice rule

(4) If the company is an unlisted trust, it may issue a share on terms that the ordering rule does not apply and that instead the slice rule applies to the cancellation. If this happens, the amount paid is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the slice rule (but still subject to the anti-avoidance rule in subsection (6)).

Calculation concessions for foreign unlisted widely-held trusts

(5) If a company is an unlisted widely-held trust not resident in New Zealand and a shareholder cannot obtain sufficient information to calculate the available subscribed capital per share under the ordering rule,—

(a) the share is treated as if it were issued under subsection (4) on terms that the slice rule applies; and

(b) the available subscribed capital under the slice rule is—

(i) the amount paid for the issue of the share, if subparagraph (ii) does not apply; or

(ii) the value of the money or property in which a beneficial interest would have vested in the shareholder had the share not been issued, if the share is a taxable bonus issue under paragraph (d) of the definition of the term.

Overriding anti-avoidance rule

(6) Neither subsection (2) nor (4) excludes an amount paid by a company on cancellation of a share from being a dividend if any part of the payment is in lieu of the payment of a dividend.

Factors relevant in applying anti-avoidance rule

(7) For the purposes of applying subsection (6), the following factors must be considered:

(a) the nature and amount of dividends paid by the company before or after the cancellation; and
(b) the issue of shares in the company after the cancellation; and
(c) the expressed purpose or purposes of the cancellation; and
(d) any other relevant factor.

Commissioner notifying view

(8) If no part of a payment on cancellation of a share is in lieu of the payment of a dividend, the Commissioner may give notice to the company that subsection (6) does not apply to the cancellation.

Some definitions

(9) In this section,—

counted associate means—

(a) a person associated with the shareholder other than merely by virtue of being a relative; or
(b) a spouse, civil union partner or de facto partner, or minor child of the shareholder, or a trustee of a trust under which a spouse, civil union partner or de facto partner, or minor child of the shareholder has benefited or is eligible to benefit

fifteen percent capital reduction means the circumstance in which the total amount paid by the company on account of the cancellation (or on account of any other pro rata cancellation of participating shares in the company occurring at the same time) is at least 15% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

fifteen percent interest reduction means the circumstance in which, immediately after and as a result of the cancellation (together with any other cancellation of participating shares in the company occurring at the same time),—

(a) the total direct voting interests in the company of the shareholder and any counted associates is 85% or less of their total direct voting interests in the company immediately before the cancellation; and

(b) if at the time of the cancellation a market value circumstance exists, the total direct market value interests in the company of the shareholder and any counted associates is 85% or less of their total direct market value interests immediately before the cancellation

non-participating redeemable share means a share that meets the following conditions

(a) the share is issued, under the company's constitution or establishing legislation, on terms that involve the share being required or allowed to be redeemed or repaid before the company is liquidated; and

(b) the share is—

(i) a redeemable share under section 68 of the Companies Act 1993 or an equivalent provision of foreign law; or

(ii) issued under 1 of New Zealand's Acts relating to co-operative companies; or

(iii) subject to sections FA 2 (Recharacterisation of certain debentures) and FZ 1 (Treatment of interest payable under debentures issued before certain date) or section FA 2B(2) (Stapled debt securities); or

(iv) a unit in a unit trust that is not a widely-held trust; and

(c) the share is either a fixed-rate share or a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule; and

(d) the shareholder does not have shareholder decision-making rights in relation to the share except—

(i) a protective right; or

(ii) if the company is subject to 1 of New Zealand's Acts relating to co-operative companies

participating share means a share that is not a non-participating redeemable share

protective right means a shareholder decision-making right that—

(a) arises only if the shareholder's position may be altered to the shareholder's detriment or if the company de-

faults on its obligations under the terms of the share; and

(b) is granted to the shareholder only to assist the shareholder to prevent the alteration or to remedy the default; and

(c) when the share is issued is not expected to arise

ten percent capital reduction means the circumstance in which the total amount paid by the company on account of the cancellation, or paid on account of any other pro rata cancellation of participating shares in the company occurring at the same time, is at least 10% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

unlisted trust means a unit trust or group investment fund, the units or interests in which are not quoted on the official list of a recognised exchange.

Defined in this Act: amount, associated person, available subscribed capital, cancellation, Commissioner, company, co-operative company, counted associate, direct market value interest, direct voting interest, dividend, fifteen percent capital reduction, fifteen percent interest reduction, fixed-rate share, group investment fund, liquidation, market value circumstance, New Zealand, non-participating redeemable share, notice, off-market cancellation, ordering rule, participating share, pay, pro rata cancellation, protective right, recognised exchange, relative, resident in New Zealand, share, shareholder, shareholder decision-making right, slice rule, taxable bonus issue, ten percent capital reduction, trustee, unit trust, unlisted trust, unlisted widely-held trust, widely-held trust

Compare: 2004 No 35 s CD 14

Section CD 22(9) **counted associate** paragraph (b): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 15(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 22(9) **non-participating redeemable share** paragraph (b)(iii): amended (with effect on 1 April 2008), on 6 October 2009, by section 15(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 23 Ordering rule and slice rule

Ordering rule

(1) Under the **ordering rule**, the available subscribed capital per share is calculated for a share using the formula—

$$\frac{\text{available subscribed capital of class}}{\text{shares being cancelled of class.}}$$

Definition of items in formula

(2) In the formula in subsection (1),—

(a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:

(b) **shares being cancelled of class** is the number of shares of the same class as the share, including the share, being cancelled at the time.

Slice rule

(3) Under the **slice rule**, the available subscribed capital per share is calculated for a share using the formula—

$$\frac{\text{available subscribed capital of class}}{\text{shares of class.}}$$

$$\frac{\text{available suscribed capital of cla}}{\text{shares of class.}}$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:

(b) **shares of class** is the number of shares of the same class as the share, including the share, on issue at the time.

Amount when foreign company information inadequate

(5) Despite subsections (2) to (4), the available subscribed capital per share calculated under the ordering rule is zero if—

(a) the company is not resident in New Zealand; and

(b) the relevant shareholder cannot obtain sufficient information to calculate the actual available subscribed capital per share using the relevant rule.

Defined in this Act: available subscribed capital, cancellation, foreign company, ordering rule, resident in New Zealand, share, shareholder, shares of the same class, slice rule

Compare: 2004 No 35 s CD 15

CD 24 Returns of capital: on-market share cancellations

Companies acquiring own shares

(1) An amount paid by a company in acquiring any of its shares in an on-market cancellation is not a dividend.

When excess amount relevant

(2) Despite subsection (1), any excess of the amount paid over the available subscribed capital per share calculated under the ordering rule—

(a) is treated as a dividend and not a return of capital when applying—

(i) section CD 40:

(ii) section CD 43(2)(c):

(iii) section GA 1(4) (Commissioner's power to adjust); and

(b) gives rise to an imputation credit account debit under section OB 42 (ICA on-market cancellation).

Defined in this Act: amount, available subscribed capital, company, dividend, imputation credit account, on-market cancellation, ordering rule, pay, share

Compare: 2004 No 35 s CD 16

Section CD 24(2)(a)(i): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 28(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

CD 25 Treasury stock acquisitions

Treasury stock generally

(1) An amount paid by a company in acquiring any of its shares is not a dividend if—

(a) the acquisition is treated as not resulting in the cancellation of the share, under section 67A(1) of the Companies Act 1993 or section 24 of the Co-operative Companies Act 1996 (each of which relates to treasury stock); and

(b) the acquisition is not part of a pro rata cancellation or something that is in substance a pro rata cancellation.

Reversion to on-market cancellation treatment

(2) Subsections (4) to (6) apply in the case of an acquisition of a share to which subsection (1) or section CD 17(1) of the Income Tax Act 2004 or section CF 3(1)(d) or (da) of the Income Tax Act 1994 applies if,—

(a) before the first anniversary of the acquisition, the company cancels the share; or

(b) at the first anniversary, the company has failed to transfer a share of the same class in an arm's length transfer, except if the company is established under New Zealand co-operative company legislation; or

(c) after the first anniversary, the company, which is established under New Zealand co-operative company legislation, cancels the share.

Requirement for arm's length transfers

(3) When subsection (2)(b) is applied,—

(a) a transfer is arm's length only if it is—

(i) to a person not associated with the company; or

(ii) in a transaction that occurs on a recognised exchange, through a broker or some other agent independent of the company, and that is not preceded by any arrangement between the transferee and the company for the transfer; and

(b) each arm's length transfer of a share is taken into account only in relation to a single share acquisition to which subsection (1) has applied.

Reduction of available subscribed capital

(4) If subsection (2) applies, then, with effect from the cancellation or the first anniversary, depending on which first causes subsection (2) to apply, the available subscribed capital of the class of the share is reduced by the lesser of—

(a) the amount paid to the shareholder on the acquisition; and

(b) the available subscribed capital per share calculated under the ordering rule and, in the case of the first anniversary, calculated as if the share and any other shares to which this subsection applies on that date were cancelled on that date.

Imputation credit account debit

(5) If subsection (2) applies, then, with effect from the date of the acquisition by the company, section OB 42 (ICA on-market cancellation) applies as if the original acquisition were an on-market cancellation but item "ASC per share excess" of

the formula in section OB 42 were equal to only the excess of the amount received by the shareholder over the reduction described in subsection (4).

Relief from imputation penalty tax

(6) No imputation penalty tax is imposed under section 140B of the Tax Administration Act 1994 (nor any late payment penalty imposed under that Act in relation to the imputation penalty tax) if it would not have arisen had subsection (5) applied only with effect from the date of cancellation or first anniversary, depending on which first causes subsection (2) to apply.

Defined in this Act: agent, amount, arrangement, associated person, available subscribed capital, cancellation, company, co-operative company, dividend, imputation credit account, imputation penalty tax, New Zealand, on-market cancellation, ordering rule, pay, pro rata cancellation, recognised exchange, share, shareholder

Compare: 2004 No 35 s CD 17

Section CD 25(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 16(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 26 Capital distributions on liquidation or emigration

When this section applies

(1) This section applies when a shareholder—

(a) is paid an amount in relation to a share on the liquidation of the company:

(b) is treated under section FL 2 (Treatment of emigrating companies and their shareholders) as being paid an amount in relation to a share in the company.

Return of subscribed capital or capital gains

(2) The amount paid is a dividend only to the extent to which it is more than—

(a) the available subscribed capital per share calculated under the ordering rule; and

(b) the available capital distribution amount calculated under section CD 44.

Statutory producer board capital levies

(3) If the company is a statutory producer board, the amount is not a dividend to the extent to which it is a return of a levy charged specifically for capital development.

Non-deductible capital

(4) An amount that is not a dividend as a result of subsection (3) is nevertheless treated as a return of capital for the purposes of the capital limitation.

Defined in this Act: amount, available capital distribution amount, available subscribed capital, capital limitation, company, dividend, emigrating company, levy, liquidation, ordering rule, pay, share, shareholder, statutory producer board

Compare: 2004 No 35 s CD 18

CD 27 Property made available intra-group

When this section applies

(1) This section applies when—

(a) a transfer of value is made by a company (the **first company**) to another company (the **associated company**); and

(b) in the absence of this section, the transfer would be a dividend under section CD 6(1)(a)(ii) because the associated company is associated with a shareholder in the first company.

Intra-group property arrangements worth $10,000 or less

(2) The transfer of value is not a dividend if—

(a) the transfer consists of making property available for less than market value; and

(b) the transfer is not a loan; and

(c) in the income year of the first company in which the transfer occurs, the total amount of transfers of value by the first company to the associated company that would be dividends for the year in the absence of this section, is $10,000 or less.

Downward transfers of value

(3) The transfer of value is also not a dividend if—

(a) either—

(i) the first company has a voting interest in the associated company; or

(ii) the first company is associated with a company (the **parent company**) that has a voting interest in the associated company and that could have received the transfer of value without the transfer

being assessable income or non-resident passive income; and

(b) the associated company does not have a voting interest in the first company; and

(c) no person, other than the parent company, has both—

(i) a voting interest or, if there is a market value circumstance in relation to either the first company or the associated company, a market value interest in the first company; and

(ii) a voting interest or, if there is a market value circumstance in relation to either the first company or the associated company, a market value interest in the associated company, of more than 10%.

Relationship with section FA 3

(4) Subsection (3) does not apply to a transfer of value that is subject to section FA 3 (Recharacterisation of certain dividends: recovery of cost of shares held on revenue account).

Rules for identifying voting interests

(5) For the purposes of subsection (3)(a) and (b),—

(a) for the purposes of determining if a company has a voting interest in another company, the look-through rule in section YC 4 (Look-through rule for corporate shareholders) does not apply to treat the initial company's voting interest as held by its shareholders or anyone else; and

(b) a zero voting interest is not a voting interest.

Rules for identifying voting and market value interests

(6) For the purposes of subsection (3)(c),—

(a) for the purposes of determining the extent to which a person, other than the parent company, has a voting interest or market value interest in the first company or the associated company, the look-through rule in section YC 4 does not apply to treat the person's voting interest or market value interest as held by the person's shareholders or anyone else unless the person treated as holder is the parent company; and

(b) for the purposes of determining the extent to which a person, other than the parent company, has a voting

interest or market value interest of more than 10% in the associated company, the look-through rule in section YC 4 does not apply to treat a voting interest or market value interest of the first company or the parent company in the associated company as held by their respective shareholders or anyone else; and

(c) a zero voting interest is not a voting interest and a zero market value interest is not a market value interest.

Defined in this Act: amount, assessable income, associated person, company, dividend, income year, loan, market value circumstance, market value interest, non-resident passive income, shareholder, tax year, transfer of value, trustee, voting interest

Compare: 2004 No 35 s CD 19

Section CD 27(1)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 17(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 27(3)(a)(ii): substituted (with effect on 30 June 2009), on 6 October 2009, by section 17(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 27 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 17(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 28 Transfers of certain excepted financial arrangements within wholly-owned groups

When section ED 2 (Transfers of certain excepted financial arrangements within wholly-owned groups) applies to a transfer of an excepted financial arrangement within a wholly-owned group of companies, the transfer does not give rise to a dividend.

Defined in this Act: dividend, excepted financial arrangement, wholly-owned group of companies

Compare: 2004 No 35 s CD 20

CD 29 Non-taxable bonus issues

A non-taxable bonus issue is not a dividend.

Defined in this Act: dividend, non-taxable bonus issue

Compare: 2004 No 35 s CD 21

CD 30 Transfer by unit trust of legal interest after beneficial interest vests

If money or property of a unit trust is a dividend under section CD 9 for a unit holder, a transfer to the unit holder of the legal interest in the money or property is not a dividend.

Defined in this Act: dividend, unit holder, unit trust

Compare: 2004 No 35 s CD 21B

CD 31 Flat-owning companies

Occupation rights

(1) If a flat-owning company makes residential property available to a person, that is not a dividend.

Meaning of flat-owning company

(2) In this section, **flat-owning company** means a company—

(a) whose constitution provides that every registered shareholder is entitled to the use of a specific residential property in New Zealand owned by the company; and

(b) whose only significant assets are residential properties available for use by specific shareholders and funds reserved for meeting the company's costs.

Defined in this Act: company, dividend, flat-owning company, New Zealand, shareholder

Compare: 2004 No 35 s CD 22

CD 32 Employee benefits

FBT rules

(1) A fringe benefit subject to fringe benefit tax is not a dividend.

Board

(2) An amount that is employment income under section CE 1(1B) (Amounts derived in connection with employment) is not a dividend.

Defined in this Act: amount, dividend, employment income, FBT rules, fringe benefit, fringe benefit tax

Compare: 2004 No 35 s CD 23

Section CD 32(2): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CD 33 Payments corresponding to notional distributions of producer boards and co-operative companies

Statutory producer board payments

(1) An amount paid by a statutory producer board to a person in relation to an income year is not a dividend if—

(a) the person was a member of the board at some time during the income year; and

(b) unless the Commissioner allows otherwise, the amount is calculated on the basis of the member's share of—

(i) the total produce transactions of members with the board during the income year; or

(ii) the total levies payable by members to the board for the income year; and

(c) the amount corresponds to a notional distribution amount treated as a dividend under section CD 13(1).

Co-operative company payments

(2) An amount paid by a co-operative company to a person in relation to an income year is not a dividend if—

(a) the person was a shareholder of the company at some time during the income year; and

(b) the amount is calculated on the basis of the shareholder's share of the total produce transactions of shareholders with the company during the income year; and

(c) the amount corresponds to a notional distribution amount treated as a dividend under section CD 13(3).

Non-deductible capital

(3) An amount that is not a dividend as a result of this section is nevertheless treated as a return of capital for the purposes of the capital limitation.

Defined in this Act: amount, capital limitation, Commissioner, co-operative company, dividend, income year, levy, member, pay, produce transactions, producer board, shareholder, statutory producer board

Compare: 2004 No 35 s CD 24

CD 34 Distribution to member of co-operative company based on member's transactions

[Repealed]

Section CD 34: repealed (with effect on 1 April 2010), on 7 September 2010, by section 8 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CD 34 list of defined terms **foreign-sourced amount**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

CD 34B Distributions to members of co-operative companies

What this section applies to

(1) This section applies to a distribution by a co-operative company, or by a company (a **subsidiary**) in which the co-operative company has a voting interest of 100%, if—

(a) the distribution is made after the Commissioner has received, from the co-operative company, an election in writing to apply this section; and

(b) the election has not been revoked.

General rule: co-operative company distributions not dividends

(2) If the requirements in subsection (4) are met, a distribution by a co-operative company, or by a subsidiary, to a member of the co-operative company is not a dividend, to the extent to which the distribution is for their—

(a) transaction shares:

(b) projected transactions shareholding:

(c) limited non-transaction shares.

Exception: distributions for excess shareholdings

(3) Subsection (2)(c) is ignored,—

(a) for a distribution to a member, if the member holds shares in the co-operative company that—

(i) are not transaction shares, are not their projected transactions shareholding, and are not limited non-transaction shares; and

(ii) may entitle members to enter trading transactions:

(b) for all distributions to all members, if the constitution of the co-operative company permits any member to hold shares that—

(i) are not transaction shares, are not their projected transaction shareholding, and are not limited non-transaction shares; and

(ii) may entitle members to enter trading transactions.

Requirements

(4) For the purposes of subsection (2), the requirements are—

(a) the co-operative company is resident in New Zealand for the period to which the distribution relates; and

(b) the company making the distribution is resident in New Zealand for the period to which the distribution relates; and

(c) the co-operative company believes on reasonable grounds that the member at the time of the distribution—

(i) is resident in New Zealand:

(ii) has a fixed establishment in New Zealand.

Meaning of transaction shares

(5) In this section, **transaction shares** means the number of shares in the co-operative company that the member holds for trading transactions that occurred in the period to which the distribution relates. The number of shares must determine the value of the trading transactions.

Meaning of limited non-transaction shares

(6) In this section, **limited non-transaction shares** means the member's shares that are not the member's transaction shares or their projected transactions shareholding, and that may entitle the member to enter trading transactions, if the number of those shares is less than or equal to the greater of the following:

(a) 20% of the member's transaction shares on the date of entitlement for the distribution under section 125 of the Companies Act 1993:

(b) 20% of the member's projected transactions shareholding on the date of entitlement for the distribution under section 125 of that Act.

Meaning of projected transactions shareholding

(7) In this section, **projected transactions shareholding** means the number of shares in the co-operative company that the member would have had to hold if the trading transactions actually had occurred that the member had projected, using reasonable assumptions, would occur in the period to which the distribution relates. The number of shares must determine the value of the trading transactions.

Meaning of trading transactions

(8) In this section, **trading transactions** means transactions between the member and the co-operative company or subsidiary that are—

(a) the sale and purchase of trading stock of the vendor that is not intangible property; and

(b) not subject to section CB 2 (Amounts received on disposal of business assets that include trading stock).

Companies Act 1993

(9) The 20 working day rule for fixing a date in section 125(2) of the Companies Act 1993 does not apply to members' entitlements to receive distributions that are for transaction shares, projected transaction shareholdings, limited non-transaction shares, or shares described in subsection (3), if—

(a) the co-operative company or the subsidiary, as the case may be, has given a copy of the election described in subsection (1) to the Registrar of Companies before the relevant distributions are paid; and

(b) for the purposes of section 125(1) of the Companies Act 1993, the co-operative company or the subsidiary, as the case may be, fixes a date in relation to members' entitlements to receive distributions before the entitlements arise, and that date is within the year or period to which the distributions relate.

Defined in this Act: Commissioner, company, co-operative company, dividend, limited non-transaction shares, projected transaction shareholding, resident in New Zealand, share, trading stock, trading transactions, transaction shares

Section CD 34B: inserted (with effect on 1 April 2010), on 7 September 2010, by section 9 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CD 35 Resident's restricted amalgamations

An amount derived by an amalgamated company on a resident's restricted amalgamation from an amalgamating company that ends its existence on the amalgamation is not a dividend if it arises from—

(a) the amalgamated company acquiring property of the amalgamating company; or

(b) the amalgamated company being relieved of an obligation owed to the amalgamating company.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, dividend, resident's restricted amalgamation

Compare: 2004 No 35 s CD 25

CD 36 Foreign investment fund income

Amount not dividend

(1) An amount paid by a company to a person is not a dividend if,—

(a) at the time the person derives the amount, the person's interest in the company is an attributing interest, or would have been if the company had not been liquidated; and

(b) the person calculates their foreign investment fund (FIF) income or loss in relation to the interest and the period in which the amount is paid under—

(i) the comparative value method:

(ii) the deemed rate of return method:

(iii) the cost method:

(iv) the fair dividend rate method.

(c) *[Repealed]*

Exclusion for interests in grey list companies

(2) Subsection (1)(b)(iv) does not apply if—

(a) the FIF is a grey list company; and

(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.

Application of rule for certain managed funds

(3) Subsection (2) does not apply if—

(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

(b) the FIF is a foreign PIE equivalent.

Defined in this Act: amount, attributing interest, company, comparative value method, cost method, deemed rate of return method, direct income interest, dividend, fair dividend rate method, FIF income, foreign investment fund, foreign PIE equivalent, grey list company, income year, life insurance, liquidation, loss, pay, portfolio investment entity

Compare: 2004 No 35 s CD 26

Section CD 36(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 19(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(b): substituted, on 1 April 2008, by section 315(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 36(1)(b)(iv): amended (with effect on 1 April 2008), on 6 October 2009, by section 19(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(1)(c): repealed (with effect on 1 April 2008), on 6 October 2009, by section 19(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(c): added, on 1 April 2008, by section 315(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 36(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 19(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(2): added (with effect on 1 April 2008), on 6 October 2009, by section 19(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 19(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(3): added (with effect on 1 April 2008), on 6 October 2009, by section 19(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36(3)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 19(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36 list of defined terms **direct income interest**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 19(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36 list of defined terms **foreign investment vehicle**: repealed, on 1 April 2010, by section 19(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36 list of defined terms **foreign PIE equivalent**: inserted, on 1 April 2010, by section 19(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36 list of defined terms **grey list company**: inserted, on 1 April 2008, by section 315(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 36 list of defined terms **income year**: inserted, on 1 April 2008, by section 315(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 36 list of defined terms **life insurance**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 19(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 36 list of defined terms **portfolio investment entity**: added (with effect on 1 April 2008), on 6 October 2009, by section 19(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 37 Maori authority distributions

A Maori authority distribution is not a dividend except for the purposes of section CW 10 (Dividend within New Zealand wholly-owned group).

Defined in this Act: dividend, Maori authority, wholly-owned group

Compare: 2004 No 35 s HI 4(2)

Calculation rules

CD 38 General calculation rule for transfers of value

Difference in value

(1) The amount of a dividend that is a transfer of value from a company to a person is calculated using the formula—

value from company – value from person.

Definition of items in formula

(2) In the formula,—

(a) **value from company** is the market value of the money or money's worth that the company provides to the person:

(b) **value from person**—

(i) is the market value of the money or money's worth, if any, that the person provides to the company as consideration for the transfer; and

(ii) excludes any amount that is attributable merely to the holding or giving up of rights as a shareholder in the company.

Relationship with sections CD 39 to CD 42

(3) This section is overridden by sections CD 39 to CD 42.

Defined in this Act: amount, company, dividend, shareholder, transfer of value

Compare: 2004 No 35 s CD 27

CD 39 Calculation of amount of dividend when property made available

How this section applies

(1) This section applies to determine the amount of a dividend that arises under section CD 3 because a company makes property available to a person.

Amounts calculated quarterly

(2) The amount of the dividend is calculated for each quarter during which the property is made available.

Date when amounts treated as paid

(3) The amount of the dividend calculated for a quarter is treated as being paid by the company to the person and as being derived by the person 6 months after the end of the company's income year. However, if the company gives notice to the shareholder on an earlier date of the amount of the dividend for that quarter, the amount is treated as being paid and derived on that earlier date instead.

Using FBT rules

(4) Unless the property made available is a loan, the amount of the dividend for each quarter is the value of the fringe benefit for that quarter calculated under the fringe benefit tax (FBT) rules as if—

(a) making the property available were the provision of a fringe benefit by the company to an employee in relation to employment, despite anything in sections CX 6 to CX 38 (which relate to fringe benefits); and

(b) the company were not to choose to pay fringe benefit tax on an income year basis under section RD 60 (Close company option).

Using difference from benchmark rate

(5) If the property made available is a loan, the amount of the dividend for each quarter is the excess, if any, of interest, calculated for the quarter on the basis of the daily balance of the loan and the benchmark rate specified in subsections (6) to (8), over the actual amount of interest accruing on the loan in the quarter. However, the company may choose instead to calculate the dividend as the excess of the benchmark interest rate amount over the amount of income accruing to the company in the quarter calculated under the yield to maturity method.

Benchmark rate: fringe benefit tax rate for certain loans

(6) For the purposes of subsection (5), the benchmark rate of interest is the prescribed rate of interest if—

(a) all amounts payable to the company for the loan are expressed in New Zealand dollars; and

(b) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter.

Setting benchmark rate

(7) For the purposes of subsection (5), the benchmark rate is the rate set by the Commissioner if—

(a) all amounts payable to the company in relation to the loan are payable in a single currency other than New Zealand dollars; and

(b) the Commissioner has set a benchmark rate for that currency and the quarter; and

(c) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter.

Default benchmark rate

(8) For the purposes of subsection (5), if neither subsection (6) nor (7) applies, the benchmark rate of interest is a market rate

determined at the end of the quarter for a loan made on the same terms between persons at arm's length.

Daily loan balance: certain repayments backdated

(9) For the purposes of subsection (5), in determining the daily balance of a loan during a tax year, an amount repaid during the tax year is treated as having been applied in repayment of the loan at the start of the company's tax year or, if later, the day the loan was made, if—

(a) the amount is repaid by applying any salary, wages, extra pay, dividends, or interest payable by the company to the borrower; and

(b) the amount payable by the company is income of the borrower in the tax year or an earlier tax year; and

(c) the amount payable by the company is payable without any amount of tax being withheld and paid under the PAYE rules, the RWT rules, or the NRWT rules.

Daily loan balance: company nominating amount

(10) Subject to subsection (9), for the purposes of subsection (5), the daily balance of the loan for a tax year is treated as being equal to the notional balance chosen under subsection (11) by the company making the loan if—

(a) the borrower is a company; and

(b) the loan is a variable principal debt instrument; and

(c) the company making the loan notifies the Commissioner that this subsection applies for the loan and the tax year; and

(d) the amount of the dividend calculated as a result for the loan, the borrower, and the tax year is no more than 30% greater or less than the amount that would be calculated if this section did not apply.

Notional balance options

(11) The notional balance referred to in subsection (10) is whichever of the following is chosen by the company making the loan and notified to the Commissioner:

(a) the average of the outstanding balances of the loan at the end of each month in the company's tax year:

(b) the average of—

(i) the outstanding balance of the loan at the start of the tax year or the first time during the tax year at which the loan exists, whichever is later; and

(ii) the outstanding balance of the loan at the end of the tax year or the last time during the tax year at which the loan exists, whichever is earlier.

Notice generally by tax returns

(12) Reference in this section to a company notifying the Commissioner is a reference to—

(a) a notice given to the Commissioner with the company's return of income for the relevant tax year; or

(b) if no return is required, a notice given by the date on which a return would be required to be filed for the tax year if a return had been required.

Attributed repatriation dividends

(13) No amount of dividend arises under section CD 4 as a result of any difference between the interest, if any, payable by a person to a CFC in an accounting period of the CFC under a loan and the benchmark rate of interest specified in any of subsections (6) to (8) if—

(a) the outstanding balance of the loan at the end of the accounting period is taken into account under sections CD 46 to CD 52 in calculating the New Zealand repatriation amount of the CFC for the accounting period; and

(b) as a result, the person derives a dividend under section CD 21.

When loan disregarded

(14) Subsection (13) does not apply to the extent to which the loan is a loan to which—

(a) section CD 50(11) applies, meaning that the loan is disregarded for the accounting period; or

(b) section CZ 10(4) (Transitional relief for calculation of attributed repatriation dividends: 2 July 1992) applies, meaning that the loan is effectively disregarded for the accounting period.

Defined in this Act: accounting period, amount, amount of tax, attributed repatriation, CFC, Commissioner, company, dividend, employee, extra pay, FBT rules, fringe benefit, fringe benefit tax, income, income year, interest, loan, New Zealand, New Zealand repatriation amount, notice, notify, NRWT rules, pay,

PAYE rules, prescribed rate of interest, quarter, return of income, RWT rules, shareholder, tax year, variable principal debt instrument

Compare: 2004 No 35 s CD 28

CD 40 Adjustment if dividend recovered by company

When dividends recovered

(1) If a company recovers a dividend from a shareholder under section 56 of the Companies Act 1993 or an equivalent provision of foreign law, this section applies to the extent necessary to ensure that—

(a) the recovered dividend and any attached imputation credit or FDP credit are disregarded for the purposes of this Act; and

(b) the resulting refunds are made.

Amendment of assessments

(2) Section 113B of the Tax Administration Act 1994 requires the Commissioner to amend assessments if given notice of the recovery.

Refunds

(3) If the Commissioner is given notice of the recovery, the Commissioner must refund any relevant—

(a) income tax, FDP, or FDP penalty tax of the shareholder; and

(b) non-resident withholding tax (NRWT) or resident withholding tax (RWT) of the company.

Relationship with subpart RM

(4) The refund is made despite sections RM 2 to RM 6 (which relate to refunds of excess tax) and RM 18 to RM 21 (which relate to limits on refunds), but subject to the other provisions of this Act.

Adjustments to accounts

(5) A credit or debit (as applicable) arises as at the date of recovery, and must be recorded in—

(a) the imputation credit account of the company; or

(b) if the shareholder is an imputation credit account (ICA) company or foreign dividend payment account (FDPA)

company, the imputation credit account or FDP account of the shareholder.

Defined in this Act: assessment, Commissioner, company, dividend, FDP, FDP account, FDP credit, FDP penalty tax, FDPA company, ICA company, imputation credit, imputation credit account, income tax, notice, NRWT, RWT, shareholder

Compare: 2004 No 35 s CD 29

CD 41 Adjustment if amount repaid later

When released debt repaid

(1) If the release by a company of a shareholder's obligation to pay money to the company has been treated as a dividend and the released amount is later repaid to the company, this section applies to the extent necessary to ensure that—

(a) the dividend is disregarded for the purposes of this Act; and

(b) the resulting refunds are made.

When close company expenditure repaid

(2) If any expenditure of a close company that shareholders in the company believed on reasonable grounds was only for the benefit of the company is nevertheless a dividend and the expenditure is later repaid to the company, this section applies to the extent necessary to ensure that—

(a) the dividend is disregarded for the purposes of this Act; and

(b) the resulting refunds are made.

Amendment of assessments

(3) Section 113B of the Tax Administration Act 1994 requires the Commissioner to amend assessments if given notice of the repayment.

Refunds

(4) If the Commissioner is given notice of the repayment, the Commissioner must refund any relevant tax of the shareholder.

Relationship with sections RM 2 to RM 6

(5) The refund is made despite sections RM 2 to RM 6 (which relate to refunds of excess tax), but subject to the other provisions of this Act.

Repayment of pre-1992 loans

(6) Subsection (1) also applies to the repayment of an amount treated as a dividend under section 4(1)(b) of the Income Tax Act 1976 (as it applied before 1 April 1992 to give the Commissioner a discretion to treat loans as dividends), as if the amount repaid were a released amount that is repaid.

Defined in this Act: amount, assessment, close company, Commissioner, company, dividend, notice, pay, shareholder, tax

Compare: 2004 No 35 s CD 30

CD 42 Adjustment if additional consideration paid

Differences from market value

(1) If a dividend from a company arises because of a difference between the market value of property provided by or to the company and the consideration paid for it, the dividend is disregarded for the purposes of this Act if the conditions in subsections (2) to (4) are met.

Market value

(2) The consideration paid must have been an amount that the company considered was the market value, having taken reasonable steps at the time of the transaction to ascertain a market value.

Difference paid

(3) The recipient of the dividend must have later paid to the company—

(a) sufficient additional consideration to reflect the actual market value of the property at the time of the transaction; or

(b) a refund of any excess consideration paid by the company.

Accounts adjusted

(4) Any necessary adjustments must have been made to the accounts of the company and the recipient for the additional consideration or refund.

Defined in this Act: amount, company, dividend, pay

Compare: 2004 No 35 s CD 31

CD 43 Available subscribed capital (ASC) amount

Formula for calculating amount of available subscribed capital

(1) For a share (the **share**) in a company at any relevant time (the **calculation time**), the amount of **available subscribed capital** is calculated using the formula—

1 July 1994 balance + subscriptions – returns – look-through company returns.

Definition of items in formula

(2) In the formula in subsection (1),—

(a) **1 July 1994 balance** is,—

(i) if the company existed before 1 July 1994, the amount calculated under subsection (3); and

(ii) in any other case, zero:

(b) **subscriptions**, subject to subsections (6) to (21), is the total amount of consideration that the company received, after 30 June 1994 and before the calculation time, for the issue of shares of the same class (the **class**) as the share, ignoring section HB 1 (Look-through companies are transparent):

(c) **returns**, subject to subsections (22) and (23), is the total amount of consideration that the company paid, after 30 June 1994 and before the calculation time, on the cancellation of shares in the relevant class and that was not a dividend because of section CD 22 or CD 24 or a corresponding provision of an earlier Act:

(d) **look-through company returns** is the total amount of consideration that the company paid, before the calculation time, on the cancellation or buyback of shares in the relevant class while the company was a look-through company, ignoring section HB 1.

1 July 1994 balance

(3) The 1 July 1994 balance is calculated using the formula—

$$\frac{\text{paid-up capital + premiums}}{\text{all shares issued}} \times \text{30 June 1994 shares.}$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **paid-up capital**, subject to subsection (5) relating to bonus issues, is the total amount of capital paid up before 1 July 1994 for shares in the class:

(b) **premiums** is the total amount of qualifying share premium paid to the company before 1 July 1994 for shares in the class, but not including amounts applied before 1 July 1994 in paying up capital:

(c) **all shares issued** is the number of shares in the class ever issued at the end of 30 June 1994:

(d) **30 June 1994 shares** is the number of shares in the class on issue at the end of 30 June 1994.

1 July 1994 balance: bonus issues after 30 September 1988

(5) The capital amount included in calculating the 1 July 1994 amount does not include an amount paid up by way of a bonus issue made after 30 September 1988, unless—

(a) the bonus issue was a taxable bonus issue; or

(b) the amount was paid up by application of an amount of qualifying share premium.

Subscriptions amount: taxable bonus issues and debt capitalisations

(6) The subscriptions amount includes,—

(a) in the case of a bonus issue in lieu, the amount offered as an alternative to the bonus issue; and

(b) in the case of a taxable bonus issue that is not a bonus issue in lieu, the amount of the dividend arising from the taxable bonus issue; and

(c) in the case of shares issued on conversion of, or as consideration for the release of, a debt claim against the company, the amount of debt converted or released.

Subscriptions amount: non-taxable and exempt bonus issues

(7) The subscriptions amount does not include—

(a) an amount for a bonus issue if neither subsection (6)(a) nor (b) applies; or

(b) an amount for a taxable bonus issue made to a shareholder to whom the bonus issue was exempt income under section CW 9 (Dividend derived by company from overseas) or CW 10 (Dividend within New Zealand wholly-owned group), or under a correspond-

ing repealed provision, except to the extent to which the taxable bonus issue is fully credited.

Subscriptions amount: reinvested exempt dividends

(8) The subscriptions amount does not include—

(a) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend to a shareholder,—

(i) if the dividend was exempt income of the shareholder under section CW 9 or CW 10, or a corresponding provision of an earlier Act; and

(ii) if the shareholder was not required to withhold and pay an amount of FDP from the dividend by section RG 3 (Obligation to pay FDP); and

(iii) to the extent to which the dividend is not fully credited; or

(b) an amount received by the company if the amount is mainly attributable, directly or indirectly, to the payment by the company of a dividend to a controlled foreign company at a time when the company is also a controlled foreign company, regardless of whether either company is a grey list company or non-attributing Australian CFC.

Subscriptions amount: share-for-share exchanges

(9) Subsection (10) applies if—

(a) the company receives an amount, directly or indirectly, for the issue of shares in the class that is in the form of shares in another company; and

(b) immediately after the issue there are 1 or more persons whose common voting interests (or common market value interests), as measured in section IC 3(3) to (5) (Common ownership: group of companies), in the company and the other company total 10% or greater; and

(c) the receipt is not on an amalgamation.

Subscriptions amount: no uplift for share-for-share exchanges

(10) If subsection (9) applies, the subscriptions amount does not include the amount received to the extent to which it is more

than the total available subscribed capital per share, calculated under the slice rule and calculated after deducting any ineligible capital amount described in subsections (13) and (14) of the shares in the other company at the date on which the amount is received.

Subscriptions amount: company share capital reorganisation

(11) Subsection (12) applies if a company receives an amount for the issue of shares in the class in the form of—

(a) a shareholder giving up rights of membership in the company; or

(b) a shareholder giving up rights of membership in a company associated with the company or that is in substance the same company.

Subscriptions amount: no uplift for share capital reorganisation

(12) If subsection (11) applies, the subscriptions amount does not include the amount received to the extent to which it is more than the total available subscribed capital per share of the rights given up at the date they are given up, calculated—

(a) under the slice rule; and

(b) after deducting any ineligible capital amount described in subsections (13) and (14); and

(c) as if the rights given up were shares, if they are not shares.

Subscriptions amount: when ineligible capital arises

(13) For the purposes of subsections (10) and (12), an ineligible capital amount arises if—

(a) a company (the **acquiring company**) issues shares in consideration for acquiring, directly or indirectly, shares in another company (the **acquired company**); and

(b) the acquired company has issued shares in anticipation of the shares being acquired by the acquiring company; and

(c) those shares issued in anticipation are not a fully credited taxable bonus issue; and

(d) the acquiring company pays an amount in consideration for acquiring the shares in the acquired company in addition to issuing shares in the acquiring company.

Subscriptions amount: amount of ineligible capital

(14) The ineligible capital amount is the lesser of—

(a) the total of the available subscribed capital per share calculated under the slice rule of the shares in the acquired company that is attributable to the shares issued in anticipation, except to the extent to which the shares issued in anticipation are a fully credited taxable bonus issue; and

(b) the total additional amount paid by the acquiring company referred to in subsection (13)(d).

Subscriptions amount: amalgamated company

(15) The subscriptions amount for a company that is an amalgamated company resulting from an amalgamation—

(a) includes an amount, as if it were consideration received at the time of the amalgamation for the issue of the amalgamated company's shares, equal to the available subscribed capital, at the time of the amalgamation, of all shares in the amalgamating companies that are—

(i) of an equivalent class to the class; and

(ii) not held directly or indirectly by an amalgamating company; and

(iii) not shares in the amalgamated company:

(b) does not include any other amount for the agreement of shareholders of an amalgamating company to the amalgamation and the resulting property acquisitions by the amalgamated company.

Subscriptions amount: emigrating company

(16) If a company has been treated under section FL 2 (Treatment of emigrating companies and their shareholders) as paying a distribution to shareholders, the subscriptions amount includes the amount of the distribution that is a dividend.

Subscriptions amount: Maori authority

(17) If the company is a Maori authority, the subscriptions amount includes the taxable income derived by the Maori authority in the 2003–04 tax year or an earlier tax year.

Subscriptions amount: no double counting

(18) The subscriptions amount does not include amounts included in calculating the 1 July 1994 balance.

Subscriptions amount: treasury stock sales excluded

(19) The subscriptions amount does not include the amount of consideration received by a company for disposing of a share if the disposal is taken into account under section CD 25 to determine that the amount paid by the company on a previous share acquisition is not subject to section CD 25(4) to (6).

Subscriptions amount: superannuation fund's interest in GIF

(20) The subscriptions amount of a company that is a group investment fund includes the value of the interest of a superannuation fund in the group investment fund at the end of 31 March 1999.

1 July 1994 and subscriptions amount: foreign currency conversions

(21) If an amount of consideration that a company receives for the issue of shares is payable in a foreign currency, the amount paid is treated, for the purposes of this section, as if it were converted into New Zealand currency at the calculation time.

Returns amount: on-market cancellations by associate

(22) If the acquisition of a share by an associate of the company is within the meaning of an acquisition under paragraph (d) of the definition of **on-market cancellation**, it is treated in the same way for the purposes of calculating the returns amount.

Returns amount: recovered amounts

(23) The returns amount does not include any amount recovered by the company before the calculation time under section 56 of the Companies Act 1993 or an equivalent provision of foreign law.

Returns amount: shares cancelled on amalgamation

(24) If shares in an amalgamated company held by an amalgamating company are cancelled on the amalgamation, the returns amount included in calculating the available subscribed capital amount of a share in the amalgamated company that is of the same class as the cancelled shares is increased by the amount calculated using the formula—

cancelled shares × asc per share.

Definition of items in formula

(25) In the formula in subsection (24),—

(a) **cancelled shares** is the number of cancelled shares:

(b) **asc per share** is the available subscribed capital per share calculated under the slice rule of each cancelled share immediately before the amalgamation.

Meaning of fully credited

(26) In this section, the part of a dividend that is **fully credited** is the part that is calculated using the formula—

$$\text{dividend excluding credits} \times \frac{\text{actual ratio}}{\text{maximum ratio}}.$$

Definition of items in formula

(27) In the formula in subsection (26),—

(a) **dividend excluding credits** is the dividend excluding any attached imputation credit or FDP credit:

(b) **actual ratio** is the total of the imputation ratio and FDP ratio of the dividend (section OZ 13 (Fully credited dividends: modifying actual ratio) may apply to modify this paragraph):

(c) **maximum ratio** is the maximum imputation ratio specified in section OA 18 (Calculation of maximum permitted ratios).

Meaning of qualifying share premium

(28) In this section, **qualifying share premium** means an amount of premium paid to a company for the issue of a share by the company if—

(a) the amount was credited to a share premium account in the company's books; and

(b) the issue of shares was not in consideration for the acquisition, directly or indirectly, of shares in another company.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, associated person, available subscribed capital, bonus issue, bonus issue in lieu, cancellation, common market value interest, common voting interest, company, consideration, controlled foreign company, dividend, exempt income, FDP, FDP credit, FDP ratio, fully credited, grey list company, group investment fund, imputation credit, imputation ratio, look-through company, Maori authority, New Zealand, non-attributing Australian CFC, on-market cancellation, pay, qualifying share premium, share, shareholder, shares of

the same class, slice rule, superannuation fund, tax year, taxable bonus issue, taxable income

Compare: 2004 No 35 s CD 32

Section CD 43(1) formula: amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 29(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CD 43(2)(b): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 29(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CD 43(2)(c): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 29(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CD 43(2)(d): added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 29(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CD 43(8)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 20(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 43(9)(b): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 10(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CD 43(27)(b): amended, on 1 April 2008, by section 316 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 43 list of defined terms **consideration**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 20(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 43 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 29(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CD 43 list of defined terms **non-attributing Australian CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 20(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 44 Available capital distribution amount

Formula for calculating amount of available capital distribution

(1) For a share (the **share**) on the liquidation of the company, the **available capital distribution amount** is calculated using the formula—

$$\text{(receipt – asc per share)} \times \frac{\text{capital gains + (capital property distribute – cost) – capital losses}}{\text{total receipts – total asc.}}$$

Definition of items in formula

(2) In the formula,—

(a) **receipt** is the amount received by the shareholder on the liquidation for the share:

(b) **asc per share** is the available subscribed capital per share calculated under the ordering rule for the share at the time of the liquidation:

(c) **capital gains** is the total of the capital gain amounts available for distribution to shareholders in the company on the liquidation, but excluding any gain occurring when the company distributes property to a shareholder on the liquidation:

(d) **capital property distributed** is the total market value of capital property of the company distributed to shareholders on the liquidation:

(e) **cost** is the total cost to the company of the capital property included in the **capital property distributed** item:

(f) **capital losses** is the total of capital loss amounts of the company arising in the 1992–93 tax year or a later tax year, but excluding any loss occurring when the company distributes property to shareholders on the liquidation:

(g) **total receipts** is the total of all amounts received by shareholders on the liquidation:

(h) **total asc** is the total of the available subscribed capital of all shares in the company at the time of the liquidation.

Positive amounts

(3) Despite subsection (1), the available capital distribution amount per share is zero if either multiplier in the formula is negative.

When foreign company information inadequate

(4) Despite subsection (1), the available capital distribution amount is zero if—

(a) the company is not resident in New Zealand; and
(b) the shareholder cannot obtain sufficient information to calculate the actual available capital distribution amount.

Capital gain amount: bonus issued capital gains

(5) A capital gain amount is treated as still being available for distribution to the extent to which—
(a) it has been applied to pay up a bonus issue made after 30 September 1988; and
(b) the bonus issue is a non-taxable bonus issue; and
(c) the bonus issued share is still on issue at the time of the company's liquidation.

This subsection is overridden by subsection (6).

Capital gain amount: capital gains after 31 March 1988 and before 1992–93

(6) A capital gain amount, derived after 31 March 1988 and before the 1992–93 tax year, is not available for distribution to the extent to which a capital loss amount has arisen for the company in the tax year in which the capital gain amount was derived or in a later tax year before the 1992–93 tax year. Capital loss amounts are offset against capital gain amounts in the chronological order in which each arose and, to the extent offset, are then disregarded for the purposes of this subsection.

Capital gain amount: when capital gain amounts arise

(7) For the purposes of this section, a company derives a capital gain amount if,—
(a) after 31 March 1988, it disposes of capital property for an amount of consideration that is more than the cost of the property to the company, including a disposal that the company is treated as making under section DB 26 (Amount from profit-making undertaking or scheme and not already in income) or DB 27 (Amount from major development or division and not already in income); the capital gain amount is the excess; or
(b) after 31 March 1988, it receives a capital gain, including a gift, and no part is assessable income of the company; the capital gain amount is the amount of the capital gain; or

(c) an amount is derived by the company from another company on liquidation of the other company that is excluded from being a dividend as a result of section CD 26(2)(b) and this section; or

(d) an amount is derived by the company that is attributable to a revaluation of livestock in the 1992–93 tax year or a later tax year under section 86D of the Income Tax Act 1976 or section EC 16 (Valuation under herd scheme) or EC 20 (Herd livestock disposed of before values determined); or

(e) the amount is described in section CZ 9(1) (Available capital distribution amount: 1965 and 1985–1992).

Capital gain amount: amalgamated company inheriting gain

(8) An amalgamated company is treated as deriving a capital gain amount at the time of the amalgamation equal to a capital gain amount of an amalgamating company to the extent to which—

(a) the amalgamating company ends its existence on the amalgamation; and

(b) the amalgamating company's capital gain amount was available for distribution at the time and was not distributed to anyone other than the amalgamated company.

Capital losses amount: when capital losses arise

(9) For the purposes of this section, a company incurs a capital loss if it disposes of capital property for an amount of consideration less than the cost of the property to the company. The capital loss amount is the deficit.

Capital losses amount: company existing before 1 April 1988

(10) In the case of a company that existed before 1 April 1988, the capital losses amount cannot be more than the total of —

(a) the amount of the **capital gains** item in the formula in subsection (1) to the extent derived after 31 March 1988; and

(b) the amount of the **capital property distributed** item, minus the amount of the **cost** item, in the formula.

Associated persons transactions

(10B) No capital gain amount is derived or capital loss amount incurred by a company after 31 March 2010 on disposing of

property under an arrangement with an associated person. This subsection is overridden by subsection (10C).

Close company liquidations

(10C) Subsection (10B) does not apply if—

(a) the company is a close company; and

(b) the associated person is not a company; and

(c) the disposal is on the liquidation of the company.

Related person transactions

[Repealed]

(11) *[Repealed]*

Close companies liquidations

[Repealed]

(12) *[Repealed]*

Reinvested exempt dividends

(13) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of any shares subscribed for by the company in another company does not include any consideration for the subscribed shares that is excluded from the available subscribed capital of the other company under section CD 43(7)(b) or (8).

Amounts written up

(14) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of the relevant capital property is increased to the extent to which—

(a) the value of the property is written up in the company's books; and

(b) because it was attributed to the write-up,—

(i) an amount paid before 11 June 1965 is treated as described in section CZ 9(2)(a); or

(ii) an issue of a share before 1 April 1988 is treated as described in section CZ 9(2)(b).

Relationship with section CZ 9B

(14B) For capital gain amounts derived or capital loss amounts incurred between 1 April 1988 and 31 March 2010, *see* section CZ 9B (Available capital distribution amount: 1988 to 2010).

Meaning of related person

[Repealed]

(15) *[Repealed]*

Look-through relatives and nominees

[Repealed]

(16) *[Repealed]*

Look-through interposed companies

[Repealed]

(17) *[Repealed]*

Meaning of capital property

(18) In this section, **capital property** means property of the company that is not revenue account property.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, assessable income, available capital distribution amount, available subscribed capital, bonus issue, capital property, close company, company, dividend, income, liquidation, non-taxable bonus issue, ordering rule, pay, relative, resident in New Zealand, revenue account property, share, shareholder, tax year, trustee

Compare: 2004 No 35 s CD 33

Section CD 44(7)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 4(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CD 44(10B) heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(10B): inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(10C) heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(10C): inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(11) heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), pursuant to section 21(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(11): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(12) heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), pursuant to section 21(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(12): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(14B) heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(14B): inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(15) heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), pursuant to section 21(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(15): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(16) heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), pursuant to section 21(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(16): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(17) heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), pursuant to section 21(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44(17): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 21(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 44 list of defined terms **assessable income**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 4(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CD 44 list of defined terms **related person**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Attributed repatriation calculation rules [Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 45 When does a person have attributed repatriation from a controlled foreign company?

[Repealed]

Section CD 45: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 45(1)(b): amended, on 1 April 2008, by section 317 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CD 46 New Zealand repatriation amount

[Repealed]

Section CD 46: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 47 New Zealand property amount

[Repealed]

Section CD 47: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 48 Cost of tangible property

[Repealed]

Section CD 48: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 49 Cost of associated party equity

[Repealed]

Section CD 49: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 50 Outstanding balances of financial arrangements

[Repealed]

Section CD 50: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 51 Property transfers between associated persons

[Repealed]

Section CD 51: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CD 52 Unrepatriated income balance

[Repealed]

Section CD 52: repealed (with effect on 30 June 2009), on 6 October 2009, by section 22(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Prevention of double taxation

CD 53 Prevention of double taxation of share cancellation dividends

When this section applies

(1) This section applies when—

(a) a person derives an amount from the cancellation of a share in a company; and

(b) the amount is income of the person under 1 of the following provisions (the **other rules**):

(i) section CB 1 (Amounts derived from business); or

(ii) section CB 3 (Profit-making undertaking or scheme); or

(iii) section CB 4 (Personal property acquired for purpose of disposal); or

(iv) section CB 5 (Business of dealing in personal property); or

(v) any other provision of this Act outside this subpart.

Treatment of amount

(2) For the purposes of the other rules, the amount derived by the person from the company is treated as if it were reduced, but not below zero, by the amount of any dividend derived by the person in relation to the cancellation, excluding any attached imputation credit or FDP credit.

Non-taxable dividends

(3) Subsection (2) does not apply to the extent to which the dividend is exempt income of the person under sections CW 9 to CW 11 (which relate to income from equity).

Subsection (3)(b): formula
[Repealed]

(4) *[Repealed]*

Definition of items in formula
[Repealed]

(5) *[Repealed]*

Relationship of dividend exclusions to other provisions

(6) Subject to subsection (2), the amount derived by the person from the company may be income of the person despite the fact that the amount is excluded from being a dividend by any of sections CD 22 to CD 27.

Relationship with section FA 3

(7) This section is overridden by section FA 3 (Recharacterisation of certain dividends: recovery of cost of shares held on revenue account).

Defined in this Act: amount, cancellation, company, dividend, exempt income, imputation credit, income, income tax, share, tax year

Compare: 2004 No 35 s CD 42

Section CD 53(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 23(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53(3): substituted (with effect on 30 June 2009), on 6 October 2009, by section 23(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53(4) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 23(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53(4): repealed (with effect on 30 June 2009), on 6 October 2009, by section 23(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53(5) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 23(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53(5): repealed (with effect on 30 June 2009), on 6 October 2009, by section 23(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53(5)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 53(5)(b): amended, on 1 April 2008, by section 318 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CD 53 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 23(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CD 53 list of defined terms **FDP credit**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 23(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Returning share transfers

CD 54 Replacement payments

The amount of a replacement payment derived by a person under a returning share transfer is income of the person when it is paid to the person.

Defined in this Act: income, pay, replacement payment, returning share transfer

Compare: 2004 No 35 s CD 43

Subpart CE—Employee or contractor income

Employment income

CE 1 Amounts derived in connection with employment

Income

(1) The following amounts derived by a person in connection with their employment or service are income of the person:

(a) salary or wages or an allowance, bonus, extra pay, or gratuity:

(b) expenditure on account of an employee that is expenditure on account of the person:

(c) *[Repealed]*

(d) a benefit received under a share purchase agreement:

(e) directors' fees:

(f) compensation for loss of employment or service:

(g) any other benefit in money.

Benefit of accommodation

(1B) The market value of the following benefits provided to a person is income of the person if the benefit is provided in relation to an office or position held by them:

(a) the provision of accommodation:

(b) the provision of an accommodation allowance instead of accommodation.

Meaning of accommodation

(2) For the purposes of this section and section CX 28 (Accommodation), **accommodation** means board or lodging, or the use of a house or living premises, or the use of part of a house or living premises.

Defined in this Act: accommodation, amount, expenditure on account of an employee, extra pay, income, salary or wages, share purchase agreement

Compare: 2004 No 35 s CE 1

Section CE 1(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 24(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CE 1(1)(c): repealed (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 30(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CE 1(1B) heading: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 30(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CE 1(1B): inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 30(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CE 1(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 24(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CE 1(2): added (with effect on 1 April 2008), on 6 October 2009, by section 24(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CE 1 list of defined terms **accommodation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 24(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CE 2 Value and timing of benefits under share purchase agreements

What this section does

(1) This section determines the value of a benefit that an employee receives under a share purchase agreement and the allocation of the benefit to a particular income year. If restrictions apply to the disposal of shares received under a share purchase agreement, CE 3 applies.

If employees acquire shares

(2) If an employee acquires shares under a share purchase agreement, the value of the benefit to the employee is the amount by which the value of the shares when they were acquired is more than the amount paid or payable for them. The employee receives the benefit in the income year in which they acquire the shares.

If employees dispose of rights to non-associates

(3) If an employee disposes of their rights under a share purchase agreement to a person who is not associated with them, the value of the benefit is the consideration for the disposal of the rights. The employee receives the benefit in the income year in which they dispose of the rights.

If associates acquire shares

(4) If, following 1 or more transactions between associated persons, an associated person acquires the shares under a share purchase agreement, the value of the benefit is the difference between the value of the shares on the date of acquisition by the associated person and the amount paid or payable for them. If the difference is negative, the value is zero. The employee receives the benefit in the income year in which the associated person acquires the shares.

If associates dispose of rights to non-associates

(5) If, following 1 or more transactions between associated persons, a person who is not an associated person acquires the rights under a share purchase agreement, the value of the benefit is the consideration paid for that disposal. The employee receives the benefit in the income year in which the last associated person disposes of the rights.

If shares transferred when employees end employment or die

(6) The value of the benefit is zero if a share purchase agreement provides unconditionally that, when the employee ends their employment or service or dies, the shares must be transferred to the employer or to the person from whom they were acquired, either without consideration or for a consideration no more than that paid by the employee.

If benefits arise under approved schemes

(7) The value of the benefit is zero if the benefit arises under a share purchase scheme.

Disposal of rights under share purchase option

(8) For the purposes of subsection (3), a disposal of rights under a share purchase agreement includes the cancellation of a share option in return for a cash payment.

Reduction of value of benefit in circumstances relating to non-resident

(9) The value of a benefit arising from a period of employment is reduced, from the value that the benefit would have in the absence of this subsection,—

(a) if, when the employee acquires the shares under the share purchase agreement or disposes of the rights under the share purchase agreement, the employee is a transitional resident; and

(b) by an amount calculated using the formula—

$$\text{value before reduction} \times \frac{\text{period employed as non-resid}}{\text{period employed.}}$$

Defined in this Act: amount, associated person, employee, employer, income year, non-resident, pay, share, share purchase agreement, share purchase scheme, transitional resident

Compare: 2004 No 35 s CE 2

CE 3 Restrictions on disposal of shares under share purchase agreements

Effect of restrictions

(1) When the benefit to an employee under a share purchase agreement is being valued, a restriction in the agreement on the disposal of the shares is taken into account only if the restriction is of a kind described in subsection (2) or (3).

First restriction

(2) The first restriction is one that applies for a period that ends—

(a) at least 8 years after the end of the tax year in which the employee receives the benefit; or

(b) with the date of the employee's death.

Second restriction

(3) The second restriction is one that—

(a) applies for a period that ends—

(i) at least 8 years after the end of the tax year in which the employee receives the benefit; or

(ii) with the date of the employee's death; and

(b) provides that an employee who ends their employment or service before the end of the period must unconditionally transfer some or all of the shares to the employer or to the person from whom the employee acquired them, either without consideration or for a consideration that is no more than that paid by the employee.

Transfers of shares under relationship agreements

(4) If a share purchase agreement does not restrict an employee from transferring the shares under a relationship agreement, but the disposal of the shares by the person to whom the shares are transferred is restricted for a period that ends at least 8 years after the end of the tax year in which the employee would otherwise have received the benefit or after the death of the employee, then the restriction is treated as applying to the employee.

Defined in this Act: employee, employer, pay, relationship agreement, share, share purchase agreement, tax year, year

Compare: 2004 No 35 s CE 3

CE 4 Adjustments to value of benefits under share purchase agreements

The Commissioner may at any time adjust the previously determined value of a benefit under a share purchase agreement if the value is reduced because—

(a) a restriction on disposal exists when the employee disposes of the shares that was not taken into account in valuing the benefit; or

(b) further consideration is required for the shares; or

(c) the shares are reacquired either without consideration or for a consideration no more than that paid by the employee.

Defined in this Act: Commissioner, employee, pay, share, share purchase agreement

Compare: 2004 No 35 s CE 4

Definitions

CE 5 Meaning of expenditure on account of an employee

Meaning

(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee.

Inclusion

(2) **Expenditure on account of an employee** includes a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child. This subsection is overridden by subsection (3)(f) to (i).

Exclusions

(3) **Expenditure on account of an employee** does not include—

(a) expenditure for the benefit of an employee, or a payment made to reimburse an employee, under section CW 17 (Expenditure on account, and reimbursement, of employees):

(b) an allowance for additional transport costs under section CW 18 (Allowance for additional transport costs):

(bb) an amount paid under section CW 17B (Relocation payments) or section CW 17C (Payments for overtime meals and certain other allowances):

(c) expenses that an employee pays in connection with their employment or service to the extent to which the expenditure is their employer's liability, if the employee undertakes to discharge the liability in consideration of the making of the payment by the employer:

(d) expenditure on an employment-related loan to which the fringe benefit tax (FBT) rules apply:

(e) an employer's superannuation contribution:

(f) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, if—

(i) the premium cannot be refunded to, or converted to cash by, the employee or an associated person; and

(ii) the only benefits that are payable under the policy are those payable on the death of the employee, or their spouse, civil union partner, de facto partner, or their child, or those payable because of accident, disease, or sickness of the employee, or their spouse, civil union partner, de facto partner, or their child:

(g) a premium that an employer that is a close company pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, to the extent to which the expenditure is treated as a dividend under subpart CD (Income from equity):

(h) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, if the policy is, or is included in, a superannuation category 1 scheme, a superannuation category 2 scheme, or a superannuation category 3 scheme:

(i) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee, or their spouse, civil union partner, de facto partner, or their child, if the policy is held by or for the trustees of a superannuation category 3 scheme:

(j) a premium for income protection insurance that an employer is liable to pay or make a contribution towards for the benefit of an employee.

Defined in this Act: additional transport costs, associated person, close company, contribution, dividend, employee, employer, employer's superannuation contribution, employment-related loan, expenditure on account of an employee, FBT rules, life insurance policy, pay, premium, superannuation category 1 scheme, superannuation category 2 scheme, superannuation category 3 scheme, trustee

Compare: 2004 No 35 s CE 5

Section CE 5(3)(bb): inserted (with effect on 1 April 2008), on 6 October 2009, by section 25 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CE 6 Meaning of share: when share acquired

Meaning

(1) In sections CE 2 to CE 4 and CE 7, **share** includes a convertible note.

Use in sections CE 2 to CE 4 and CE 7

(2) For the purposes of sections CE 2 to CE 4 and CE 7,—

(a) shares are treated as having been acquired on the date on which the right or option to buy them is exercised; and

(b) if shares or rights are acquired or transferred under an agreement by a trustee for the benefit of an employee to whom section CE 2 applies, the employee is treated as having acquired or transferred the shares or rights.

Defined in this Act: convertible note, employee, share, trustee

Compare: 2004 No 35 s CE 6

CE 7 Meaning of share purchase agreement

In sections CE 1 to CE 4, **share purchase agreement** means an agreement to sell or issue shares in a company to an employee that is entered into in connection with the employee's employment or service, whether or not an employment relationship exists when the employee receives a benefit under the agreement.

Defined in this Act: company, employee, share, share purchase agreement

Compare: 2004 No 35 s CE 7

Attributed income

CE 8 Attributed income from personal services

When this section applies

(1) This section applies when, under sections GB 27 to GB 29 (which relate to the attribution rule), a person is required to attribute an amount to another person.

Income

(2) The amount attributed is income of the person to whom it is attributed.

Timing of income

(3) The amount is allocated to the income year in which it is attributed.

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s CE 8

Restrictive covenants and exit inducement payments

CE 9 Restrictive covenants

When this section applies

(1) This section applies when—

(a) a person (**person A**) gives an undertaking that restricts, or is intended to restrict, their ability to perform services as an employee, office holder, or independent contractor, whether or not the undertaking is legally enforceable; and

(b) a person, whether or not person A, derives an amount for the undertaking.

Income

(2) The amount is income of person A.

Exclusion

(3) Subsection (2) does not apply if—

(a) person A derives the amount because person A or an associated person sells a business to another person (**person B**); and

(b) person A or the associated person and person B agree in writing that the transaction is the sale of a business; and

(c) person A derives the amount as consideration for an undertaking by person A not to provide goods or services in competition with the goods or services that person B provides from the business; and

(d) person A does not provide services to person B after the sale of the business, other than temporarily providing services incidental to the sale.

Sale of all shares in company

(4) For the purposes of subsection (3),—

(a) the sale of a business includes the sale of shares in a company, but only if the sale is of all the shares in the company and the company—
  (i) carries on a business; or
  (ii) directly or indirectly wholly owns another company that carries on a business; and

(b) in that case, the words "person B" in subsection (3)(c) and (d) mean the company that carries on the business, whether the company referred to in paragraph (a)(i) or the company referred to in paragraph (a)(ii).

Sale of part of business

(5) For the purposes of subsection (3), the sale of a business includes the sale of part of a business, if the part can be operated separately.

Avoidance arrangements

(6) Section GB 30 (Arrangements to avoid taxation of restrictive covenant payments) may apply to treat an amount as income under this section.

Defined in this Act: amount, arrangement, associated person, business, company, employee, income, share

Compare: 2004 No 35 s CE 9

CE 10 Exit inducements

An amount is income of a person if they derive it for—

(a) the loss of a vocation; or

(b) the loss of a position; or

(c) leaving a position; or

(d) loss of status.

Defined in this Act: amount, income

Compare: 2004 No 35 s CE 10

Income protection insurance

CE 11 Proceeds from claims under policies of income protection insurance

When this section applies

(1) This section applies when an employer is liable to pay, or contribute to the payment of, a premium under a policy of income

protection insurance for the benefit of a person who is their employee.

Income

(2) An amount that is or would be derived under the policy is income of the person.

Defined in this Act: amount, employee, employer, income, pay

Compare: 2004 No 35 s CE 11

Tax credits

CE 12 Tax credits for personal service rehabilitation payments

When this section applies

(1) This section applies when a person has a tax credit in a tax year under section LB 7 (Tax credits related to personal service rehabilitation payments: providers).

Income

(2) An amount equal to the credit is income of the person in the corresponding income year.

Defined in this Act: amount, corresponding income year, income, income year, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s CE 12

Section CE 12: substituted, on 1 July 2008, by section 319 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart CF—Income from living allowances, compensation, and government grants

CF 1 Benefits, pensions, compensation, and government grants

Income

(1) The following amounts are income:

- (a) an accident compensation payment:
- (b) an education grant:
- (c) an income-tested benefit:
- (d) a living alone payment:
- (e) a New Zealand superannuation payment:
- (f) a parental leave payment paid under Part 7A of the Parental Leave and Employment Protection Act 1987:
- (g) a pension:

(h) a veteran's pension.

Some definitions

(2) In this section,—

accident compensation payment means—

(a) a payment under the Accident Compensation Act 1982 of earnings-related compensation that is not recovered or recoverable by, or refunded to, the chief executive of the administering department:

(b) a payment under section 80(4) of the Accident Compensation Act 1982 that is not recovered or recoverable by, or refunded to, the chief executive of the administering department:

(c) a payment of any of the following kinds under the Accident Rehabilitation and Compensation Insurance Act 1992, none of which is recovered or recoverable:

(i) a vocational rehabilitation allowance under section 25; or

(ii) compensation for loss of earnings under any of sections 38, 39, and 43; or

(iii) compensation for loss of potential earning capacity under section 45 or 46; or

(iv) weekly compensation under any of sections 58, 59, and 60; or

(v) continued compensation under section 138:

(d) a payment under the Accident Insurance Act 1998 of weekly compensation that is not recovered or recoverable:

(e) a payment under a policy of personal accident or sickness insurance under section 188(1)(a) of the Accident Insurance Act 1998, as it was immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000, of compensation for loss of earnings or loss of potential earning capacity as it relates to work-related personal injury:

(f) a payment under the Accident Compensation Act 2001 paid by the Corporation as defined in that Act, of weekly compensation that is not recovered or recoverable under section 248 of that Act:

(g) a payment under section 81(1)(b) of the Accident Compensation Act 2001 paid by the Corporation as defined in that Act, for attendant care as defined in schedule 1, clause 12 of that Act:

(h) a personal service rehabilitation payment for a person under the Accident Compensation Act 2001

education grant means a basic grant or an independent circumstances grant under regulations made under section 303 of the Education Act 1989

pension—

(a) includes a gratuitous payment made to a person in return for services that the person, or their parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant, provided to the payer when the payment would not have been made if the services had not been provided; and

(b) does not include a payment made to the person because of, and within 1 year after, the death of that parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant.

Defined in this Act: accident compensation payment, amount, chief executive of the administering department, education grant, income, income-tested benefit, living alone payment, New Zealand superannuation, pay, pension, personal service rehabilitation payment, veteran's pension, year

Compare: 2004 No 35 s CF 1

Section CF 1(2)(a) **accident compensation payment**: amended (with effect on 1 April 2008), on 7 December 2009, by section 7 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section CF 1(2)(b) **accident compensation payment**: amended (with effect on 1 April 2008), on 7 December 2009, by section 7 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section CF 1(2)(f) **accident compensation payment**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 26 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CF 1(2)(f) **accident compensation payment**: amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CF 1(2)(g) **accident compensation payment**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 26 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CF 1(2)(g) **accident compensation payment**: substituted, on 1 July 2008, by section 320(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CF 1(2)(g) **accident compensation payment**: amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CF 1(2)(h) **accident compensation payment**: added (with effect on 1 April 2008), on 6 October 2009, by section 26 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CF 1(2)(h) **accident compensation payment**: amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CF 1 list of defined terms **personal service rehabilitation payment**: inserted, on 1 July 2008, by section 320(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CF 2 Remission of specified suspensory loans

When this section applies

(1) This section applies when a public authority—

(a) grants a loan to a person for a business that the person carries on; and

(b) designates the loan as a specified suspensory loan.

Income

(2) An amount remitted on the specified suspensory loan is income of the person.

Timing of income

(3) The amount is allocated in equal parts to the income year of remission and the following 2 income years. However, the person may choose to allocate some or all of the amount in the following 2 income years to an earlier income year that is 1 of the 3 income years.

Business ceasing

(4) If the person stops carrying on the business for which the specified suspensory loan was granted, an amount remitted that is allocated to a later income year is allocated to the income year in which the person stops carrying on the business.

Defined in this Act: amount, business, income, income year, public authority

Compare: 2004 No 35 s CF 2

Subpart CG—Recoveries

CG 1 Amount of depreciation recovery income

An amount of depreciation recovery income that a person has is income of the person.

Defined in this Act: amount, depreciation recovery income, income

Compare: 2004 No 35 s CG 1

CG 2 Remitted amounts

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction in an income year of an amount that the person is liable to pay; and

(b) the person's liability for the amount is later remitted or cancelled, wholly or partly; and

(c) the remission or cancellation is not a dividend; and

(d) the person is not required to calculate a base price adjustment by section EW 29 (When calculation of base price adjustment required).

Income

(2) The amount to which the remission or cancellation applies is income of the person.

Timing of income

(3) The income is allocated to the income year in which the remission or cancellation occurs.

How remission or cancellation occurs

(4) Remission or cancellation occurs, for the purposes of this section, in 1 of the following ways:

(a) a liability is remitted to the extent to which the person is discharged from it without fully adequate consideration in money or money's worth:

(b) a liability is cancelled to the extent to which the person is released from it under the Insolvency Act 2006 or the Companies Act 1993 or the laws of a country or territory other than New Zealand:

(c) a liability is cancelled to the extent to which the person is released from it by a deed or agreement of composition with the person's creditors:

(d) a liability is cancelled to the extent to which it is irrecoverable or unenforceable through lapse of time.

Defined in this Act: amount, deduction, dividend, income, income year, New Zealand, pay

Compare: 2004 No 35 s CG 2

CG 3 Bad debt repayment

An amount received by a person for a bad debt for which the person has been allowed a deduction is income of the person.

Defined in this Act: amount, deduction, income

Compare: 2004 No 35 s CG 3

CG 4 Recovered expenditure or loss

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction for expenditure or loss; and

(b) the person recovers some or all of the expenditure or loss, whether through insurance, indemnity, or otherwise; and

(c) the amount recovered, to the extent of the deduction, is not income of the person under any other provision of this Act.

Income

(2) The amount recovered is, to the extent of the deduction, income of the person.

Timing of income

(3) The income is allocated to the income year in which the amount is recovered.

Defined in this Act: amount, deduction, income year, loss

Compare: 2004 No 35 s CG 4

CG 5 Recoveries or receipts by employers from superannuation schemes

When this section applies

(1) This section applies when—

(a) an employer makes an employer's superannuation contribution to a superannuation scheme for their employee's benefit; and
(b) the employer is allowed a deduction for the contribution; and
(c) the employer—
(i) recovers the contribution from the superannuation scheme; or
(ii) receives a benefit in money or money's worth from the superannuation scheme, other than an amount paid to the employer under the scheme in return for contributions made by or for the employer in a personal capacity.

Income

(2) The amount recovered or received is, to the extent of the deduction, income of the employer.

Timing of income

(3) The income is allocated to the income year in which the amount is recovered or received.

Defined in this Act: amount, deduction, employee, employer, employer's superannuation contribution, income, income year, pay, superannuation scheme

Compare: 2004 No 35 s CG 5

CG 5B Receipts from insurance, indemnity, or compensation for interruption or impairment of business activities

When this section applies

(1) This section applies when a person receives an amount of insurance, indemnity, or compensation for an interruption or impairment of business activities resulting from an event.

Income

(2) The part of the insurance, indemnity, or compensation attributable to income that the person would have derived if not for the event is income of the person.

Timing of income

(3) The income is allocated to the earlier of—
(a) the income year in which the amount is received:

(b) the income year in which the amount is reasonably able to be estimated.

Defined in this Act: amount, business, income, income year

Section CG 5B: inserted (with effect on 4 September 2010), on 29 August 2011, by section 5 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CG 6 Receipts from insurance, indemnity, or compensation for trading stock

When this section applies

(1) This section applies when a person receives an amount of insurance, indemnity, or compensation for the loss or destruction of, or damage to,—

(a) trading stock:

(b) anything acquired, manufactured, or produced for a purpose ancillary to a business of manufacturing or producing goods for sale or exchange.

Income

(2) The part of the insurance, indemnity, or compensation that is attributable to the asset is income if—

(a) the person is allowed a deduction in an income year for the cost of the asset; and

(b) the deduction is not for an amount of depreciation loss.

Timing of income

(3) The income is allocated to the income year in which the amount is received.

Defined in this Act: amount, business, deduction, depreciation loss, income, income year trading stock

Compare: 2004 No 35 s CG 6

CG 7 Recoveries after deduction of payments under lease

When this section applies

(1) This section applies, for the purposes of section FA 5 (Assets acquired and disposed of after deduction of payments under lease) when—

(a) a person leases, rents, or hires an asset that is—

(i) plant, machinery, or other equipment; or

(ii) a motor vehicle; or

(iii) a temporary building; and

(b) they are allowed a deduction for the rental payments; and

(c) they acquire the asset and later dispose of it for an amount that is more than the amount paid to acquire the asset.

Income

(2) The amount described in subsection (3) is income of the person.

Consideration less payments or total deductions

(3) The amount is the lesser of the amount by which the consideration on disposal is more than—

(a) the sum of the payments made; or

(b) the total amount of the deductions referred to in subsection (1)(b).

Timing of income

(4) The income is allocated to the income year of the disposal of the asset.

Defined in this Act: amount, deduction, dispose, income, income year, motor vehicle, pay, temporary building

Compare: 2004 No 35 s FC 5(1)

CG 8 Capital contributions

When this section applies

(1) This section applies for the income year (the **first year**) in which a person derives a capital contribution and for the 9 income years after that first year.

Income

(2) For an income year, the amount given by the following formula is income of the person derived in that income year:

$$\frac{\text{capital contribution}}{10.}$$

Definition of item in formula

(3) In the formula, **capital contribution** is the capital contribution that the person derives in the first year.

Exception

(4) This section does not apply for the capital contribution if the person has chosen, in accordance with section DB 64(1)(c) (Capital contributions), to apply section DB 64 instead.

Defined in this Act: amount, capital contribution, income, income year, return of income

Section CG 8: added (with effect on 20 May 2010), on 28 May 2010 (applying for capital contributions derived after 20 May 2010), by section 75(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Subpart CH—Adjustments

Matching rules: revenue account property, prepayments, and deferred payments

CH 1 Adjustment for closing values of trading stock, livestock, and excepted financial arrangements

When this section applies

(1) This section applies when a person has some or all of the following at the end of an income year:

(a) trading stock valued under subpart EB (Valuation of trading stock (including dealer's livestock)):

(b) livestock valued under subpart EC (Valuation of livestock):

(c) excepted financial arrangements that are revenue account property valued under subpart ED (Valuation of excepted financial arrangements):

(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in paragraph (c).

Income: closing value of trading stock

(2) The value of the trading stock, calculated under section EB 3 (Valuation of trading stock), is income of the person in the income year.

Income: closing value of livestock

(3) The value of the livestock, calculated under section EC 2 (Valuation of livestock), is income of the person in the income year.

Income: closing value of excepted financial arrangements

(4) The value of the excepted financial arrangements or share-lending right, calculated under section ED 1 (Valuation of excepted financial arrangements), is income of the person in the income year.

Defined in this Act: excepted financial arrangement, income, income year, original share, revenue account property, share-lending right, share supplier trading stock

Compare: 2004 No 35 s CH 1

CH 2 Adjustment for prepayments

When this section applies

(1) This section applies when a person has, under section EA 3 (Prepayments), an unexpired amount of expenditure at the end of an income year.

Income

(2) The unexpired amount is income of the person in the income year.

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s CH 2

CH 3 Adjustment for deferred payment of employment income

When this section applies

(1) This section applies when a person has, under section EA 4 (Deferred payment of employment income), an unpaid amount of expenditure on employment income that is to be treated as income in an income year.

Income

(2) The unpaid amount is income of the person in the income year.

Defined in this Act: amount, employment income, income, income year, pay

Compare: 2004 No 35 s CH 3

Change to accounting practice

CH 4 Adjustment for change to accounting practice

When this section applies

(1) This section applies when a person has, under section EG 2(2)(a) or (3)(a) (Adjustment for changes to accounting prac-

tice), an amount owing to them or an amount owed by them as quantified in those paragraphs.

Income

(2) An amount quantified and allocated under section EG 2(2)(a) or (3)(a) is income of the person.

Defined in this Act: amount, income

Compare: 2004 No 35 s CH 4

Goods and services tax (GST)

CH 5 Adjustment for GST

Income

(1) An adjustment taken into account under section 20(3)(e) of the Goods and Services Tax Act 1985 relating to the application of goods and services is income of a person.

Exclusion

(2) This section does not apply to an adjustment made in relation to a capital asset.

Timing of income

(3) The income is allocated to the income year in which the amount is calculated.

Defined in this Act: amount, income, income year

Compare: 2004 No 35 s CH 5

Section CH 5(1): amended, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 31(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CH 5(2): substituted, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 31(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CH 5(3) list of defined terms **taxable supply**: repealed, on 1 April 2011, by section 31(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Finance leases

CH 6 Adjustments for certain finance and operating leases

When this section applies

(1) This section applies when an adjustment is made under section FA 11 or FA 11B (which relate to adjustments for leases that become finance leases and certain operating leases).

Income: leases that become finance leases

(2) The amount of a positive adjustment under section FA 11 is income of the lessor or the lessee, as applicable, in the income year in which the lease becomes a finance lease.

Income: operating leases entered into before 20 June 2007

(3) The amount of the adjustment under section FA 11B is income of the lessor in the income year after the income year in which 20 June 2007 falls.

Defined in this Act: amount, finance lease, income, income year, lease, operating lease

Compare: 2004 No 35 ss FC 8H(6), FC 8I(6)

Section CH 6: substituted, on 1 April 2008, by section 321 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Avoidance and non-market transactions

CH 7 Adjustment for avoidance arrangements

An amount treated as income of a person under any of the following sections is income of the person:

(a) section GA 1 (Commissioner's power to adjust):

(b) section GB 23 (Excessive remuneration to relatives):

(c) section GB 26 (Arrangements involving repatriation of commercial bills):

(d) section GB 29 (Attribution rule: calculation):

(e) section GB 46 (Deferral of surplus deductions from arrangements).

Defined in this Act: amount, arrangement, Commissioner, income, relative

CH 8 Market value substituted

Transfer pricing arrangements

(1) An amount treated as income of a person under section GB 7 (Arrangements involving CFC control interests) is income of the person.

Disposal at below market value

(2) A person may be treated as deriving an amount—

(a) on disposal of trading stock under section GC 1 (Disposals of trading stock at below market value):

(b) on the lease of a property under section GC 5 (Leases for inadequate rent).

Defined in this Act: amount, income, lease trading stock

Interest apportionment on thin capitalisation

CH 9 Interest apportionment: excess debt entity

When this section applies

(1) This section applies when an excess debt entity is required under section FE 6 (Apportionment of interest by excess debt entity) to apportion its interest expenditure.

Income

(2) The amount calculated under section FE 6(2) is treated as income of the excess debt entity for the income year.

Defined in this Act: amount, excess debt entity, income, income year, interest

Compare: 2004 No 35 s FG 8(1)

CH 10 Interest apportionment: reporting bank

When this section applies

(1) This section applies when a reporting bank is required under section FE 7 (Apportionment of interest by reporting bank) to apportion its interest expenditure.

Income

(2) The amount calculated under section FE 7(2) is treated as income of the reporting bank for the income year in which the measurement period falls.

Defined in this Act: amount, income, income year, interest, measurement period, reporting bank

Compare: 2004 No 35 s FG 8B(1)

Subpart CO—Income from voluntary activities

Subpart CO: inserted (with effect on 1 April 2009), on 6 October 2009, by section 27(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CO 1 Income from voluntary activities

Income

(1) An amount derived by a person in undertaking a voluntary activity is income of the person.

Relationship with section CW 62B

(2) This section is overridden by section CW 62B (Voluntary activities).

Defined in this Act: amount, income

Section CO 1: inserted (with effect on 1 April 2009), on 6 October 2009, by section 27(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart CP—Income from portfolio investment entities

CP 1 Attributed income of investors in multi-rate PIEs

When this section applies

(1) This section applies when a multi-rate PIE attributes an amount of income for an income year calculated under sections HM 35, HM 35C, and HM 36 (which relate to the attribution of amounts to investors) to a person who is an investor in the PIE.

Income

(2) The amount is income of the person in the income year of the person in which the PIE's income year ends.

Defined in this Act: amount, income, income year, investor, multi-rate PIE, PIE

Compare: 2007 No 97 s CP 1

Section CP 1: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 28(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CP 1(1): amended, on 29 August 2011, by section 6 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Subpart CQ—Attributed income from foreign equity

Attributed controlled foreign company income

CQ 1 Attributed controlled foreign company income

Attributed controlled foreign company (CFC) income of a person is income.

Defined in this Act: attributed CFC income, controlled foreign company, income

Compare: 2004 No 35 s CQ 1

CQ 2 When attributed CFC income arises

General rule

(1) A person has **attributed CFC income** from a foreign company in an income year if—

(a) the foreign company is a CFC at any time during 1 of its accounting periods, under sections EX 1 to EX 7 (which relate to the definition of a controlled foreign company); and

(b) the accounting period ends during the income year; and

(c) the person has an income interest in the foreign company for the accounting period, under sections EX 8 to EX 13 (which relate to calculating a person's income interest); and

(d) at any time in the accounting period, the person is a New Zealand resident who is not a transitional resident; and

(e) the person's income interest is 10% or more for the part of the accounting period during which the person is a New Zealand resident who is not a transitional resident, under sections EX 14 to EX 17 (which relate to the 10% threshold); and

(f) either—

(i) the CFC has net attributable CFC income for the accounting period under section EX 20C (Net attributable CFC income or loss); or

(ii) the special rule in section EX 19 (Taxable distribution from non-complying trust) applies because the CFC gets a distribution from a non-complying trust; and

(g) *[Repealed]*

(h) the CFC is not a non-attributing active CFC for the accounting period, under section EX 21B (Non-attributing active CFCs); and

(i) the CFC is not a non-attributing Australian CFC for the accounting period, under section EX 22 (Non-attributing Australian CFCs).

Special rule: branch equivalent FIF with taxable distribution

(2) A person also has **attributed CFC income** if section EX 50(5) (Branch equivalent method) applies because—

(a) the person has an attributing interest in a foreign investment fund (FIF); and

(b) the person is using the branch equivalent method to calculate FIF income; and

(c) the FIF receives a taxable distribution from a non-complying trust.

Special rule: attributed CFC amount from personal services

(2B) If a person and a non-attributing active CFC or non-attributing Australian CFC meet the requirements of subsection (1)(a) to (e) and the CFC derives income from personal services that is an attributable CFC amount under section EX 20B(3)(h) (Attributable CFC amount), the person has **attributed CFC income** from the CFC equal to the product of—

(a) the person's income interest in the CFC:

(b) the amount by which the CFC's income from personal services exceeds the expenditure incurred by the CFC in deriving the income from personal services.

Treated as derived while person New Zealand resident

(3) Attributed CFC income of a person who has stopped being a New Zealand resident is treated as being derived while the person was a New Zealand resident.

Dividend income can arise
[Repealed]

(4) *[Repealed]*

Defined in this Act: accounting period, attributable CFC amount, attributed CFC income, attributed repatriation, attributing interest, branch equivalent method, CFC, distribution, dividend, FIF, FIF income, foreign company, grey list, income, income interest, income year, net attributable CFC income, New

Zealand resident, non-attributing active CFC, non-attributing Australian CFC, non-complying trust, taxable distribution, transitional resident

Compare: 2004 No 35 s CQ 2

Section CQ 2(1)(f)(i): substituted (with effect on 30 June 2009), on 6 October 2009, by section 29(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(1)(g): repealed (with effect on 30 June 2009), on 6 October 2009, by section 29(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(1)(h): added (with effect on 30 June 2009), on 6 October 2009, by section 29(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(1)(i): added (with effect on 30 June 2009), on 6 October 2009, by section 29(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(2B) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 29(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(2B): inserted (with effect on 30 June 2009), on 6 October 2009, by section 29(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(4) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 29(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2(4): repealed (with effect on 30 June 2009), on 6 October 2009, by section 29(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2 list of defined terms **attributable CFC amount**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 29(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2 list of defined terms **branch equivalent income**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 29(5)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2 list of defined terms **net attributable CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 29(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2 list of defined terms **non-attributing active CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 29(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 2 list of defined terms **non-attributing Australian CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 29(5)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CQ 3 Calculation of attributed CFC income

The amount of attributed CFC income is calculated under the rules in sections EX 18 to EX 20 (which relate to the calculation of attributed CFC income or loss).

Defined in this Act: amount, attributed CFC income

Compare: 2004 No 35 s CQ 3

Foreign investment fund income

CQ 4 Foreign investment fund income

FIF income of a person is income.

Defined in this Act: FIF income, income

Compare: 2004 No 35 s CQ 4

CQ 5 When FIF income arises

General rule

(1) A person has **FIF income** in an income year if—

(a) at any time in the year, the person has—

(i) rights in a foreign company, or a foreign superannuation scheme, or an entity listed in schedule 25, part A (Foreign investment funds); or

(ii) rights under a life insurance policy issued by a non-resident; and

(b) at that time, the rights are an attributing interest in a FIF under section EX 29 (Attributing interests in FIFs); and

(c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of—

(i) the exemption for ASX-listed Australian companies in section EX 31 (Exemption for ASX-listed Australian companies):

(ii) the exemption for Australian unit trusts with 25% turnover in section EX 32 (Exemption for Australian unit trusts with 25% turnover):

(iii) the exemption for Australian regulated superannuation savings in section EX 33 (Exemption for Australian regulated superannuation savings):

(iv) the CFC rules exemption in section EX 34 (CFC rules exemption):

(v) the exemption for a 10% or greater interest in a grey list company in section EX 35 (Exemption for 10% or greater interest in grey list company):

(vi) the 10-year exemption for a venture capital company emigrating to a grey list country in section EX 36 (Venture capital company emigrating to grey list country: 10-year exemption):

(vii) the 10-year exemption for a grey list company owning a New Zealand venture capital company in section EX 37 (Grey list company owning New Zealand venture capital company: 10-year exemption):

(viii) the exemption for an employee share purchase scheme of a grey list company in section EX 38 (Exemption for employee share purchase scheme of grey list company):

(ix) the terminating exemption for a grey list company with numerous New Zealand shareholders in section EX 39 (Terminating exemption for grey list company with numerous New Zealand shareholders):

(x) the terminating exemption for a grey list company investing in Australasian equities in section EZ 32 (Terminating exemption for grey list FIF investing in Australasian listed equities):

(xi) the foreign exchange control exemption in section EX 40 (Foreign exchange control exemption):

(xii) the exemption for a non-resident or transitional resident in section EX 41 (Income interest of non-resident or transitional resident):

(xiii) the immigrant's accrued superannuation entitlement exemption in section EX 42 (New resident's accrued superannuation entitlement exemption):

(xiv) the non-resident's annuity or pension exemption in section EX 43 (Non-resident's pension or annuity exemption); and

(d) if the person is a natural person and not acting as a trustee, the total cost, calculated under section EX 68 (Measurement of cost), of attributing interests in FIFs that the person holds at any time in the year when the person is a New Zealand resident is more than $50,000; and

(e) if the person is acting as trustee of a trust that meets the requirements of subsection (5), the total cost, calculated under section EX 68, of attributing interests in FIFs that the person holds at any time in the year is more than $50,000; and

(f) at any time in the year, the person is a New Zealand resident who is not a transitional resident and holds the attributing interest; and

(g) under the relevant calculation method chosen by the person, an income amount is calculated for the year under sections EX 44 to EX 56 (which relate to the calculation of FIF income or loss), EX 60 or EX 61 (which relate to top-up FIF income).

Treatment of transaction under section EX 63, EX 65, or EX 67

(1B) If a person is treated under section EX 63(5), EX 65, or EX 67 (which relate to changes in method or application of FIF rules) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (e).

Look-through calculation methods

(2) Despite subsection (1), if the calculation method is the accounting profits method or branch equivalent method,—

(a) FIF income arises in the income year only if the relevant accounting period of the FIF ends during the year; and

(b) the tests in subsection (1)(a), (b), (c), and (f) are applied on the basis that references in subsection (1)(a), (b), (c), and (f) to any time in the year are read as references to any time in the relevant accounting period.

FIF income from CFC with FIF interest

(3) **FIF income** also includes an additional amount that a person with an income interest of 10% or more in a CFC has in an

income year under section EX 58 (Additional FIF income or loss if CFC owns FIF), whether or not the CFC is a non-attributing Australian CFC under section EX 22 (Non-attributing Australian CFCs).

Treated as derived while person New Zealand resident

(4) FIF income of a person who has stopped being a New Zealand resident is treated as being derived while the person was a New Zealand resident.

Requirements for trustees

(5) Subsection (1)(e) applies to the trustee of a trust for an income year if—

(a) the trust is of the estate of a deceased person and the income year begins on or before the day that is 5 years after the person's death:

(b) the settlor of the trust—

(i) is a relative or legal guardian of a beneficiary of the trust, or a person associated with a relative or legal guardian of a beneficiary of the trust; and

(ii) is required by a court order to pay damages or compensation to the beneficiary:

(c) the settlor of the trust—

(i) is the estate of a deceased person; and

(ii) is required by a court order to settle on the trust the proceeds of damages or compensation for the beneficiaries of the trust:

(d) the settlor of the trust is the Accident Compensation Corporation.

Defined in this Act: accounting period, accounting profits method, amount, associated person, attributing interest, branch equivalent method, calculation method, CFC, FIF, FIF income, foreign company, foreign superannuation scheme, grey list, grey list company, income, income interest, income year, life insurance policy, New Zealand resident, non-attributing Australian CFC, non-resident, relative, shareholder, transitional resident, trustee, unit trust

Compare: 2004 No 35 s CQ 5

Section CQ 5(1)(d): amended, on 1 April 2008, by section 322(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CQ 5(1)(e): amended, on 1 April 2008, by section 322(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CQ 5(1B) heading: inserted, on 1 April 2008, by section 322(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CQ 5(1B): inserted, on 1 April 2008, by section 322(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CQ 5(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 30(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 5(3): substituted (with effect on 30 June 2009), on 6 October 2009, by section 30(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 5 list of defined terms **non-attributing Australian CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 30(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CQ 6 Calculation of FIF income

The amount of any FIF income is calculated, using the relevant calculation method, under sections EX 44 to EX 61 (which relate to the calculation of FIF income or loss).

Defined in this Act: amount, calculation method, FIF income

Compare: 2004 No 35 s CQ 6

CQ 7 Treatment of attributing interests subject to returning share transfer

[Repealed]

Section CQ 7: repealed on 6 October 2009, by section 31 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CQ 7: added, on 1 April 2008, by section 323 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart CR—Income from insurance

Subpart CR heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 32 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CR 1 Policyholder base income of life insurer

If, but for this section, a life insurer has an amount of policyholder base income for an income year, and that amount is not income under this Part, the amount is income of the life insurer for the income year.

Defined in this Act: amount, income, income year, life insurer, policyholder base income

Section CR 1: substituted, on 1 July 2010, by section 33(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CR 2 Shareholder base income of life insurer

If, but for this section, a life insurer has an amount of shareholder base income for an income year, and that amount is not income under this Part, the amount is income of the life insurer for the income year.

Defined in this Act: amount, income, income year, life insurer, shareholder base income

Section CR 2: substituted, on 1 July 2010, by section 33(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CR 3 Income of non-resident general insurer

What this section applies to

(1) This section applies to a premium that is treated as having a source in New Zealand under section YD 8 (Apportionment of premiums derived by non-resident general insurers) if—

- (a) an insured person pays the premium to an insurer for insurance of any of the kinds described in subsection (3); and
- (b) the premium meets all 3 conditions in subsection (4); and
- (c) the premium is not excluded from the application of this section by section YD 8(6).

Amount of income

(2) Ten percent of the gross premium derived by the insurer is income of the insurer.

Kinds of insurance

(3) The kinds of insurance referred to in subsection (1)(a) are—

- (a) general insurance:
- (b) a guarantee against risk given by an insurer to an insured person if—
  - (i) the insured person is liable to pay a premium to the insurer for the guarantee; and
  - (ii) the insured person is associated with the insurer:

(c) a guarantee against risk given by an insurer to an insured person if—

(i) the insured person is liable to pay a premium to the insurer for the guarantee; and

(ii) the risk arises from money lent to the insured person; and

(iii) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and

(iv) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee.

Conditions for premium

(4) The premium referred to in subsection (1)(b) is—

(a) a premium derived by an insurer who is not resident in New Zealand when they derive it:

(b) a premium that is not attributable to a fixed establishment of the insurer in New Zealand through which they carry on business in New Zealand:

(c) a premium to which at least 1 of the following applies:

(i) the insured person from whom the premium is derived is resident in New Zealand; or

(ii) the insurance contract from which the premium is derived is offered or entered into in New Zealand; or

(iii) the insurance contract from which the premium is derived is entered into for the purposes of a business carried on by the insured person in New Zealand through a fixed establishment in New Zealand.

Defined in this Act: amount, business, fixed establishment, general insurance, gross, income, insurance, insurance contract, insured person, insurer, money lent, New Zealand, non-resident, offered or entered into in New Zealand, pay, premium, resident in New Zealand, source in New Zealand

Compare: 2004 No 35 ss FC 13, FC 14(2)

Section CR 3(1): amended, on 21 December 2010, by section 32(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CR 3 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 32(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CR 3 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 32(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

CR 4 Income for general insurance outstanding claims reserve

What this section applies to

(1) This section applies for—

(a) an insurer who—

(i) uses IFRS 4, Appendix D for general insurance contracts:

(ii) is a life insurer who has general insurance contracts; and

(b) general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies.

Formula for insurer's OCR income

(2) For an income year (the **current year**), an insurer has income of the amount by which zero is less than the amount calculated using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

Definition of items in formula

(3) In the formula,—

(a) **opening outstanding claims reserve** is—

(i) the amount of the insurer's closing outstanding claims reserve for the income year before the current year (the **prior year**); or

(ii) the amount of the insurer's reserve for outstanding claims liability, calculated at the end of the prior year, using the basis the insurer used for tax purposes in that prior year, if the current year is the first year that this section applies to the insurer:

(b) **closing outstanding claims reserve** is the amount of the insurer's outstanding claims reserve, calculated at the end of the current year.

Defined in this Act: amount, IFRS 4, income, income year, insurer, life insurer, outstanding claims reserve, premium

Section CR 4: added (with effect on 1 April 2008), on 6 October 2009, by section 34(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CR 4 list of defined terms **general insurance contract**: repealed (with effect on 1 April 2008), on 7 September 2010, by section 11(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CR 4 list of defined terms **premium**: added (with effect on 1 April 2008), on 7 September 2010, by section 11(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart CS—Superannuation funds

[Repealed]

Subpart CS: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Withdrawals

[Repealed]

Heading: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 1 Withdrawals

[Repealed]

Section CS 1: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Exclusions

[Repealed]

Heading: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 2 Exclusions of withdrawals of various kinds

[Repealed]

Section CS 2: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 3 Exclusion of withdrawal on grounds of hardship

[Repealed]

Section CS 3: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 4 Exclusion of withdrawal to settle division of relationship property

[Repealed]

Section CS 4: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 5 Exclusion of withdrawal paid as annuity or pension

[Repealed]

Section CS 5: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 6 Exclusion of withdrawal on partial retirement

[Repealed]

Section CS 6: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 7 Exclusion of withdrawal when member ends employment

[Repealed]

Section CS 7: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 8 Exclusion of withdrawal when member ends employment: lock-in rule

[Repealed]

Section CS 8: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 9 Exclusion of withdrawal from defined benefit fund when member ends employment

[Repealed]

Section CS 9: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 10 When member treated as not ending employment

[Repealed]

Section CS 10: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 10B Exclusion of permitted withdrawals from KiwiSaver schemes and complying superannuation funds

[Repealed]

Section CS 10B: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Transfers to or from superannuation funds and superannuation schemes

[Repealed]

Heading: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 11 Transfer by superannuation fund to another superannuation fund

[Repealed]

Section CS 11: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 12 Transfer from superannuation scheme to superannuation fund

[Repealed]

Section CS 12: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 13 Investment by superannuation fund in another superannuation fund

[Repealed]

Section CS 13: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Treatment of amounts when superannuation fund becomes superannuation scheme or vice versa

[Repealed]

Heading: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 14 Superannuation fund becomes superannuation scheme

[Repealed]

Section CS 14: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 15 Superannuation fund becomes foreign superannuation scheme

[Repealed]

Section CS 15: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 16 Superannuation scheme becomes superannuation fund

[Repealed]

Section CS 16: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Treatment of distributions when superannuation fund wound up
[Repealed]

Heading: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 17 Superannuation fund wound up
[Repealed]

Section CS 17: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Treatment of loans to members
[Repealed]

Heading: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CS 18 Value of loan treated as fund income
[Repealed]

Section CS 18: repealed, on 1 April 2011, by section 12 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart CT—Income from petroleum mining

CT 1 Disposal of exploratory material or petroleum mining asset

Income: disposal of exploratory material

(1) The consideration that a petroleum miner derives from disposing of exploratory material is income of the petroleum miner.

Income: disposal of petroleum mining asset

(2) The consideration that a petroleum miner derives from disposing of a petroleum mining asset is income of the petroleum miner.

Relationship with section CX 43

(3) This section is overridden by section CX 43 (Farm-out arrangements for petroleum mining).

Defined in this Act: consideration, dispose, exploratory material, income, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s CT 1

CT 2 Damage to assets

The consideration that a petroleum miner derives for damage to an asset of the kind described in section CT 7(1)(b) or (c) is income of the petroleum miner.

Defined in this Act: consideration, income, petroleum miner

Compare: 2004 No 35 s CT 2

CT 3 Exploratory well used for commercial production

When this section applies

(1) This section applies when a petroleum miner uses an exploratory well for commercial production of petroleum, whether or not the well has been sealed and abandoned previously.

Income

(2) An amount equal to the amount of expenditure described in subsection (3) is treated as income of the petroleum miner.

Exploratory well expenditure

(3) The expenditure is exploratory well expenditure to which all the following apply:

(a) it is directly attributable to drilling or acquiring the exploratory well; and

(b) the petroleum miner or a holder of a previous interest in the well is or has been allowed a deduction for it as petroleum exploration expenditure; and

(c) it is incurred in relation to the permit held currently by the petroleum miner, or a previous permit surrendered in exchange for the permit currently held under section 32(3) of the Crown Minerals Act 1991.

Timing of income

(4) The amount is allocated to the income year in which commercial production from the well starts.

Part interest

(5) If the petroleum miner has a part interest in the exploratory well when that well is first used for commercial production, the amount of expenditure treated as income under this section must bear the same proportion to the exploratory well expenditure specified in subsection (3) as that part interest bears to all interests in the well.

Defined in this Act: amount, commercial production, deduction, exploratory well, exploratory well expenditure, income, income year, permit, petroleum, petroleum exploration expenditure, petroleum miner, seal and abandonment

Compare: 2004 No 35 s CT 3

CT 4 Partnership interests and disposal of part of asset

In this subpart, and in sections CX 42 (Disposal of ownership interests in controlled petroleum mining entities) and CX 43 (Farm-out arrangements for petroleum mining), unless the context requires otherwise,—

(a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their interest in the income of the partnership:

(b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: income, petroleum permit

Compare: 2004 No 35 s CT 4

CT 5 Petroleum mining operations outside New Zealand

This subpart, and sections CX 42 (Disposal of ownership interests in controlled petroleum mining entities) and CX 43 (Farm-out arrangements for petroleum mining), apply, with any necessary modifications, to a petroleum miner who undertakes petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by this subpart and sections CX 42 and CX 43.

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s CT 5

Definitions

CT 6 Meaning of petroleum miner

Meaning

(1) **Petroleum miner**, for a permit area, means a person who undertakes petroleum mining operations in the permit area.

Exclusion

(2) **Petroleum miner** does not include a person who undertakes petroleum mining operations for consideration that is not in the form of, or contingent on,—

(a) the production of petroleum from the permit area; or

(b) profits from the production of petroleum from the permit area; or

(c) an interest or a right to an interest in the petroleum permit.

Activities: inclusions
[Repealed]

(3) *[Repealed]*

Activities: exclusions
[Repealed]

(4)

Defined in this Act: consideration, permit area, petroleum, petroleum miner, petroleum mining operations petroleum permit

Compare: 2004 No 35 s CT 6

Section CT 6(1): substituted, on 1 April 2008, by section 326(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6(2): amended, on 1 April 2008, by section 326(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6(3) heading: repealed, on 1 April 2008, by section 326(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6(3): repealed, on 1 April 2008, by section 326(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6(4) heading: repealed, on 1 April 2008, by section 326(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6(4): repealed, on 1 April 2008, by section 326(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6 list of defined terms **petroleum mining operations**: inserted, on 1 April 2008, by section 326(4)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CT 6 list of defined terms **removal or restoration operations**: repealed, on 1 April 2008, by section 326(4)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CT 6B Meaning of petroleum mining operations

Meaning

(1) **Petroleum mining operations** means an activity included in those described in subsection (2) and not excluded by subsection (3).

Activities: inclusions

(2) The activities are those carried out in connection with—

- (a) prospecting or exploring for petroleum:
- (b) developing a permit area for producing petroleum:
- (c) producing petroleum:
- (d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:
- (e) removal or restoration operations.

Activities: exclusions

(3) The activities do not include further treatment to which all the following apply:

- (a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and
- (b) it is done—
  - (i) by liquefaction or compression; or
  - (ii) for the extraction of constituent products; or
  - (iii) for the production of derivative products; and
- (c) it is not treatment at the production facilities.

Defined in this Act: permit area, petroleum, removal or restoration operations

Compare: 2004 No 35 s CT 6B.

Section CT 6B: inserted, on 1 April 2008, by section 327 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CT 7 Meaning of petroleum mining asset

Meaning

(1) **Petroleum mining asset** means—

- (a) a petroleum permit:
- (b) an asset that—

(i) is acquired by a petroleum miner for the purpose of carrying on an activity described in subsection (3) in a permit area or areas; and

(ii) has an estimated useful life that depends on, and is no longer than, the remaining life of the petroleum permit for the area or areas:

(c) a share or partial interest in an asset described in paragraph (a) or (b).

Exclusion

(2) **Petroleum mining asset** does not include land.

Activities: inclusions

(3) The activities are those carried out in connection with—

(a) developing a permit area for producing petroleum:

(b) producing petroleum:

(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:

(d) removal or restoration operations.

Activities: exclusions

(4) The activities do not include further treatment to which all the following apply:

(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and

(b) it is done—

(i) by liquefaction or compression; or

(ii) for the extraction of constituent products; or

(iii) for the production of derivative products; and

(c) it is not treatment at the production facilities.

Defined in this Act: land, permit area, petroleum, petroleum miner, petroleum mining asset, petroleum permit, removal or restoration operations

Compare: 2004 No 35 s CT 7

Subpart CU—Income from mineral mining

Introductory provision

CU 1 Mining company's 2 kinds of income

Income derived by a mining company is either income from mining or income other than income from mining.

Defined in this Act: income, income from mining, mining company

Compare: 2004 No 35 s CU 1

Income from mining

CU 2 Mining company that processes or manufactures

When this section applies

(1) This section applies when—

(a) a mining company—

(i) obtains specified minerals from its mining operations; or

(ii) through a combination of its mining operations and its associated mining operations, brings specified minerals to the stage at which they are ready to be processed or used in a manufacturing operation; and

(b) the company produces products by processing the specified minerals or using them in a manufacturing operation; and

(c) the company disposes of the products.

Income classified

(2) For the income year in which the mining company disposes of the products, the Commissioner must classify the mining company's income from the disposal as income from mining or income other than income from mining. The Commissioner must classify the income by apportioning it under subsection (3) or by making a decision under subsection (4).

Apportionment

(3) In apportioning the income, the Commissioner must make an appropriate apportionment of the value of the stock of products on hand at the start and end of the income year and must take into account the matters the Commissioner considers relevant and appropriate, including—

(a) the capital employed, or the expenditure or losses incurred, in the mining operations, associated mining operations, and processing of the specified minerals or the use of the specified minerals in a manufacturing operation:

(b) the extent of the steps involved in the mining operations, associated mining operations, and processing of the specified minerals or the use of the specified minerals in a manufacturing operation.

Decision

(4) In making a decision, the Commissioner must take into account the amount that would have been—

(a) the value received or receivable for the specified minerals if they had been disposed of in the income year to a wholly independent person in the state in which they resulted from the mining operations or the combination of mining operations and associated mining operations; and

(b) the value of the products on hand at the end of the income year if the specified minerals from which they came had been valued for the purposes of subpart EB (Valuation of trading stock (including dealer's livestock)) in the state in which they resulted from the mining operations or the combination of mining operations and associated mining operations.

Defined in this Act: amount, associated mining operations, Commissioner, income, income from mining, income year, mining company, mining operations, specified mineral

Compare: 2004 No 35 s CU 2

CU 3 Disposal of assets

When this section applies

(1) This section applies when—

(a) a mining company acquires an asset, including mining prospecting information or a mining or prospecting right, by incurring mining exploration expenditure or mining development expenditure; and

(b) the company, whether or not still a mining company, disposes of the asset.

Exclusion

(2) This section does not apply when—

(a) a mining company acquires an asset, including mining prospecting information or a mining or prospecting right, by incurring mining exploration expenditure or mining development expenditure; and

(b) the company, whether or not still a mining company, passes the ownership of the asset to another person; and

(c) the passing of ownership is not because the asset is sold to the other person; and

(d) the company does not receive, and is not entitled to receive, consideration for the passing of ownership; and

(e) the company and the other person deal with each other over the passing of ownership at arm's length, even if they are associated persons at a time relevant to the passing of ownership.

Income

(3) The following are income from mining of the mining company:

(a) the consideration that the company derives from the disposal of the asset, unless paragraph (b) applies:

(b) in the cases described in subsections (4) to (7), the consideration specified in subsection (4) or (5) or (7).

Consideration other than in cash

(4) If some or all of the consideration for the disposal is other than in cash, and the disposal is not to an associated person, the consideration that is not in cash has the value agreed between the company and the person to whom the asset is disposed of. If the company and the person do not agree, or if the Commissioner considers that the value agreed is unreasonable, the consideration that is not in cash has the value that the Commissioner decides.

Disposal to associated person

(5) If the disposal is to an associated person, the consideration for the disposal is the market value that the asset has on the date of the disposal.

When subsection (7) applies

(6) Subsection (7) applies when—

(a) the company disposes of the asset to a person acquiring it for use in carrying on their mining operations or associated mining operations or a mining venture; and

(b) the company and the person give notice to the Commissioner that they have agreed to apply subsection (7); and

(c) the notice is given to the Commissioner within 1 of the following times:

(i) the time in which the company is required to file a return of income for the income year in which it disposes of the asset:

(ii) a further time allowed by the Commissioner; and

(d) the notice specifies an amount that—

(i) is no more than the market value that the asset has at the date of the disposal; and

(ii) is not less than the amount of any part of the consideration that is in cash.

Amount specified by parties to disposal

(7) The consideration for the disposal is the amount that the company and the person specify in the notice.

Defined in this Act: amount, asset, associated mining operations, associated person, Commissioner, company, income year, mining company, mining development expenditure, mining exploration expenditure, mining operations, mining or prospecting right, mining prospecting information, mining venture, notice, return of income

Compare: 2004 No 35 s CU 3

CU 4 Compensation for lost, destroyed, or damaged assets

When sections CU 5 to CU 8 apply

(1) Sections CU 5 to CU 8 apply when—

(a) a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure; and

(b) the company is allowed a deduction for the expenditure under—

(i) section DU 1 (Mining exploration expenditure and mining development expenditure); or

(ii) section DZ 12(1)(a) (Mineral mining: 1954–2005); and

(c) the asset is lost, destroyed, or damaged; and

(d) the company, whether or not still a mining company,—

(i) is paid insurance, indemnity, or compensation for the loss, destruction, or damage; or

(ii) is entitled to receive payment for any scrap of the asset that it disposes of.

What sections CU 5 to CU 8 apply to

(2) Sections CU 5 to CU 8 apply to any asset (**asset A**) that a mining company acquires by incurring mining exploration expenditure or mining development expenditure, except for an asset (**asset B**) used to derive income other than income from mining to which section CU 10 is applied. Sections CU 5 to CU 8 apply to asset B only if it is later used to derive income from mining and section DU 5 (Non-mining asset used to derive income from mining) is applied to it.

Defined in this Act: asset, company, deduction, income, income from mining, mining company, mining development expenditure, mining exploration expenditure, pay

Compare: 2004 No 35 s CU 4

CU 5 Compensation and scrap payment: income from mining

Income

(1) When, under section CU 4, this section applies, the total of the following amounts is income from mining of the mining company:

(a) the amount of insurance, indemnity, or compensation paid; and

(b) the amount, if any, payable to the company for the disposal of any scrap of the asset.

Timing of income

(2) The income from mining is allocated to the income year in which the insurance, indemnity, or compensation is paid.

Relationship with sections CU 6 to CU 8

(3) This section is overridden by sections CU 6 to CU 8.

Defined in this Act: amount, asset, income from mining, income year, mining company, pay

Compare: 2004 No 35 s CU 5

CU 6 Compensation and scrap payment: use to replace or repair asset

Choosing between section CU 5 and sections CU 7 and CU 8

(1) If the mining company wants sections CU 7 and CU 8 to apply instead of section CU 5, it must comply with subsection (2).

Choosing sections CU 7 and CU 8

(2) The company must—

(a) give notice to the Commissioner that the insurance, indemnity, or compensation will be used to replace or repair the asset; and

(b) give the notice within the time in which the company must file a return of income for the income year in which the loss, destruction, or damage occurred; and

(c) start the replacement or repair by the end of the second income year after the income year in which the loss, destruction, or damage occurred.

Defined in this Act: asset, Commissioner, income year, mining company, notice, return of income

Compare: 2004 No 35 s CU 6

CU 7 Compensation and scrap payment: not income from mining

When, under sections CU 4 and CU 6, this section applies, neither of the following amounts is income from mining of the mining company:

(a) the amount of insurance, indemnity, or compensation paid; or

(b) the amount, if any, payable to the company for the disposal of any scrap of the asset.

Defined in this Act: amount, asset, income from mining, mining company, pay

Compare: 2004 No 35 s CU 7

CU 8 Compensation and scrap payment: more than expenditure

When this section applies

(1) This section applies when—

(a) the mining company complies with section CU 6(2); and

(b) the company incurs expenditure in replacing or repairing the asset; and

(c) the company has an excess amount because the expenditure is less than the total of the following:

(i) the amount of insurance, indemnity, or compensation paid; and

(ii) the amount, if any, payable to the company for the disposal of any scrap of the asset.

Income

(2) The excess amount is income from mining of the company, whether or not the company is still a mining company when the excess amount is determined.

Timing of income

(3) The income from mining is allocated to the income year in which the replacement or repair of the asset is completed or is treated as completed.

When replacement or repair treated as completed

(4) The replacement or repair, even if not completed, is treated as completed—

(a) on the last day of the period, if any, considered by the Commissioner to be a reasonable period in which to complete the replacement or repair; or

(b) on the day on which work on the replacement or repair stops; or

(c) on the day on which the asset is transferred from the company's mining operations and used, wholly or mainly, to derive income other than income from mining; or

(d) on the day on which the company disposes of the asset other than for scrap; or

(e) on the day on which the company stops being a mining company.

Limitation on calculation of excess amount

(5) Expenditure incurred after the day on which the work is treated as completed is not taken into account to determine the exis-

tence or amount of an excess amount for the purposes of subsection (1)(c).

Defined in this Act: amount, asset, Commissioner, company, income, income from mining, income year, mining company, mining operations, pay

Compare: 2004 No 35 s CU 8

CU 9 Previous deduction for income appropriated

Income

(1) An amount equal to the amount for which a mining company is allowed a deduction under section DU 4 (Income appropriated to expenditure) is income from mining of the mining company.

Timing of income

(2) The income is allocated to the income year following the income year in which the mining company is allowed the deduction.

Company stops mining

(3) A mining company that stops being a mining company before the end of the income year to which the income is allocated is treated as if it were still a mining company in the income year.

Defined in this Act: amount, deduction, income from mining, income year, mining company

Compare: 2004 No 35 s CU 9

CU 10 Mining asset used to derive income other than income from mining

When this section applies

(1) This section applies when—

(a) a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure; and

(b) the company uses the asset, wholly or mainly, to derive income other than income from mining.

Income

(2) An amount equal to the market value that the asset has on the first day of each period in which it is used, wholly or mainly, to derive income other than income from mining is income from mining of the mining company.

Timing of income

(3) The income is allocated to the income year in which each first day falls.

Company stops mining

(4) A mining company that stops being a mining company before the end of the income year to which the income is allocated is treated as if it were still a mining company in the income year.

Defined in this Act: asset, income, income from mining, income year, mining company, mining development expenditure, mining exploration expenditure

Compare: 2004 No 35 s CU 10

CU 11 Meaning of asset for sections CU 3 to CU 10

Mining company's share or interest in asset

(1) Sections CU 3 to CU 10 apply to a share or interest that a mining company has in an asset—

(a) to the extent to which the mining company acquired the share or interest by incurring—

(i) mining exploration expenditure or mining development expenditure; or

(ii) the exploration expenditure or development expenditure referred to in section DZ 12(2)(a) (Mineral mining: 1954–2005); and

(b) to the extent to which the mining company uses the share or interest for the purpose of deriving income from mining.

Partner's share or interest in asset
[Repealed]

(2) *[Repealed]*

Replaced or repaired asset

(3) For the purposes of sections CU 3 to CU 10,—

(a) an asset that a mining company acquires by incurring expenditure in replacing or repairing the asset is the same asset as the one that was lost, destroyed, or damaged:

(b) part of an asset that a mining company acquires by incurring expenditure in repairing the asset is part of the asset that was damaged.

Defined in this Act: asset, income from mining, mining company, mining development expenditure, mining exploration expenditure

Compare: 2004 No 35 s CU 11

Section CU 11(2) heading: repealed, on 1 April 2008, by section 6(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section CU 11(2): repealed, on 1 April 2008, by section 6(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

CU 12 Application of sections to resident mining operators

Sections in this subpart applying to resident mining operators

(1) Sections CU 1 to CU 8, CU 10, and CU 11 apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies.

Additional modification of sections CU 4 and CU 11

(2) For the purposes of subsection (1),—

(a) section CU 4(1)(b)(ii) applies as described in section DZ 12(1)(b) (Mineral mining: 1954–2005); and

(b) section CU 11(1)(a)(ii) applies as described in section DZ 12(2)(b).

Defined in this Act: mining company, resident mining operator

Compare: 2004 No 35 s CU 12

CU 13 Application of sections to non-resident mining operators

Sections in this subpart applying to non-resident mining operators

(1) Sections CU 3 to CU 11 apply, with any necessary modifications, to non-resident mining operators as if non-resident mining operators were mining companies, income from mining were income from a mining venture, mining operations were mining ventures, and associated mining operations were mining ventures.

Additional modification of sections CU 4 and CU 11

(2) For the purposes of subsection (1),—

(a) section CU 4(1)(b)(ii) applies as described in section DZ 12(1)(b) (Mineral mining: 1954–2005); and

(b) section CU 11(1)(a)(ii) applies as described in section DZ 12(2)(b).

Defined in this Act: associated mining operations, income from mining, mining company, mining operations, mining venture, non-resident mining operator

Compare: 2004 No 35 s CU 13

CU 14 Recovery of reinvestment profit on disposal of mining shares

When this section applies

(1) This section applies when—

(a) a company derives an amount from disposing of a mining share, including a disposal described in section CU 20; and

(b) an amount of the company's reinvestment profit is used in calculating the deduction for the cost of the mining share under section DU 11(2)(b) (Disposal of mining shares by company).

Income

(2) The lesser of the following amounts is income of the company:

(a) the amount derived from the disposal of the mining share minus the deduction for the cost of the mining share; and

(b) the amount of reinvestment profit used in calculating the deduction for the cost of the mining share.

Timing of income

(3) The income is allocated to the income year in which the mining share is disposed of.

Relationship with sections CX 44 and CX 45

(4) This section is overridden by sections CX 44 (Disposal of mining shares) and CX 45 (Disposal of mining shares acquired with reinvestment profit).

Defined in this Act: amount, company, deduction, income, income year, mining share, reinvestment profit

Compare: 2004 No 35 s CU 14

CU 15 Recovery of reinvestment profit not used for mining purposes

When subsections (2) and (3) apply

(1) Subsections (2) and (3) apply when some or all of a company's reinvestment profit—

(a) is used for purposes other than mining purposes in the prescribed period; and

(b) will not be used for mining purposes in the prescribed period.

Income

(2) The amount of reinvestment profit described by subsection (1) is income of the company.

Timing of income

(3) The income is allocated to the income year in which the amount is used for purposes other than mining purposes.

When subsections (5) and (6) apply

(4) Subsections (5) and (6) apply when some or all of a company's reinvestment profit is not used for mining purposes in the prescribed period.

Income

(5) The reinvestment profit is income of the company.

Timing of income

(6) The income is allocated to the last income year of the prescribed period.

No longer reinvestment profit

(7) The amount referred to in subsection (2) and the reinvestment profit referred to in subsection (5) cease to be reinvestment profit.

Defined in this Act: amount, company, income, income year, mining purposes, prescribed period, reinvestment profit

Compare: 2004 No 35 s CU 15

CU 16 Recovery of reinvestment profit on repayment of loans

When this section applies

(1) This section applies when—

(a) a company (the **lender company**) makes a loan to a mining company or a mining holding company; and

(b) the loan is made wholly or partly out of the lender company's reinvestment profit; and

(c) the loan is wholly or partly repaid.

Income

(2) The amount calculated using the formula in subsection (3) is income of the lender company.

Formula

(3) The formula is—

$$\frac{\text{reinvestment profit amount}}{\text{loan amount}} \times \text{repayment.}$$

Definition of items in formula

(4) In the formula,—

(a) **reinvestment profit amount** is the amount of the loan made out of the lender company's reinvestment profit:

(b) **loan amount** is the amount of the loan:

(c) **repayment** is the amount repaid.

Timing of income

(5) The income is allocated to the income year in which the repayment is made.

Relationship with section CX 46

(6) This section is overridden by section CX 46 (Repayment of loans made from reinvestment profit).

Defined in this Act: amount, company, income, income year, mining company, mining holding company, pay, reinvestment profit

Compare: 2004 No 35 s CU 16

CU 17 Repayment by mining company of amount written off

When this section applies

(1) This section applies when—

(a) a holding company of a mining company is allowed, under section DU 12 (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and

(b) the mining company—

(i) repays, to the holding company or any other person, some or all of the amount written off; or

(ii) is treated, under section CU 18 or CU 19, as having repaid to the holding company some or all of the amount written off.

Income

(2) The amount repaid, to the extent of the deduction, is income of the holding company.

Timing of income

(3) The income is allocated to the income year in which the mining company repays the amount or is treated as repaying the amount.

Defined in this Act: amount, deduction, holding company, income, income year, loan, mining company, pay

Compare: 2004 No 35 s CU 17

CU 18 Amount treated as repayment for purposes of section CU 17: excess

When this section applies

(1) This section applies when,—

(a) in an income year, a holding company of a mining company is allowed, under section DU 12 (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and

(b) in a later income year, the holding company disposes of shares in the mining company or an interest in shares in the mining company; and

(c) the holding company has an excess amount because the amount it derives from the disposal is more than the amount paid up in cash on the shares.

Repayment amount

(2) For the purposes of section CU 17, the excess amount is treated as repayment by the mining company of the amount written off.

Defined in this Act: amount, deduction, holding company, income year, loan, mining company, pay, share

Compare: 2004 No 35 s CU 18

CU 19 Amount treated as repayment for purposes of section CU 17: net income

When this section applies

(1) This section applies when—

(a) a holding company of a mining company is allowed, under section DU 12 (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and

(b) the deduction is allocated to an income year; and

(c) the mining company would have had net income in a tax year after the tax year that corresponds to the income year referred to in paragraph (b) (the **later tax year**) if—

(i) the situation described in subsection (2) had existed; and

(ii) the situation described in subsection (3) had existed.

First situation

(2) The first situation is that in the later tax year no person is allowed a deduction for the mining company's mining exploration expenditure or mining development expenditure.

Second situation

(3) The second situation is that in the later tax year the mining company disposes of an asset in circumstances to which section CU 3 or CZ 2(1)(b) (Mining company's 1970–71 tax year) applies and the amount received or receivable for the asset is the amount determined under subsection (4) or (5).

Amount for which asset disposed of: most cases

(4) If any of section CU 3(3)(a), (4), or (5) applies to the disposal of the asset, the amount is the consideration determined under whichever one of the provisions applies.

Amount for which asset disposed of: election of section CU 3(7)

(5) If section CU 3(7) applies to the disposal of the asset, the amount is the greater of the following up to the limit of the market value that the asset has on the date of disposal:

(a) the part of the amount specified in the notice under section CU 3(7) that is in cash, which may be zero; and

(b) the total amount of loans made on or before the date of disposal by all holding companies of the mining company to the mining company to the extent to which the loans—

(i) relate to the asset, including a part not disposed of; and

(ii) have been written off and allowed as a deduction under section DU 12 (Amount written off by holding company) or an earlier Act; and

(iii) have not been repaid, and have not been treated as repaid under this section or section CU 18 or an earlier Act, on or before the date of disposal.

Asset

(6) For the purposes of subsections (3) to (5),—

(a) a reference to an asset means the part of the asset that is disposed of, which may be some of it or all of it, and a reference to an amount received or receivable for an asset means the amount for the part that is disposed of:

(b) a reference to an asset includes a reference to a share or interest in the asset:

(c) *[Repealed]*

(d) every member of any other association of persons who receive income jointly or carry on activities jointly has a share or interest in each asset of the association that is the same as the member's interest in the totality of the assets of the association.

Amount of net income

(7) For the purposes of section CU 17, the prescribed proportion of the amount that would have been the net income of the mining company is treated as repayment by the mining company of the amount written off. The repayment is treated as having been made on the day following the end of the income year in which the mining company would have had net income.

Defined in this Act: amount, deduction, holding company, income, income year, loan, mining company, mining development expenditure, mining exploration expenditure, net income, notice, pay, prescribed proportion, tax year

Compare: 2004 No 35 s CU 19

Section CU 19(6)(c): repealed, on 1 April 2008, by section 7(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

CU 20 Mining company or mining holding company liquidated

Treatment of shares

(1) If a mining company or a mining holding company is liquidated,—

(a) a mining share held in the company is treated as disposed of to the company; and

(b) a distribution received for the share on the liquidation is treated as an amount received for the disposal.

Relationship with section CU 14

(2) Section CU 14 deals with the recovery of reinvestment profit on the disposal of mining shares.

Defined in this Act: amount, liquidation, mining company, mining holding company, mining share, reinvestment profit

Compare: 2004 No 35 s CU 20

Definitions

CU 21 Meaning of income from mining

Meaning

(1) **Income from mining** means the part of the income of a mining company that is derived in an income year from the company's mining operations or associated mining operations in the tax year.

Resident mining operators and non-resident mining operators

(2) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

Defined in this Act: associated mining operations, income, income from mining, income year, mining company, mining operations, mining venture, non-resident mining operator, resident mining operator

Compare: 2004 No 35 s CU 21

CU 22 Meaning of mining company

Meaning

(1) **Mining company** means a company incorporated in New Zealand to which 1 of the following applies:

(a) the company's only source of income is the business described in subsection (2); or

(b) the company's main source of income is the business described in subsection (2); or

(c) the company's only activity is 1 of the activities described in subsection (3); or

(d) the company's main activity is 1 of the activities described in subsection (3); or

(e) the company proposes that its only activity or its main activity be 1 of the activities described in subsection (3).

Business

(2) The business referred to in subsection (1)(a) and (b) is the business of mining a specified mineral in New Zealand.

Activities

(3) The activities referred to in subsection (1)(c), (d), and (e) are—

(a) exploring, searching, or mining for a specified mineral in New Zealand; or

(b) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

Service for reward

(4) An activity described in subsection (3) does not include an activity done or to be done as a service to another person for reward unless the reward—

(a) is wholly or mainly related to and dependent on the production of the specified mineral; or

(b) arises wholly or mainly through participation in profits from the production of the specified mineral.

Defined in this Act: business, company, income, mining company, New Zealand, specified mineral

Compare: 2004 No 35 s CU 22

CU 23 Meaning of mining development expenditure

Meaning

(1) **Mining development expenditure** means development expenditure that a mining company incurs in its mining operations or associated mining operations.

Inclusions

(2) **Mining development expenditure** includes expenditure that the company incurs—

- (a) on acquiring land as a site for its mining operations or associated mining operations:
- (b) on preparing the site for its mining operations or associated mining operations:
- (c) on restoring the site during or after its mining operations or associated mining operations:
- (d) on any of the following for its mining operations or associated mining operations:
  - (i) buildings, mineshafts, platforms, tunnels, wells, or other improvements:
  - (ii) plant or machinery, including vehicles:
  - (iii) production equipment or facilities:
  - (iv) storage facilities:
- (e) on vessels or aircraft for use wholly or mainly in its mining operations or associated mining operations:
- (f) on providing, or contributing to the cost of providing, communication equipment, fuel, light, power, or water for the site of its mining operations or associated mining operations:
- (g) on buildings or facilities that—
  - (i) are situated at, or adjacent to, the site of any of its mining operations or associated mining operations; and
  - (ii) are for use in the education, housing, or welfare of, or the supply of meals to, its employees in or connected with its mining operations or associated mining operations or in the education, housing, or welfare of, or the supply of meals to, the employees' dependants:

(h) on providing, or contributing to the cost of providing, communication equipment, fuel, light, power, or water for the buildings or facilities described in paragraph (g).

Exclusions

(3) **Mining development expenditure** does not include expenditure that the company incurs—

(a) on a building or facility provided for the purpose of deriving income; or

(b) on or in relation to an office building that is not situated at, or adjacent to, the site of any of its mining operations or associated mining operations.

Resident mining operators and non-resident mining operators

(4) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

Defined in this Act: associated mining operations, employee, income, mining company, mining development expenditure, mining operations, mining venture, non-resident mining operator, resident mining operator

Compare: 2004 No 35 s CU 23

CU 24 Meaning of mining exploration expenditure

Meaning

(1) **Mining exploration expenditure** means expenditure that a mining company incurs in exploring or searching in New Zealand for a specified mineral.

Inclusions

(2) **Mining exploration expenditure** includes expenditure that the company incurs—

(a) on acquiring mining prospecting information:

(b) on acquiring a mining or prospecting right:

(c) on geological mapping and geophysical surveys:

(d) on systematic searches for areas containing specified minerals:

(e) on searching by drilling in areas containing specified minerals:

(f) on searching for ore containing a specified mineral within or in the vicinity of an ore body by crosscuts, drilling, drives, rises, shafts, or winzes.

Exclusions

(3) **Mining exploration expenditure** does not include—

(a) mining development expenditure:

(b) expenditure on operations in the course of working a mining property.

Resident mining operators and non-resident mining operators

(4) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

Defined in this Act: associated mining operations, mining company, mining development expenditure, mining exploration expenditure, mining operations, mining or prospecting right, mining prospecting information, mining venture, New Zealand, non-resident mining operator, resident mining operator, specified mineral

Compare: 2004 No 35 s CU 24

CU 25 Meaning of mining operations

Meaning

(1) **Mining operations** means operations that—

(a) are carried on by a mining company on a mining property in New Zealand for the purpose of deriving income; and

(b) consist of—

(i) exploring, searching, or mining for 1 or more specified minerals; or

(ii) performing development work for exploring, searching, or mining for 1 or more specified minerals.

Resident mining operators and non-resident mining operators

(2) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were

mining ventures, and associated mining operations were mining ventures.

Defined in this Act: associated mining operations, income, mining company, mining operations, mining venture, New Zealand, non-resident mining operator, resident mining operator, specified mineral

Compare: 2004 No 35 s CU 25

CU 26 Meaning of mining venture

Meaning

(1) **Mining venture** means a venture that—

(a) is carried on, or is proposed to be carried on,—

(i) in New Zealand; and

(ii) as a business; and

(iii) under an exploration permit, prospecting permit, or mining permit granted under the Crown Minerals Act 1991 or under an existing privilege as defined in section 106 of that Act; and

(b) consists, or is proposed to consist, wholly or mainly of—

(i) exploring, searching, or mining for a specified mineral in New Zealand; or

(ii) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

Service for reward

(2) An activity described in subsection (1)(b) does not include an activity done or to be done as a service to another person for reward unless the reward—

(a) is wholly or mainly related to and dependent on the production of the specified mineral; or

(b) arises wholly or mainly through participation in profits from the production of the specified mineral.

Activities not carried on jointly

(3) If 2 or more persons carry on, or propose to carry on, a joint mining venture, but 1 or more of them carries on an activity of the kind described in subsection (1)(b) outside the joint mining

venture, the carrying on of the activity is not part of the joint mining venture.

Defined in this Act: business, mining venture, New Zealand, specified mineral

Compare: 2004 No 35 s CU 26

CU 27 Meaning of resident mining operator

Meaning

(1) **Resident mining operator** means a person who—

(a) is resident in New Zealand; and

(b) is not a mining company or a petroleum mining company; and

(c) carries on, or proposes to carry on, the activities of—

(i) exploring, searching, or mining for a specified mineral in New Zealand; or

(ii) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

How activities carried on

(2) The person must carry on the activities described in subsection (1)(c), or propose to carry them on,—

(a) personally and actively in the field; and

(b) as a business; and

(c) under an exploration permit, prospecting permit, or mining permit granted under the Crown Minerals Act 1991 or under an existing privilege as defined in section 106 of that Act.

Service for reward

(3) An activity described in subsection (1)(c) does not include an activity done or to be done as a service to another person for reward unless the reward—

(a) is wholly or mainly related to and dependent on the production of the specified mineral; or

(b) arises wholly or mainly through participation in profits from the production of the specified mineral.

Defined in this Act: business, mining company, New Zealand, petroleum mining company, resident in New Zealand, specified mineral

Compare: 2004 No 35 s CU 27

CU 28 Meaning of specified mineral

Meaning

(1) **Specified mineral**—

(a) means alumina minerals (for example, bauxite, corundum, diaspore, and gibbsite), aluminous refractory clays containing over 30% alumina in the fired state, aluminous refractory fireclays containing over 30% alumina in the fired state, andalusite, antimony, asbestos, barite, bentonite (except bentonite mined in the area formerly known as Malvern County), bituminous shale, chromite, copper, diatomite, dolomite, feldspar, fluorite, gold, halloysite, kaolin, kyanite, lead, magnesite, manganese, mercury, mica, molybdenite, nickel, perlite, phosphate, platinum group, pyrite, silica in lump form used only in producing silicon carbide or silicon metal or ferro silicon, silica in sand form used only in producing silicon carbide, sillimanite, silver, sodium chloride, sulphur, talc, tin, titanium, titanomagnetite, tungsten, uranium, wollastonite, zeolite, zinc, and zircon:

(b) includes a mineral that is declared to be a specified mineral in a *Gazette* notice given by the Minister.

Minister to consider

(2) Before giving a *Gazette* notice about a particular mineral, the Minister must consider whether the mineral is or is likely to be of importance—

(a) in the industrial development of New Zealand:

(b) as a means of reducing the quantity of industrial minerals or industrial rock required to be imported into New Zealand:

(c) as an item of export from New Zealand.

Defined in this Act: mineral, Minister, New Zealand

Compare: 2004 No 35 s CU 28

CU 29 Other definitions

In this Act,—

associated mining operations means operations that—

(a) are carried on in New Zealand in association with mining operations; and

(b) consist of the accumulation, initial treatment, and transport of specified minerals, up to the stage at which the minerals—

(i) are in a saleable form and in a location suitable for a person to acquire them; or

(ii) are ready to be processed beyond the initial treatment or to be used in a manufacturing operation

holding company, for a mining company, means a company incorporated in New Zealand that holds shares, or for which shares are held, in the mining company

initial treatment, for a specified mineral,—

(a) means—

(i) breaking, cleaning, crushing, grading, grinding, leaching, screening, or sizing; or

(ii) a treatment that is applied before concentration or, for a specified mineral not requiring concentration, that would have been applied before concentration if the specified mineral had required concentration; or

(iii) concentration; and

(b) does not include—

(i) calcining or sintering; or

(ii) the production of, or processes carried on in connection with the production of, alumina, or pellets or other agglomerated forms of iron

loan, for a holding company and a mining company, means a loan by the holding company to the mining company made when the holding company is a holding company of the mining company

mining holding company means a company incorporated in New Zealand that is engaged wholly or mainly in—

(a) holding shares in a mining company or a petroleum mining company; or

(b) investing money in a mining company or a petroleum mining company; or

(c) making loans to a mining company or a petroleum mining company

mining or prospecting right—

(a) means an authority, concession, easement, lease, licence, option, permit, privilege, right, or title relating to exploring, searching, or mining for, or carrying on an operation to recover, a specified mineral; and

(b) includes a share or interest in any such authority, concession, easement, lease, licence, option, permit, privilege, right, or title

mining prospecting information means geological, geophysical, or technical information—

(a) that is about the presence, absence, extent, or volume of specified minerals in an area; or

(b) that is likely to assist in determining the presence, absence, extent, or volume of specified minerals in an area

mining purposes means—

(a) subscribing for shares in a mining company or in a mining holding company; or

(b) paying calls on shares in a mining company or in a mining holding company; or

(c) making loans to a mining company to enable it—

(i) to finance its mining exploration expenditure or mining development expenditure; or

(ii) to carry on its mining operations or associated mining operations; or

(d) making, to a mining holding company, loans that are to be used—

(i) to finance a mining company's mining exploration expenditure or mining development expenditure; or

(ii) to finance a mining company's mining operations or associated mining operations

mining share means a share in a mining company or a mining holding company

non-resident mining operator means a person who—

(a) is not resident in New Zealand; and

(b) carries on, personally and actively in the field, a mining venture

prescribed period means,—

(a) for an amount derived from a disposal of a mining share, the income year in which the disposal occurs and the next 6 income years; or

(b) for an amount repaid for a loan made to a mining company or a mining holding company, the income year in which the amount is repaid and the next 6 income years

prescribed proportion means the proportion that an amount (**amount A**) bears to another amount (**amount B**), when—

(a) amount A is the amount owing on all loans made by a holding company to a mining company; and

(b) amount B is the amount owing on all loans by all holding companies to the mining company

reinvestment profit means an amount that—

(a) is excluded income of a company under any of sections CX 44 to CX 46 (which relate to mineral mining) or under a corresponding provision of an earlier Act; and

(b) has not ceased to be reinvestment profit under section CU 15(7).

Defined in this Act: amount, associated mining operations, company, excluded income, holding company, income year, initial treatment, lease, loan, mining company, mining development expenditure, mining exploration expenditure, mining holding company, mining operations, mining share, mining venture, New Zealand, pay, petroleum mining company, resident in New Zealand, share, specified mineral

Compare: 2004 No 35 s CU 29

Subpart CV—Income specific to certain entities

CV 1 Group companies

An amount that a company derives in an income year and that would not otherwise be income of the company is treated as its income if—

(a) the company is for that income year part of a wholly-owned group of companies; and

(b) had the group of companies been a single company, the amount would have been income of that single company.

Defined in this Act: amount, company, income, income year, wholly-owned group of companies

Compare: 2004 No 35 s CV 1

CV 2 Consolidated groups: income of company in group

When this section applies

(1) This section applies for the purposes of section FM 8 (Transactions between group companies: income) to an amount derived by a company that is part of a consolidated group, when the amount would be income of the group if the group were 1 company.

Income

(2) The amount is treated as income of the company.

Defined in this Act: amount, company, consolidated group, income

Compare: 2004 No 35 s HB 2(1)(e)

CV 3 Consolidated groups: arrangement for disposal of shares

When this section applies

(1) This section applies for the purposes of section FM 23 (Arrangements for disposal of shares) when shares in company A that is part of a consolidated group are disposed of by another company for consideration that is less than would have been received in an arm's length transaction because of a reduction in the value of company A's assets.

Income

(2) The amount that would have been received in an arm's length transaction is treated as income derived by the other company at the time of disposal.

Defined in this Act: amount, company, consolidated group, income

Compare: 2004 No 35 s FD 10(8)

CV 4 Amalgamated companies: amount derived after amalgamation

When this section applies

(1) This section applies for the purposes of section FO 7 (Income derived after amalgamation) when an amount is derived by the amalgamated company after an amalgamation as a result of something that an amalgamating company did or did not do.

Income

(2) The amount is income of the amalgamated company in the income year in which it is derived if it would have been income of an amalgamating company but for the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amount, income, income year

Compare: 2004 No 35 s FE 4(b)

CV 5 Statutory producer boards

A levy received by a statutory producer board, other than a levy charged specifically for capital development, is income.

Defined in this Act: income, levy, statutory producer board

Compare: 2004 No 35 s OC 3(c)

CV 6 Crown Research Institutes

Income

(1) An amount that a Crown Research Institute derives is income of the institute if the amount is provided to the institute for the purposes of—

(a) any 1 or more of the activities listed in section 7 of the Research, Science, and Technology Act 2010; or

(b) producing outputs relating to public good science and technology.

Meaning

(2) In this section, **public good science and technology** means science or technology—

(a) that is likely to increase knowledge or understanding of the physical, biological, or social environment; or

(b) that is likely to develop, maintain, or increase skills or scientific or technological expertise that is of particular importance to New Zealand; or

(c) that may be of benefit to New Zealand, but is unlikely to be funded, or adequately funded, from non-governmental sources.

Defined in this Act: amount, Crown Research Institute, income

Compare: 2004 No 35 s CV 2

Section CV 6: substituted, on 1 February 2011, by section 18 of the Research, Science, and Technology Act 2010 (2010 No 131).

CV 7 Australian wine producer rebate

An amount of Australian wine producer rebate derived by a New Zealand resident wine producer is income of the wine producer.

Defined in this Act: amount, Australian wine producer rebate, income, New Zealand resident

Compare: 2004 No 35 s CV 3

CV 8 Regulations: Australian wine producer rebate

Order in Council

(1) For the purpose of enabling the Commissioner to administer the entitlement of New Zealand resident wine producers to Australian wine producer rebates for wine produced in New Zealand, the Governor-General may by Order in Council make regulations relating to—

(a) the claim by a New Zealand resident wine producer for payment of an Australian wine producer rebate for wine produced in New Zealand that is sold in Australia:

(b) the approval or verification of the entitlement of a New Zealand resident wine producer to a payment of an Australian wine producer rebate:

(c) any matter necessary to give effect to a provision relating to Australian wine producer rebates in the agreement for the time being in force between the Government of New Zealand and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion in relation to taxes on income.

Force and effect

(2) An Order in Council under subsection (1)—

(a) has force and effect despite any provision in this Act or any other Inland Revenue Act:

(b) may come into force on or after 1 July 2005:

(c) may apply for Australian financial years commencing on or after 1 July 2005.

Definitions

(3) In this section,—

Australian financial year means a year starting on and including 1 July

wine has the meaning given in section 31-1 of A New Tax System (Wine Equalisation Tax) Act 1999 (Aust) and regulations made under that Act.

Defined in this Act: Australian financial year, Australian wine producer rebate, Inland Revenue Acts, New Zealand resident, pay, wine

Compare: 2004 No 35 s CV 4

CV 9 Supplementary dividend holding companies

When this section applies

(1) This section applies to a supplementary dividend holding company that derives a dividend and related supplementary dividend in an income year when, but for section LP 8 (Relationship with exempt income rules), both dividends would be exempt income under section CW 10 (Dividend within New Zealand wholly-owned group).

Income

(2) The amount calculated under section LP 8(2) is assessable income of the supplementary dividend holding company.

Defined in this Act: amount, assessable income, dividend, exempt income, income year, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(6), (8)

CV 10 Foreign dividend payment account companies or conduit tax relief companies

[Repealed]

Section CV 10: repealed (with effect on 30 June 2009), on 6 October 2009, by section 39(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CV 11 Maori authorities

Income

(1) An amount that a member of a Maori authority derives as a distribution from the Maori authority is income of the member if the amount is—

(a) a notional distribution under section HF 5 (Notional distributions of co-operative companies); or

(b) a taxable Maori authority distribution under section HF 7 (Taxable Maori authority distributions).

When credits attached

(2) The amount of a taxable Maori authority distribution or notional distribution is increased by a credit that is attached or is treated as attached under section RE 24 (When amount of tax treated as Maori authority credit).

Defined in this Act: amount, co-operative company, Maori authority, Maori authority credit, member, taxable Maori authority distribution

Compare: 2004 No 35 ss HI 4(3), HI 5(2), (3), HI 7

CV 12 Trustees: amounts received after person's death

To the extent to which section HC 8 (Amounts received after person's death) applies to an amount that a trustee of an estate of a deceased person receives in an income year, the amount is income of the trustee.

Defined in this Act: amount, income, income year, trustee

Compare: 2004 No 35 s HH 8

CV 13 Amounts derived from trusts

An amount derived by a person is income of the person if it is—

(a) beneficiary income to which sections HC 6 (Beneficiary income) and HC 17 (Amounts derived as beneficiary income) apply; or

(b) a settlement on trust of property of the kind described in section HC 7(3) (Trustee income); or

(c) a taxable distribution from a foreign trust to which section HC 18 (Taxable distributions from foreign trusts) applies.

Defined in this Act: amount, beneficiary income, foreign trust, income, settlement, settlor, taxable distribution, trustee income

Compare: 2004 No 35 ss HH 1(7), HH 3(1)

CV 14 Distributions from community trusts

To the extent to which section HC 21 (Distributions from community trusts) applies to treat an amount that a community trust distributes to a person as income, the amount is income of the person.

Defined in this Act: amount, community trust, distribution, income

Compare: 2004 No 35 s HH 3(5A)

CV 15 Amounts derived from trusts while person absent from New Zealand

To the extent to which section HC 23 (Temporary absences of beneficiaries) applies to an amount of beneficiary income or taxable distribution, the amount is income of the person derived on the day on which the person becomes resident in New Zealand again.

Defined in this Act: amount, beneficiary income, income, resident in New Zealand, taxable distribution

Compare: 2004 No 35 s HH 3(3)

CV 16 Non-resident shippers

When this section applies

(1) This section applies when a ship that belongs to, or is chartered by, a non-resident person carries outside New Zealand cargo, mail, or passengers shipped or embarked in New Zealand.

Amount of income

(2) Five percent of the amount payable to the person for the carriage, whether payable inside or outside New Zealand, is treated as income of the person.

Exemption

(3) Despite subsection (2), the Commissioner may determine that some or all of an amount that would otherwise be income of a person under this section is a foreign-sourced amount.

Place of shipping

(4) In this section, cargo, mail, or passengers shipped or embarked at a port in New Zealand for carriage outside New Zealand are treated as carried outside New Zealand from that port, even though the ship may call at another port in New Zealand before finally leaving New Zealand.

Defined in this Act: amount, Commissioner, exempt income, foreign-sourced amount, income, income tax, New Zealand, non-resident, pay, resident in New Zealand

Compare: 2004 No 35 ss FC 18, FC 19

CV 17 Non-resident film renters

When this section applies

(1) This section applies when a non-resident person derives an amount from 1 or more of the following activities:

(a) renting, exhibiting, or issuing a film, or making other arrangements for its exhibition:

(b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film:

(c) selling or hiring advertising materials relating to a film.

Income and exempt income

(2) Ten percent of the amounts that have a source in New Zealand is income of the person. The remainder is a foreign-sourced amount.

Insignificant proportion

(3) This section does not apply to a non-resident person if the amounts derived by them from activities are an insignificant proportion of the total amounts derived by them from any business carried on in New Zealand or elsewhere.

Defined in this Act: amount, arrangement, business, exempt income, film, foreign-sourced amount, income, New Zealand, non-resident, source in New Zealand

Compare: 2004 No 35 s FC 21(1), (2), (4)

Section CV 17(2): amended, on 21 December 2010, by section 33(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CV 17 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 33(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section CV 17 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 33(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Subpart CW—Exempt income

Income from business or trade-like activities

CW 1 Forestry companies established by the Crown, Maori owners, and holding companies buying land with standing timber from founders

When this section applies

(1) This section applies when a forestry company buys land with standing timber on it from a seller who is the Crown, the Maori owners, or a holding company of the forestry company.

Land sold by Maori Trustee, trustee for Maori owners, or Maori incorporation

(2) For the purposes of subsection (1),—

(a) land sold to the forestry company by the Maori Trustee or by a trustee for a Maori owner is treated as if it had been sold by the beneficial owners:

(b) land sold to the forestry company by a Maori incorporation is treated as if it had been sold by the members of the incorporation.

Exempt income

(3) The amount described in section CB 25(3) (Disposal of land with standing timber) is exempt income of the seller.

Relationship with section DP 9

(4) Section DP 9 (Cost of acquiring timber: forestry business on land bought from the Crown, Maori owners, or holding company) deals with the cost to the forestry company of acquiring the timber.

Defined in this Act: amount, exempt income, forestry company, holding company, Maori incorporation, Maori owners, standing timber, trustee

Compare: 2004 No 35 s CW 1

CW 1B Treaty of Waitangi claim settlements: rights to take timber

When this section applies

(1) This section applies when a person's right to take timber (the **old right**) is extinguished, and new rights (the **new rights**) to take timber are granted to the person in place of the old right, if—

(a) the sole reason for the new rights replacing the old right is to facilitate a Treaty of Waitangi claim settlement process; and

(b) the rights and obligations of the new rights are equivalent to the old right, ignoring differences that are solely for the reason in paragraph (a).

Exempt income

(2) An amount under section CB 24(1)(b) (Disposal of timber or right to take timber) for the extinguishing of the old right, or for the granting of the new rights, is exempt income of the relevant person. The amount is not income under that section.

Exception

(3) Subsection (2) does not apply to an amount to the extent it is compensation paid, for the new rights replacing the old right, to the person who is granted the new rights.

Relationship with section DP 9B

(4) Section DP 9B (Treaty of Waitangi claim settlements: rights to take timber) deals with the cost of the new rights for the person who is granted them.

Defined in this Act: amount, exempt income, income, pay, person, right to take timber

Section CW 1B: inserted (with effect on 1 April 2008), on 29 August 2011, by section 7 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CW 2 Forestry encouragement agreements

When this section applies

(1) This section applies when a person makes a forestry encouragement agreement under the Forestry Encouragement Act 1962.

Exempt income: advance

(2) An amount of income advanced to the person under the agreement is exempt income, even if the person is later relieved from some or all of their liability to repay the principal.

Exempt income: interest

(3) The amount from which the person is relieved in the circumstances described in subsection (4) is exempt income.

Circumstances for purposes of subsection (3)

(4) The circumstances are that—

(a) the person is liable to pay interest on an advance made under the agreement; and

(b) the interest has not been paid; and

(c) the person has been denied a deduction for the interest; and

(d) the person is relieved from some or all of their liability to pay the interest.

Defined in this Act: amount, deduction, exempt income, income, interest, pay

Compare: 2004 No 35 s CW 2

CW 3 Forestry companies and Maori investment companies

When this section applies

(1) This section applies when a forestry company or a Maori investment company issues a qualifying debenture.

Exempt income

(2) Interest derived from the qualifying debenture is exempt income to the extent to which it is paid by the issue of a further qualifying debenture.

Defined in this Act: exempt income, forestry company, interest, Maori investment company, pay, qualifying debenture

Compare: 2004 No 35 s CW 3

CW 3B Pre-1990 forest land units: emissions trading scheme *[Repealed]*

Section CW 3B: repealed (with effect on 26 September 2008), on 6 October 2009, by section 40 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 3B: inserted, on 26 September 2008, by section 69 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Income from holding property (excluding equity)

CW 4 Annuities under life insurance policies

When this section applies

(1) This section applies when—

(a) a person is paid an annuity under a life insurance policy offered or entered into in New Zealand by a life insurer; or

(b) a person is paid an annuity under a life insurance policy offered or entered into outside New Zealand by a life insurer resident in New Zealand.

Exempt income

(2) The annuity is exempt income.

Excluded annuities

(3) An annuity that is excluded income of a superannuation fund under section CX 40 (Superannuation fund deriving amount from life insurance policy) is not also exempt income of the fund under this section.

Defined in this Act: excluded income, exempt income, life insurance policy, life insurer, New Zealand, offered or entered into in New Zealand, pay, resident in New Zealand, superannuation fund

Compare: 2004 No 35 s CW 4

CW 5 Payments of interest: post-war credits

Interest derived by a person under section 2 of the Income Tax (Repayment of Post-War Credits) Act 1959 of the United Kingdom Parliament is exempt income.

Defined in this Act: exempt income, interest

Compare: 2004 No 35 s CW 5

CW 6 Payments of interest: farm mortgages

Exempt income

(1) Fifty percent of the interest that a person derives from a mortgage securing a loan made by a seller of a farm is exempt income, if—

(a) the Rural Banking and Finance Corporation of New Zealand approves the mortgage; and

(b) the Corporation gives the Commissioner notice of the approval and each variation.

Exclusions

(2) This section does not apply if the person is—

(a) an absentee; or

(b) a company; or

(c) a Maori authority; or

(d) a public authority; or

(e) a trustee liable for income tax under subpart HC (Trusts) and section HZ 2 (Trusts that may become complying trusts); or

(f) an unincorporated body.

Relationship with sections LZ 6 to LZ 8

(3) A person who derives interest that is exempt income under this section is not entitled to a tax credit for the interest under sections LZ 6 to LZ 8 (which relate to interest on home vendor mortgages).

Defined in this Act: absentee, Commissioner, company, exempt income, income tax, interest, Maori authority, mortgage, notice, public authority, trustee

Compare: 2004 No 35 s CW 6

CW 7 Foreign-sourced interest

Interest that a person derives from a country or territory outside New Zealand is exempt income if—

(a) the person was not resident in New Zealand during the period for which the interest was payable; and

(b) the interest was exempt under the laws of the overseas country or territory from a tax that is substantially the same as income tax imposed under this Act.

Defined in this Act: exempt income, income tax, interest, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s CW 7

CW 8 Money lent to government of New Zealand

What this section applies to

(1) This section applies to—

(a) interest derived from money lent under a binding contract entered into on or after 29 July 1983; and

(b) a redemption payment made on a commercial bill to which both the following apply; **issue** is defined in section 2 of the Bills of Exchange Act 1908:

(i) it was issued on or after 29 July 1983; and
(ii) it was not issued under a binding contract entered into before that date.

Exempt income

(2) Interest or a redemption payment that is payable outside New Zealand is exempt income if—
(a) it is derived by a person who is a non-resident; and
(b) it is derived from or in relation to money lent to—
(i) the government of New Zealand; or
(ii) a local authority or a public authority; and
(c) in the case of money lent to a local or public authority,—
(i) it is lent for the purposes of a non-commercial activity carried on in New Zealand by the local or public authority; and
(ii) the government of New Zealand has approved the exempt status of the interest or redemption payment.

Defined in this Act: commercial bill, exempt income, interest, local authority, money lent, New Zealand, non-resident, pay, public authority, redemption payment

Compare: 2004 No 35 s CW 8

Income from equity

CW 9 Dividend derived from foreign company

Exempt income

(1) A dividend from a foreign company is exempt income if derived by a company that is resident in New Zealand.

Exclusions

(2) Subsection (1) does not apply to a dividend if the dividend is paid in relation to rights that are—
(a) a direct income interest of less than 10% in a foreign company described in—
(i) section EX 31 (Exemption for ASX-listed Australian companies):
(ii) section EX 32 (Exemption for Australian unit trusts with adequate turnover or distributions):
(iii) section EX 36 (Venture capital company emigrating to grey list country: 10-year exemption):

(iv) section EX 37 (Grey list company owning New Zealand venture capital company: 10-year exemption):

(v) section EX 37B (Share in grey list company acquired under venture investment agreement):

(vi) section EX 39 (Terminating exemption for grey list company with numerous New Zealand shareholders):

(b) a fixed-rate foreign equity:

(c) rights to a deductible foreign equity distribution.

Non-application to dividends derived by certain PIEs

(3) This section does not apply to a dividend derived by a multi-rate PIE.

Defined in this Act: company, dividend, deductible foreign equity distribution, exempt income, fixed-rate foreign equity, multi-rate PIE, portfolio tax rate entity, resident in New Zealand

Section CW 9: substituted (with effect on 30 June 2009), on 6 October 2009, by section 41(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 9(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 41(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 9(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 41(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 9(3): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 41(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 9 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 41(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 10 Dividend within New Zealand wholly-owned group

Exempt income

(1) A dividend is exempt income if—

(a) it is derived by a company (the **recipient**) that is resident in New Zealand; and

(b) it is derived from a company (the **payer**) that is part of the same wholly-owned group of companies as the recipient at the time the dividend is derived; and

(c) the payer is not a foreign company; and

(d) the payer is not a company that can derive only exempt income; and

(e) the requirements of subsections (3) to (6) are met.

Aligned balance dates

[Repealed]

(2) *[Repealed]*

Exclusion: dividends from council-controlled organisations

(3) The dividend must not be derived by a local authority from—

(a) a council-controlled organisation; or

(b) a port company, subsidiary company of a port company, or energy company that would be a council-controlled organisation in the absence of section 6(4) of the Local Government Act 2002.

Exclusion: debt release dividends

(4) The dividend must not be the release of an obligation to repay an amount lent, treated as a dividend under section CD 5(2) (What is a transfer of value?).

Exclusion: certain friendly society dividends

(5) The dividend must not be derived by a friendly society from a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of the society.

Exclusion: certain sickness, accident, or death benefit fund dividends

(6) The dividend must not be derived by a trustee in trust for a sickness, accident, or death benefit fund from a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of the trustee.

Defined in this Act: amount, company, council-controlled organisation, deduction, dividend, exempt income, foreign company, friendly society, income year, local authority, net income, New Zealand, resident in New Zealand, sickness, accident, or death benefit fund, tax avoidance arrangement, trustee, wholly-owned group of companies

Compare: 2004 No 35 s CW 10

Section CW 10(1)(e): amended, on 29 August 2011, by section 8(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CW 10(2) heading: repealed, on 29 August 2011, pursuant to section 8(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CW 10(2): repealed, on 29 August 2011, by section 8(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CW 11 Dividend of conduit tax relief holding company

Exempt income: credit

(1) If a conduit tax relief (CTR) holding company derives a dividend with a CTR credit attached, the dividend is exempt income to the extent to which it is fully credited for conduit tax relief.

Exempt income: additional dividend

(2) If a CTR holding company derives a CTR additional dividend, the CTR additional dividend is exempt income.

Defined in this Act: CTR additional dividend, CTR credit, CTR holding company, dividend, exempt income, fully credited for conduit tax relief

Compare: 2004 No 35 s CW 11

CW 12 Proceeds of share disposal by qualifying foreign equity investor

Exempt income: proceeds from disposal of share in resident company

(1) An amount that a person derives from the sale or other disposal by a qualifying foreign equity investor of a share, or option to buy a share, in a company (the **resident company**) is exempt income if—

(a) the resident company is resident in New Zealand; and

(b) the share or option, or an option or convertible note relating to the share, is bought on a day that is 12 months or more before the day of the sale or other disposal; and

(c) the person who buys the share or option, or the option or convertible note relating to the share, and disposes of the share or option is a qualifying foreign equity investor from the time of the purchase to the time of the disposal; and

(d) at some time in the 12-month period that starts from the time of the purchase referred to in paragraph (b), the shares of the resident company are quoted on no official list of a recognised exchange; and

(e) the resident company meets the requirements of either or both of subsections (2) and (3).

Requirements relating to main activity of resident company

(2) A resident company meets the requirements of this subsection if, throughout the period referred to in subsection (1)(c), the resident company does not have as a main activity 1 or more of—

(a) land development:
(b) land ownership:
(c) mining:
(d) provision of financial services:
(e) insurance:
(f) construction of public infrastructure assets:
(g) acquisition of public infrastructure assets:
(h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

Requirements relating to resident company that provides capital to others

(3) A resident company that has a main activity of providing capital in the form of debt or equity funding to other companies meets the requirements of this subsection if,—

(a) throughout the period referred to in subsection (1)(c), each other company that is resident in New Zealand—
  (i) does not have, as a main activity, an activity that is referred to in subsection (2)(a) to (c) and (e) to (g); and
  (ii) does not have, as a main activity, an activity that is referred to in subsection (2)(d) and (h) and is not the provision of capital to other companies; and
  (iii) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in subsection (2)(a) to (c) and (e) to (g); and
  (iv) does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in subsection (2)(d) and (h) and is not the provision of capital to other companies; and

(b) throughout the period referred to in subsection (1)(c), each other company that is not resident in New Zealand does not provide capital, directly or indirectly, to a company that is resident in New Zealand and has, as a main activity, an activity that is referred to in subsection (2)(a) to (h); and

(c) for each other company there is a time in the period referred to in subsection (1)(c) at which—

(i) the shares of the other company are quoted on no official list of a recognised exchange; and

(ii) the shares of the resident company are quoted on no official list of a recognised exchange.

Some definitions

(4) In this section,—

foreign exempt entity means a person who—

(a) is established as a legal entity under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and

(b) has persons (the **members**) who hold interests in the capital of the legal entity and who are entitled to shares of the income of the legal entity; and

(c) under the laws of the territory or part of the territory is not subject to a tax on income other than as a body that handles income of the members; and

(d) is resident in no territory that has laws that treat the legal entity as being subject to a tax on income other than as a body that handles income of the members; and

(e) does not have a member who—

(i) has, when treated as holding the interests of any person who is associated with the member, an interest of 10% or more in the capital of the legal entity; and

(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and

(f) does not have a member who, when treated as holding the interests of any person who is associated with the

member, has an interest of 10% or more in the capital of the legal entity and who would—

(i) be entitled to receive an amount derived from a disposal to which this section would apply; and

(ii) receive an amount referred to in subparagraph (i) that, in the absence of this section, would have been reduced by a tax imposed by the Act on the amount or on the proceeds of the disposal in the hands of the legal entity; and

(iii) in any circumstances under the laws of the territory in which the member is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for the reduction referred to in subparagraph (ii); and

(g) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—

(i) is resident in New Zealand:

(ii) when treated as holding the interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more

foreign exempt partnership means an unincorporated body that—

(a) is established under the laws of a territory that is approved for the purposes of this section by the Governor-General by an Order in Council or under the laws of a part of such a territory; and

(b) consists of persons (the **partners**); and

(c) under the laws of the territory or part of the territory is not subject to a tax on income other than as a body that handles income of the partners; and

(d) has at least 1 partner (the **general partner**) who is liable for all debts of the unincorporated body and who has significant involvement in, and control of, the business activities of the unincorporated body; and

(e) has at least 1 partner (the **special partner**) whose liability for debts of the unincorporated body is limited

and who has limited involvement in, and control of, the business activities of the unincorporated body; and

(f) does not have a general partner who is resident in no territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and

(g) does not have a partner who—

(i) has, when treated as holding the interests of any person who is associated with the partner, an interest of 10% or more in the capital of the unincorporated body; and

(ii) is resident in no territory that is approved for the purpose of this section by the Governor-General by an Order in Council; and

(h) does not have a partner who, when treated as holding the interests of any person who is associated with the partner, has an interest of 10% or more in the capital of the unincorporated body and who—

(i) would under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and

(ii) would in any circumstances under the laws of the territory in which the partner is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for a payment of the tax referred to in subparagraph (i); and

(i) does not have a holder of a direct or indirect interest in the capital of the unincorporated body who,—

(i) is resident in New Zealand:

(ii) when treated as holding the interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more

foreign exempt person means a person who—

(a) is resident in a territory that is approved for the purposes of this section by the Governor-General by an Order in Council; and

(b) is not a legal entity that meets the requirements of paragraphs (a) to (c) of the definition of **foreign exempt entity**; and

(c) is not part of an unincorporated body that meets the requirements of paragraphs (a) to (c) of the definition of **foreign exempt partnership**; and

(d) under the laws of the territory or part of the territory derives the proceeds from a disposal of shares or options that are held by the person; and

(e) is not a person who—

(i) would under the Act in the absence of this section, be subject to tax on an amount derived from a disposal to which this section would apply; and

(ii) would in any circumstances under the laws of the territory in which the person is resident or under the laws of part of the territory be entitled to receive from the government of the territory or part of the territory a financial benefit in the form of a payment, credit, rebate, forgiveness, or other compensation for a payment of the tax referred to in subparagraph (i); and

(f) does not have a holder of a direct or indirect interest in the capital of the legal entity who,—

(i) is resident in New Zealand:

(ii) when treated as holding the interests of a person associated with the resident, holds a total direct or indirect interest of 10% or more.

Residency of territory

(5) For the purpose of this section, whether a person is resident in a territory other than New Zealand is determined—

(a) under a double tax agreement that is in force between New Zealand and the territory, if there is an agreement and it provides for the residency of the person; or

(b) otherwise, under the laws of the territory.

Approval and withdrawal of approval for territory

(6) The Governor-General may by Order in Council—

(a) approve a territory for the purpose of this section:

(b) withdraw the approval of a territory for the purpose of this section.

Defined in this Act: amount, associated, business, company, dividend, double tax agreement, exempt income, foreign exempt entity, foreign exempt partnership, foreign exempt person, income, insurance, interest, land, pay, personal property lease payment, qualifying foreign equity investor, recognised exchange, resident in New Zealand, royalty, share, tax

Compare: 2004 No 35 s CW 11B

Section CW 12(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 42 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 12(4) **foreign exempt entity** paragraph (c): substituted, on 1 April 2008, by section 328(1)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt entity** paragraph (f)(iii): amended, on 1 April 2008, by section 328(1)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt entity** paragraph (f)(iii): amended, on 1 April 2008, by section 328(1)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt entity** paragraph (g): added, on 1 April 2008, by section 328(1)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt partnership** paragraph (c): substituted, on 1 April 2008, by section 328(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt partnership** paragraph (h)(ii): amended, on 1 April 2008, by section 328(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt partnership** paragraph (h)(ii): amended, on 1 April 2008, by section 328(2)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt partnership** paragraph (i): added, on 1 April 2008, by section 328(2)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt person** paragraph (d): substituted, on 1 April 2008, by section 328(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt person** paragraph (e)(ii): amended, on 1 April 2008, by section 328(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt person** paragraph (e)(ii): amended, on 1 April 2008, by section 328(3)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(4) **foreign exempt person** paragraph (f): added, on 1 April 2008, by section 328(3)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(5)(a): substituted, on 1 April 2008, by section 328(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12(5)(b): substituted, on 1 April 2008, by section 328(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 12 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 13 Proceeds from share or option acquired under venture investment agreement

Exempt income: proceeds from share or option

(1) An amount of income that a non-resident derives from the sale or other disposal of a share, or option to buy a share, in a company is exempt income if the requirements of subsections (2) to (5) are met.

Requirement relating to company at time of acquisition

(2) The first requirement is that, when the non-resident first acquires a share, or option to buy a share, in the company in a way that meets the requirements of subsection (3), the company must have in New Zealand—

(a) more than 50% in value of the company's assets; and

(b) more than 50% in number of the company's employees.

Requirement relating to acquisition of first share or option

(3) The second requirement is that, when the non-resident first acquires a share or option to buy a share (the **first interest**) in the company, a person (the **venture capital manager**) must acquire, at the same time and on the same terms,—

(a) the first interest, on behalf of the non-resident; and

(b) another share or option that confers the same rights and imposes the same obligations as the first interest—

(i) on behalf of the Venture Investment Fund or a company owned by the Venture Investment Fund; and

(ii) under a venture investment agreement.

Continuing requirement relating to company

(4) The third requirement is that, while the non-resident holds the share or option, the company must not have 1 or more of the following as a main activity:

(a) land development:

(b) land ownership:
(c) mining:
(d) provision of financial services:
(e) insurance:
(f) construction of public infrastructure assets:
(g) acquisition of public infrastructure assets:
(h) investing with a main aim of deriving, from the investment, income in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

Requirement relating to situation at disposition of share or option

(5) The fourth requirement is that, when the non-resident disposes of the share or option,—

(a) the venture capital manager must have complied with the venture capital manager's obligations under the venture investment agreement; and
(b) the non-resident must have complied with the non-resident's obligations under any agreement between the non-resident and the Venture Investment Fund or a company owned by the Venture Investment Fund; and
(c) no person who is resident in New Zealand and no group of associated persons who are resident in New Zealand has a direct or indirect interest of more than 10% in the share or option.

Venture investment agreement

(6) In this section, **venture investment agreement** means an agreement that—

(a) is an agreement, relating to investment in companies, between parties that include—
  (i) a venture capital manager; and
  (ii) the Venture Investment Fund or a company owned by the Venture Investment Fund; and
(b) provides for investments under the agreement to be managed by the venture capital manager; and
(c) provides that an investment under the agreement must be in a company that, when the first investment in the company under the agreement is made, has in New Zealand—

(i) more than 50% in value of the company's assets; and

(ii) more than 50% in number of the company's employees.

Defined in this Act: employee, income, interest, non-resident, pay, resident in New Zealand, share, venture investment agreement, Venture Investment Fund

Compare: 2004 No 35 s CW 11C

CW 14 Dividends derived by qualifying companies

Sections CW 10 and CW 11 do not apply to treat as exempt income a dividend derived by a company that has been a qualifying company at some time before the date on which it derives the dividend, except to the extent to which the dividend is a dividend to which section CW 9 applies.

Defined in this Act: company, dividend, exempt income, qualifying company

Compare: 2004 No 35 s HG 10(a)

CW 15 Dividends paid by qualifying companies

Exempt income of shareholder

(1) To the extent to which the amount of a dividend that a qualifying company pays to a person resident in New Zealand is more than a fully imputed distribution, the amount is exempt income of the person.

Exempt income of beneficiary

(2) If a dividend paid by a qualifying company to a trustee shareholder is, or becomes, beneficiary income of a beneficiary resident in New Zealand, the dividend is exempt income of the beneficiary.

Defined in this Act: beneficiary income, bonus issue, dividend, exempt income, fully imputed, pay, qualifying company, resident in New Zealand, shareholder, trustee

Compare: 2004 No 35 s HG 13(1)(a), (1A)

Section CW 15(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 43(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 15 list of defined terms **fully imputed**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 43(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Employee or contractor income

CW 16 Allowance of Governor-General and other benefits and privileges

The following are exempt income:

(a) the allowance of the Governor-General, paid under section 6 of the Governor-General Act 2010:

(b) any benefit or privilege provided under an agreement made under section 11(1) of the Governor-General Act 2010 or an agreement referred to in section 28(1)(d) of that Act.

Section CW 16: substituted, on 23 November 2010, by section 23of the Governor-General Act 2010 (2010 No 122).

CW 17 Expenditure on account, and reimbursement, of employees

Exempt income: expenditure on account

(1) Expenditure on account of an employee incurred by an employer in connection with the employee's employment or service is exempt income of the employee to the extent to which the expenditure is expenditure for which the employee would be allowed a deduction if they incurred the expenditure and if the employment limitation did not exist.

Exempt income: reimbursement

(2) An amount that an employer pays to an employee in connection with the employee's employment or service is exempt income of the employee to the extent to which it reimburses the employee for expenditure for which the employee would be allowed a deduction if the employment limitation did not exist.

Estimated expenditure of employees

(3) For the purposes of subsection (2),—

(a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and

(b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates.

Depreciation loss included

(4) In this section, expenditure includes an amount of depreciation loss.

Relationship with sections CW 17B and CW 17C

(5) This section does not apply to an amount referred to in section CW 17B (Relocation payments) or CW 17C (Payments for overtime meals and certain other allowances).

Defined in this Act: amount, deduction, depreciation loss, employee, employer, employment limitation, exempt income, expenditure on account of an employee, pay

Compare: 2004 No 35 s CW 13

Section CW 17(4) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 44(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 17(4): added (with effect on 1 April 2008), on 6 October 2009, by section 44(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 17(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 44(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 17(5): added (with effect on 1 April 2008), on 6 October 2009, by section 44(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 17 list of defined terms **depreciation loss**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 44(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 17B Relocation payments

Exempt income

(1) An amount that an employer pays to or on behalf of an employee in connection with the expenses of the employee in a work-related relocation is exempt income of the employee.

Actual expenditure

(2) The amount paid must be no more than the actual cost incurred by or on behalf of the employee on an expense that the Commissioner lists as an eligible relocation expense in a determination made under subsection (6).

Time limit

(3) Subsection (1) applies only to expenditure incurred to the end of the tax year following that in which the relocation occurs. For the purposes of this subsection, a temporary move that has

not been treated as a work-related relocation under this section is ignored.

Meaning of work-related relocation

(4) **Work-related relocation** means a relocation of the place where an employee lives that is required—

(a) because the employee's workplace is not within reasonable daily travelling distance of their residence; and

(b) as a result of the employee—

(i) taking up new employment with a new employer; or

(ii) taking up new duties at a new location with their existing employer; or

(iii) continuing in their current position but at a new location.

Exemption from distance test

(5) The requirement in subsection (4)(a) for a person's workplace to be beyond reasonable travelling distance of their residence does not apply to a person whose accommodation forms an integral part of their work.

Determinations

(6) The Commissioner may issue a determination for the purposes of this section under section 91AAR of the Tax Administration Act 1994 to provide a list of eligible relocation expenses, and may extend or modify the list from time to time as required. The Commissioner must give at least 30 days' notice of the implementation date of any alteration.

Defined in this Act: amount, Commissioner, employee, employer, exempt income, tax year, work-related relocation

Section CW 17B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 45 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 17C Payments for overtime meals and certain other allowances

Exempt income: overtime meals

(1) An amount that an employer pays to or on behalf of an employee for a meal for the employee when the employee is working overtime is exempt income of the employee.

Exempt income: certain sustenance allowances

(2) An amount that an employer pays to an employee as a sustenance allowance for the employee for a day is exempt income of the employee if—

(a) the employee works a minimum of 7 hours on the day; and

(b) their employment requires them—

(i) to work outdoors and away from their employment base for most of the day; and

(ii) to undertake a long period of physical activity in travelling through a neighbourhood or district on foot or by bicycle; and

(c) it is not practicable for the employer to provide sufficient sustenance on the day for the period when the employee is working outdoors; and

(d) the allowance recognises—

(i) the arduous physical nature of the employee's work as described in paragraph (b); and

(ii) that the employer would normally provide tea, coffee, water, or similar refreshments at the employment base in the course of their business.

Eligibility requirements: overtime meals

(3) Subsection (1) applies only if—

(a) the employee has worked at least 2 hours' overtime on the day of the meal; and

(b) either—

(i) the employee's employment agreement provides for pay for overtime hours worked; or

(ii) the employer has an established policy or practice of paying for overtime meals.

Eligibility requirements: sustenance allowances

(4) Subsection (2) applies only if the employer has an established policy or practice of paying a sustenance allowance.

Actual cost or reasonable estimate

(5) The amount paid must be—

(a) the actual cost to the employee, and for an overtime meal referred to in subsection (1), with documentation required for amounts over $20 per meal; or

(b) a reasonable estimate of the expenditure likely to be incurred by the employee or a group of employees for whom an amount is payable.

Meaning of overtime

(6) For the purposes of this section, **overtime**, for a person and a day, means time worked for an employer on the day beyond the person's ordinary hours of work as set out in their employment agreement.

Defined in this Act: amount, employee, employer, exempt income, overtime, pay

Section CW 17C: inserted (with effect on 1 April 2008), on 6 October 2009, by section 45 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 18 Allowance for additional transport costs

Exempt income

(1) An allowance that an employee receives from an employer to reimburse the employee's additional transport costs is exempt income to the extent to which the employee incurs the costs in connection with their employment and for the employer's benefit or convenience.

Estimated expenditure of employees

(2) For the purposes of subsection (1),—

(a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and

(b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates.

Meaning of additional transport costs

(3) In this section, **additional transport costs** means the costs to an employee of travelling between their home and place of work that are more than would ordinarily be expected. The costs must be attributable to 1 or more of the following factors:

(a) the day or time of day when the work duties are performed:

(b) the need to transport any goods or material for use or disposal in the course of the employee's work:

(c) the requirement to fulfil a statutory obligation:

(d) a temporary change in the employee's place of work while in the same employment:
(e) any other condition of the employee's work:
(f) the absence of an adequate public passenger transport service that operates fixed routes and a regular timetable for the employee's place of work.

Quantifying additional transport costs

(4) Additional transport costs are quantified as follows:
(a) when the additional transport costs are attributed to a factor described in any of subsection (3)(a) to (e), the amount by which the costs are more than the employee's ordinarily expected travel costs without reference to that factor:
(b) when the additional transport costs are attributed to the factor described in subsection (3)(f), the amount by which the costs are more than $5 for each day on which the employee attends work:
(c) except in special circumstances, the costs of travelling any distance over 70 kilometres in 1 day are not taken into account in calculating additional transport costs.

Defined in this Act: additional transport costs, amount, employee, employer, exempt income, pay

Compare: 2004 No 35 s CW 14

CW 19 Amounts derived during short-term visits

Exempt income

(1) Income that a non-resident person derives in a tax year from performing personal or professional services in New Zealand during a visit is exempt income if—
(a) the visit is for 92 or fewer days, counting the days of arrival and departure as a whole day each; and
(b) the total number of days on which the person is present in New Zealand in the tax year is 92 or fewer; and
(c) the services are performed for or on behalf of a person who is not resident in New Zealand; and
(d) the amount derived from the personal or professional services is chargeable in the country or territory in which the person is resident with a tax that is substantially the same as income tax imposed under this Act.

Exclusion

(2) This section does not apply to the income of a public entertainer.

Meaning of public entertainer

(3) In this section, **public entertainer includes**—

(a) circus performers, dancers, lecturers, motion picture artists, musicians, radio artists, singers, television artists, and theatre artists; and

(b) athletes, boxers, wrestlers, and other professional sportspersons.

Defined in this Act: amount, exempt income, income, income tax, New Zealand, non-resident, public entertainer, resident in New Zealand, tax year

Compare: 2004 No 35 s CW 15

CW 20 Amounts derived by visiting entertainers including sportspersons

Exempt income: cultural activities

(1) Income that a non-resident entertainer derives from carrying out their activity or performance in New Zealand during a visit is exempt income if—

(a) the activity or performance occurs under a cultural programme of the New Zealand government or an overseas government; or

(b) the activity or performance occurs under a cultural programme wholly or partly sponsored by the New Zealand government or an overseas government; or

(c) the activity or performance occurs as part of a programme of an overseas foundation, trust, or other organisation that—

(i) exists wholly or partly to promote cultural activity; and

(ii) is not carried on for the private pecuniary profit of any member, proprietor, or shareholder.

Exempt income: sporting activities

(2) Income that a non-resident entertainer derives from carrying out an activity or performance that relates to a game or sport in New Zealand during a visit is exempt income if the participants are the official representatives of a body that administers the game or sport in an overseas country.

Exempt income: employer of non-resident entertainer

(3) If income derived from an activity or performance of a non-resident entertainer would be exempt income under this section if derived by the non-resident entertainer, that amount is exempt income if derived by a person who—

(a) provides the services of the non-resident entertainer during the visit to New Zealand; and

(b) is 1 of the following:

(i) the entertainer's employer; or

(ii) a company of which the entertainer is an officer; or

(iii) a firm of which the entertainer is a principal.

Meaning of non-resident entertainer

(4) In this section, **non-resident entertainer** means a non-resident person, as defined in subpart YD (Residence and source in New Zealand), who carries out an activity or performance in connection with—

(a) a solo or group performance by actors, comperes, dancers, entertainers, musicians, singers, or other artists, whether for cultural, educational, entertainment, religious, or other purposes; or

(b) lectures, speeches, or talks for any purpose; or

(c) a sporting event or sporting competition of any nature.

Defined in this Act: amount, company, employer, exempt income, income, New Zealand, non-resident, non-resident entertainer

Compare: 2004 No 35 s CW 16

CW 21 Amounts derived by visiting crew of pleasure craft

Exempt income

(1) Income that a non-resident crew member derives from performing services in New Zealand relating to a pleasure craft while it is in New Zealand is exempt income if—

(a) the services are performed for a person who is not resident in New Zealand; and

(b) the pleasure craft is the subject of a security given under section 116 of the Customs and Excise Act 1996; and

(c) the pleasure craft is not owned, wholly or partly or directly or indirectly, by—

(i) a resident of New Zealand; or

(ii) a controlled foreign company.

Some definitions

(2) In this section,—

non-resident crew member means a person who—

(a) is a crew member of a pleasure craft; and

(b) is a non-resident, a matter determined without applying section YD 1(3) (Residence of natural persons); and

(c) is not present in New Zealand on more than 365 days in any 2-year period that starts on or after 28 May 2002; and

(d) is not in New Zealand unlawfully under the Immigration Act 2009

pleasure craft is defined in section 2 of the Maritime Transport Act 1994.

Defined in this Act: amount, controlled foreign company, exempt income, income, New Zealand, non-resident, non-resident crew member, pleasure craft, resident in New Zealand, year

Compare: 2004 No 35 s CW 17

Section CW 21(2) **non-resident crew member**: amended, on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

CW 22 Amounts derived by overseas experts and trainees in New Zealand by government arrangement

Exempt income: personal services

(1) Income that a non-resident person derives from performing personal services, including professional services, in New Zealand during a visit is exempt income if—

(a) the services are performed for or on behalf of a non-resident employer; and

(b) the purpose of the visit is all or any of the following:

(i) providing professional or expert advice or assistance:

(ii) teaching or lecturing:

(iii) making investigations:

(iv) receiving education, training, or experience; and

(c) the visit occurs under an arrangement for assistance entered into by the government of New Zealand.

Exempt income: maintenance or bursaries

(2) An amount of income that a non-resident person derives from a payment of maintenance or of an allowance, or from a bursary or scholarship, provided for or paid to the person during or in relation to their presence in New Zealand during a visit, is exempt income if—

(a) the purpose of the visit is all or any of the following:

(i) providing professional or expert advice or assistance:

(ii) teaching or lecturing:

(iii) making investigations:

(iv) receiving education, training, or experience; and

(b) the visit occurs under an arrangement for assistance entered into by the government of New Zealand.

Some definitions

(3) In this section,—

arrangement for assistance entered into by the government of New Zealand means an arrangement entered into by the government of New Zealand—

(a) in relation to or under—

(i) the Commonwealth Education Scheme; or

(ii) a programme of the United Nations, or any specialised agency of the United Nations, for cultural, economic, educational, expert, professional, or technical assistance; or

(b) for the purpose of providing education, training, or experience for officers of the Samoan, Cook Islands, Niuean, or Tokelauan public services, or for persons resident in Samoa, the Cook Islands, Niue, or Tokelau; or

(c) with the government of any other country or with any international organisation, if it is an arrangement that—

(i) is for the purpose of providing cultural, economic, educational, expert, professional, or technical assistance, or administrative or other training, or the means or facilities for making investigations, whether upon a bilateral, co-operative, multilateral, mutual, or unilateral basis; and

(ii) is in principle similar to any arrangement to which paragraph (a) or (b) applies

international organisation means an organisation whose members are sovereign powers, whether countries of the Commonwealth or foreign sovereign powers, or the governments of those countries or powers

non-resident person means a person who would not be resident in New Zealand if they were not present in New Zealand under an arrangement for assistance entered into by the government of New Zealand. The residence of the person is determined without applying section YD 1(3) (Residence of natural persons).

Defined in this Act: amount, arrangement, arrangement for assistance entered into by the government of New Zealand, Commonwealth, employer, exempt income, income, international organisation, New Zealand, non-resident person, pay, resident in New Zealand

Compare: 2004 No 35 s CW 18

CW 23 Income for military or police service in operational area

When this section applies

(1) This section applies when a member of the New Zealand Defence Force or the police (the **member**) derives income for serving in an operational area.

Exempt income

(2) The following are exempt income of the member:

(a) an operational allowance:

(b) an amount that the ministerial committee decides under subsection (3) is exempt income.

Ministerial committee

(3) A ministerial committee that includes the Prime Minister, the Minister of Defence, the Minister of Police, the Minister of Finance, and the Minister of Foreign Affairs may, for the purposes of subsection (2)(b), decide that an amount of income derived by a member for being in an operational area is exempt income.

Some definitions

(4) In this section,—

operational allowance, for a member, means the amount of an allowance payable by the Government of New Zealand that—

(a) is paid directly and solely to the member for being in an operational area; and

(b) is not—

(i) a regular force gratuity:

(ii) a bonus or bounty for re-engagement in a regular force

operational area means an area—

(a) to which the Minister of Defence has ordered the deployment of New Zealand Defence Force members for a specific mission authorised by the Government; and

(b) that the Chief of Defence Force delineates for that mission.

Defined in this Act: amount, exempt income, income, New Zealand, operational allowance, operational area

Compare: 2004 No 35 s CW 19

CW 24 Deferred military pay for active service

Exempt income

(1) Deferred military pay that is granted or paid under the Defence Act 1990 to a person for service in the New Zealand armed forces in an active service area is exempt income.

Some definitions

(2) In this section,—

active service area means an area outside New Zealand that is designated as an active service area by the Minister of Defence, with the agreement of the Minister of Finance

deferred military pay means pay declared to be deferred by the Minister of Defence, with the agreement of the Minister of Finance.

Defined in this Act: active service area, deferred military pay, exempt income, New Zealand, pay

Compare: 2004 No 35 s CW 20

CW 25 Value of board for religious society members

The value of personal board and lodging and other basic personal necessities received by a member of a religious society or order is exempt income if—

(a) the member's sole occupation is service in a religious society or order; and

(b) it is in the nature of the service that members are not paid for their work and do not receive a reward for it, other than those necessities.

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 21

CW 26 Jurors' and witnesses' fees

Fees paid by the Crown to jurors and to witnesses, other than expert witnesses, are exempt income.

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 22

Certain income of transitional resident

CW 27 Certain income derived by transitional resident

Income derived by a person who is a transitional resident is exempt income if the income is a foreign-sourced amount that is none of the following:

(a) employment income of a type described in section CE 1 (Amounts derived in connection with employment) in connection with employment or service performed while the person is a transitional resident:

(b) income from a supply of services.

Defined in this Act: employment income, exempt income, foreign-sourced amount, income, transitional resident

Compare: 2004 No 35 s CW 22B

Income from living allowances, compensation, and government grants

CW 28 Pensions

Exempt income

(1) The following are exempt income:

(a) a pension or allowance under the War Pensions Act 1954, other than a veteran's pension:
(b) a pension or allowance of any other kind granted in New Zealand or overseas by any government relating to any war or to disability attributable to or aggravated by service in the armed forces or the police:
(c) a payment of portable New Zealand superannuation:
(d) a payment of portable veteran's pension:
(e) an overseas pension.

Meaning of overseas pension

(2) In this section, **overseas pension** means—

(a) an overseas pension, to the extent of sums subtracted under section 70 of the Social Security Act 1964, by the department currently responsible for administering that Act, from—
  (i) a monetary benefit paid under Part 1 of the Act; or
  (ii) a monetary benefit, other than New Zealand superannuation or a veteran's pension, paid under the Social Welfare (Transitional Provisions) Act 1990:
(b) an overseas pension to the extent to which it is subject to an arrangement under section 70(3) of the Social Security Act 1964 but not to the extent of the equivalent amount of New Zealand superannuation, veteran's pension, or income-tested benefit paid under section 70(3)(b) of that Act.

Defined in this Act: amount, exempt income, income-tested benefit, New Zealand superannuation, overseas pension, pay, portable New Zealand superannuation, portable veteran's pension, veteran's pension

Compare: 2004 No 35 s CW 23

CW 29 Reinvested amounts from foreign superannuation schemes in Australia

An amount of income derived in an income year by a natural person as a withdrawal from a foreign superannuation scheme is exempt income if,—

(a) in the income year, the person invests the amount in another foreign superannuation scheme; and

(b) each foreign superannuation scheme is constituted in Australia and is—

(i) an Australian approved deposit fund:

(ii) an Australian exempt public sector superannuation scheme:

(iii) an Australian regulated superannuation fund:

(iv) an Australian retirement savings account.

Defined in this Act: amount, Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund, Australian retirement savings account, exempt income, foreign superannuation scheme, income, income year

Compare: 2004 No 35 s CW 23B

CW 30 Annuities from Crown Bank Accounts

An annuity is exempt income if—

(a) it is granted by the Executive Council of New Zealand; and

(b) it is paid from the Crown Bank Account; and

(c) it is not designated as being subject to tax.

Defined in this Act: exempt income, New Zealand, pay, tax

Compare: 2004 No 35 s CW 24

CW 31 Services for members of Parliament

Travel, accommodation, attendance, and communication services, as defined in section 20A(7) of the Civil List Act 1979, are exempt income if they—

(a) are—

(i) referred to in section 20A of that Act:

(ii) paid under section 25 of that Act; and

(b) are provided to—

(i) a person to whom any of section 25(1)(b) to (e) of that Act applies:

(ii) a member of the family of a person described in subparagraph (i).

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 25

CW 32 Maintenance payments

The following are exempt income:

(a) child support or spousal maintenance under the Child Support Act 1991:

(b) a payment in the nature of maintenance out of money belonging to a person's spouse, civil union partner or de facto partner, or former spouse, former civil union partner, or former de facto partner.

Defined in this Act: exempt income, pay

Compare: 2004 No 35 s CW 26

CW 33 Allowances and benefits

Exempt income

(1) The following are exempt income:

(a) a monetary benefit under the Social Security Act 1964, except an income-tested benefit:

(b) a payment under Part 5 or 13 of the Accident Insurance Act 1998, or under Part 11 of the Accident Compensation Act 2001, of any of the following kinds:

(i) a payment to an insured person for treatment or rehabilitation:

(ii) an independence allowance:

(iii) a funeral grant:

(iv) a survivor's grant:

(v) a childcare payment:

(c) a participation allowance under regulations made under the Social Security Act 1964:

(d) a disabled workshop payment:

(e) an amount derived by a trustee of a trust created for the benefit of persons harmed by thalidomide, or a distribution to a beneficiary from the trust:

(f) an amount derived by a trustee of the New Zealand Agent Orange Trust that represents the settlement fund and income attributable to the fund, or a distribution to a beneficiary from the trust.

Meaning of disabled workshop payment

(2) In this section, **disabled workshop payment** means a payment to a disabled person for undertaking therapeutic activities in a sheltered workshop, as defined in the Disabled Persons

Employment Promotion Act 1960, or in a similar workshop, if the average amount paid in a tax year is $50 or less per week.

Defined in this Act: amount, disabled workshop payment, exempt income, income, income-tested benefit, pay, tax year, trustee

Compare: 2004 No 35 s CW 27

Section CW 33(1)(b): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

CW 34 Compensation payments

Exempt income

(1) An amount of income from the following payments is exempt income:

(a) a payment relating to incapacity for work:

(b) a payment under the Workers Compensation Act 1956:

(c) a payment under the Criminal Injuries Compensation Act 1963:

(d) a distribution from funds approved by the Minister in charge of War Pensions to ex-prisoners of war held in German concentration camps in World War 2:

(e) a payment under the laws of a State of the Federal Republic of Germany or the Republic of Austria to the victims of National Socialist persecution:

(f) payments under schedule 1 of the Crown Forest Assets Act 1989 (except clause 3(b)):

(g) payments of compensation, solatium payments, or payments to lessors for the purchase of leases under the Maori Reserved Land Amendment Act 1997 (but not interest paid under section 23 of the Act).

Some definitions

(2) In this section,—

accident insurance contract is defined in section 13 of the Accident Insurance Act 1998

payment relating to incapacity for work means a payment of 1 of the following kinds made to a person because they are, or another person is, incapacitated for work

(a) a payment by a friendly society, but not a payment referred to in paragraph (d) or (e) of the definition of **accident compensation payment** in section CF 1(2) (Benefits, pensions, compensation, and government grants):

(b) a payment from a sickness, accident, or death benefit fund to which the person was a contributor when the period of incapacity began, but not a payment referred to in paragraph (d) or (e) of the definition of **accident compensation payment** in section CF 1(2):

(c) a payment under a policy of personal sickness or accident insurance, or an accident insurance contract, but neither a payment referred to in paragraph (d) or (e) or (f) of the definition of **accident compensation payment** in section CF 1(2) nor a payment calculated according to loss of earnings or profits.

Defined in this Act: accident insurance contract, exempt income, friendly society, interest, lease, pay, payment relating to incapacity for work, sickness, accident, or death benefit fund

Compare: 2004 No 35 s CW 28

CW 35 Personal service rehabilitation payments

An amount paid to a person for an income year as a personal service rehabilitation payment is exempt income of the person if—

(a) they are paid the amount under the Accident Compensation Act 2001; and

(b) they pay an amount to another person for providing them in the income year a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and

(c) the amount paid is equal to or more than the amount of personal service rehabilitation payment for the income year after taking into account any amount of tax withheld.

Defined in this Act: amount, amount of tax, exempt income, income year, pay, personal service rehabilitation payment

Compare: 2004 No 35 s CW 28B

Section CW 35: substituted, on 1 July 2008, by section 329 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 35(a): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

CW 36 Scholarships and bursaries

A basic grant or an independent circumstances grant under regulations made under section 303 of the Education Act 1989 is not exempt income, but any other scholarship or bursary for attendance at an educational institution is exempt income.

Defined in this Act: exempt income

Compare: 2004 No 35 s CW 29

CW 37 Film production grants

[Repealed]

Section CW 37: repealed (with effect on 1 October 2009), on 6 October 2009, by section 46(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Income of certain entities

CW 38 Public authorities

Exempt income

(1) An amount of income derived from sinking funds relating to the debt of a public authority is exempt income.

Exempt income

(2) Any other amount of income derived by a public authority is exempt income.

Exclusion: amounts received in trust

(3) Subsection (2) does not apply to an amount of income that a public authority derives as a trustee.

Exclusion: superannuation schemes

(4) Subsection (2) does not apply to a public authority to the extent to which it is a superannuation scheme.

Exclusion: certain public authorities

(5) Subsection (2) does not apply to an amount of income derived by the following public authorities:

(a) Public Trust:

(b) State enterprises:

(c) Crown Research Institutes.

Meaning of public authority

(6) In this section, **public authority** includes the Reserve Bank of New Zealand.

Defined in this Act: amount, Crown Research Institute, exempt income, income, public authority, State enterprise, superannuation scheme, trustee

Compare: 2004 No 35 s CW 31

CW 39 Local authorities

Exempt income

(1) An amount of income derived from sinking funds relating to the debt of a local authority is exempt income.

Exempt income

(2) Any other amount of income derived by a local authority is exempt income.

Exclusion: amounts received in trust

(3) Subsection (2) does not apply to an amount of income that a local authority derives as a trustee.

Exclusion: certain amounts from commercial undertakings

(4) Subsection (2) does not apply to an amount of income that—

(a) is derived by a local authority; and

(b) is not rates; and

(c) is derived from—

(i) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority; or

(ii) an organisation that is a port company, a subsidiary of a port company, or an energy company and that would be a council-controlled organisation in the absence of section 6(4) of the Local Government Act 2002.

Exclusion: local authority as port operator

(5) Subsection (2) does not apply to an amount of income derived by a local authority in its capacity as a port operator from a port-related commercial undertaking. **Port operator**

and **port-related commercial undertaking** are defined in section 38(4) of the Port Companies Act 1988.

Defined in this Act: amount, council-controlled organisation, exempt income, income, local authority, trustee

Compare: 2004 No 35 s CW 32

Section CW 39(4)(c)(i): substituted, on 1 April 2008, by section 330 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CW 40 Local and regional promotion bodies

Exempt income: beautification societies

(1) An amount of income derived by an association or society is exempt income if—

(a) the association or society is established mainly to—

(i) advertise, beautify, or develop a city or other district so as to attract population, tourists, trade, or visitors:

(ii) create, develop, or increase amenities for the general public in a city or other district; and

(b) none of the funds of the association or society is used, or is or may become available to be used, for any other purpose that is not a charitable purpose.

Exclusion: council-controlled organisation

(2) Subsection (1) does not apply to an amount of income derived—

(a) by a council-controlled organisation:

(b) by a local authority from a council-controlled organisation.

Exempt income: trustees of Cornwall Park

(3) An amount of income that the trustees of Cornwall Park, Auckland, derive from the property of the trust is exempt income.

Defined in this Act: amount, charitable purpose, council-controlled organisation, exempt income, income, local authority, trustee

Compare: 2004 No 35 s CW 33

Section CW 40 list of defined terms **associated person**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 47 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 41 Charities: non-business income

Exempt income

(1) The following are exempt income:

(a) an amount of income derived by a trustee in trust for charitable purposes:

(b) an amount of income derived by a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.

Exclusion: trustees, society, or institution not registered

(2) This section does not apply to an amount of income if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

Exclusion: business income

(3) This section does not apply to an amount of income derived from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in subsection (1).

Exclusion: council-controlled organisation income

(4) This section does not apply to an amount of income derived by—

(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:

(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.

Definition

(5) In this section and sections CW 42 and CW 43, **tax charity** means,—

(a) a trustee or trustees of a trust, a society, or an institution, registered as a charitable entity under the Charities Act 2005:

(b) a trustee or trustee of a trust, a society, or an institution (the **entity**), that—

(i) has started, before 1 July 2008, to take reasonable steps in the process of preparing an application for registering the entity as a charitable entity under the Charities Act 2005; and

(ii) intends to complete the process of preparing an application described in subparagraph (i); and

(iii) has not been notified by the Commissioner that the entity is not a tax charity:

(c) a trustee or trustee of a trust, a society, or an institution, that is or are non-resident and carrying out its or their charitable purposes outside New Zealand, and which is approved as a tax charity by the Commissioner in circumstances where registration as a charitable entity under the Charities Act 2005 is unavailable.

Defined in this Act: amount, business, charitable purpose, council-controlled organisation, exempt income, income, local authority, tax charity, trustee

Compare: 2004 No 35 s CW 34

Section CW 41(2): amended, on 1 July 2008, by section 20(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 41(4): substituted, on 1 April 2008, by section 331 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 41(5) heading: added, on 1 July 2008, by section 20(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 41(5): added, on 1 July 2008, by section 20(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 41 list of defined terms **registered as a charitable entity**: repealed, on 1 July 2008, by section 20(3) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 41 list of defined terms **tax charity**: inserted, on 1 July 2008, by section 20(3) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

CW 42 Charities: business income

Exempt income

(1) Income derived directly or indirectly from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in section CW 41(1) is exempt income if—

(a) the trust, society, or institution carries out its charitable purposes in New Zealand; and

(b) the trustee or trustees of the trust, the society, or the institution is or are, at the time that the income is derived, a tax charity; and

(c) no person with some control over the business is able to direct or divert, to their own benefit or advantage, an amount derived from the business. Subsections (3) to (8) expand on this subsection.

Exclusion

(2) This section does not apply to an amount of income derived by—

(a) a council-controlled organisation, other than a council-controlled organisation operating a hospital as a charitable activity:

(b) a local authority from a council-controlled organisation, other than from a council-controlled organisation operating a hospital as a charitable activity on behalf of the local authority.

Carrying on a business: trustee

(3) For the purposes of subsection (1), a trustee is treated as carrying on a business if—

(a) the trustee derives rents, fines, premiums, or other revenues from an asset of the trust; and

(b) the asset was disposed of to the trust by a person of a kind described in subsection (5)(b);

(c) and either—

(i) the person retains or reserves an interest in the asset; or

(ii) the asset will revert to the person.

Charitable purposes in New Zealand and overseas

(4) For the purposes of subsection (1)(a), if the charitable purposes of the trust, society, or institution are not limited to New Zealand, income derived from the business in a tax year is apportioned reasonably between those purposes in New Zealand and those outside New Zealand. Only the part apportioned to the New Zealand purposes is exempt income.

Control over business

(5) For the purposes of subsection (1)(c) for an income year, a person is treated as having some control over the business, and as being able to direct or divert amounts from the business to their own benefit or advantage if, in the tax year,—

(a) they are, in any way, whether directly or indirectly, able to determine, or materially influence the determination of,—

(i) the nature or extent of a relevant benefit or advantage; or

(ii) the circumstances in which a relevant benefit or advantage is, or is to be, given or received; and

(b) their ability to determine or influence the benefit or advantage arises because they are—

(i) a settlor or trustee of the trust by which the business is carried on; or

(ii) a shareholder or director of the company by which the business is carried on; or

(iii) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or

(iv) a person associated with a settlor, trustee, shareholder, or director referred to in any of subparagraphs (i) to (iii).

Control: settlor asset disposed of to trust

(6) For the purposes of subsection (5), a person is treated as a settlor of a trust, and as gaining a benefit or advantage in the carrying on of a business of the trust, if—

(a) they have disposed of an asset to the trust, and the asset is used by the trust in the carrying on of the business; and

(b) they retain or reserve an interest in the asset, or the asset will revert to them.

No control

(7) For the purposes of subsection (1)(c), a person is not treated as having some control over the business merely because—

(a) they provide professional services to the trust or company by which the business is carried on; and

(b) their ability to determine, or materially influence the determination of, the nature or extent of a relevent benefit or advantage arises because they—

(i) provide the services in the course of and as part of carrying on, as a business, a professional public practice; or

(ii) are a statutory trustee company; or

(iii) are Public Trust; or

(iv) are the Maori Trustee.

Benefit or advantage

(8) For the purposes of subsection (1)(c), a benefit or advantage to a person—

(a) may or may not be something that is convertible into money:

(b) unless excluded under paragraph (d), includes deriving an amount that would be income of the person under 1 or more of the following provisions:

(i) section CA 1(2) (Amounts that are income):

(ii) sections CB 1 to CB 23 (which relate to income from business or trade-like activities):

(iii) section CB 32 (Property obtained by theft):

(iv) sections CC 1 (Land), CC 3 to CC 8 (which relate to income from financial instruments), and CC 9 (Royalties):

(v) section CD 1 (Dividend):

(vi) sections CE 1 (Amounts derived in connection with employment) and CE 8 (Attributed income from personal services):

(vii) section CF 1 (Benefits, pensions, compensation, and government grants):

(viii) section CG 3 (Bad debt repayment):

(ix) sections CQ 1 (Attributed controlled foreign company income) and CQ 4 (Foreign investment fund income):

(c) includes retaining or reserving an interest in an asset in the case described in subsection (3), if the person has disposed of the asset to the trust or the asset will revert to them:

(d) does not include earning interest on money lent, if the interest is payable at no more than the current commercial rate, given the nature and term of the loan.

Non-exempt business income

(9) If an amount derived from the carrying on of a business by or for a trust is not exempt income because of a failure to comply with subsection (1)(c), the amount is trustee income.

Defined in this Act: amount, associated person, business, charitable purpose, company, council-controlled organisation, director, exempt income, income, income year, interest, local authority, money lent, New Zealand, pay, shareholder, statutory trustee company, tax charity, trustee, trustee income

Compare: 2004 No 35 s CW 35

Section CW 42(1)(b): amended, on 1 July 2008, by section 21(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 42(2): substituted, on 1 April 2008, by section 332 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section CW 42(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 48 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 42(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 48 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 42(8): amended (with effect on 1 April 2008), on 6 October 2009, by section 48 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 42(9): amended (with effect on 1 April 2008), on 6 October 2009, by section 48 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 42 list of defined terms **tax charity**: inserted, on 1 July 2008, by section 21(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

CW 43 Charitable bequests

Exempt income

(1) An amount of income derived by a deceased's executor or administrator is exempt income to the extent to which the requirements of subsections (2) and (3) are met, having regard to all relevant matters including—

(a) the terms of the deceased's will, including the rights of annuitants, legatees, and other beneficiaries; and

(b) the nature and extent of the debts and liabilities of, and other charges against, the estate and their likely effect on the income and assets available for distribution to the beneficiaries; and

(c) the shares and prospective shares of the beneficiaries in the income and assets of the estate.

Gift to charity

(2) The first requirement is that the amount arises from or is attributable to assets of the estate that have been left to a trust, society, or institution of a kind referred to in section CW 41(1).

Exempt in hands of charity

(3) The second requirement is that the amount, if derived by the trust, society, or institution or by a business carried on by, or for, or for the benefit of it, would be exempt income under section CW 41 or CW 42.

Timing of registration as charitable entity

(4) An amount of income derived by a deceased's executor or administrator that is derived during the period beginning on the deceased's date of death and ending at the end of the income year that follows the income year in which the deceased died is not prevented from being exempt income under this section merely because the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

Requirements of sections CW 41 and CW 42 disregarded

(5) For the purposes of subsection (4), until the end of the income year that follows the income year in which the deceased died, the requirements of sections CW 41 and CW 42 for the trustee or trustees of the trust, the society, or the institution to be a tax charity must be disregarded when applying those sections for the purposes of this section.

Amounts derived after end of certain period

(6) This section does not apply to an amount of income derived after the end of the income year that follows the income year in which the deceased died if, at the time that the amount of

income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, a tax charity.

Defined in this Act: amount, business, distribution, exempt income, income, New Zealand, tax charity

Compare: 2004 No 35 s CW 36

Section CW 43(4): amended, on 1 July 2008, by section 22(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 43(5): amended, on 1 July 2008, by section 22(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 43(6): amended, on 1 July 2008, by section 22(3) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 43 list of defined terms **registered as a charitable entity**: repealed, on 1 July 2008, by section 22(4) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section CW 43 list of defined terms **tax charity**: inserted, on 1 July 2008, by section 22(4) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

CW 44 Friendly societies

An amount of income derived by a friendly society is exempt income, except to the extent to which the amount is derived from—

(a) a business carried on beyond the membership of the friendly society; or

(b) a company registered as an insurer under the Accident Insurance Act 1998.

Defined in this Act: amount, business, company, exempt income, friendly society, income

Compare: 2004 No 35 s CW 37

CW 45 Funeral trusts

Interest or a dividend derived by a trustee in trust for a fund is exempt income if, when the interest or dividend is derived by the trustee,—

(a) the sole purpose of the fund is the payment of the expenses associated with the funerals of—

(i) employees of an employer:

(ii) spouses, civil union partners, de facto partners, and dependants of employees of the employer:

(iii) surviving spouses, civil union partners, de facto partners, and surviving dependants of deceased employees of the employer; and

(b) the employer has at least 10 employees; and

(c) all persons eligible for benefits from the fund are eligible equally for benefits from the fund; and

(d) no contributions to the fund are made by a person who is not the employer or an employee of the employer; and

(e) the fund is approved by the Commissioner.

Defined in this Act: Commissioner, dividend, employee, employer, exempt income, interest, pay, trustee

Compare: 2004 No 35 s CW 38

CW 46 Bodies promoting amateur games and sports

An amount of income derived by a club, society, or association is exempt income if—

(a) the club, society, or association is established mainly to promote an amateur game or sport; and

(b) the game or sport is conducted for the recreation or entertainment of the general public; and

(c) no part of the funds of the club, society, or association is used or is available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

Defined in this Act: amount, associated person, exempt income, income

Compare: 2004 No 35 s CW 39

CW 47 TAB and racing clubs

Exempt income: racing organisations

(1) An amount of income derived by any of the following bodies is exempt income:

(a) the New Zealand Racing Board:

(b) New Zealand Thoroughbred Racing:

(c) Harness Racing New Zealand:

(d) the New Zealand Greyhound Racing Association (Incorporated).

Exempt income: racing clubs

(2) An amount of income derived by a racing club, as defined in section 5 of the Racing Act 2003, is exempt income, if none of

the club's funds is used or is available to be used for the private pecuniary profit of a member of the club or an associate of a member.

Defined in this Act: amount, associated person, exempt income, income

Compare: 2004 No 35 s CW 40

CW 48 Income from conducting gaming-machine gambling

An amount of income derived by a person that is gross gambling proceeds from gaming-machine gambling is exempt income if—

(a) the person is authorised to conduct the gaming-machine gambling under the Gambling Act 2003 by a gaming-machine operator's licence and a gaming-machine venue licence; and

(b) the person complies with the Gambling Act 2003 in applying and distributing the net gambling proceeds from the gaming-machine gambling.

Defined in this Act: exempt income, gaming-machine gambling, gaming-machine operator's licence, gaming-machine venue licence, gross gambling proceeds, net gambling proceeds

Compare: 2004 No 35 s CW 40B

CW 49 Bodies promoting scientific or industrial research

Exempt income

(1) An amount of income derived by a society or association established mainly to promote or encourage scientific or industrial research is exempt income if—

(a) the society or association is approved by the Royal Society of New Zealand; and

(b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

Exclusion

(2) This section does not apply to a Crown Research Institute.

Defined in this Act: amount, associated person, Crown Research Institute, exempt income, income

Compare: 2004 No 35 s CW 41

CW 50 Veterinary services bodies

Exempt income: veterinary clubs

(1) An amount of income derived by a veterinary association, club, or society is exempt income if—

(a) the association, club, or society was established mainly to promote efficient veterinary services in New Zealand; and

(b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

Exempt income: Veterinary Council

(2) An amount of income derived by the Veterinary Council of New Zealand is exempt income.

Defined in this Act: amount, associated person, exempt income, income, New Zealand

Compare: 2004 No 35 s CW 42

CW 51 Herd improvement bodies

An amount of income derived by a herd improvement association or society is exempt income if—

(a) the association or society was established mainly to promote the improvement of the standard of dairy cattle in New Zealand; and

(b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

Defined in this Act: amount, associated person, exempt income, income, New Zealand

Compare: 2004 No 35 s CW 43

CW 52 Community trusts

An amount of income derived by the trustee of a community trust is exempt income.

Defined in this Act: amount, community trust, exempt income, income, trustee

Compare: 2004 No 35 s CW 44

CW 53 Distributions from complying trusts

To the extent to which section HC 20 (Distributions from complying trusts) applies to an amount that a person derives as a beneficiary of a trust, the amount is exempt income.

Defined in this Act: amount, complying trust, distribution, exempt income

Compare: 2004 No 35 s HH 3(5)

CW 54 Foreign-sourced amounts derived by trustees

To the extent to which section HC 26 (Foreign-sourced amounts: resident trustees) applies to a foreign-sourced amount that a trustee who is resident in New Zealand derives in an income year, the amount is exempt income.

Defined in this Act: exempt income, foreign-sourced amount, income year, non-resident, resident in New Zealand, trustee

Compare: 2004 No 35 s HH 4(3B)

CW 55 Maori authority distributions

A distribution from a Maori authority to a member, to the extent to which it is not income under section CV 11 (Maori authorities) is exempt income.

Defined in this Act: exempt income, income, Maori authority, member

Compare: 2004 No 35 s HI 5(1)

CW 55BA Tertiary education institutions

An amount of income derived by a tertiary education institution that is established under Part 14 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual is exempt income.

Defined in this Act: exempt income, income

Section CW 55BA: inserted, on 1 July 2008, by section 23 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Partners and partnerships

Heading: inserted, on 1 April 2008, by section 8(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

CW 55B Amounts of exempt income for partners

A person who is a partner has an amount of exempt income to the extent to which an amount of exempt income results from

the application of subpart HG (Joint venturers, partners, and partnerships) to them and their partnership.

Defined in this Act: amount, exempt income, partner, partnership

Section CW 55B: inserted, on 1 April 2008, by section 8(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Income from certain activities

CW 56 Non-resident aircraft operators

Exempt income

(1) An amount of income derived by a non-resident aircraft operator from air transport from New Zealand is exempt income to the extent to which the Commissioner determines that an aircraft operator resident in New Zealand is, in circumstances corresponding to the circumstances of the non-resident aircraft operator, exempt from, or not liable to, income tax imposed by the laws of the country or territory in which the non-resident aircraft operator is resident.

Determination

(2) A determination by the Commissioner for the purposes of subsection (1) may relate to a class of non-resident aircraft operators or a class of resident aircraft operators.

Some definitions

(3) In this section,—

air transport from New Zealand—

(a) means the carriage outside New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in New Zealand; and

(b) if the aircraft calls at another airport in New Zealand before leaving New Zealand on the flight for which the emplaning or embarking occurred, includes that New Zealand portion of the flight

non-resident aircraft operator means a person who—

(a) is engaged in the business of operating an aircraft for air transport from an airport; and

(b) is resident in a country or territory outside New Zealand and is not resident in New Zealand.

Defined in this Act: air transport from New Zealand, amount, business, Commissioner, exempt income, income, income tax, New Zealand, non-resident aircraft operator, resident in New Zealand

Compare: 2004 No 35 s CW 45

CW 57 Non-resident company involved in exploration and development activities

Exempt income

(1) An amount of income derived by a non-resident company from exploration and development activities in an offshore permit area is exempt income if it is derived in the period that—

(a) starts on the beginning of the 2005–06 income year for the non-resident company; and

(b) ends on 31 December 2014.

Some definitions

(2) In this section,—

exploration and development activities means the following activities undertaken for the purposes of identifying and developing exploitable petroleum deposits or occurrences in an offshore permit area

(a) operating a ship to provide seismic survey readings:

(b) drilling an exploratory well or other well

offshore permit area means an area of land that is—

(a) in New Zealand; and

(b) on the seaward side of the mean high-water mark; and

(c) a permit area or part of a permit area.

Defined in this Act: amount, exempt income, exploration and development activities, exploratory well, New Zealand, non-resident company, offshore permit area, permit area

Compare: 2004 No 35 s CW 45B

Section CW 57(1)(b): substituted (with effect on 31 December 2009), on 7 September 2010, by section 14 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CW 58 Disposal of companies' own shares

An amount of income derived by a company from disposing of shares in the company is exempt income if—

(a) the company acquired the shares; and

(b) the acquisition was treated under section 67A(1) of the Companies Act 1993 as not resulting in the cancellation of the shares.

Defined in this Act: amount, cancellation, company, exempt income, income, share

Compare: 2004 No 35 s CW 46

CW 59 New Zealand companies operating in Niue

Exempt income: income wholly or mainly from Niue

(1) An amount of income derived by a company incorporated in New Zealand that derives its income wholly or mainly from Niue is exempt income.

Exclusion

(2) Subsection (1) does not apply if the company, if it were a foreign company, would at any time during the income year in which the amount is derived be a controlled foreign company.

Exempt income: dividends

(3) A dividend derived from a company incorporated in New Zealand that derives its income wholly or mainly from Niue is exempt income, unless the dividend is derived by—

(a) a person who is resident in New Zealand; or

(b) a company that is a controlled foreign company at any time during the income year in which the amount is derived; or

(c) a trustee of a trust of which a settlor or beneficiary is resident in New Zealand during the income year in which the amount is derived.

Exempt income: Niue development projects

(4) An amount of income derived by a company incorporated in New Zealand from a business or enterprise that the company carries on in Niue is exempt income if—

(a) the business or enterprise is declared by an Order in Council made under subsection (7) to be a development project for the purposes of this section; and

(b) the company's income is derived wholly or mainly from that business or enterprise; and

(c) the amount is derived from sources in Niue; and

(d) the amount is derived while the Order in Council is in force.

Exclusions

(5) Subsections (1), (3), and (4) do not apply to—

(a) an amount of income derived from sources in New Zealand; or

(b) a dividend, to the extent to which it constitutes distribution of an amount derived by the company from sources in New Zealand.

Attributed CFC income and FIF income

(6) This section does not restrict the application of section CQ 1 (Attributed controlled foreign company income), or CQ 4 (Foreign investment fund income), or the FIF rules. For the purposes of the FIF rules, a company that derives its income wholly or mainly from Niue and has exempt income under subsection (1) is treated as a foreign company.

Order in Council declaring Niue development project

(7) The Governor-General may make an Order in Council declaring a business or enterprise to be a development project for the purposes of this section if satisfied that the business or enterprise—

(a) has been or will be entered upon wholly or mainly for the purpose of developing Niue; or

(b) is or will be important in the development of Niue.

Defined in this Act: amount, attributed CFC income, business, company, controlled foreign company, dividend, exempt income, FIF, FIF rules, foreign company, income, income year, resident in New Zealand, settlor, source in New Zealand, trustee

Compare: 2004 No 35 s CW 47

CW 59B Income of and distributions by certain international funds

Trustees

(1) An amount derived by a person is exempt income of the person if they are—

(a) the trustee of the Niue International Trust Fund:

(b) the trustee of the Tokelau International Trust Fund.

Distributions

(2) An amount derived by a person is exempt income of the person if the income is a distribution by—

(a) the trustee of the Niue International Trust Fund:

(b) the trustee of the Tokelau International Trust Fund.

Defined in this Act: amount, distribution, exempt income, income, Niue International Trust Fund, Tokelau International Trust Fund, trustee

Compare: 2004 No 35 ss CW 49C, CW 49D

Section CW 59B: inserted, on 1 April 2008, by section 333 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

CW 59C Life reinsurance outside New Zealand

An amount of life reinsurance claim derived by a life insurer is exempt income to the extent to which, for the relevant life reinsurance policy, deductions for premiums are denied under section DR 3 (Life reinsurance outside New Zealand).

Defined in this Act: amount, claim, deduction, exempt income, income, life insurer, life reinsurance, life reinsurance policy, New Zealand, premium

Section CW 59C: inserted, on 1 July 2010, by section 49(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CW 60 Stake money

Stake or prize money for a dog race, horse race, or trotting race is exempt income if—

(a) it is paid by a club that is licensed to use the totalisator under the Racing Act 2003; or

(b) the race is held outside New Zealand.

Defined in this Act: exempt income, New Zealand, pay

Compare: 2004 No 35 s CW 48

CW 61 Providing standard-cost household service

Exempt income under determination

(1) An amount of income derived in an income year by a natural person from providing a standard-cost household service is exempt income if the amount is exempt income under a determination made under section 91AA(2)(a) of the Tax Administration Act 1994.

When amount treated as expenditure

(2) If subsection (1) does not apply, and the amount of standard-cost household service is less than the amount of income of the person, the person is treated, under a determination made under section 91AA of that Act, as incurring an amount of expenditure in providing the services.

Allocation

(3) For the purposes of subsection (2), the allocation of the amount of the expenditure occurs under section BD 4 (Allocation of deductions to particular income years).

Defined in this Act: amount, deduction, exempt income, income, income tax liability, income year, standard-cost household service

Compare: 2004 No 35 s CW 49

CW 62 Interest paid under the KiwiSaver Act 2006

Interest paid by the Commissioner under section 84 of the KiwiSaver Act 2006 is exempt income.

Defined in this Act: Commissioner, exempt income, interest

Compare: 2004 No 35 s CW 49B

CW 62B Voluntary activities

Exempt income

(1) When a volunteer, in undertaking a voluntary activity, derives an amount that is a reimbursement payment to cover actual expenses incurred by them, the amount is exempt income of the volunteer.

Estimated expenditure

(2) For the purposes of subsection (1)—

(a) a person may make a reasonable estimate of the amount of expenditure likely to be incurred by the volunteer for which reimbursement is payable; and

(b) the amount estimated is treated as if it were the amount incurred.

Payments partly reimbursement and partly honorarium

(3) If the person paying the amount to the volunteer makes a payment to them that is only partly a reimbursement of expenses, the person must identify the portion of the amount that is the

reimbursement, and treat the remainder as an honorarium, being a schedular payment to which the PAYE rules apply.

Who is a volunteer?

(4) For the purposes of this section, a **volunteer** means a person who freely undertakes an activity in New Zealand—

(a) chosen either by themselves or by a group of which they are a member; and

(b) that provides a benefit to a community or another person; and

(c) for which there is no purpose or intention of private pecuniary profit for the person.

Honoraria

(5) For the purposes of this section, an **honorarium** means an amount that a person receives for providing services that—

(a) is paid at a rate that is less than the market rate for providing the services; and

(b) is an amount for which, in the normal course, no payment is fixed for the services provided.

Nature of reimbursement payment

(6) For the purposes of this section, it does not matter whether—

(a) an amount of a reimbursement payment is paid in 1 sum or not:

(b) the amount is paid during an income year or at the end of an income year.

Relationship with section RD 8(3)

(7) A determination made by the Commissioner under section RD 8(3) (Schedular payments) may apply to modify an amount of expenditure under this section.

Defined in this Act: amount, exempt income, honorarium, income year, New Zealand, pay, PAYE rules, schedular payment, volunteer

Section CW 62B: inserted (with effect on 1 April 2009), on 6 October 2009, by section 50(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CW 62B(5): amended, on 7 September 2010 (applying for the 2009–10 and later income years), by section 15(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CW 63 Avoidance arrangements

An amount is exempt income if it is treated as exempt income under—

(a) section GA 1 (Commissioner's power to adjust):

(b) section GB 23 (Excessive remuneration to relatives).

Defined in this Act: amount, exempt income

Compare: 2004 No 35 ss GB 1(1)–(2C), GD 3(1), (2)

CW 64 Exemption under other Acts

An amount of income expressly exempted from income tax by any other Act is exempt income.

Defined in this Act: amount, exempt income, income, income tax

Compare: 2004 No 35 s CW 50

Subpart CX—Excluded income

Goods and services tax

CX 1 Goods and services tax

The following are excluded income of a registered person:

(a) output tax on goods and services they supply:

(b) goods and services tax (GST) payable to them by the Commissioner.

Defined in this Act: Commissioner, excluded income, goods, GST, GST payable, output tax, pay, registered person, services

Compare: 2004 No 35 s CX 1

Fringe benefits

Introductory provisions

CX 2 Meaning of fringe benefit

Meaning

(1) A **fringe benefit** is a benefit that—

(a) is provided by an employer to an employee in connection with their employment; and

(b) either—

(i) arises in a way described in any of sections CX 6, CX 9, CX 10, or CX 12 to CX 16; or

(ii) is an unclassified benefit; and

(c) is not a benefit excluded from being a fringe benefit by any provision of this subpart.

Arrangement to provide benefit

(2) A benefit that is provided to an employee through an arrangement made between their employer and another person for the benefit to be provided is treated as having been provided by the employer.

Past, present, or future employment

(3) It is not necessary to the existence of a fringe benefit that an employment relationship exists when the employee receives the benefit.

Relationship with subpartRD

(4) SectionsRD 25to RD 63 (which relate to fringe benefit tax) deal with the calculation of the taxable value of fringe benefits.

Arrangements

(5) A benefit may be treated for the purposes of the FBT rules as being provided by an employer to an employee under—

(a) section GB 31 (FBT arrangements: general):

(b) section GB 32 (Benefits provided to employee's associates).

Defined in this Act: arrangement, associated person, employee, employer, employment, FBT rules, fringe benefit, unclassified benefit

Compare: 2004 No 35 s CX 2

Section CX 2(5): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 51(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 2 list of defined terms **FBT rules**: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 51(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 3 Excluded income

A fringe benefit is excluded income of the employee.

Defined in this Act: employee, excluded income, fringe benefit

Compare: 2004 No 35 s CX 3

CX 4 Relationship with assessable income

To the extent to which a benefit that an employer provides to an employee in connection with their employment is assessable income, the benefit is not a fringe benefit.

Defined in this Act: assessable income, employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 4

CX 5 Relationship with exempt income

Exempt income not fringe benefit

(1) To the extent to which a benefit that an employer provides to an employee in connection with their employment is exempt income, the benefit is not a fringe benefit.

Exclusions

(2) Subsection (1) does not apply to—

(a) a payment of a premium on a life insurance policy that is excluded from being expenditure on account of an employee under section CE 5(3)(f) to (i) (Meaning of expenditure on account of an employee):

(b) an allowance that is exempt income under section CW 17(Expenditure on account, and reimbursement, of employees) to the extent to which it is made to enable the employee to provide a benefit to another person.

Exempt cash payment not fringe benefit

(3) To the extent to which a benefit that an employer provides to an employee in connection with their employment would have been exempt income if it had been paid in cash, the benefit is not a fringe benefit.

Exclusion

(4) Subsection (3) does not apply to interest, dividends, or an allowance under subsection (2)(b).

Defined in this Act: dividend, employee, employer, employment, exempt income, expenditure on account of an employee, fringe benefit, interest, life insurance policy, pay, premium

Compare: 2004 No 35 s CX 5

Fringe benefits

CX 6 Private use of motor vehicle

When fringe benefit arises

(1) A fringe benefit arises when—

(a) a motor vehicle is made available to an employee for their private use; and

(b) the person who makes the vehicle available to the employee—

(i) owns the vehicle:

(ii) leases or rents the vehicle:

(iii) has a right to use the vehicle under an agreement or arrangement with the employee or a person associated with the employee.

Exclusion: work-related vehicles

(2) Subsection (1) does not apply when the vehicle is a work-related vehicle.

Exclusion: emergency calls

(3) Subsection (1) does not apply when the vehicle is used for an emergency call.

Exclusion: absences from home

(4) Subsection (1) does not apply when the employee is absent from home, with the vehicle, for a period of at least 24 hours continuously, if the employee is required, in the performance of their duties, to use a vehicle and regularly to be absent from home.

Use on part of day

(5) For the purposes of subsections (3) and (4), the whole of the day on which a motor vehicle is used as described in the applicable subsection is treated as a day on which the vehicle is not available for private use.

Defined in this Act: emergency call, employee, fringe benefit, lease, motor vehicle, private use, work-related vehicle

Compare: 2004 No 35 s CX 6

CX 7 Employer or associated person treated as having right to use vehicle under arrangement

When this section applies

(1) This section applies for the application of the fringe benefit tax (FBT) rules to an agreement or arrangement—

(a) between an employer, or a person associated with the employer, and an employee, or a person associated with the employee; and

(b) transferring to the employer or person associated with the employer a right to use a motor vehicle under terms agreed between the parties.

Person treated as having right to use vehicle

(2) The employer or associated person is treated as having a right to use the motor vehicle for a period during which the employee—

(a) uses the vehicle privately:

(b) has a right to use the vehicle privately.

Defined in this Act: employee, employer, FBT rules, fringe benefit tax, lease, motor vehicle

Compare: 2004 No 35 s CX 6B

CX 8 Private use of motor vehicle: use by more than 1 employee

If, on any day, a motor vehicle is made available by an employer for the private use of more than 1 employee, this availability is treated as a single instance. The taxable value of the fringe benefit is reduced by the total amount of any contributions paid by an employee or employees.

Defined in this Act: amount, contribution, employee, employer, fringe benefit, motor vehicle, pay, private use

Compare: 2004 No 35 s CX 7

CX 9 Subsidised transport

A fringe benefit arises when an employer provides subsidised transport to an employee.

Defined in this Act: employee, employer, fringe benefit, subsidised transport

Compare: 2004 No 35 s CX 8

CX 10 Employment-related loans

When fringe benefit arises

(1) A fringe benefit arises when an employer provides a loan to an employee.

Exclusions

(2) Subsection (1) does not apply to a loan made—

(a) as an employee share loan:

(b) under a share purchase scheme:

(c) *[Repealed]*

(d) as an advance of salary and wages, if,—

(i) in the period for which the employer is required to forward a return to the Commissioner under sections RD 25to RD 63 (which relate to fringe benefit tax), the total outstanding of such advances to the employee is no more than $2,000; and

(ii) the contract of employment does not require the employer to make the advance.

Loan owing

(3) The employer provides a fringe benefit in a tax year in which the loan is owing. The circumstances in which a loan is owing include a case in which, under the arrangement for the loan, an amount is payable in the future, or would be payable in the future if a particular event happened, and the employee or an associated person is or would be liable to pay the amount.

Defined in this Act: amount, arrangement, associated person, employee, employee share loan, employer, employment-related loan, fringe benefit, income, pay, share purchase scheme, tax year

Compare: 2004 No 35 s CX 9

Section CX 10(2)(c): repealed, on 1 April 2011, by section 16(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CX 10 list of defined terms **superannuation fund**: repealed, on 1 April 2011, by section 16(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CX 11 Employment-related loans: loans by life insurers

When fringe benefit treated as arising

(1) A life insurer provides a benefit that is treated as an employment-related loan if—

(a) the life insurer makes a loan to a person who holds a life insurance policy (**person A**) or to a person associated with person A; and

(b) the life insurance policy is offered or entered into in New Zealand; and

(c) either—

(i) the loan is made because of the capacity or status of person A as a policyholder; or

(ii) the interest charged on the loan depends on the capacity or status of person A as a policyholder.

Life insurer as employer

(2) For the purposes of the FBT rules, the life insurer is treated as an employer and person A or the person associated with them is treated as an employee.

Meaning of life insurer

(3) In this section, **life insurer**—

(a) means a person who is the insurer under the life insurance policy:

(b) includes—

(i) a person associated with the life insurer:

(ii) a person with whom the life insurer has entered into an arrangement relating to the making of the loan.

Defined in this Act: arrangement, associated person, employee, employer, employment-related loan, FBT rules, fringe benefit, interest, life insurance policy, life insurer, offered or entered into in New Zealand

Compare: 2004 No 35 s CX 10

CX 12 Services for members of Parliament

A fringe benefit arises when travel, accommodation, attendance, and communications services are exempt income under section CW 31 (Services for members of Parliament).

Defined in this Act: exempt income, fringe benefit

Compare: 2004 No 35 s CX 11

CX 13 Contributions to superannuation schemes

When fringe benefit arises

(1) A fringe benefit arises when an employer contributes to a superannuation scheme for the benefit of an employee.

Exclusion

(2) This section does not apply if the contribution is an employer's superannuation cash contribution.

Defined in this Act: contribution, employee, employer, employer's superannuation cash contribution, fringe benefit, superannuation scheme

Compare: 2004 No 35 s CX 12

Section CX 13(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 52(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 13 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 52(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 13 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 52(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 14 Contributions to sickness, accident, or death benefit funds

A fringe benefit arises when an employer makes a contribution for the benefit of an employee to a sickness, accident, or death benefit fund.

Defined in this Act: contribution, employee, employer, fringe benefit, sickness, accident, or death benefit fund

Compare: 2004 No 35 s CX 13

CX 15 Contributions to funeral trusts

A fringe benefit arises when an employer makes a contribution to a fund in the circumstances described in section CW 45 (Funeral trusts).

Defined in this Act: contribution, employer, fringe benefit

Compare: 2004 No 35 s CX 14

CX 16 Contributions to life or health insurance

When fringe benefit arises

(1) A fringe benefit arises when an employer pays a specified insurance premium or makes a contribution to the insurance fund of a friendly society for the benefit of an employee.

Exclusion

(2) This section does not apply to a premium or contribution described in section CZ 15 (Accident insurance contracts before 1 July 2000).

Meaning of specified insurance premium

(3) In this section, **specified insurance premium** means a premium paid for the benefit of an employee, their spouse, civil union partner or de facto partner, or their child on a policy described in any of subsections (4) to (6).

Life insurance

(4) The first kind of policy referred to in subsection (3) is a policy of insurance on the life of the employee or their spouse, civil union partner or de facto partner, or on their joint lives, or on the life of their child, to which all the following apply:

- (a) for policies other than whole of life policies, the minimum term is—
  - (i) 10 years; or
  - (ii) 5 years, for a policy whose maturity date is no earlier than the date on which a life assured reaches 60 years of age; and
- (b) the only benefits payable earlier than 10 years from the start of the policy or its maturity date, whichever is earlier, are—
  - (i) benefits payable for the death of a life assured; or
  - (ii) additional benefits payable for an accident to a life assured or disease or sickness of a life assured; and
- (c) the policy—
  - (i) provides for a payment on the death of a life assured of a benefit that is not a return of premiums, is substantially capital, and is not materially less than the total benefit payable under the policy otherwise than for death; or

(ii) is a policy on the life of a person who, because of ill health or physical disability, is unable to effect a policy of the kind described in subparagraph (i) at ordinary rates; or

(iii) is a deferred life assurance policy on the life of a child.

Life insurance: pension benefit

(5) The second kind of policy referred to in subsection (3) is a policy described in subsection (4), or that would be described if it met the requirements of subsection (4)(c)(i), and under which the only benefits payable are for a life assured and by way of—

(a) a pension starting on or after the date on which the life assured reaches 60 years of age and continuing for the life of the employee, their spouse, civil union partner or de facto partner, or their child; or

(b) on the death of the life assured,—

(i) the return of the part of the premiums paid for the assurance to secure the payment of a pension dependent on the life of the employee, their spouse, civil union partner or de facto partner, or their child; and

(ii) the payment of the part of each bonus declared on the policy attributable to the part of the premiums described in subparagraph (i).

Health insurance

(6) The third kind of policy referred to in subsection (3) is a policy of insurance under which the benefits are payable only for—

(a) an accident, whether fatal or not, to the employee, their spouse, civil union partner or de facto partner, or their child; or

(b) disease or sickness of the employee, their spouse, civil union partner or de facto partner, or their child.

Defined in this Act: contribution, employee, employer, friendly society, fringe benefit, life insurance, pay, specified insurance premium, year

Compare: 2004 No 35 s CX 15

CX 17 Benefits provided to employees who are shareholders or investors

Benefit provided in connection with employment

(1) If a company or a trustee of a group investment fund provides a non-cash benefit to an employee who holds shares in the company or who is an investor in the fund, the benefit is treated as having been provided in connection with the employment. The shares or investment may be held in the employee's own right or beneficially.

Whether fringe benefit or dividend

(2) A company or a trustee of a group investment fund that has provided a non-cash benefit to an employee who holds shares in the company or who is an investor in the fund may choose to treat the benefit as a fringe benefit or a dividend. If the company or trustee does not make an election, the benefit is treated as a fringe benefit. If the company or trustee chooses to treat the benefit as a dividend, the FBT rules do not apply.

Exclusion

(3) Neither subsection (1) nor subsection (2) applies to a non-cash benefit provided by a company to a non-executive director of the company.

Non-cash benefits

(4) Subsection (2) applies to non-cash benefits that would,—

(a) in the absence of section CD 32 (Employee benefits), be dividends under section CD 4 (Transfers of value generally) if provided to a person in their capacity as a shareholder; and

(b) in the absence of section CX 4 , be unclassified benefits if provided to a person in their capacity as an employee.

Notice of election

(5) The company or trustee must give notice to the Commissioner of the election referred to in subsection (2)in the time allowed for filing a fringe benefit tax return for the period in which the benefit was provided.

Defined in this Act: Commissioner, company, dividend, employee, employment, FBT rules, fringe benefit, fringe benefit tax, group investment fund, investor, non-executive director, notice, return, share, shareholder, trustee, unclassified benefit

Compare: 2004 No 35 s CX 16

Section CX 17(4)(a): amended (with effect on 1 April 2008), on 7 September 2010, by section 17(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

CX 18 Benefits provided to associates of both employees and shareholders

When this section applies

(1) This section applies when—

(a) a benefit provided to an associated person of an employee would be treated as a fringe benefit under section GB 32 (Benefits provided to employee's associates) in the absence of section CX 4; and

(b) the employer is a company; and

(c) the associated person is also associated with a shareholder in the company; and

(d) the associated person is not a company; and

(e) the associated person is not a shareholder in the company; and

(f) the benefit would be a dividend if provided to the shareholder.

FBT rules apply, not dividend rules

(2) The benefit is subject to the FBT rules and is treated as not being a dividend.

Defined in this Act: associated person, company, dividend, employee, employer, FBT rules, fringe benefit, shareholder

Compare: 2004 No 35 s GC 15(3), (4)

Exclusions and limitations

CX 19 Benefits provided instead of allowances

When not fringe benefit

(1) A benefit that an employer provides to an employee in connection with their employment is not a fringe benefit to the extent to which it removes the need that would otherwise exist for the employer to pay the employee an allowance of 1 of the following kinds:

(a) an allowance that, if it had been paid,—

(i) would have been exempt income under section CW 17 (Expenditure on account, and reimbursement, of employees); and

(ii) would have been paid for reasons other than to enable the employee to provide a benefit to another person; or

(b) an allowance that reimburses the employee for transport costs that—

(i) would have been incurred both in connection with their employment and for the benefit of the employer in travelling between home and work; and

(ii) would have been attributable to any 1 or more of the factors set out in section CW 18(3) (Allowance for additional transport costs); or

(c) an amount that, if it had been paid, would have been exempt income under section CW 17B (Relocation payments).

Temporary change in workplace

(2) A benefit that an employer provides to an employee is not a fringe benefit if it—

(a) is in substitution for an allowance described in subsection (1)(b); and

(b) is brought about because the employee has a temporary change in their place of work while in the same employment; and

(c) reimburses the employee for transport costs that would have been incurred relating to travel by 1 or more of the employee's spouse, civil union partner, or de facto partner, and relatives for the purpose of visiting the employee in the temporary place of work; and

(d) has a value that is no more than the amount that would be provided under the allowance described in subsection (1)(b).

Defined in this Act: employee, employer, employment, exempt income, fringe benefit, pay, relative

Compare: 2004 No 35 s CX 17

Section CX 19(1)(b)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 53 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 19(1)(c): added (with effect on 1 April 2008), on 6 October 2009, by section 53 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 20 Benefits to enable performance of duties

The taxable value of a benefit that an employer provides to an employee by way of subsidised transport, or in the form of expenditure that an employer incurs on accommodation or transport provided to an employee, is zero if the expenditure—

(a) relates to travel by the employee in order for them to perform their employment duties; and

(b) does not relate to the providing or taking of leave or a vacation; and

(c) is not increased as a result of the benefit.

Defined in this Act: employee, employer, subsidised transport

Compare: 2004 No 35 s CX 18

CX 21 Business tools

When use of business tool not fringe benefit

(1) The private use of a business tool that an employer provides to an employee, and the availability for private use of such a business tool, is not a fringe benefit if—

(a) the business tool is provided mainly for business use; and

(b) the cost of the business tool to the employer, including the amount of any deduction for the cost of the business tool that the employer may make under section 20(3)of the Goods and Services Tax Act 1985 , is no more than $5,000.

Use away from employer's premises

(2) For the purposes of subsection (1), a business tool that is not taken to and used on the employer's premises may nevertheless be provided mainly for business use if the employee performs a significant part of the employee's employment duties away from the premises.

Defined in this Act: business tool, business use, employee, employer, fringe benefit

Compare: 2004 No 35 s CX 18B

CX 22 Benefits to non-executive directors

A transfer of value to a non-executive director that is a dividend under section CD 20(2) (Benefits of shareholder-employees or directors) is not a fringe benefit if it is made solely because of their capacity as a non-executive director.

Defined in this Act: dividend, fringe benefit, non-executive director, transfer of value

Compare: 2004 No 35 s CX 19

CX 23 Benefits provided on premises

When not fringe benefit

(1) A benefit, other than free, discounted, or subsidised travel, accommodation, or clothing, is not a fringe benefit if the benefit is—

- (a) provided to the employee by the employer of the employee and used or consumed by the employee on the premises of—
  - (i) the employer:
  - (ii) a company that is part of the same group of companies as the employer:
- (b) provided to the employee by a company that is part of the same group of companies as the employer of the employee and used or consumed by the employee on the premises of—
  - (i) the employer:
  - (ii) the company that provides the benefit.

Premises of person

(2) In this section, the premises of a person—

- (a) include premises that the person owns or leases:
- (b) include premises, other than those referred to in paragraph (a), on which an employee of the person is required to perform duties for the person:
- (c) do not include premises occupied by an employee of the person for residential purposes.

Defined in this Act: company, employee, employer, fringe benefit, group of companies, lease

Compare: 2004 No 35 s CX 20

Section CX 23(1)(a): amended (with effect on 5 August 2010), on 21 December 2010, by section 34 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 23(1)(b): amended (with effect on 5 August 2010), on 21 December 2010, by section 34 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

CX 24 Benefits related to health or safety

A benefit that an employer provides to an employee is not a fringe benefit to the extent to which it—

(a) is related to the employee's health or safety; and

(b) is aimed at hazard management in the workplace as contemplated in the Health and Safety in Employment Act 1992; and

(c) would be excluded by section CX 23 from being a fringe benefit if provided on the employer's premises.

Defined in this Act: employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 20B

CX 25 Benefits provided by charitable organisations

When not fringe benefit

(1) A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which—

(a) the employee receives the benefit mainly in connection with their employment; and

(b) the employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes.

When employer provides charge facilities

(2) Subsection (1)does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than 5% of the employee's salary or wages for the tax year.

Meaning of short-term charge facilities

(3) For the purposes of the FBT rules, a **short-term charge facility** means an arrangement that—

(a) enables an employee of a charitable organisation to obtain goods or services that have no connection with the

organisation or its operations by buying or hiring the goods or services or charging the cost of the goods or services to an account; and

(b) places the liability for some or all of the payment for the goods or services on the organisation; and

(c) is not a fringe benefit under section CX 10.

Defined in this Act: business, charitable organisation, employee, employment, fringe benefit, pay, short-term charge facility

Compare: 2004 No 35 s CX 21

CX 26 Non-liable payments

A benefit received by an employee is not a fringe benefit to the extent to which it is received in a quarter or in an income year in which they derive 1 or more pay-as-you-earn (PAYE) income payments, all of which are not liable for income tax.

Defined in this Act: employee, fringe benefit, income tax, income year, PAYE income payment, quarter

Compare: 2004 No 35 s CX 22

CX 27 Assistance with tax returns

An employer's assistance with the preparation of an employee's income statement or return of income is not a fringe benefit when the expenditure incurred in providing the assistance is expenditure for which the employee would have been allowed a deduction, if it had been incurred by the employee, under section DB 3 (Determining tax liabilities).

Defined in this Act: deduction, employee, employer, fringe benefit, income statement, return of income

Compare: 2004 No 35 s CX 23

CX 28 Accommodation

The value of accommodation that an employer provides to an employee in connection with the employment or services is not a fringe benefit.

Defined in this Act: accommodation, employee, employer, employment, fringe benefit

Section CX 28: substituted (with effect on 1 April 2008), on 6 October 2009, by section 54(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 29 Entertainment

When not fringe benefit

(1) A benefit in a form of entertainment described in section DD 2 (Limitation rule) that an employer provides to an employee is not a fringe benefit. This subsection is overridden by subsection (2).

When is fringe benefit

(2) A benefit in a form of entertainment described in section DD 2 that an employer provides to an employee is a fringe benefit if—

(a) the employee does not receive or use it in the course of employment; and

(b) the employee does not receive or use it as a necessary consequence of their employment duties; and

(c) either—

(i) the employee may choose when to receive or use the benefit; or

(ii) the entertainment is of a kind described in section DD 7 (Entertainment outside New Zealand).

Defined in this Act: employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 25

CX 30 Distinctive work clothing

When not fringe benefit

(1) Distinctive work clothing that an employer provides to an employee is not a fringe benefit, whether provided by sale or otherwise.

Meaning of distinctive work clothing

(2) In this section, **distinctive work clothing** means clothing, including a single item of clothing, that—

(a) is worn by an employee as, or as part of, a uniform that can be identified with the employer—

(i) through the permanent and prominent display of a name, logo, or other identification that the employer regularly uses in carrying on their activity or undertaking; or

(ii) because the colour scheme, pattern, or style is readily associated with the employer; and

(b) is worn in the course, or as an incident, of employment; and

(c) is not clothing that employees would normally wear for private purposes.

Defined in this Act: distinctive work clothing, employee, employer, employment, fringe benefit

Compare: 2004 No 35 s CX 26

CX 31 Contributions to income protection insurance

An employer who satisfies a liability to pay, or contribute to the payment of, a premium for income protection insurance for the benefit of an employee does not provide a fringe benefit to the employee if a payment of the insurance to the employee would be assessable income of the employee.

Defined in this Act: contribution, employee, employer, fringe benefit, pay

Compare: 2004 No 35 s CX 26B

CX 32 Services provided to superannuation fund

A fringe benefit does not arise if services are provided to a superannuation fund to the extent to which the superannuation fund would have been allowed a deduction for the expenditure incurred in providing the services if the expenditure had been incurred by the superannuation fund.

Defined in this Act: deduction, fringe benefit, superannuation fund

Compare: 2004 No 35 s CX 27

CX 33 Goods provided at discount by third parties

When this section applies

(1) This section applies when an employer and a person who is not associated with the employer have an arrangement through which goods are provided by the person at a discount.

When not fringe benefit

(2) A discount provided by the person to an employee in a group of employees is not a fringe benefit if—

(a) the person offers a discount to a group of persons that—

(i) negotiates the discount on an arm's-length basis; and

(ii) does not include the group of employees; and

(iii) is comparable in number to the group of employees; and

(b) the discount offered to the group of employees is the same or less than the discount offered to the group described in paragraph (a).

Defined in this Act: arrangement, associated person, employee, employer, fringe benefit

Compare: 2004 No 35 s CX 27B

Definitions

CX 34 Meaning of emergency call

Emergency call means a visit that an employee is required to make, to which all the following apply

(a) the employee makes the visit from their home in the course of their employment; and

(b) the purpose of the visit is to provide—

(i) essential services relating to the operation of the plant or machinery of the employer, or of their client or customer; or

(ii) essential services relating to the maintenance of services provided by a local authority or a public authority; or

(iii) essential services relating to the carrying on of a business for the supply of energy or fuel to the public; or

(iv) emergency services relating to the health or safety of any person; and

(c) the employer, their client or customer, or a member of the public requests the services; and

(d) except when paragraph (b)(iv) applies, the services are required to be performed between the hours of 6.00 pm and 6.00 am on days other than a Saturday, Sunday, or statutory public holiday, and at any time on other days.

Defined in this Act: business, emergency call, employee, employer, employment, local authority, public authority

Compare: 2004 No 35 s CX 28

CX 35 Meaning of employee share loan

Meaning

(1) **Employee share loan** means a loan made to an employee if—

(a) the loan is made for the sole purpose of enabling the employee to acquire, under a scheme of acquisition,—

(i) shares, rights, or options in the company that is their employer:

(ii) shares, rights, or options in a company that is associated with their employer; and

(b) the employee uses the loan only for the purpose of the acquisition; and

(c) the employee beneficially owns the shares, rights, or options throughout the term of the loan; and

(d) the employee must immediately repay the loan in full if they stop being the beneficial owner of any of the shares, rights, or options; and

(e) the company issuing the shares, rights, or options must maintain a dividend-paying policy throughout the term of the loan.

Exclusions

(2) This section does not apply—

(a) to shares, rights, or options in a qualifying company:

(b) to a loan made under a share purchase scheme:

(c) to an employer and an employee who are associated persons.

Defined in this Act: associated person, company, dividend, employee, employee share loan, employer, pay, qualifying company, share

Compare: 2004 No 35 s CX 29

CX 36 Meaning of private use

Private use, for a motor vehicle, includes—

(a) the employee's use of the vehicle for travel between home and work; and

(b) any other travel that confers a private benefit on the employee.

Defined in this Act: employee, motor vehicle, private use

Compare: 2004 No 35 s CX 30

CX 37 Meaning of unclassified benefit

Unclassified benefit means a fringe benefit that arises if an employer provides an employee with a benefit in connection with their employment that is—

(a) not a benefit referred to in any of sections CX 6to CX 16; and

(b) not a benefit excluded under this subpart.

Defined in this Act: employee, employer, employment, fringe benefit, unclassified benefit

Compare: 2004 No 35 s CX 31

CX 38 Meaning of work-related vehicle

Meaning

(1) **Work-related vehicle**, for an employer, means a motor vehicle that prominently and permanently displays on its exterior,—

(a) if the employer owns the vehicle, the form of identification that the employer regularly uses in carrying on their undertaking or activity; or

(b) if the employer rents the vehicle, the form of identification—

(i) that the employer regularly uses in carrying on their undertaking or activity; or

(ii) that the person from whom it is rented regularly uses in carrying on their undertaking or activity.

Exclusion: car

(2) Subsection (1)does not apply to a car.

Exclusion: private use

(3) A motor vehicle is not a work-related vehicle on any day on which the vehicle is available for the employee's private use, except for private use that is—

(a) travel to and from their home that is necessary in, and a condition of, their employment; or

(b) other travel in the course of their employment during which the travel arises incidentally to the business use.

Defined in this Act: business use, car, employee, employer, employment, motor vehicle, work-related vehicle

Compare: 2004 No 35 s CX 32

Insurance

CX 39 Life insurers and fully reinsured persons

[Repealed]

Section CX 39: repealed, on 1 July 2010, by section 55(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 40 Superannuation fund deriving amount from life insurance policy

When this section applies

(1) This section applies when a superannuation fund invests funds in a life insurance policy offered or entered into in New Zealand.

Excluded income

(2) An amount that the superannuation fund derives from the policy is excluded income.

Defined in this Act: amount, excluded income, life insurance policy, offered or entered into in New Zealand, superannuation fund

Compare: 2004 No 35 s CX 34

CX 41 Resident insurance underwriters

When this section applies

(1) This section applies when a natural person or an unincorporated body of natural persons—

(a) is resident in New Zealand; and

(b) carries on a business of providing general insurance or guarantees against loss, damage, or risk; and

(c) as part of the business, is liable under an insurance contract, whether or not named in it, to pay, or to contribute towards the payment of, some or all of an amount claimable by the person insured under the contract.

Excluded income

(2) Income that the natural person or persons derive from carrying on the business outside New Zealand is excluded income to the extent to which it is income not referred to in any of section

YD 4(7)or (10) to (12) (Classes of income treated as having New Zealand source).

Defined in this Act: amount, business, excluded income, general insurance, income, insurance contract, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s CX 35

Petroleum mining

CX 42 Disposal of ownership interests in controlled petroleum mining entities

Excluded income

(1) The consideration that a person derives from disposing of shares or trust interests in a controlled petroleum mining entity is excluded income of the person.

Application of Tax Administration Act 1994

(2) Section 65of the Tax Administration Act 1994 applies when this section applies.

Defined in this Act: consideration, controlled petroleum mining entity, dispose, excluded income, share

Compare: 2004 No 35 s CX 36

CX 43 Farm-out arrangements for petroleum mining

Farm-in expenditure under a farm-out arrangement is excluded income of a petroleum miner who is the farm-out party in the farm-out arrangement.

Defined in this Act: excluded income, farm-in expenditure, farm-out arrangement, farm-out party, petroleum miner

Compare: 2004 No 35 s CX 37

Mineral mining

CX 44 Disposal of mining shares

When subsection (2)applies

(1) Subsection (2)applies when—

(a) a mining company derives an amount from disposing of a mining share; and

(b) the disposal is to a person other than a mining company or a mining holding company; and

(c) the company has an excess amount because the amount derived from disposing of the share is more than the cost

of the share calculated under section DU 11(2) (Disposal of mining shares by company); and

(d) the excess amount would, in the absence of this section, be income of the company under any of sections CB 1to CB 5 (which relate to income from business or trade-like activities).

Excluded income

(2) The excess amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes in the prescribed period.

When subsection (4)applies

(3) Subsection (4) applies when—

(a) a mining company (the **seller**) derives an amount from disposing of a mining share; and

(b) the disposal is to a mining company or to a mining holding company (the **buyer**); and

(c) the seller has an excess amount because the amount derived from disposing of the share is more than the cost of the share calculated under section DU 11(2); and

(d) the excess amount would, in the absence of this section, be income of the seller under any of sections CB 1to CB 5.

Excluded income

(4) The excess amount is excluded income of the seller to the extent to which it consists of mining shares issued to it in the buyer.

Defined in this Act: amount, excluded income, income, mining company, mining holding company, mining purposes, mining share, prescribed period

Compare: 2004 No 35 s CX 38

CX 45 Disposal of mining shares acquired with reinvestment profit

When subsection (2) applies

(1) Subsection (2) applies when—

(a) a company derives an amount from disposing of a mining share; and

(b) an amount of the reinvestment profit of the company is used in calculating the deduction for the cost of the min-

ing share under section DU 11(2) (Disposal of mining shares by company); and

(c) some or all of the amount derived from the disposal would, in the absence of this section, be income of the company under section CU 14 (Recovery of reinvestment profit on disposal of mining shares).

Excluded income

(2) The amount that would be income is excluded income of the company to the extent to which it is, or is to be, used for mining purposes in the prescribed period.

When subsection (4) applies

(3) Subsection (4) applies when—

(a) a company (the **seller**) derives an amount from disposing of a mining share; and

(b) the disposal is to a mining company or to a mining holding company (the **buyer**); and

(c) an amount of the reinvestment profit of the seller is used in calculating the deduction for the cost of the mining share under section DU 11(2); and

(d) some or all of the amount derived from the disposal would, in the absence of this section, be income of the seller under section CU 14.

Excluded income

(4) The amount that would be income is excluded income of the seller to the extent to which it consists of mining shares issued to it in the buyer.

When subsection (6) applies

(5) Subsection (6) applies when—

(a) a company derives an amount from disposing of a mining share; and

(b) the disposal is of the kind described in section CU 20 (Mining company or mining holding company liquidated); and

(c) an amount of the reinvestment profit of the company is used in calculating the deduction for the cost of the mining share under section DU 11(2); and

(d) some or all of the amount derived from the disposal would, in the absence of this section, be income of the company under section CU 14.

Excluded income

(6) The amount that would be income is excluded income of the company to the extent to which it consists of mining shares.

Defined in this Act: amount, company, deduction, excluded income, income, mining company, mining holding company, mining purposes, mining share, prescribed period, reinvestment profit

Compare: 2004 No 35 s CX 39

CX 46 Repayment of loans made from reinvestment profit

When this section applies

(1) This section applies when an amount would, in the absence of this section, be income of a company under section CU 16 (Recovery of reinvestment profit on repayment of loans).

Excluded income

(2) The amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes in the prescribed period.

Defined in this Act: amount, company, excluded income, income, mining purposes, prescribed period

Compare: 2004 No 35 s CX 40

Government grants

CX 47 Government grants to businesses

When this section applies

(1) This section applies when—

(a) a local authority or a public authority makes a payment to a person for a business that the person carries on; and

(b) the payment—

(i) is in the nature of a grant or subsidy to the person; or

(ii) is a grant-related suspensory loan to the person; and

(c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and

(d) the payment corresponds to—

(i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses):

(ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they would have an amount of depreciation loss in the absence of section DF 1.

Excluded income

(2) The payment is excluded income of the person.

Exclusions

(3) This section does not apply to a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent to which the grant relates to expenditure—

(a) incurred by the recipient before the grant; and

(b) for which the recipient would be allowed a deduction in the absence of section DF 1.

Further exclusion

(4) A person may choose that this section not apply to a payment under a grant to the extent to which—

(a) the grant is made to the person for the person's business as a technology development grant or under a technology transfer voucher; and

(b) the payment is withheld until the conditions of the grant are satisfied; and

(c) in the absence of section DF 1, the person would be allowed for an income year before the income year of the payment,—

(i) a deduction for expenditure to which the payment corresponds:

(ii) depreciation loss resulting from expenditure to which the payment corresponds.

Defined in this Act: amount, business, deduction, depreciation loss, excluded income, grant-related suspensory loan, local authority, pay, public authority

Compare: 2004 No 35 s CX 41

Section CX 47(1)(a): substituted (with effect on 1 October 2010), on 21 December 2010, by section 35(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 47(1)(b): substituted (with effect on 1 October 2010), on 21 December 2010, by section 35(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 47(1)(c): substituted (with effect on 1 October 2010), on 21 December 2010, by section 35(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 47(1)(d): substituted (with effect on 1 October 2010), on 21 December 2010, by section 35(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 47(3) heading: substituted (with effect on 1 October 2009), on 6 October 2009, by section 56(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 47(3): substituted (with effect on 1 October 2009), on 6 October 2009, by section 56(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 47(4) heading: added (with effect on 1 October 2010), on 21 December 2010, by section 35(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 47(4): added (with effect on 1 October 2010), on 21 December 2010, by section 35(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 47 list of defined terms **large budget screen production grant**: repealed (with effect on 1 October 2009), on 6 October 2009, by section 52(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 48 Amounts remitted as condition of new start grant

When this section applies

(1) This section applies when in an income year of a person—

(a) the person carries on a business of—

(i) animal husbandry:

(ii) poultry-keeping:

(iii) beekeeping:

(iv) breeding horses other than bloodstock:

(v) horticulture:

(vi) cropping; and

(b) the person is paid a new start grant for the business for an event that is declared to be an emergency event; and

(c) the person in carrying on the business—

(i) incurs a liability for expenditure or loss before the declaration of the emergency event; and

(ii) before the date that is 3 months after the end of the period for which the declaration applies,

takes the liability into account in calculating the person's taxable income for an income year; and

(d) the liability referred to in paragraph (c)(i) is forgiven or otherwise remitted—

(i) as a prerequisite for the payment of the new start grant; and

(ii) before the date that is 18 months after the end of the period for which the declaration applies; and

(e) the amount of the remitted liability is income of the person under section CG 2 (Remitted amounts).

Excluded income

(2) The remitted liability is excluded income of the person to the extent to which it is the greater of zero and the amount calculated using the formula—

remitted amount – current loss – loss balance – other loss.

Definition of items in formula

(3) In the formula,—

(a) **remitted amount** is the amount of the remitted liability:

(b) **current loss** is the net loss that the person would have for the income year in which the liability is remitted in the absence of this section:

(c) **loss balance** is the loss balance that is available to the person for offset against net income for the income year in which the liability is remitted:

(d) **other loss** is a loss that—

(i) is incurred by a person associated with the person who receives the new start grant; and

(ii) meets the requirements of subsection (4).

Loss incurred by associated person from business or land

(4) The loss referred to in subsection (3)(d)—

(a) is incurred by a person who—

(i) carries on or has carried on the business for which the new start grant is paid or owns or has owned an estate in fee simple or leasehold estate in land used in the business; and

(ii) in the opinion of the Commissioner, is under a substantial degree of control by the person; and

(iii) in the opinion of the Commissioner, has a substantial identity of interests with the person; and

(b) is incurred from—

(i) the business referred to in paragraph (a)(i):

(ii) land that is used in the business; and

(c) is, for the income year in which the liability is remitted,—

(i) a tax loss component of the associated person:

(ii) a loss balance for the associated person; and

(d) is included in the calculation in subsection (3) to the extent determined by the Commissioner, having regard to the interests of the associated person that are separate from those of the person.

Notice to associated person

(5) The Commissioner must give to the associated person notice of a determination under subsection (4)(d).

Defined in this Act: business, capital limitation, deduction, diminished value, emergency event, general limitation, general permission, income, income year, new start grant, notice, pay

Compare: 2004 No 35 s CX 41B

Section CX 48(1): substituted, on 6 October 2009, by section 57(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 48 list of defined terms **emergency event**: inserted, on 6 October 2009, by section 57(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 48 list of defined terms **qualifying event**: repealed, on 6 October 2009, by section 57(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 48B Issue of post-1989 forest land units

[Repealed]

Section CX 48B: repealed (with effect on 26 September 2008), on 6 October 2009, by section 58 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 48B: inserted, on 26 September 2008, by section 70 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Government funding of film and television

Heading: inserted (with effect on 1 October 2009), on 6 October 2009, by section 59 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 48C Government funding additional to government screen production payments

When this section applies

(1) This section applies when a public authority makes a payment to a person for a project if—

(a) the payment is not in the nature of a grant or subsidy; and

(b) the payment is not a grant-related suspensory loan; and

(c) the person receives a government screen production payment for the project in addition to the payment.

Excluded income

(2) The payment is excluded income of the person.

Defined in this Act: excluded income, government screen production payment, grant-related suspensory loan, pay, public authority

Section CX 48C: inserted (with effect on 1 October 2009), on 6 October 2009, by section 59 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Research and development

Heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 60(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 48D Tax credits for expenditure on research and development

The amount of a tax credit that a person has under subpart LH (Tax credits for expenditure on research and development) is excluded income of the person.

Defined in this Act: amount, excluded income, tax credit

Section CX 48D: inserted (with effect on 1 April 2008), on 6 October 2009, by section 60(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Superannuation and savings

CX 49 Employer's superannuation contributions

An employer's superannuation contribution is excluded income of—

(a) the employee for whose benefit the contribution is provided; and

(b) the trustees of the superannuation scheme to whom the contribution is made.

Defined in this Act: employee, employer's superannuation contribution, excluded income, superannuation scheme, trustee

Compare: 2004 No 35 s CX 42

CX 50 Tax credits for KiwiSaver and complying superannuation funds

An amount paid as a tax credit under subpart MK (Tax credits for KiwiSaver schemes and complying superannuation funds) is excluded income of the person deriving the amount.

Defined in this Act: amount, Commissioner, excluded income, pay, tax credit

Compare: 2004 No 35 s CP 1

CX 50B Contributions to retirement savings schemes

Excluded income

(1) A retirement scheme contribution is excluded income of a person if they are—

(a) the person for whose benefit the contribution is made to the extent to which the contribution is an amount of—

(i) money:

(ii) an imputation credit or a Maori authority credit that is used to meet the liability of the retirement scheme contributor for RSCT on the contribution:

(b) the retirement savings scheme.

Exclusions

(2) Subsection (1)(a) does not apply if the person for whose benefit the contribution is made—

(a) is non-resident, and the contribution is non-resident passive income:

(b) supplies to the retirement scheme contributor or the retirement savings scheme, a tax rate applying to the amount of tax withheld that is less than the retirement scheme prescribed rate for the person:

(c) includes the amount of the contribution in a return of income for the income year in which the contribution is made.

Defined in this Act: excluded income, income year, non-resident, non-resident passive income, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, retirement scheme prescribed rate, return of income

Compare: 2004 No 35 s CX 42B

Section CX 50B: inserted, on 1 April 2008, by section 334 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Farming, forestry, or fishing

CX 51 Income equalisation schemes

A refund under section EH 8(Refund of excess deposit), EH 42 (Refund of excess deposit), or EH 68 (Refund of excess deposit) is excluded income.

Defined in this Act: excluded income

Compare: 2004 No 35 s CX 43

Emissions units under Climate Change Response Act 2002

Heading: inserted (with effect on 26 September 2008), on 6 October 2009, by section 61 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 51B Disposal of pre-1990 forest land emissions units

Who this section applies to

(1) This section applies to a person who disposes of a pre-1990 forest land emissions unit other than by surrender.

Excluded income: disposal

(2) An amount of income that the person derives from the disposal is excluded income if, at the time of the disposal, the person would not derive income, other than exempt income or excluded income, from a disposal without timber of the pre-1990 forest land to which the emissions unit relates.

Defined in this Act: amount, emissions unit, excluded income, income, pre-1990 forest land, pre-1990 forest land emissions unit, surrender

Section CX 51B: inserted (with effect on 26 September 2008), on 6 October 2009, by section 61 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 51C Disposal of fishing quota emissions units

Who this section applies to

(1) This section applies to a person who disposes of a fishing quota emissions unit other than by surrender.

Excluded income: disposal

(2) An amount of income that the person derives from the disposal is excluded income if, at the time of the disposal, the person would not derive income, other than exempt income or excluded income, from a disposal of the individual transferable quota to which the emissions unit relates.

Defined in this Act: amount, emissions unit, excluded income, exempt income, fishing quota emissions unit

Section CX 51C: inserted (with effect on 1 July 2010), on 7 September 2010, by section 18 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Environmental restoration

CX 52 Refund from environmental restoration account

A refund to a person under section EK 9 (Refund of payment if excess, lacking details) is excluded income of the person.

Defined in this Act: excluded income

Compare: 2004 No 35 s CX 43B

Inflation-indexed instruments

CX 53 Credits for inflation-indexed instruments

When this section applies

(1) This section applies when—

(a) an amount payable to a person who is a lender for money lent is determined by a fixed relationship to 1 or more indices of general price inflation in New Zealand; and

(b) an amount on account of an increase in the amount payable is credited to the lender's account by the borrower; and

(c) the credit represents a recovery of a decrease, previously debited in account, in the amount payable over a previous period.

Excluded income

(2) The credit is excluded income of the lender.

Defined in this Act: amount, excluded income, money lent, New Zealand, pay

Compare: 2004 No 35 s CX 44

Share-lending arrangements

CX 54 Share-lending collateral under share-lending arrangements

An amount of share-lending collateral derived by a person under a share-lending arrangement is excluded income of the person.

Defined in this Act: amount, excluded income, share-lending arrangement, share-lending collateral

Compare: 2004 No 35 s CX 44B

Portfolio investment income

CX 55 Proceeds from disposal of investment shares

What this section applies to

(1) This section applies in an income year to the following entities unless the entity is assured, under an arrangement with another person, of having a gain on the disposal:

(a) a portfolio investment entity other than a life fund PIE:

(b) the New Zealand Superannuation Fund:

(c) a life insurer.

Excluded income

(2) An amount that the entity derives from the disposal in the income year of a share issued by a company referred to in subsection (3) is—

(a) excluded income of the entity for the income year, if the entity is described in subsection (1)(a) or (b); or

(b) excluded income of the entity for the income year to the extent to which the amount is actuarially determined to be policyholder base income, if the entity is a life insurer.

Particular company

(3) The company referred to in subsection (2) is,—

(a) at all times in the income year, a company resident in New Zealand and not treated under and for the pur-

poses of a double tax agreement as not resident in New Zealand; or

(b) a company that meets the following requirements:

(i) a company that, at all times in the income year, is resident in Australia and not treated as resident in a country other than Australia under an agreement between Australia and the other country, that would be a double tax agreement if negotiated between New Zealand and the other country; and

(ii) a company that, at the start of the income year or at the time the shares are first acquired in the income year, is included in an approved index under the ASX Market Rules made under Chapter 7 of the Corporations Act 2001 (Aust); and

(iii) a company that, at all times in the income year, is required under the Income Tax Assessment Act 1997 (Aust) and the Income Tax Assessment Act 1936 (Aust) to maintain a franking account.

Non-participating redeemable shares

(4) This section does not apply to a non-participating redeemable share.

Defined in this Act: actuarially determined, amount, arrangement, company, double tax agreement, excluded income, income, income year, life fund PIE, life insurer, non-participating redeemable share, policyholder base income portfolio investment entity, resident in Australia, resident in New Zealand, share

Section CX 55: substituted, on 1 April 2010, by section 63(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 56 Attributed income of certain investors in multi-rate PIEs

When this section applies

(1) This section applies when an investor in a multi-rate PIE derives income attributed under section CP 1 (Attributed income of investors in multi-rate PIEs) in an income year, and—

(a) the prescribed investor rate for the investor in the relevant calculation period is more than zero; and

(b) that rate is not more than the notified investor rate in relation to the investor when the PIE calculates—

(i) its income tax liability under section HM 47 (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to the income; or

(ii) a voluntary payment under section HM 45 (Voluntary payments) that is intended to be a final payment of its income tax liability in relation to the income.

When this section also applies

(1B) This section also applies when a foreign investment PIE attributes income to an investor who is, for the calculation period in which the amount is attributed,—

(a) a notified foreign investor other than a person referred to in section HM 55D(6):

(b) a transitional resident who has chosen a prescribed investor rate referred to in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions):

(c) a transitional resident when the calculation period falls in the tax year in which the person becomes or ceases to be a transitional resident:

(d) an investor in the PIE when the calculation period falls in the tax year in which the person either becomes or ceases to be resident in New Zealand.

When this section does not apply

(2) This section does not apply when—

(a) the PIE calculates its income tax liability using the quarterly calculation option under section HM 43 (Quarterly calculation option) and the amount is attributed to an investor who is treated under section HM 61 (Certain exiting investors zero-rated) as zero-rated:

(b) an amount of attributed PIE income is derived by a trustee who has chosen a prescribed investor rate referred to in schedule 6, table 1, row 5 or 7, as applicable.

Excluded income

(3) The amount is excluded income of the investor.

Defined in this Act: amount, attribution period, calculation period, excluded income, foreign investment PIE, income, income tax liability, income year, investor, multi-rate PIE, notified foreign investor, notified investor rate, pay, PIE,

prescribed investor rate, quarter, resident in New Zealand, tax year, transitional resident

Section CX 56: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 65(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 56(1)(b): amended, on 1 October 2010, by section 5(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section CX 56(1B) heading: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 9(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56(1B): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 9(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56(2)(b): amended, on 29 August 2011, by section 9(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56(2)(b): amended, on 1 April 2010 (applying for income years beginning on or after 1 April 2010), by section 8(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section CX 56 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 9(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 9(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56 list of defined terms **notified investor rate**: inserted, on 1 October 2010, by section 5(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section CX 56 list of defined terms **resident in New Zealand**: inserted, on 29 August 2011, by section 9(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56 list of defined terms **tax year**: inserted, on 29 August 2011, by section 9(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56 list of defined terms **transitional resident**: inserted, on 29 August 2011, by section 9(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CX 56B Distributions to investors in multi-rate PIEs

Excluded income

(1) An amount of income derived by an investor in a multi-rate PIE as a distribution of or dividend of the PIE is excluded income of the investor.

Treatment as non-resident passive income

(2) Despite subsection (1), an amount paid by a foreign investment PIE to a notified foreign investor in the PIE is not excluded income under this section to the extent to which it is treated under section HM 44B (NRWT calculation option) as non-resident passive income.

Defined in this Act: amount, dividend, excluded income, foreign investment PIE, income, investor, multi-rate PIE, non-resident passive income, notified foreign investor

Section CX 56B: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 65(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CX 56B(1) heading: inserted, on 29 August 2011, by section 10(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56B(2) heading: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 10(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56B(2): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 10(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56B list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 10(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56B list of defined terms **non-resident passive income**: inserted, on 29 August 2011, by section 10(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section CX 56B list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 10(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CX 56C Distributions to investors by listed PIEs

Resident investors

(1) If an investor in a listed PIE derives an amount in an income year as a distribution by or dividend of the PIE, the amount is excluded income of the investor if they—

(a) are resident; and

(b) are a natural person or a trustee; and

(c) do not include the amount as income in a return of income for the income year.

Imputed dividends

(2) If subsection (1)(a) to (c) does not apply to the investor, the amount is excluded income to the extent to which the amount of the distribution or dividend is more than the amount that is fully credited as described in section CD 43(26) (Available subscribed capital amount).

Defined in this Act: amount, dividend, excluded income, income year, investor, listed PIE, PIE, resident return of income, trustee

Section CX 56C: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 65(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CX 57 Credits for investment fees

When this section applies

(1) This section applies when—

(a) a multi-rate PIE includes a credit for fees in the calculation of its tax liability under section HM 47 (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to an investor in an investor class of the PIE; and

(b) an amount of the credit is attributed to the investor as a member of the class.

Excluded income

(2) The amount allocated is excluded income of the investor.

Defined in this Act: amount, excluded income, investor, investor class, multi-rate PIE, PIE

Section CX 57: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 66(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Minors' beneficiary income

CX 58 Amounts derived by minors from trusts

To the extent to which section HC 35 (Beneficiary income of minors) applies to an amount of beneficiary income, the amount is excluded income of the minor.

Defined in this Act: amount, beneficiary income, excluded income, minor

Compare: 2004 No 35 ss HH 3A–3F

CX 59 Taxable distributions from non-complying trusts

An amount that a person derives in an income year as a taxable distribution from a non-complying trust under section HC 19 (Taxable distributions from non-complying trusts) is excluded income of the person.

Defined in this Act: amount, exempt income, income year, non-complying trust, taxable distribution

Compare: 2004 No 35 s HH 3(4)

Transactions between companies in consolidated groups

CX 60 Intra-group transactions

When this section applies

(1) This section applies for the purposes of section FM 8 (Transactions between group companies: income) when a company that is part of a consolidated group derives an amount from a transaction or arrangement with another company that is part of the same group and the amount would not be income if the group were 1 company.

Excluded income

(2) The amount is excluded income of the company.

Defined in this Act: amount, company, consolidated group, excluded income, income

Compare: 2004 No 35 s HB 2(1)(a)

Avoidance arrangements

CX 61 Avoidance arrangements

An amount is excluded income if it is treated as excluded income under—

(a) section GA 1 (Commissioner's power to adjust):

(b) section GB 23 (Excessive remuneration to relatives).

Defined in this Act: amount, excluded income

Compare: 2004 No 35 ss GB 1(1)–(2C), GD 3(1), (2)

Partners and partnerships

Heading: added, on 1 April 2008, by section 9(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

CX 62 Amounts of excluded income for partners

A person who is a partner has an amount of excluded income to the extent to which an amount of excluded income results from the application of subpart HG (Joint venturers, partners, and partnerships) to them and their partnership.

Defined in this Act: amount, excluded income, partner, partnership

Section CX 62: added, on 1 April 2008, by section 9(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Look-through companies

Heading: added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 36 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

CX 63 Dividends derived after company ceased to be look-through company

Dividends

(1) A dividend derived by a person from a company after it has ceased to be a look-through company is excluded income of the person to the extent to which it is equal to or less than the amount given by subsection (2).

Excluded income formula

(2) For the purposes of subsection (1), the amount is calculated using the following formula:

exit dividends – dividends after look-through.

Definition of items in formula

(3) The items in the formula are defined in subsections (4) and (5).

Exit dividends

(4) **Exit dividends** is the sum of the amounts that would be dividends if the company, immediately after it ceased to be a look-through company,—

(a) disposed of all of its property, other than cash, to an unrelated person at market value for cash; and

(b) met all its liabilities at market value, excluding income tax payable through disposing of the property or meeting the liabilities; and

(c) were liquidated, with the amount of cash remaining being distributed to its shareholders without imputation credits or FDP credits attached.

Dividends after look-through

(5) **Dividends after look-through** is the total dividends paid by the company after it ceases to be a look-through company and before it pays the dividend described in subsection (1) to the person.

Defined in this Act: amount, company, , dispose, , dividend, , excluded income, , FDP credit, , imputation credit, , income tax, , liquidation, , look-through company, , shareholder

Section CX 63: added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 36 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Subpart CZ—Terminating provisions

CZ 1 Share purchase agreement income before 19 July 1968

In sections CE 1 to CE 4 (which relate to employment income), **share purchase agreement** does not include any agreement entered into before 19 July 1968.

Defined in this Act: share purchase agreement

Compare: 2004 No 35 s CZ 1

CZ 2 Mining company's 1970–71 tax year

When this section applies

(1) This section applies when—

(a) section 152 or 153 of the Land and Income Tax Act 1954 (as in force before the commencement of section 153F of the Act) applied to a mining company for the 1970–71 tax year; and

(b) the company acquires an asset by incurring the exploration expenditure or development expenditure referred to in section 27(3)(a) of the Land and Income Tax Amendment Act 1971.

Application of subpart CU

(2) The provisions of subpart CU (Income from mineral mining) apply, with any necessary modifications, as follows:

(a) section CU 3 (Disposal of assets) applies to the company as if every reference in the section to an asset in-

cluded a reference to an asset of the kind described in subsection (1)(b) that the company disposes of in the 1971–72 tax year or a later tax year:

(b) section CU 3 applies to a person who acquires an asset of the kind described in subsection (1)(b) from the company as if every reference in the section to an asset included a reference to such an asset that the person acquires in the 1971–72 tax year or a later tax year:

(c) section CU 10 (Mining asset used to derive income other than income from mining) applies to the company as if every reference in the section to an asset included a reference to an asset of the kind described in subsection (1)(b) that the company uses, wholly or mainly, to derive income other than income from mining in the 1971–72 tax year or a later tax year.

Resident and non-resident mining operators

(3) This section applies, with any necessary modifications, to an asset of the kind referred to in paragraph (i) of item "a" of the formula in section 31(3) of the Land and Income Tax Amendment Act (No 2) 1972 that a resident mining operator acquires or that a non-resident mining operator acquires.

Defined in this Act: income, income from mining, mining company, non-resident mining operator, resident mining operator, tax year

Compare: 2004 No 35 s CZ 2

CZ 3 Exchange variations on 8 August 1975

When this section applies

(1) This section applies when—

(a) a person carrying on a business in New Zealand—

(i) receives a loan in 2 or more instalments for the purposes of the business; or

(ii) makes a loan in 2 or more instalments in the course of carrying on the business; and

(b) an exchange variation arises in relation to the whole or partial repayment of the loan; and

(c) the person derives an amount or incurs a loss through the exchange variation.

Income or deduction

(2) The amount derived is income of the person and the loss incurred is a deduction that they are allowed.

Instalments and repayments

(3) For the purposes of this section, unless the terms of the loan expressly provide otherwise,—

(a) each instalment is treated as a separate loan; and

(b) repayments are applied so that the separate loans are repaid in the order in which they were received.

Exclusion

(4) This section does not apply to a financial arrangement to which the financial arrangements rules apply.

Some definitions

(5) In this section,—

exchange variation, for the repayment of some or all of the loan, excluding interest, means a variation by virtue of a fluctuation in the value of the currency or currencies of 1 or more countries other than New Zealand in relation to New Zealand currency, that occurs between—

(a) the amount of the repayment expressed in New Zealand currency at the time at which the repayment was made; and

(b) the amount expressed in New Zealand currency that would have been required to make that repayment on or at the later of 8 August 1975 and the time at which the loan was first made

loan means,—

(a) for money lent, to a person, on or after 1 January 1974 and on or before 22 January 1985, money that—

(i) was lent with the consent of the Minister under the Capital Issues (Overseas) Regulations 1965 or the Overseas Investment Regulations 1974 or with the consent of the Reserve Bank under the Exchange Control Regulations 1978, as applicable; and

(ii) was lent in a currency other than New Zealand currency; and

(iii) was expressed to be repayable in a currency other than New Zealand currency:

(b) for money lent, by a person, on or after 1 January 1974 and on or before 22 January 1985, money that—

(i) was lent with the consent of the Reserve Bank under the Exchange Control Regulations 1978 if required; and

(ii) was expressed to be repayable in a currency other than New Zealand currency:

(c) for money lent, to a person, on or after 23 January 1985, money that—

(i) is lent in a currency other than New Zealand currency; and

(ii) is expressed to be repayable in a currency other than New Zealand currency:

(d) in relation to money lent, by a person, on or after 23 January 1985, money that is expressed to be repayable in a currency other than New Zealand currency.

Defined in this Act: amount, business, deduction, exchange variation, financial arrangement, financial arrangements rules, income, loan, money lent, New Zealand, pay

Compare: 2004 No 35 s CZ 3

CZ 4 Mineral mining: company making loan before 1 April 1979

When this section applies

(1) This section applies when sections CU 17 to CU 19 (which relate to the repayment by a mining company of an amount written off) would have applied to a loan by a company to another company made on or before 31 March 1979 if the Income Tax Amendment Act 1979 had not been enacted.

Application of sections CU 17 to CU 19

(2) The sections apply, as far as applicable, to such a loan as if section 45 of the Income Tax Amendment Act 1979 were the only provision of it that had been enacted.

Defined in this Act: company, mineral

Compare: 2004 No 35 s CZ 4

CZ 5 Exempt interest: overseas money lent to government or local or public authority before 29 July 1983

Exempt income

(1) Amounts that a non-resident derives are exempt income if they are derived from—

(a) stock or debentures issued before 29 July 1983 by the government of New Zealand or by a local authority or a public authority, the interest on which is payable out of New Zealand; or

(b) loans entered into before 29 July 1983, the interest on which was to be exempt from income tax in New Zealand under an agreement or arrangement made with the government of New Zealand.

Application posted or received before 29 July 1983

(2) For the purposes of subsection (1)(b), a loan entered into on or after 29 July 1983 is treated as having been entered into before that date if an exemption of a kind referred to in that provision was authorised as a result of an application received by or posted to the government of New Zealand before 29 July 1983.

Defined in this Act: amount, arrangement, debenture, exempt income, income tax, interest, local authority, money lent, New Zealand, non-resident, pay, public authority

Compare: 2004 No 35 s CZ 5

CZ 6 Commercial bills before 31 July 1986

Income: redemption

(1) The amount that a person receives on the redemption of a commercial bill owned by the person is income of the person.

Income: disposal

(2) The value of a commercial bill on the day its owner disposes of it is income of the owner. This subsection does not apply if the disposal is a transfer under a relationship agreement.

Defined in this Act: amount, commercial bill, income, relationship agreement

Compare: 2004 No 35 s CZ 6

CZ 7 Primary producer co-operative companies: 1987–88 income year

Income: sale of asset

(1) If a primary producer co-operative company disposes of an asset for which the company was allowed a deduction under section 200 of the Income Tax Act 1976 for the 1987–88 income year or an earlier income year, the company is treated as deriving income in the income year of disposal of an amount equal to the lesser of—

(a) the total of all deductions relating to the asset that were allowed under section 200; and

(b) the amount that the company derived from the disposal of the asset.

Income: payments to shareholders

(2) If a primary producer co-operative company has been allowed a deduction under section 200 for the 1987–88 income year or an earlier income year, and a payment has been made to a shareholder of the company either on the surrender of any of their shares or on the liquidation of the company, part of the payment is treated as income of the shareholder. The part that is income is determined under subsection (3).

Amounts attributable to deductions

(3) The part of the payment that is treated as income is only such part as—

(a) is more than the available subscribed capital per share calculated under the slice rule of the shares surrendered or held on liquidation by the shareholder; and

(b) is attributable to an increase in the value of the company's assets that was caused by the company applying or appropriating a deduction allowed under section 200.

Some definitions

(4) In this section,—

primary producer co-operative company means a company that, at the end of the 1987–88 income year,—

(a) was a primary producer co-operative company, as defined in section 200(1) and (9); and

(b) could qualify for a deduction under section 200(4)

section 200 means section 200 of the Income Tax Act 1976 as it was in force before it was repealed by section 41(1) of the Income Tax Amendment Act (No 5) 1988 (which, in general, allowed primary producer co-operative companies to claim a deduction for profits that were reinvested in certain defined primary produce activities and assets).

Defined in this Act: amount, available subscribed capital, income, income year, liquidation, pay, primary producer co-operative company, section 200, share, shareholder, slice rule

Compare: 2004 No 35 s CZ 7

CZ 8 Farm-out arrangements for petroleum mining before 16 December 1991

Excluded income

(1) Excess expenditure under a farm-out arrangement entered into before 16 December 1991 is excluded income of the transferor.

Some definitions

(2) In subsection (1), **excess expenditure**, **farm-out arrangement**, and **transferor** have the same meanings as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

Defined in this Act: excess expenditure, excluded income, farm-out arrangement, transferor

Compare: 2004 No 35 s CZ 8

CZ 9 Available capital distribution amount: 1965 and 1985–1992

Section CD 44(7)(e)

(1) For the purposes of section CD 44(7)(e) (Available capital distribution amount), a company derives a capital gain amount if—

(a) before 1 April 1988, a net profit or gain was derived by the company to which section 4(5) of the Income Tax Act 1976, and not section 4(5A) of the Income Tax Act 1976, applied immediately before those provisions were repealed by section 31(1) of the Income Tax Amendment Act (No 5) 1988; or

(b) an amount is derived by the company that is attributable to—

(i) a deduction allowed in the 1985–86 or 1986–87 tax year for livestock under section 86E of the Income Tax Act 1976; or

(ii) a revaluation of livestock in any of the 1986–87 to 1991–92 tax years under section 86A of the Income Tax Act 1976; or

(iii) a deduction allowed in the 1988–89 tax year for the revaluation of trading stock of wine, brandy, and whisky under section 87A of the Income Tax Act 1976.

Section CD 44(14)(b)

(2) For the purposes of section CD 44(14)(b),—

(a) the amount has been excluded by section 4(3) of the Land and Income Tax Act 1954 from treatment as a dividend; or

(b) the issue has been excluded by section 3(3) of the Income Tax Act 1976 from treatment as a bonus issue.

Defined in this Act: amount, bonus issue, company, dividend trading stock

Compare: 2004 No 35 s CZ 9

CZ 9B Available capital distribution amount: 1988 to 2010

When this section applies

(1) This section applies for the purposes of section CD 44 (Available capital distribution amount) in relation to capital gain amounts derived or capital loss amounts incurred in the period that starts on 1 April 1988 and ends on 31 March 2010.

Related person transactions

(2) No capital gain amount is derived or capital loss amount incurred by a company disposing of property under an arrangement with a related person. But this subsection does not apply if—

(a) the company is a close company; and

(b) the related person is not a company; and

(c) the disposal is on the liquidation of the company.

Meaning of related person

(3) In this section, **related person** means a person related to a company (the **first company**) because 1 of the following applies to the person and the first company:

(a) the person owns, can control, directly or indirectly, or has the right to acquire 20% or more of the first company's ordinary shares; or

(b) the person owns, can control, directly or indirectly, or has the right to acquire 20% or more of the voting rights of shareholders in the first company; or

(c) the person is a company and the first company owns, can control, directly or indirectly, or has the right to acquire 20% or more of the ordinary shares in the person; or

(d) the person is a company and the first company owns, can control, directly or indirectly, or has the right to acquire 20% or more of the voting rights of shareholders in the company; or

(e) the person is a company and 20% or more of the shares or voting rights in the person are owned or controlled by persons that also own, control, or have the right to acquire 20% or more of the shares or voting rights in the first company; or

(f) the person is a partner or co-venturer of the first company; or

(g) the person is the trustee of a trust and the first company, or a person who is a related person of the first company under this subsection, benefits or can benefit under the trust, directly or indirectly; or

(h) the person is a partnership and 1 or more persons, that are related persons of the first company under this subsection, are entitled to 50% or more of the partnership's assets or profits or are able to control the partnership.

Look-through relatives and nominees

(4) For the purposes of subsection (3), a person is treated as holding anything held by—

(a) their spouse, civil union partner, or de facto partner; or

(b) their child; or

(c) a child of their spouse, civil union partner, or de facto partner; or

(d) a spouse, civil union partner, or de facto partner of their child, or of a child of their spouse, civil union partner, or de facto partner.

Look-through interposed companies

(5) For the purposes of subsection (3)(e), if shares or voting rights in a company are owned or controlled by another company, a look-through approach must be applied. The look-through approach requires that—

(a) the shares or voting rights are treated as if owned or controlled by the shareholders in the other company; and

(b) if a shareholder in the other company is a company, that shareholder's portion of the shares or voting rights are treated as if owned or controlled by the shareholders in the shareholder company; and

(c) the approach is applied in the same way to any chain of companies, whatever the length of the chain.

Relationship with section CD 44

(6) Section CD 44(7)(c) (Available capital distribution amount) overrides this section.

Defined in this Act: amount, close company, company, liquidation, related person, share, shareholder, trustee

Section CZ 9B: inserted, on 1 April 2010, by section 67 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section CZ 9B(2)(c): amended (with effect on 1 April 2010), on 7 September 2010, by section 19 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section CZ 9B(6) heading: added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 9(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section CZ 9B(6): added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 9(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

CZ 10 Transitional relief for calculation of attributed repatriation dividends: 2 July 1992

Loans made by CFC to intermediary before 2 July 1992

(1) Subsection (2) applies for the purposes of calculating attributed repatriation from a controlled foreign company (CFC) to the extent to which—

(a) the CFC made a loan before 8.00 pm New Zealand standard time on 2 July 1992; and

(b) the loan enabled another person (the **intermediary**) to make a loan to a New Zealand resident associated with the CFC; and

(c) the loan is not a loan that is an arrangement subject to section GB 8 (Arrangements involving attributed repatriation from CFCs); and

(d) the New Zealand resident associated person repays the intermediary and the intermediary repays the CFC; and

(e) the CFC uses the proceeds to make a loan directly to the New Zealand resident associated person.

Loan to associate: treated as existing for whole accounting period

(2) The loan to the New Zealand resident associated person is treated as if it were in existence at the start of the accounting period of the CFC in which it is in fact made.

Property acquired under contract binding before 2 July 1992

(3) Subsection (4) applies for the purposes of calculating attributed repatriation from a CFC if the CFC—

(a) acquires any property (including an amount accruing on a financial arrangement) under a binding contract entered into before 8.00 pm New Zealand standard time on 2 July 1992; and

(b) the acquisition is not as a result of any voluntary action taken by the CFC after that time.

Acquired property: treated as existing for whole accounting period

(4) The property is treated as if it were held by the CFC at the start of the accounting period of the CFC in which it is in fact acquired.

Defined in this Act: accounting period, arrangement, associated person, attributed repatriation, CFC, controlled foreign company, financial arrangement, New Zealand, New Zealand resident, pay

Compare: 2004 No 35 s CZ 10

CZ 11 Recovery of deductions for software acquired before 1 April 1993

What this section applies to

(1) This section applies to any of the following items for the acquisition of which a person was allowed a deduction before 1 April 1993:

(a) the copyright in software:

(b) the right to use the copyright in software:

(c) the right to use software.

Income

(2) An amount derived from the disposal of the item is income.

Relationship with sections EE 44 to EE 52 and EZ 20

(3) Sections EE 44 to EE 52 (which relate to disposals and similar events) apply to the item. Section EZ 20 (Adjusted tax value for software acquired before 1 April 1993) deals with the adjusted tax value of the item.

Defined in this Act: adjusted tax value, amount, income

Compare: 2004 No 35 s CZ 11

CZ 12 General insurance with risk period straddling 1 July 1993

When this section applies

(1) This section applies when—

(a) a company carries on a business of providing general insurance or guarantees against loss, damage, or risk, immediately before and on 1 July 1993; and

(b) the company holds a reinsurance contract for the general insurance that covers a period of risk starting before 1 July 1993 and ending after 1 July 1993; and

(c) the company pays the premiums under the contract outside New Zealand.

Income

(2) An amount derived by the company from a claim under the reinsurance contract is income of the company if the event giving rise to the claim occurs on or after 1 July 1993.

Timing

(3) The income is allocated to the income year in which the event giving rise to the claim occurs.

Defined in this Act: amount, business, company, general insurance, income, income year, New Zealand, pay, reinsurance contract

Compare: 2004 No 35 s CZ 12

CZ 13 Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996

Units and interests in unit trusts and group investment funds

(1) All units in a unit trust and interests in a group investment fund on issue on 1 April 1996 are treated, on and from that date, as not having been issued on terms that their redemption would be subject to the slice rule.

Election made for units or interests

(2) All units or interests to which subsection (1) applies and for which an election has been made relying on paragraph (c) of the definition of the term **shares of the same class** in section YA 1 (Definitions) are treated on and from 1 April 1996 as if the election made in reliance upon paragraph (c) had never been made.

Exclusion

(3) This section does not apply to a unit or interest if the manager or trustee of the unit trust or group investment fund so chooses, by giving notice to the Commissioner before 1 April 1996, in which case the relevant unit or interest is treated, on and from 1

April 1996, as having been issued on terms that its redemption would be subject to the slice rule.

Defined in this Act: Commissioner, group investment fund, notice, shares of the same class, slice rule, trustee, unit trust

Compare: 2004 No 35 s CZ 13

CZ 14 Treatment of superannuation fund interests in group investment funds on 1 April 1999

When this section applies

(1) This section applies when a superannuation fund has an interest in a group investment fund on 1 April 1999.

Exclusions from dividends

(2) Section CD 22(4) (Returns of capital: off-market share cancellations) does not apply to the interest.

Trustee's election

(3) If a trustee of a group investment fund chose on or before 31 March 1999 to treat a superannuation fund interest in a group investment fund as subject to section CD 22(4),—

(a) subsection (2) does not apply to the interest:

(b) section CD 22(2) applies to the interest on and after 1 April 1999.

Defined in this Act: dividend, group investment fund, interest, superannuation fund, trustee

Compare: 2004 No 35 s CZ 14

CZ 15 Accident insurance contracts before 1 July 2000

A premium or contribution referred to in section CX 16(2) (Contributions to life or health insurance) is—

(a) a premium or contribution paid for an accident insurance contract, as defined in section 13 of the Accident Insurance Act 1998, that was in force before 1 July 2000; or

(b) a premium or contribution paid for a contract to which section 188(1)(a) of that Act applied, to the extent to which it related to cover and entitlements for work-related personal injury, that was in force before 1 July 2000.

Defined in this Act: contribution, pay

Compare: 2004 No 35 s CZ 15

CZ 16 Interest payable to exiting company: 2001

Interest payable under schedule 4, clause 12 of the Dairy Industry Restructuring Act 2001 to an exiting company, as defined in section 5 of the Act, as a result of a buy-out of the company's interests in the New Zealand Dairy Board is exempt income.

Defined in this Act: exempt income, interest, pay

Compare: 2004 No 35 s CZ 16

CZ 17 Dividend of exiting company: 2001

If an exiting company, as defined in section 5 of the Dairy Industry Restructuring Act 2001, derives a dividend as a result of a buy-out of the company's interests in the New Zealand Dairy Board under schedule 4 of the Act, the dividend is exempt income.

Defined in this Act: dividend, exempt income

Compare: 2004 No 35 s CZ 17

CZ 18 Benefit provider approved within 6 months of 25 November 2003

When this section applies

(1) This section applies when a person (the **provider**)—

- (a) is—
  - (i) an incorporated body; or
  - (ii) a trustee; and
- (b) provides accident insurance, health insurance, life insurance, or other health and welfare benefits to natural persons (the **recipients**); and
- (c) either—
  - (i) was approved as a sickness, accident, or death benefit fund by the Commissioner on or before 24 November 2003; or
  - (ii) administers a fund that was approved as a sickness, accident, or death benefit fund by the Commissioner on or before 24 November 2003; and
- (d) has been approved by the Commissioner as an organisation that the Commissioner considers operates on the principles of mutuality for recipients—

(i) within the 6 months starting on 25 November 2003; or

(ii) in a further period allowed by the Commissioner, if the provider satisfies the Commissioner that the provider was not aware of the requirement for the Commissioner's approval in sufficient time to obtain the approval under subparagraph (i).

Exempt income

(2) An amount derived by a provider is exempt income if—

(a) the amount is not derived from a business carried on by the provider beyond the circle of the recipients; and

(b) each of the recipients is—

(i) a beneficiary of the trust for which the provider is the trustee:

(ii) a member of the provider:

(iii) a member of an organisation that directly or indirectly controls the provider:

(iv) a relative of a person described in any of subparagraphs (i) to (iii).

Defined in this Act: amount, business, Commissioner, exempt income, life insurance, relative, sickness, accident, or death benefit fund, trustee

Compare: 2004 No 35 s CZ 18

CZ 19 Community trust receipts in 2004–05 or 2005–06 tax year

An amount of income derived by a trustee or company is exempt income if—

(a) the amount would be exempt income under section CW 41 (Charities: non-business income) or CW 42 (Charities: business income) but for the trustee or company making a dividend, distribution, or settlement to a community trust in the 2004–05 or 2005–06 tax year on the winding up of the trust or company; and

(b) either—

(i) the corpus of the trust was provided by the community trust; or

(ii) the company is wholly owned by the community trust.

Defined in this Act: amount, community trust, company, corpus, dividend, exempt income, income, tax year, trustee

Compare: 2004 No 35 s CZ 19

CZ 20 Disposal of personal property lease asset under specified lease

When this section applies

(1) This section applies for the purposes of section FZ 2 (Effect of specified lease on lessor and lessee) when a personal property lease asset that is leased under a specified lease is sold, assigned or leased on or after the term of the lease.

Income of lessor: when lease ends before term

(2) The amount of the excess described in section FZ 2(5)(c) is treated as income derived by the lessor in the income year in which the lease is terminated.

Income of lessor: when lease ends

(3) The amount of the excess described in section FZ 2(7) is treated as income derived by the lessor in the income year in which the term of the lease ends.

Income of lessee

(4) The amount of the excess described in section FZ 2(8) is income of the lessee in the income year in which the asset is disposed of.

Defined in this Act: amount, income year, lessee, lessor, personal property lease asset, specified lease, term of the lease

Compare: 2004 No 35 s FC 6(7), (8)

CZ 21 Superannuation fund loans made to members before 1 April 1989

When this section applies

(1) This section applies for the purposes of section CS 18 (Value of loan treated as fund income) in the case of a loan made by a superannuation fund to a member if—

(a) it was made before 1 April 1989; and

(b) the rate of interest payable on the loan cannot be reviewed.

Prescribed rate of interest varied

(2) The prescribed rate of interest is treated as being—

(a) the non-concessionary rate of interest for the tax year in which the loan agreement was signed or, if not in writing, agreed to by all parties, in the case of a loan made before 1 April 1985:

(b) the prescribed rate of interest for the quarter in which the loan agreement was signed or, if not in writing, agreed to by all parties, in any other case.

Defined in this Act: interest, member, non-concessionary rate of interest, pay, prescribed rate of interest, quarter, superannuation fund, tax year

Compare: 2004 No 35 s GD 6(3)

CZ 22 Geothermal wells between 31 March 2003 and 17 May 2006

When this section applies

(1) This section applies to a person's geothermal well when—

(a) the well is—

(i) both started and completed between 31 March 2003 and 17 May 2006:

(ii) acquired between 31 March 2003 and 17 May 2006; and

(b) the person—

(i) uses the well, or has the well available for use, after the end of the well's geothermal energy proving period in deriving income or carrying on a business for the purpose of deriving income:

(ii) disposes of the well.

Income: using well

(2) For a person to whom subsection (1)(b)(i) applies, the person has, for the first income year in which this section applies, an amount of income equal to the total amount of deductions that the person is allowed for the well under section DZ 7 of the Income Tax Act 1994, section DZ 15 of the Income Tax Act 2004, and section DZ 16 (Geothermal wells between 31 March 2003 and 17 May 2006) for all income years.

Income: disposing of well

(3) For a person to whom subsection (1)(b)(ii) applies, the person has, for the first income year in which this section applies, an amount of income equal to the lesser of—

(a) the amount derived from disposing of the well; and

(b) the total amount of deductions that the person is allowed for the well under section DZ 7 of the Income Tax Act 1994, section DZ 15 of the Income Tax Act 2004, and section DZ 16 for all income years.

Defined in this Act: amount, business, deduction, dispose, geothermal energy proving period, geothermal well, income, income year

Compare: 2004 No 35 s CZ 20

CZ 23 Insurance or compensation for buildings replaced as revenue account property affected by Canterbury earthquakes

When this section applies

(1) This section applies for a person and an income year (the **current year**) before the 2016–17 income year when the person,—

(a) in or before the current year, receives insurance or other compensation for buildings (the **affected property**), each of which is revenue account property and, as a result of a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011 is rendered useless for the purpose of deriving income, and demolished or abandoned for later demolition, because of damage to the building or to the neighbourhood of the building; and

(b) in the absence of this section, would have in or before the current year a total amount of income under section CG 6 (Receipts from insurance, indemnity, or compensation for trading stock) from the insurance or compensation for the affected property that exceeds the total amount of deductions under section DB 23 (Cost of revenue account property) for the affected property; and

(c) plans in the current year to acquire property (the **replacement property**) replacing affected property and meeting the requirements of subsection (4); and

(d) gives written notice to the Commissioner under subsection (6) in relation to the affected property.

Suspended recovery income

(2) The amount of the excess (the **excess recovery**) referred to in subsection (1)(a) is not income of the person except to the extent of the amount (the **suspended recovery income**) remaining after adjustment under subsection (3) that is attributed to an income year by subsection (5).

Effect of purchase of replacement property

(3) If the person incurs expenditure (the **replacement cost**) to acquire replacement property,—

(a) for the purposes of determining the value of the replacement property for section EA 2 (Other revenue account property), the amount of the person's expenditure on the replacement property, to the extent that it is less than or equal to the total amount of the income under section CG 6 for the affected property, is treated as being reduced by an amount calculated by multiplying the replacement cost by the excess recovery and dividing the result by the total amount of deductions under section DB 23 for the affected property; and

(b) the amount of the suspended recovery income immediately before the expenditure is reduced by an amount equal to the reduction of expenditure under paragraph (a) for the purposes of section EA 2.

Requirements for replacement property

(4) For an item of affected property, replacement property must be a building that is revenue account property—

(a) acquired in or before the person's 2015–16 income year; and

(b) located in greater Christchurch as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011.

Amount remaining at end of 2015–16 income year or when person changes intentions, is liquidated, or becomes bankrupt

(5) The person has an amount of income for the affected property in the current year equal to the amount of suspended recovery income when—

(a) the current year ends, if the current year is the 2015–16 income year:

(b) in the current year, the person decides not to replace the affected property:

(c) in the current year, the person goes into liquidation or becomes bankrupt.

Notice of election for affected property

(6) A person choosing to rely on this section to suspend in a current year the recognition of suspended recovery income from the insurance for affected property must give written notice to the Commissioner—

(a) by the later of 31 January 2012 and the date on which the return of income is filed for the earliest income year (the **estimate year**) in which the amount of the insurance for the affected property can be reasonably estimated; and

(b) if the current year is after the estimate year,—

(i) for each income year between the estimate year and the current year, by the date on which the return of income is filed for that income year; and

(ii) for the current year, by the date on which the return of income is filed for the current year.

Contents of notice of election

(7) A notice under subsection (6) must—

(a) describe the affected property; and

(b) give details of replacement property acquired in the current year to replace, in full or in part, the affected property; and

(c) give the cost of the replacement property and the reduction under subsection (3) of that cost for the purposes of section EA 2; and

(d) give the amount, for the affected property, of the income from insurance or compensation remaining suspended under this section at the end of the current year.

Relationship to section CG 6

(8) This section overrides section CG 6.

Defined in this Act: amount, deduction, income, income year, notice, return of income

Section CZ 23: substituted (with effect on 4 September 2010), on 29 August 2011, by section 11 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

CZ 24 Employee benefits for Canterbury earthquake relief: not fringe benefits

When this section applies

(1) This section applies when an employee receives from an employer a benefit that—

(a) would be a fringe benefit in the absence of this section; and

(b) is for the purpose of the relief of employees from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011, of 4 September 2010 or 22 February 2011; and

(c) is received in the period of 8 weeks beginning on the day of that Canterbury earthquake; and

(d) does not replace a PAYE income payment; and

(e) does not depend on the seniority of the employee; and

(f) is available to another employee, who is not an associated person of the employer and is or was immediately before a Canterbury earthquake in full-time employment with the employer, if the employee is an associated person of the employer; and

(g) is treated by the employer as not being a fringe benefit.

Benefits with known value for employee

(2) Benefits satisfying subsection (1) that would, in the absence of this section, be fringe benefits having a value for the employee that the employer could estimate, are not fringe benefits to the extent that their total value as fringe benefits for the period would be less than or equal to the amount by which $3,200 exceeds the income that is—

(a) exempt income under section CZ 23(2)(b); and

(b) derived by the employee from the employer in the same period.

Benefits with unknown value for employee

(3) Benefits satisfying subsection (1) that would, in the absence of this section, be fringe benefits having a value for the employee that the employer could not estimate, are not fringe benefits.

Defined in this Act: associated person, employee, employer, exempt income, fringe benefit, income, PAYE income payment

Section CZ 24: added (with effect on 4 September 2010), on 24 May 2011, by section 4 of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Part D
Deductions

Subpart DA—General rules

DA 1 General permission

Nexus with income

(1) A person is allowed a deduction for an amount of expenditure or loss, including an amount of depreciation loss, to the extent to which the expenditure or loss is—

(a) incurred by them in deriving—

(i) their assessable income; or

(ii) their excluded income; or

(iii) a combination of their assessable income and excluded income; or

(b) incurred by them in the course of carrying on a business for the purpose of deriving—

(i) their assessable income; or

(ii) their excluded income; or

(iii) a combination of their assessable income and excluded income.

General permission

(2) Subsection (1) is called the **general permission**.

Avoidance arrangements

(3) Section GB 33 (Arrangements involving depreciation loss) may apply to override the general permission in relation to an amount of depreciation loss.

Defined in this Act: amount, assessable income, business, deduction, depreciation loss, excluded income, general permission, loss

Compare: 2004 No 35 s DA 1

DA 2 General limitations

Capital limitation

(1) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is of a capital nature. This rule is called the **capital limitation**.

Private limitation

(2) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is of a private or domestic nature. This rule is called the **private limitation**.

Exempt income limitation

(3) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving exempt income. This rule is called the **exempt income limitation**.

Employment limitation

(4) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving income from employment. This rule is called the **employment limitation**.

Withholding tax limitation

(5) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving non-resident passive income of the kind referred to in section RF 2(3) (Non-resident passive income). This rule is called the **withholding tax limitation**.

Non-residents' foreign-sourced income limitation

(6) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving non-residents' foreign-sourced income. This rule is called the **non-residents' foreign-sourced income limitation**.

Relationship of general limitations to general permission

(7) Each of the general limitations in this section overrides the general permission.

Defined in this Act: amount, capital limitation, deduction, employment limitation, exempt income, exempt income limitation, general limitation, general permission, income from employment, loss, non-residents' foreign-sourced income, non-residents' foreign-sourced income limitation, private limitation, withholding tax limitation

Compare: 2004 No 35 s DA 2

DA 3 Effect of specific rules on general rules

Supplements to general permission

(1) A provision in any of subparts DB to DZ may supplement the general permission. In that case, a person to whom the provision applies does not have to satisfy the general permission to be allowed a deduction.

Express reference needed to supplement

(2) A provision in any of subparts DB to DZ takes effect to supplement the general permission only if it expressly states that it supplements the general permission.

Relationship of general limitations to supplements to general permission

(3) Each of the general limitations overrides a supplement to the general permission in any of subparts DB to DZ, unless the provision creating the supplement expressly states otherwise.

Relationship between other specific provisions and general permission or general limitations

(4) A provision in any of subparts DB to DZ may override any 1 or more of the general permission and the general limitations.

Express reference needed to override

(5) A provision in any of subparts DB to DZ takes effect to override the general permission or a general limitation only if it expressly states that—

(a) it overrides the general permission or the relevant limitation; or

(b) the general permission or the relevant limitation does not apply.

Part E

(6) No provision in Part E (Timing and quantifying rules) supplements the general permission or overrides the general permission or a general limitation.

Defined in this Act: deduction, general limitation, general permission, supplement

Compare: 2004 No 35 s DA 3

DA 4 Treatment of amount of depreciation loss

The capital limitation does not apply to an amount of depreciation loss merely because the item of property is itself of a capital nature.

Defined in this Act: amount, capital limitation, depreciation loss

Compare: 2004 No 35 s DA 4

Subpart DB—Specific rules for expenditure types

Taxes and other amounts

Heading: substituted (with effect on 1 April 2008), on 29 August 2011, by section 12 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

DB 1 Taxes, other than GST, and penalties

No deduction

(1) A person is denied a deduction for the following:

- (a) income tax:
- (b) a tax imposed in a country or territory outside New Zealand that is substantially the same as income tax:
- (c) ancillary tax, unless listed in subsection (2):
- (d) a civil penalty under Part 9 of the Tax Administration Act 1994:
- (e) a tax, a penalty, or interest on unpaid tax that is—
  - (i) payable under the laws of a country or territory outside New Zealand; and
  - (ii) substantially the same as a civil penalty as defined in section 3(1) of the Tax Administration Act 1994, or a criminal penalty under Part 9 of the Act, or interest imposed under Part 7 of the Act.

Some ancillary tax excluded

(2) Subsection (1) does not apply to—

- (a) pay-as-you-earn (PAYE):
- (b) fringe benefit tax (FBT):
- (c) employer's superannuation contribution tax (ESCT):
- (d) resident withholding tax (RWT):
- (e) non-resident withholding tax (NRWT).

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: ancillary tax, deduction, ESCT, FBT, general permission, income tax, New Zealand, NRWT, pay, PAYE, RWT, tax

Compare: 2004 No 35 s DB 1

DB 2 Goods and services tax

No deduction

(1) A registered person is denied a deduction for the following:

(a) input tax on a supply of goods or services to them:

(b) goods and services tax (GST) payable by them to the Commissioner.

Deduction

(2) A registered person is allowed a deduction for deductible output tax but only to the extent to which—

(a) they are allowed a deduction for expenditure that they incur in acquiring or producing the goods or services; or

(b) they are allowed a deduction for an amount of depreciation loss for the goods or services.

Exclusion

(3) Subsection (2) does not apply to an adjustment made in relation to a capital asset.

Depreciable property

(4) The provisions that apply when an amount of depreciation loss is quantified by reference to the cost of an item of depreciable property to a person are in section EE 54 (Cost: GST).

Link with subpart DA

(5) The link between this section and subpart DA (General rules) is as follows:

(a) subsection (1) overrides the general permission:

(b) subsection (2) supplements the general permission; the general limitations still apply.

Defined in this Act: amount, Commissioner, deductible output tax, deduction, depreciable property, depreciation loss, general limitation, general permission, goods, GST, GST payable, income, input tax, output tax, pay, registered person, services, supplement

Compare: 2004 No 35 s DB 2

Section DB 2(2): amended, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 37(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section DB 2(2): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 37(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section DB 2(2): amended (with effect on 1 April 2008), on 7 December 2009, by section 10 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 2(3): substituted, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 37(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section DB 2 list of defined terms **deductible output tax**: inserted, on 21 December 2010, by section 37(4)(a)of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section DB 2 list of defined terms **taxable supply**: repealed, on 21 December 2010, by section 37(4)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

DB 3 Determining tax liabilities

Deduction

(1) A person is allowed a deduction for expenditure that they incur in connection with the following matters:

(a) calculating or determining their income tax liability for a tax year:

(b) calculating or determining the GST payable by them in a taxable period:

(c) preparing, instituting, or presenting an objection or challenge to, or an appeal following, a determination or assessment made under this Act or an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985:

(d) making a contribution towards the expenditure incurred by another person if—

(i) the other person is allowed a deduction for that expenditure; and

(ii) the expenditure relates to a matter affecting the determination of the first person's liability for income tax or GST; and

(iii) the first person has objected to, challenged, or appealed against an assessment or determination made in relation to the matter under this Act or

an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985.

Exclusions

(2) This section does not apply to expenditure that a person incurs in connection with the following matters:

(a) a matter arising from a return of income or a return under the Goods and Services Tax Act 1985 that was fraudulent or wilfully misleading:

(b) an offence under any of the Inland Revenue Acts:

(c) a shortfall penalty assessed under this Act or an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985 (but not an assessment that is later cancelled):

(d) an objection, challenge, or appeal that is inconsequential or frivolous:

(e) a matter arising under the Goods and Services Tax Act 1985 to the extent to which it relates to a taxable activity that does not constitute a business for the purposes of this Act.

Taxable activity

(3) In this section, **taxable activity** is defined in section 6 of the Goods and Services Tax Act 1985.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation, the private limitation, and the employment limitation. The other general limitations still apply.

Defined in this Act: amount, assessment, business, capital limitation, deduction, employment limitation, general limitation, general permission, GST, GST payable, income tax liability, Inland Revenue Acts, pay, private limitation, return of income, supplement, tax year, taxable activity, taxable period

Compare: 2004 No 35 s DB 3

Section DB 3(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 68(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 3(4) list of defined terms **capital limitation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 68(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 3B Use of money interest

Deduction

(1) A person is allowed a deduction for an amount of interest they are liable to pay under Part 7 of the Tax Administration Act 1994.

Timing of deduction

(2) The deduction is allocated under section EF 5 (Use of money interest payable by person).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation, the private limitation, and the employment limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, employment limitation, general limitation, general permission, private limitation

Section DB 3B: inserted (with effect on 1 April 2008), on 29 August 2011, by section 13(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

DB 4 Chatham Islands dues

Deduction

(1) A person is allowed a deduction for expenditure incurred on dues levied under the Chatham Islands Council Act 1995 that relate to goods that the person uses in connection with carrying on a business.

Timing of deduction

(2) The deduction is allocated to the income year in which the dues are paid.

Exclusion of expenditure: other deductions

(3) Expenditure to which subsection (1) applies must not be taken into account in calculating the cost of the goods for the purpose of a deduction relating to the goods under any other provision of this Act.

Link with subpart DA

(4) The link between this section and subpart DA (General rules) is as follows:

(a) subsection (1) supplements the general permission and overrides the capital limitation; the other general limitations still apply:

(b) subsection (3) overrides the general permission.

Defined in this Act: business, capital limitation, deduction, general permission, general limitation, income year, pay, supplement

Compare: 2004 No 35 s DB 4

DB 4B Fees to purchase funds in tax pooling accounts

Deduction

(1) A person is allowed a deduction for expenditure incurred in purchasing an amount held in a tax pooling account to pay a liability for provisional tax, terminal tax, or an increase in an assessment of tax as described in sections RP 17 to RP 21 (which relate to tax pooling intermediaries).

Timing of deduction

(2) The deduction is allocated to the income year in which the amount is transferred into the person's tax account by the Commissioner to satisfy the person's obligation to pay the tax.

Link with subpart DA

(3) This section supplements the general permission and overrides the private limitation, the employment limitation, and the withholding tax limitation. The other general limitations still apply.

Defined in this Act: amount, assessment, Commissioner, deduction, employment limitation, general permission, income year, intermediary, pay, private limitation, provisional tax, tax account with the Commissioner, tax pooling account, terminal tax, withholding tax limitation

Section DB 4B: inserted, on 29 August 2011, by section 14 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Financing costs

DB 5 Transaction costs: borrowing money for use as capital

Deduction

(1) A person is allowed a deduction for expenditure incurred in borrowing money that is used as capital in deriving their income.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income

Compare: 2004 No 35 s DB 5

DB 6 Interest: not capital expenditure

Deduction

(1) A person is allowed a deduction for interest incurred.

Exclusion

(2) Subsection (1) does not apply to interest for which a person is denied a deduction under section DB 1.

Conduit financing arrangements
[Repealed]

(3) *[Repealed]*

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, interest

Compare: 2004 No 35 s DB 6

Section DB 6(3) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 69(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 6(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 69(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 7 Interest: most companies need no nexus with income

Deduction

(1) A company is allowed a deduction for interest incurred.

Exclusion: qualifying company

(2) Subsection (1) does not apply to a qualifying company.

Exclusion: exempt income

(3) If a company (**company A**) derives exempt income or another company (**company B**) that is part of the same wholly-owned group of companies derives exempt income, subsection (1) applies to company A only if all the exempt income is 1 or more of the following:

(a) dividends; or

(b) income exempted under section CW 58 (Disposal of companies' own shares); or

(c) income exempted under section CW 60 (Stake money) and ancillary to the company's business of breeding.

Exclusion: non-resident company

(4) If a company is a non-resident company, subsection (1) applies only to the extent to which the company incurs interest in the course of carrying on a business through a fixed establishment in New Zealand.

Exclusion: interest related to tax

(5) Subsection (1) does not apply to interest for which a person is denied a deduction under section DB 1.

Consolidated groups

(6) Section FM 12 (Expenditure when deduction would be denied to consolidated group) may apply to allow a deduction under this section to a company that is part of a consolidated group.

Conduit financing arrangements
[Repealed]

(7) *[Repealed]*

Link with subpart DA

(8) This section supplements the general permission and overrides the capital limitation, the exempt income limitation, and the withholding tax limitation. The other general limitations still apply.

Defined in this Act: business, capital limitation, company, consolidated group, deduction, dividend, exempt income, exempt income limitation, fixed establishment, general limitation, general permission, income, interest, New Zealand, non-resident company, qualifying company, supplement, wholly-owned group of companies, withholding tax limitation

Compare: 2004 No 35 s DB 7

Section DB 7(7) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 70(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 7(7): repealed (with effect on 30 June 2009), on 6 October 2009, by section 70(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 8 Interest: money borrowed to acquire shares in group companies

Deduction: borrowing to acquire group company shares

(1) A company is allowed a deduction for interest incurred on money borrowed to acquire shares in another company that is part of the same group of companies.

Exclusion: group not in existence at year end

(2) Subsection (1) does not apply if the 2 companies are not part of the same group of companies at the end of the tax year that corresponds to the income year in which the deduction is allowed.

Deduction: interest after resident's restricted amalgamation

(3) A company is allowed a deduction for interest incurred on money borrowed to acquire shares in another company that has ended its existence on a resident's restricted amalgamation.

Exclusion: group not in existence immediately before resident's restricted amalgamation

(4) Subsection (3) does not apply if the 2 companies were not part of the same group of companies immediately before the resident's restricted amalgamation.

Application from income year of resident's restricted amalgamation

(5) Subsection (3) applies in the income year in which the resident's restricted amalgamation occurs and in later income years.

Consolidated groups

(6) Section FM 12 (Expenditure when deduction would be denied to consolidated group) may apply to allow a deduction under this section to a company that is part of a consolidated group.

Conduit financing arrangements

[Repealed]

(7) *[Repealed]*

Link with subpart DA

(8) This section supplements the general permission and overrides the capital limitation, the exempt income limitation, and the withholding tax limitation. The other general limitations still apply.

Defined in this Act: company, consolidated group, deduction, exempt income limitation, general limitation, general permission, group of companies, income year, interest, resident's restricted amalgamation, share, supplement, withholding tax limitation

Compare: 2004 No 35 s DB 8

Section DB 8(7) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 71(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 8(7): repealed (with effect on 30 June 2009), on 6 October 2009, by section 71(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 9 Interest incurred on money borrowed to acquire shares in qualifying companies

Deduction for interest incurred

(1) The deduction that a shareholder in a qualifying company has for interest in an income year is reduced by the amount of non-cash dividends, other than taxable bonus issues, derived by them or an associated person from the company in the income year.

Exempt income

(2) In determining the amount of the deduction that the shareholder has for the interest, section CW 15(1) (Dividends paid by qualifying companies) does not apply to treat as exempt income a distribution from the qualifying company to the shareholder, and the distribution is excluded from the definition of **dividend**.

Associated persons

(3) If the associated person referred to in subsection (1) is associated with more than 1 shareholder in the company, the amount of non-cash dividends is apportioned among the associated shareholders according to their effective interests in the company in the income year.

Allocation of dividend

(4) If section CD 39 (Calculation of amount of dividend when property made available) applies to a dividend derived by a shareholder of a qualifying company, the dividend is treated as having been paid and derived at the end of the quarter in which the amount is calculated.

Link with subpart DA

(5) This section overrides—

(a) the general permission; and

(b) the exempt income limitation.

Defined in this Act: amount, associated person, bonus issue, deduction, dividend, effective interest, exempt income, exempt income limitation, general permission, income year, interest, non-cash dividend, pay, qualifying company, share, shareholder, taxable bonus issue

Compare: 2004 No 35 s HG 9(3)–(5)

DB 10 Interest or expenditure connected to profit-related or substituting debentures

When this section applies

(1) This section applies for the purposes of section FA 2 (Recharacterisation of certain debentures).

No deduction

(2) A company issuing either a profit-related debenture or a substituting debenture is denied a deduction for—

(a) interest payable under the debenture; or

(b) expenditure or loss incurred in connection with the debenture; or

(c) expenditure or loss incurred in borrowing the money secured by or owing under the debenture.

Relationship with sections DB 5 to DB 8

(3) This section overrides sections DB 5 to DB 8.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: debenture, deduction, general permission, interest, pay, profit-related debenture, substituting debenture

Compare: 2004 No 35 ss FC 1(1), FC 2(2)

DB 10B Interest or expenditure connected to stapled debt security

No deduction

(1) A company that issues a stapled debt security is denied, while section FA 2B(2) (Stapled debt securities) applies to the security, a deduction for—

(a) interest payable under the security:

(b) expenditure or loss incurred in connection with the security:

(c) expenditure or loss incurred in borrowing the money secured by or owing under the security.

Relationship with sections DB 5 to DB 8

(2) This section overrides sections DB 5 to DB 8.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: deduction, general permission, interest, pay, stapled debt security

Section DB 10B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 72 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Financial arrangements adjustments

DB 11 Negative base price adjustment

Deduction

(1) A person who has a negative base price adjustment under section EW 31(4) (Base price adjustment formula) is allowed a deduction for the expenditure to the extent to which it arises from assessable income, under section CC 3 (Financial arrangements), derived by the person under the financial arrangement in earlier income years.

Link with subpart DA

(2) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: assessable income, deduction, financial arrangement, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DB 9

DB 12 Base price adjustment under old financial arrangements rules

Deduction

(1) A person is allowed a deduction for an amount that is a deduction under section EZ 37(6) (Cash basis holder) or EZ 38(3) or (4) (Income and expenditure where financial arrangement redeemed or disposed of).

Link with subpart DA

(2) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: amount, deduction, general limitation, general permission, supplement

Compare: 2004 No 35 s DB 9B

DB 13 Repayment of debt sold at discount to associate of debtor

Deduction

(1) When section EW 49(5)(b) (Income and deduction when debt sold at discount to associate of debtor) applies, the debtor is allowed a deduction for the amount quantified in that subsection.

Link with subpart DA

(2) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: amount, associated person, deduction, general limitation, general permission, supplement

Compare: 2004 No 35 s DB 10

DB 14 Security payment

When subsection (2) applies

(1) Subsection (2) applies when—

(a) a person receives a security payment for a loss; and

(b) no other provision of this Act allows the person a deduction for the loss.

Deduction: loss

(2) The person is allowed a deduction for the loss quantified in section EW 51(2) (Deduction for security payment).

When subsection (4) applies

(3) Subsection (4) applies when—

(a) a person receives a security payment for a share loss as described in section DB 24; and

(b) the requirements of section DB 24 are met; and

(c) no other provision of this Act allows the person a deduction for the loss.

Deduction: share loss

(4) The person is allowed a deduction for the share loss quantified in section EW 51(4).

Link with subpart DA

(5) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: deduction, general limitation, general permission, loss, pay, security payment, supplement

Compare: 2004 No 35 s DB 11

DB 15 Sureties

When this section applies

(1) This section applies when a surety incurs expenditure or loss under a security arrangement.

No deduction (with exceptions)

(2) Neither the surety nor a person with whom the surety was an associated person over the security arrangement's term is allowed a deduction for the expenditure or loss to the extent to which the expenditure or loss is due to—

(a) the actions of the surety or a person with whom the surety was an associated person over the arrangement's term; or

(b) the occurrence of an event, if the occurrence could have been influenced by the surety or a person with whom the surety was an associated person over the arrangement's term; or

(c) the non-occurrence of an event, if the non-occurrence could have been influenced by the surety or a person with whom the surety was an associated person over the arrangement's term.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: associated person, deduction, general permission, loss, security arrangement

Compare: 2004 No 35 s DB 12

Share-lending arrangements

DB 16 Share-lending collateral under share-lending arrangements

No deduction

(1) A person is denied a deduction for the amount of expenditure incurred as share-lending collateral under a share-lending arrangement.

Link with subpart DA and other subject matter

(2) This section overrides—

(a) the general permission:

(b) sections DB 23 to DB 26.

Defined in this Act: amount, deduction, general permission, share-lending arrangement, share-lending collateral

Compare: 2004 No 35 s DB 12B

DB 17 Replacement payments and imputation credits under share-lending arrangements

A person is allowed a deduction for—

(a) the amount of expenditure incurred as a replacement payment under a share-lending arrangement:

(b) the amount of imputation credit attached under sections OB 64 (Replacement payments) and RE 25 (When amount of tax treated as imputation credit) to the replacement payment.

Defined in this Act: amount, deduction, imputation credit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s DB 12C

Section DB 17 list of defined terms **portfolio investment-linked life fund**: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Premises or land costs

DB 18 Transaction costs: leases

Deduction

(1) A person is allowed a deduction for expenditure that they incur for the preparation and registration, or the renewal, of a lease of property.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, lease

Compare: 2004 No 35 s DB 13

DB 19 Expenses of failed or withdrawn application for resource consent

Deduction

(1) A person who applies for the grant of a resource consent under the Resource Management Act 1991 and is refused the grant or withdraws the application is allowed a deduction for expenditure—

(a) that the person incurs in relation to the application; and

(b) that would have been part of the cost of depreciable property, or otherwise a deduction, if the application had been granted; and

(c) for which the person is not allowed a deduction under another provision.

Timing of deduction

(2) The deduction is allocated to the income year in which the grant is refused or the application is withdrawn.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission and other general limitations still apply.

Defined in this Act: accounting year, capital limitation, deduction, general limitation, general permission, income year

Compare: 2004 No 35 s DB 13B

DB 20 Destruction of temporary building

Deduction

(1) A person is allowed a deduction for a loss that they incur through the destruction of a temporary building.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, loss, supplement, temporary building

Compare: 2004 No 35 s DB 14

DB 21 Amounts paid for non-compliance with covenant for repair

When this section applies

(1) This section applies when—

(a) a person who is a lessee of land uses it to derive income; and

(b) the lease contains a covenant requiring the lessee to maintain the land or to make repairs to improvements on the land; and

(c) the lessee does not comply with the covenant; and

(d) the lessee is, consequently, liable to pay an amount to the lessor; and

(e) either—

(i) the lessee, during the term of the lease or after it ends, pays the amount to the lessor; or

(ii) the lessor recovers the amount from the lessee during the term of the lease or after it ends.

Deduction

(2) The lessee is allowed a deduction for the amount paid to the extent to which it relates to maintenance or repairs and to the extent to which the lessee would have been allowed a deduction for the expenditure had the lessee incurred it during the term of the lease.

Timing of deduction

(3) The deduction is allocated to the income year in which the lessee pays the amount or the lessor recovers the amount.

Relationship with section EJ 11

(4) This section is overridden by section EJ 11 (Amount paid by lessee for non-compliance with covenant for repair).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income, income year, lease, pay, repairs, supplement, term of the lease

Compare: 2004 No 35 s DB 15

DB 22 Amounts paid for non-compliance and change in use

When this section applies

(1) This section applies when—

(a) a person who is a lessor receives an amount for non-compliance with a covenant for repair that is assessable income under section CC 2 (Non-compliance with covenant for repair); and

(b) in the income year in which the lessor receives the amount or in any of the following 4 income years,—

(i) the lessor does not use the land to which the amount relates to derive assessable income, but continues to own the land; and

(ii) the lessor incurs expenditure in maintaining the land or in making repairs to improvements on the land, including painting and general maintenance; and

(iii) the lessor would have been allowed a deduction if the land had been used for the purpose of deriving assessable income; and

(iv) in the absence of section DB 46, no other provision of this Act would allow the lessor a deduction for the expenditure.

Deduction

(2) The lessor is allowed a deduction for the expenditure.

Amount of deduction

(3) The amount of the deduction is the lesser of—

(a) the amount of the expenditure; and

(b) the part of the amount that is assessable income derived by the lessor in the income year in which the expenditure is incurred through the operation of—

(i) section CC 2; or

(ii) section EI 5 (Amount paid to lessor for non-compliance with covenant for repair); or

(iii) section EI 6 (Amount paid for non-compliance: when lessor ceases to own land).

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, assessable income, deduction, general limitation, general permission, income year, own, supplement

Compare: 2004 No 35 s DB 16

Revenue account property

DB 23 Cost of revenue account property

Deduction

(1) A person is allowed a deduction for expenditure that they incur as the cost of revenue account property.

No deduction

(2) Despite subsection (1), a person is denied a deduction for expenditure incurred as the cost of revenue account property if—

(a) *[Repealed]*

(b) section CX 55, CX 56B, or CX 56C (which relate to portfolio investment income) applies to income derived by the person from the disposal of the revenue account property.

Link with subpart DA

(3) Subsection (1) overrides the capital limitation but the general permission must still be satisfied. Subsection (2) overrides the general permission. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, revenue account property

Compare: 2004 No 35 s DB 17

Section DB 23(2) heading: substituted, on 29 August 2011, by section 15(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DB 23(2)(a): repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 73(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 23(2)(a): substituted, on 1 April 2008, by section 337(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 23(2)(b): amended, on 29 August 2011, by section 15(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DB 23 list of defined terms **portfolio investment entity**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 73(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 24 Share losses

When this section applies

(1) This section applies when—

(a) a company (**company A**) acquires a share in another company (**company B**); and

(b) the share declines in value; and

(c) because of the decline in value, company A incurs a loss (the **share loss**), whether on a disposal of the share or a valuation of it under subpart ED (Valuation of excepted financial arrangements) or in any other way; and

(d) company B—

(i) itself uses the amount subscribed for the share; or

(ii) uses it to fund directly or indirectly another company (**company C**); and

(e) company B or company C has a tax loss, in the calculation of which the amount used is taken into account; and

(f) company A, or a company that is part of the same group of companies as company A at any time in the income year in which company B or company C has the tax loss, offsets an amount for the tax loss under section IC 1 (Company A making tax loss available to company B); and

(g) the offset is in a tax year before the tax year that corresponds to the income year in which company A incurs the share loss.

No deduction (with exception)

(2) Company A is denied a deduction for the share loss, except to the extent to which the share loss, as adjusted under subsection (3), is more than the amount offset under section IC 1, as adjusted under subsection (4).

Other denied deductions added

(3) When subsection (2) applies, the share loss is adjusted by adding every loss to which all the following apply:

(a) company A incurs it as a result of the share's decline in value or the decline in value of another share if the use of the amount subscribed for the other share is taken into account in calculating the tax loss; and

(b) company A incurs it in an income year before the income year referred to in subsection (1)(g); and

(c) company A has been denied a deduction for it by the operation of subsection (2).

Other offsets added

(4) The amount offset under section IC 1 includes every amount that company A, or a company that is part of the same group of companies as company A at any time in the income year in which company A has the tax loss, has offset for the tax loss under that section in a tax year before the tax year that corresponds to the income year in which the share loss is incurred.

Link with subpart DA

(5) This section overrides the general permission.

Defined in this Act: amount, company, deduction, general permission, group of companies, income year, loss, share, tax loss, tax year

Compare: 2004 No 35 s DB 18

DB 25 Cancellation of shares held as revenue account property

When this section applies

(1) This section applies for the purposes of section FA 4(3)(b) (Recharacterisation of shareholder's base: company repurchasing share).

No deduction

(2) A shareholder is denied a deduction for the amount added to the cost of their remaining shares of the same class as that of

the share cancelled, unless the share is trading stock of the shareholder.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: deduction, general permission, interest, profit-related debenture, substituting debenture

Compare: 2004 No 35 s FC 4(f)(iv)

DB 26 Amount from profit-making undertaking or scheme and not already in income

When this section applies

(1) This section applies when a person derives income under section CB 3 (Profit-making undertaking or scheme) that is not their income under any other provision of this Act.

Deduction

(2) The person is allowed a deduction for the value of the property, as determined under subsection (3).

Determining amount of deduction

(3) For the purpose of determining the amount of the deduction, the person is treated as—

(a) having disposed of the property to an unrelated third party immediately before the start of the undertaking or scheme; and

(b) having reacquired the property immediately after the start of the undertaking or scheme at the market value of the property at the time.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, income, supplement

Compare: 2004 No 35 s DB 19

DB 27 Amount from major development or division and not already in income

When this section applies

(1) This section applies when a person derives income under section CB 13 (Disposal: amount from major development or div-

ision and not already in income) that is not their income under any other provision of this Act.

Deduction

(2) The person is allowed a deduction for the value of the land, as determined under subsection (3).

Determining amount of deduction

(3) For the purpose of determining the amount of the deduction, the person is treated as—

(a) having disposed of the land to an unrelated third party immediately before the start of the undertaking or scheme; and

(b) having reacquired it immediately after the start of the undertaking or scheme at the market value of the land at the time.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, income, land, supplement

Compare: 2004 No 35 s DB 20

DB 28 Amount from land affected by change and not already in income

When this section applies

(1) This section applies when a person derives income under section CB 14 (Disposal: amount from land affected by change and not already in income) that is not their income under any other provision of this Act.

Deduction

(2) The person is allowed—

(a) a deduction allowed under any other provision of this Act; and

(b) a deduction to the extent described in subsection (3).

Calculation of deduction

(3) The maximum amount of the deduction is the greater of $1,000 and an amount calculated using the formula in subsection (4). However, the amount must not be more than the profit obtained from the disposal of the land.

Formula

(4) The formula is—

percentage of profit × years.

Definition of items in formula

(5) In the formula,—

(a) **percentage of profit** is 10% of the profit on the disposal of the land:

(b) **years** is the number, up to and including 10, of consecutive years between the date on which the person acquired the land and the date on which they disposed of it, with the first year starting on the date on which the person acquired the land.

Meaning of profit

(6) In this section, **profit** means the excess of the amount derived over the cost of the land.

Link with subpart DA

(7) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, income, land, profit, supplement, year

Compare: 2004 No 35 s DB 21

DB 29 Apportionment when land acquired with other property

If a person derives income under sections CB 6 to CB 14 (which relate to the disposal of land) from the disposal of land, and the land is acquired together with other property, the cost of acquisition must be apportioned between the land and the other property.

Defined in this Act: income, land, property

Compare: 2004 No 35 s FB 4A

DB 30 Cost of non-specified mineral

When this section applies

(1) This section applies when—

(a) an amount of cost of a mineral is treated by a person under generally accepted accounting practice as a cost of the mineral for the person and reported accordingly for financial reporting purposes; and

(b) the mineral is not a specified mineral; and

(c) no other provision of this Act allows the person a deduction for the amount; and

(d) an amount derived by the person from disposing of the mineral would be income of the person under section CB 29 (Disposal of minerals).

Deduction

(2) The person is allowed a deduction for the amount.

Timing of deduction: trading stock

(3) If the amount is a cost of trading stock, the deduction is allocated to the income year in which the mineral first becomes trading stock of the person.

Timing of deduction: not trading stock

(4) If the amount is not a cost of trading stock, the deduction is allocated by section EA 2 (Other revenue account property).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, dispose, general limitation, general permission, generally accepted accounting practice, income, income year, mineral, specified mineral trading stock

Compare: 2004 No 35 s DB 22

Bad debts

DB 31 Bad debts

No deduction (with exception)

(1) A person is denied a deduction in an income year for a bad debt, except to the extent to which—

(a) the debt is written off as bad in the income year; and

(b) in the case of the bad debts described in subsections (2) to (5), the requirements of the relevant subsection are met.

Deduction: financial arrangement debt: amount of income

(2) A person who derives assessable income from a financial arrangement to which the financial arrangements rules apply is allowed a deduction for an amount owing under the financial arrangement, but only to the extent to which—

(a) the amount is a bad debt and the requirement of subsection (1)(a) is met; and
(b) the amount is attributable to the income; and
(c) subsection (5) does not limit the deduction.

Deduction: financial arrangement debt: dealers in arrangements

(3) A person is allowed a deduction for an amount owing under a financial arrangement to which the financial arrangements rules apply, but only to the extent to which—
(a) the amount is a bad debt and the requirement of subsection (1)(a) is met; and
(b) the person carries on a business for the purpose of deriving assessable income that includes dealing in or holding financial arrangements that are the same as, or similar to, the financial arrangement; and
(c) the person is not associated with the person owing the amount written off; and
(d) subsection (5) does not limit the deduction.

Deduction: financial arrangement debt: dealers in property or services sold

(4) A person is allowed a deduction for an amount owing under a financial arrangement to which the financial arrangements rules apply, but only to the extent to which—
(a) the amount is a bad debt and the requirement of subsection (1)(a) is met; and
(b) the financial arrangement is an agreement for the sale and purchase of property or services; and
(c) the person carries on a business of dealing in the property or services that are the subject of the agreement; and
(d) the person carries on the business for the purpose of deriving assessable income; and
(e) subsection (5) does not limit the deduction.

Deduction: bad debt representing loss already offset

(5) A person is allowed a deduction for a bad debt only to the extent to which it is more than the total of the amounts offset under section IC 1 (Company A making tax loss available to company B) that are described in paragraphs (e) and (f) if—

(a) the person writing off the amount of debt is a company (**company A**); and
(b) the debt is owed to it by another company (**company B**); and
(c) company B—
  (i) itself uses the amount giving rise to the debt; or
  (ii) uses it to fund directly or indirectly another company (**company C**) that uses the amount; and
(d) company B or company C has a tax loss, in the calculation of which the amount used is taken into account; and
(e) company A, or a company that is part of the same group of companies as company A at any time in the income year in which company B or company C has the tax loss, offsets an amount for the tax loss under section IC 1; and
(f) the offset is in a tax year before the tax year that corresponds to the income year in which company A writes off the amount of debt, but not before the 1993–94 tax year.

Link with subpart DA

(6) The link between this section and subpart DA (General rules) is as follows:
(a) subsection (1) overrides the general permission; and
(b) for subsections (2) to (5),—
  (i) they supplement the general permission, to the extent to which they allow a deduction that is denied under the general permission; and
  (ii) they override the general permission, to the extent to which they deny a deduction that is allowed under the general permission; and
  (iii) the other general limitations still apply.

Defined in this Act: agreement for the sale and purchase of property or services, amount, assessable income, associated person, business, company, deduction, financial arrangement, financial arrangements rules, general limitation, general permission, group of companies, income year, supplement, tax loss, tax year

Compare: 2004 No 35 s DB 23

DB 32 Bad debts owed to estates

When this section applies

(1) This section applies when—

(a) a debt owing to a person at the date of their death is, in an income year,—

(i) assessable income of the person; or

(ii) assessable income of the trustee of their estate; and

(b) the trustee writes off some or all of the debt as bad because it is not recoverable.

Deduction

(2) The following persons, in the following order, are allowed a deduction for the amount of the debt written off:

(a) first, the trustee, to the extent of assessable income derived as trustee income in the income year; and

(b) second, any beneficiary who has a vested interest in the capital of the estate, to the extent of assessable income derived in the income year by or in trust for the beneficiary, and to the extent to which the amount is chargeable against the capital of the beneficiary; and

(c) third, the trustee or a beneficiary denied a deduction for the balance in the income year; each is allowed a deduction, as described in paragraph (a) or (b), in the next tax year, and so on.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, assessable income, deduction, general limitation, general permission, income year, supplement, trustee, trustee income

Compare: 2004 No 35 s DB 24

Research and development

DB 33 Scientific research

Deduction: scientific research

(1) A person is allowed a deduction for expenditure they incur in connection with scientific research that they carry on for the purpose of deriving their assessable income.

Exclusion

(2) Subsection (1) does not apply to expenditure that the person incurs on an asset that—

(a) is not created from the scientific research; and

(b) is an asset for which they have an amount of depreciation loss for which—

(i) they are allowed a deduction; or

(ii) they would have been allowed a deduction but for the Commissioner's considering that incomplete and unsatisfactory accounts were kept by or for them.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, assessable income, capital limitation, Commissioner, deduction, depreciation loss, general limitation, general permission, supplement

Compare: 2004 No 35 s DB 25

DB 34 Research or development

Deduction

(1) A person is allowed a deduction for expenditure they incur on research or development. This subsection applies only to a person described in any of subsections (2) to (5) and does not apply to the expenditure described in subsection (6).

Person recognising expenditure as expense

(2) Subsection (1) applies to a person who recognises the expenditure as an expense for financial reporting purposes—

(a) under paragraph 5.1 or 5.2 of the old reporting standard or because paragraph 5.4 of that standard applies; or

(b) under paragraph 68(a) of the new reporting standard applying, for the purposes of that paragraph, paragraphs 54 to 67 of that standard.

Person not recognising expenditure as asset
[Repealed]

(3) *[Repealed]*

Person recognising expenditure otherwise

(4) Subsection (1) also applies to a person who—

(a) recognises the expenditure as an expense for financial reporting purposes because it is an amount written off as an immaterial amount for financial reporting purposes; and

(b) would be required, if the expenditure were material, to recognise it for financial reporting purposes—

(i) under paragraph 5.1 or 5.2 of the old reporting standard or because paragraph 5.4 of that standard applies; or

(ii) under paragraph 68(a) of the new reporting standard applying, for the purposes of that paragraph, paragraphs 54 to 67 of that standard.

Person with minor expenditure

(5) Subsection (1) also applies to a person who—

(a) incurs expenditure of $10,000 or less, in total, on research and development in an income year; and

(b) has written off the expenditure as an immaterial amount for financial reporting purposes; and

(c) has recognised the expenditure as an expense for financial reporting purposes.

Exclusion

(6) Subsection (1) does not apply to expenditure that the person incurs on property to which all the following apply:

(a) the property is used in carrying out research or development; and

(b) it is not created from the research or development; and

(c) it is 1 of the following kinds:

(i) property for which the person is allowed a deduction for an amount of depreciation loss; or

(ii) property the cost of which is allowed as a deduction by way of amortisation under a provision of this Act outside subpart EE (Depreciation); or

(iii) land; or

(iv) intangible property, other than depreciable intangible property; or

(v) property that its owner chooses, under section EE 8 (Election that property not be depreciable) to treat as not depreciable.

Choice for allocation of deduction

(7) A person who is allowed a deduction under this section for expenditure that is not interest may choose to allocate all or part of the deduction—

(a) to an income year after the income year in which the person incurs the expenditure; and

(b) in the way required by section EJ 23 (Allocation of deductions for research, development, and resulting market development).

Section need not be applied

(8) A person may return income and expenditure in their return of income on the basis that this section does not apply to expenditure incurred on research or development in the income year to which the return relates.

Relationship with section EA 2

(9) If expenditure to which this section applies is incurred in devising an invention that is patented, the expenditure is not treated as part of the cost of revenue account property for the purposes of section EA 2 (Other revenue account property).

Link with subpart DA

(10) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, depreciable intangible property, depreciation loss, development, general limitation, general permission, income, income year, new reporting standard, old reporting standard, research, return of income, revenue account property

Compare: 2004 No 35 s DB 26

Section DB 34(2): substituted (with effect on 1 April 2008), on 7 December 2009, by section 11(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 34(2): amended, on 1 April 2008, by section 338(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 34(3) heading: repealed, on 1 April 2008, pursuant to section 338(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 34(3): repealed, on 1 April 2008, by section 338(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 34(4)(a): amended, on 1 April 2008, by section 338(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 34(4)(b): substituted (with effect on 1 April 2008), on 7 December 2009, by section 11(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 34(4)(b): substituted, on 1 April 2008, by section 338(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 34(5)(b): substituted, on 1 April 2008, by section 338(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 34 list of defined terms **new reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 34 list of defined terms **old reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 34 list of defined terms **reporting standard**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DB 35 Some definitions

Definitions

(1) In this section, and in section DB 34,—

development is defined in paragraph 8 of the reporting standard

new reporting standard means the New Zealand Equivalent to International Accounting Standard 38, approved or issued under the Financial Reporting Act 1993, and as amended from time to time or an equivalent standard issued in its place

old reporting standard means Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities) being the standard approved under the Financial Reporting Act 1993, or an equivalent standard issued in its place, that applies in the tax year in which the expenditure is incurred

research is defined in paragraph 8 of the reporting standard.

Meaning of research or development: modification by Order in Council

(2) The Governor-General may make an Order in Council specifying—

(a) a kind of expenditure that is not expenditure on research or development for the purposes of section DB 34:

(b) an activity that is neither research nor development for the purposes of section DB 34:

(c) the date from which the expenditure or the activity is excluded from being research or development.

Defined in this Act: development, income year, new reporting standard, old reporting standard, research

Compare: 2004 No 35 s DB 27

Section DB 35(1): substituted, on 1 April 2008, by section 339 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 35(1) **new reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 12 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 35(1) **new reporting standard**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section DB 35(1) **old reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 12 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 35(1) **reporting standard**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 12 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 35(1) list of defined terms **new reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 35(1) list of defined terms **old reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DB 35(1) list of defined terms **reporting standard**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DB 36 Patent expenses

Deduction

(1) A person is allowed a deduction for expenditure that they incur in connection with the grant, maintenance, or extension of a patent if they—

(a) acquired the patent before 23 September 1997; and

(b) use the patent in deriving income in the income year in which they incur the expenditure.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income, income year

Compare: 2004 No 35 s DB 28

DB 37 Expenses of failed or withdrawn patent application

Deduction

(1) A person who applies for the grant of a patent and is refused the grant or withdraws the application is allowed a deduction for expenditure—

(a) that the person incurs in relation to the application; and

(b) that would have been part of the cost of fixed life intangible property if the application had been granted; and

(c) for which the person is not allowed a deduction under another provision.

Timing of deduction

(2) The deduction is allocated to the income year in which the grant is refused or the application is withdrawn.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission and other general limitations still apply.

Defined in this Act: capital limitation, deduction, fixed life intangible property, general limitation, general permission, income year

Compare: 2004 No 35 s DB 28B

DB 38 Patent rights: devising patented inventions

When this section applies

(1) This section applies when a person incurs expenditure in devising an invention for which a patent has been granted. The section applies whether the person devised the invention alone or in conjunction with another person.

Deduction: expenditure before 1 April 1993

(2) When the person uses the patent in deriving income in an income year, they are allowed a deduction for expenditure incurred before 1 April 1993, but not if a deduction has been

allowed for the expenditure under any other provision of this Act or an earlier Act.

Deduction: devising invention

(3) If the person sells all the patent rights relating to the invention, they are allowed a deduction for the expenditure that they have incurred, whenever it is incurred, in connection with devising the invention to the extent to which a deduction has not already been allowed under subsection (2).

Deduction: devising invention: proportion of expenditure

(4) If the person sells some of the patent rights relating to the invention, they are allowed a deduction for part of the expenditure described in subsection (3). The part is calculated by dividing the amount derived from the sale by the market value of the whole of the patent rights on the date of the sale.

Link with subpart DA

(5) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income, income year, patent right

Compare: 2004 No 35 s DB 29

DB 39 Patent rights acquired before 1 April 1993

When this section applies

(1) This section applies when a person sells patent rights that they acquired before 1 April 1993.

Deduction

(2) The person is allowed a deduction on the sale of the patent rights.

Amount of deduction

(3) The amount is calculated using the formula—

$$\frac{\text{unexpired term of the patent rights at the date of sale}}{\text{unexpired term of the patent rights at the date of acquisition}} \times \text{cost.}$$

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, general limitation, general permission, patent right

Compare: 2004 No 35 s DB 30

DB 40 Patent applications or patent rights acquired on or after 1 April 1993

When this section applies

(1) This section applies when a person sells a patent application with a complete specification or patent rights that they acquired on or after 1 April 1993.

Deduction

(2) The person is allowed a deduction on the sale of the patent application with a complete specification or patent rights.

Amount of deduction

(3) The amount is calculated using the formula—

total cost − total amounts of depreciation loss.

Definition of items in formula

(4) In the formula,—

(a) **total cost** is the total cost to the person of the patent application with a complete specification or of the patent rights, excluding any expenditure for which the person has been allowed a deduction under section DZ 15 (Patent applications before 1 April 2005):

(b) **total amounts of depreciation loss** is the total of the amounts of depreciation loss, for which the person is allowed a deduction, for the patent application with a complete specification or for the patent rights and the patent application relating to the patent rights.

Link with subpart DA

(5) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, depreciation loss, general limitation, general permission, patent right

Compare: 2004 No 35 s DB 31

Marketing

DB 41 Charitable or other public benefit gifts by company

Who this section applies to

[Repealed]

(1) *[Repealed]*

Deduction

(2) A company is allowed a deduction for a charitable or other public benefit gift that it makes to a donee organisation.

Amount of deduction

(3) The deduction for the total of all gifts made in an income year is limited to the amount that would be the company's net income in the corresponding tax year in the absence of this section.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, charitable or other public benefit gift, deduction, donee organisation, general limitation, general permission, income year, net income, supplement, tax year

Compare: 2004 No 35 s DB 32

Section DB 41(1) heading: repealed, on 1 April 2008, pursuant to section 340(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 41(1): repealed, on 1 April 2008, by section 340(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 41(2): amended, on 6 January 2010, by section 74(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 41(2): amended, on 1 April 2008, by section 340(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 41(2): amended, on 1 April 2008, by section 340(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 41(3): amended, on 1 April 2008, by section 340(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 41 list of defined terms **close company**: repealed, on 6 January 2010, by section 74(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 41 list of defined terms **company**: repealed, on 6 January 2010, by section 74(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 41 list of defined terms **recognised exchange**: repealed, on 6 January 2010, by section 74(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 41 list of defined terms **share**: repealed, on 6 January 2010, by section 74(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 41 list of defined terms **donee organisation**: inserted, on 6 January 2010, by section 74(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Theft and bribery

DB 42 Property misappropriated by employees or service providers

When this section applies

(1) This section applies when—

(a) a person carries on a business; and

(b) an employee of the business, or a person who provides services to the business, misappropriates property; and

(c) no other provision of this Act allows the person who carries on the business a deduction for the loss resulting from the misappropriation.

Exclusions

(2) This section does not apply when a person who misappropriates property is associated with the person who carries on the business.

Deduction

(3) The person is allowed a deduction for the loss that they incur in the course of the business as a result of the misappropriation of the property.

Timing of deduction

(4) The deduction is allocated to the income year in which the loss is ascertained, or in 1 or more earlier years if, in the circumstances, the Commissioner considers it would be fair.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: associated person, business, capital limitation, Commissioner, company, deduction, employee, general limitation, general permission, income year, relative, supplement, trustee

Compare: 2004 No 35 s DB 33

Section DB 42(2): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 75(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 43 Making good loss from misappropriation by partners

When this section applies

(1) This section applies when a person carrying on a business in partnership pays an amount to make good a loss that arises from a partner, other than the person or the person's spouse, civil union partner, or de facto partner, misappropriating property that—

(a) belongs to another person who is neither a partner in the partnership nor the spouse, civil union partner, or de facto partner of a partner; and

(b) is received in the course of the business either by the partnership or 1 or more of its partners.

Deduction

(2) The person is allowed a deduction for the amount if the person is under a legal liability to make good the loss.

Timing of deduction

(3) The deduction is allocated to the income year in which the amount is paid.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DB 34

DB 44 Restitution of stolen property

Deduction

(1) A person who derives income under section CB 32 (Property obtained by theft) is allowed a deduction for the amount of restitution that they make to a person who is beneficially entitled to property to which section CB 32 applies.

Timing of deduction

(2) The deduction is allocated to the income year in which the person makes restitution.

Meaning of restitution

(3) In this section, **restitution** includes restitution made to a person claiming through the person beneficially entitled to the property.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation and the private limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income, income year, private limitation, property, restitution, supplement

Compare: 2004 No 35 s DB 35

DB 45 Bribes paid to public officials

When this section applies

(1) This section applies when—

(a) a person (**person A**) corruptly gives a bribe to another person; and

(b) person A gives the bribe intending to influence a public official to act, or to fail to act, in their official capacity in order to—

(i) obtain or retain business for person A; or

(ii) obtain an improper advantage for person A in the conduct of business; and

(c) the official either has or does not have the authority to act or to fail to act.

No deduction

(2) Person A is denied a deduction for the amount of the bribe.

Exclusions

(3) This section does not apply if—

(a) person A gives the bribe outside New Zealand and, at the time, the bribe is not an offence under the laws of the foreign country where the principal office of the person, organisation, or other body that employs the foreign public official or for whom the official provides services is situated:

(b) the bribe is given wholly or mainly to ensure or expedite the performance by a foreign public official of a routine government action when the value of the benefit is small.

Some definitions

(4) In this section,—

benefit, **foreign country**, and **foreign public official** are defined in section 105C of the Crimes Act 1961

bribe is defined in section 99 of the Crimes Act 1961

public official means—

(a) a member of Parliament or a Minister of the Crown; and

(b) a judicial officer, a law enforcement officer, or an official, as those terms are defined in section 99 of the Crimes Act 1961; and

(c) a foreign public official

routine government action is defined in section 105C of the Crimes Act 1961.

Link with subpart DA

(5) This section overrides the general permission.

Defined in this Act: amount, benefit, bribe, business, deduction, foreign country, foreign public official, general permission, New Zealand, pay, public official, routine government action

Compare: 2004 No 35 s DB 36

Pollution control

DB 46 Avoiding, remedying, or mitigating effects of discharge of contaminant

When this section applies

(1) This section applies when a person—

(a) carries on a business in New Zealand; and

(b) the person incurs, in the business or in ending the operations of the business, expenditure that is—

(i) of a kind listed in schedule 19, in either part A or B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 19, part C; and

(ii) not incurred in relation to revenue account property other than land that is subject to section CB 8 (Disposal: land used for landfill, if notice of election); and

(c) no other provision allows a deduction for the expenditure.

Amount and timing of deduction

(2) The person is allowed for an income year a deduction for the expenditure of,—

(a) if paragraphs (b) and (c) do not apply, an amount that is calculated using the formula—

rate × value:

(b) if the operations of the business for which the expenditure was incurred come to an end in the income year, the diminished value or adjusted tax value of the expenditure for the income year:

(c) if an improvement on which the expenditure was incurred is destroyed, or is rendered useless for the purposes for which the expenditure was incurred, and paragraph (b) does not apply, the diminished value or adjusted tax value of the expenditure for the income year.

Definition of items in formula

(3) The items in the formula in subsection (2)(a) are defined in subsections (4) and (6).

Rate

(4) **Rate** is—

(a) 100%, if the expenditure is of a kind listed in schedule 19, part A, item 1, or part B and neither paragraph (b) nor (c) applies:

(b) the appropriate rate under subsection (5) if—

(i) the expenditure is of a kind listed in schedule 19, part A, items 2 to 5; and

(ii) paragraph (c) does not apply:

(c) the rate for the kind of expenditure, the income year, the valuation method adopted under subsection (6), and the person, determined by the Commissioner under section 91AAN of the Tax Administration Act 1994, if such a rate is determined.

Banded straight-line rate or corresponding diminishing value rate

(5) The rate for expenditure if the requirements of subsection (4)(b) are met is—

(a) the straight-line rate set out in schedule 12, column 2 (Old banded rates of depreciation) that is nearest to the rate calculated for the expenditure using the formula in subsection (7), if the person chooses to use the straight-line method:

(b) the diminishing value rate set out in schedule 12, column 1 that corresponds to the straight-line rate under paragraph (a), if the person chooses to use the diminishing value method.

Value

(6) **Value** is—

(a) the adjusted tax value of the expenditure, if the person chooses to use the straight-line method:

(b) the diminished value of the expenditure for the income year, if the person chooses to use the diminishing value method.

Formula for rate for expenditure with assumed life

(7) The formula for the straight-line rate for a kind of expenditure to which subsection (4)(b) applies is—

$$\frac{100\%}{\text{assumed life}}.$$

Definition of item in formula

(8) In the formula in subsection (7), **assumed life** for expenditure and an income year is,—

(a) for expenditure associated with a business activity that does not require a resource consent, 35:

(b) for expenditure associated with a business activity that requires a resource consent, the lesser of 35 and the

number of the years in the period of the resource consent that include or follow the time at which the expenditure is incurred.

Link with subpart DA

(9) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand

Compare: 2004 No 35 s DB 37

Section DB 46(1)(b)(i): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 38(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Repayments

DB 47 Payments for remitted amounts

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction in an income year of an amount that the person is liable to pay; and

(b) the person's liability for the amount is later remitted or cancelled, wholly or partly; and

(c) the remission or cancellation is not a dividend; and

(d) the person is not required to calculate a base price adjustment by section EW 29 (When calculation of base price adjustment required); and

(e) the amount to which the remission or cancellation applies is assessable income of the person under section CG 2 (Remitted amounts); and

(f) the person makes a payment for the amount to which the remission or cancellation applies.

Amount, and timing, of deduction

(2) The person is allowed a deduction for the amount of the payment in the income year in which it is made.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, assessable income, deduction, dividend, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DB 38

DB 48 Restrictive covenant breached

When this section applies

(1) This section applies when an employee (**person A**) makes a payment to another person (**person B**) in the following circumstances:

- (a) person A derives assessable income under section CE 9 (Restrictive covenants); and
- (b) person A breaches a term of the undertaking they gave to person B; and
- (c) person A is, consequently, required to make the payment to person B.

Deduction

(2) Person A is allowed a deduction for the payment.

Amount of deduction

(3) The amount of the deduction is the lesser of the following:

- (a) the assessable income that person A derives under section CE 9; and
- (b) the payment that person A makes to person B, excluding interest, punitive damages, exemplary damages, and person B's legal costs and other expenses.

Timing of deduction

(4) The deduction is allocated to the income year in which person A makes the payment to person B.

Link with subpart DA

(5) This section supplements the general permission and overrides the employment limitation. The other general limitations still apply.

Defined in this Act: amount, assessable income, deduction, employee, employment limitation, general limitation, general permission, income year, interest, pay, supplement

Compare: 2004 No 35 s DB 39

Matching rules: revenue account property, prepayments, and deferred payments

DB 49 Adjustment for opening values of trading stock, livestock, and excepted financial arrangements

When this section applies

(1) This section applies when a person has some or all of the following at the start of an income year:

(a) trading stock valued under subpart EB (Valuation of trading stock (including dealer's livestock)):

(b) livestock valued under subpart EC (Valuation of livestock):

(c) excepted financial arrangements that are revenue account property valued under subpart ED (Valuation of excepted financial arrangements):

(d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in paragraph (c).

Deduction: opening value of trading stock

(2) The person is allowed a deduction in the income year for the value that the trading stock had at the end of the previous income year, as calculated under section EB 3 (Valuation of trading stock).

Deduction: opening value of livestock

(3) The person is allowed a deduction in the income year for the value that the livestock had at the end of the previous income year, as calculated under section EC 2 (Valuation of livestock).

Deduction: opening value of excepted financial arrangements

(4) The person is allowed a deduction in the income year for the value that the excepted financial arrangements or share-lending right had at the end of the previous income year, as calculated under section ED 1 (Valuation of excepted financial arrangements).

Link with subpart DA

(5) This section supplements the general permission. The general limitations still apply.

Defined in this Act: deduction, excepted financial arrangement, general limitation, general permission, income year, original share, revenue account property, share-lending right, share supplier, supplement trading stock

Compare: 2004 No 35 s DB 40

DB 50 Adjustment for prepayments

When this section applies

(1) This section applies when a person has, under section EA 3 (Prepayments), an unexpired amount of expenditure at the end of an income year.

Deduction

(2) The person is allowed a deduction for the unexpired amount for the following income year.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply, but not to the extent to which any relevant general limitation was overridden by a provision that initially allowed a deduction for the expenditure, whether in this Act or an earlier Act.

Defined in this Act: amount, deduction, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DB 41

DB 51 Adjustment for deferred payment of employment income

When this section applies

(1) This section applies when a person has, under section EA 4 (Deferred payment of employment income), an unpaid amount of expenditure on employment income in an income year for which the person is to be allowed a deduction in the following income year.

Deduction

(2) The person is allowed a deduction for the unpaid amount for the following income year.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply, but not to the extent to which any relevant general limitation was overridden by a provision that initially allowed a deduction for the expenditure, whether in this Act or an earlier Act.

Defined in this Act: amount, deduction, employment income, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DB 42

Adjustments for leases that become finance leases

Heading: inserted, on 1 April 2008, by section 341 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

DB 51B Adjustments for leases that become finance leases

When this section applies

(1) This section applies when an adjustment made under section FA 11 (Adjustments for leases that become finance leases) is negative.

Deduction

(2) The amount of the adjustment is a deduction of the lessor or the lessee, as applicable, in the income year in which the lease becomes a finance lease.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: deduction, finance lease, general limitation, general permission, income year, lease

Compare: 2004 No 35 s FC 8H(7)

Section DB 51B: inserted, on 1 April 2008, by section 341 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Change to accounting practice

DB 52 Adjustment for change to accounting practice

When this section applies

(1) This section applies when a person has, under section EG 2(2) or (3) (Adjustment for changes to accounting practice), an

amount owed by them or an amount owing to them as quantified in those subsections.

Amount, and timing, of deduction

(2) The person is allowed a deduction of the amount as quantified and allocated under section EG 2.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, supplement

Compare: 2004 No 35 s DB 43

Investment income

DB 53 Attributed PIE losses of certain investors

When this section applies

(1) This section applies to an investor in a multi-rate PIE when—

(a) an amount of attributed PIE loss is attributed under section HM 36 (Calculating amounts attributed to investors) to an investor for an attribution period in a tax year; and

(b) either the investor is—

(i) a zero-rated investor; or

(ii) treated under section HM 61 (Certain exiting investors zero-rated) as zero-rated.

Deduction

(2) The investor is allowed a deduction for the amount allocated to the investor's income year in which the PIE's tax year ends.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, attributed PIE loss, attribution period, deduction, exit period, general limitation, general permission, income tax liability, income year, investor, multi-rate PIE, PIE, quarter, tax year, zero-rated portfolio investor

Compare: 2007 No 97 s DB 53

Section DB 53: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 77(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 53(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 76(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 53(2)(a): amended, on 1 April 2008, by section 342(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 53(2)(a): amended, on 1 April 2008, by section 342(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 53 compare note: amended, on 1 April 2008, by section 342(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

DB 54 Treatment of credits for investment fees

When this section applies

(1) This section applies when an investor in an investor class of a multi-rate PIE incurs expenses in relation to their investor interest, and the entity includes the amount in the calculation of its tax liability under section HM 47 (Calculation of tax liability or tax credit of multi-rate PIEs) in relation to the investor.

No deduction

(2) The investor is denied a deduction for the amount.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: amount, deduction, general permission, investor, investor class, investor interest, multi-rate PIE

Compare: 2007 No 97 s DB 54

Section DB 54: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 78(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DB 54B Expenditure incurred by foreign investment PIEs

When this section applies

(1) This section applies when a foreign investment PIE incurs expenditure or loss in deriving income attributable to a notified foreign investor in the PIE.

No deduction

(2) The PIE is denied a deduction for the amount of the expenditure or loss.

Relationship with section DB 7

(3) This section overrides section DB 7 (Interest: most companies need no nexus with income).

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, deduction, foreign investment PIE, general permission, income, loss, notified foreign investor

Section DB 54B: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 16(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Exempt income

DB 55 Expenditure incurred in deriving exempt dividend

Deduction

(1) A company that derives a dividend that is exempt income of the company under section CW 9 (Dividend derived from foreign company) is allowed a deduction of the amount of the expenditure incurred by the company in deriving the dividend.

Definition of items in formula
[Repealed]

(2) *[Repealed]*

Link with subpart DA

(3) This section overrides the exempt income limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: company, deduction, dividend, exempt income, exempt income limitation, general limitation, general permission, non-resident, shareholder

Compare: 2004 No 35 s DB 44

Section DB 55(1) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 79(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 55(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 79(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 55(2) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 79(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 55(2): repealed (with effect on 30 June 2009), on 6 October 2009, by section 79(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 55 list of defined terms **CTR company**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 79(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Use of motor vehicle under certain arrangements

DB 56 Expenditure incurred in operating motor vehicle under agreement or arrangement affected by section CX 7

Deduction

(1) A party to an agreement or arrangement referred to in section CX 7 (Employer or associated person treated as having right to use vehicle under arrangement) is allowed a deduction for expenditure or an amount of depreciation loss incurred in operating a motor vehicle during a period for which an employer or associated person is treated under that section as having a right to use the vehicle.

Link with subpart DA

(2) This section overrides the private limitation and exempt income limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, arrangement, deduction, depreciation loss, exempt income limitation, general limitation, general permission, lease, motor vehicle

Compare: 2004 No 35 s DB 45

Payments to spouses, civil union partners, or de facto partners

DB 57 Payments to spouses, civil union partners, or de facto partners other than for services

No deduction without approval

(1) A person is denied a deduction for a payment to their spouse, civil union partner, or de facto partner for something other than services, without the Commissioner's approval.

Commissioner's approval

(2) The Commissioner may approve the deduction only if—

(a) the Commissioner considers that the payment is genuine; and

(b) the payment is incurred by the person exclusively in deriving their assessable income; and

(c) the approval is granted before the deduction is claimed.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: assessable income, Commissioner, deduction, general permission, pay

Compare: 2004 No 35 s GD 4

Avoidance and non-market transactions

DB 58 Adjustment for avoidance arrangements

Deduction denied

(1) An amount is not a deduction of a person if the deduction is denied under—

(a) section GA 1 (Commissioner's power to adjust):

(b) section GB 17 (Excessive amounts for film rights or production expenditure):

(c) section GB 18 (Arrangements to acquire film rights or incur production expenditure):

(d) section GB 23 (Excessive remuneration to relatives):

(e) section GB 25 (Close company remuneration to shareholders, directors, or relatives).

Deduction

(2) An amount treated as a deduction of a person under any of the following sections is a deduction of the person:

(a) section GA 1:

(b) section GB 23:

(c) section GB 29 (Attribution rule: calculation):

(d) section GB 46 (Deferral of surplus deductions from arrangements).

Link with subpart DA

(3) Subsection (1) overrides, and subsection (2) supplements, the general permission. The general limitations still apply.

Defined in this Act: amount, arrangement, close company, Commissioner, deduction, depreciation loss, director, film production expenditure, film rights, general limitation, general permission, relative, shareholder

Compare: 2004 No 35 ss GB 1(1)–(2C), GC 11A, GC 31, GD 3(1), (2), GD 5, GD 12, GD 12A

DB 59 Market value substituted

Transfer pricing arrangements

(1) A person may be denied a deduction under section GC 7 (Excess amount payable by person).

Acquisition for below market value

(2) A person may be treated as providing an amount—

(a) for acquisition of trading stock, under section GC 1 (Disposals of trading stock at below market value):

(b) for lease of a property, under section GC 5 (Leases for inadequate rent).

Link with subpart DA

(3) Subsection (1) overrides, and subsection (2) supplements, the general permission. The general limitations still apply.

Defined in this Act: deduction, general limitations, general permission, lease trading stock

Compare: 2004 No 35 ss GD 7, GD 10

Emissions units and liabilities under Climate Change Response Act 2002

Heading: substituted (with effect on 1 January 2009), on 6 October 2009, by section 80 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Heading: added, on 26 September 2008, by section 71 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

DB 60 Acquisition of emissions units

When this section applies

(1) This section applies when an emissions unit is transferred to a person for a price of zero—

(a) under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002:

(b) in relation to a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person.

No deduction

(2) The person is denied a deduction for an amount of expenditure or loss incurred as consideration for the emissions unit.

Link with subpart DA

(3) Subsection (2) overrides the general permission.

Defined in this Act: amount, emissions unit, general permission, loss

Section DB 60: substituted (with effect on 1 January 2009), on 6 October 2009, by section 80 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 60: added, on 26 September 2008, by section 71 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section DB 60(1): substituted (with effect on 1 January 2009), on 7 September 2010, by section 20 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

DB 60B Liabilities for emissions

When this section applies

(1) This section applies when a person incurs a liability—

(a) under the Climate Change Response Act 2002 for emissions relating to post-1989 forest land or pre-1990 forest land:

(b) to transfer emissions units to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person.

No deduction

(2) The person is denied a deduction for the liability.

Link with subpart DA

(3) Subsection (2) overrides the general permission.

Defined in this Act: amount, deduction, emissions unit, general permission, post-1989 forest land, pre-1990 forest land

Section DB 60B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 81(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 60B(1): substituted (with effect on 1 January 2009), on 7 September 2010, by section 21(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DB 60B list of defined terms **emissions unit**: inserted (with effect on 1 January 2009), on 7 September 2010, by section 21(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

DB 61 Surrender of certain emissions units for post-1989 forest land emissions

When this section applies

(1) This section applies when a person surrenders a pre-1990 forest land emissions unit or fishing quota emissions unit to meet a liability under the Climate Change Response Act 2002 to surrender units in relation to post-1989 forest land.

Treated as disposal and reacquisition

(2) The person is treated as having disposed of the emissions unit to an unrelated person and as having then reacquired it, in each case immediately before the surrender and for an amount equal to the unit's market value at the time.

Defined in this Act: amount, emissions unit, fishing quota emissions unit, pre-1990 forest land emissions unit, surrender

Section DB 61: substituted (with effect on 1 July 2010), on 7 September 2010, by section 22 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DB 61: added, on 26 September 2008, by section 71 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Legal expenses

Heading: added, on 1 April 2009, by section 4 of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

DB 62 Deduction for legal expenses

When this section applies

(1) This section applies to a person when their total legal expenses for an income year is equal to or less than $10,000.

Deduction

(2) The person is allowed a deduction for the legal expenses.

Definition

(3) For the purposes of this section, **legal expenses** means fees for **legal services** (as defined in the Lawyers and Conveyancers Act 2006) provided by a person who holds a practising certificate issued by the New Zealand Law Society or an Australian equivalent.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, income year, legal expenses

Section DB 62: added, on 1 April 2009, by section 4 of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Capital contributions

Heading: added (with effect on 20 May 2010), on 28 May 2010 (applying for capital contributions derived after 20 May 2010), by section 76(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

DB 64 Capital contributions

When this section applies

(1) This section applies if,—

(a) a person has derived a capital contribution after 20 May 2010; and

(b) in the absence of this section, the person would be allowed a deduction for an amount of depreciation loss for an item of depreciable property for which the capital contribution is a contribution (*see*: definition of **capital contribution**); and

(c) the person has chosen to apply this section in a return of income for the income year in which the capital contribution is derived.

Deduction

(2) For the purposes of quantifying the amount of depreciation loss for the income year under subpart EE (Depreciation), the item's adjusted tax value, base value, cost, or value, as applicable, is reduced by the amount of the capital contribution.

Links with subpart DA

(3) This section overrides the general permission.

Defined in this Act: adjusted tax value, amount, capital contribution, deduction, general permission, income, income year, return of income

Section DB 64: added (with effect on 20 May 2010), on 28 May 2010 (applying for capital contributions derived after 20 May 2010), by section 76(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

DB 65 Allowance for certain commercial buildings

When this section applies

(1) This section applies when—

(a) a person owns an item that is a commercial building (the **building**), and the building is depreciable property with an annual rate of 0%, in an income year; and

(b) the item starting pool described in subsection (3)(a) is greater than the total of all deductions allowed under this section for income years before the income year; and

(c) the person has been allowed a deduction for an amount of depreciation loss for the building for the 2010–11 income year and the person has not disposed of it since then; and

(d) the person has never had a deduction for an amount of depreciation loss for a separate item of depreciable property that is commercial fit-out and that was acquired at the same time as the building and relates to the building; and

(e) the building was acquired in the 2010–11 or earlier income years; and

(f) the person is not allowed a deduction under any other provision in relation to the building, for the income year.

Deduction

(2) Except as provided by subsection (6), the person is treated as having a loss for the income year equal to the amount calculated using the formula—

$$\text{starting pool} \times 0.02 \times \frac{\text{whole months}}{12.}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **starting pool** is the amount given by the formula in subsection (4):

(b) **whole months** is the number of whole months in the income year in which the item is used, or is available for use, by the person in deriving assessable income

or carrying on a business for the purpose of deriving assessable income.

Starting pool: formula

(4) For the purposes of subsection (3)(a), the amount is calculated using the formula—

$$(0.15 \times \text{building atv}) - \text{fitout atv}.$$

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **building atv** is the adjusted tax value of the building that results for the 2010–11 income year after all relevant amounts for that income year have been subtracted under subpart EE (Depreciation):

(b) **fitout atv** is the total adjusted tax value of all items of commercial fit-out that results for the 2010–11 income year after all relevant amounts for that income year have been subtracted under subpart EE, if—

(i) the items of commercial fit-out relate to the building and were acquired after the building was acquired; and

(ii) the person has had a deduction for an amount of depreciation loss for the items of commercial fit-out.

Exception: deductible amount

(6) Despite subsection (2), if the item starting pool described in subsection (3)(a), reduced by the total of all deductions allowed under this section for income years before the income year, is equal to an amount (the **deductible amount**) that is smaller than the amount given by the formula in subsection (2) (the **formula amount**), then the person is treated as having a loss for the income year equal to the deductible amount instead of the formula amount.

Treatment of amounts under specific and general rules for deductions

(7) The capital limitation does not apply to a loss under this section merely because the item of property is itself of a capital nature.

Defined in this Act: adjusted tax value, amount, assessable income, building, capital limitation, commercial building, commercial fit-out, deduction, depreciable property, depreciation loss, dispose, estimated useful life, income year

Section DB 65: added, on 1 April 2011 (applying for the 2011–12 and later income years), by section 39(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Subpart DC—Employee or contractor expenditure

DC 1 Lump sum payments on retirement

Deduction

(1) A person who carries on a business is allowed a deduction for a lump sum paid as a bonus, gratuity, or retiring allowance to an employee on retirement.

Inclusions

(2) For the purposes of subsection (1), a lump sum paid on retirement includes a lump sum paid to—

(a) an employee when they end their employment or service through redundancy, loss of office, or similar circumstances:

(b) a former employee when they are unable to be reemployed in seasonal work in circumstances that would be considered the loss of employment or service through redundancy if they resulted in ending the seasonal work.

Exclusion

(3) This section does not apply to the extent to which the person has accepted a liability, as described in section DC 10(1)(c), to pay an amount of employment income.

Timing of deduction

(4) The deduction is allocated to the income year in which the lump sum is paid.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, employee, employment income, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DC 1

DC 2 Pension payments to former employees

When subsection (2) applies

(1) Subsection (2) applies when—

(a) a person, other than a close company, carries on a business; and

(b) a former employee has retired from their employment in the business or their employment has ended through redundancy or similar circumstances; and

(c) they are paid a pension in consideration of their past services in the business; and

(d) they or their spouse, civil union partner, or de facto partner has a right to receive the pension under a deed for a fixed period or for life or, in the case of the spouse, civil union partner, or de facto partner, until the spouse, civil union partner, or de facto partner enters a new marriage, civil union, or de facto relationship.

Deduction: not close company

(2) The person is allowed a deduction for a reasonable amount paid as the pension to the former employee or their surviving spouse, civil union partner, or de facto partner.

When subsection (4) applies

(3) Subsection (4) applies when—

(a) a close company carries on a business; and

(b) a former employee of the company is or has been a shareholder in it or has a relative who is or has been a shareholder in it; and

(c) the former employee's employment in the company was genuine; and

(d) they have retired from the employment or their employment has ended through redundancy or similar circumstances; and

(e) they are paid a pension in consideration of their past services in the business; and

(f) they or their spouse, civil union partner, or de facto partner has a right to receive the pension under a deed for a fixed period or for life or, in the case of the spouse, civil union partner, or de facto partner, until the spouse, civil union partner, or de facto partner enters a new marriage, civil union, or de facto relationship.

Deduction: close company

(4) The close company is allowed a deduction for the amount paid as the pension to the former employee or their surviving spouse, civil union partner, or de facto partner.

Amount of deduction under subsection (4)

(5) The amount of the deduction allowed under subsection (4) is the amount that the company would have paid if the former employee or their relative were not, or had not been, a shareholder in the company.

Timing of deductions

(6) A deduction under this section is allocated to the income year in which the amount is paid.

Relationship with section FB 11

(7) Section FB 11 (Pension payments to former employees) expands on this section.

Link with subpart DA

(8) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, business, capital limitation, close company, deduction, employee, general limitation, general permission, income year, pay, relative, shareholder, supplement

Compare: 2004 No 35 s DC 2

DC 3 Pension payments to former partners

When this section applies

(1) This section applies when—

(a) a person is a partner in a partnership; or

(b) a person who was a partner in a partnership is in business on their own account.

Exclusion

(2) This section does not apply to a partnership or a business that is engaged wholly or mainly in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land.

Deduction

(3) The person is allowed a deduction for their share of an amount, to the extent to which the amount is reasonable, paid as a pension to a former partner, or to the spouse, civil union partner, or de facto partner of a deceased former partner, if—

(a) the partnership in which the former partner was a partner (the **old partnership**) carried on the same business as that now carried on either by the partnership that is paying the pension or by the person in business who is paying the pension; and

(b) the former partner retired from the old partnership or their employment ended through retirement; and

(c) the former partner or their spouse, civil union partner, or de facto partner has a right to receive the pension under a deed for a fixed period or for life or, in the case of the spouse, civil union partner, or de facto partner, until the spouse, civil union partner, or de facto partner enters a new marriage, civil union, or de facto relationship; and

(d) the pension is paid for the former partner's services in the old partnership.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, estate, general limitation, general permission, interest, land, pay, share, supplement

Compare: 2004 No 35 s DC 3

DC 3B Payments to working owners

Deduction

(1) A person who has an effective look-through interest for a look-through company (an **owner**) is allowed a deduction for their share of a payment made under a contract of employment to a working owner.

Amount of deduction

(2) The amount of the deduction is limited to the amount of the payment authorised by the contract of employment and any bonus, whether or not the payment of a bonus is authorised by the contract.

Meaning of contract of employment

(3) In this section, **contract of employment**, for a working owner, means an agreement that—

(a) specifies the terms and conditions of the services to be performed by the working owner; and

(b) specifies the amount payable to the working owner for the performance of the services; and

(c) is in writing.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, contract of employment, deduction, effective look-through interest, general limitation, general permission, look-through company, pay, supplement, working owner

Section DC 3B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 40(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

DC 4 Payments to working partners

Deduction

(1) A person who is a partner in a partnership is allowed a deduction for their share of a payment made under a contract of service to a partner who personally and actively performs duties that—

(a) are required to be performed in carrying on the business of the partnership; and

(b) are performed by the partner during the currency of the contract of service.

Exclusion

(2) This section does not apply to a partnership that is engaged wholly or mainly in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land.

Amount of deduction

(3) The amount of the deduction is limited to the amount of the payment authorised by the contract of service and any bonus, whether or not the payment of a bonus is authorised by the contract.

Relationship with section GB 23

(4) This section is overridden by section GB 23 (Excessive remuneration to relatives).

Meaning of contract of service

(5) In this section, **contract of service**, for a partner and a partnership, means an agreement that—

(a) specifies the terms and conditions of the services to be performed by the partner; and

(b) specifies the amount payable to the partner for the performance of the services; and

(c) is entered into by all the partners in the partnership; and

(d) is in writing.

Link with subpart DA

(6) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, business, contract of service, deduction, estate, general limitation, general permission, interest, land, pay, share, supplement

Compare: 2004 No 35 s DC 4

DC 5 Payments to spouses, civil union partners, or de facto partners: services

No deduction without approval

(1) A person is denied a deduction for a payment to their spouse, civil union partner, or de facto partner for services without the Commissioner's approval.

When Commissioner can give consent

(2) The Commissioner may approve the deduction only if—

(a) the Commissioner considers that the payment is for services rendered; and

(b) the services are not domestic services or otherwise services connected with the home; and

(c) the payment is incurred by the person exclusively in deriving their assessable income; and

(d) the approval is granted before the deduction is claimed.

Relationship with section GB 23

(3) This section is overridden by section GB 23 (Excessive remuneration to relatives).

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: assessable income, Commissioner, deduction, general permission, pay

Compare: 2004 No 35 s GD 4

DC 6 Contributions to employees' benefit funds

Deduction

(1) An employer is allowed a deduction for an amount that they pay to, or set aside as, a fund to provide individual personal benefits to their employees if—

(a) the fund is not a superannuation scheme; and

(b) the employees' rights to receive benefits from the fund are fully secured.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, employee, employer, general limitation, general permission, pay, superannuation scheme, supplement

Compare: 2004 No 35 s DC 5

DC 7 Contributions to employees' superannuation schemes

Deduction

(1) An employer is allowed a deduction for a superannuation contribution to an employees' superannuation scheme.

Exclusion

[Repealed]

(1B) *[Repealed]*

Timing of deduction

(2) The deduction is allocated to the income year in which the employer makes the contribution.

Relationship with section EJ 21

(3) Subsection (2) is overridden by section EJ 21 (Contributions to employees' superannuation schemes).

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, employee, employer, general limitation, general permission, income year, superannuation contribution, superannuation scheme, tax credit

Compare: 2004 No 35 s DC 6

Section DC 7(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 82(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DC 7(1B) heading: repealed, on 1 April 2009, pursuant to section 52 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section DC 7(1B): repealed, on 1 April 2009, by section 52 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section DC 7(1B): amended (with effect on 1 April 2008), on 6 October 2009, by section 82(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DC 7 list of defined terms **superannuation contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 82(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DC 7 list of defined terms **tax credit**: inserted, on 1 April 2008, by section 124(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

DC 8 Attribution of personal services

When this section applies

(1) This section applies when, under sections GB 27 to GB 29 (which relate to the attribution rule for income from personal services), an amount of income of a person (the **associated entity**) is attributed to another person (the **working person**).

Deduction

(2) The associated entity is allowed a deduction for the amount attributed.

Timing of deduction

(3) The deduction is allocated to the income year in which the amount is attributed to the working person.

Link with subpart DA

(4) This section supplements the general permission and overrides all the general limitations.

Defined in this Act: amount, deduction, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DC 7

DC 9 Restrictive covenants or exit inducements

Deduction

(1) A person is allowed a deduction for expenditure that they incur that is income of another person under section CE 9 (Restrictive covenants) or CE 10 (Exit inducements).

Exclusion

(2) This section does not apply if—

(a) the other person performs services for the person; and

(b) expenditure that the person would have incurred for the services, if the other person had not derived an amount that is income under section CE 9 or CE 10, would have been of a capital nature.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, general limitation, general permission, income

Compare: 2004 No 35 s DC 8

DC 10 Sale of business: transferred employment income obligations

When this section applies

(1) This section applies when—

(a) a person (the **seller**) sells a business, or a part of a business, to another person (the **buyer**); and

(b) an employee of the seller working in the business, or the part of the business, becomes an employee of the buyer under the sale arrangements; and

(c) the seller and the buyer agree in writing, under the sale arrangements, that the buyer assumes the obligation to pay an amount of employment income to the employee.

Deduction: parties not associated

(2) If the seller and the buyer are not associated persons at the time of the sale,—

(a) the seller is allowed a deduction, in the income year of the sale, for the provision made by the seller for any part of the amount that remains contingent on the employee continuing in employment or any similar factor; and

(b) the seller is treated under section EA 4(4) (Deferred payment of employment income) as having paid the amount of the provision at the time of sale.

Deduction: parties associated

(3) If the seller and the buyer are associated persons at the time of the sale,—

(a) the buyer is allowed a deduction for the provision made by the seller for the amount of employment income if the seller would have been allowed a deduction for the amount if the business, or the part of the business, had not been sold; and

(b) subsection (2) does not apply, and section EA 4(5) will mean that the seller cannot get a deduction for the amount.

Deduction: excess

(4) The buyer is allowed a deduction for any part of the amount of employment income that the buyer pays that is more than the provision made by the seller for the amount.

Link with subpart DA

(5) The link between this section and subpart DA (General rules) is as follows:

(a) subsection (2)(a) supplements the general permission; the general limitations still apply:

(b) subsections (3)(a) and (4) override the capital limitation; the general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, arrangement, associated person, business, capital limitation, deduction, employee, employment income, general limitation, general permission, income year, pay, supplement, time of the sale

Compare: 2004 No 35 s DC 9

DC 11 Transfers of employment income obligations to associates

When this section applies

(1) This section applies when—

(a) an employee of a person (**person A**) becomes an employee of another person (**person B**); and

(b) person A and person B are associated persons at the time; and

(c) person B assumes person A's obligation to pay an amount of employment income to the employee; and

(d) the employee's becoming an employee of person B does not result from the sale by person A of a business, or a part of a business, to person B.

Deduction

(2) Person B is allowed a deduction for the amount of employment income if person A would have been allowed a deduction for the amount if the transfer had not occurred.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, associated person, business, capital limitation, deduction, employee, employment income, general limitation, general permission, pay

Compare: 2004 No 35 s DC 10

DC 12 Loans to employees under share purchase schemes

Deduction

(1) An employing company that provides financial assistance to an employee by way of an interest-free loan under a share pur-

chase scheme is allowed a deduction for providing the assistance, under the following conditions:

(a) the scheme must have the Commissioner's approval, which must be given if the scheme meets all the criteria set out in sections DC 13 and DC 14; and

(b) the deduction is allowed only for the 5 years after the date of the loan.

Amount, and timing, of deduction

(2) The amount of the deduction in each income year is equal to the interest that would have been payable by the employing company for the income year if the amount of the loan had been borrowed by the company at an interest rate of 10% annually with interest calculated with monthly rests, and as if repayments by the employee under the scheme were repayments of the notional loan by the company.

Shares issued by another group company

(3) Subsection (4) applies when—

(a) an employing company is a member of a group of companies; and

(b) an employee of the employing company acquires under a share purchase scheme a share issued by another company (the **issuing company**) in the group; and

(c) financial assistance is provided to the employee by way of an interest-free loan under the share purchase scheme; and

(d) the scheme has the Commissioner's approval, which must be given if the scheme meets all the criteria set out in sections DC 13 and DC 14.

Deduction for issuing company

(4) The issuing company is entitled to the deduction that the employing company would have been allowed under subsections (1) and (2) had the employing company provided the loan. The employing company is not allowed a deduction for the loan under those subsections.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, Commissioner, company, deduction, employee, employing company, general limitation, general permission, group of companies, income year, interest, pay, share, share purchase scheme, supplement, year

Compare: 2004 No 35 s DC 11

DC 13 Criteria for approval of share purchase schemes: before period of restriction ends

What this section does

(1) This section sets out the criteria, relating to the provisions of a share purchase scheme on the period of restriction, that the Commissioner applies in determining whether or not to approve the scheme.

Purchase of shares

(2) The scheme must provide for—

(a) the shares to be available for no more than their market value at the date of purchase or subscription; and

(b) the amount that an employee spends on buying shares under the scheme or any similar scheme to be $2,340 or less in a 3 year period.

Eligibility

(3) The scheme must provide for—

(a) employees to be eligible to participate equally in the scheme, that is,—

(i) every full-time permanent employee on an equal basis with every other full-time permanent employee; and

(ii) if the scheme applies to part-time employees and seasonal employees, every part-time employee on an equal basis with every other part-time employee and every seasonal employee on an equal basis with every other seasonal employee; and

(b) any minimum period of employment or service before employees are eligible to participate,—

(i) for full-time employees, to be no more than 3 years' full-time work; and

(ii) for other employees, an accumulated period that is the equivalent of 3 years' full-time work.

Loans to employees

(4) The scheme must provide for—

(a) a loan to an employee to buy shares to be free of interest and other charges; and

(b) any minimum amount of loan to be $624 or less; and

(c) employees to be able to repay the loan by regular equal instalments at intervals of 1 month or less over a period of between 3 years and 5 years from the date of the loan; and

(d) employees to be able to choose to repay some or all of the loan before the due date for repayment.

Shares held on trust

(5) The scheme must provide for—

(a) the trustee of the scheme to hold the shares in trust for the employee; and

(b) the trustee to pay any dividends directly to the employee; and

(c) the dividends to be treated as having been derived by the employee; and

(d) the trustee to be prohibited from applying the amount of any dividend to the repayment of a sum owing to the company or to the trustee; and

(e) the employee to be prohibited from charging or disposing of their rights or interests in the shares.

Hardship

(6) The scheme must provide for a trustee who is satisfied that the employee's continued participation in the scheme has resulted or would result in serious hardship,—

(a) with the employee's agreement, to vary the terms of the repayment of a loan under the scheme; or

(b) with the employee's agreement, to allow the employee to withdraw from the scheme as if they had ended their employment in the circumstances described in section DC 14(4).

Withdrawal from scheme

(7) The scheme must provide for—

(a) an employee to be able to withdraw from the scheme on giving 3 months' notice to the trustee; and

(b) the employee to be treated for the purposes of the scheme as if they ended their employment with the company on the date the notice takes effect, with the effect that section DC 14(4) and (5) then apply.

Defined in this Act: amount, Commissioner, company, dividend, employee, interest, notice, pay, period of restriction, share, share purchase scheme, trustee, year

Compare: 2004 No 35 s DC 12

Section DC 13(5)(d): substituted (with effect on 1 April 2008), on 6 October 2009, by section 83(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DC 14 Criteria for approval of share purchase schemes: when period of restriction ends

What this section does

(1) This section sets out the criteria, relating to the provisions of a share purchase scheme on the period when the period of restriction ends, that the Commissioner applies in determining whether or not to approve the scheme.

General rule

(2) The scheme must provide for—

(a) the trustee—

(i) to transfer the shares to the employee if the employee is still employed by the company; or

(ii) at the option of the employee, to buy the shares at their market value on the date of purchase; or

(b) the trustee to apply subsection (3) or (4), if either applies, in priority to paragraph (a).

Death, accident, sickness, redundancy, or retirement at normal retiring age

(3) If the period of restriction ends because the employee ends their employment through death, accident, sickness, redundancy, or retirement at normal retiring age, the scheme must provide for—

(a) the trustee to transfer the shares to the legal representative of the employee's estate or to the former employee; or

(b) at the option of the legal representative or former employee, the trustee to buy the shares at their market value on the date of purchase, subject to the repayment of any outstanding loan under the scheme for the shares.

Employment ends for other reason

(4) If the period of restriction ends because the employee ends their employment for any reason other than a reason described in subsection (3), the scheme must provide for the trustee to buy the shares at their market value on the date on which the employee ends their employment, subject to the repayment of any outstanding loan under the scheme for the shares.

Purchase price when trustee buys shares

(5) If the trustee buys the shares when the period of restriction ends, the scheme must provide for the purchase price to be no more than the price paid for the shares by the employee.

Defined in this Act: Commissioner, company, employee, normal retiring age, pay, period of restriction, share, share purchase scheme, trustee

Compare: 2004 No 35 s DC 13

Section DC 14(4): amended (with effect on 1 April 2008), on 7 December 2009, by section 13 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DC 15 Some definitions

Definitions

(1) In this section, and in sections DC 12 to DC 14,—

employee—

(a) means a person employed by a company:

(b) does not include—

(i) a director of the company; or

(ii) a person who, with any associated person, holds 10% or more of the issued capital of the company; or

(iii) a company, a local authority, a public authority, or an unincorporated body of persons

employing company, for an employee, means the company that employs the employee

normal retiring age means,—

(a) for an employee other than one to whom paragraph (b) applies, no less than 60 years of age:

(b) for a female employee who is entitled under a contract of employment entered into before 1 April 1978 with the employing company to retire before 60 years of age, no less than 55 years of age:

(c) for any employee, an age that is earlier than the age referred to in paragraph (a) or (b) and that the Commissioner considers reasonable given the nature of the employment or the general terms of employment in the business or occupation of the employee

share, for a company whose shares are made available under a share purchase scheme, means a fully paid ordinary share that ranks equally with, and has the same designation as, an existing ordinary voting share in the company

trustee means a person or group of persons appointed to administer a share purchase scheme of an employing company, and to hold shares under that scheme on trust for an employee during the period of restriction.

Meaning of period of restriction

(2) In this section, and in sections DC 13 and DC 14,—

(a) period of restriction is defined in subsections (3) and (4); and

(b) for the purposes of this definition, if an employing company is part of a group of companies, and an employee is transferred to another company in the group, the employee is treated as continuing in their employment.

Shorter of 2 periods

(3) **Period of restriction** means the shorter of—

(a) a period of 3 years starting on the date the employee buys or subscribes for the shares, or the period of repayment of a loan made to them under the scheme for this purpose, whichever is longer; and

(b) a period starting on the date the employee buys or subscribes for the shares and ending on the date the employee ends their employment with the employing company.

This subsection is overridden by subsection (4).

Different period

(4) If the employee buys or subscribes for the shares at market value, and the rules of the scheme provide a period of restriction, that period applies, but it must be no shorter than the period of repayment of a loan made under the scheme for the purpose, and must be no longer than the period described in subsection (3) that would apply in the absence of this subsection.

Defined in this Act: associated person, company, director, employee, employing company, group of companies, group of persons, local authority, normal retiring age, pay, period of restriction, public authority, share, share purchase scheme, trustee, year

Compare: 2004 No 35 s DC 14

Subpart DD—Entertainment expenditure

DD 1 Entertainment expenditure generally

When this subpart applies

(1) This subpart applies when, in deriving income, a person incurs expenditure on entertainment that provides both a private and a business benefit.

No deduction (with exception)

(2) The person is denied a deduction for expenditure that they incur on the forms of entertainment set out in section DD 2, except for 50% of the amount that they would have been allowed in the absence of this subsection.

Meaning of limitation rule

(3) **Limitation rule** means the rule described in subsection (2).

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, business, deduction, general permission, income, limitation rule

Compare: 2004 No 35 s DD 1

DD 2 Limitation rule

What rule applies to

(1) The expenditure to which the limitation rule applies is expenditure on the forms of entertainment described in subsections (2) to (6).

Corporate boxes

(2) The limitation rule—

(a) applies to deductions for expenditure on corporate boxes, corporate marquees or tents, or other exclusive areas, whether temporary or permanent, at—

(i) cultural, sporting, or other recreational events:

(ii) activities taking place off the person's business premises; and

(b) applies to the cost of tickets or other rights of entry to the areas; and

(c) applies to the cost of food and drink incidental to this form of entertainment.

Holiday accommodation

(3) The limitation rule—

(a) applies to deductions for expenditure on accommodation in a holiday home, time-share apartment, or similar leisure venue; and

(b) does not apply to accommodation that is merely incidental to business activities or employment duties; and

(c) applies to the cost of food and drink incidental to this form of entertainment.

Pleasure craft

(4) The limitation rule—

(a) applies to deductions for expenditure on yachts or other pleasure craft; and

(b) applies to the cost of food and drink incidental to this form of entertainment.

Entertainment off premises

(5) The limitation rule applies to deductions for expenditure on food and drink that a person provides off their business premises.

Entertainment on premises

(6) The limitation rule applies to deductions for expenditure on food and drink that a person provides, other than light refreshments such as a morning tea and whether or not guests are present,—

(a) on their business premises at a celebration meal, party, reception, or other similar social function:

(b) in an area of the premises that at the time is reserved for senior employees to use and is not open to all the person's employees working in the premises.

Meaning of expenditure

(7) **Expenditure** includes,—

(a) in subsections (2) to (4),—

(i) an amount of depreciation loss; and

(ii) expenditure or loss on running costs and maintenance and similar matters; and

(iii) a deduction for a lease premium under section DZ 9 (Premium paid on land leased before 1 April 1993); and

(b) in subsections (2) to (6), any incidental expenditure on matters such as hireage of crockery, glassware, or utensils, waiting staff, and music or other entertainment provided in association with the specified kind of entertainment.

Defined in this Act: amount, business, business premises, deduction, depreciation loss, expenditure, limitation rule, pay

Compare: 2004 No 35 s DD 2

DD 3 When limitation rule does not apply

The limitation rule is either restricted in its application or does not apply to deductions for the expenditure described in sections DD 4 to DD 8.

Defined in this Act: deduction, limitation rule

Compare: 2004 No 35 s DD 3

DD 4 Employment-related activities

Business travel expenditure

(1) The limitation rule does not apply to a deduction for expenditure on food or drink consumed by a person while travelling in the course of business or for their employment duties. However, the limitation rule applies if—

(a) the travel is mainly for the purpose of enjoying entertainment; or

(b) the food or drink is consumed at a meal or function involving an existing or potential business contact as a guest; or

(c) the food or drink is consumed at a celebration meal, party, reception, or other similar social function.

Conference expenditure

(2) The limitation rule does not apply to a deduction for expenditure on light refreshments at a conference or educational course or similar event, nor to food or drink consumed at such an event lasting for at least 4 consecutive hours, excluding meal times. However, the limitation rule applies if the event is mainly for the purpose of entertainment.

Relocation expenses, employees' meals, and sustenance allowances

(3) The limitation rule does not apply to a deduction for expenditure on—

(a) an amount that is exempt income of an employee under sections CW 17B and CW 17C (which relate to relocation expenses, expenditure on overtime meals, and sustenance allowances):

(b) a light meal consumed as part of the employee's employment duties in an area of the person's business premises that at the time is reserved for senior employees and their guests to use and is not open to all the person's employees working in the premises.

Defined in this Act: amount, business, business contacts, business premises, deduction, employee, exempt income, limitation rule

Compare: 2004 No 35 s DD 4

Section DD 4(3) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 84(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DD 4(3)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 84(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DD 4 list of defined terms **amount**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 84(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DD 5 Promoting businesses, goods, or services

Sponsored promotions

(1) The limitation rule does not apply to a deduction for expenditure on entertainment if—

(a) the entertainment is sponsored mainly to advertise or promote a person's business, goods, or services to the public; and

(b) none of the following has a greater opportunity to enjoy the entertainment than the public generally:

(i) existing business contacts of the person or the person whose business, goods, or services are being advertised or promoted:

(ii) employees of the person or the person whose business, goods, or services are being advertised or promoted:

(iii) anyone associated with the person or the person whose business, goods, or services are being advertised or promoted.

Incidental costs of promotion

(2) The limitation rule does not apply to a deduction for expenditure on entertainment that is merely an incidental part of—

(a) a trade display mainly held to advertise or promote a business, goods, or services:

(b) a function open to the public and mainly held to advertise or promote a business, goods, or services.

Samples

(3) The limitation rule does not apply to a deduction for expenditure on samples that a person provides for promotion or advertising purposes to anyone who is not an employee of or associated with the person.

Entertainment for review

(4) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides to a person who is reviewing the entertainment for a book, magazine, paper, or other medium of communication.

Defined in this Act: associated person, business, business contacts, deduction, employee, limitation rule

Compare: 2004 No 35 s DD 5

DD 6 Entertainment as business or for charitable purpose

Entertainment as business

(1) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides for market value or in an arm's length transaction in the ordinary course of their business, if that business is to provide 1 or more of the forms of entertainment referred to in section DD 2.

Entertainment for charitable purposes

(2) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides to members of the public for charitable purposes.

Defined in this Act: business, charitable purpose, deduction, limitation rule

Compare: 2004 No 35 s DD 6

DD 7 Entertainment outside New Zealand

The limitation rule does not apply to a deduction for expenditure on entertainment that is enjoyed or consumed outside New Zealand.

Defined in this Act: deduction, limitation rule, New Zealand

Compare: 2004 No 35 s DD 7

DD 8 Entertainment that is income or fringe benefit

The limitation rule does not apply to a deduction for expenditure on entertainment that is—

(a) income of the person who consumes it; or

(b) a fringe benefit to which fringe benefit tax applies.

Defined in this Act: deduction, fringe benefit, fringe benefit tax, income, limitation rule

Compare: 2004 No 35 s DD 8

DD 9 Relationship with fringe benefit tax rules

Sections DD 2 to DD 8 override the fringe benefit tax (FBT) rules. However, the FBT rules, as applied by section CX 29 (Entertainment), override sections DD 2 to DD 8 if an employee of the person providing the benefit—

(a) may choose when to receive or use the benefit:

(b) does not receive or use the benefit in the course of their employment duties.

Defined in this Act: employee, FBT rules

Compare: 2004 No 35 s DD 9

DD 10 Interpretation: reimbursement and apportionment

In sections DD 2 to DD 8,—

(a) a person is treated as having incurred expenditure on entertainment described in section DD 2 if they pay an allowance for, or reimburse an employee's expenditure on, the entertainment, and the allowance or reimbursement is exempt income under sections CW 17, CW 17B, and CW 17C (which relate to expenditure and reimbursement of employees):

(b) if a person incurs expenditure that relates only partly to the entertainment, the expenditure must be apportioned appropriately.

Defined in this Act: employee, exempt income, pay

Compare: 2004 No 35 s DD 10

Section DD 10(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 85 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DD 11 Some definitions

In this subpart,—

business includes any recurring income-earning activity

business contacts—

(a) includes, for a person,—

(i) their clients, customers, shareholders, other financiers, and suppliers:

(ii) the clients, customers, shareholders, other financiers, and suppliers of an associated person:

(b) if the person is in partnership, does not include other partners in the partnership

business premises—

(a) means the normal business premises or a temporary workplace of the person (or an associate):

(b) does not include premises or a workplace established mainly for the purpose of enjoying entertainment.

Defined in this Act: associated person, business, business contacts, business premises, shareholder

Compare: 2004 No 35 s DD 11

Subpart DE—Motor vehicle expenditure

Introductory provisions

DE 1 What this subpart does

Apportions motor vehicle expenditure

(1) This subpart sets out the rules for determining the proportion of business use of a motor vehicle to its total use when a person uses a motor vehicle partly for business purposes and partly for other purposes.

Exclusions

(2) This subpart does not apply—

(a) to a company:

(b) to a person whose only income is income from employment:

(c) to a motor vehicle that is used only—

(i) for the purpose of deriving income; or

(ii) for a purpose that constitutes a fringe benefit.

Defined in this Act: business use, company, fringe benefit, income, income from employment, motor vehicle

Compare: 2004 No 35 s DE 1

DE 2 Deductions for business use

Deduction

(1) A person is allowed a deduction for—

(a) expenditure that they incur for the business use of a motor vehicle:

(b) an amount of depreciation loss for the business use of a motor vehicle.

Amount, and timing, of deduction: expenditure

(2) The amount of the deduction allowed in an income year for the expenditure for the business use of the vehicle is calculated using the formula—

expenditure × business proportion.

Definition of item in formula

(3) In the formula in subsection (2), **business proportion** is the proportion of business use of the motor vehicle for the income year, expressed as a decimal, calculated under sections DE 3 to DE 12.

Amount, and timing, of deduction: depreciation loss

(4) The amount of the deduction allowed in an income year for the amount of depreciation loss for the business use of the vehicle is calculated—

(a) using the formula in subsection (5), except in a case to which paragraph (b) or (c) applies; or

(b) using the formula in subsection (8) if that subsection applies to the amount of depreciation loss; or

(c) using the formula in subsection (11) if that subsection applies to the amount of depreciation loss.

Calculation of deduction: depreciation loss generally

(5) The formula referred to in subsection (4)(a) is—

standard calculation × business proportion.

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **standard calculation** is the amount resulting from a calculation made for the motor vehicle under section EE 16 (Amount resulting from standard calculation):

(b) **business proportion** is the proportion of business use of the motor vehicle for the income year (expressed as a decimal) calculated under sections DE 3 to DE 12.

When subsection (8) applies

(7) Subsection (8) applies when—

(a) the amount of depreciation loss results from a calculation made for the motor vehicle under section EE 48(2) (Effect of disposal or event); and

(b) the person's amount of depreciation loss for the motor vehicle was, at a time when the person owned it, calculated under subsection (5).

Calculation of deduction: depreciation loss on disposal

(8) The formula referred to in subsection (4)(b) is—

$$\text{disposal depreciation loss} \times \frac{\text{all deductions}}{(\text{base value} - \text{adjusted tax value})}.$$

Definition of items in formula

(9) In the formula in subsection (8),—

(a) **disposal depreciation loss** is the amount resulting from a calculation made for the vehicle under section EE 48(2):

(b) **all deductions** is all amounts of depreciation loss relating to the vehicle for which the person has been allowed a deduction in each of the income years in which the person has owned the vehicle:

(c) **base value** has the applicable one of the meanings in sections EE 57 to EE 60 (which relate to base value):

(d) **adjusted tax value** is the vehicle's adjusted tax value on the date on which the disposal or event occurs.

When subsection (11) applies

(10) Subsection (11) applies when—

(a) the amount of depreciation loss results from a calculation made for the motor vehicle under section EE 48(2); and

(b) the motor vehicle starts to have a business use in the same income year as that in which the amount of depreciation loss arose.

Calculation of deduction: depreciation loss on disposal after business use

(11) The formula referred to in subsection (4)(c) is—

disposal depreciation loss × business proportion.

Definition of items in formula

(12) In the formula in subsection (11),—

(a) **disposal depreciation loss** is the amount resulting from a calculation made for the vehicle under section EE 48(2):

(b) **business proportion** is the proportion of business use of the vehicle for the income year calculated under sections DE 3 to DE 12, expressed as a decimal.

Link with subpart DA

(13) This section supplements the general permission and overrides the private limitation. The other general limitations still apply.

Defined in this Act: adjusted tax value, amount, business use, deduction, depreciation loss, general limitation, general permission, income year, motor vehicle, own, private limitation, supplement

Compare: 2004 No 35 s DE 2

DE 3 Methods for calculating proportion of business use

The 3 methods that may be used to calculate the proportion of business use of a motor vehicle are—

(a) actual records, *see*section DE 5:

(b) a logbook, *see*sections DE 6 to DE 11:

(c) mileage rates, *see*section DE 12.

Defined in this Act: business use, motor vehicle

Compare: 2004 No 35 s DE 3

DE 4 Default method for calculating proportion of business use

When this section applies

(1) This section applies when—

(a) a person has not maintained actual records to show the proportion of business use of a motor vehicle; or

(b) a period is not a term to which a proportion of business use of a motor vehicle established by a logbook applies; or

(c) a person cannot use the mileage rate method.

Amount of deduction

(2) The deduction under section DE 2 for expenditure or loss incurred is limited to the lesser of—

(a) the proportion of actual business use of the vehicle; and

(b) 25% of the total use of the vehicle.

Defined in this Act: amount, business use, deduction, motor vehicle

Compare: 2004 No 35 s DE 4

Actual records

DE 5 Actual records

To determine the proportion of business use of a motor vehicle, a person may use actual records showing the reasons for

and the distance of journeys by a motor vehicle for business purposes. However, when the period covered falls within a logbook term, actual records may be used only if the person and the Commissioner agree.

Defined in this Act: business use, Commissioner, logbook term, motor vehicle

Compare: 2004 No 35 s DE 5

Logbook

DE 6 Using logbook for test period

A person may keep a logbook for a test period for the purpose of establishing the proportion of the business use of a motor vehicle for an income year, or part of an income year, that falls within a logbook term. If a person uses a logbook as a method of establishing the proportion of business use, they must also record the total distance travelled in each income year, or part of an income year, that falls within a logbook term.

Defined in this Act: business use, income year, logbook term, motor vehicle

Compare: 2004 No 35 s DE 6

DE 7 Logbook requirements

Test period

(1) When a logbook is used to establish the proportion of business use of a motor vehicle, a person must select a start date, and keep the logbook for at least 90 consecutive days at a time that represents, or is likely to represent, the average proportion of travel by the vehicle for business purposes during the logbook term.

Record of reasons for, and distance of, journeys

(2) The logbook must record—

- (a) the start and end of the 90 day test period; and
- (b) the vehicle's odometer readings at the start and end of the test period; and
- (c) the distance of each business journey; and
- (d) the date of each business journey; and
- (e) the reason for each business journey; and

(f) any other detail that the Commissioner may require.

Defined in this Act: business, business use, Commissioner, logbook term, motor vehicle

Compare: 2004 No 35 s DE 7

DE 8 Logbook term

Meaning of logbook term

(1) A **logbook term** is a period to which the proportion of business use of a motor vehicle established by the logbook applies. The term lasts up to 3 years and starts and ends as described in subsections (2) and (3).

Start of term

(2) A logbook term starts on the date that is the latest of the following days:

(a) the first day of the income year in which a person starts to keep a logbook:

(b) the day that a person acquires the motor vehicle, unless the vehicle is a replacement vehicle, which is dealt with in section DE 11:

(c) the day immediately after the last day of the previous logbook term:

(d) a day that a person specifies.

End of term

(3) The logbook term ends on the date that is the earliest of the following days:

(a) the day that a person disposes of the motor vehicle without replacing it:

(b) the day that is 3 years after the first day of the income year in which the logbook term started:

(c) a day that the Commissioner specifies under section DE 9:

(d) a day that a person specifies.

Defined in this Act: business use, Commissioner, income year, logbook term, motor vehicle, year

Compare: 2004 No 35 s DE 8

DE 9 Inadequate logbook

Non-representative logbook proportion

(1) If the Commissioner considers that the proportion of business use recorded in a logbook does not, or does no longer, represent the average use of a motor vehicle for business purposes during an income year that falls within a logbook term, the Commissioner may,—

(a) within the logbook term, direct a person to keep a further logbook and specify another 90 day period in the logbook term for keeping the logbook; or

(b) treat a person as not having kept a logbook that applies to the logbook term.

Further logbook

(2) If the Commissioner directs a person to keep a further logbook, and the proportion of business use calculated under that logbook is less by at least 20% than the proportion under the first logbook, the Commissioner may find that the first logbook—

(a) represented the average use of the motor vehicle for business purposes for only part of the logbook term; or

(b) did not represent that use at all.

Partly representative logbook

(3) If subsection (2)(a) applies, the Commissioner may determine a date on which the application of the first logbook ended, and the further logbook applies to a new logbook term that starts on the day after that date.

Non-representative logbook

(4) If subsection (2)(b) applies, the Commissioner may direct that the further logbook applies for the logbook term to which the first logbook applied.

Defined in this Act: business use, Commissioner, income year, logbook term, motor vehicle

Compare: 2004 No 35 s DE 9

DE 10 Variance during logbook term

If, in any month during a logbook term, the proportion of business use in that month is less by at least 20 percentage points than the proportion established by the logbook, and the proportion of business use recorded in the logbook no longer rep-

resents the average use of the motor vehicle for business purposes, the logbook term must end on the last day of that month.

Defined in this Act: business use, logbook term, motor vehicle

Compare: 2004 No 35 s DE 10

Section DE 10: amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008-09 and later income years), by section 41(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

DE 11 Replacement vehicles

For the purpose of establishing the proportion of business use of a motor vehicle, a replacement vehicle is treated in the same way as the vehicle it replaces if—

(a) the logbook is likely to be representative of the average travel for business purposes for the remainder of the logbook term; and

(b) from the date of replacement, a person keeps a record of the total distance travelled by the replacement vehicle for each income year, or part of an income year, of the remaining logbook term.

Defined in this Act: business use, income year, logbook term, motor vehicle

Compare: 2004 No 35 s DE 11

Mileage rates

DE 12 Mileage rate method

Using mileage rates

(1) If a person's business travel is 5,000 kilometres or less in an income year, they may use the mileage rate method to calculate the expenditure or loss on a motor vehicle that represents the proportion of business use of the vehicle.

Amount of deduction

(2) Under the mileage rate method, the person must keep details of the business use of the motor vehicle and calculate the mileage travelled for business purposes for the income year. The amount of the deduction under this method is found by multiplying the mileage rate by the distance that reflects the proportion of business use of the vehicle for the income year.

Setting mileage rates

(3) For the purposes of this section, the Commissioner must from time to time set and publish a mileage rate.

Defined in this Act: amount, business, business use, Commissioner, deduction, income year, motor vehicle

Compare: 2004 No 35 s DE 12

Subpart DF—Government grants, funding, and compensation

Subpart DF heading: amended (with effect on 1 October 2009), on 6 October 2009, by section 86 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DF 1 Government grants to businesses

When this section applies

(1) This section applies when—

(a) a local authority or a public authority makes a payment to a person for a business that the person carries on; and

(b) the payment—

(i) is in the nature of a grant or subsidy to the person; or

(ii) is a grant-related suspensory loan to the person; and

(c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and

(d) the person does not make an election that section CX 47(4) (Government grants to businesses) apply to the payment.

When subsection (2) applies

(1B) Subsection (2) applies when, in the absence of this section, the person would be allowed a deduction for expenditure by the person to which the payment by the local or public authority corresponds.

No deduction (with exception)

(2) The person is denied, to the extent of the amount of the payment, the deduction that they would have been allowed in the absence of this section.

When subsection (4) applies

(3) Subsection (4) applies when—

(a) expenditure by the person in the acquisition, construction, installation, or extension of an item of depreciable property is expenditure to which the payment by the local or public authority corresponds; and

(b) in the absence of this section, the person would be allowed a deduction for an amount of depreciation loss for the item of depreciable property.

Amount of depreciation loss

(4) For the purpose of quantifying the amount of depreciation loss, the amount of the expenditure is reduced by the amount of the payment.

Amendment of assessment

(5) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section.

Exclusion

[Repealed]

(6) *[Repealed]*

Link with subpart DA

(7) This section overrides the general permission.

Defined in this Act: amount, assessment, business, Commissioner, deduction, depreciable property, depreciation loss, general permission, grant-related suspensory loan, local authority, pay, public authority, time bar

Compare: 2004 No 35 s DF 1

Section DF 1(1) heading: substituted (with effect on 1 October 2010), on 21 December 2010, by section 42(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section DF 1(1): substituted (with effect on 1 October 2010), on 21 December 2010, by section 42(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section DF 1(1B) heading: inserted (with effect on 1 October 2010), on 21 December 2010, by section 42(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section DF 1(1B): inserted (with effect on 1 October 2010), on 21 December 2010, by section 42(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section DF 1(3): substituted (with effect on 1 October 2010), on 21 December 2010, by section 42(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section DF 1(6) heading: repealed (with effect on 1 October 2009), on 6 October 2009, pursuant to section 87(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DF 1(6): repealed (with effect on 1 October 2009), on 6 October 2009, by section 87(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DF 1 list of defined terms **large budget screen production grant**: repealed (with effect on 1 October 2009), on 6 October 2009, by section 87(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DF 2 Repayment of grant-related suspensory loans

Deduction

(1) A person is allowed a deduction for the amount of a repayment that they are required to make of some or all of a grant-related suspensory loan to the extent to which the amount relates to a payment to which section DF 1(2) applies.

Timing of deduction

(2) The deduction is allocated to the income year in which repayment is first required.

Amount of depreciation loss

(3) If a person is required to repay some or all of a grant-related suspensory loan, then, to the extent to which section DF 1(3) and (4) apply to the loan,—

(a) the person is allowed a deduction for an amount of depreciation loss for the item; and

(b) the amount of depreciation loss is the total of the amounts of depreciation loss for the item for which the person would have been allowed a deduction if section DF 1(3) and (4) had not applied.

Quantifying amount of depreciation loss

(4) For the purpose of quantifying the amount of depreciation loss for the item in the income year and in later income years, the following matters must be taken into account:

(a) the amount of the deduction under subsection (3); and

(b) the total of the amounts of depreciation loss for the item for which the person has been allowed a deduction; and

(c) the person's expenditure on acquiring, constructing, installing, or extending the item.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation for the amount described in subsection (1). The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, depreciation loss, general limitation, general permission, grant-related suspensory loan, income year, pay, supplement

Compare: 2004 No 35 s DF 2

DF 3 Identifying expenditure for purposes of sections DF 1 and DF 2

For the purposes of sections DF 1 and DF 2, a statement by a person making a grant-related suspensory loan as to the expenditure that relates to the loan or to the repayment of the loan provides conclusive evidence on the questions.

Defined in this Act: grant-related suspensory loan, pay

Compare: 2004 No 35 s DF 3

DF 4 Payments for social rehabilitation

When this section applies

(1) This section applies when a person is paid under the Accident Compensation Act 2001 a personal service rehabilitation payment for an income year and the amount is assessable income of the person.

Deduction

(2) The person is allowed a deduction for an amount calculated using the formula—

$$\frac{\text{amount paid}}{1 - \text{tax rate}}.$$

Definition of items in formula

(3) In the formula,—

(a) **amount paid** is the amount paid by the person for a key aspect of social rehabilitation provided to them for the income year, to the extent to which the amount is less than the amount of personal service rehabilitation payment paid to them for the income year after taking into account any amount of tax withheld:

(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part I, clause 1 (Rates of tax for schedular payments).

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation and private limitation for the amount described in subsection (2). The other general limitations still apply.

Defined in this Act: amount, amount of tax, assessable income, capital limitation, general limitation, general permission, income year, pay, personal service rehabilitation payment, private limitation, tax

Compare: 2004 No 35 s DF 4

Section DF 4: substituted, on 1 July 2008, by section 343 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DF 4(1): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section DF 4(3) heading: amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DF 4(3)(b): amended (with effect on 1 July 2008), on 6 October 2009, by section 88 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DF 5 Government funding additional to government screen production payments

When this section applies

(1) This section applies when a public authority makes a payment (the **funding payment**) to a person for expenditure incurred in a project if—

(a) the funding payment is not in the nature of a grant or subsidy; and

(b) the funding payment is not a grant-related suspensory loan; and

(c) the person receives a government screen production payment for the project in addition to the funding payment; and

(d) the person would be allowed a deduction for the expenditure in the absence of this section; and

(e) the payment is excluded income under section CX 48C (Government funding additional to government screen production payments).

No deduction for expenditure

(2) The person is denied, to the extent of the amount of the funding payment, the deduction for the expenditure that would be allowed in the absence of this section.

Deduction for payments to public authority

(3) The person is allowed a deduction for the amount of a payment (the **return payment**) made to the public authority to the extent to which the return payment is required by the arrangement under which the funding payment is made.

Links with subpart DA

(4) In this section—

(a) subsection (2) overrides the general permission; and

(b) subsection (3) supplements the general permission and overrides the capital limitation; the other general limitations still apply.

Defined in this Act: capital limitation, deduction, excluded income, general limitation, general permission, government screen production payment, grant-related suspensory loan, pay, public authority

Section DF 5: added (with effect on 1 October 2009), on 6 October 2009, by section 89 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart DN—Attributed losses from foreign equity

Attributed controlled foreign company (CFC) loss

DN 1 Attributed controlled foreign company loss

Deduction

(1) A person is allowed a deduction for an attributed controlled foreign company (CFC) loss, subject to the jurisdictional ring-fencing rule in section DN 4.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: attributed CFC loss, capital limitation, deduction, general limitation, general permission, supplement

Compare: 2004 No 35 s DN 1

DN 2 When attributed CFC loss arises

General rule

(1) A person has an **attributed CFC loss** from a foreign company in an income year if—

(a) the foreign company is a CFC at any time during 1 of its accounting periods, under sections EX 1 to EX 7 (which relate to the definition of a controlled foreign company); and

(b) the accounting period ends during the income year; and

(c) the person has an income interest in the foreign company for the accounting period, under sections EX 8 to EX 13 (which relate to calculating a person's income interest); and

(d) at any time in the accounting period, the person is a New Zealand resident who is not a transitional resident; and

(e) the person's income interest is 10% or more for the accounting period, under sections EX 14 to EX 17 (which relate to the 10% threshold); and

(f) the CFC has a net attributable CFC loss for the accounting period under section EX 20C (Net attributable CFC income or loss); and

(g) *[Repealed]*

(h) the CFC is not a non-attributing active CFC for the accounting period, under section EX 21B (Non-attributing active CFCs); and

(i) the CFC is not a non-attributing Australian CFC for the accounting period, under section EX 22 (Non-attributing Australian CFCs).

Special rule: Attributable CFC amount from personal services

(2) If a person and a non-attributing active CFC or non-attributing Australian CFC meet the requirements of subsection (1)(a) to (e) and the CFC derives income from personal services that is an attributable CFC amount under section EX 20B(3)(h) (Attributable CFC amount), the person has **attributed CFC loss** from the CFC equal to the product of—

(a) the person's income interest in the CFC:

(b) the amount by which the CFC's expenditure incurred in deriving the income from personal services exceeds the income from personal services.

Defined in this Act: accounting period, attributable CFC amount, attributed CFC loss, CFC, foreign company, grey list, income interest, income year, net attributable CFC loss, New Zealand resident, non-attributing active CFC, non-attributing Australian CFC, transitional resident

Compare: 2004 No 35 s DN 2

Section DN 2(1) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 90(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2(1)(f): substituted (with effect on 30 June 2009), on 6 October 2009, by section 90(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2(1)(g): repealed (with effect on 30 June 2009), on 6 October 2009, by section 90(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2(1)(h): added (with effect on 30 June 2009), on 6 October 2009, by section 90(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2(1)(i): added (with effect on 30 June 2009), on 6 October 2009, by section 90(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2(2) heading: added (with effect on 30 June 2009), on 6 October 2009, by section 90(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2(2): added (with effect on 30 June 2009), on 6 October 2009, by section 90(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2 list of defined terms **attributable CFC amount**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 90(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2 list of defined terms **branch equivalent loss**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 90(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2 list of defined terms **net attributable CFC loss**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 90(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2 list of defined terms **non-attributing active CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 90(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DN 2 list of defined terms **non-attributing Australian CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 90(4)(b) of the

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DN 3 Calculation of attributed CFC loss

The amount of an attributed CFC loss is calculated under sections EX 18 to EX 20 (which relate to the calculation of attributed CFC income or loss).

Defined in this Act: amount, attributed CFC loss

Compare: 2004 No 35 s DN 3

DN 4 Ring-fencing cap on deduction

Amount of deduction

(1) The deduction that a person is allowed for an attributed CFC loss from a CFC in an income year is no more than the total of—

(a) any attributed CFC income of the person for the income year from another CFC that is resident in the same country as the first CFC for the relevant accounting period; and

(b) any foreign investment fund (FIF) income of the person for the income year calculated under the branch equivalent method from a FIF that is resident in the same country.

Income only once

(2) When subsection (1) is applied to an attributed CFC loss, an amount of attributed CFC income or FIF income may be used only to the extent to which the income is not used when—

(a) subsection (1) is applied to another attributed CFC loss; or

(b) section DN 8 is applied to a FIF loss.

Relationship with subpart IQ

(3) Any excess not able to be deducted because of subsection (1) is an attributed CFC net loss able to be used under sections IQ 2, IQ 4, and IQ 9 (which relate to the use of attributed CFC net losses).

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, attributed CFC net loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, income year

Compare: 2004 No 35 s DN 4

Foreign investment fund (FIF) loss

DN 5 Foreign investment fund loss

Deduction

(1) A person is allowed a deduction for a FIF loss.

Ring-fencing rule for loss calculated under branch equivalent method

(2) The deduction for a FIF loss calculated under the branch equivalent method is subject to the jurisdictional ring-fencing rule in section DN 8.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: branch equivalent method, calculation method, capital limitation, deduction, FIF loss, general limitation, general permission, supplement

Compare: 2004 No 35 s DN 5

DN 6 When FIF loss arises

General rule

(1) A person has a **FIF loss** in an income year if,—

(a) at any time in the year, the person has—

(i) rights in a foreign company, or a foreign superannuation scheme, or an entity listed in schedule 25, part A (Foreign investment funds); or

(ii) rights under a life insurance policy issued by a non-resident; and

(b) at that time, the rights are an attributing interest in a FIF under section EX 29 (Attributing interests in FIFs); and

(c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of—

(i) the exemption for ASX-listed Australian companies in section EX 31 (Exemption for ASX-listed Australian companies):

(ii) the exemption for Australian unit trusts with 25% turnover in section EX 32 (Exemption for Australian unit trusts with 25% turnover):

(iii) the exemption for Australian regulated superannuation savings in section EX 33 (Exemption

for Australian regulated superannuation savings):

(iv) the CFC regime exemption in section EX 34 (CFC rules exemption):

(v) the exemption for a 10% or greater interest in a grey list company in section EX 35 (Exemption for 10% or greater interest in grey list company):

(vi) the 10-year exemption for a venture capital company emigrating to a grey list country in section EX 36 (Venture capital company emigrating to grey list country: 10-year exemption):

(vii) the 10-year exemption for a grey list company owning a New Zealand venture capital company in section EX 37 (Grey list company owning New Zealand venture capital company: 10-year exemption):

(viii) the exemption for an employee share purchase scheme of a grey list company in section EX 38 (Exemption for employee share purchase scheme of grey list company):

(ix) the terminating exemption for a grey list company with numerous New Zealand shareholders in section EX 39 (Terminating exemption for grey list company with numerous New Zealand shareholders):

(x) the terminating exemption for a grey list company investing in Australasian equities in section EZ 32 (Terminating exemption for grey list FIF investing in Australasian listed equities):

(xi) the foreign exchange control exemption in section EX 40 (Foreign exchange control exemption):

(xii) the exemption for a non-resident or transitional resident, in section EX 41 (Income interest of non-resident or transitional resident):

(xiii) the immigrant's accrued superannuation entitlement exemption in section EX 42 (New resident's accrued superannuation entitlement exemption):

(xiv) the annuity or pension exemption in section EX 43 (Non-resident's pension or annuity exemption); and

(d) if the person is a natural person and not acting as a trustee, the total cost, calculated under section EX 68 (Measurement of cost), of attributing interests in FIFs that the person holds at any time in the year when the person is a New Zealand resident is more than $50,000:

(e) if the person is acting as trustee of a trust that meets the requirements of subsection (4), the total cost, calculated under section EX 68, of attributing interests in FIFs that the person holds at any time in the year is more than $50,000; and

(f) at any time in the year, the person is a New Zealand resident who is not a transitional resident and holds the attributing interest; and

(g) under the relevant calculation method chosen by the person, a loss amount is calculated for the income year or relevant accounting period under sections EX 44 to EX 56 (which relate to the calculation of FIF income or loss), EX 60 or EX 61 (which relate to top-up FIF income).

Treatment of transaction under section EX 63, EX 65, or EX 67

(1B) If a person is treated under section EX 63(5), EX 65 or EX 67 (which relate to changes in method or application of FIF rules) as disposing of or acquiring rights in an income year, the disposal or acquisition is ignored for the purposes of subsection (1)(d) and (e).

Look-through calculation methods

(2) Despite subsection (1), if the calculation method is the accounting profits method or branch equivalent method,—

(a) FIF loss arises in the income year only if the relevant accounting period of the FIF ends during the year; and

(b) the tests in subsection (1)(a), (b), (c), and (f) are applied on the basis that references in subsection (1)(a), (b), (c), and (f) to any time in the income year are read as references to any time in the relevant accounting period.

FIF loss from CFC with FIF interest

(3) **FIF loss** also includes an amount of additional FIF loss that a person with an income interest of 10% or more in a CFC has in an income year under section EX 58 (Additional FIF income or loss if CFC owns FIF), whether or not the CFC is a non-attributing Australian CFC under section EX 22 (Non-attributing Australian CFCs).

Requirements for trustees

(4) Subsection (1)(e) applies to the trustee of a trust for an income year if—

(a) the trust is of the estate of a deceased person and the income year begins on or before the day that is 5 years after the person's death:

(b) the settlor of the trust—

(i) is a relative or legal guardian of a beneficiary of the trust, or a person associated with a relative or legal guardian of a beneficiary of the trust; and

(ii) is required by a court order to pay damages or compensation to the beneficiary:

(c) the settlor of the trust—

(i) is the estate of a deceased person; and

(ii) is required by a court order to settle on the trust the proceeds of damages or compensation for the beneficiaries of the trust:

(d) the settlor of the trust is the Accident Compensation Corporation.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, CFC, FIF, FIF loss, foreign company, foreign superannuation scheme, grey list, grey list company, income interest, income year, life insurance policy, New Zealand resident, non-attributing Australian CFC, non-resident, relative, share, shareholder, transitional resident, trustee, unit trust

Compare: 2004 No 35 s DN 6

Section DN 6(1)(d): amended, on 1 April 2008, by section 344(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DN 6(1)(e): amended, on 1 April 2008, by section 344(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DN 6(1B) heading: inserted, on 1 April 2008, by section 344(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DN 6(1B): inserted, on 1 April 2008, by section 344(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DB 6(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 91(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 6(3): substituted (with effect on 30 June 2009), on 6 October 2009, by section 91(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DB 6 list of defined terms **non-attributing Australian CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 91(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DN 7 Calculation of FIF loss

The amount of a FIF loss is calculated, using the relevant calculation method, under sections EX 44 to EX 61 (which relate to the calculation of FIF income or loss).

Defined in this Act: amount, calculation method, FIF loss

Compare: 2004 No 35 s DN 7

DN 8 Ring-fencing cap on deduction: branch equivalent method

Amount of deduction

(1) If a person has a FIF loss that is calculated under the branch equivalent method, the deduction the person is allowed for the loss in an income year is no more than the total of—

(a) any attributed CFC income of the person for the income year from a CFC that is resident in the same country as the FIF for the relevant accounting period of the CFC; and

(b) any FIF income of the person for the income year that is calculated under the branch equivalent method from another FIF resident in the same country.

Income only once

(2) When subsection (1) is applied to a FIF loss, an amount of attributed CFC income or FIF income may be used only to the extent to which the income is not used when applying—

(a) subsection (1) to another FIF loss; or

(b) section DN 4 to an attributed CFC loss.

Relationship with section IQ 3

(3) Any excess not able to be deducted because of subsection (1) is a FIF net loss able to be used under section IQ 3 (Ring-fencing cap on FIF net losses).

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, FIF net loss, income year

Compare: 2004 No 35 s DN 9

Subpart DO—Farming and aquacultural business expenditure

Farming

DO 1 Enhancements to land, except trees

Deduction

(1) A person is allowed a deduction for expenditure that they incur on the following in carrying on a farming or agricultural business on land in New Zealand:

(a) the destruction of weeds or plants detrimental to the land:

(b) the destruction of animal pests detrimental to the land:

(c) the repair of flood or erosion damage to the land:

(d) the destruction of scrub, stumps, or undergrowth on the land:

(e) the clearing or removing from the land of scrub, stumps, or undergrowth:

(f) the construction on the land of fences for farming or agricultural purposes, including buying wire or wire netting for the purpose of making new or existing fences rabbit-proof:

(g) the regrassing and fertilising of all kinds of pasture, if the expenditure is not incurred in the course of a significant capital activity.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, New Zealand, significant capital activity

Compare: 2004 No 35 s DO 1

DO 2 Erosion and shelter plantings

When this section applies

(1) This section applies when a person carries on a farming or agricultural business on land in New Zealand, whether or not the business is the principal business carried on on the land.

Deduction

(2) The person is allowed a deduction for expenditure that they incur in planting or maintaining trees, whether or not on the land, for the purpose of—

(a) preventing or combating erosion of the land; or

(b) providing shelter to the land.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, New Zealand

Compare: 2004 No 35 s DO 2

DO 3 Trees on farms

When this section applies

(1) This section applies when—

(a) a person carries on, on land in New Zealand, a farming or agricultural business that is the principal business carried on on the land; and

(b) they plant or maintain trees on the land; and

(c) the trees are not—

(i) trees for which the person is allowed a deduction under section DO 2; or

(ii) trees planted mainly to produce fruit; or

(iii) trees planted under a forestry encouragement agreement under the Forestry Encouragement Act 1962.

Deduction

(2) The person is allowed the following deductions:

(a) in an income year in which the person incurs expenditure on planting trees on the land, they are allowed a deduction of the lesser of $7,500 and the expenditure that they incur; and

(b) in an income year in which the person incurs expenditure on maintaining trees on the land, they are allowed a deduction of the lesser of $7,500 and the expenditure that they incur.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, general limitation, general permission, income year, New Zealand

Compare: 2004 No 35 s DO 3

DO 4 Improvements to farm land

When this section applies

(1) This section applies when—

(a) a person carries on a farming or agricultural business on land in New Zealand; and

(b) an improvement described in schedule 20, part A (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made to the land; and

(c) the expenditure on the improvement is not expenditure to which sections DO 5 to DO 7 apply.

Deduction: expenditure: owner of land

(2) A person who owns the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person or by another person; and

(c) it is not incurred on anything described in any of sections DO 1 to DO 3; and

(d) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person disposes of the land, the income year being the income year of the person who owns the land; and
(e) it is incurred in developing the land; and
(f) it is of benefit to the business in the income year in which the person is allowed the deduction.

Deduction: expenditure: non-owner of land

(3) A person who does not own the land is allowed a deduction for expenditure to which all the following apply:
(a) it is incurred on making the improvement; and
(b) it is incurred by the person; and
(c) it is not incurred on anything described in any of sections DO 1 to DO 3; and
(d) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business on the land; and
(e) it is incurred in developing the land; and
(f) it is of benefit to the business in the income year in which the person is allowed the deduction.

Amount, and timing, of deduction

(4) The amount of the deduction is calculated using the formula—

schedule 20 percentage × diminished value.

Definition of items in formula

(5) In the formula,—
(a) **schedule 20 percentage** is the percentage set out opposite the description of the improvement in schedule 20, part A:
(b) **diminished value** is the diminished value of the improvement.

Amount, and timing, for non-listed horticultural plants

(6) When non-listed horticultural plants described in schedule 20, part A, clause 9 have ceased to exist, or to be used in deriving income, on or after 16 December 1991,—
(a) subsection (4) does not apply; and

(b) the amount of the deduction is the diminished value of the non-listed horticultural plants at the time they ceased to exist or to be used in deriving income; and

(c) the deduction is allocated to the income year in which the non-listed horticultural plants ceased to exist or to be used in deriving income.

Link with subpart DA

(7) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Amendment of schedule 20 by Order in Council

(8) The Governor-General may by Order in Council make regulations amending schedule 20 to vary the categories of improvements and percentages of diminished value of those improvements allowed as a deduction.

Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, New Zealand, non-listed horticultural plant, own

Compare: 2004 No 35 s DO 4

DO 5 Expenditure on land: planting of listed horticultural plants

When this section applies

(1) This section applies when—

(a) a person carries on a farming or agricultural business, including a horticultural business, on land in New Zealand; and

(b) the land has been developed by the planting of listed horticultural plants on the land.

Deduction and timing

(2) For an income year in which the planting benefits the business and for which subsection (3) does not apply, the person is allowed a deduction relating to expenditure incurred by the person, or by another person, in developing the land.

Income year in which no deduction

(3) The person is denied a deduction under subsection (2) for an income year in which—

(a) if the person owns the land, the person disposes of the land:

(b) if the person does not own the land, the person ceases carrying on the business on the land.

Amount of deduction other than under subsections (6) and (7)

(4) For expenditure to which subsections (6) and (7) do not apply for the income year, the amount of the deduction under subsection (2) is calculated using the formula—

1.2 × rate × diminished value.

Definition of items in formula

(5) In the formula,—

(a) **rate** is the percentage rate determined for the kind of listed horticultural plant by the Commissioner under section 91AAB of the Tax Administration Act 1994:

(b) **diminished value** is the diminished value of the expenditure.

Deduction: expenditure on replaced plant if no deduction under section DO 6

(6) If a listed horticultural plant in a planting of the person ceases in an income year to exist or to be used in deriving assessable income and the person has no deduction under section DO 6 for the income year for the expenditure incurred in replacing the listed horticultural plant,—

(a) the person is allowed a deduction:

(b) the amount of the deduction is the diminished value of the expenditure on the listed horticultural plant at the time that the listed horticultural plant ceases to exist or to be used in deriving assessable income:

(c) the deduction is allocated to the income year in which the listed horticultural plant ceases to exist or to be used in deriving income.

Treatment of expenditure on replaced plant if deduction under section DO 6

(7) If a listed horticultural plant in a planting of the person ceases in an income year to exist or to be used in deriving assessable income and the person is allowed a deduction under section DO 6 for the income year for all or some of the expenditure incurred in replacing the listed horticultural plant,—

(a) the person is not allowed a deduction under this section; and

(b) the person may add the diminished value, immediately before the replacement, of the expenditure on the listed horticultural plant to the diminished values, at the end of the income year, of the expenditure on listed horticultural plants that are in the planting at the end of the income year; and

(c) the person may choose the method of making the addition by applying the method in a return of income for the income year.

Link with subpart DA

(8) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: assessable income, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, listed horticultural plant, planting, return of income

Compare: 2004 No 35 s DO 4B

DO 6 Expenditure on land: horticultural replacement planting

When this section applies

(1) This section applies to a person who carries on a horticultural business on land in New Zealand and who, in an income year (the **current income year**)—

(a) plants, or causes to be planted, on the land a listed horticultural plant as a replacement plant:

(b) regrafts, or causes to be regrafted, a listed horticultural plant on the land as a replacement plant.

Deduction

(2) The person is allowed a deduction of an amount set out in 1 of subsections (3) and (5) if, in the current income year,—

(a) the person incurs expenditure in replacing a listed horticultural plant; and

(b) the replacement plant benefits the business; and

(c) the person does not dispose of the land on which the listed horticultural plant is cultivated; and

(d) the person chooses that this section apply to the expenditure by making a return of income for the current income year on that basis.

Amount of deduction if no deduction in 1 or both of 2 preceding income years

(3) If the person is denied a deduction under this section for 1 or both of the 2 income years preceding the current income year, the amount of the deduction under subsection (2) is calculated using the formula—

$$\text{replacement expenditure} \times \frac{7.5\%}{\text{fraction.}}$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **replacement expenditure** is the amount of the expenditure incurred by the person in replacing the listed horticultural plant:

(b) **fraction** is the greater of 7.5% and the replaced area fraction for the planting for the current income year.

Amount of deduction if deduction in both of 2 preceding income years

(5) If the person has been allowed a deduction under this section for a planting for both of the 2 income years preceding the current income year, the amount of the deduction under subsection (2) is the lesser of—

(a) the amount that is calculated using the formula in subsection (6):

(b) the amount that is calculated using the formula in subsection (8).

Formula for first amount

(6) The first amount is calculated using the formula—

$$\text{replacement expenditure} \times \frac{7.5\%}{\text{fraction.}}$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **replacement expenditure** is the amount of the expenditure incurred by the person:

(b) **fraction** is the greater of 7.5% and the replaced area fraction for the planting for the current income year.

Formula for second amount

(8) The second amount is calculated using the formula—

$$\text{replacement expenditure} \times \frac{15\% - \text{earlier fraction} - \text{later fractio}}{\text{replaced area fraction.}}$$

Definition of items in formula

(9) In the formula in subsection (8),—

(a) **replacement expenditure** is the amount of the expenditure incurred by the person:

(b) **earlier fraction** is the lesser of 7.5% and the replaced area fraction for the planting for the earlier of the 2 income years preceding the current income year:

(c) **later fraction** is the lesser of 7.5% and the replaced area fraction for the planting for the later of the 2 income years preceding the current income year:

(d) **replaced area fraction** is the replaced area fraction for the planting for the current income year.

Timing of deduction

(10) The deduction is allocated to the current income year.

Link with subpart DA

(11) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: assessable income, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, listed horticultural plant, planting, replaced area fraction, replacement plant, return of income

Compare: 2004 No 35 s DO 4C

DO 7 Accounting for expenditure on listed horticultural plants under sections DO 5 and DO 6

Separate accounting for additional listed horticultural plants if deduction under section DO 6

(1) A person to whom section DO 5 applies must, for an income year and for later income years for which subsection (2) does not apply, account separately under sections DO 5 and DO 6 for listed horticultural plants if—

(a) the person has had a deduction under section DO 6 for 1 or both of the 2 income years preceding the income year; and

(b) the person acquires the listed horticultural plants in the income year; and

(c) the listed horticultural plants benefit the business of the person in the income year; and

(d) the listed horticultural plants are not replacement plants.

Combined accounting for listed horticultural plants if no deduction under section DO 6

(2) Despite subsection (1), a person may account under sections DO 5 and DO 6 for listed horticultural plants as 1 planting for an income year and later income years if the person has had no deduction under section DO 6 for both of the 2 income years preceding the income year.

Defined in this Act: deduction, income year, listed horticultural plant, planting, replacement plant

Compare: 2004 No 35 s DO 4D

DO 8 Meaning of planting and plot

In this section and sections DO 5 to DO 7,—

planting for a person and an income year means 1 or more listed horticultural plants—

(a) that are involved in the business of the person during the income year; and

(b) for which the person must account under sections DO 5 and DO 6, for the income year, separately from any other listed horticultural plants that are involved in the business of the person

plot means the land occupied by the listed horticultural plants in a planting.

Defined in this Act: income year, listed horticultural plant, planting

Compare: 2004 No 35 s DO 4E

DO 9 Meaning of replaced area fraction

Meaning

(1) In section DO 6, **replaced area fraction**, for a planting and an income year, means the amount calculated using the formula—

$$\frac{\text{replacement area}}{\text{plot area}} \times 100\%.$$

Definition of items in formula

(2) In the formula in subsection (1),—

(a) **replacement area** is the area, at the end of the income year, of the part of the plot on which listed horticultural plants in the planting are planted or regrafted during the income year as replacement plants:

(b) **plot area** is the total area, at the end of the income year, of the plot.

Defined in this Act: income year, listed horticultural plant, planting, plot, replacement plant

Compare: 2004 No 35 s DO 4E

DO 10 Farming or horticulture expenditure of lessor or sublessor

When this section applies

(1) This section applies when a person—

(a) is the owner of an estate in fee simple or of a leasehold estate in land in New Zealand; and

(b) grants a lease or a sublease of the land to a person who carries on a farming or agricultural business on the land; and

(c) in the term of the lease or sublease,—

(i) incurs expenditure relating to the land for which they are allowed a deduction under any of section DO 1, DO 2, DO 4, DO 5, or DO 6; or

(ii) is allowed a deduction under section DO 4(2), DO 5(2), or DO 6 for expenditure incurred by another person relating to the land.

Relationship with sections DO 1, DO 2, DO 4, DO 5, and DO 6

(2) Sections DO 1, DO 2, DO 4, DO 5, and DO 6, whichever is applicable to the person, applies as if the person were personally carrying on a farming or agricultural business on the land at the time they incur the expenditure or are allowed the deduction.

Defined in this Act: business, deduction, estate, lease, leasehold estate, New Zealand, own, term of the lease

Compare: 2004 No 35 s DO 5

DO 11 Improvement destroyed or made useless

When this section applies

(1) This section applies when, in an income year of a person,—

(a) the person owns land, or operates a business on land, to which an improvement described in schedule 20 (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made for the purposes of the business; and

(b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income; and

(c) the person would be entitled for the income year to a deduction under section DO 4 or DO 5 for expenditure on the improvement if the improvement had not been destroyed or irreparably damaged and made useless; and

(d) the damage occurs in an income year that corresponds to the 2005–06 tax year or a later tax year; and

(e) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

Deduction: diminished value of expenditure

(2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement.

Link with subpart DA

(3) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, tax year

Compare: 2004 No 35 s DO 5B

DO 11B Entering partners' livestock deduction

[Repealed]

Section DO 11B: repealed (with effect on 1 April 2009), on 6 October 2009, by section 92(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DO 11B: inserted, on 1 April 2008, by section 11(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Aquaculture

DO 12 Improvements to aquacultural business

When this section applies

(1) This section applies when—

(a) a person carries on an aquacultural business in New Zealand; and

(b) the aquacultural business is—

(i) fish farming under a licence issued under the Freshwater Fish Farming Regulations 1983; or

(ii) mussel farming; or

(iii) rock oyster farming; or

(iv) scallop farming; or

(v) sea-cage salmon farming; and

(c) an improvement described in any of schedule 20, parts B to F (Expenditure on farming, horticultural, aquacultural, and forestry improvements) is made for the purposes of the business.

Deduction: expenditure: owner of improvement

(2) A person who owns the improvement is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person or by another person; and

(c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business, the income year being the income year of the person who owns the improvement; and

(d) it is incurred in developing the business; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Deduction: expenditure: non-owner of improvement

(3) A person who does not own the improvement is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person; and

(c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business; and

(d) it is incurred in developing the business; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Amount, and timing, of deduction

(4) The amount of the deduction is calculated using the formula—

schedule 20 percentage × diminished value.

Definition of items in formula

(5) In the formula,—

(a) **schedule 20 percentage** is the percentage set out opposite the description of the improvement in any of schedule 20, parts B to F:

(b) **diminished value** is the diminished value of the improvement.

Link with subpart DA

(6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand

Compare: 2004 No 35 s DO 6

DO 13 Improvement destroyed or made useless

When this section applies

(1) This section applies when, in an income year of a person,—

(a) the person carries on an aquacultural business in New Zealand—

(i) that meets the requirements of section DO 12(1)(b); and

(ii) for the purposes of which an improvement described in schedule 20 (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made; and

(b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income; and

(c) the person would be entitled for the income year to a deduction under section DO 12 for expenditure on the im-

provement if the improvement had not been destroyed or irreparably damaged and made useless; and

(d) the damage occurs in an income year that corresponds to the 2005–06 tax year or a later tax year; and

(e) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

Deduction: diminished value of expenditure

(2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement.

Link with subpart DA

(3) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, tax year

Compare: 2004 No 35 s DO 7

Subpart DP—Forestry expenditure

DP 1 Expenditure of forestry business

Deduction

(1) A person carrying on a forestry business on land in New Zealand is allowed a deduction for expenditure that they incur on—

(a) administrative overheads, rates, rent, insurance premiums, or other expenses of the same kinds:

(b) interest on money borrowed for the purposes of the business and employed as capital in the business:

(c) planting or maintaining trees on the land:

(d) applying fertiliser after the planting of the trees:

(e) disease control, pest control, or weed control (excluding releasing):

(f) repair or maintenance of plant, machinery, or equipment used by the person mainly in—

(i) planting or maintaining trees on the land; or

(ii) preparing or otherwise developing the land for the person's forestry operations:

(g) repair or maintenance of land improvements, other than trees, effected on the land and used by the person mainly in the business:

(h) the construction to or on the land of access tracks that are—

(i) constructed for a specific operational purpose; and

(ii) used for no longer than 12 months after construction:

(i) the cost of standing timber that is lost or destroyed.

Timing of deduction

(2) Although timber is revenue account property, a deduction for expenditure described in subsection (1) is not allocated under section EA 2(2) (Other revenue account property) but under section BD 4(2) (Allocation of deductions to particular income years).

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, forestry business, general limitation, general permission, interest, New Zealand, revenue account property, standing timber, timber

Compare: 2004 No 35 s DP 1

Section DP 1 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 2 Plant or machinery

When this section applies: first case

(1) This section applies when—

(a) a person incurs expenditure on acquiring, on or after 1 April 1975, plant or machinery; and

(b) the person first uses the plant or machinery on or after 1 April 1975; and

(c) the person uses the plant or machinery mainly in developing land in New Zealand for use in a forestry business to be carried on by them on the land.

When this section applies: second case

(2) This section also applies when—

(a) a person carrying on a forestry business on land in New Zealand incurs expenditure on acquiring, on or after 1 April 1975, plant or machinery; and

(b) the person first uses the plant or machinery on or after 1 April 1975; and

(c) the person uses the plant or machinery mainly in planting or maintaining trees on the land.

Deduction

(3) The person is allowed a deduction for an amount of depreciation loss for the plant or machinery.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: acquire, amount, business, capital limitation, deduction, depreciation loss, forestry business, general limitation, general permission, New Zealand

Compare: 2004 No 35 s DP 2

Section DP 2 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 3 Improvements to forestry land

When this section applies

(1) This section applies when—

(a) a person carries on a forestry business on land in New Zealand; and

(b) an improvement described in schedule 20, part G (Expenditure on farming, horticultural, aquacultural, and forestry improvements) has been made to the land.

Deduction: expenditure: owner of land

(2) A person who owns the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person or by another person; and

(c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which

the person disposes of the land, the income year being the income year of the person who owns the land; and

(d) it is incurred in developing the land; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Deduction: expenditure: non-owner of land

(3) A person who does not own the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person; and

(c) it is incurred in the 1995–96 income year or in a later income year, not including the income year in which the person ceases to carry on the business on the land; and

(d) it is incurred in developing the land; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Amount, and timing, of deduction

(4) The amount of the deduction is calculated using the formula—

schedule 20 percentage × diminished value.

Definition of items in formula

(5) In the formula,—

(a) **schedule 20 percentage** is the percentage set out opposite the description of the improvement in schedule 20, part G:

(b) **diminished value** is the diminished value of the improvement.

Link with subpart DA

(6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, diminished value, forestry business, general limitation, general permission, income year, New Zealand, own

Compare: 2004 No 35 s DP 3

Section DP 3 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 4 Improvement destroyed or made useless

When this section applies

(1) This section applies when, in an income year of a person,—

(a) the person operates a forestry business on land, to which there has been made an improvement; and

(b) the improvement is destroyed or irreparably damaged and made useless for the purpose of deriving income—

(i) in an income year that corresponds to the 2005–06 tax year or a later tax year; and

(ii) other than as a result of the action or failure to act of the person, an agent of the person, or an associated person; and

(c) the person would be entitled for the income year to a deduction under section DP 3 for expenditure on the improvement if the improvement had not been destroyed or made useless.

Deduction: diminished value of expenditure

(2) The person is allowed a deduction of the amount of the diminished value, for the income year, of the expenditure on the improvement.

Link with subpart DA

(3) This section overrides the general permission and the capital limitation. The other general limitations still apply.

Defined in this Act: business, capital limitation, deduction, diminished value, forestry business, general limitation, general permission, income, income year, tax year

Compare: 2004 No 35 s DP 3B

Section DP 4 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 5 Forestry encouragement agreement: deductions

When this section applies

(1) This section applies when a person makes a forestry encouragement agreement under the Forestry Encouragement Act 1962.

Deduction: forestry expenditure under agreement

(2) The person is allowed a deduction for expenditure that they incur if all the following apply to the expenditure:

(a) it is expenditure incurred in planting or maintaining trees under the agreement; and

(b) it is not expenditure for which an advance has been or is to be made under the agreement; and

(c) it is not expenditure represented in a payment made to the person under the Forestry Encouragement Grants Regulations 1983 and incurred in—

(i) planting or maintaining trees; or

(ii) meeting administrative overheads, rates, rent, insurance premiums, or other expenses of the same kinds; or

(iii) paying interest on money borrowed for the purpose of developing the trees and employed as capital in developing the trees.

Deduction: advance

(3) The person is allowed a deduction for expenditure that they incur in—

(a) making a payment of interest for an advance made under the agreement:

(b) making a payment reducing the principal of an advance made under the agreement.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, interest, pay

Compare: 2004 No 35 s DP 4

DP 6 Forestry encouragement agreement: no deduction

No deduction

(1) A person who has made a forestry encouragement agreement under the Forestry Encouragement Act 1962 is denied a deduction for an amount equal to the amount from which they are relieved in the following circumstances:

(a) an advance is made to the person under the agreement; and

(b) the advance is exempt income of the person under section CW 2 (Forestry encouragement agreements); and

(c) the person is later relieved from some or all of their liability to repay the principal.

Link with subpart DA

(2) This section overrides the general permission.

Defined in this Act: amount, deduction, exempt income, general permission, pay

Compare: 2004 No 35 s DP 5

DP 7 Land contouring: no deduction

No deduction

(1) A person who derives income under section CB 24 (Disposal of timber or right to take timber) or CB 25 (Disposal of land with standing timber) is denied a deduction for expenditure that they incur on land contouring in the course of deriving the income.

Link with subpart DA

(2) This section overrides the general permission.

Defined in this Act: deduction, general permission, income

Compare: 2004 No 35 s DP 6

DP 8 Forestry business on land bought from the Crown, Maori owners, or holding company: no deduction

No deduction: forestry company

(1) A forestry company is denied a deduction for interest to which both the following apply:

(a) it is paid by the company under a qualifying debenture issued by the company; and

(b) it is exempt income of the person deriving it, under section CW 3 (Forestry companies and Maori investment companies).

No deduction: Maori investment company

(2) A Maori investment company is denied a deduction for interest to which both the following apply:

(a) it is paid by the company under a qualifying debenture issued by the company; and

(b) it is exempt income of the person deriving it, under section CW 3.

Relationship with sections FA 2 and FA 2B

(3) Section FA 2 (Recharacterisation of certain debentures), as it applies to substituting debentures, and section FA 2B (Stapled debt securities) do not apply to a qualifying debenture.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: business, deduction, exempt income, forestry business, forestry company, general permission, holding company, interest, Maori investment company, Maori owners, pay, qualifying debenture, substituting debenture

Compare: 2004 No 35 s DP 7

Section DP 8(3) heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 93(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DP 8(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 93(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DP 8 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 9 Cost of acquiring timber: forestry business on land bought from the Crown, Maori owners, or holding company

When this section applies

(1) This section applies when a forestry company buys land with standing timber on it from a seller who is the Crown, the Maori owners, or a holding company of the forestry company.

Sellers of Maori land

(2) For the purposes of subsection (1),—

(a) land sold to the forestry company by the Maori Trustee or by a trustee for a Maori owner is treated as if it had been sold by the beneficial owners:

(b) land sold to the forestry company by a Maori incorporation is treated as if it had been sold by the members of the incorporation.

Cost of acquiring timber

(3) The cost to the forestry company of acquiring the timber is the lesser of—

(a) the cost of the timber to the seller at the date of the sale; and

(b) the amount described in section CB 25(3) (Disposal of land with standing timber).

Defined in this Act: business, forestry business, forestry company, holding company, Maori incorporation, Maori owners, standing timber, trustee

Compare: 2004 No 35 s DP 8

Section DP 9 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 9B Treaty of Waitangi claim settlements: rights to take timber

When this section applies

(1) This section applies when a person's right to take timber (the **old right**) has been extinguished, and new rights (the **new rights**) to take timber are granted to the person in place of the old right, if section CW 1B (Treaty of Waitangi claim settlements: rights to take timber) applied to exempt income for the extinguishing of the old right.

Cost of acquiring new rights

(2) The person who is granted the new rights is treated, for each new right, as having acquired the new right for a cost equal to the expenditure they incurred in relation to the old right, but only to the extent that the expenditure relates to the land covered by the new right and has not been deducted previously.

Defined in this Act: exempt income, land, person, right to take timber

Section DP 9B: inserted (with effect on 1 April 2008), on 29 August 2011, by section 17 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

DP 10 Cost of acquiring timber or right to take timber: other cases

Acquiring land with standing timber

(1) For a person acquiring land with standing timber on it in a disposal to which section CB 25 (Disposal of land with standing timber) applies, the cost of acquiring the timber is the amount that is, under CB 25, income of the person disposing of the land.

Recharacterisation or avoidance

(2) For a person acquiring timber or a right to take timber in a disposal or distribution to which section EB 24, FB 6, FB 7, GC 1, or GC 2 (which relate to the disposal of trading stock) applies, the cost of acquiring the timber or the cost of acquiring a right to take timber is the amount treated as—

(a) the price paid or realised under section EB 24 (Apportionment on disposal of business assets that include trading stock); or

(b) the consideration under sections FB 6 and FB 7 (which relate to the disposal of timber under a relationship agreement); or

(c) the price realised under section GC 1 (Disposals of trading stock at below market value); or

(d) the price realised under section GC 2 (Disposals of timber rights or standing timber).

Transfers between associated persons

(3) Subsections (4) and (5) apply if—

(a) a person (the **transferor**) disposes of timber, a right to take timber, or standing timber, to an associated person (the **transferee**); and

(b) as a result, the transferor has an amount of income under section CB 24 or CB 25 (which relate to income from timber).

Limit on deduction for transferor

(4) The deduction that the transferor is allowed for the cost of the timber, right to take timber, or standing timber must not be more than the amount of the income.

Transferee's deduction

(5) The deduction that the transferee is allowed for the cost of acquiring the timber is calculated on the basis that the transferee acquired the timber for the total of—

(a) the cost to the transferee of acquiring the timber; and

(b) the amount, if any, for which the transferor is denied a deduction under subsection (4).

Defined in this Act: amount, associated person, dispose, income, pay, right to take timber, standing timber, timber

Compare: 2004 No 35 ss DP 9, GD 15

Section DP 10(5): amended (with effect on 1 April 2008), on 7 December 2009, by section 14(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DP 11 Cost of timber

When this section applies

(1) This section applies when a person—

(a) derives an amount on the disposal of timber and the amount is income of the person under section CB 24 (Disposal of timber or right to take timber) or CB 25 (Disposal of land with standing timber); and

(b) has incurred expenditure in relation to the timber that is a cost of timber.

Deduction

(2) The person is allowed a deduction for the amount that is a cost of timber.

Timing of deduction

(3) The deduction is allocated—

(a) for timber harvested from the land before the time of disposal, to the income year in which the timber first becomes trading stock of the person; or

(b) otherwise, by section EA 2 (Other revenue account property).

Meaning of timber

(4) In this section, **timber** includes—

(a) the creation or grant of a right to take timber:

(b) the grant of a licence or an easement in relation to timber:

(c) the creation of a forestry right as defined in section 2 of the Forestry Rights Registration Act 1983, other than a right in favour of the proprietor in relation to establishing, maintaining, and harvesting timber.

(4B) Subsection (2) does not apply if the amount of income of the person under section CB 24 would be exempt income under section CW 1B (Treaty of Waitangi claim settlements: rights to take timber) but for section CW 1B(3).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, cost of timber, deduction, dispose, exempt income, general permission, income, income year, timber trading stock

Section DP 11: substituted (with effect on 1 April 2008), on 7 December 2009, by section 15(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DP 11(4): inserted (with effect on 1 April 2008), on 29 August 2011, by section 18(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DP 11 list of defined terms **exempt income**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 18(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DP 11 list of defined terms **income**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 18(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Subpart DQ—Income equalisation schemes and environmental restoration accounts schemes

DQ 1 Main income equalisation scheme

Deduction

(1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in section EH 7(2) (Deduction of deposit).

Timing of deduction

(2) The deduction is allocated to the income year corresponding to the tax year described in section EH 7(3).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, deposit, general limitation, general permission, income year, main income equalisation scheme, person, supplement, tax year

Compare: 2004 No 35 s DQ 1

DQ 2 Adverse event income equalisation scheme

Deduction

(1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in section EH 41(2) (Deduction of deposit).

Timing of deduction

(2) The deduction is allocated to the income year corresponding to the tax year described in section EH 41(3).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: adverse event income equalisation scheme, amount, capital limitation, deduction, deposit, general limitation, general permission, income year, person, supplement, tax year

Compare: 2004 No 35 s DQ 2

DQ 3 Thinning operations income equalisation scheme

Deduction

(1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in section EH 67(2) (Deduction of deposit).

Timing of deduction

(2) The deduction is allocated to the income year corresponding to the tax year described in section EH 67(3).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, deposit, general limitation, general permission, income year, person, supplement, tax year, thinning operations income equalisation scheme

Compare: 2004 No 35 s DQ 3

DQ 4 Environmental restoration accounts scheme

Deduction for payment

(1) A person is allowed a deduction of the amount set out in section EK 7 (Deduction for payment) if the person has made a payment for an income year to the Commissioner under section EK 2 (Persons who may make payment to environmental

restoration account) and the amount is not refunded under section EK 9 (Refund of payment if excess, lacking details).

Timing of deduction

(2) The deduction under subsection (1) is allocated to the income year referred to in section EK 7.

Deduction for transfer

(3) A person is allowed a deduction for an income year of the amount set out in section EK 8 (Deduction for transfer) if in an income year the person receives—

(a) a transfer under section EK 15 (Transfer on request) that is treated under section EK 15(3) as being a payment by the person:

(b) a transfer under section EK 16(3)(b) (Transfer on death, bankruptcy, or liquidation):

(c) a transfer under section EK 19 (Environmental restoration account of amalgamating company).

Timing of deduction

(4) A deduction under subsection (3) is allocated to the income year referred to in section EK 8.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, pay, supplement

Compare: 2004 No 35 s DQ 4

Subpart DR—Life insurance business expenditure

DR 1 Policyholder base allowable deduction of life insurer

Deduction

(1) If, but for this section, a life insurer has an amount of policyholder base allowable deduction for an income year and that amount is neither a deduction under this Part nor denied as a deduction under this Part, the amount is a deduction of the life insurer for the income year.

No cross-deducting: section EY 2

(2) A policyholder base allowable deduction is not allowed against shareholder base income. Section EY 2 (Policyholder base) deals with allowing policyholder base allowable deductions against policyholder base income, and deals with deductions that relate to the life insurer's schedular income derived by their life fund PIE that is a multi-rate PIE.

Link with subpart DA

(3) Subsections (1) and (2) override the general permission.

Defined in this Act: amount, deduction, general permission, income year, life fund PIE, life insurer, multi-rate PIE, policyholder base allowable deduction, policyholder base income, shareholder base income

Section DR 1: substituted, on 1 July 2010, by section 94(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DR 2 Shareholder base allowable deduction of life insurer

Deduction

(1) If, but for this section, a life insurer has an amount of shareholder base allowable deduction for an income year and that amount is neither a deduction under this Part nor denied as a deduction under this Part, the amount is a deduction of the life insurer for the income year.

No cross-deducting

(2) A shareholder base allowable deduction is not allowed against policyholder base income.

Link with subpart DA

(3) Subsections (1) and (2) override the general permission.

Defined in this Act: amount, deduction, general permission, income year, life insurer, policyholder base income, shareholder base allowable deduction

Section DR 2: substituted, on 1 July 2010, by section 94(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DR 3 Life reinsurance outside New Zealand

No deduction

A life insurer is denied a deduction for life reinsurance premiums they incur if the relevant life reinsurance policy,—

(a) was not offered in New Zealand:

(b) was not entered into in New Zealand.

Defined in this Act: amount, deduction, general permission, income year, life insurer, life reinsurance, life reinsurance policy, New Zealand

Section DR 3: substituted, on 1 July 2010, by section 94(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DR 4 Life insurers' claims reserves

No deduction on account of claims

(1) For a life insurer's life insurance policies, the life insurer is denied a deduction relating to the life insurer's outstanding claims or for a claim's expenditure or loss for an income year, except as provided by—

(a) section EY 24 (Outstanding claims reserving amount: non-participation policies not annuities):

(b) subsection (2).

Deduction for payments of current claims

(2) The life insurer is allowed a deduction for the amount of expenditure or loss of a claim paid under a life insurance policy for the income year.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: claim, deduction, general limitation, general permission, life insurance policy, life insurer

Section DR 4: added, on 1 July 2010, by section 94(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart DS—Film industry expenditure

DS 1 Acquiring film rights

Deduction

(1) A person is allowed a deduction for expenditure that they incur in acquiring a film right, if the film is completed, whether it is completed before, at the time, or after the film right is acquired.

Exclusion

(2) This section does not apply to expenditure that a person incurs in acquiring a film right if—

(a) the person operates a television station, a television network, or a cable television system, and the film right is acquired mainly to enable the film to be broadcast in New Zealand; or

(b) the film is intended to be shown as an advertisement; or

(c) the expenditure is film production expenditure; or

(d) section DS 2B applies to the expenditure.

Timing of deduction

(3) The deduction is allocated under section EJ 4 (Expenditure incurred in acquiring film rights in feature films) or EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films).

No other deduction

(4) No other deduction for expenditure incurred in acquiring a film right is allowed under a provision of this Act other than section DS 2B.

Avoidance arrangements

(5) The amount of the deduction may be reduced under—

(a) section GB 17 (Excessive amounts for film rights or production expenditure):

(b) section GB 18 (Arrangements to acquire film rights or incur production expenditure).

Link with subpart DA

(6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: arrangement, capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, New Zealand

Compare: 2004 No 35 s DS 1

Section DS 1(2): substituted (with effect on 1 April 2008), on 7 December 2009, by section 16(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section DS 1(2) first paragraph (c): amended, on 1 April 2008, by section 345(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DS 1(2) second paragraph (c): added, on 1 April 2008, by section 345(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DS 1(4): amended, on 1 April 2008, by section 345(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

DS 2 Film production expenditure

Deduction

(1) A person is allowed a deduction for film production expenditure if—

(a) the film is completed; and

(b) the person has a film right in it—

(i) before it is completed:

(ii) at the time it is completed:

(iii) after it is completed.

Inclusions

(2) For the purposes of subsection (1),—

(a) if a person (**person A**) reimburses another person (**person B**) for film production expenditure that person B incurs, and does it before the film is completed, the reimbursement is treated as film production expenditure incurred by person A; and

(b) if a person (**person A**) reimburses another person (**person B**) for expenditure on interest incurred by person B in producing the film, person A may treat the reimbursement as film production expenditure incurred by person A.

Exclusion

(3) This section does not apply to film production expenditure if the film—

(a) is produced mainly for broadcast in New Zealand by a person who operates a television station, a television network, or a cable television system:

(b) is intended to be shown as an advertisement:

(c) section DS 2B applies to the film production expenditure.

Timing of deduction

(4) The deduction is allocated under—

(a) section EJ 4 or EJ 5 (which relate to expenditure incurred in acquiring film rights) if the film is one for which a large budget film grant is made; or

(b) section EJ 7 or EJ 8 (which relate to film production expenditure) if the film is not one for which a large budget film grant is made.

No other deduction

(5) No other deduction for film production expenditure is allowed under a provision of this Act other than section DS 2B.

Avoidance arrangements

(6) The amount of the deduction may be reduced or the timing of the deduction may be delayed under—

(a) section GB 17 (Excessive amounts for film rights or production expenditure):

(b) section GB 18 (Arrangements to acquire film rights or incur production expenditure):

(c) section GB 19 (When film production expenditure payments delayed or contingent).

Link with subpart DA

(7) The link between this section and subpart DA (General rules) is as follows:

(a) it overrides the capital limitation; and

(b) the other general limitations still apply; and

(c) either—

(i) the general permission must be satisfied; or

(ii) a provision that supplements the general permission must be satisfied.

Defined in this Act: arrangement, capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, large budget film grant, New Zealand, pay, supplement

Compare: 2004 No 35 s DS 2

Section DS 2(3) heading: substituted, on 1 April 2008, by section 346(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DS 2(3): substituted, on 1 April 2008, by section 346(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DS 2(4) heading: substituted, on 1 January 2010, by section 95(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 2(4): substituted, on 1 January 2010, by section 95(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 2(4)(a): amended (with effect on 1 January 2010), on 7 September 2010, by section 23(1)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DS 2(4)(b): amended (with effect on 1 January 2010), on 7 September 2010, by section 23(1)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DS 2(5): amended, on 1 April 2008, by section 346(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DS 2 list of defined terms **government screen production payment**: repealed (with effect on 1 January 2010), on 7 September 2010, by section 23(2)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DS 2 list of defined terms **government screen production payment**: inserted, on 1 January 2010, by section 95(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 2 list of defined terms **large budget film grant**: inserted (with effect on 1 January 2010), on 7 September 2010, by section 23(2)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DS 2 list of defined terms **large budget screen production grant**: repealed, on 1 January 2010, by section 95(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DS 2B Expenditure when film or film right intended for disposal

When this section applies

(1) This section applies when—

(a) a person incurs film production expenditure or expenditure in acquiring a film right; and

(b) at the time of incurring the expenditure, the person intends to dispose of the film or film right.

Deduction

(2) The person is allowed a deduction for the amount of the expenditure allocated under section EA 2 (Other revenue account property).

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, film, film production expenditure, film right, general limitation, general permission

Compare: 2004 No 35 s DS 2B

Section DB 2B: inserted, on 1 April 2008, by section 347 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

DS 3 Clawback of deductions for film reimbursement schemes

Reduction of deductions

(1) A person who disposes of property under a film reimbursement scheme must use the formula in subsection (3) to reduce—

(a) the total deductions that they have been allowed for the disposal under the scheme under section DS 1 or DS 2; or

(b) the total deductions that they would be allowed for the disposal under the scheme under section DS 1 or DS 2 in the absence of this section.

Order of reduction

(2) Deductions must be reduced in the same order as they have been allowed or would be allowed.

Formula

(3) The total deductions must be reduced to an amount equal to the greater of zero and the amount calculated using the formula—

total deductions – total consideration.

Definition of items in formula

(4) In the formula,—

(a) **total deductions** is the total amount of deductions that—

(i) the person has been allowed under section DS 1 or DS 2; or

(ii) the person would be allowed under section DS 1 or DS 2 in the absence of this section:

(b) **total consideration** is the total amount of consideration for the disposal of the property that the person derives and that is not film income.

Application of Tax Administration Act 1994

(5) Section 44A of the Tax Administration Act 1994 applies to a person to whom this section applies.

Amendment of assessment

(6) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section.

Exclusion

(7) This section does not apply to a deduction for expenditure excluded under section DZ 11 (Film reimbursement scheme on or before 30 June 2001).

Defined in this Act: amount, assessment, Commissioner, deduction, film income, film reimbursement scheme, time bar

Compare: 2004 No 35 s DS 3

DS 4 Meaning of film reimbursement scheme

Meaning

(1)

Film reimbursement scheme means an arrangement to which subsections (2) to (4) apply.

Deduction allowed

(2) The first requirement for a film reimbursement scheme is that it is a scheme under which a person may incur expenditure for which they are allowed a deduction under—

(a) section DS 1 or DS 2, or would be allowed a deduction in the absence of section DS 3:

(b) subpart DA (General rules), if the expenditure is for—

(i) a film right:

(ii) a right to an amount that is dependent on or calculated by reference to income from the rental, sale, use, or other exploitation of a film.

Disposal of property

(3) The second requirement for a film reimbursement scheme is that 1 of the following applies:

(a) it enables the person or an associated person to dispose of property; or

(b) it gives a right to the person or an associated person to dispose of property; or

(c) it gives a right, the right creates an obligation for the person or an associated person, and the person or the associated person may meet the obligation by disposing of property.

Consideration not film income

(4) The third requirement for a film reimbursement scheme is that it is a scheme under which some or all of the consideration for the property would not be film income.

Associated persons

(5) For the purposes of subsection (3), a shareholder in a loss-attributing qualifying company and the company are associated persons, in addition to the associated persons described in subpart YB (Associated persons and nominees).

Defined in this Act: amount, arrangement, associated person, deduction, film income, film reimbursement scheme, film right, income, loss-attributing qualifying company, shareholder

Compare: 2004 No 35 s DS 4

Section DS 4(5): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 96(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 96(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 96(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4 list of defined terms **1973 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 96(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 96(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4 list of defined terms **1988 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 96(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 96(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DS 4 list of defined terms **1990 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 96(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart DT—Petroleum mining expenditure

Petroleum exploration expenditure

DT 1A Ring-fenced allocations

When this section applies

(1) This section applies to an amount of a person's deductions for expenditure and loss for an income year to the extent to which it is—

(a) petroleum exploration expenditure:

(b) petroleum development expenditure:

(c) residual expenditure.

Basis for allocation of deductions

(2) If, but for this subsection, an amount that relates to petroleum mining operations undertaken outside New Zealand would be allocated to an income year (the **current year**), including an amount carried forward and allocated to the current year, the amount that is allocated to the current year is no more than the amount of the person's income derived for the current year from all petroleum mining operations undertaken outside New Zealand.

Excess allocations: carried forward and re-instated next year

(3) Any excess not allocated to the current year because of subsection (2) is carried forward and treated as—

(a) relating to petroleum mining operations undertaken outside New Zealand for the next income year; and

(b) allocated to that next income year.

Restriction on reinstating excess allocations

(4) Despite subsection (3), the excess is not allocated to the next income year, and no deduction is allowed or allocated to any income year for the excess, if sections IA 5 and IP 3 (which relate to the carrying forward of tax losses for companies) would not have allowed the excess to be carried forward to that next income year in a loss balance, treating the excess as a tax loss component arising on the last day of the current year.

Defined in this Act: deduction, income year, loss balance, New Zealand, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operation, residual expenditure, tax loss component

Section DT 1A: inserted (with effect on 1 April 2008), on 6 October 2009, by section 97(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DT 1 Petroleum exploration expenditure

Deduction

(1) A person is allowed a deduction for petroleum exploration expenditure incurred by them.

Relationship with section DT 2

(2) This section is overridden by section DT 2.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, petroleum exploration expenditure, supplement

Compare: 2004 No 35 s DT 1

DT 2 Arrangement for petroleum exploration expenditure and sale of property

What this section applies to

(1) This section applies to a person and an arrangement if—

- (a) the person may incur expenditure under the arrangement and would be allowed a deduction for the expenditure under section DT 1; and
- (b) the person or a person associated with them may dispose of property—
  - (i) under the arrangement; or
  - (ii) under a right given by the arrangement to the person or the associated person; or
  - (iii) in meeting an obligation of the person or the associated person arising from a right given by the arrangement; and
- (c) the property is not—
  - (i) exploratory material; or
  - (ii) a petroleum permit; or
  - (iii) material or a permit that relates to petroleum mining operations undertaken outside New Zealand, and that material or permit are substantially the same as those described in subparagraphs (i) or

(ii), with necessary modifications made to this subpart and the Crown Minerals Act 1991.

Amount of deduction

(2) The person is allowed a deduction in an income year for the expenditure described in subsection (1)(a) but only to the extent of an amount equal to the greater of zero and the amount calculated using the formula—

expenditure – (consideration – lesser amount).

Exclusion

(3) If consideration for the property is derived in an income year, the person's deductions in earlier income years for the expenditure described in subsection (1)(a) are reduced so that the total of those deductions is equal to the greater of zero and the amount calculated using the formula—

previous expenditure – consideration.

Definition of items in formulas

(4) In the formulas in subsections (2) and (3),—

(a) **expenditure** is the amount of expenditure for which the person would be allowed a deduction in the income year under section DT 1(1):

(b) **consideration** is the total consideration for the property that is derived before or during the income year:

(c) **lesser amount** is the lesser of—

(i) the amount of consideration; and

(ii) the amount of expenditure for which a person would be allowed a deduction in earlier income years under section DT 1(1):

(d) **previous expenditure** is the amount of expenditure for which a person would be allowed a deduction in earlier income years under section DT 1(1).

Order of reduction

(5) When an adjustment under subsection (3) is being made, deductions are treated as denied in the same order in time as they would have been allowed under section DT 1(1).

Application of Tax Administration Act 1994

(6) Section 44A of the Tax Administration Act 1994 applies to a person to whom this section applies.

Amendment of assessment

(7) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section.

Relationship with section DT 1

(8) This section overrides section DT 1.

Link with subpart DA

(9) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, arrangement, assessment, associated person, Commissioner, consideration, deduction, dispose, exploration permit, exploratory material, income year, petroleum, petroleum exploration expenditure, prospecting permit, supplement, time bar

Compare: 2004 No 35 s DT 2

Section DT 2(1)(b): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 98(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2(1)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 98(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2(1)(c)(ii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 98(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2(1)(c)(iii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 98(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 98(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2 list of defined terms **1973 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 98(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 98(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2 list of defined terms **1988 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 98(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 98(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 2 list of defined terms **1990 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 98(4) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DT 3 Acquisition of privileges and permits

The consideration that a person pays to acquire an existing privilege, a prospecting permit for petroleum, or an exploration permit for petroleum from a petroleum miner is treated as petroleum exploration expenditure incurred in the income year in which the petroleum miner disposes of the privilege or permit to the person.

Defined in this Act: consideration, dispose, existing privilege, exploration permit, income year, pay, petroleum exploration expenditure, petroleum miner, prospecting permit

Compare: 2004 No 35 s DT 3

DT 4 Acquisition of exploratory material

The consideration that a person pays to acquire exploratory material from a petroleum miner is treated as petroleum exploration expenditure incurred in the income year in which the petroleum miner disposes of the material to the person.

Defined in this Act: consideration, dispose, exploratory material, income year, pay, petroleum exploration expenditure, petroleum miner

Compare: 2004 No 35 s DT 4

Petroleum development expenditure

DT 5 Petroleum development expenditure

Deduction

(1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them.

Timing of deduction

(2) For an income year, an amount of the deduction is allocated to that year, as provided by—

(a) section EJ 12 (Petroleum development expenditure: default allocation rule); or

(b) section EJ 12B (Petroleum development expenditure: reserve depletion method).

Relationship with section DZ 3

(3) This section is overridden by section DZ 3 (Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991).

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, petroleum development expenditure, petroleum miner, supplement

Compare: 2004 No 35 s DT 5

Section DT 5(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 99(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 5(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 99(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 5(2) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 99(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DT 5(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 99(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DT 6 Expenditure on petroleum mining assets

Expenditure that a person incurs in buying a petroleum mining asset is treated as petroleum development expenditure if, at the time the asset is bought,—

(a) petroleum is produced in commercial quantities on a continuing basis under a petroleum permit that is the one being bought; or

(b) petroleum is produced in commercial quantities on a continuing basis under a petroleum permit that applies to the permit area in which an asset of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset) is to be used; or

(c) an application for a petroleum mining permit for the permit area has been made by a person entitled under section 32(3) of the Crown Minerals Act 1991.

Defined in this Act: permit area, petroleum, petroleum development expenditure, petroleum mining asset, petroleum permit

Compare: 2004 No 35 s DT 6

DT 7 Exploratory well expenditure

When this section applies

(1) This section applies when—

(a) a petroleum miner incurs exploratory well expenditure; and

(b) the miner then uses the exploratory well for the commercial production of petroleum; and

(c) the exploratory well expenditure is then treated, under section CT 3 (Exploratory well used for commercial production), as income of the miner.

Treatment of expenditure

(2) An amount equal to the amount that is treated as income is treated as petroleum development expenditure incurred by the petroleum miner in the income year in which commercial production from the well starts.

Defined in this Act: amount, commercial production, exploratory well expenditure, income, income year, petroleum, petroleum development expenditure, petroleum miner

Compare: 2004 No 35 s DT 7

DT 8 Acquisition of certain petroleum mining assets

The consideration that a person pays to acquire a petroleum mining asset, other than an existing privilege, a prospecting permit for petroleum, or an exploration permit for petroleum, from a petroleum miner is treated as petroleum development expenditure incurred in the income year in which the petroleum miner disposes of the petroleum mining asset to the person.

Defined in this Act: consideration, dispose, existing privilege, exploration permit, income year, pay, petroleum, petroleum development expenditure, petroleum miner, petroleum mining asset, prospecting permit

Compare: 2004 No 35 s DT 8

DT 9 Disposal of petroleum mining asset to associate

When this section applies

(1) This section applies when—

(a) a petroleum miner disposes of a petroleum mining asset to—

(i) a person associated with the miner; or

(ii) a person who holds the asset for the miner; or

(iii) a person who holds the asset for a person associated with the miner; and

(b) section EJ 16(2) (Disposal of petroleum mining asset to associate) prevents the miner from taking the full amount of a deduction allocated under section EJ 15 (Disposal of petroleum mining asset) to the income year in which the miner disposes of the asset.

No deduction

(2) The miner is denied a deduction for the amount that section EJ 16(2) prevents from being allocated to the income year in which the miner disposes of the asset.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: amount, associated person, deduction, dispose, general permission, income year, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s DT 9

Section DT 9(1)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 19(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DT 9(2): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 19(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

DT 10 Disposal of petroleum mining asset outside association

When this section applies

(1) This section applies when—

(a) a petroleum miner disposes of a petroleum mining asset to a person described in subsection (2) (**person A**); and

(b) person A disposes of the asset to a person described in subsection (3) (**person B**).

Person A

(2) For the purposes of subsection (1)(a), the persons are—

(a) an associated person of the miner; or

(b) a person who holds the asset for the miner; or

(c) a person who holds the asset for an associated person of the miner.

Person B

(3) For the purposes of subsection (1)(b), the persons are—

(a) a person not associated with the miner; or
(b) a person who does not hold the asset for the miner; or
(c) a person who does not hold the asset for a person associated with the miner.

Deduction

(4) Person A is allowed a deduction.

Amount of deduction

(5) The amount of the deduction is the amount for which the petroleum miner is denied a deduction under section DT 9.

Timing of deduction

(6) The deduction is allocated to the income year in which person A disposes of the asset.

Link with subpart DA

(7) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, associated person, capital limitation, deduction, dispose, general limitation, general permission, income year, petroleum miner, petroleum mining asset, supplement

Compare: 2004 No 35 s DT 10

DT 11 Association ending

When this section applies

(1) This section applies when—
(a) a petroleum miner disposes of a petroleum mining asset to a person (**person A**) who is—
(i) an associated person of the miner; or
(ii) a person who holds the asset for an associated person of the miner; or
(iii) a person who holds the asset for the miner; and
(b) while person A holds the asset,—
(i) the association between the miner and the associated person ends; or
(ii) the association between the miner and the person who holds the asset for the miner ends.

Exclusion

(2) This section does not apply when the petroleum miner and the other party to the association end their association—

(a) for the purpose of the miner being allowed a deduction under this section; or

(b) for various purposes, 1 of which is, as a more than merely incidental purpose, the miner being allowed a deduction under this section.

Deduction

(3) The petroleum miner is allowed a deduction.

Amount of deduction

(4) The amount of the deduction is the amount for which the petroleum miner is denied a deduction under section DT 9.

Timing of deduction

(5) The deduction is allocated to the income year in which the association ends.

Link with subpart DA

(6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, associated person, capital limitation, deduction, dispose, general limitation, general permission, income year, petroleum miner, petroleum mining asset, supplement

Compare: 2004 No 35 s DT 11

Other expenditure

DT 12 Damage to assets

Deduction

(1) A petroleum miner is allowed a deduction for the cost of repairing a damaged asset of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset).

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, petroleum miner, supplement

Compare: 2004 No 35 s DT 12

DT 13 Disposal of ownership interests in controlled petroleum mining entities

No deduction

(1) A person who disposes of shares or trust interests in a controlled petroleum mining entity is denied a deduction for their cost.

Application of Tax Administration Act 1994

(2) Section 65 of the Tax Administration Act 1994 applies when this section applies.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: controlled petroleum mining entity, deduction, dispose, share

Compare: 2004 No 35 s DT 13

DT 14 Farm-out arrangements

When this section applies

(1) This section applies when a farm-in party under a farm-out arrangement incurs farm-in expenditure that, if it were incurred by the farm-out party, would be petroleum development expenditure, exploratory well expenditure, or prospecting expenditure.

Treatment of farm-in expenditure

(2) The farm-in expenditure is treated as if it were petroleum development expenditure, exploratory well expenditure, or prospecting expenditure, as applicable.

Deduction

(3) The farm-in party is allowed a deduction for the farm-in expenditure that is incurred under the farm-out arrangement on or after 16 December 1991.

Relationship with section DZ 5

(4) Farm-in expenditure that is incurred before 16 December 1991 is dealt with in section DZ 5 (Farm-out arrangements for petroleum mining before 16 December 1991).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, exploratory well expenditure, farm-in expenditure, farm-in party, farm-out arrangement, general limitation, general permission, petroleum development expenditure, prospecting expenditure, supplement

Compare: 2004 No 35 s DT 14

DT 15 Persons associated with petroleum miner

When this section applies

(1) This section applies to a person associated with a petroleum miner when—

- (a) the petroleum miner has some or all of an existing privilege; and
- (b) the associated person—
  - (i) undertakes petroleum mining operations in the licence area of the existing privilege; and
  - (ii) does so under an arrangement for reward; and
  - (iii) when doing so is not a petroleum miner in relation to the petroleum mining operations.

Deduction

(2) The associated person is allowed a deduction for expenditure or loss that they incur in the petroleum mining operations described in subsection (1).

Amount of deduction

(3) The amount of the deduction is limited to the extent of the amount of income that they derive from the petroleum mining operations.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, arrangement, associated person, deduction, existing privilege, general permission, income, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s DT 15

DT 16 Removal or restoration operations

Deduction

(1) A petroleum miner is allowed a deduction for expenditure that they incur on removal or restoration operations.

Timing of deduction

(2) The deduction is allocated to the income year in which the expenditure is incurred.

Relationship with section EA 2

(3) This section overrides section EA 2 (Other revenue account property).

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, petroleum miner, removal or restoration operations, supplement

Compare: 2004 No 35 s DT 16

General provisions

DT 17 Attribution of expenditure

Petroleum mining permit

(1) A deduction for expenditure incurred to acquire a petroleum permit is attributable to the permit area of the petroleum permit.

Other assets

(2) A deduction for expenditure incurred to acquire an asset of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset) is attributable to—

(a) the asset; and

(b) the permit area to which the asset relates.

Relationship with this subpart and sections GB 20 and IS 5

(3) This section applies for the purposes of this subpart, sections GB 20 (Arrangements involving petroleum mining) and IS 5 (Petroleum miners' tax losses), and section 91 of the Tax Administration Act 1994.

Defined in this Act: permit area, petroleum permit

Compare: 2004 No 35 s DT 17

DT 18 Replacement permits

In this subpart, a reference to a petroleum permit includes a reference to a replacement permit. All expenditure incurred, deductions allowed, and petroleum mining assets that are attributable to the petroleum permit are attributable to the replacement permit.

Defined in this Act: deduction, petroleum mining asset, petroleum permit, replacement permit

Compare: 2004 No 35 s DT 18

DT 19 Partnership interests and disposal of part of asset

In this subpart, unless the context requires otherwise,—

(a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their interest in the income of the partnership:

(b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: dispose, income, petroleum permit

Compare: 2004 No 35 s DT 19

DT 20 Petroleum mining operations outside New Zealand

This subpart applies, with any necessary modifications, to a petroleum miner undertaking petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by this subpart.

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s DT 20

Subpart DU—Mineral mining expenditure

DU 1 Mining exploration expenditure and mining development expenditure

Deduction

(1) A mining company is allowed a deduction for mining exploration expenditure and mining development expenditure that it incurs.

Amount of deduction

(2) The amount of the deduction is the amount determined under section DU 2.

Mining expenditure

(3) The amount of the expenditure for which the company is allowed a deduction must be taken into account in the **mining expenditure** item of the formula in section DU 7(5).

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, mining company, mining development expenditure, mining exploration expenditure, supplement

Compare: 2004 No 35 s DU 1

DU 2 Mining exploration expenditure or mining development expenditure on acquisition of asset

What this section does

(1) This section applies when a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure. It describes the consideration that the mining company is treated as giving for the asset and the consideration that the person who disposes of the asset to the mining company is treated as receiving for it.

Consideration in various cases

(2) The consideration is,—

(a) in a case other than a case described in any of subsections (3) to (6), the consideration that the company incurs for the acquisition of the asset:

(b) in the case described in subsection (3), the consideration specified in the subsection for the acquisition of the asset:

(c) in the case described in subsection (4), the consideration specified in the subsection for the acquisition of the asset:

(d) in the case described in subsection (5), the consideration specified in subsection (6) for the acquisition of the asset.

Consideration other than in cash

(3) If some or all of the consideration for the acquisition is other than in cash, and the acquisition is not from an associated person, the consideration that is not in cash has the value agreed between the mining company and the person from whom the asset is acquired. If the mining company and the person do not agree, or if the Commissioner considers that the value agreed is unreasonable, the consideration that is not in cash has the value that the Commissioner decides.

Acquisition from associated person

(4) If the acquisition is from an associated person, the consideration for the acquisition is the market value that the asset has on the date of the acquisition.

Amount specified by parties to acquisition

(5) Subsection (6) applies when—

(a) the mining company acquires the asset for use in carrying on their mining operations or associated mining operations; and

(b) the mining company and the person from whom the asset is acquired give notice to the Commissioner that they have agreed to apply subsection (6); and

(c) the notice is given to the Commissioner within 1 of the following times:

(i) the time in which the mining company is required to file a return of income for the income year in which it acquires the asset; or

(ii) a longer time allowed by the Commissioner; and

(d) the notice specifies an amount that—

(i) is no more than the market value that the asset has at the date of the acquisition; and

(ii) is no less than the amount of any part of the consideration that is in cash.

Amount specified in notice

(6) The consideration for the acquisition is the amount that the mining company and the person specify in the notice.

Defined in this Act: amount, associated mining operations, associated person, Commissioner, income year, mining company, mining development expend-

iture, mining exploration expenditure, mining operations, notice, return of income

Compare: 2004 No 35 s DU 2

Section DU 2(2)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 17(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

DU 3 Replacing or repairing asset

When subsections (2) to (4) apply

(1) Subsections (2) to (4) apply when—

(a) a mining company complies with section CU 6(2) (Compensation and scrap payment: use to replace or repair asset); and

(b) the company incurs expenditure in replacing or repairing the asset; and

(c) the company has an excess amount because the expenditure is more than the total of—

(i) the amount of insurance, indemnity, or compensation paid; and

(ii) the amount, if any, payable to the company for the disposal of any scrap of the asset.

Deduction

(2) The company is allowed a deduction for the excess.

Mining expenditure

(3) The excess amount must be taken into account in the **mining expenditure** item of the formula in section DU 7(5).

No other deduction

(4) No other deduction for expenditure incurred in the circumstances described in subsection (1) is allowed under any other provision of this Act.

When subsections (7) and (8) apply

(5) Subsections (7) and (8) apply when—

(a) a mining company complies with section CU 6(2); and

(b) the Commissioner considers a period to be a reasonable period within which to complete the replacement or repair; and

(c) the company incurs expenditure in replacing or repairing the asset after the last day of the period; and

(d) the company has an excess amount because the expenditure is more than the total of the following:
  (i) the amount of compensation paid; and
  (ii) the amount, if any, payable to the company for the disposal of any scrap of the asset.

Deduction

(6) The company is allowed a deduction for the excess.

Limitation on calculation of excess amount

(7) The expenditure incurred after the last day of the period must not be taken into account to determine the existence or amount of an excess amount for the purposes of subsection (1)(c).

Mining expenditure

(8) The expenditure incurred after the last day of the period must be taken into account in the **mining expenditure** item of the formula in section DU 7(5).

Link with subpart DA

(9) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, Commissioner, deduction, general limitation, general permission, mining company, pay, supplement

Compare: 2004 No 35 s DU 3

DU 4 Income appropriated to expenditure

When this section applies

(1) This section applies when—
  (a) a mining company appropriates an amount of income to mining exploration expenditure or mining development expenditure; and
  (b) the company makes the appropriation within 2 months after the end of an income year or in a longer time allowed by the Commissioner; and
  (c) the amount that the company appropriates is no more than its net income in the income year, calculated as if this section did not exist.

Deduction

(2) The company is allowed a deduction for the part of the amount to which both the following apply:

(a) it is not spent in the income year to which the appropriation relates; and

(b) it will be, or is likely to be, used as mining exploration expenditure or mining development expenditure before the end of the second income year following the income year to which the appropriation relates.

Timing of deduction

(3) The deduction for the part of the amount is allocated to the income year to which the appropriation relates.

Mining expenditure

(4) The part of the amount to which subsection (2)(a) and (b) apply must be taken into account in the **mining expenditure** item of the formula in section DU 7(5).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, Commissioner, deduction, general limitation, general permission, income, income year, mining company, mining development expenditure, mining exploration expenditure, net income, supplement

Compare: 2004 No 35 s DU 4

DU 5 Non-mining asset used to derive income from mining

When this section applies

(1) This section applies when—

(a) a mining company starts to use, or starts again to use, an asset to derive income from mining; and

(b) immediately before that, the company used the asset to derive income other than income from mining.

Adjustment

(2) The Commissioner may make an adjustment to any deduction of the mining company for the asset for the income year, as between the part of the income year in which the company used the asset to derive income from mining and the part of the income year in which the company did not use the asset to derive income from mining.

Commissioner to consider

(3) The adjustment must be of a kind that the Commissioner considers equitable, having regard to—

(a) any deduction for an amount of depreciation loss that the company has been allowed; and

(b) any other deduction that the company has been allowed for the cost of the asset; and

(c) any other matters that the Commissioner considers relevant.

Defined in this Act: amount, Commissioner, deduction, depreciation loss, income, income from mining, income year, mining company

Compare: 2004 No 35 s DU 5

DU 6 Depreciation

When this section applies: first case

(1) This section applies when—

(a) a mining company acquires an asset by incurring—

(i) mining exploration expenditure or mining development expenditure; or

(ii) the exploration expenditure or development expenditure referred to in section DZ 12(2)(a) (Mineral mining: 1954–2005); and

(b) the company is allowed a deduction for the expenditure; and

(c) the company uses the asset, wholly or mainly, to derive income from mining.

When this section applies: second case

(2) This section also applies when—

(a) a mining company complies with section CU 6(2) (Compensation and scrap payment: use to replace or repair asset); and

(b) the company incurs expenditure in replacing or repairing the asset; and

(c) the company is allowed a deduction for the expenditure; and

(d) the company uses the asset, wholly or mainly, to derive income from mining.

No deduction (with exception)

(3) The company is denied a deduction for an amount of depreciation loss for the asset from the time when it uses the asset wholly or mainly to derive income from mining until the time, if any, when it uses the asset wholly or mainly to derive income other than income from mining.

Amount of depreciation loss

(4) The asset has the value described in section CU 10(2) (Mining asset used to derive income other than income from mining) for the purpose of calculating the amount of depreciation loss that the company has for its use of the asset wholly or mainly to derive income other than income from mining.

Link with subpart DA

(5) Subsections (1) to (3) override the general permission.

Defined in this Act: acquire, amount, deduction, depreciation loss, general permission, income, income from mining, mining company, mining development expenditure, mining exploration expenditure, pay

Compare: 2004 No 35 s DU 6

DU 7 Limit on deduction

Limit

(1) When a mining company has a mining outgoing excess, there is a limit on the deduction that it is allowed in the income year for the amount taken into account in the **mining expenditure** item of the formula in subsection (5).

Amount of deduction

(2) The limit is the lesser of—

(a) two-thirds of the mining outgoing excess; and

(b) the greater of zero and the amount calculated using the formula—

non-mining income – non-mining expenditure.

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **non-mining income** is the income other than income from mining of the mining company allocated to the income year:

(b) **non-mining expenditure** is all the expenditure or loss that the mining company incurs in the income year re-

lating to deriving non-mining income and for which it is allowed a deduction that is allocated to the income year.

Meaning of mining outgoing excess

(4) **Mining outgoing excess** means the greater of zero and the amount that a mining company calculates for an income year using the formula—

mining expenditure – income from mining.

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **mining expenditure** is an amount consisting of—

(i) all the expenditure or loss that the mining company incurs in the income year relating to deriving income from mining and for which it would be allowed a deduction that would be allocated to the income year; and

(ii) any part of an amount described in section DU 4(4):

(b) **income from mining** is the income from mining of the mining company allocated to the income year.

Defined in this Act: amount, deduction, income, income from mining, income year, mining company, mining outgoing excess

Compare: 2004 No 35 s DU 7

DU 8 Meaning of asset for sections DU 1 to DU 7

Mining company's share or interest in asset

(1) Sections DU 1 to DU 7 apply to a share or interest that a mining company has in an asset—

(a) to the extent to which the mining company acquired the share or interest by incurring—

(i) mining exploration expenditure or mining development expenditure:

(ii) the exploration expenditure or development expenditure referred to in section DZ 12(2)(a) (Mineral mining: 1954–2005); and

(b) to the extent to which the mining company uses the share or interest for the purpose of deriving income from mining.

Partner's share or interest in asset

[Repealed]

(2) *[Repealed]*

Replaced or repaired asset

(3) For the purposes of sections DU 1 to DU 7,—

(a) an asset that a mining company acquires by incurring expenditure in replacing or repairing the asset is the same asset as the one that was lost, destroyed, or damaged; and

(b) part of an asset that a mining company acquires by incurring expenditure in repairing the asset is part of the asset that was damaged.

Defined in this Act: asset, income from mining, mining company, mining development expenditure, mining exploration expenditure

Compare: 2004 No 35 s DU 8

Section DU 8(2) heading: repealed, on 1 April 2008, pursuant to section 12(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section DU 8(2): repealed, on 1 April 2008, by section 12(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

DU 9 Application of sections to resident mining operators

Sections of this subpart applying to resident mining operators

(1) Sections DU 1 to DU 3, and DU 5 to DU 7 apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies.

Additional modification of section DU 6

(2) For the purposes of subsection (1), section DU 6(1)(a)(ii) applies as described in section DZ 12(2)(b) (Mineral mining: 1954–2005).

Application of section DU 7

(3) When a resident mining operator has a mining outgoing excess, the total of deductions that it is allowed in the income year for expenditure or loss taken into account in the **mining expenditure** item of the formula in section DU 7(5) is no more than the lesser of—

(a) the total amount of the expenditure and loss; and

(b) the prescribed amount for the income year.

Meaning of prescribed amount

(4)

Prescribed amount means 50% of the amount by which the income that the resident mining operator derives in an income year, other than from its mining operations or associated mining operations, is more than the total of the expenditure and losses, for which it is allowed deductions, that it incurs in the income year in deriving the income.

Relationship with sections IA 2 to IA 5 and IS 2

(5) Expenditure or loss of a resident mining operator for which it would be allowed a deduction in an income year in the absence of subsection (3) is a tax loss component of the operator in the income year for the purposes of sections IA 2 to IA 5 and IS 2 (which relate to the use of tax losses).

Defined in this Act: amount, associated mining operations, deduction, income, income year, loss, mining company, mining operations, mining outgoing excess, prescribed amount, resident mining operator, tax loss component

Compare: 2004 No 35 s DU 9

DU 10 Application of sections to non-resident mining operators

Sections of this subpart and subpart IS applying to non-resident mining operators

(1) Sections DU 1 to DU 6 and IS 1, IS 3, and IS 4 (which relate to the use of tax losses by mining companies) apply, with any necessary modifications, to non-resident mining operators as if non-resident mining operators were mining companies, income from mining were income from a mining venture, mining operations were mining ventures, and associated mining operations were mining ventures.

Application of section DU 1

(2) Section DU 1 applies with the additional modification that subsection (2) is omitted.

Application of section DU 3

(3) Section DU 3 applies with the additional modification that subsections (3) and (6) are omitted.

Application of section DU 4

(4) Section DU 4 applies with the additional modification that subsection (4) is omitted.

Additional modification of section DU 6

(5) For the purposes of subsection (1), section DU 6(1)(a)(ii) applies as described in section DZ 12(2)(b) (Mineral mining: 1954–2005).

Defined in this Act: associated mining operations, income, income from mining, mining company, mining operations, mining venture, non-resident mining operator

Compare: 2004 No 35 s DU 10

DU 11 Disposal of mining shares by company

Deduction

(1) When a company disposes of a mining share, the company is allowed a deduction for the cost of the share to it.

Amount of deduction

(2) The cost of the share to the company is the difference between the following 2 sums:

(a) the total of—

(i) the consideration that the company gave to acquire the share; and

(ii) any capital the company contributed later for the share:

(b) the total of—

(i) any reinvestment profit of the company included in the consideration that the company gave; and

(ii) any reinvestment profit of the company included in the capital that the company contributed.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, company, deduction, general limitation, general permission, mining share, reinvestment profit

Compare: 2004 No 35 s DU 11

DU 12 Amount written off by holding company

Deduction

(1) A holding company of a mining company is allowed a deduction for an amount written off a loan it made to the mining company.

Exclusions

(2) The following are not included within the words "an amount written off a loan it made to the mining company" in subsection (1):

(a) an amount of interest that the holding company writes off; or

(b) an amount of a loan to the extent to which a mining holding company makes the loan from its reinvestment profit; or

(c) an amount of a loan made on or after 1 October 1978 to the extent to which the loan—

(i) is made to obtain an unfair advantage for tax purposes; and

(ii) is excessive, having regard to previous loans made by the holding company and any other circumstances.

Amount of deduction

(3) The deduction is no more than the lesser of—

(a) 50% of the amount that, in the absence of this section, would be the net income of the holding company in the income year in which the amount is written off; and

(b) the prescribed proportion of the total amount of mining exploration expenditure and mining development expenditure incurred by the mining company before the end of the income year in which the amount referred to in subsection (1) is written off, reduced by the total amount of deductions the holding company is allowed under this section in all income years before the income year in which that amount is written off.

Timing of deduction

(4) The deduction for the amount written off is allocated to the income year in which the amount is written off.

Reduction of amount

(5) The amount calculated under subsection (3) is reduced in the circumstances described in section DZ 12(4) (Mineral mining: 1954–2005).

Link with subpart DA

(6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, general limitation, general permission, holding company, income year, interest, loan, mining company, mining development expenditure, mining exploration expenditure, net income, prescribed proportion, reinvestment profit, supplement, tax

Compare: 2004 No 35 s DU 12

Section DU 12(3)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 101(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DU 12(3)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 101(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart DV—Expenditure specific to certain entities

Superannuation funds

DV 1 Publicising superannuation funds

When this section applies

(1) This section applies when a superannuation fund incurs expenditure to which all the following apply:

(a) it is incurred in developing, marketing, selling, promoting, or advertising the fund; and

(b) it is not incurred in acquiring a building, equipment, land, machinery, or plant; and

(c) it is assessable income of the recipient.

Deduction

(2) The superannuation fund is allowed a deduction for the expenditure.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation and the exempt income limitation. The other general limitations still apply.

Defined in this Act: assessable income, capital limitation, deduction, exempt income limitation, general limitation, general permission, superannuation fund, supplement

Compare: 2004 No 35 s DV 1

DV 2 Transfer of expenditure to master fund

When this section applies

(1) This section applies when—

(a) a superannuation fund (the **member superannuation fund**) invests some or all of its funds in another superannuation fund (the **master superannuation fund**); and

(b) while the member superannuation fund has funds invested in the master superannuation fund, the member superannuation fund incurs expenditure of a kind described in subsection (2).

Expenditure on publicising or managing

(2) The expenditure is expenditure to which all the following apply:

(a) it is incurred—

(i) in developing, marketing, selling, promoting, or advertising the fund; or

(ii) in managing the fund; and

(b) it is not incurred in acquiring a building, equipment, land, machinery, or plant; and

(c) it is assessable income of the recipient.

When expenditure becomes master superannuation fund's

(3) The member superannuation fund may choose to treat some or all of the expenditure as expenditure incurred by the master superannuation fund in deriving assessable income.

How election made

(4) The member superannuation fund makes the election by giving notice to the Commissioner within 1 of the following times:

(a) the time in which its return of income must be filed under section 37 of the Tax Administration Act 1994; or

(b) a longer time allowed by the Commissioner.

Effect of election

(5) When the member superannuation fund makes an election, subsections (6) to (9) apply to the part or the whole, as chosen, of the expenditure.

When expenditure incurred

(6) The expenditure is treated as being incurred by the master superannuation fund as follows:

(a) for a master fund that is a multi-rate PIE, in the income year in which the expenditure is transferred by the member superannuation fund; or

(b) for other master funds, in the same income year as that in which it was incurred by the member superannuation fund.

Deduction allowed to master superannuation fund

(7) The master superannuation fund is allowed a deduction for the expenditure. The amount of the deduction is limited by subsection (8).

Amount of deduction

(8) The formula in section DV 3 is used to calculate the maximum deduction that the master superannuation fund is allowed for expenditure of the member superannuation fund treated as being incurred by the master superannuation fund.

Amount of deduction when master fund is portfolio tax rate entity

(8B) Despite subsection (8), a master superannuation fund that is a multi-rate PIE is allowed a deduction for expenditure transferred to it by a member superannuation fund. However, the maximum amount transferred must be no more than the member fund's share of the taxable income of the PIE for the income year in which the amount is transferred, any excess being treated as not transferred.

Deducted expenditure not incurred by member superannuation fund

(9) The expenditure for which the master superannuation fund is allowed a deduction is treated as not being incurred by the member superannuation fund.

Link with subpart DA

(10) The link between this section and subpart DA (General rules) is as follows:

(a) for subsection (7),—

(i) it supplements the general permission:

(ii) it overrides the capital limitation and the exempt income limitation:

(iii) the other general limitations still apply:

(b) subsection (9) overrides the general permission.

Defined in this Act: amount, assessable income, capital limitation, Commissioner, deduction, exempt income limitation, general limitation, general permission, income year, multi-rate PIE, notice, return of income, superannuation fund, supplement

Compare: 2004 No 35 s DV 2

Section DV 2(6): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 102(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2(6): substituted (with effect on 1 April 2008), on 6 October 2009, by section 102(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2(8B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 102(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2(8B): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 102(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2(8B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 102(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2 list of defined terms **investor interest**: repealed (with effect on 1 April 2010), on 21 December 2010, by section 43 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section DV 2 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 102(6)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2 list of defined terms **portfolio investor interest**: repealed, on 1 April 2010, by section 102(6)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2 list of defined terms **portfolio investor interest**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 102(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 102(6)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 2 list of defined terms **portfolio tax rate entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 102(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DV 3 Formula for calculating maximum deduction

Formula

(1) The formula referred to in section DV 2(8) is—

taxable income − non-resident passive income.

Definition of items in formula

(2) The items in the formula are defined in subsections (3) and (4).

Taxable income

(3) **Taxable income** is the amount that would be the master superannuation fund's taxable income in the tax year in which the expenditure is incurred in the absence of sections DV 2 to DV 4.

Non-resident passive income

(4) **Non-resident passive income** is the total of any amounts of non-resident passive income of any of the kinds to which section RF 2(5) (Non-resident passive income) applies derived by the master superannuation fund in the corresponding income year in which the expenditure is incurred.

Defined in this Act: amount, corresponding income year, deduction, non-resident passive income, superannuation fund, tax year, taxable income

Compare: 2004 No 35 s DV 3

DV 4 Carry forward of expenditure

When this section applies

(1) This section applies when—

(a) the expenditure treated as being incurred by the master superannuation fund, under section DV 2(3), is more than the maximum amount for which it is allowed a deduction, as calculated under DV 3, so there is surplus expenditure; and

(b) the member superannuation fund chooses to deal with the surplus expenditure under this section, rather than deducting it itself; and

(c) the member superannuation fund has funds invested in the master superannuation fund at the time referred to in section DV 2(1)(b) and while its election under section DV 2(3) continues and while it deals with the surplus expenditure under this section.

What this section does not apply to

(1B) This section does not apply to a transfer of expenditure to a master superannuation fund that is a multi-rate PIE.

KiwiSaver schemes

[Repealed]

(2) *[Repealed]*

Surplus carried forward

(3) The member superannuation fund carries the surplus expenditure forward to the next income year and takes the following steps:

(a) it gets the combined expenditure by adding the surplus expenditure to the expenditure, if any, incurred by it in the income year that it chooses to treat as being incurred by the master superannuation fund:

(b) it calculates the maximum deduction for the income year, using the formula in section DV 3:

(c) if the combined expenditure is the same as or less than the maximum deduction, it—

(i) treats the surplus expenditure as expenditure incurred by the master superannuation fund in deriving assessable income in the income year; and

(ii) applies subsections (5) to (8):

(d) if the combined expenditure is more than the maximum deduction, it—

(i) carries forward the new surplus expenditure to the next income year; and

(ii) applies subsection (4).

Surplus dealt with until gone

(4) The member superannuation fund repeats the steps in subsection (3) for the following income years until all surplus expenditure is deducted.

Deduction allowed to master superannuation fund

(5) Expenditure treated under subsection (3)(c)(i) as incurred by the master superannuation fund in deriving income is allowed as a deduction in the income year in which it is so treated. The amount of the deduction is limited by subsection (6).

Amount of deduction

(6) The maximum amount of a deduction under subsection (5) is the maximum deduction for the income year, calculated using the formula in section DV 3.

Deducted expenditure not incurred by member superannuation fund

(7) Expenditure for which the master superannuation fund is allowed a deduction is treated as not being incurred by the member superannuation fund.

Sequential deductions

(8) Expenditure for which the master superannuation fund is allowed a deduction must be deducted in sequence according to the income year in which the member superannuation fund incurred it.

Link with subpart DA

(9) The link between this section and subpart DA (General rules) is as follows:

(a) subsection (5) supplements the general permission and overrides the capital limitation; the other general limitations still apply:

(b) subsection (7) overrides the general permission.

Defined in this Act: amount, assessable income, capital limitation, deduction, general limitation, general permission, income, income year, KiwiSaver scheme, multi-rate PIE, superannuation fund, superannuation scheme, supplement

Compare: 2004 No 35 s DV 4

Section DV 4(1B) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 103(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4(1B): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 103(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4(2) heading: repealed, on 1 May 2011, by section 56 of the Kiwisaver Amendment Act 2011 (2011 No 8).

Section DV 4(2): repealed, on 1 May 2011, by section 56 of the Kiwisaver Amendment Act 2011 (2011 No 8).

Section DV 4 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 103(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 103(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4 list of defined terms **portfolio tax rate entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 103(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DV 4B Carry forward of expenditure by member funds investing in portfolio investment entities

When this section applies

(1) This section applies when—

(a) a master fund that is a multi-rate PIE has a deduction under section DV 2(8B) for an income year for expenditure transferred to it by a member fund; and

(b) the amount of the expenditure that meets the tests set out in section DV 2(2) is more than the amount transferred for the income year, so there is surplus expenditure for the member fund.

Member fund carrying expenditure forward

(2) The member fund may carry forward the surplus expenditure for transfer under section DV 2(8B) in a later income year.

Expenditure as loss balance

(3) If the member fund carries forward surplus expenditure in an income year, the member fund may treat some or all of the expenditure as a loss balance for the corresponding tax year.

Defined in this Act: amount, deduction, income year, loss balance, master fund, multi-rate PIE, tax year

Section DV 4B: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 4B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 104(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Other entities

DV 5 Investment funds: transfer of expenditure to master funds

When this section applies

(1) This section applies when—

(a) a group investment fund that derives category A income, a public unit trust, or a superannuation fund (the **member fund**) invests some or all of its funds in a master fund; and

(b) while the member fund has funds invested in the master fund, the member fund incurs expenditure of a kind described in subsection (2); and

(c) the member fund has some or all of its funds invested in the master fund throughout the period starting at the time at which the member fund incurs the expenditure and ending with the close of the last day of the income year in which the expenditure is deducted by the master fund under this section.

Expenditure described

(2) The expenditure is expenditure for which the member fund is allowed a deduction,—

(a) including expenditure on a financial arrangement that is denominated in New Zealand dollars and for which expenditure is allocated using the yield to maturity method set out in subpart EW (Financial arrangements rules); and

(b) not including—

(i) expenditure on any other financial arrangement; or

(ii) expenditure on revenue account property.

When expenditure becomes master fund's

(3) The expenditure incurred by the member fund may be transferred to the master fund, subject to the following conditions:

(a) the member fund and the master fund must agree to the transfer of the expenditure; and

(b) the member fund may transfer expenditure only to the extent to which it has a tax loss in the corresponding tax year, with the tax loss calculated as if this section did not exist; and

(c) a member fund that is a group investment fund that derives category A income may transfer only expenditure that relates to the category A income.

Income year in which investment stops

(4) In an income year in which the member fund stops investing in the master fund,—

(a) neither the master fund nor the member fund is allowed a deduction for expenditure that would otherwise be transferable; and

(b) the member fund must treat the expenditure as a loss balance.

When expenditure incurred

(5) The expenditure referred to in subsection (3) is treated as being incurred by the master fund in the income year in which it is transferred by the member fund.

Deduction allowed to master fund

(6) The master fund is allowed a deduction for the expenditure, subject to the following conditions:

(a) a master fund that is a group investment fund that derives category A income may deduct expenditure only from its category A income; and

(b) the amount of the deduction is limited by subsection (7).

Amount of deduction

(7) The formula in section DV 6 is used to calculate the maximum deduction that the master fund is allowed for expenditure of the member fund treated as being incurred by the master fund.

Amount of deduction when master fund is multi-rate PIE

(7B) Despite subsection (7), a master fund that is a multi-rate PIE is allowed a deduction for expenditure transferred to it by a member fund. However, the maximum amount transferred must be no more than the member fund's share of the taxable income of the PIE for the income year in which the amount is transferred, any excess being treated as not transferred.

Additional transfer

(8) If, after the date on which the master fund has filed its return of income, the master fund is able to deduct more than the amount actually deducted, the Commissioner may allow the member

fund to transfer expenditure to the extent of the difference after the return of income has been filed.

Deducted expenditure not incurred by member fund

(9) The expenditure for which the master fund is allowed a deduction is treated as not being incurred by the member fund.

Link with subpart DA

(10) The link between this section and subpart DA (General rules) is as follows:

(a) subsection (6) supplements the general permission and overrides the capital limitation; the other general limitations still apply:

(b) subsection (9) overrides the general permission.

Defined in this Act: amount, capital limitation, category A income, Commissioner, deduction, financial arrangement, general limitation, general permission, group investment fund, income year, loss balance, master fund, multi-rate PIE, public unit trust, return of income, revenue account property, superannuation fund, supplement, tax loss, tax year

Compare: 2004 No 35 s DV 5

Section DV 5(7B) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 105(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5(7B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 105(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5(7B): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 105(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5(7B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 105(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5 list of defined terms **investor interest**: repealed (with effect on 1 April 2010), on 21 December 2010, by section 44 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section DV 5 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 105(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5 list of defined terms **portfolio investor interest**: repealed, on 1 April 2010, by section 105(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5 list of defined terms **portfolio investor interest**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 105(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 105(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 5 list of defined terms **portfolio tax rate entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 105(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DV 6 Formula for calculating maximum deduction

Formula used to calculate maximum deduction

(1) The formula referred to in section DV 5(7) is—

taxable income − non-resident passive income.

Definition of items in formula

(2) The items in the formula are defined in subsections (3) and (4).

Taxable income

(3) **Taxable income** is the amount that would be the master fund's taxable income in the tax year in which the expenditure is transferred in the absence of sections DV 5 to DV 7.

Non-resident passive income

(4) **Non-resident passive income** is the total of any amounts of non-resident passive income of any of the kinds to which section RF 2(5) (Non-resident passive income) applies derived by the master fund in the corresponding income year in which the expenditure is incurred.

Multi-rate PIEs

(5) This section does not apply to an amount of expenditure transferred to a master fund that is a multi-rate PIE.

Defined in this Act: amount, corresponding income year, deduction, master fund, multi-rate PIE, non-resident passive income, taxable income

Compare: 2004 No 35 s DV 6

Section DV 6(5) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 106(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 6(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 106(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 6(5): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 106(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 6(5): added (with effect on 1 April 2008), on 6 October 2009, by section 106(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 6 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 106(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 6 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 106(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 6 list of defined terms **portfolio tax rate entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 106(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DV 7 Carry forward of expenditure

When this section applies

(1) This section applies when a member superannuation fund incurs expenditure that is more than—

(a) the member fund and master fund agree can be transferred; or

(b) the maximum amount that can be transferred.

Member fund carrying expenditure forward

(1B) The member fund may carry forward the expenditure for transfer in a later income year.

Expenditure as loss balance

(2) If the member fund carries forward expenditure in an income year, the member fund may treat some or all of the expenditure as a loss balance for the corresponding tax year.

Defined in this Act: income year, loss balance, master fund, tax year

Compare: 2004 No 35 s DV 7

Section DV 7(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by 107(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 7(1): substituted (with effect on 1 April 2008), on 6 October 2009, by 107(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 7(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by 107(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 7(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by 107(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DV 8 Non-profit organisations

When this section applies

(1) This section applies when an incorporated or unincorporated organisation—

(a) does not have the purpose of making a profit for a proprietor, member, or shareholder; and

(b) has a constitution that prohibits a distribution of property in any form to a member, proprietor, or shareholder.

Amount of deduction

(2) The organisation is allowed a deduction for the lesser of—

(a) $1,000; and

(b) the amount that would be the organisation's net income in the absence of this section.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, net income, shareholder, supplement

Compare: 2004 No 35 s DV 8

DV 9 Trusts

No deduction

(1) A person who derives beneficiary income is denied a deduction for expenditure or loss that a trustee incurs in deriving the income.

Trustee income

(2) For the purpose of determining the deductions that a trustee is allowed in an income year, beneficiary income of beneficiaries of the trust in the income year is treated as trustee income.

Link with subpart DA

(3) The link between this section and subpart DA (General rules) is as follows:

(a) subsection (1) overrides the general permission:

(b) subsection (2) supplements the general permission; the general limitations still apply.

Defined in this Act: beneficiary income, deduction, general limitation, general permission, income year, supplement, trustee, trustee income

Compare: 2004 No 35 s DV 9

DV 10 Building societies

Deduction

(1) A building society is allowed a deduction for—

(a) expenditure incurred on money borrowed by way of withdrawable shares:

(b) interest and other financial charges incurred in providing money that is used to provide an interest-free loan to a person who holds a terminating share:

(c) an amount incurred in purchasing a balloted loan right from a person who holds a terminating share.

Timing of deduction

(2) The deduction for the amount referred to in subsection (1)(c) is allocated to the income year in which the amount is paid.

Meaning of balloted loan right

(3) In this section, **balloted loan right** means a right arising from a ballot that—

(a) is held by or for a building society; and

(b) is of terminating shares; and

(c) is held for the purpose of finding out which of the holders of the shares are entitled to receive an interest-free loan relating to their shares.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and other general limitations still apply.

Defined in this Act: amount, balloted loan right, building society, capital limitation, deduction, general limitation, general permission, income year, pay, terminating share, withdrawable share

Compare: 2004 No 35 s DV 10

DV 11 Distribution to member of co-operative company, excluded from being dividend

Deduction

(1) A co-operative company, or a company owned by a co-operative company, is allowed a deduction for a distribution made for an income year to a member of the co-operative company if an amount of the distribution is excluded by section CD 34B

(Distributions to members of co-operative companies) from being a dividend.

Amount of deduction

(2) The amount of the deduction is the amount of the distribution that is excluded by section CD 34B from being a dividend.

Timing of deduction

(3) The deduction is allocated to the income year to which the distribution relates.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: company, co-operative company, deduction, general permission, general limitation, income year, shareholder

Compare: 2004 No 35 s DV 10B

Section DV 11(1): amended (with effect on 1 April 2010), on 7 September 2010, by section 24(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DV 11(2): amended (with effect on 1 April 2010), on 7 September 2010, by section 24(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DV 11(3): amended (with effect on 1 April 2010), on 7 September 2010, by section 24(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

DV 12 Maori authorities: donations

Deduction

(1) A Maori authority is allowed a deduction for—

(a) a donation that it makes to a Maori association, as defined in the Maori Community Development Act 1962, for the purposes of the Act:

(b) a charitable or other public benefit gift that it makes to a donee organisation.

Amount of deduction

(2) The deduction for the total of all donations and gifts made in an income year is limited to of the amount that would be the Maori authority's net income in the corresponding tax year in the absence of this section.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, charitable or other public benefit gift, deduction, donee organisation, general limitation, general permission, income year, Maori authority, net income, supplement, tax year

Compare: 2004 No 35 s DV 11

Section DV 12(1)(b): amended, on 6 January 2010, by section 108(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DV 12(1)(b): amended, on 1 April 2008, by section 348(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DV 12(2): amended, on 1 April 2008, by section 348(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section DV 12 list of defined terms **donee organisation**: inserted, on 6 January 2010, by section 108(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DV 13 Group companies

When this section applies

(1) This section applies when,—

(a) in an income year, a company (**company A**) that is part of a wholly-owned group of companies derives income under section CV 1 (Group companies); and

(b) no other provision of this Act allows company A a deduction for the expenditure it incurs in deriving the income; and

(c) if the wholly-owned group of companies were a single company, the single company would be allowed a deduction for the expenditure that company A incurs in deriving the income.

Amount, and timing, of deduction

(2) Company A is allowed a deduction for the expenditure in the income year in which the income is derived.

Link with subpart DA

(3) This section supplements the general permission and overrides the exempt income limitation. The other general limitations still apply.

Defined in this Act: company, deduction, exempt income limitation, general limitation, general permission, income, income year, supplement, wholly-owned group of companies

Compare: 2004 No 35 s DV 12

DV 14 Amalgamated company: expenditure on improvements for farming, horticultural, aquacultural, and forestry businesses

When this section applies

(1) This section applies when—

(a) an amalgamating company ends its existence on a resident's restricted amalgamation; and

(b) the amalgamated company acquires land or a business from the amalgamating company; and

(c) the amalgamating company would have been allowed a deduction under any of section DO 4, DO 5, DO 6, DO 12, or DP 3 (which relate to improvements and expenditure on land) for the land or business if the amalgamation had not occurred.

Deduction

(2) While the amalgamated company holds the land or carries on the business, it is allowed the deduction that the amalgamating company would have been allowed under section DO 4, DO 5, DO 6, DO 12, or DP 3.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amalgamated company, amalgamating company, business, deduction, general limitation, general permission, resident's restricted amalgamation, supplement

Compare: 2004 No 35 s DV 13

DV 15 Amalgamated companies: property passing on resident's restricted amalgamation

When this section applies

(1) This section results from sections FO 8 and FO 10 (which relate to resident's restricted amalgamations).

Deduction for bad debts or expenditure or loss

(2) On a resident's restricted amalgamation, an amalgamated company is allowed a deduction for an amount written off as bad, or an amount of expenditure or loss, including an amount of depreciation loss, incurred as a result of something that the amalgamating company did or did not do in the circumstances set out in section FO 8.

Depreciation loss for property transferred

(3) On a resident's restricted amalgamation, an amalgamating company is allowed a deduction for an amount of depreciation loss for property transferred to the amalgamated company for the period described in section FO 10(7).

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amalgamated company, amalgamating company, amount, deduction, depreciation loss, general permission, resident's restricted amalgamation

Compare: 2004 No 35 ss FE 3, FE 6A

DV 16 Consolidated groups: intra-group transactions

When this section applies

(1) This section applies in relation to a consolidated group of companies for the purposes of section FM 10 (Expenditure: intra-group transactions).

No deduction (with exception)

(2) A company that is a part of a consolidated group of companies is denied a deduction for expenditure or loss incurred through a payment or disposal to, or transaction or arrangement with, another group company, and a deduction would not be allowed for the expenditure or loss if the group were 1 company, except to the extent to which the expenditure or loss arises—

(a) from the company's acquisition of trading stock; or

(b) under sections FM 15 to FM 23 (which relate to accounting for particular property).

Other expenditure or loss

(3) A company that is part of a consolidated group is—

(a) allowed a deduction for expenditure or loss or an amount of depreciation loss:

(b) denied a deduction for expenditure or loss or amount of depreciation loss except to the extent to which the expenditure or loss is interest on money that the company has borrowed outside the consolidated group.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, arrangement, company, consolidated group, deduction, depreciation loss, general permission, interest, pay

Compare: 2004 No 35 s HB 2(1)(b), (d)

DV 17 Consolidated groups: expenditure or loss incurred by group companies

When this section applies

(1) This section results from sections FM 11 and FM 12 (which relate to expenditure or loss incurred by group companies).

Deduction allowed: nexus with income derivation

(2) To the extent set out in section FM 11, if the consolidated group would be allowed a deduction for an item of expenditure or loss as 1 company because of a nexus between the expenditure and the income or carrying on of a business by another group company, a company that is part of the consolidated group is allowed a deduction.

No deduction except for interest on money borrowed

(3) To the extent set out in section FM 12, if the consolidated group would be denied a deduction for an item of expenditure or loss as 1 company, a company that is part of the consolidated group is denied a deduction, except for an amount of expenditure or loss that is interest on money borrowed by the company from a group company in the circumstances described in that section.

Link with subpart DA

(4) Subsection (2) supplements the general permission, and the general limitations still apply. Subsection (3) overrides the general permission.

Defined in this Act: amount, arrangement, company, consolidated group, deduction, depreciation loss, general permission, loss, pay

Compare: 2004 No 35 s HB 2(1)(c)

DV 18 Statutory producer boards and co-operative companies

When this section applies

(1) This section applies for the purposes of sections OB 73 and OB 78 (which relate to imputation credits attached to cash distributions by statutory producer boards and co-operative companies) when a producer board or co-operative company chooses to treat a distribution as a dividend.

No deduction

(2) The producer board or co-operative company making the distribution is denied a deduction for the amount of the distribution.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: amount, co-operative company, deduction, general permission, imputation credit, statutory producer board

Compare: 2004 No 35 ss ME 30(2), ME 35(2)

DV 19 Association rebates

When this section applies

(1) This section applies when an association—

(a) enters into a mutual transaction with a member; and

(b) in relation to the transaction, pays an association rebate to a member.

Deduction

(2) The association is allowed a deduction for the lesser of—

(a) the amount described in subsection (4); or

(b) the amount calculated using the formula in subsection (5).

Allocation

(3) The deduction is allowed in the income year corresponding to the accounting year for which the association rebate is paid.

Amount paid

(4) The amount referred to in subsection (2)(a) is the total amount that the association pays as association rebates to members for those mutual transactions with members that arise in the income year and which the association takes into account in determining its net income or net loss. In the calculation of the total amount, it is irrelevant that the amount paid may be limited or reduced because a member of the association has a share or interest in the capital of the association.

Amount under formula

(5) The amount is calculated using the formula—

assessable income − (deductions + amount distributed).

Definition of items in formula

(6) In the formula,—

(a) **assessable income** is the total amount of the association's assessable income attributable to mutual transactions with members:

(b) **deductions** are the total deductions that the association is allowed, other than under this section, that are attributable to the assessable income referred to in paragraph (a):

(c) **amount distributed** is the total amount that the association distributes to members in the income year through a cash distribution for which a determination is made under section OB 82(1)(a) (When and how co-operative company makes election).

Statutory producer boards' deductions

(7) When an association is a statutory producer board that pays an association rebate to a member—

(a) the amount allowed as a deduction is the amount referred to in subsection (4):

(b) the board may choose whether the rebate is a deduction in the income year in which the amount is paid, or in the income year in which the mutual transaction giving rise to the amount is made.

Link with subpart DA

(8) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: accounting year, amount, assessable income, association, association rebate, capital limitation, deduction, general permission, imputation credit, income, income year, member, mutual transaction, net income, net loss, pay, share, statutory producer board

Compare: 2004 No 35 s HF 1(2), (3)(a), (b), (4)

Section DV 19(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 25(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DV 19(1)(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 20(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DV 19(3): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 25(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DV 19(4): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 20(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DV 19(6)(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 20(3)(a) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DV 19(6)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 20(3)(b) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section DV 19 list of defined terms **accounting year**: inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 25(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Partners and partnerships

Heading: inserted, on 1 April 2008, by section 10(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

DV 20 Partners

A person who is a partner is allowed a deduction for expenditure or loss to the extent to which the deduction results from the application of subpart HG (Joint venturers, partners, and partnerships) to them and their partnership.

Defined in this Act: amount, deduction, partner, partnership

Section DV 20: inserted, on 1 April 2008, by section 10(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

DV 21 Losses for QCs entering partnership regime

When this section applies

(1) This section applies to a person when,—

(a) for an income year, a person's partnership (the **partnership**) has effectively replaced a qualifying company or companies under a QCP transitional process; and

(b) ignoring the application of section HZ 4B(3) (Qualifying companies: transition into partnership), the company or companies would have had loss balances to carry forward to the first or second income year, as applicable, starting on or after 1 April 2011 (the **relevant transitional income year**).

Losses extinguished

(2) Despite section HZ 4B(3), for the relevant transitional income year and subsequent income years, a loss balance under Part I (Treatment of tax losses) is cancelled if the loss balance arose in relation to an income year before the relevant transitional income year.

Deduction

(3) The person is allowed a deduction for an amount equal to an amount given by the formula in subsection (4), to the extent to which it is equal to or less than the net income the person would have for the income year if they were treated as having only income and deductions arising from the application of subpart HG (Joint venturers, partners, and partnerships) for the partnership.

Deduction formula

(4) For the purposes of subsection (3), the amount is calculated using the formula—

(loss balance extinguished − subsequent deductions) × partnership share.

Definition of items in formula

(5) In the formula,—

(a) **loss balance extinguished** is the loss balance cancelled under subsection (2):

(b) **subsequent deductions** is the total amount of deductions allowed for previous income years under this section for all persons with a partnership share in the partnership:

(c) **partnership share** is the person's average partnership share for the partnership for the income year.

Exception

(6) Despite subsection (3), a person is not allowed a deduction for an amount in subsection (4) to the extent to which—

(a) it arises from an amount carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and

(b) it is greater than the maximum amount they may subtract from their net income under subpart IQ, treating the amount as an attributed CFC net loss or a FIF net loss carried forward under subpart IQ, and the person as having the net income they would have for the income year if they were treated as having only income and deductions arising from the application of subpart HG for the partnership.

Link with subpart DA

(7) This section overrides the general permission and the general limitations.

Defined in this Act: amount, attributed CFC net loss, company, deduction, FIF net loss, general limitation, general permission, income, income year, loss balance, net income, partnership, partnership share, QCP transitional process, qualifying company

Section DV 21: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 45(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Look-through companies

Heading: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 45(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

DV 22 Owners of look-through companies

A person who has an effective look-through interest for a look-through company has a deduction to the extent to which a

deduction results from the application of subpart HB (Look-through companies) to them and the look-through company.

Defined in this Act: deduction, effective look-through interest, look-through company

Section DV 22: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 45(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

DV 23 Losses for QCs entering look-through companies rules

When this section applies

(1) This section applies to a person who has an effective look-through interest for a look-through company (the **LTC**) for an income year when—

(a) the LTC was a qualifying company that first becomes a look-through company for the first or second income year that starts on or after 1 April 2011; and

(b) but for becoming a look-through company and the application of section HB 3 (Loss balances extinguished), there would have been a loss balance to carry forward to the first or second income year that starts on or after 1 April 2011 (the **relevant transitional income year**).

Deduction

(2) The person is allowed a deduction for an amount equal to an amount given by the formula in subsection (3), to the extent to which it is equal to or less than the net income the person would have for the income year if they were treated as having only income and deductions arising from the application of subpart HB (Look-through companies) for the LTC.

Deduction formula

(3) For the purposes of subsection (2), the amount is calculated using the formula—

(loss balance extinguished − subsequent deductions) × effective interest.

Definition of items in formula

(4) In the formula,—

(a) **loss balance extinguished** is the loss balance that would have been carried forward to the relevant transitional income year:

(b) **subsequent deductions** is the total amount of deductions allowed for previous income years under this section for all persons with an effective look-through interest for the LTC:

(c) **effective interest** is the person's average effective look-through interest for the income year for the LTC.

Exception

(5) Despite subsection (2), a person is denied a deduction for an amount in subsection (3) to the extent to which—

(a) it arises from an amount carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and

(b) it is greater than the maximum amount they may subtract from their net income under subpart IQ, treating the amount as an attributed CFC net loss or a FIF net loss carried forward under subpart IQ, and the person as having the net income they would have for the income year if they were treated as having only income and deductions arising from the application of subpart HB for the LTC.

Link with subpart DA

(6) This section overrides the general permission and the general limitations.

Defined in this Act: amount, attributed CFC net loss, deduction, effective look-through interest, FIF net loss, general limitation, general permission, income, income year, look-through company, loss balance, net income, qualifying company

Section DV 23: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 45(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Sole traders

Heading: added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 45(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

DV 24 Losses for QCs becoming sole traderships

When this section applies

(1) This section applies to a person when,—

(a) for an income year, the person's sole tradership has effectively replaced a qualifying company under a QCST transitional process; and

(b) ignoring the application of section HZ 4D(3) (Qualifying companies: transition into sole traderships), the company would have had a loss balance to carry forward to the first or second income year, as applicable, starting on or after 1 April 2011 (the **relevant transitional income year**).

Losses extinguished

(2) Despite section HZ 4D(3), for the relevant transitional income year and subsequent income years, a loss balance under Part I (Treatment of tax losses) is cancelled if the loss balance arose in relation to an income year before the relevant transitional income year.

Deduction

(3) The person is allowed a deduction for an amount equal to an amount given by the formula in subsection (4).

Deduction formula

(4) For the purposes of subsection (3), the amount is calculated using the following formula:

loss balance extinguished − subsequent deductions.

Definition of items in formula

(5) In the formula,—

(a) **loss balance extinguished** is the loss balance cancelled under subsection (2):

(b) **subsequent deductions** is the total amount of deductions allowed for previous income years under this section.

Exception

(6) Despite subsection (3), a person is denied a deduction for an amount in subsection (4) to the extent to which—

(a) it arises from an amount carried forward under subparts IA and IQ (which relate to the treatment of foreign losses); and

(b) it is greater than the maximum amount they may subtract from their net income under subpart IQ, treating

the amount as an attributed CFC net loss or a FIF net loss carried forward under subpart IQ.

Link with subpart DA

(7) This section overrides the general permission and the general limitations.

Defined in this Act: amount, attributed CFC net loss, deduction, FIF net loss, general limitation, general permission, income, income year, loss balance, net income, QCST transitional process, qualifying company

Section DV 24: added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 45(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Subpart DW—Expenditure specific to certain industries

DW 1 Airport operators

No deduction (with exception)

(1) An airport operator is denied a deduction for expenditure or loss to the extent to which the expenditure or loss is, in terms of the joint venture agreement that relates to the airport operator, a charge against any part of the joint income of the parties to the agreement that has been allocated or distributed to any party.

Meaning of expenditure

(2) In subsection (1), **expenditure** includes a provision that is treated as expenditure or loss in the nature of interest under sections HR 5 and HR 6 (which relate to airport operators).

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: airport operator, deduction, expenditure, general permission, income, joint venture agreement

Compare: 2004 No 35 s DW 1

DW 2 Bloodstock racing

No deduction

(1) A person is denied a deduction for expenditure or loss that they incur—

(a) on the racing of bloodstock; or

(b) in relation to the racing of bloodstock.

No deduction (with exception)

(2) A person is denied a deduction for expenditure or loss that they incur in preparing bloodstock for racing, except, first, when—

(a) the person is in the business of breeding bloodstock; and

(b) they incur the expenditure or loss in preparing for sale bloodstock that they are preparing for racing; and

(c) they do not race the bloodstock on which they incur the expenditure or loss.

No deduction (with exception)

(3) A person is denied a deduction for expenditure or loss that they incur in preparing bloodstock for racing, except, second, when—

(a) the person incurs the expenditure or loss in preparing the bloodstock for racing; and

(b) they receive consideration for preparing the bloodstock for racing; and

(c) the consideration is income of the person.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: bloodstock, business, deduction, general permission, income, loss

Compare: 2004 No 35 s DW 2

DW 3 Non-resident general insurers, shippers, and film renters

No deduction

(1) A person listed in subsection (2) is denied a deduction for expenditure incurred in deriving the income described in the relevant section.

Persons

(2) The persons referred to in subsection (1) are—

(a) a non-resident person who derives income under section CR 3 (Income of non-resident general insurer):

(b) a non-resident person who derives income under section CV 16 (Non-resident shippers) for cargo, mail, or passengers shipped outside New Zealand:

(c) a non-resident person who derives income under section CV 17 (Non-resident film renters) from the activities described in that section.

Non-resident shipper's expenditure on depreciation

(3) The non-resident person referred to in subsection (2)(b) has no amount of depreciation loss in relation to that income.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, deduction, depreciation loss, film, general permission, income, insurer, New Zealand, non-resident

Compare: 2004 No 35 ss FC 15, FC 20, FC 21(3), (5)

DW 4 Deduction for general insurance outstanding claims reserve

When this section applies

(1) This section applies for—

(a) an insurer who—

(i) uses IFRS 4, Appendix D for general insurance contracts:

(ii) is a life insurer who has general insurance contracts; and

(b) general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general insurer) applies.

No deduction on account of claims

(2) For an insurer's general insurance contracts, the insurer is denied a deduction relating to the insurer's outstanding claims liability or for a claim's expenditure or loss, except as provided by this section.

Formula for insurer's OCR deduction

(3) For an income year (the **current year**), an insurer is allowed a deduction for the amount by which zero is greater than the amount calculated using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

Definition of items in formula

(4) In the formula,—

(a) **opening outstanding claims reserve** is—

(i) the amount of the insurer's closing outstanding claims reserve for the income year before the current year (the **prior year**); or

(ii) the amount of the insurer's reserve for outstanding claims liability, calculated at the end of the prior year, using the basis the insurer used for tax purposes in that prior year, if the current year is the first year that this section applies to the insurer:

(b) **closing outstanding claims reserve** is the amount of the insurer's outstanding claims reserve, calculated at the end of the current year.

Deduction for payments of current claims

(5) The insurer is allowed a deduction for the amount of expenditure or loss of a claim paid to an insured under a general insurance contract for the income year.

Link with subpart DA

(6) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, IFRS 4, income year, insurer, life insurer, outstanding claims reserve, pay

Section DW 4: added (with effect on 1 April 2008), on 6 October 2009, by section 109(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section DW 4 list of defined terms **general insurance contract**: repealed (with effect on 1 April 2008), on 7 September 2010, by section 26(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section DW 4 list of defined terms **pay**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 26(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart DX—Other expenditure

DX 1 Testamentary annuities

When this section applies

(1) This section applies when—

(a) property is subject to the payment of an annuity—

(i) because of a provision in a will; or

(ii) because of a court order under the Family Protection Act 1955; or

(iii) because of a deed of family arrangement; and

(b) the property, or property substituted for it, is transferred to a beneficiary; and

(c) the property transferred, or property that the beneficiary substitutes for it, is charged with the payment of the annuity or part of the annuity.

Deduction

(2) The owner of the property, or the substituted property, is allowed a deduction for an amount that they pay on account of the annuity.

Exclusion

(3) The owner is denied a deduction—

(a) if the owner is not a beneficiary but a person who has bought the property subject to the condition that they assume the liability for the annuity, or a part of it:

(b) to the extent to which the annuity is payable under a court order or under a deed of family arrangement and represents consideration for the purchase of the property, or the substituted property, by the owner.

Amount of deduction

(4) The deduction is limited in an income year to the amount that would be the net income of the owner for the corresponding tax year if the owner's only income in the income year were from the property, or the substituted property.

Meaning of beneficiary

(5) In this section, **beneficiary**—

(a) means—

(i) a person to whom a testator has left the property in their will; or

(ii) a person to whom the testator has given a right to buy the property in their will; and

(b) includes a person who is entitled to the property under—

(i) an order of a court under the Family Protection Act 1955; or

(ii) a deed of family arrangement.

Link with subpart DA

(6) This section supplements the general permission and overrides the private limitation. The other general limitations still apply.

Defined in this Act: amount, arrangement, beneficiary, deduction, general limitation, general permission, income, income year, net income, pay, private limitation, supplement, tax year

Compare: 2004 No 35 s DX 1

DX 2 Tax credits: conduit financing arrangements

[Repealed]

Section DX 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 110(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

DX 3 Tax credits: supplementary dividend holding companies

When this section applies

(1) This section applies when a supplementary dividend holding company derives a supplementary dividend in relation to which its annual total deduction is allocated as described in section LP 10 (Limitation on deductions).

Limited deduction

(2) Despite section BD 4 (Allocation of deductions to particular income years), the company is allowed a deduction for the expenditure for an income year only to the extent set out in section LP 10(1).

Defined in this Act: annual total deduction, deduction, income year, supplementary dividend holding company

Compare: 2004 No 35 ss LE 3(10), LE 4

Subpart DZ—Terminating provisions

DZ 1 Commercial bills before 31 July 1986

Deduction

(1) A person is allowed a deduction if they acquire a commercial bill from another person, other than under a relationship agreement, and derive income under section CZ 6 (Commercial bills before 31 July 1986) on the redemption or disposal of the commercial bill.

Amount of deduction

(2) The amount of the deduction is the value of the commercial bill on the date on which the person acquired it.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, commercial bill, deduction, general limitation, general permission, income, relationship agreement, supplement

Compare: 2004 No 35 s DZ 1

DZ 2 Life insurers acquiring property before 1 April 1988

When this section applies

(1) This section applies when—

(a) a life insurer started carrying on the business of providing life insurance on or before the last day of the 1988–89 income year; and

(b) on the last day of the 1987–88 income year the life insurer's Life Insurance Fund covered some or all of the following matters:

(i) superannuation policies; and

(ii) pre-1983 mortgage repayment insurance policies; and

(iii) annuities that had been granted; and

(c) the life insurer, as part of the business, acquired property before 1 April 1988; and

(d) the life insurer, as part of the business, disposes of the property; and

(e) either—

(i) the life insurer has not already been allowed a deduction for the property, whether under section DR 2 (Disposal of property) or any other provision; or

(ii) the life insurer has been allowed a deduction for the property, but only for an amount of depreciation loss or because of the application of the old financial arrangements rules or the financial arrangements rules; and

(f) section DR 2 does not apply to the disposal.

Deduction

(2) The life insurer is allowed a deduction for the amount quantified in section EZ 1 (Life insurers acquiring property before 1 April 1988).

Meaning of superannuation policy

(3)

Superannuation policy means a life insurance policy—

(a) that—

(i) is vested in a superannuation fund that was or was treated as being a superannuation category 1 scheme on or before 17 December 1987, not including a scheme that was classified by the Government Actuary as a personal pension superannuation scheme and that admitted new members after 17 December 1987; or

(ii) was effected for the purposes of any such superannuation fund; or

(iii) was accepted by any such superannuation fund for the purposes of the fund; and

(b) that has not ceased to be a policy for the purposes of the superannuation fund.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, depreciation loss, financial arrangements rules, general limitation, general permission, income year, life insurance, Life Insurance Fund, life insurance policy, life insurer, old financial arrangements rules, pay, property, superannuation category 1 scheme, superannuation fund, superannuation policy, superannuation scheme

Compare: 2004 No 35 s DZ 2

DZ 3 Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991

Deduction

(1) A petroleum miner is allowed a deduction for petroleum mining development expenditure incurred by them on or after 1 October 1990 and before or on 15 December 1991. This subsection is overridden by subsection (2).

Relationship with section DZ 4

(2) The petroleum miner is denied a deduction for petroleum mining development expenditure as described in subsection (1) if it has been deducted under—

(a) section DZ 4; or

(b) sections 214D to 214M of the Income Tax Act 1976 as they were immediately before their repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

Timing of deduction

(3) The deduction is allocated under section EZ 3 (Petroleum development expenditure from 1 October 1990 to 15 December 1991).

Meaning of petroleum mining development expenditure

(4) In this section, **petroleum mining development expenditure** has the same meaning as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

Link with subpart DA

(5) This section supplements the general permission. The general limitations still apply.

Defined in this Act: deduction, general limitation, general permission, petroleum miner, petroleum mining development expenditure, supplement

Compare: 2004 No 35 s DZ 3

DZ 4 Expenditure on abandoned exploratory well before 16 December 1991

Deduction

(1) A petroleum miner is allowed a deduction for expenditure that they incur before 16 December 1991 in drilling, testing, completing, and abandoning an exploratory well if—

(a) the miner seals and abandons the well before commercial production from the well starts; and

(b) the expenditure has not been deducted in any earlier income year.

Sealing and abandoning well

(2) To seal and abandon an exploratory well, a petroleum miner must make a declaration under the Oaths and Declarations Act 1957 that they do not intend—

(a) to use the exploratory well in petroleum mining operations; or

(b) to apply for an existing privilege over the area containing the exploratory well.

Timing of deduction

(3) The deduction is allocated to the income year in which the well is sealed and abandoned.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, commercial production, deduction, existing privilege, exploratory well, general limitation, general permission, income year, petroleum miner, petroleum mining operations, seal and abandonment

Compare: 2004 No 35 s DZ 4

DZ 5 Farm-out arrangements for petroleum mining before 16 December 1991

Deduction: excess expenditure incurred before 16 December 1991

(1) A transferee under a farm-out arrangement is allowed a deduction of excess expenditure incurred before 16 December 1991 in a farm-out arrangement entered into before 16 December 1991, and for which a deduction has not been allowed in any earlier income year. The deduction is allowed under section DT 1 (Petroleum exploration expenditure) or DT 5 (Petroleum development expenditure).

Deduction: excess expenditure incurred on or after 16 December 1991

(2) A transferee under a farm-out arrangement is allowed a deduction of excess expenditure incurred on or after 16 December 1991 in a farm-out arrangement entered into before 16 December 1991 if the expenditure has the character of exploratory well expenditure, petroleum exploration expenditure, or petroleum development expenditure. The deduction is allowed under section DT 1 or DT 5 to DT 7 (which relate to petroleum development expenditure) and quantified and allocated under whichever of sections EJ 12 to EJ 16 (which relate to petroleum mining) applies.

Reduction of deductions

(3) A transferor under a farm-out arrangement entered into before 16 December 1991 must reduce, but is denied as a deduction, the deductions described in subsection (4) by the amount determined under subsection (5).

Deductions to which subsection (3) applies

(4) The deductions to which subsection (3) applies are deductions for expenditure incurred before, on, or after 16 December 1991 that—

(a) are not deductions of a kind referred to in subsection (5)(a) to (c); and

(b) are attributable to—

(i) the petroleum permit to which the farm-out arrangement relates; and

(ii) a licence-specific asset or permit-specific asset held for conducting petroleum mining operations under the petroleum permit.

Amount of reduction

(5) The amount of the reduction under subsection (4), in an income year, is the same amount as would have been determined under section 214I(2) and (3) of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992, as if references in section 214I(2) and (3) to deferred deductions were references to any deductions, deferred or not, attributable to the relevant permit or asset, except deductions for—

(a) residual expenditure; and

(b) expenditure incurred on or before the date on which the application for an existing privilege or prospecting permit for petroleum was submitted for the relevant licence area; and

(c) expenditure that is neither petroleum exploration expenditure nor petroleum development expenditure.

Some definitions

(6) In subsections (2) to (5), **excess expenditure**, **farm-out arrangement**, **licence-specific assets**, **permit-specific asset**, **transferee**, and **transferor** have the same meanings as in section 214D of the Income Tax Act 1976 immediately before

its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

Link with subpart DA

(7) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, excess expenditure, existing privilege, exploratory well expenditure, farm-out arrangement, general limitation, general permission, income year, licence-specific assets, permit-specific asset, petroleum, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operations, petroleum permit, prospecting permit, residual expenditure, supplement, transferee, transferor

Compare: 2004 No 35 s DZ 5

DZ 6 Partnership interests and disposal of part of asset before 16 December 1991

In sections DZ 3 to DZ 5, unless the context requires otherwise,—

(a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their income interest in the partnership:

(b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: dispose, income, petroleum permit

Compare: 2004 No 35 s DZ 6

DZ 7 Petroleum mining operations outside New Zealand before 16 December 1991

Sections DZ 3 to DZ 6 apply, with any necessary modifications, to a petroleum miner undertaking petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by this Act.

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s DZ 7

DZ 8 Buying patent rights before 1 April 1993

When this section applies

(1) This section applies when a person buys patent rights before 1 April 1993 and uses them in deriving their income. In this section, if the person dies after incurring expenditure on buying the rights, references to the person include their personal representative, a trustee of their estate, and a beneficiary of their estate.

Deduction

(2) The person is allowed a deduction of the amount quantified in section EZ 7(2) (Buying patent rights before 1 April 1993).

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, income, patent rights, supplement, trustee

Compare: 2004 No 35 s DZ 8

DZ 9 Premium paid on land leased before 1 April 1993

When this section applies

(1) This section applies when a person (**person A**) leases land that they use in deriving their income and a grant or renewal of the lease occurs before 1 April 1993.

Deduction

(2) Person A is allowed a deduction of the amount quantified in section EZ 8(2) (Premium paid on land leased before 1 April 1993).

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Defined in this Act: amount, deduction, general limitation, general permission, income, lease, premium, supplement

Compare: 2004 No 35 s DZ 9

DZ 10 General insurance with risk period straddling 1 July 1993

When this section applies

(1) This section applies when—

(a) a company carries on a business of providing general insurance or guarantees against loss, damage, or risk, immediately before and on 1 July 1993; and

(b) the company, as insurer, enters into an insurance contract for the general insurance in the course of carrying on the business outside New Zealand; and

(c) the contract covers a period of risk starting before 1 July 1993 and ending after 1 July 1993.

No deduction (with exception)

(2) The company is denied a deduction for an amount payable under the contract unless the event giving rise to the payment occurs on or after 1 July 1993.

Link with subpart DA

(3) This section overrides the general permission.

Defined in this Act: amount, business, company, deduction, general insurance, general permission, insurance contract, New Zealand, pay

Compare: 2004 No 35 s DZ 10

DZ 11 Film reimbursement scheme on or before 30 June 2001

Film reimbursement scheme

(1) Section DS 3 (Clawback of deductions for film reimbursement schemes) does not apply to a deduction for expenditure that relates to a film and is incurred by a person (**person A**) under a film reimbursement scheme if—

(a) the scheme is entered into on or before 30 June 2001; and

(b) the film has, under section EJ 6 (Certification of New Zealand films),—

(i) a final certificate that it is a New Zealand film; or

(ii) a provisional certificate, not obtained by the provision of materially incorrect information to the New Zealand Film Commission, that it is a New Zealand film; and

(c) the film had not been completed before 7 July 1999; and

(d) before 7 July 1999,—

(i) 1 or more contracts had been entered into for the supply of goods or services in New Zealand in relation to the film; and

(ii) at least $1,000,000 of expenditure had been incurred under the contract or contracts; and

(e) on or before 1 November 1999, a person who entered into a contract referred to in paragraph (d)(i) gave notice to the Commissioner that the requirements of paragraphs (c) and (d) were met; and

(f) the expenditure for which persons are allowed a deduction under section DS 1 (Acquiring film rights) or DS 2 (Film production expenditure) is no more than 140% of the physical cost of production of the film; and

(g) without limiting the application of section BG 1 (Tax avoidance), on the date the film reimbursement scheme is entered into, there is an expectation based on reasonable commercial assumptions that the income to be derived by person A as a result of the expenditure will be at least equal to the sum of—

(i) all expenditure incurred by person A under the scheme; and

(ii) a return on each amount of expenditure that is equivalent to the return on 5 year government stock measured on the date that the scheme is entered into; and

(h) if the expenditure is incurred on depreciable intangible property of a kind listed in schedule 14 (Depreciable intangible property), the expenditure is an amount paid to person B in the circumstances described in subsection (2).

Circumstances for purposes of subsection (1)(h)

(2) For the purposes of subsection (1)(h), the circumstances are that—

(a) the amount paid is income of person B; or

(b) at all times in the tax year in which the payment is made, person B—

(i) is resident in a country or territory specified in schedule 24, part A (International tax rules: grey list countries); and

(ii) is liable to income tax in that country or territory by reason of domicile, residence, place of incorporation, or place of management in that country or territory; and

(iii) has calculated its income that is liable to income tax in that country or territory without applying a feature of the taxation law of the country or territory specified in schedule 24, part B.

Some definitions

(3) In this section,—

government stock means stock issued under Part 6 of the Public Finance Act 1989

physical cost of production means the expenditure incurred in producing a film, whether incurred in New Zealand or elsewhere, other than expenditure incurred—

(a) in marketing or selling the film; and

(b) on depreciable intangible property of a kind listed in schedule 14.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, Commissioner, completed, deduction, depreciable intangible property, film, film reimbursement scheme, general permission, government stock, income, income tax, New Zealand, notice, pay, physical cost of production, tax year, year

Compare: 2004 No 35 s DZ 11

DZ 12 Mineral mining: 1954–2005

Section CU 4(1)(b)(ii)

(1) For the purposes of section CU 4(1)(b)(ii) (Compensation for lost, destroyed, or damaged assets),—

(a) for a mining company, the deduction is under—

(i) section 153F of the Land and Income Tax Act 1954; or

(ii) section 27 of the Land and Income Tax Amendment Act 1971; or

(iii) section 216 of the Income Tax Act 1976; or

(iv) section DN 1(5) of the Income Tax Act 1994; or
(v) section DU 1(1) or (3) of the Income Tax Act 2004; and

(b) for a resident mining operator or a non-resident mining operator, the deduction is under—
(i) section 153J of the Land and Income Tax Act 1954; or
(ii) section 31 of the Land and Income Tax Amendment Act (No 2) 1972; or
(iii) section 216 of the Income Tax Act 1976; or
(iv) section DN 1(5) of the Income Tax Act 1994; or
(v) section DU 1(1) or (3) of the Income Tax Act 2004.

Sections CU 11(1)(a)(ii) and DU 6(1)(a)(ii)

(2) For the purposes of sections CU 11(1)(a)(ii) (Meaning of asset for sections CU 3 to CU 10) and DU 6(1)(a)(ii) (Depreciation),—
(a) for a mining company, the expenditure is that referred to in section 27(3)(a) of the Land and Income Tax Amendment Act 1971; and
(b) for a resident mining operator or a non-resident mining operator,—
(i) the expenditure, for section CU 11(1)(a)(ii), is that referred to in paragraph (i) of item "a" of the formula in section 31(3) of the Land and Income Tax Amendment Act (No 2) 1972; and
(ii) the asset, for section DU 6(1)(a)(ii), is that referred to in paragraph (i) of item "a" of the formula in section 31(3) of the Land and Income Tax Amendment Act (No 2) 1972.

Section DU 12

(3) This subsection applies if section DU 12 (Amount written off by holding company) would have applied to a loan by a company to another company made on or before 31 March 1979 if the Income Tax Amendment Act 1979 had not been enacted. The section applies, as far as applicable, to such a loan as if section 45 of the Income Tax Amendment Act 1979 were the only provision of it that had been enacted.

Section DU 12(5)

(4) For the purposes of section DU 12(5), if the holding company that made the loan was a mining holding company and made the loan wholly or partly out of payments that it received and for which any person was allowed a deduction under section 159 of the Income Tax Act 1976, the part of the amount calculated under section DU 12(3) that arises from those payments is reduced by one-third.

Defined in this Act: company, deduction, holding company, mining company, mining holding company, non-resident mining operator, pay, resident mining operator

Compare: 2004 No 35 s DZ 12

DZ 13 Enhancements to land unamortised at end of 2004–05 year

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction under section DO 4(1) of the Income Tax Act 1994, of an amount set out in section DO 4(3)(a) or (c) of that Act, for expenditure incurred in carrying on a farming or agricultural business on land in New Zealand; and

(b) at the end of the 2004–05 income year, part of the expenditure (the **unamortised balance**) remains to be allowed as a deduction in later income years.

Deduction

(2) The person is allowed a deduction for the unamortised balance of expenditure in the income year in which the expenditure is of benefit to the business.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year, supplement

Compare: 2004 No 35 s DZ 13

DZ 14 Deductions under specified leases

When this section applies

(1) This section applies for the purposes of sections FZ 2 and FZ 4 (which relate to specified leases).

Lessor

(2) In an income year in which a lessor leases a personal property lease asset to a lessee under a specified lease, the lessor is denied a deduction for an amount of depreciation loss for the asset.

Lessee

(3) A lessee under a specified lease is denied a deduction for expenditure incurred by them under the lease except to the extent to which the expenditure—

(a) would be allowed as a deduction to the lessee under section BD 2 (Deductions); and

(b) is no more than the sum of the amounts calculated under section FZ 3(2)(a) (Income of lessor under specified lease) for the initial period, if any, and each instalment period that ends in the income year.

Link with subpart DA

(4) This section overrides the general permission.

Defined in this Act: amount, deduction, depreciation loss, general permission, income year, initial period, instalment period, lessee, lessor, personal property lease asset, specified lease

Compare: 2004 No 35 ss FC 6(4), FC 8

DZ 15 Patent applications before 1 April 2005

When this section applies

(1) This section applies when—

(a) a patent is granted to a person in their 2005–06 income year or a later income year; and

(b) the patent is granted in relation to a patent application owned by the person; and

(c) the patent application, with a complete specification, was first lodged with the Intellectual Property Office of New Zealand or a similar office in another jurisdiction before 1 April 2005; and

(d) a deduction for expenditure on the patent application is denied under another provision.

Calculation of deduction

(2) The person is allowed, in the income year in which the patent is granted, a deduction for expenditure on the patent application in any income year, calculated using the formula—

$$\frac{\text{months of ownership}}{240} \times \text{cost.}$$

Definition of items in formula

(3) In the formula,—

(a) **months of ownership** is the number of whole calendar months for which the person owns the patent application:

(b) **cost** is the cost to the person of the patent application.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, income year

Compare: 2004 No 35 s DZ 14

DZ 16 Geothermal wells between 31 March 2003 and 17 May 2006

When this section applies

(1) This section applies to a person's geothermal well when—

(a) the well's geothermal energy proving period ends between 31 March 2003 and 17 May 2006; and

(b) the well is—

(i) both started and completed between 31 March 2003 and 17 May 2006:

(ii) acquired between 31 March 2003 and 17 May 2006; and

(c) a deduction for expenditure on the well is denied under another provision.

Deduction

(2) In the income year in which the well's geothermal energy proving period ends, the person is allowed a deduction for expenditure incurred on the well.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, deduction, general limitation, general permission, geothermal energy proving period, geothermal well, income year, supplement

Compare: 2004 No 35 s DZ 15

DZ 17 Expenditure on improvements to aquacultural business before 1995–96 income year

When this section applies

(1) This section applies in an income year when a person incurs expenditure—

(a) before the 1995–96 income year in making an improvement for the purposes of an aquacultural business; and

(b) for which they would be allowed under section DO 12 (Improvements to aquacultural business) a deduction in the income year if the expenditure had been incurred in the 1995–96 income year or a later income year.

Deduction

(2) The person is allowed a deduction in the income year of an amount calculated using the formula—

125% × schedule percentage × diminished value.

Definition of items in formula

(3) In the formula,—

(a) **schedule percentage** is the percentage set out opposite the description of the improvement in schedule 20, parts B to F, column 2 (Expenditure on farming, horticultural, aquacultural, and forestry improvements):

(b) **diminished value** is the diminished value of the improvement.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year

Compare: 2004 No 35 s DZ 16

DZ 18 Expenditure on improvements to forestry land before 1995–96 income year

When this section applies

(1) This section applies in an income year when a person incurs expenditure—

(a) before the 1995–96 income year in making an improvement on land; and

(b) for which they would be allowed under section DP 3 (Improvements to forestry land) a deduction in the income year if the expenditure had been incurred in the 1995–96 income year or a later income year.

Deduction

(2) The person is allowed a deduction in the income year of an amount calculated using the formula—

125% × schedule percentage × diminished value.

Definition of items in formula

(3) In the formula,—

(a) **schedule percentage** is the percentage set out opposite the description of the improvement in schedule 20, part G, column 2 (Expenditure on farming, horticultural, aquacultural, and forestry improvements):

(b) **diminished value** is the diminished value of the improvement.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Defined in this Act: amount, capital limitation, deduction, diminished value, general limitation, general permission, income year, land

Compare: 2004 No 35 s DZ 17

DZ 19 Attributed CFC loss carried back under section EZ 32C

For the purposes of subpart DN (Attributed losses from foreign equity), an amount of net loss carried back to an income year under section EZ 32C(12) (Treatment in section EX 20C of currency effects on CFC's borrowing) for a CFC is treated as being an attributed CFC loss from the CFC in the income year.

Defined in this Act: attributed CFC loss, CFC, income year, net loss

Section DZ 19: added (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009; and before 1 July 2013), by section 21(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Part E
Timing and quantifying rules

Subpart EA—Matching rules: revenue account property, prepayments, and deferred payments

EA 1 Trading stock, livestock, and excepted financial arrangements

Property subject to matching rules

(1) The matching rules described in this section apply to each of the following kinds of property:

- (a) trading stock valued under subpart EB (Valuation of trading stock (including dealer's livestock)):
- (b) livestock valued under subpart EC (Valuation of livestock):
- (c) excepted financial arrangements that are revenue account property valued under subpart ED (Valuation of excepted financial arrangements):
- (d) a share supplier's share-lending right, if the original shares that relate to the right are excepted financial arrangements described in paragraph (c).

Application of section CH 1

(2) When a person has any of those kinds of property at the end of an income year, its value is income of the person in the income year under section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements).

Application of section DB 49

(3) When a person has any of those kinds of property at the start of an income year, they are allowed a deduction for its value in the income year under section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Determination of values

(4) The values are determined under—

(a) section EB 3 (Valuation of trading stock); and

(b) section EC 2 (Valuation of livestock); and

(c) section ED 1 (Valuation of excepted financial arrangements).

Defined in this Act: deduction, excepted financial arrangement, income, income year, original share, pay, revenue account property, share-lending right, share supplier trading stock

Compare: 2004 No 35 s EA 1

EA 2 Other revenue account property

When this section applies

(1) This section applies to revenue account property that is not—

(a) trading stock valued under subpart EB (Valuation of trading stock (including dealer's livestock)):

(b) livestock valued under subpart EC (Valuation of livestock):

(c) an excepted financial arrangement valued under subpart ED (Valuation of excepted financial arrangements):

(d) a film or a film right to which sections EJ 4 to EJ 8 (which relate to films) apply:

(e) a specified lease or a lease to which section EJ 10 (Personal property lease payments) applies:

(f) property that arises as a result of petroleum development expenditure or petroleum exploration expenditure to which sections EJ 12 to EJ 20 (which relate to petroleum mining) apply:

(g) a financial arrangement valued under subpart EW (Financial arrangements rules).

Timing of deduction

(2) A deduction for the cost of revenue account property of a person is allocated to the earlier of—

(a) the income year in which the person disposes of the property; and

(b) the income year in which the property ceases to exist.

Defined in this Act: deduction, excepted financial arrangement, film, film right, financial arrangement, income year, lease, pay, petroleum development expenditure, petroleum exploration expenditure, revenue account property, specified lease trading stock

Compare: 2004 No 35 s EA 2

EA 3 Prepayments

When this section applies

(1) This section applies when—

(a) a person has been allowed a deduction for expenditure under this Act or an earlier Act; and

(b) the expenditure was not incurred on the items described in subsection (2); and

(c) some or all of the expenditure is unexpired under subsections (4) to (7) at the end of the person's income year.

Exclusions

(2) This section does not apply to expenditure incurred on—

(a) revenue account property to which section EA 2 applies:

(b) trading stock valued under subpart EB (Valuation of trading stock (including dealer's livestock)):

(c) livestock valued under subpart EC (Valuation of livestock):

(d) an excepted financial arrangement valued under subpart ED (Valuation of excepted financial arrangements):

(e) a film or a film right to which sections EJ 4 to EJ 8 (which relate to films) apply:

(f) a specified lease or a lease to which section EJ 10 (Personal property lease payments) applies:

(g) property that arises as a result of petroleum development expenditure or petroleum exploration expenditure to which sections EJ 12 to EJ 20 (which relate to petroleum mining) apply:

(h) a financial arrangement valued under subpart EW (Financial arrangements rules).

Unexpired portion

(3) The unexpired portion of a person's expenditure at the end of an income year—

(a) is income of the person in the income year under section CH 2 (Adjustment for prepayments); and

(b) is an amount for which the person is allowed a deduction in the following income year under section DB 50 (Adjustment for prepayments).

Unexpired portion: expenditure on goods

(4) An amount of expenditure on goods is unexpired at the end of an income year if, by the end of the income year,—

(a) the person has not used up the goods in deriving income; and

(b) the goods are not destroyed or rendered useless for the purpose of deriving income.

Unexpired portion: expenditure on services

(5) An amount of expenditure on services is unexpired at the end of an income year if the services have not been performed by the end of the income year.

Unexpired portion: expenditure on choses in action

(6) An amount of expenditure on a chose in action is unexpired at the end of an income year if the amount relates to a period of enforceability of the chose in action falling after the income year.

Allowances reimbursing employees

(7) In the case of expenditure subject to sections CW 17, CW 17B, CW 17C, and CW 18 (which relate to expenditure, reimbursement, and allowances of employees), this section applies on the basis that the relevant services were performed in the income year in which the employee's expenditure is expected to occur.

Commissioner's discretionary relief

(8) The Commissioner may excuse a person from complying with this section under section 91AAC of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, deduction, employee, film, film right, goods, income, income year, pay, revenue account property, services

Compare: 2004 No 35 s EA 3

Section EA 3(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 111 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EA 4 Deferred payment of employment income

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction in an income year for an amount of expenditure on employment income; and

(b) the person has not paid the amount at the end of—

(i) the 63rd day after the end of the income year; or

(ii) the period described in subsection (3), for employment income paid to a shareholder-employee.

Unpaid amount

(2) The unpaid amount is—

(a) income of the person in the income year under section CH 3 (Adjustment for deferred payment of employment income); and

(b) an amount for which the person is allowed a deduction in the following income year under section DB 51 (Adjustment for deferred payment of employment income).

Extension of payment period for shareholder-employee

(3) For employment income paid to a shareholder-employee, the 63 day period for payment in subsection (1)(b)(i) is extended until the last date by which the person could file a return of income for the income year if the time for filing were extended to its maximum under section 37(5) of the Tax Administration Act 1994.

Sale of business: obligations transferred to non-associates

(4) For the purposes of this section, a person (the **seller**) who sells a business, or a part of a business, to another person (the **buyer**) is treated as paying, at the time of the sale, an amount of employment income of an employee working in the business if—

(a) the seller and the buyer are not associated persons at the time of the sale; and

(b) the seller has incurred the obligation to pay the amount in the course of their business, whether or not it remains a contingent obligation at the time of sale; and

(c) the employee becomes an employee of the buyer under the sale arrangements; and

(d) the seller and the buyer agree in writing, under the sale arrangements, that—

(i) the buyer assumes the obligation to pay an amount of employment income to the employee; and

(ii) the consideration payable by the buyer for the business, or the part of the business, reflects the buyer's assumption of the seller's provision for the obligation.

Sale of business: obligations transferred to associates

(5) If subsection (4) would have applied but for the fact that the seller and the buyer are associated at the time of the sale,—

(a) the amount of employment income is not treated as income of the seller in any income year following the sale, despite subsection (2)(a) and section CH 3; and

(b) the seller is denied a deduction for the amount of employment income in any income year following the sale, despite subsection (2)(b) and section DB 51; and

(c) the buyer may be allowed a deduction under section DC 10(3) (Sale of business: transferred employment income obligations).

No sale: obligations transferred to associates

(6) If section DC 11 (Transfers of employment income obligations to associates) applies,—

(a) the amount of employment income is not treated as income of the transferor (**person A**) in any income year following the sale, despite subsection (2)(a) and CH 3; and

(b) the transferor is denied a deduction for the amount of employment income in any income year following the sale, despite subsection (2)(b) and section DB 51; and

(c) the transferee (**person B**) may be allowed a deduction under section DC 11.

Accounting treatment of transferred obligations

(7) For the purposes of this section, the buyer of a business, or a part of a business, who assumes at the time of the sale an obligation to pay an amount of employment income—

(a) may account for the amount in a way that treats the relevant employee individually or treats the buyer's employees as a group; and

(b) must account for the amount in the same way in each relevant income year.

Defined in this Act: amount, arrangement, associated person, business, deduction, employee, employment income, income, income year, pay, return of income, shareholder-employee, time of the sale

Compare: 2004 No 35 s EA 4

Subpart EB—Valuation of trading stock (including dealer's livestock)

Introductory provisions

EB 1 When this subpart applies

This subpart applies when a person who owns or carries on a business has trading stock for the purpose of selling or exchanging it in the ordinary course of the business.

Defined in this Act: business trading stock

Compare: 2004 No 35 s EB 1

EB 2 Meaning of trading stock

Meaning

(1) **Trading stock** means property that a person who owns or carries on a business has for the purpose of selling or exchanging in the ordinary course of the business.

Inclusions

(2) **Trading stock** includes—

(a) work of the following kinds that would be trading stock under subsection (1) if it were completed:

(i) partly completed work:

(ii) work in progress:

(b) materials that the person has for use in producing trading stock:

(c) property on which the person has incurred expenditure, when the property would, if they had it, be trading stock under subsection (1) or paragraph (a) or (b):

(d) property leased under a hire purchase agreement when the property—

(i) is treated as having been acquired by the lessor under section FA 15 (Treatment when agreement ends: seller acquiring property); and

(ii) is an asset of a business that the lessor carries on.

Exclusions

(3) **Trading stock** does not include—

(a) land:

(b) depreciable property:

(c) a financial arrangement to which the financial arrangements rules or the old financial arrangements rules apply:

(d) an excepted financial arrangement that a life insurer has:

(e) an excepted financial arrangement held by a person if section CX 55 (Proceeds from disposal of investment shares) applies to the income of the person from a disposal of the excepted financial arrangement:

(f) livestock not used in a dealing business:

(g) consumable aids to be used in the process of producing trading stock:

(h) a spare part not held for sale or exchange:

(i) an emissions unit:

(j) a non-Kyoto greenhouse gas unit.

Defined in this Act: business, depreciable property, emissions unit, excepted financial arrangement, financial arrangement, hire purchase agreement, income, land, lessor, life insurer, non-Kyoto greenhouse gas unit trading stock

Compare: 2004 No 35 s EB 2

Section EB 2(3)(e): amended, on 1 April 2010, by section 112(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EB 2(3)(h): amended, on 26 September 2008, by section 72(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section EB 2(3)(i): substituted (with effect on 1 January 2009), on 6 October 2009, by section 112(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EB 2(3)(i): added, on 26 September 2008, by section 72(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section EB 2(3)(j): added (with effect on 1 January 2009), on 6 October 2009, by section 112(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EB 2 list of defined terms **emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 112(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EB 2 list of defined terms **ETS unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 112(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EB 2 list of defined terms **ETS unit**: inserted, on 26 September 2008, by section 72(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section EB 2 list of defined terms **non-Kyoto greenhouse gas unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 112(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EB 3 Valuation of trading stock

Valuation method

(1) A person who carries on a business must determine the value of their trading stock at the end of each income year by a method that is available under this subpart for them to use.

Use of value

(2) The value determined under subsection (1) is—

(a) the closing value of the trading stock for the income year for the purposes of section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and

(b) the opening value of the trading stock for the next income year for the purposes of section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Excepted financial arrangements valued at cost

(3) Despite anything in this subpart, the value of any trading stock that is an excepted financial arrangement must be determined

under subpart ED (Valuation of excepted financial arrangements).

Defined in this Act: business, excepted financial arrangement, income year trading stock

Compare: 2004 No 35 s EB 3

EB 4 Trading stock valuation methods

Standard valuation

(1) The standard valuation methods for trading stock are—

(a) cost:

(b) discounted selling price:

(c) replacement price:

(d) market selling value.

Low-turnover valuation

(2) A person who is a low-turnover trader may value closing stock by a method described in section EB 14.

Low value trading stock

(3) In certain circumstances, a person may value closing stock under section EB 23.

Defined in this Act: closing stock, cost, low-turnover trader trading stock

Compare: 2004 No 35 s EB 4

EB 5 Transfers of trading stock within wholly-owned groups

When this section applies

(1) This section applies in an income year to trading stock held by a company that is part of a wholly-owned group of companies, when—

(a) a group company (**company A**) originally acquires and holds the trading stock; and

(b) from the time it is acquired to the end of the income year, the trading stock is held within the group by a company or companies that are resident in New Zealand; and

(c) through transfers within the group, another group company (**company B**) holds the trading stock at the end of the income year; and

(d) company A and company B remain part of the group at the end of the income year; and

(e) either—

(i) the income years of company A and company B end on the same date; or

(ii) they end on different dates, and the Commissioner has approved both dates as corresponding to the end of a business cycle and as necessary to avoid material distortion of net income that would occur if the income years ended on the same date.

Choice of treatment

(2) Company B may choose to value the closing stock at the cost of the trading stock to company A.

When company stops being part of group

(3) If the companies stop being part of the same wholly-owned group, company B is treated as disposing of and reacquiring the trading stock for its market value at the time. If the market value of the trading stock cannot be determined separately from other property, its market value at the time company B acquired it is treated as its value.

Defined in this Act: business, closing stock, Commissioner, company, cost, income year, market value, net income, resident in New Zealand, trading stock wholly-owned group of companies

Compare: 2004 No 35 s EB 5

Standard valuation

EB 6 Cost

Valuation at cost

(1) A person may determine the value of their closing stock at cost. If the person chooses this method, they must include and allocate costs under generally accepted accounting practice or as described in subsection (1B)(b).

Valuation at cost: agricultural produce

(1B) Despite subsection (1), a person who uses NZIAS 41 for their trading stock in their financial statements must—

(a) value their closing stock at cost; and

(b) include and allocate costs so that the value of their closing stock is not materially different from the value of the closing stock obtained by applying NZIAS 2, ignoring paragraph 20 of NZIAS 2.

Whether valuation correct

(2) For the purposes of subsection (1), the person has not complied with generally accepted accounting practice if the value of closing stock is materially different from the value obtained by applying, to the closing stock, NZIAS 2 or an equivalent standard issued in its place.

Definition

(3) In this section, **NZIAS 41** means New Zealand Equivalent to International Accounting Standard 41, approved or issued under the Financial Reporting Act 1993 as amended from time to time, or an equivalent standard issued in its place.

Defined in this Act: closing stock, cost, generally accepted accounting practice, NZIAS 2, NZIAS 41

Compare: 2004 No 35 s EB 6

Section EB 6(1): amended, on 1 April 2008, by section 349(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6(1B) heading: inserted, on 1 April 2008, by section 349(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6(1B): inserted, on 1 April 2008, by section 349(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6(2): amended, on 1 April 2008, by section 349(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6(3) heading: inserted, on 1 April 2008, by section 349(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6(3): inserted, on 1 April 2008, by section 349(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6(3): amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section EB 6 list of defined terms **NZIAS 2**: inserted, on 1 April 2008, by section 349(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 6 list of defined terms **NZIAS 41**: inserted, on 1 April 2008, by section 349(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EB 7 Cost allocation: cost-flow method

When this section applies: first case

(1) This section applies when a person who determines the value of their closing stock at cost has items of trading stock that are not separately identifiable.

Compulsory use of cost-flow method

(2) The person must use 1 of the cost-flow methods described in subsection (5) to identify the items of trading stock included in closing stock and to determine the cost of the items.

When this section applies: second case

(3) This section also applies when a person who determines the value of their closing stock at cost has items of trading stock that are separately identifiable.

Discretionary use of cost-flow method

(4) The person may use 1 of the cost-flow methods described in subsection (5) to determine the cost of the items of trading stock.

Cost-flow methods

(5) The cost-flow methods of allocating costs are—

(a) the first-in first-out cost method; and

(b) the weighted average cost method.

Consistent use

(6) A person who determines the value of their closing stock at cost must use the same cost-flow method of allocating costs as they use in their financial statements for the income year.

Defined in this Act: closing stock, cost, financial statements, income year trading stock

Compare: 2004 No 35 s EB 7

EB 8 Cost allocation: budgeted method or standard cost method

When this section applies

(1) This section applies when a person—

(a) has a business of manufacturing or producing trading stock; and

(b) determines the value of their closing stock at cost; and

(c) allocates costs by—

(i) a budgeted method; or

(ii) a standard cost method; and

(d) is not a low-turnover trader to whom section EB 17(3) applies.

Apportionment of difference required

(2) If any difference arises between the estimated costs of production included in the financial statements of the business for the income year and the actual costs of production, the person must apportion the difference between the cost of trading stock sold during the income year and the closing stock.

Defined in this Act: business, closing stock, cost, financial statements, income year, low-turnover trader trading stock

Compare: 2004 No 35 s EB 8

EB 9 Discounted selling price

Valuation at discounted selling price

(1) A person may determine the value of their closing stock at its discounted selling price if they use discounted selling price for their trading stock in their financial statements.

Retailers

(2) If the person is a retailer, the discounted selling price for each department or category of goods is the total of the retail selling prices of the goods minus the normal gross profit margin for the department or category of goods. This subsection is overridden by subsection (4).

Normal gross profit margin for purposes of subsection (2)

(3) For the purposes of subsection (2), the person must—

(a) calculate the normal gross profit margin for the department or category of goods under NZIAS 2 or an equivalent standard issued in its place; and

(b) calculate the normal gross profit margin for each income year for each department or category of goods; and

(c) include all costs that sections EB 6 to EB 8 require to be included.

Retailers with turnover of $1,000,000 or less

(4) A trader who is a retailer whose turnover is $1,000,000 or less may determine the discounted selling price of all closing stock valued under this method in an income year by discounting the total of the retail selling prices of the stock by the average gross profit margin for all closing stock valued under this method in the income year.

Increase in specified sum

(5) The Governor-General may make an Order in Council increasing the sum specified in subsection (4).

Not retailers

(6) If the person is not a retailer, the discounted selling price for each category of goods is the total market selling value of the goods minus the normal gross profit margin for the category of goods.

Normal gross profit margin for purposes of subsection (6)

(7) For the purposes of subsection (6), the person must—

(a) calculate the normal gross profit margin for each income year for each category of goods; and

(b) include all costs that sections EB 6 to EB 8 require to be included.

Defined in this Act: closing stock, cost, financial statements, income year, NZIAS 2, trading stock turnover

Compare: 2004 No 35 s EB 9

Section EB 9(3)(a): amended, on 1 April 2008, by section 350(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 9 list of defined terms **NZIAS 2**: inserted, on 1 April 2008, by section 350(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EB 10 Replacement price

Valuation at replacement price

(1) A person may determine the value of their closing stock at its replacement price if they use replacement price for their trading stock in their financial statements.

Establishing replacement price

(2) The replacement price—

(a) is—

(i) the market value of the trading stock on the last day of the income year; or

(ii) if there is no such market value, the last price that the person paid during the income year to acquire equivalent trading stock; and

(b) does not include an amount of input tax for the supply of the replacement trading stock to the person.

Defined in this Act: closing stock, financial statements, income year, input tax trading stock

Compare: 2004 No 35 s EB 10

EB 11 Market selling value

Valuation at market selling value

(1) A person may determine the value of their closing stock at its market selling value if the market selling value is less than the cost of the stock.

Establishing market selling value

(2) The market selling value of closing stock is found by taking the amount that the person would normally expect to receive in the ordinary course of business from the sale of the trading stock and subtracting the following costs:

(a) the estimated costs of completion; and

(b) the expected costs of selling it.

Expected costs of selling

(3) For the purposes of subsection (2)(b), the expected costs of selling the stock are the costs that the person usually incurs for the following:

(a) transport:

(b) insurance:

(c) sales commissions:

(d) discounts to buyers.

Expected costs of selling: financial statements

(4) For the purposes of subsection (3), if the person prepares financial statements, the costs must have been taken into account in the statements in calculating net realisable value.

Substantiating market selling value

(5) If the person uses market selling value to value closing stock, they must be able to substantiate that value. If they cannot, they must use 1 of the following to value their closing stock:

(a) cost, as described in sections EB 6 to EB 8 or EB 15 to EB 18; or

(b) discounted selling price, as described in section EB 9 or EB 19; or

(c) replacement price, as described in section EB 10 or EB 20.

Defined in this Act: amount, business, closing stock, cost, financial statements trading stock

Compare: 2004 No 35 s EB 11

EB 12 Valuing closing stock consistently

In determining the value of closing stock at cost, discounted selling price, or replacement price, a person must comply with the consistency and disclosure requirements of NZIAS 8 or an equivalent standard issued in its place.

Defined in this Act: closing stock, cost, NZIAS 8

Compare: 2004 No 35 s EB 12

Section EB 12: amended, on 1 April 2008, by section 351(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 12 list of defined terms **NZIAS 8**: inserted, on 1 April 2008, by section 351(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Low-turnover valuation

EB 13 Low-turnover valuation

Options

(1) A person who is a low-turnover trader may value closing stock—

(a) by a standard valuation method, as described in sections EB 6 to EB 12; or

(b) by a low-turnover valuation method, as described in sections EB 14 to EB 22; or

(c) as low value trading stock, in the circumstances described in section EB 23.

Meaning of low-turnover trader

(2) In this subpart, **low-turnover trader** means a person who carries on a business when, in an income year, the total of the turnover of the business and the turnover of associated persons, as defined in sections YB 2 and YB 3 (which contain definitions of associated persons), is no more than the greater of—

(a) $3,000,000; and

(b) the sum specified by the Governor-General by Order in Council.

Increase in specified sum

(3) The Governor-General may make an Order in Council increasing the sum specified in subsection (2)(a).

Defined in this Act: associated person, business, closing stock, income year, low-turnover trader, turnover

Compare: 2004 No 35 s EB 13

Section EB 13(2): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 113(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EB 14 Low-turnover valuation methods

The low-turnover valuation methods are—

(a) cost for low-turnover traders; and

(b) discounted selling price for low-turnover traders; and

(c) replacement price for low-turnover traders; and

(d) market selling value for low-turnover traders.

Defined in this Act: cost, low-turnover trader

Compare: 2004 No 35 s EB 14

EB 15 Cost for low-turnover traders

A low-turnover trader may determine the value of their closing stock at cost. If the low-turnover trader chooses this method, they must include and allocate costs under—

(a) generally accepted accounting practice; or

(b) section EB 16; or

(c) section EB 17; or

(d) section EB 18.

Defined in this Act: closing stock, cost, generally accepted accounting practice, low-turnover trader

Compare: 2004 No 35 s EB 15

EB 16 Cost allocation: cost-flow method for low-turnover traders

Section EB 7(1) to (5) applies to a low-turnover trader.

Defined in this Act: cost, low-turnover trader

Compare: 2004 No 35 s EB 16

EB 17 Costs: manufactured or produced stock of low-turnover traders

When this section applies

(1) This section applies when a low-turnover trader—

(a) has a business of manufacturing or producing trading stock; and

(b) determines the value of their closing stock at cost.

Costs to be included

(2) In determining the value of their closing stock, the low-turnover trader must include the following costs of production:

(a) direct and indirect material costs:

(b) direct and indirect labour costs:

(c) utilities costs:

(d) costs of repairing and maintaining factory plant:

(e) costs of rent of factory plant:

(f) amounts of depreciation loss on factory plant:

(g) costs additional to those described in paragraphs (a) to (f), if—

(i) they are costs of production; and

(ii) the low-turnover trader includes them in the financial statements for the income year.

Apportionment of difference not required

(3) If the low-turnover trader allocates costs by a budgeted method or a standard cost method, and if any difference arises between the estimated costs of production included in the financial statements of the business for the income year and the actual costs of production, the low-turnover trader is not required to apportion the difference between the cost of trading stock sold during the income year and the closing stock.

Defined in this Act: amount, business, closing stock, cost, depreciation loss, financial statements, income year, low-turnover trader trading stock

Compare: 2004 No 35 s EB 17

EB 18 Costs: other stock of low-turnover traders

When this section applies

(1) This section applies when a low-turnover trader—

(a) acquires trading stock other than by manufacture or production; and

(b) determines the value of their closing stock at cost.

Costs to be included

(2) In determining the value of their closing stock, the low-turnover trader must include the following costs:

(a) the purchase price; and

(b) any direct transport and insurance costs that they incur in bringing the stock to the place and condition in which they have it.

Defined in this Act: closing stock, cost, low-turnover trader trading stock

Compare: 2004 No 35 s EB 18

EB 19 Discounted selling price for low-turnover traders

Financial statements prepared

(1) A low-turnover trader who prepares financial statements may determine the value of their closing stock at its discounted selling price if they use discounted selling price for their trading stock in their financial statements.

Financial statements not prepared

(2) A low-turnover trader who does not prepare financial statements may determine the value of their closing stock at its discounted selling price.

Retailers with turnover of more than $1,000,000

(3) If the low-turnover trader is a retailer whose turnover is more than $1,000,000, the discounted selling price for each department or category of goods is the total of the retail selling prices of the goods minus the normal gross profit margin for the department or category of goods.

Normal gross profit margin for purposes of subsection (3)

(4) For the purposes of subsection (3), the low-turnover trader must—

(a) calculate the normal gross profit margin for the department or category of goods under NZIAS 2 or an equivalent standard issued in its place; and

(b) calculate the normal gross profit margin for each income year for each department or category of goods; and

(c) include all costs that sections EB 16 to EB 18 require to be included.

Not retailers

(5) If the low-turnover trader is not a retailer, the discounted selling price for each category of goods is the total market selling value of the goods minus the normal gross profit margin for the category of goods.

Normal gross profit margin for purposes of subsection (5)

(6) For the purposes of subsection (5), the low-turnover trader must—

(a) calculate the normal gross profit margin for each income year for each category of goods; and

(b) include all costs that sections EB 16 to EB 18 require to be included.

Defined in this Act: closing stock, cost, financial statements, income year, low-turnover trader, NZIAS 2, trading stock turnover

Compare: 2004 No 35 s EB 19

Section EB 19(4)(a): amended, on 1 April 2008, by section 352(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 19 list of defined terms **NZIAS 2**: amended, on 1 April 2008, by section 352(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EB 20 Replacement price for low-turnover traders

Financial statements prepared

(1) A low-turnover trader who prepares financial statements may determine the value of their closing stock at its replacement price if they use replacement price for their trading stock in their financial statements.

Financial statements not prepared

(2) A low-turnover trader who does not prepare financial statements may determine the value of their closing stock at its replacement price.

Establishing replacement price

(3) The replacement price is—

(a) the market value of the trading stock on the last day of the income year; or

(b) the last price that the low-turnover trader paid during the income year to acquire equivalent trading stock.

Defined in this Act: financial statements, income year, low-turnover trader trading stock

Compare: 2004 No 35 s EB 20

EB 21 Market selling value for low-turnover traders

Valuation at market selling value

(1) A low-turnover trader may determine the value of their closing stock at its market selling value, whether that value is higher or lower than cost. However, if the value is higher than cost, the trader must be consistent from 1 income year to the next in their use of market selling value to determine the value of closing stock.

Establishing market selling value

(2) Section EB 11(2) to (4) applies to a low-turnover trader.

Defined in this Act: closing stock, cost, income year, low-turnover trader

Compare: 2004 No 35 s EB 21

EB 22 Valuing closing stock consistently for low-turnover traders

Traders complying with generally accepted accounting practice

(1) In determining the value of closing stock at cost, discounted selling price, or replacement price, a low-turnover trader who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of NZIAS 8 or an equivalent standard issued in its place.

Other traders

(2) A low-turnover trader who does not comply with generally accepted accounting practice must be consistent from 1 income year to the next in—

(a) their choice of valuing closing stock at cost, discounted selling price, or replacement price; and

(b) their use of market selling value, if it is greater than cost; and

(c) their use of a cost-flow method of allocating costs under section EB 7(1) to (5); and

(d) the extent to which they include indirect costs in the cost of trading stock that they manufacture or produce; and

(e) their method of calculating discounted selling price.

When changes allowed

(3) A low-turnover trader to whom subsection (2) applies may make changes in relation to the matters described in the subsection if—

(a) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or

(b) the change is required by another provision in this subpart.

Records

(4) A low-turnover trader who makes a change as described in subsection (3) must keep sufficient details of the change, and the reasons for the change, under section 22 of the Tax Administration Act 1994.

Defined in this Act: closing stock, cost, generally accepted accounting practice, income tax liability, income year, low-turnover trader, NZIAS 8 trading stock

Compare: 2004 No 35 s EB 22

Section EB 22(1): amended, on 1 April 2008, by section 353(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EB 22 list of defined terms **NZIAS 8**: inserted, on 1 April 2008, by section 353(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Low value trading stock

EB 23 Valuing closing stock under $10,000

When this section applies

(1) This section applies when a person, including a low-turnover trader,—

(a) has a turnover of $1,300,000 or less in an income year; and

(b) reasonably estimates that the value of their closing stock for the income year is less than $10,000.

Closing value

(2) The person may use the opening value of their trading stock as the value of their closing stock for the income year.

Defined in this Act: closing stock, income year, low-turnover trader, trading stock turnover

Compare: 2004 No 35 s EB 23

Section EB 23 heading: amended, on 1 April 2009, by section 5(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EB 23(1)(b): amended, on 1 April 2009, by section 5(2) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Disposal of business assets

EB 24 Apportionment on disposal of business assets that include trading stock

When this section applies

(1) This section applies when a person disposes of trading stock together with other assets of a business to another person. This section also applies if a person disposes of an interest in trading stock together with other assets of a business or an interest in those other assets, whether or not the disposal of the partial interest is to another person.

Apportionment

(2) The total amount received on disposal must be apportioned between the trading stock and the other assets in a way that reflects their respective market values.

Purchase price

(3) The amount apportioned to the trading stock under subsection (2) is treated as the price paid for it by the buyer.

Disposals of timber

(4) For the purposes of this section, a disposal of timber is treated as—

(a) including the creation or grant of a right to take timber:

(b) including a disposal of land with standing timber except to the extent to which the timber is any of the following:

(i) trees that are ornamental or incidental, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994; or

(ii) timber subject to a forestry right, as defined in section 2 of the Forestry Rights Registration Act 1983, registered under the Land Transfer Act 1952; or

(iii) timber subject to a profit a prendre granted before 1 January 1984.

Transfers under settlement of relationship property

(5) A disposal under this section includes a transfer under a settlement of relationship property.

Defined in this Act: amount, business, dispose, financial arrangement, financial arrangements rules, land, market value, registered bank, right to take timber, settlement of relationship property, timber trading stock

Compare: 2004 No 35 ss FB 4, FF 13(1)

Section EB 24(1): amended (with effect on 1 April 2008), on 7 September 2010, by section 27(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart EC—Valuation of livestock

Introductory provisions

EC 1 Application of this subpart

What this subpart does

(1) This subpart sets out the rules for valuing livestock not used in a dealing business.

Groups of livestock

(2) For the purposes of this subpart, livestock is divided into—

(a) specified livestock:

(b) non-specified livestock:

(c) high-priced livestock:

(d) bloodstock.

Defined in this Act: bloodstock, business, high-priced livestock, non-specified livestock, specified livestock

Compare: 2004 No 35 s EC 1

EC 2 Valuation of livestock

Valuation method

(1) A person must determine the value of their livestock at the end of each income year by a method that is available under this subpart for them to use.

Use of value

(2) The value determined under subsection (1) is—

(a) the closing value of the livestock for the income year for the purposes of section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and

(b) the opening value of the livestock for the next income year for the purposes of section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: income year

Compare: 2004 No 35 s EC 2

EC 3 Livestock valuation methods

Specified livestock

(1) The value of specified livestock is determined under sections EC 6 to EC 27.

Non-specified livestock

(2) The value of non-specified livestock is determined under sections EC 28 to EC 31.

High-priced livestock

(3) The value of high-priced livestock is determined under sections EC 32 to EC 37.

Bloodstock

(4) The value of bloodstock is determined under sections EC 38 to EC 48.

Defined in this Act: bloodstock, high-priced livestock, non-specified livestock, specified livestock

Compare: 2004 No 35 s EC 3

EC 4 Transfers of livestock within wholly-owned groups

When this section applies

(1) This section applies in an income year to livestock held by a company that is part of a wholly-owned group of companies, when—

(a) a group company (**company A**) originally acquires and holds the livestock; and

(b) from the time it is acquired to the end of the income year, the livestock is held within the group by a company or companies that are resident in New Zealand; and

(c) through transfers within the group, another group company (**company B**) holds the livestock at the end of the income year; and

(d) company A and company B remain part of the group at the end of the income year; and

(e) either—

(i) the income years of company A and company B end on the same date; or

(ii) they end on different dates, and the Commissioner has approved both dates as corresponding to the end of a business cycle and as necessary to avoid material distortion of net income that would occur if the income years ended on the same date.

Choice of treatment

(2) Company B may choose to value the livestock at the cost of the livestock to company A.

When company stops being part of group

(3) If the companies stop being part of the same wholly-owned group, company B is treated as disposing of and reacquiring the livestock for its market value at the time. If the market value of the livestock cannot be determined separately from other property, its market value at the time company B acquired it is treated as its value.

Defined in this Act: business, Commissioner, company, income year, net income, resident in New Zealand, wholly-owned group of companies

Compare: 2004 No 35 s EC 5

EC 5 Transfer of livestock because of self-assessed adverse event

When this section applies

(1) This section applies to livestock that is donated, or supplied for consideration with a value that is less than the market value of the livestock, to a recipient—

(a) for use in a farming or agricultural business that is affected by a self-assessed adverse event; and

(b) by a donor or supplier who is not associated with the recipient.

Treatment by donor or supplier

(2) The donor or supplier must treat the livestock as having, on the day of the transfer of the livestock,—

(a) no value, if the livestock is donated to the recipient:

(b) the value of the consideration provided by the recipient.

Treatment by recipient

(3) The recipient must treat the livestock as having, on the day of the transfer of the livestock,—

(a) no value, if the livestock is donated to the recipient:

(b) the value of the consideration provided by the recipient.

Defined in this Act: market value, self-assessed adverse event

Compare: 2004 No 35 s EC 5B

Valuation of specified livestock

EC 6 Application of sections EC 7 to EC 27

Sections EC 7 to EC 27 set out the rules for valuing specified livestock.

Defined in this Act: specified livestock

Compare: 2004 No 35 s EC 6

EC 7 Valuation methods

Methods

(1) The methods available for valuing specified livestock are—

(a) the herd scheme described in sections EC 14 to EC 21:

(b) the national standard cost scheme described in sections EC 22 to EC 24:

(c) 1 of the cost price, replacement price, or market value methods described in section EC 25:

(d) the method described in section EC 26.

Person chooses

(2) A person must choose which method to use, making their election by using the method chosen in their return of income for the income year.

Election continues

(3) When a person chooses a valuation method, that method continues to apply in the following income years unless they choose another method that is available to them.

Commissioner's determination

(4) If a person chooses a valuation method that is not available to them and they later make no effective election, the Commissioner must determine the method to be used. In doing so, the Commissioner must consult the person.

Restrictions

(5) Restrictions apply to the use of valuation methods, as described in sections EC 8 to EC 10, and the making of elections, as described in section EC 11.

Defined in this Act: Commissioner, cost price, herd scheme, income year, national standard cost scheme, return of income, specified livestock

Compare: 2004 No 35 s EC 7

EC 8 Restrictions on use of herd scheme

Herd scheme: first restriction on use of other method

(1) A valuation method other than the herd scheme is not available to a person, in an income year, for animals of a class for which they use the herd scheme if the animals remaining to be valued under the herd scheme would be reduced to a number smaller than the number of any animals of the class that the person valued under the herd scheme at the end of the previous income year.

Herd scheme: second restriction on use of other method

(2) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income year, they also value any livestock of that type under the national standard cost scheme or under the cost price method.

Defined in this Act: class, cost price, herd scheme, income year, national standard cost scheme, type

Compare: 2004 No 35 s EC 8

EC 9 Restrictions on use of national standard cost scheme

National standard cost scheme: first restriction on use of scheme

(1) The national standard cost scheme is not available to a person to value specified livestock in an income year if they value any specified livestock in the income year under the cost price method.

National standard cost scheme: second restriction on use of scheme

(2) The national standard cost scheme is not available to a person to value specified livestock if, in the income year before the income year in which their election under section EC 7(2) is to apply, they have valued specified livestock under the cost price method, and have not given at least 2 income years' notice in the way described in section EC 11 to the Commissioner of their election to value specified livestock under the national standard cost scheme.

National standard cost scheme: third restriction on use of scheme

(3) The national standard cost scheme is not available to a person to value a type of specified livestock in an income year if they have made specified livestock available to another person under a profit-sharing arrangement and, in the income year, the other person, or another person has also made livestock of the type available under the profit-sharing arrangement, values any livestock of the type under the cost price method.

National standard cost scheme: fourth restriction on use of scheme

(4) The national standard cost scheme is not available to a person to value specified livestock in an income year if—

(a) they have bailed the livestock to another person under a long-term bailment not made under a profit-sharing arrangement; or

(b) they have leased the livestock to another person under a long-term bailment not made under a profit-sharing arrangement.

National standard cost scheme: fifth restriction on use of scheme

(5) The national standard cost scheme is not available to a person to value specified livestock in an income year if a determination made under section EC 24 precludes the use of the national standard cost scheme for the livestock.

Defined in this Act: Commissioner, cost price, income year, lease, long-term bailment, national standard cost scheme, profit-sharing arrangement, specified livestock, type

Compare: 2004 No 35 s EC 9

EC 10 Restrictions on use of cost price method

Cost price method: first restriction on use of method

(1) The cost price method is not available to a person to value specified livestock in an income year if the person values other specified livestock in the income year under the national standard cost scheme.

Cost price method: second restriction on use of method

(2) The cost price method is not available to a person to value specified livestock if, in the income year before the income year in which their election under section EC 7(2) is to apply, they have valued specified livestock under the national standard cost scheme and have not given 2 income years' notice in the way described in section EC 11 to the Commissioner of their election to value specified livestock under the cost price method.

Cost price method: third restriction on use of method

(3) The cost price method is not available to a person to value specified livestock in an income year if they have bailed or leased their specified livestock to another person, unless the livestock is bailed or leased under a profit-sharing arrangement.

Cost price method: fourth restriction on use of method

(4) The cost price method is not available to a person to value specified livestock in an income year if they have bailed or leased their specified livestock to another person—

(a) under a long-term bailment; or

(b) under a short-term bailment made between associated persons in which the consideration paid to the bailee is not a fair market value.

Cost price method: fifth restriction on use of method

(5) The cost price method is not available to a person to value a type of specified livestock in an income year if they have made specified livestock available to another person under a profit-sharing arrangement and, in the income year, the other person, or another person has also made livestock of the type available under the profit-sharing arrangement, values any livestock of the type under the national standard cost scheme.

Defined in this Act: associated person, Commissioner, cost price, income year, lease, long-term bailment, national standard cost scheme, profit-sharing arrangement, short-term bailment, specified livestock, type

Compare: 2004 No 35 s EC 10

EC 11 Restrictions on making of elections

Forms of notice

(1) This section specifies the 2 forms of notice that a person must give to the Commissioner and when each must be used. When a person notifies the Commissioner of an election under this section, the election is irrevocable in the first income year in which it applies.

When notice in same year required

(2) For the elections described in this subsection, a person must give notice by the date of filing their return of income for the income year in which the election is first to apply. The elections are—

(a) an election to value livestock of a particular type under the herd scheme, as described in section EC 14; and

(b) an election to adopt a herd value ratio or the Chatham Islands adjustment to the herd value ratio for livestock of any type when the income year is the first income year in which the particular livestock is valued under the herd scheme, as described in sections EC 17 to EC 19.

When 2 years' notice required

(3) For the elections described in this subsection, a person must give notice by the date of filing their return of income for an income year that is at least 2 income years before the income year in which the election is first to apply. The elections are—

(a) an election to stop valuing specified livestock of a particular type under the herd scheme, except when the person continues to value some livestock of that type under the herd scheme or when another valuation method is available, as described in EC 14(2); and

(b) an election, after the herd scheme has been adopted, to adopt a herd value ratio or recalculated herd value ratio or the Chatham Islands adjustment for any livestock type, as described in sections EC 17 to EC 19; and

(c) an election to value specified livestock under the national standard cost scheme when the person has, in the income year before the application of the new election, valued the same livestock under the cost price method; and

(d) an election to value specified livestock under the cost price method when the person has, in the year before the application of the new election, valued the same livestock under the national standard cost scheme.

Information for notices of election

(4) A notice of election must state—

(a) the income year in which the election is first to apply; and

(b) the type, class, or other description of the applicable livestock; and

(c) the existing and proposed methods of valuing the applicable livestock; and

(d) for an election to use a herd value ratio or recalculated herd value ratio under section EC 17,—

(i) the value assessed under section EC 17(4) of an average animal of each applicable class of livestock; and

(ii) the date on which the valuation of each animal was made; and

(iii) the name and address of the valuer.

Defined in this Act: class, Commissioner, cost price, herd scheme, herd value ratio, income year, national standard cost scheme, notice, notify, return of income, specified livestock, type

Compare: 2004 No 35 s EC 11

EC 12 Interests in livestock

Joint election of valuation method

(1) When specified livestock is owned jointly by 2 or more persons, the owners must choose a valuation method. For the election to be effective, it must be made jointly by all the owners.

Ineffective election

(2) If there is no effective election, specified livestock owned jointly is valued as follows:

(a) if the owners bail or lease the livestock to another person during the income year, under the market value method; or

(b) if the owners enter into a profit-sharing arrangement for the livestock, under the market value method; or

(c) in any other case, under the national standard cost scheme.

Profit-sharing arrangements

(3) If the method used in an income year to calculate the value of livestock under a profit-sharing arrangement is the national standard cost scheme or the cost price method, all the following are treated as the single owner of the livestock:

(a) the person who owns the livestock; and

(b) the person who has the use of the livestock; and

(c) any other person who has made livestock of the same type available to the person referred to in paragraph (b) under a profit-sharing arrangement.

Partnerships interests

(4) For the purpose of an election under this section, a person's interest in a partnership that owns livestock is treated separately from any other interest that the person has in livestock. Separate elections are required for the person's partnership interest and for their other livestock interests. The person is not required to choose the same valuation method in both cases.

Look-through company owners' interests

(5) For the purposes of an election under this section, a person's interest for a look-through company that owns livestock is treated separately from any other interest that the person has in livestock. Separate elections are required for the person's owner's interest and for their other livestock interests. The

person is not required to choose the same valuation method in both cases.

Defined in this Act: cost price, income year, lease, look-through company, national standard cost scheme, owner's interests, profit-sharing arrangement, specified livestock, type

Compare: 2004 No 35 s EC 12

Section EC 12(5) heading: added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 46(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EC 12(5): added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 46(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EC 12 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 46(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EC 12 list of defined terms **owner's interests**: inserted, on 1 April 2011, by section 46(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

EC 13 Changes in partnership interests

When this section applies

(1) This section applies when—

(a) a partnership owns specified livestock (the **old partnership**); and

(b) a new partnership is formed (the **new partnership**); and

(c) at the end of the income year in which the new partnership is formed, more than 50% of the property of the new partnership is owned by persons who, during that income year or in the previous income year,—

(i) owned all the property of the old partnership; and

(ii) derived income in either income year from specified livestock of the same type as that owned by the new partnership.

Valuation

(2) The value of specified livestock owned by the new partnership must be taken into account in the way the old partnership determines the value of livestock of the particular type at the end of the income year in which the new partnership is formed. If the old partnership has no specified livestock of the type on hand at the end of the income year, the value is taken into ac-

count as the old partnership would have determined it, had it owned specified livestock of that type.

Defined in this Act: income, income year, specified livestock, type

Compare: 2004 No 35 s EC 13

Herd scheme

EC 14 Herd scheme

Election to use herd scheme

(1) A person may choose to value specified livestock of any type and class under the herd scheme.

Election of other method

(2) A person who has chosen to value livestock of a particular type under the herd scheme may nevertheless value livestock of that type by another method, subject to the restrictions described in section EC 8.

Election to leave herd scheme

(3) A person who wishes to stop valuing livestock of a particular type under the herd scheme must give 2 income years' notice to the Commissioner in the way described in section EC 11. However, notice is not required if the person values livestock of that type by another method that is available for use in conjunction with the herd scheme.

Defined in this Act: class, Commissioner, herd scheme, income year, notice, specified livestock, type

Compare: 2004 No 35 s EC 14

EC 15 Determining national average market values

Determined by Commissioner

(1) The Commissioner must determine a **national average market value** for an income year for each class of specified livestock set out in schedule 17, column 2 (Types and classes of livestock).

Application to income year

(2) The value applies to the income year for which it is determined, whether the income year started before, on, or after the date on which the determination is made.

Defined in this Act: class, Commissioner, income year, national average market value, specified livestock

Compare: 2004 No 35 s EC 15

EC 16 Valuation under herd scheme

Closing value of herd livestock

(1) The closing value of herd livestock in an income year is either its herd value for the income year or, if a herd value ratio is adopted, its herd value multiplied by its herd value ratio.

Opening value of herd livestock

(2) The opening value of herd livestock in an income year is determined under subsection (3) if a person—

(a) has valued the livestock under the herd scheme in the previous income year; and

(b) has the livestock on hand at the start of the income year; and

(c) has not chosen to value the livestock by a different method for the income year.

Determining opening value

(3) The opening value of herd livestock in an income year is either its herd value for the income year or, if the person has adopted a herd value ratio, its herd value for the income year multiplied by its herd value ratio for the previous income year. This subsection overrides section DB 49(3) (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: herd livestock, herd scheme, herd value, herd value ratio, income year

Compare: 2004 No 35 s EC 16

Section EC 16(3): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 22(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EC 17 Herd value ratio

Adoption of herd value ratio

(1) A herd value ratio is available for a person to use in determining the value of specified livestock in the herd scheme. A person may adopt a herd value ratio for herd livestock of a particular type by giving notice in the way described in section EC 11. A person may also adopt a recalculated ratio by giving notice in the same way.

Chatham Islands livestock

(2) Herd value ratios calculated under subsection (5) do not apply to livestock on the Chatham Islands. The Chatham Islands adjustment to the herd value ratio is dealt with in section EC 19.

When herd value ratio applies

(3) When a person adopts a herd value ratio for livestock of a particular type, the ratio applies in the income year specified in the notice and in later income years until—

- (a) the income year in which it is superseded by a recalculation of the ratio; or
- (b) the income year in which the person stops valuing, under an election, livestock of that type under the herd scheme; or
- (c) the income year following 2 consecutive income years in which the person has not valued livestock of that type under the herd scheme.

Assessment of average value

(4) For the purpose of calculating a herd value ratio, a person must obtain from a recognised livestock valuer an assessment of the value of an average animal of that person in each applicable class of livestock. The value is determined as at the 30 April that is closest to the day on which the national average market values are set.

Calculation of herd value ratio

(5) The herd value ratio for livestock of a particular type is calculated by using the formula in subsection (6) and rounding the result of the calculation to the nearest of the following figures: 0.9, 1.0, 1.1, 1.2, 1.3.

Formula

(6) The formula is—

$$\frac{\Sigma\,(\text{average value} \times \text{number})}{\Sigma\,(\text{herd value} \times \text{number})}.$$

Definition of items in formula

(7) In the formula,—

(a) Σ is the total of the individual calculations for all applicable classes of livestock type valued under the herd scheme:

(b) **average value** is the average value of an animal in a class as described in subsection (4):

(c) **number** is the number of all livestock of that class on hand at the end of the income year, including livestock that are not in the herd scheme, but not including high-priced livestock:

(d) **herd value** is the herd value of livestock for a class.

Defined in this Act: class, herd livestock, herd scheme, herd value, herd value ratio, high-priced livestock, income year, livestock on the Chatham Islands, national average market value, notice, specified livestock, type

Compare: 2004 No 35 s EC 17

EC 18 Inaccurate herd value ratio

The Commissioner may require a person who is using an inaccurate herd value ratio for a type of livestock in an income year to recalculate the herd value ratio. If the recalculation differs from the existing ratio for the income year, the Commissioner may amend the assessment of income tax for the income year and any later income year and may substitute the recalculated herd value ratio for that previously applied by the person.

Defined in this Act: assessment, Commissioner, herd value ratio, income tax, income year, type

Compare: 2004 No 35 s EC 18

EC 19 Chatham Islands adjustment to herd value

Adjustment for herd livestock on Chatham Islands

(1) A person may adopt an adjustment for herd livestock on the Chatham Islands by giving notice in the way described in section EC 11.

When adjustment applies

(2) When a person adopts a Chatham Islands adjustment as a herd value ratio, it applies as a herd value ratio to a particular type of livestock on the Chatham Islands at the end of the income year specified in the notice and in later income years until—

(a) the income year in which the person stops valuing, under an election, livestock of that type in the herd scheme; or

(b) the income year following 2 consecutive income years in which the person has not valued livestock of that type on the Chatham Islands under the herd scheme.

Setting adjustment

(3) The Commissioner must set and may vary from time to time the level of Chatham Islands adjustment to the herd value ratio that applies in an income year.

Defined in this Act: Commissioner, herd livestock, herd scheme, herd value, herd value ratio, income year, livestock on the Chatham Islands, notice, type

Compare: 2004 No 35 s EC 19

EC 20 Herd livestock disposed of before values determined

When this section applies

(1) This section applies when, in an income year, a person—

(a) stops deriving income from specified livestock; and

(b) disposes of herd livestock before the 1 February that precedes the determination of the national average market values for the income year; and

(c) gives notice to the Commissioner before that 1 February that they choose that this section applies to the valuation of the herd livestock.

Value of herd livestock

(2) The value of herd livestock that is disposed of is either the herd value of the livestock for the previous income year or, if the person has adopted a herd value ratio, the herd value multiplied by the herd value ratio applying in the previous income year.

Defined in this Act: Commissioner, herd livestock, herd value, herd value ratio, income, income year, national average market value, notice, specified livestock

Compare: 2004 No 35 s EC 20

EC 21 Herd livestock on death before values determined

When this section applies

(1) This section applies when—

(a) a person dies; and

(b) herd livestock owned by the person is disposed of before the 1 February that precedes the determination of the national average market values for the income year in which the person dies; and

(c) the person's return of income to the date of death is filed before the national average market values for the income year are determined.

Value of herd livestock

(2) The value of herd livestock that is disposed of is either the herd value of the livestock for the previous income year or, if the person has adopted a herd value ratio, the herd value multiplied by the ratio applying in the previous income year.

Defined in this Act: herd livestock, herd value, herd value ratio, income year, national average market value, return of income

Compare: 2004 No 35 s EC 21

National standard cost scheme

EC 22 National standard cost scheme

Election to use national standard cost scheme

(1) A person may choose to value specified livestock under the **national standard cost scheme**, subject to the restrictions described in section EC 9.

Closing value

(2) The closing value of the livestock is the cost of the livestock calculated under the determination made by the Commissioner under section EC 24.

Defined in this Act: Commissioner, national standard cost scheme, specified livestock

Compare: 2004 No 35 s EC 22

EC 23 Determining national standard costs

Determination of costs

(1) The Commissioner must determine national standard costs for each category of specified livestock in schedule 18 (Categories

of livestock for which national standard costs to be declared). The determination must take into account, as applicable,—

(a) the average breeding, rearing, and growing costs for animals in the category; and

(b) the average rearing and growing costs for animals in the category.

Application to income year

(2) The national standard costs apply to the income year for which they are determined, whether the income year started before, on, or after the date on which the determination is made.

Defined in this Act: Commissioner, income year, specified livestock

Compare: 2004 No 35 s EC 23

EC 24 Methods for determining costs using national standard cost scheme

Determination of methods for calculation of cost

(1) The Commissioner must determine the methods for calculating the cost of livestock listed in schedule 18, column 2 (Categories of livestock for which national standard costs to be declared).

Average cost

(2) For the purposes of subsection (1), the determination must establish a process for finding an average cost to be applied to all specified livestock valued under the national standard cost scheme. The process must take into account—

(a) the number of homebred livestock that a person has on hand at any time in an income year, applying to the number the relevant national standard costs determined under section EC 23:

(b) in addition to paragraph (a), the number in each category of livestock listed in schedule 18, column 2 that a person has on hand at any time in an income year, applying to the number the relevant national standard costs determined under section EC 23:

(c) the number of livestock bought, applying to the number the purchase costs associated with the livestock.

Content of determination

(3) The matters that may be included in the determination are set out in section 91AAD of the Tax Administration Act 1994.

Defined in this Act: Commissioner, income year, national standard cost scheme, specified livestock

Compare: 2004 No 35 s EC 24

Other methods

EC 25 Cost price, replacement price, or market value

Election

(1) A person may choose to value specified livestock under the cost price method, subject to the restrictions described in section EC 10, or under the replacement price method, or under the market value method.

Changing to cost price method

(2) If a person chooses in an income year to change to the cost price method from another valuation method, the opening value of the affected livestock is the closing value of the livestock at the end of the previous income year determined under the method used in that previous income year.

Defined in this Act: cost price, income year, specified livestock

Compare: 2004 No 35 s EC 25

EC 26 Bailee's treatment of livestock

When this section applies

(1) This section applies when, under a bailment, lease, or other agreement,—

(a) a person (**person A**) has the use of specified livestock; and

(b) person A is required—

(i) to return the livestock to the person who made it available; or

(ii) to pay the person full compensation for it.

Closing livestock numbers

(2) Person A is treated as owning, and must take into account at the end of an income year, the total number for all classes calculated using the formula—

total livestock - bailed livestock.

Definition of items in formula

(3) In the formula,—

(a) **total livestock** is all the livestock that person A has on hand in a class at the end of the income year, including—

(i) the livestock that they own; and

(ii) the livestock that they have the use of under the bailment, lease, or other agreement:

(b) **bailed livestock** is all the livestock in a class that person A has been given the use of under a bailment, lease, or other agreement that remains in force at the end of the income year.

Result of applying formula

(4) If the result of applying the formula in subsection (2) is positive, person A is treated as the owner of any surplus livestock. If the result is negative, person A must adjust the total number described in subsection (2) by treating it as a negative number.

Defined in this Act: class, income year, lease, pay, specified livestock

Compare: 2004 No 35 s EC 26

Partnerships: cost price and national standard cost scheme

Heading: inserted (with effect on 1 April 2009), on 6 October 2009, by section 114(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EC 26B Entering partners' cost base

When this section applies

(1) This section applies when an entering partner has acquired specified livestock that includes female breeding livestock for which section HG 10 (Disposal of livestock) applies, and the partners use the cost price method or the national standard cost scheme.

Existing cost base

(2) For the specified livestock, the entering partner is treated as having the same existing cost base that the exiting partner would have had for the purposes of the cost price method or national standard cost scheme for an income year, if they had not disposed of the interests.

Addition to cost base

(3) For the purposes of determining the value of the specified livestock at the end of an income year for the purposes of section EC 2, the entering partner must add to the existing cost base, described in subsection (2), the amount for the income year (the **current year**) calculated using the following formula:

$$\frac{\text{livestock cost base difference} \times \text{current year count}}{\text{allowed years.}}$$

Definition of items in formula

(4) In the formula,—

(a) **livestock cost base difference** is the cost base that the entering partner would have for the specified livestock at the end of the income year in which the acquisition of the specified livestock occurred, ignoring subsection (2) reduced by the entering partner's existing cost base for the specified livestock at the end of that year, described in subsection (2). It must be a positive number:

(b) **current year count**,—

(i) is the allowed years reduced by the number of years between the current year and the income year in which the entering partner's acquisition of the specified livestock occurred, ignoring years in which the partners do not use the cost price method or national standard cost scheme (for example: **current year count** is **1**, if the allowed years is **4**, and the acquisition of the specified livestock occurred in the 2010–11 income year, and the current year is the 2013–14 income year, and the relevant method or scheme was used for all relevant income years):

(ii) may equal the allowed years (for example: the current year is the same year as the income year in which the entering partner's acquisition of the specified livestock occurred), but must not be a negative number:

(c) **allowed years** is—

(i) 4, if the partners acquire or dispose of any partnership interests that include any livestock after

the entering partner's acquisition of the specified livestock and before the end of the income year in which that acquisition occurred; or

(ii) 5, if the partners do not acquire or dispose of any partnership interests that include any livestock after the entering partner's acquisition of the specified livestock and before the end of the income year in which that acquisition occurred.

Defined in this Act: amount, cost price, dispose, income year, national standard cost scheme, partner, partner's interest, specified livestock

Section EC 26B: inserted (with effect on 1 April 2009), on 6 October 2009, by section 114(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Definitions

EC 27 Some definitions

In this subpart,—

long-term bailment is a bailment or lease under which, at the time a person delivers livestock, the person does not expect to have the same livestock delivered back to them

short-term bailment is a bailment or lease under which,—

(a) at the time a person delivers livestock, the person expects to have the same livestock delivered back to them; and

(b) the bailee or lessee did not provide consideration to the person for the delivery of the livestock; and

(c) the term of the bailment or lease ends on or before the end of the income year following the income year in which the arrangement is made.

Defined in this Act: arrangement, income year, lease, long-term bailment, short-term bailment

Compare: 2004 No 35 s EC 27

Valuation of non-specified livestock

EC 28 Application of sections EC 29 to EC 31

Sections EC 29 to EC 31 set out the rules for valuing non-specified livestock.

Defined in this Act: non-specified livestock

Compare: 2004 No 35 s EC 28

EC 29 Determining standard values

Determined by Commissioner

(1) The Commissioner may determine a **standard value** for an income year for a type or category of non-specified livestock.

Application to income year

(2) A standard value applies to the income year for which it is determined, whether the income year started before, on, or after the date on which the standard value is determined.

Defined in this Act: Commissioner, income year, non-specified livestock, standard value, type

Compare: 2004 No 35 s EC 29

EC 30 Closing value methods

A person may choose 1 of the following methods to value non-specified livestock on hand at the end of an income year:

(a) its cost price:

(b) its replacement price:

(c) its market value:

(d) if the Commissioner agrees, its standard value.

Defined in this Act: Commissioner, cost price, income year, non-specified livestock, standard value

Compare: 2004 No 35 s EC 30

EC 31 Enhanced production

When this section applies

(1) This section applies when a person who derives income from non-specified livestock—

(a) enhances production in an income year by—

(i) starting, or restarting, to derive income from non-specified livestock; or

(ii) bringing land into production, or substantially increased production, for the purpose of deriving income from non-specified livestock; or

(iii) acquiring additional land for the purpose of deriving income from non-specified livestock; and

(b) as a result, in an income year or over the following 3 income years, buys more non-specified livestock that is not replacement livestock and that is valued at its standard value.

Closing value

(2) The closing value of the livestock bought is,—

(a) for the income year in which the livestock was bought, its standard value plus two-thirds of the difference between the cost price of the livestock and the standard value:

(b) for the following income year, its standard value plus one-third of the difference between the cost price of the livestock and the standard value:

(c) for other income years, its standard value.

Defined in this Act: cost price, income, income year, non-specified livestock, standard value

Compare: 2004 No 35 s EC 31

Valuation of high-priced livestock

EC 32 Application of sections EC 33 to EC 37

Sections EC 33 to EC 37

(1) Sections EC 33 to EC 37 set out the rules for valuing high-priced livestock.

Person chooses valuation method

(2) A person may choose to use either the straight-line method or the diminishing value method to value high-priced livestock.

Diminishing value method

(3) If the person chooses to use the diminishing value method, they must give notice to the Commissioner that they are using the method at the time of filing their return of income for the first income year in which the value of the high-priced livestock is determined under EC 34. The person cannot revoke their election to use the diminishing value method for the livestock.

Defined in this Act: Commissioner, high-priced livestock, income year, notice, return of income

Compare: 2004 No 35 s EC 32

EC 33 Determining depreciation percentages

Determined by Commissioner

(1) The Commissioner must determine a **depreciation percentage** for an income year for each type, class, or category of high-priced livestock.

Purpose

(2) The percentage represents the average percentage decline in the value of livestock of the type, class, or category.

Factors

(3) The Commissioner must take into account—

(a) the average cost of livestock of the type, class, or category; and

(b) the estimated useful life of the livestock; and

(c) the average estimated residual market value of the livestock.

Defined in this Act: class, Commissioner, depreciation percentage, estimated residual market value, estimated useful life, high-priced livestock, income year, type

Compare: 2004 No 35 s EC 33

EC 34 General rule

Value in income year of purchase and later income years

(1) The closing value of high-priced livestock at the end of the income year in which it is bought is its cost price minus the reduction applying in the income year. In a later income year, the value is its opening value minus the reduction applying in the income year until the value reaches or falls below the national average market value for the class to which the livestock belongs.

Straight-line method

(2) When a person has chosen to use the straight-line method, the reduction is calculated using the formula—

cost price × depreciation percentage.

Diminishing value method

(3) When a person has chosen to use the diminishing value method, the reduction is calculated as follows:

(a) in the first income year in which the election applies, the cost price multiplied by the diminishing value equivalent of the depreciation percentage for the income year:

(b) in later income years, the opening value of the livestock multiplied by the diminishing value equivalent of the depreciation percentage for the income year.

Meaning of diminishing value equivalent

(4) In this section, **diminishing value equivalent**, for a depreciation percentage, means the diminishing value depreciation rate in schedule 12, column 1 (Old banded rates of depreciation) to which the amount in column 2 equal to the depreciation percentage is the straight-line equivalent. Two qualifications are—

(a) if no amount in column 2 is equal to the depreciation percentage, the amount closest to it is taken; and

(b) if 2 amounts in column 2 are equidistant from the depreciation percentage, the depreciation percentage is rounded down.

Exclusions

(5) This section does not apply in the cases described in sections EC 35 and EC 36.

Defined in this Act: amount, class, cost price, depreciation percentage, diminishing value equivalent, high-priced livestock, income year, national average market value

Compare: 2004 No 35 s EC 34

EC 35 Livestock reaching national average market value and livestock no longer used for breeding

Livestock at or less than national average market value

(1) This section applies to a person's high-priced livestock whose value at the end of an income year is equal to or less than the national average market value for the class to which the livestock belongs.

Livestock no longer used for breeding

(2) This section also applies to high-priced livestock that, in an income year, a person—

(a) does not expect to use for breeding for that or any later income year; and

(b) does not intend to dispose of to any other person to use for breeding.

Closing value

(3) The closing value of the high-priced livestock at the end of the income year is determined as follows:

(a) when the person values any specified livestock of that type under the herd scheme for the income year, the value of the animal under the herd scheme; and

(b) when the person values all specified livestock of that type that is older than 1 year under the national standard cost scheme or the cost price method, the national average market value for the income year of livestock of the class to which the animal belongs; and

(c) when the person values all specified livestock of that type that is older than 1 year under the market value method or the replacement price method, the market value or replacement price of the animal at the end of the income year.

Valuation in later income years

(4) In later income years, the animal that was high-priced livestock is treated as the person's specified livestock and is valued under the valuation method the person chooses for specified livestock of the type to which the animal belongs.

Entry into herd scheme in later income years

(5) This subsection applies if, in a later income year (**year A**), the person values any specified livestock of the same type as the animal under the herd scheme and, in the next year, values the animal under the herd scheme. The animal is treated as if it were valued under the herd scheme at the end of year A.

Defined in this Act: class, cost price, herd scheme, high-priced livestock, income year, national average market value, national standard cost scheme, specified livestock, type, year

Compare: 2004 No 35 s EC 35

EC 36 Immature livestock and recently bought livestock

Immature livestock

(1) This section applies to high-priced livestock that is less than 1 year old at the end of the income year in which it is bought.

Recently bought livestock

(2) This section also applies to high-priced livestock that is bought within 6 months of the end of an income year and, during that time,—

(a) is not used for insemination, in the case of male livestock; and

(b) is not used for the collection of semen; and

(c) does not give birth; and

(d) does not have ova removed.

Closing value

(3) The closing value of the high-priced livestock at the end of the income year is its cost price.

Defined in this Act: cost price, high-priced livestock, income year, year

Compare: 2004 No 35 s EC 36

EC 37 Bailment

In section EC 26, references to specified livestock include high-priced livestock.

Defined in this Act: high-priced livestock, specified livestock

Compare: 2004 No 35 s EC 37

Valuation of bloodstock

EC 38 Application of sections EC 39 to EC 48

Sections EC 39 to EC 48 set out the rules for valuing bloodstock.

Defined in this Act: bloodstock

Compare: 2004 No 35 s EC 38

EC 39 First income year in breeding business

Bloodstock to which this section applies

(1) This section applies to bloodstock that is 2 years of age or older at the end of the first income year in which a person—

(a) uses the bloodstock for breeding in their breeding business; or

(b) forms the intention of using the bloodstock for breeding in their breeding business; or

(c) buys the bloodstock, with the intention of using it for breeding in their breeding business.

Special group of broodmares to which this section applies

(2) This section also applies to a broodmare that is 2 years of age or older at the end of a person's first income year after 1 April 2001 in which the person—

(a) first uses the broodmare for breeding in their breeding business; or

(b) first forms the intention of using the broodmare for breeding in their breeding business; or

(c) buys the broodmare, with the intention of using it for breeding in their breeding business.

Closing value

(3) The closing value of the bloodstock at the end of the first income year is its cost price minus the reduction applying in that income year.

Determination of reduction

(4) The reduction that applies is determined under section EC 41, EC 42, EZ 5, or EZ 6 (which relate to bloodstock).

Defined in this Act: bloodstock, broodmare, business, cost price, income year, year

Compare: 2004 No 35 s EC 39

EC 40 Later income years in breeding business

What this section applies to

(1) This section applies to the income years that follow the first income year described in section EC 39.

Closing value

(2) The closing value of the bloodstock is its opening value minus the reduction applying in that income year.

Closing value not previously taken into account

(3) If the person has not taken the closing value of the bloodstock into account in the previous income year, the closing value is the cost price of the bloodstock minus the reduction applying in the income year in which the person makes the calculation.

Determination of reduction

(4) The reduction that applies is determined under section EC 41, EC 42, EZ 5, or EZ 6 (which relate to bloodstock).

Defined in this Act: bloodstock, cost price, income year

Compare: 2004 No 35 s EC 40

EC 41 Reduction: bloodstock not previously used for breeding in New Zealand other than as shuttle stallions

Bloodstock to which this section applies

(1) This section applies to bloodstock that—

(a) was not used for breeding in New Zealand before 16 December 1991; and

(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person.

Further bloodstock to which this section applies

(1B) This section also applies to bloodstock that, before person A acquired it, was used by another person for breeding in New Zealand if—

(a) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FB 18 (Bloodstock) applies:

(b) the other person was a company in the same wholly-owned group as person A at the time person A acquired the bloodstock from the other person:

(c) the bloodstock is a stallion that, for each year in which the stallion was used for breeding in New Zealand before being acquired by person A, was—

(i) owned by a non-resident; and

(ii) removed from New Zealand after the breeding season; and

(iii) not subject to a reduction under this section.

Stallion

(2) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a stallion is 50% of the cost price of the stallion unless person A chooses to value the stallion by the reducing value method.

Stallion valued by reducing value method

(3) When person A chooses to value the stallion by the reducing value method, the reduction applying to the value of the stallion is 75% of its cost price in the first income year and 75% of its opening value in each later income year. Person A must give notice to the Commissioner of their election in their return of income for the first income year.

Broodmare when first used on or after 1 April 2001

(4) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a broodmare to which section EC 39(2) applies is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{9 - \text{age of broodmare.}}$$

Definition of item in formula

(5) In the formula, **age of broodmare** is—

(a) 8 years of age; or

(b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Relationship with section EZ 5

(6) This section is overridden by section EZ 5 (Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006).

Defined in this Act: bloodstock, broodmare, Commissioner, company, cost price, income year, matrimonial agreement, New Zealand, notice, return of income, stallion, wholly-owned group, year

Compare: 2004 No 35 s EC 41

Section EC 41 heading: amended, on 1 April 2008, by section 354(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EC 41(1)(b): substituted, on 1 April 2008, by section 354(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EC 41(1B) heading: inserted, on 1 April 2008, by section 354(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EC 41(1B): inserted, on 1 April 2008, by section 354(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EC 42 Reduction: bloodstock previously used for breeding in New Zealand

Stallion

(1) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a stallion to which section EC 41 does not apply is 20% of its cost price.

Broodmare when first used on or after 1 April 2001

(2) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a broodmare to which section EC 39(2) applies and EC 41 does not apply is calculated using the formula—

$$\frac{\text{cost price of broodmar}}{9 - \text{age of broodmare}}.$$

Definition of item in formula

(3) In the formula, **age of broodmare** is—

(a) 8 years of age; or

(b) the actual age in years, for a broodmare that is 7 years of age or less at the end of the income year.

Relationship with section EZ 6

(4) This section is overridden by section EZ 6 (Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006).

Defined in this Act: bloodstock, broodmare, cost price, income year, stallion, year

Compare: 2004 No 35 s EC 42

EC 43 Accident, birth deformity, or infertility

When this section applies

(1) This section applies when a person has bloodstock on hand at the end of an income year whose market value is, because of accident, birth deformity, or infertility, less than 50% of what its market value would have been if the accident, birth deformity, or infertility had not occurred.

Value

(2) The person may value the bloodstock at its market value.

Later income years

(3) If the person applies subsection (2), the closing value of the bloodstock in later income years is its market value in the applicable income year.

Defined in this Act: bloodstock, income year

Compare: 2004 No 35 s EC 43

EC 44 Other bloodstock

If sections EC 39 to EC 43 do not apply, the closing value of the bloodstock is its cost price.

Defined in this Act: bloodstock, cost price

Compare: 2004 No 35 s EC 44

EC 45 Residual value of bloodstock

If the closing value of any bloodstock would be less than $1 in the absence of this section, the closing value is $1.

Defined in this Act: bloodstock

Compare: 2004 No 35 s EC 45

EC 46 Use of bloodstock for racing

General treatment

(1) If in an income year a bloodstock owner uses bloodstock for racing, and they are in the business of breeding bloodstock for sale, the use of the bloodstock for racing is treated as use in the course of the business.

Bloodstock not used in business

(2) If bloodstock used in an income year for racing is not actually used in the course of a business of breeding bloodstock for sale, the bloodstock owner may apply to the Commissioner to have the use of the bloodstock treated other than under subsection (1).

Non-breeding bloodstock

(3) If a bloodstock owner expects that bloodstock will not be able to be used for future breeding, the use in an income year of the bloodstock for racing is not treated as use in the course of a business of breeding bloodstock for sale. However, if the bloodstock owner uses the bloodstock in the course of their business of breeding bloodstock for sale, they may apply to the Commissioner to have the use of the bloodstock treated as use in the course of the business.

Application to Commissioner

(4) The application must be made in writing with the supporting information that the Commissioner requires within 1 month after the day on which the bloodstock is first prepared for racing by the bloodstock owner or the day on which it is first raced by the bloodstock owner, whichever is earlier.

Defined in this Act: bloodstock, business, Commissioner, income year

Compare: 2004 No 35 s EC 46

EC 47 Change of use of bloodstock in course of business

Use outside business

(1) If a bloodstock owner who is in the business of breeding bloodstock for sale starts to use bloodstock other than in the course of the business, they are treated as having disposed of the bloodstock. The disposal is treated as having occurred at market value on the day on which they changed the use of the bloodstock.

Use in business

(2) If a bloodstock owner who is in the business of breeding bloodstock for sale has been using bloodstock for other purposes, and they start to use the bloodstock in the course of the business, the bloodstock is treated as having been bought by the bloodstock owner. The purchase is treated as having occurred at market value on the day on which the bloodstock owner changed the use of the bloodstock.

Defined in this Act: bloodstock, business

Compare: 2004 No 35 s EC 47

EC 48 Replacement breeding stock

When this section applies

(1) This section applies when—

(a) a bloodstock owner—

(i) disposes of bloodstock (the **breeding stock**) that they had previously used for breeding in the course of a business of breeding bloodstock for sale; and

(ii) buys replacement bloodstock (the **replacement breeding stock**) within the time limits set out in subsections (6) and (7); or

(b) a bloodstock owner—

(i) receives a payment of insurance, indemnity, or compensation for the loss or death of, or permanent injury to, breeding stock that they had previously used for breeding in the course of a business of breeding bloodstock for sale or that they had bought for use in the business; and

(ii) buys replacement breeding stock within the time limits set out in subsections (6) and (7).

Amount determined

(2) The bloodstock owner may apply to the Commissioner to determine the amount that the bloodstock owner has applied in buying replacement breeding stock.

Maximum amount

(3) The amount must not be more than the net gain calculated using the formula—

gross proceeds - value of breeding stock.

Definition of items in formula

(4) In the formula,—

(a) **gross proceeds** is—

(i) the amount of the proceeds of disposing of the breeding stock; or

(ii) the amount paid by way of insurance, indemnity, or compensation for the breeding stock:

(b) **value of breeding stock** is the closing value of the breeding stock in the income year before the breeding stock was disposed of or was lost or died or was permanently injured.

Reduction in income

(5) The bloodstock owner may reduce their income by the amount determined under subsection (2). If they reduce their income in this way, they must also reduce the cost of the replacement breeding stock by the same amount.

Time limit

(6) Replacement breeding stock must be acquired within 6 months after the end of the income year in which the amount determined under subsection (2) would otherwise be income or, if the Commissioner approves in a case or in a class of cases, a longer period.

Delay in replacing breeding stock

(7) In the case of lost, dead, or permanently injured breeding stock, the Commissioner may extend the time limit under subsection (6). However, valid commercial reasons must exist for the delay in replacing the breeding stock and the

replacement breeding stock must have been acquired before the end of the second income year following the income year in which the loss, death, or permanent injury occurred.

Application to Commissioner

(8) An application under subsection (2) must be made in writing within the relevant time limits described in subsections (6) and (7). The application must relate only to replacement breeding stock bought before the application is made.

Defined in this Act: amount, bloodstock, business, Commissioner, income, income year, pay

Compare: 2004 No 35 s EC 48

Subpart ED—Valuation of excepted financial arrangements

ED 1 Valuation of excepted financial arrangements

Valuation methods for excepted financial arrangements

(1) A person who has revenue account property that is an excepted financial arrangement must determine the value of the arrangement at the end of each income year at cost.

Valuation method for right to acquire share under share-lending arrangement

(2) Despite subsection (1), a share supplier's share-lending right has the value at the end of each income year that is equal to the amount described in subsection (4).

Valuation method for share acquired by share supplier under share-lending arrangement

(3) Despite subsection (1), the original share or an identical share acquired by a share supplier from a share user under a share-lending arrangement has the value at the end of each income year that is equal to the amount described in subsection (4).

Amount

(4) For subsections (2) and (3), the amount is the value of the original share at cost, determined by applying this section to the share immediately before the share supplier's disposal of the share under the relevant share-lending arrangement.

Cost-flow methods

(5) The person must use 1 of the following cost-flow methods to allocate costs:

(a) the first-in first-out cost method; or

(b) the weighted average cost method.

Certain emissions units not pooled with other types of emissions unit

(5B) No emissions unit described in 1 of the following paragraphs may be pooled for the purposes of subsection (5) with an emissions unit described in another of the paragraphs:

(a) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive income, other than exempt income and excluded income, from a disposal of the land without timber:

(b) post-1989 forest land emissions units:

(bb) forest sink emissions units:

(c) replacement forest land emissions units:

(cb) fishing quota emissions units, if the holder of the units would derive income, other than exempt income and excluded income, from a disposal of the individual transferable quota to which the units relate:

(d) pre-1990 forest land emissions units relating to pre-1990 forest land, if the holder of the units would derive no income other than exempt income and excluded income from a disposal of the land without timber:

(db) fishing quota emissions units, if the holder of the units would derive no income, other than exempt income and excluded income, from a disposal of the individual transferable quota to which the units relate:

(e) emissions units issued for no consideration—

(i) to which section ED 1B applies; and

(ii) that have not been assigned a cost under section ED 1B(3)(a).

Exceptions: types of emissions units pooled with other types

(5C) Despite subsection (5B), for the purposes of subsection (5),—

(a) emissions units described in paragraphs (a) to (cb) may be pooled together:

(b) emissions units described in paragraphs (d) and (db) may be pooled together.

Persons complying with generally accepted accounting practice

(6) A person who complies with generally accepted accounting practice must comply with the consistency and disclosure requirements of NZIAS 8 or an equivalent standard issued in its place.

Other persons

(7) A person who does not comply with generally accepted accounting practice—

(a) must be consistent from 1 income year to the next in their choice of 1 of the cost-flow methods described in subsection (5); and

(b) may change their cost-flow method if—

(i) the change is justified by sound commercial reasons and for this purpose, the advancement, deferral, or reduction of an income tax liability is not a sound commercial reason; or

(ii) the change is required by another provision in this subpart; and

(c) must keep sufficient details of any such change, and the reasons for it, under section 22 of the Tax Administration Act 1994.

Valuation of emissions units issued for zero price

(7B) Despite subsection (1),—

(a) an emissions unit transferred under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002 in an income year for no payment of a price, and to which section ED 1B does not apply, has a value of zero for the period beginning with the transfer and ending before the end of the income year:

(b) a forest land emissions unit has a value of zero at the end of each income year:

(c) a replacement forest land emissions unit has a value of zero at the end of each income year:

(cb) a fishing quota emissions unit has a value at the end of each income year of—

(i) the market value of the unit at the end of the income year, if the holder of the unit would derive income, other than exempt income and excluded

income, from a disposal of the individual transferable quota to which the units relate; or

(ii) zero, if subparagraph (i) does not apply:

(d) an emissions unit to which section ED 1B applies has the value at the end of each income year that is given by that section.

Worthless arrangements

(8) If an excepted financial arrangement has no present or likely future market value and has been written off as worthless, its closing value is zero.

Closing value for replacement ETS unit
[Repealed]

(8B) *[Repealed]*

Use of value

(9) The value determined under this section is—

(a) the closing value of the excepted financial arrangement for the purposes of section CH 1 (Adjustment for closing values of trading stock, livestock, and excepted financial arrangements); and

(b) the opening value of the excepted financial arrangement for the next income year for the purposes of section DB 49 (Adjustment for opening values of trading stock, livestock, and excepted financial arrangements).

Defined in this Act: emissions unit, excepted financial arrangement, excluded income, exempt income, fishing quota emissions unit, forest land emissions unit, forest sink emissions unit, generally accepted accounting practice, identical share, income tax liability, income year, NZIAS 8, original share, pay, post-1989 forest land emissions unit, pre-1990 forest land, pre-1990 forest land emissions unit, replacement forest land emissions unit, revenue account property, share-lending arrangement, share-lending right, share supplier, share user

Compare: 2004 No 35 s ED 1

Section ED 1(5B) heading: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(5B): inserted (with effect on 1 January 2009), on 6 October 2009, pursuant to section 115(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(5B)(bb): inserted (with effect on 1 January 2009), on 7 September 2010, by section 28(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section ED 1(5B)(cb): inserted (with effect on 1 July 2010), on 7 September 2010, by section 28(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section ED 1(5B)(db): inserted (with effect on 1 July 2010), on 7 September 2010, by section 28(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section ED 1(5C) heading: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(5C): substituted (with effect on 1 July 2010), on 7 September 2010, by section 28(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section ED 1(5C): inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(6): amended, on 1 April 2008, by section 355(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ED 1(7B) heading: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(7B): inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(7B)(a): substituted (with effect on 1 July 2010), on 21 December 2010, by section 47(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section ED 1(7B)(cb): inserted (with effect on 1 July 2010), on 21 December 2010, by section 47(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section ED 1(8B) heading: repealed (with effect on 1 January 2009), on 6 October 2009, pursuant to section 115(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(8B): repealed (with effect on 1 January 2009), on 6 October 2009, by section 115(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1(8B) heading: inserted, on 26 September 2008, by section 73(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section ED 1(8B): inserted, on 26 September 2008, by section 73(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section ED 1 list of defined terms **emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **excluded income**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (Inter-

national Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **exempt income**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **fishing quota emissions unit**: inserted (with effect on 1 July 2010), on 7 September 2010, by section 28(5)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section ED 1 list of defined terms **forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **forest sink emissions unit**: inserted (with effect on 1 January 2009), on 7 September 2010, by section 28(5)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section ED 1 list of defined terms **NZIAS 8**: amended, on 1 April 2008, by section 355(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ED 1 list of defined terms **pay**: inserted (with effect on 1 July 2010), on 21 December 2010, by section 47(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section ED 1 list of defined terms **post-1989 forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **pre-1990 forest land** : inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **pre-1990 forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **replacement ETS unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ED 1 list of defined terms **replacement ETS unit**: inserted, on 26 September 2008, by section 73(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section ED 1 list of defined terms **replacement forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 115(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

ED 1B Valuation of emissions units issued for zero price

What this section applies to

(1) This section applies to emissions units held by a person in an income year that—

(a) are transferred to the person at a price of zero—

(i) under Part 4, subpart 2, of the Climate Change Response Act 2002:

(ii) by a public authority under a supplementary agreement to a negotiated greenhouse agreement; and

(b) have been held continuously by the person from the time of the transfer; and

(c) have not been valued under either of subsections (4)(a) and (8)(a) before the income year; and

(d) are not forest land emissions units; and

(e) are not replacement forest land emissions units; and

(f) are not fishing quota emissions units.

Value of units transferred to person if no earlier emissions unit shortfall year

(2) If an emissions unit is transferred to the person in the income year and there is no earlier income year that is an emissions unit shortfall year for the person under subsections (9) and (10), the emissions unit is assigned a value of zero at the time of the transfer.

Value of units transferred to person in income year after emissions unit shortfall year

(3) If an earlier income year is an emissions unit shortfall year for the person immediately before an emissions unit (the **transferred unit**) is transferred to the person in the income year, the value of the transferred unit at the time of the transfer is given by the application of the paragraphs in subsection (4) in alphabetical order to transferred units until all the transferred units are assigned a value.

Valuation method at transfer for transferred units

(4) If emissions units are transferred to the person in an income year when there is a unit shortfall under subsections (9) and (10) for an earlier emissions unit shortfall year,—

(a) for each emissions unit shortfall year in date order, transferred units, up to the number corresponding to the unit shortfall relating to the emissions unit shortfall year, are each assigned a value equal to the market value of an emissions unit at the end of the emissions unit shortfall year:

(b) transferred units are each assigned a value equal to zero.

Value of units with zero value immediately before end of income year

(5) If the value of an emissions unit (the **revalued unit**) held by the person immediately before the end of the income year is zero, the value of the revalued unit at the end of the year is given by the application of the paragraphs in subsection (8) in alphabetical order to revalued units until all the revalued units are assigned a value.

Limit on application of subsection (8)(a)

(6) The maximum number of units valued under subsection (8)(a) for the income year is the greater of zero and the number calculated using the formula—

unit entitlement – disposals at zero value.

Definition of items in formula

(7) In the formula,—

(a) **unit entitlement** is the total for the income year of amounts, each of which the person would have for the period of overlap between a calendar year ending 31 December and the income year if the period of overlap were treated as a year, of—

(i) final allocation entitlement under section 83 of the Climate Change Response Act 2002:

(ii) allocation entitlement under section 85 of that Act:

(iii) emissions units corresponding to the actual emissions amount under a supplementary agreement to a negotiated greenhouse agreement:

(b) **disposals at zero value** is the number of emissions units disposed of by the person in the income year that had a value of zero at the disposal.

Valuation method at end of income year for revalued units

(8) If the person holds revalued units immediately before the end of the income year, the units are each assigned a value—

(a) equal to the market value of an emissions unit at the end of the income year:

(b) equal to zero.

Emissions unit shortfall year

(9) If the number of units assigned a market value for an income year under subsection (8)(a) is less than the maximum number given by subsection (6) for the income year, at the end of the income year—

(a) the income year is an **emissions unit shortfall year** and has 2 numbers (the **unit shortfall** and the **unit shortfall value**) associated with it:

(b) the unit shortfall relating to the emissions unit shortfall year is the difference between the maximum number given by subsection (6) for the income year and the number of zero value units assigned a market value under subsection (8)(a) for the income year:

(c) the unit shortfall value relating to the emissions unit shortfall year is the unit shortfall multiplied by the market value of an emissions unit at the end of the income year.

Reductions in unit shortfall and unit shortfall value

(10) When an emissions unit held by a person is assigned a value under subsection (4)(a) in relation to a year that is an emissions unit shortfall year for the person,—

(a) the unit shortfall relating to that year is reduced by the number of emissions units assigned a value in relation to that year:

(b) the unit shortfall value relating to that year is reduced by an amount equal to the number of emissions units assigned a value in relation to that year multiplied by the value assigned to each of those emissions units:

(c) the year ceases to be an emissions unit shortfall year, if the unit shortfall relating to the year is reduced to zero.

Unit shortfall values treated as values of additional emissions units for purposes of adjustments

(11) For the purposes of sections CH 1 and DB 49 (which relate to adjustments for values of excepted financial arrangements), the person is treated as holding at the end of the income year additional emissions units with a value equal to the total of the unit shortfall values relating to emissions unit shortfall years for the person.

Defined in this Act: amount, emissions unit, emissions unit shortfall year, fishing quota emissions units, forest land emissions units, income year, public authority, replacement forest land emissions units, year

Section ED 1B: substituted (with effect on 1 July 2010), on 21 December 2010, by section 48 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

ED 2 Transfers of certain excepted financial arrangements within wholly-owned groups

When this section applies

(1) This section applies when—

(a) a company that is part of a wholly-owned group of companies (**company A**) transfers to another company in the same group (**company B**) an excepted financial arrangement that is revenue account property of company A; and

(b) the transfer of the excepted financial arrangement is not made under a share-lending arrangement; and

(c) both companies are resident in New Zealand on the date of the transfer; and

(d) the market value of the excepted financial arrangement on the date of the transfer is less than its cost to company A.

Transfer at cost

(2) The consideration for the transfer is treated as being equal to the cost of the excepted financial arrangement to company A.

Company stops being part of group

(3) If company B stops being part of the wholly-owned group, the company is treated as disposing of and reacquiring the excepted financial arrangement at its market value at the time the company stops being part of the group.

Not dividend

(4) A transfer of an excepted financial arrangement to which this section applies does not give rise to a dividend.

Defined in this Act: company, dividend, excepted financial arrangement, resident in New Zealand, revenue account property, wholly-owned group of companies

Compare: 2004 No 35 s ED 2

Subpart EE—Depreciation

Introductory provision

EE 1 What this subpart does

Quantifying amounts of depreciation loss and depreciation recovery income

(1) This subpart—

(a) quantifies the amount of depreciation loss for which a person is allowed a deduction if the provisions of Part D (Deductions) are met; and

(b) quantifies the amount of depreciation recovery income that is income under Part C (Income).

When amount of depreciation loss arises

(2) A person has an amount of **depreciation loss** for an item for an income year if—

(a) the person owns an item of property, as described in sections EE 2 to EE 5; and

(b) the item is depreciable property, as described in sections EE 6 to EE 8; and

(c) the item is used, or is available for use, by the person in the income year; and

(d) the amount of depreciation loss is calculated for the person, the item, and the income year under sections EE 9 to EE 11.

When amount of depreciation recovery income arises

(3) A person has an amount of **depreciation recovery income** for an item for an income year if—

(a) the person owns an item of property, as described in sections EE 2 to EE 5; and

(b) the item is depreciable property, as described in sections EE 6 to EE 8; and

(c) the item is disposed of or an event of a kind described in section EE 38 occurs; and

(d) the amount of depreciation recovery income is calculated for the person, the item, and the income year under any of sections EE 22(5), EE 38(5), EE 48(1), EE 49(2), EE 51(3), EE 52(3), and EZ 23B(8) (Property acquired after depreciable property affected by Canterbury earthquakes).

Amounts of loss incurred and income derived

(4) To avoid doubt,—

(a) an amount of depreciation loss is treated as being incurred in the income year for which it is calculated; and

(b) an amount of depreciation recovery income is treated as being derived in the income year for which it is calculated.

Allocation of deduction for depreciation loss

(5) A person who in an income year uses an item for research or development or for market development that gives rise to a deduction allocated under section EJ 22 (Deductions for market development: product of research, development), and as a result has an amount of depreciation loss for the item for the income year, may choose to allocate all or part of the deduction for the depreciation loss—

(a) to an income year after the income year for which the person has the depreciation loss; and

(b) in the way required by section EJ 23 (Allocation of deductions for research, development, and resulting market development).

Partial income-producing use

(6) Subpart DE (Motor vehicle expenditure) and section EE 50 contain rules for calculating the amount of deduction available for depreciation loss in circumstances in which an item of property is only partly used or available for use in a way that satisfies the general permission.

Defined in this Act: amount, deduction, depreciable property, depreciation loss, depreciation recovery income, development, dispose, general permission, income, income year, own, property, research

Compare: 2004 No 35 s EE 1

Section EE 1(3)(d): amended (with effect on 4 September 2010), on 29 August 2011, by section 23 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Meaning of own

EE 2 Nature of ownership of item

Kinds of ownership

(1) **Own**, for the ownership of depreciable property,—

(a) means legal or equitable ownership; and

(b) includes ownership of the kinds described in sections EE 3 to EE 51.

Shared ownership

(2) When more than 1 person owns an item of depreciable property, **own** means the interest that the person has in the item.

Defined in this Act: depreciable property, own

Compare: 2004 No 35 s EE 2

EE 3 Ownership of goods subject to reservation of title

When this section applies

(1) This section applies when—

(a) a person (the **buyer**) enters into an unconditional contract to buy an item of depreciable property; and

(b) the contract is not a hire purchase agreement and the item is not a hire purchase asset that is the subject of a hire purchase agreement; and

(c) the contract is subject to the Sale of Goods Act 1908; and

(d) title to the item does not pass until the purchase price is paid in full; and

(e) the buyer takes possession of the item before title to it passes.

Buyer treated as owner

(2) The buyer is treated as owning, and the seller is treated as not owning, the item from the later of the following times:

(a) the time at which the buyer enters into the contract; and

(b) the time at which the buyer takes possession of the item.

Buyer ceases to be treated as owner

(3) Subsection (2) ceases to apply when 1 of the following occurs:

(a) title to the item passes to the buyer; or
(b) the seller repossesses the item.

Defined in this Act: depreciable property, hire purchase agreement, hire purchase asset, own

Compare: 2004 No 35 s EE 3

EE 4 Ownership of lessee's improvements: lessee

When this section applies

(1) This section applies when—

(a) a lessee of land incurs expenditure during the period during which the land is leased to the lessee in erecting a fixture on the land or making an improvement to the land; and
(b) the lessor owns the fixture or improvement.

Ownership of fixture or improvement

(2) The following apply to the ownership of the fixture or improvement:

(a) in the period during which the land is leased to the lessee,—
  (i) the lessee is treated as owning the fixture or improvement; and
  (ii) the lessor is treated as not owning the fixture or improvement; and
  (iii) a person to whom the lessor disposes of the land during the period is treated as not owning the fixture or improvement; and
(b) after the period during which the land is leased to the lessee,—
  (i) the lessor is treated as not owning the fixture or improvement, unless the lessor incurs a cost relating to it at the end of the period; and
  (ii) a person to whom the lessor disposes of the land during the period is treated as not owning the fixture or improvement.

Defined in this Act: improvement, lessee, lessor, own

Compare: 2004 No 35 s EE 4

EE 5 Ownership of lessee's improvements: other person

When this section applies: first case

(1) This section applies when—

(a) a lessee of land incurs expenditure during the term of the lease in erecting a fixture on the land or making an improvement to the land; and

(b) the lessee has been allowed a deduction for an amount of depreciation loss for the fixture or improvement; and

(c) the lessee disposes of their interest in the lease to another person; and

(d) the other person pays the lessee for the fixture or improvement.

When this section applies: second case

(2) This section also applies when—

(a) a lessee of land has been allowed a deduction for an amount of depreciation loss for a fixture on the land, or an improvement to the land, that a previous lessee erected or made; and

(b) the lessee disposes of their interest in the lease to another person; and

(c) the other person pays the lessee for the fixture or improvement.

Other person treated as owner

(3) The other person is treated as owning the fixture or improvement from the time at which they pay the lessee for it.

Defined in this Act: amount, deduction, depreciation loss, dispose, improvement, lease, lessee, own, pay, term of the lease

Compare: 2004 No 35 s EE 5

Meaning of depreciable property

EE 6 What is depreciable property?

Description

(1) **Depreciable property** is property that, in normal circumstances, might reasonably be expected to decline in value while it is used or available for use—

(a) in deriving assessable income; or

(b) in carrying on a business for the purpose of deriving assessable income.

Subsections (2) to (4) expand on this subsection.

Property: tangible

(2) An item of tangible property is depreciable property if—

(a) it is described by subsection (1); and

(b) it is not described by section EE 7.

Property: intangible

(3) An item of intangible property is depreciable property if—

(a) it is within the definition of **depreciable intangible property**; and

(b) it is described by subsection (1); and

(c) it is not described by section EE 7.

Property: geothermal wells

(4) For the purposes of this subpart, a person who owns a geothermal well is, for the geothermal energy proving period, treated as acquiring the well as property that declines in value and is to be available for use in carrying on a business for the purpose of deriving assessable income.

Defined in this Act: acquire, assessable income, business, depreciable intangible property, depreciable property, geothermal energy proving period, geothermal well, property

Compare: 2004 No 35 s EE 6

EE 7 What is not depreciable property?

The following property is not **depreciable property**:

(a) land, although buildings, fixtures, and the improvements listed in schedule 13 (Depreciable land improvements) are depreciable property if they are described by section EE 6(1):

(b) trading stock:

(c) livestock to which subpart EB (Valuation of trading stock (including dealer's livestock)) applies:

(d) financial arrangements:

(e) excepted financial arrangements:

(f) property that will not decline in value, as far as its owner is concerned, because, when they dispose of it, they have a right to be compensated for any decline in its value:

(g) property that its owner chooses, under section EE 8, to treat as not depreciable:

(h) property that its owner chooses, under section EE 38, to deal with under that section:

(i) property for whose cost a person other than the property's owner is allowed a deduction:

(j) property for whose cost a person is allowed a deduction under a provision of this Act outside this subpart or under a provision of an earlier Act, except for an asset to which section DU 6(4) (Depreciation) applies.

Defined in this Act: building, deduction, depreciable property, dispose, excepted financial arrangement, financial arrangement, own, property trading stock

Compare: 2004 No 35 s EE 7

Section EE 7 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 8 Election that property not be depreciable

Item acquired

(1) A person may choose that an item of property they acquire not be depreciable property even though, in the absence of the election, it would be depreciable property.

Item changing use

(2) A person may choose that an item of property they own ceases to be depreciable property if—

(a) the use of the item changes; and

(b) before the use changes, the person was denied a deduction for an amount of depreciation loss for the item; and

(c) after the use changes, in the absence of the election, the person would have been allowed a deduction for an amount of depreciation loss for the item.

Retrospective election

(3) A person who has deducted none of the amounts of depreciation loss for which they were allowed a deduction for an item of property, in the income year in which they acquired it and in each later year, may retrospectively choose that the item not be depreciable property.

How elections made

(4) An election under this section is made as follows:

(a) a person makes an election under subsection (1) by giving the Commissioner notice of it in their return of income for the income year in which they acquire the item; and

(b) a person makes an election under subsection (2) by giving the Commissioner notice of it in their return of income for the income year in which the item's use changes; and

(c) a person makes an election under subsection (3) by giving the Commissioner notice of it in their return of income for any income year after they acquire the item, including an income year after they dispose of the item.

Effect of election

(5) An election under this section has effect for the person for—

(a) the income year for which they make the election; and

(b) all later income years until—

(i) the item is disposed of, although this reference to disposal does not include the disposal of an item of intangible property as part of an arrangement to replace it with an item of the same kind; or

(ii) an event described in section EE 47 occurs involving the item.

Retrospective effect of election

(6) An election made under subsection (3) also has retrospective effect for the person for—

(a) the income year in which they acquire the property; and

(b) all intervening income years until the year in which they make the election.

Defined in this Act: acquire, amount, Commissioner, deduction, depreciable property, depreciation loss, dispose, income year, notice, property, return of income

Compare: 2004 No 35 s EE 8

How amounts of depreciation loss and depreciation recovery income are calculated

EE 9 Description of elements of calculation

Depreciation methods

(1) Sections EE 12 to EE 24 deal with the methods of calculating an amount of depreciation loss. The methods are—

(a) the straight-line method, which is dealt with in sections EE 13 to EE 19; and

(b) the diminishing value method, which is also dealt with in sections EE 13 to EE 19; and

(c) the pool method, which is dealt with in sections EE 20 to EE 24.

Depreciation rates

(2) Sections EE 26 to EE 36 deal with the rates of depreciation. The rates are—

(a) the economic rate, which is dealt with in section EE 26; and

(b) the annual rate, which is dealt with in sections EE 31, EE 33, and EE 34; and

(c) a special rate or a provisional rate, both of which are dealt with in sections EE 35 and EE 36.

Improvements, low value items, and items no longer used

(3) Sections EE 37 to EE 39 deal with the cases of—

(a) an improvement made to an item of depreciable property; and

(b) an item of depreciable property that is of low value; and

(c) an item of depreciable property that is no longer used.

Transfers

(4) Sections EE 40 to EE 43 deal with the transfer of items of depreciable property in certain amalgamations and between associated persons.

Disposals and similar events

(5) Sections EE 44 to EE 52 deal with disposals of property and events that involve property and are similar to disposal.

Interpretation provisions

(6) Sections EE 54 to EE 67 deal with the following interpretation matters:

(a) section EE 54 deals with the effect of goods and services tax (GST) on cost; and

(b) sections EE 55 to EE 60 deal with the meaning of **adjusted tax value**; and

(c) sections EE 61 to EE 67 contain definitions.

Relationship with sections EZ 9 to EZ 28

(7) Sections EZ 9 to EZ 28 (which relate to depreciation) deal with items acquired in periods before 24 September 1997.

Defined in this Act: adjusted tax value, amount, annual rate, associated person, depreciable property, depreciation loss, depreciation method, diminishing value method, dispose, economic rate, GST, improvement, pool method, property, provisional rate, special rate, straight-line method

Compare: 2004 No 35 s EE 9

EE 10 Calculation rule: item temporarily not available

An item of depreciable property is treated as being available for use while subject temporarily to repair or inspection, if it was used or available for use immediately before going for repair or inspection.

Defined in this Act: depreciable property

Compare: 2004 No 35 s EE 10

EE 11 Calculation rule: income year in which item disposed of

Generally no amount of depreciation loss

(1) A person does not have an amount of depreciation loss for an item of depreciable property for the income year in which they dispose of it.

Exclusion: building or petroleum-related depreciable property

(2) A person has an amount of depreciation loss for an item of depreciable property for the income year in which they dispose of it, if it is—

(a) a building; or

(b) an item of petroleum-related depreciable property.

Exclusion: empty pool

(3) A person has the amount of depreciation loss calculated under section EE 22(4)(a) for an income year for a disposal to which the subsection applies.

Exclusion: consideration less than adjusted tax value

(4) A person has the amount of depreciation loss calculated under section EE 48(2) for a disposal or event to which the subsection applies.

Exclusion: item partly used for business

(5) A person has the amount of depreciation loss calculated under section EE 50(6) for a disposal or event to which the subsection applies.

Exclusion: recent acquisition of item partly used for business

(6) A person has the amount of depreciation loss calculated under section EE 50(9) for a disposal or event to which the subsection applies.

Defined in this Act: building, adjusted tax value, amount, business, depreciable property, depreciation loss, dispose, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 11

Section EE 11 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Methods

EE 12 Depreciation methods

Meaning of depreciation method

(1) **Depreciation method** means—

(a) a method that a person may use to calculate an amount of depreciation loss:

(b) a rate determined by the Commissioner under section 91AAF or 91AAG of the Tax Administration Act 1994:

(c) a maximum pooling value determined by the Commissioner under section 91AAL of that Act.

Methods described

(2) The depreciation methods are—

(a) the diminishing value method, which—

(i) may be used for any item of depreciable property except one referred to in subparagraph (ii) or (iii); and

(ii) must not be used for an item of fixed life intangible property; and

(iii) must not be used for an item of property in the circumstances described in section EZ 9 (Pool method for items accounted for by globo method for 1992–93 income year):

(b) the straight-line method, which—

(i) may be used for any item of depreciable property; and

(ii) must be used for an item of fixed life intangible property:

(c) the pool method, which—

(i) may be used for any item of poolable property except one referred to in subparagraph (ii); and

(ii) must not be used for an item of fixed life intangible property; and

(iii) must be used for an item of property in the circumstances described in section EZ 9.

Person chooses

(3) A person chooses which of the depreciation methods they will use for each item of depreciable property they own.

How person chooses

(4) The person chooses the method by using the chosen method for the item in their return of income for the income year for which they make the election.

Diminishing value or straight-line method fixed for income year

(5) If the person chooses the diminishing value method or the straight-line method, they must use the method for the item and the income year and must not change the election for the income year.

Pool method fixed for income year and later income years

(6) If the person chooses the pool method, they must use the method for the item and the income year and must not change the election for—

(a) the income year; or

(b) a later income year in which the item is still poolable property that they own.

Defined in this Act: amount, depreciable property, depreciation loss, depreciation method, diminishing value method, fixed life intangible property, in-

come year, own, pool method, poolable property, property, return of income, straight-line method

Compare: 2004 No 35 s EE 12

Amount of depreciation loss under diminishing value method or straight-line method

EE 13 Application of sections EE 14 to EE 19

Sections EE 14 to EE 19 apply to the calculation of the amount of depreciation loss that a person using the diminishing value method or the straight-line method has.

Defined in this Act: amount, depreciation loss, diminishing value method, straight-line method

Compare: 2004 No 35 s EE 13

EE 14 Diminishing value or straight-line method: calculating amount of depreciation loss

Most depreciable property

(1) The amount of depreciation loss that the person has for an income year for an item of depreciable property is the lesser of the amounts dealt with in sections EE 15 and EE 16.

Exclusion: petroleum-related depreciable property

(2) The amount of depreciation loss that the person has for an income year for an item of petroleum-related depreciable property is the lesser of the amounts dealt with in sections EE 15 and EE 17.

Defined in this Act: amount, depreciable property, depreciation loss, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 14

EE 15 Amount of adjusted tax value

For the purposes of the comparison of amounts required by section EE 14(1) and (2), the amount dealt with in this section is the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, income year

Compare: 2004 No 35 s EE 15

EE 16 Amount resulting from standard calculation

Amount

(1) For the purposes of the comparison of amounts required by section EE 14(1), the amount dealt with in this section is calculated using the formula—

$$\text{annual rate} \times \text{value or cost} \times \frac{\text{months}}{12}$$

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (5).

Annual rate

(3) **Annual rate** is the annual rate that, in the income year, applies to the item of depreciable property under the depreciation method that the person uses for the item. It is expressed as a decimal.

Value or cost

(4) **Value or cost** is,—

(a) when the person uses the diminishing value method, the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year:

(b) when the person uses the straight-line method,—

(i) for a patent or plant variety rights in relation to which the person has been allowed a deduction for an amount of depreciation loss for the relevant application, the item's adjusted tax value at the start of the month in which the person acquires it:

(ii) for other items, its cost to the person excluding expenditure for which the person is allowed a deduction under a provision of this Act outside this subpart:

(c) for the purposes of paragraph (b), variations to **cost** are in sections EE 18 and EE 19.

Months: income year of normal length or shorter

(5) **Months**, for a person whose income year contains 365 days or fewer, or 366 days or fewer in a leap year, is the lesser of the following:

(a) 12; and

(b) the number of whole or part calendar months in the income year in which—

(i) the person owns the item; and

(ii) the person uses the item or has it available for use for any purpose.

Months: income year of longer than normal length

(6) **Months**, for a person whose income year contains more than 365 days, or more than 366 days in a leap year, is the number of whole or part months in the income year in which—

(a) the person owns the item; and

(b) the person uses the item or has it available for use for any purpose.

Months: patent applications

(7) For the purposes of subsections (5) and (6), for a patent application, **months** refers to whole calendar months and whole months, as applicable.

Defined in this Act: adjusted tax value, amount, annual rate, deduction, depreciable property, depreciation loss, depreciation method, diminishing value method, income year, own, plant variety rights, straight-line method

Compare: 2004 No 35 s EE 16

EE 17 Amount resulting from petroleum-related depreciable property calculation

Amount

(1) For the purposes of the comparison of amounts required by section EE 14(2), the amount dealt with in this section is calculated using the formula—

$$\text{annual rate} \times \text{value or cost} \times \frac{\text{days}}{365}.$$

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (5).

Annual rate

(3) **Annual rate** is the annual rate that, in the income year, applies to the item of depreciable property under the depreciation method that the person uses for the item. It is expressed as a decimal.

Value or cost

(4) **Value or cost** is,—

(a) when the person uses the diminishing value method, the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year:

(b) when the person uses the straight-line method, the item's cost to the person; a variation to **cost** is in section EE 18.

Days

(5) **Days** is the number of whole or part days in the income year on which—

(a) the person owns the item; and

(b) the person uses the item or has it available for use for any purpose.

Defined in this Act: adjusted tax value, amount, annual rate, deduction, depreciable property, depreciation loss, depreciation method, diminishing value method, income year, own, straight-line method

Compare: 2004 No 35 s EE 17

EE 18 Cost: change from diminishing value to straight-line method

When this section applies

(1) This section applies when a person changes from the diminishing value method to the straight-line method for an item of property for an income year.

How straight-line method applies

(2) For the purposes of the formulas in sections EE 16 and EE 17, the item's cost is treated as being the item's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the item for the income year.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, diminishing value method, income year, property, straight-line method

Compare: 2004 No 35 s EE 18

EE 19 Cost: fixed life intangible property

When this section applies

(1) This section applies when—

(a) a person owns an item of fixed life intangible property; and

(b) the person incurs additional costs in an income year for the item; and

(c) the person is denied a deduction for the additional costs other than a deduction for an amount of depreciation loss.

Additional costs for fixed life intangible property

(2) For the purposes of the formula in section EE 16, the item's cost at the start of the income year is treated as being the total of—

(a) the item's adjusted tax value at the start of the income year; and

(b) the additional costs the person incurs.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, fixed life intangible property, income year, own

Compare: 2004 No 35 s EE 19

Amount of depreciation loss under pool method

EE 20 Application of sections EE 21 to EE 24

Sections EE 21 to EE 24 apply to the calculation of the amount of depreciation loss that a person using the pool method has.

Defined in this Act: amount, depreciation loss, pool method

Compare: 2004 No 35 s EE 20

EE 21 Pool method: calculating amount of depreciation loss

Amount of depreciation loss subtracted from pool's value

(1) The amount of depreciation loss that a person has for an income year for a pool of depreciable property is—

(a) first, calculated under subsection (2); and

(b) second, subtracted from the pool's adjusted tax value at the end of the income year.

Amount

(2) The amount of depreciation loss is calculated using the formula—

$$\text{rate} \times \frac{\text{starting adjusted tax value} + \text{ending adjusted tax value}}{2} \times \frac{\text{months}}{12.}$$

Definition of items in formula

(3) The items in the formula are defined in subsections (4) to (8).

Rate

(4) **Rate** is the diminishing value rate. It is 1 of the following:

(a) if the same rate applies to all items depreciated in the pool in the income year, that rate; or

(b) if different rates apply to items depreciated in the pool in the income year,—

(i) the lower of the rates, if there are 2 items in the pool; or

(ii) the lowest of the rates, if there are 3 or more items in the pool.

Starting adjusted tax value

(5) **Starting adjusted tax value** is—

(a) the pool's adjusted tax value at the start of the income year, increased as applicable by the amount referred to in section EE 22(2)(b); or

(b) zero, if the pool did not exist at the start of the income year.

Ending adjusted tax value

(6) **Ending adjusted tax value** is the pool's adjusted tax value at the end of the income year before the deduction of an amount of depreciation loss for the pool for the income year. The value is, as applicable,—

(a) increased by the amounts referred to in section EE 22(1) and (2)(a):

(b) decreased by the amount referred to in section EE 22(3).

Months

(7) **Months**, for a person, is the number of whole or part months in their income year, and the number may be more or less than 12.

Months: income year of longer than normal length

[Repealed]

(8) *[Repealed]*

Defined in this Act: adjusted tax value, amount, deduction, depreciable property, depreciation loss, diminishing value rate, income year, own, pool

Compare: 2004 No 35 s EE 21

Section EE 21(5) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(6) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(6): substituted (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(7) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(7): substituted (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(8) heading: repealed (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 21(8): repealed (with effect on 1 April 2008), on 6 October 2009, by section 117(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EE 22 Cases affecting pool

Acquired item included

(1) If a person chooses in an income year to include in a pool an item of poolable property that they acquire in the income year, the pool's adjusted tax value is increased by the item's cost.

Separately depreciated item included

(2) If a person chooses in an income year to include in a pool an item of poolable property that they depreciated separately in the previous income year,—

(a) the pool's adjusted tax value is increased by the item's adjusted tax value on the date it is included in the pool; and

(b) the item's adjusted tax value at the end of the previous income year is included in **starting adjusted tax value** in section EE 21(5).

Item disposed of

(3) If a person disposes of an item included in a pool, any consideration they derive from the disposal is subtracted from the adjusted tax value of the pool in which the item was included on the date of the disposal.

All items disposed of

(4) If, on the last day of an income year, the adjusted tax value of a person's pool is positive but the person has disposed of all items that were in the pool,—

(a) the amount of depreciation loss that the person has for the pool for the income year is the pool's adjusted tax value; and

(b) on the first day of the following income year, the pool's adjusted tax value is zero.

Negative adjusted tax value

(5) If, on the last day of an income year, the adjusted tax value of a person's pool is negative,—

(a) the amount by which the adjusted tax value is negative is an amount of depreciation recovery income of the person derived in the income year; and

(b) on the first day of the following income year the pool's adjusted tax value is zero.

Relationship with section EZ 10

(6) Section EZ 10 (Pool items accounted for by globo method for 1992–93 income year) limits the amount of income arising under subsection (5)(a) in the circumstances described in the section.

Defined in this Act: acquire, adjusted tax value, amount, depreciation loss, depreciation recovery income, dispose, income, income year, pool, poolable property

Compare: 2004 No 35 s EE 22

EE 23 Combined pools

Combining pools allowed

(1) A person using the pool method may at any time combine any number of pools to form a single pool.

Consequences

(2) When a person combines pools,—

(a) the new pool's adjusted tax value is the same as the sum of the adjusted tax values of the constituent pools; and

(b) the adjusted tax value of each of the constituent pools at the end of the income year in which the pools are combined is zero; and

(c) each of the constituent pools ceases to exist.

Defined in this Act: adjusted tax value, income year, pool, pool method

Compare: 2004 No 35 s EE 23

EE 24 Property ceasing to qualify for pool

If a person starts using an item of property included in a pool in such a way as to cause the item to cease to meet the requirements of section EE 66(4), they must account for it as if, on the day they first used it in that way,—

(a) they disposed of it for its market value; and

(b) they immediately reacquired it for its market value.

Defined in this Act: acquire, dispose, pool, property

Compare: 2004 No 35 s EE 24

EE 25 Depreciation loss for plant variety rights application granted in 2005–06 or later income year

When this section applies

(1) This section applies when—

(a) plant variety rights are granted to a person in their 2005–06 income year or a later income year; and

(b) the rights are granted in relation to a plant variety rights application owned by the person; and

(c) a deduction for expenditure is denied under another provision.

Calculation of deduction

(2) For the income year in which the plant variety rights are granted, the person is allowed a deduction for expenditure on

the plant variety rights application of an amount calculated using the formula—

$$\text{cost} \times \frac{\text{months of ownership}}{\text{depreciation months.}}$$

Definition of items in formula

(3) In the formula,—

(a) **cost** is the cost to the person of the plant variety rights application:

(b) **months of ownership** is the number of whole calendar months for which the person owns the plant variety rights application:

(c) **depreciation months** is the total of the number of months of ownership under paragraph (b) and the number of months in the term for which the plant variety rights are granted in relation to the plant variety rights application.

Defined in this Act: amount, deduction, depreciation, income year, plant variety rights

Compare: 2004 No 35 s EE 24B

Depreciation rates

EE 26 Setting of economic depreciation rate

Relevant provisions

(1) The economic depreciation rate that applies to a kind of item of depreciable property is set under—

(a) section EE 27, for items that—

(i) are not buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is set under section EE 29 or EE 30; and

(ii) are acquired on or after 1 April 2005:

(b) section EE 28, for items that are buildings and—

(i) are acquired on or after 19 May 2005; and

(ii) do not have an economic depreciation rate set under section EZ 23 (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005):

(c) section EE 29, for certain aircraft and motor vehicles acquired on or after 1 April 2005:

(d) section EE 30, for items that—

(i) have an estimated residual market value greater than 13.5% of cost:

(ii) would, in the absence of section EE 30, have an economic depreciation rate set under section EE 27 or EE 28:

(e) section EZ 23 for items that—

(i) are not buildings, fixed life intangible property, or excluded depreciable property and are acquired before 1 April 2005:

(ii) are buildings acquired before 19 May 2005:

(iii) are buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under section EZ 23 or a corresponding provision.

No rate for fixed life intangible property or excluded depreciable property

(2) An economic depreciation rate must not be set for a kind of item of depreciable property that is fixed life intangible property or excluded depreciable property.

Overriding effect of election under section EE 32

(3) Subsection (1)(a), (c), and (d) are overridden by section EE 32.

Defined in this Act: building, depreciable property, economic rate, estimated residual market value, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25

Section EE 26 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 27 Economic rate for certain depreciable property

What this section is about

(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property.

Exclusion

(2) This section does not apply to buildings, fixed life intangible property, excluded depreciable property, or property for which an economic rate is set under section EE 29 or EE 30.

Rate set by Commissioner

(3) The Commissioner sets the rate from time to time by—

(a) following the procedure set out in this section; and

(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(4) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—

(a) obtains a figure by applying the formula in subsection (5) to items of that kind; and

(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 1 (New banded rates of depreciation); and

(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

(i) the rate calculated for each kind; and

(ii) the reduction in compliance costs that is likely to be achieved.

Formula

(5) The formula is—

$$\frac{2}{\text{estimated useful life}}.$$

Definition of item in formula

(6) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

Defined in this Act: building, Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25B

Section EE 27 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 28 Economic rate for buildings

What this section is about

(1) This section is about setting the economic depreciation rate that applies to a kind of item of depreciable property that is a building and for which an economic rate is not set under section EE 30 or EZ 23 (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005).

Rate set by Commissioner

(2) The Commissioner sets the rate from time to time by—

(a) following the procedure set out in this section; and

(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(3) To set the straight-line rate for a kind of item of depreciable property, the Commissioner—

(a) gets a figure by applying the formula in subsection (4) to items of that kind; and

(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 4 (New banded rates of depreciation); and

(c) sets the same rate for some or all of the kinds of buildings that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

(i) the rate calculated for each kind; and

(ii) the reduction in compliance costs that is likely to be achieved.

Formula

(4) The formula is—

$$\frac{1}{\text{estimated useful life}}.$$

Definition of item in formula

(5) In the formula, **estimated useful life** is the estimated useful life of the item expressed in years.

Contracts existing at 19 May 2005

(6) Despite subsection (1), a person who before 19 May 2005 enters into a binding contract for the purchase or construction of

a building must apply to the building the economic rate for the kind of the building determined under EZ 23.

Defined in this Act: building, Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25C

Section EE 28 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 29 Economic rate for certain aircraft and motor vehicles

What this section does

(1) This section gives the economic depreciation rate for certain aircraft and motor vehicles.

Rate for certain aircraft

(2) The economic rate for an aircraft is a diminishing value rate of 10% or a straight-line rate of 7% if the aircraft—

(a) is self-propelled; and

(b) has fixed wings; and

(c) is not an international aircraft; and

(d) is not used for top-dressing or spraying; and

(e) is not a helicopter.

Rate for certain motor vehicles

(3) The economic rate for a motor vehicle that is designed exclusively or mainly to carry persons and has seats for no more than 12 persons is a diminishing value rate of 30% or a straight-line rate of 21% if the motor vehicle—

(a) is not available for hire:

(b) is available for hire for a hire period of more than 1 month:

(c) is a taxi:

(d) is a minibus.

Defined in this Act: diminishing value rate, economic rate, international aircraft, minibus, straight-line rate

Compare: 2004 No 35 s EE 25D

EE 30 Economic rate for plant, equipment, or building, with high residual value

What this section is about

(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

(a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and

(b) the estimated residual market value for the item is more than 13.5% of cost; and

(c) the items are—

(i) plant or equipment acquired on or after 1 April 2005:

(ii) buildings acquired on or after 19 May 2005.

Rate set by Commissioner

(2) The Commissioner sets the rate from time to time by—

(a) following the procedure set out in this section; and

(b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—

(a) obtains a figure by applying the formula in subsection (4) to items of that kind; and

(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 1 (New banded rates of depreciation); and

(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

(i) the rate calculated for each kind; and

(ii) the reduction in compliance costs that is likely to be achieved.

Formula

(4) The formula is—

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}} \right)^{\frac{1}{\text{estimated useful life}}} \right).$$

Definition of items in formula

(5) In the formula,—

(a) **residual value** is the greater of—

(i) estimated residual market value, which is defined in section EE 67:

(ii) 13.5% of cost:

(b) **cost** is the cost of items of the kind to which the formula is applied:

(c) **estimated useful life** is defined in section EE 63.

Defined in this Act: building, Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EE 25E

Section EE 30(1)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 118 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 30(3)(b): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 30(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EE 30 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 31 Annual rate for item acquired in person's 1995–96 or later income year

What this section is about

(1) This section is about the annual rate that applies to an item of depreciable property that a person acquires, other than under section FL 2(2) (Treatment of emigrating companies and their shareholders), in their 1995–96 income year or a later income year (not including fixed life intangible property or excluded depreciable property, for which rates are set in sections EE 33 and EZ 15 (Annual rate for excluded depreciable property: 1992–93 tax year)). Subsection (2) applies to specify the annual rate for the item if the requirements in subsection (2A) are met, and subsection (3) applies to specify the annual rate

for the item if subsections (2A) and (2) do not apply and the requirements in subsection (3A) are met.

Requirements for subsection (2) rate

(2A) This subsection applies, and the rate is 1 of the rates given by subsection (2), if the person—

(a) acquires the item on or before 20 May 2010; or

(b) decides to purchase or construct the item, meets the administrative requirements in subsection (4), and—

(i) enters into a binding contract for the purchase or construction of the item on or before 20 May 2010:

(ii) after deciding to purchase or construct the item, incurs expenditure in relation to its purchase or construction on or before 20 May 2010.

Rate for item acquired on or before 20 May 2010

(2) If subsection (2A) applies, the rate is 1 of the following:

(a) the item's economic rate, special rate, or provisional rate, for an item not described in paragraph (b), (c), or (d):

(b) the item's economic rate, special rate, or provisional rate, multiplied by 1.2, for an item that—

(i) has not been used or held for use in New Zealand as an item of depreciable property before the date on which the person acquires it; and

(ii) is not a building; and

(iii) is not a used imported car; and

(iv) is not an international aircraft:

(c) a diminishing value rate of 15% or a straight-line rate of 10%, for an international aircraft:

(d) 0% for a building that has an economic rate or provisional rate of more than 0% due to an estimated useful life of 50 years or more.

Requirements for subsection (3) rate

(3A) This subsection applies, and the rate is 1 of the rates given by subsection (3), if subsections (2A) and (2) do not apply and the person—

(a) acquires the item after 20 May 2010; or

(b) decides to purchase or construct the item, and—

(i) enters into a binding contract for the purchase or construction of the item after 20 May 2010:

(ii) incurs expenditure in relation to the item's purchase or construction after 20 May 2010.

Rate for item acquired after 20 May 2010

(3) If subsection (3A) applies, the rate is 1 of the following:

(a) the item's economic rate, special rate, or provisional rate, for an item not described in paragraph (b) or (c):

(b) a diminishing value rate of 15% or a straight-line rate of 10% for an international aircraft:

(c) 0%, for a building that has an economic rate or provisional rate of more than 0% due to an estimated useful life of 50 years or more.

Administrative requirements

(4) For the purposes of subsection (2A)(b), a person must—

(a) have available for the Commissioner documents dated on or before 20 May 2010 that evidence that the person had, on or before 20 May 2010, decided to purchase or construct the relevant item:

(b) send to the Commissioner a statutory declaration that the person had, on or before 20 May 2010, decided to purchase or construct the relevant item.

Defined in this Act: acquire, annual rate, building, Commissioner, depreciable property, diminishing value rate, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property, income year, international aircraft, New Zealand, straight-line rate

Compare: 2004 No 35 s EE 26

Section EE 31(1): amended (with effect on 20 May 2010), on 21 December 2010, by section 49(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(1): amended (with effect on 20 May 2010), on 28 May 2010, by section 77(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(2A) heading: inserted (with effect on 20 May 2010), on 21 December 2010, by section 49(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(2A): inserted (with effect on 20 May 2010), on 21 December 2010, by section 49(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(2) heading: substituted (with effect on 20 May 2010), on 28 May 2010, by section 77(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(2): amended (with effect on 20 May 2010), on 21 December 2010, by section 49(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(2): amended (with effect on 20 May 2010), on 28 May 2010, by section 77(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(2)(a): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(4)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(2)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 119(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 31(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 119(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 31(2)(c): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(4)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(2)(d): added, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(4)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(3A) heading: inserted (with effect on 20 May 2010), on 21 December 2010, by section 49(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(3A): inserted (with effect on 20 May 2010), on 21 December 2010, by section 49(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(3) heading: added (with effect on 20 May 2010), on 28 May 2010, by section 77(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(3): amended (with effect on 20 May 2010), on 21 December 2010, by section 49(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(3): added (with effect on 20 May 2010), on 28 May 2010, by section 77(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(3)(a): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(4)(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(3)(b): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(4)(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(3)(c): added, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(4)(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31(4) heading: added (with effect on 20 May 2010), on 21 December 2010, by section 49(6) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31(4): added (with effect on 20 May 2010), on 21 December 2010, by section 49(6) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 31 list of defined terms **Commissioner**: inserted (with effect on 20 May 2010), on 21 December 2010, by section 49(7) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 31 list of defined terms **estimated useful life**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 77(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 32 Election in relation to certain depreciable property acquired on or after 1 April 2005

When this section applies

(1) This section applies when a person acquired an item of depreciable property that is not a building—

(a) on or after 1 April 2005; and

(b) before the commencement of the person's income year corresponding to the 2006–07 tax year.

Election to use economic depreciation rate determined under section EZ 23

(2) The person may choose to calculate the depreciation loss for the item of depreciable property for income years corresponding to the 2005–06 tax year and later tax years in accordance with the economic depreciation rate determined for the kind of item under section EZ 23 (Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005).

Election to be made in return of income

(3) The person must make an election under subsection (2) in the person's return of income for the 2005–06 tax year.

Defined in this Act: building, depreciable property, depreciation loss, economic depreciation rate, income year, return of income, tax year

Compare: 2004 No 35 s EE 26B

Section EE 32 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 33 Annual rate for fixed life intangible property

What this section is about

(1) This section is about the annual rate that applies to an item of fixed life intangible property, not including—

(a) an item of excluded depreciable property for which a rate is set in section EZ 15 (Annual rate for excluded depreciable property: 1992–93 tax year):

(b) a patent for which a rate is set in section EE 34.

Rate

(2) The rate is the rate calculated using the formula—

$$\frac{1}{\text{legal life}}.$$

Definition of item in formula

(3) In the formula, **legal life** is,—

(a) if section EE 19 applies, the item's remaining legal life from the start of the income year in which a person incurs the additional costs referred to in that section:

(b) if section EE 19 does not apply, the item's remaining legal life from the time at which a person acquires it.

How rate expressed

(4) The rate given by the formula is expressed as a decimal and rounded to 2 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down.

Defined in this Act: acquire, annual rate, excluded depreciable property, fixed life intangible property, income year, legal life

Compare: 2004 No 35 s EE 27

EE 34 Annual rate for patent granted in 2005–06 or later income year

When this section applies

(1) This section applies to an item that is a patent when the patent is acquired by a person in their 2005–06 income year or a later income year.

Rate

(2) The rate is the rate calculated using the formula—

$$\frac{1}{\text{legal life}}.$$

Definition of item in formula

(3) In the formula, **legal life** is set out in whichever of subsections (4) to (7) applies to the patent.

Fixed life intangible property

(4) If the patent is an item of fixed life intangible property to which section EE 19 applies, **legal life** is the patent's remaining legal life from the start of the income year in which the person incurs the additional costs referred to in that section.

No depreciation loss for patent application

(5) If section EE 19 does not apply to the patent and the person has been denied a deduction for an amount of depreciation loss for the patent application, **legal life** is the patent's remaining legal life from the time at which the person acquires the patent.

Depreciation loss for patent application

(6) If section EE 19 does not apply to the patent, and has not applied to the patent application while the person has owned it, and the person has been allowed a deduction for an amount of depreciation loss for the patent application, **legal life** is the remaining legal life of the patent application from the start of the income year in which the person acquires the patent application.

When section EE 19 applied to patent application

(7) If section EE 19 does not apply to the patent, but has applied to the patent application while the person has owned it, and the person has been allowed a deduction for an amount of depreciation loss for the patent application, **legal life** is the remaining legal life of the patent application from the start of the income year in which the person acquires the patent.

How rate expressed

(8) The rate calculated using the formula is expressed as a decimal and rounded to 2 decimal places, with numbers at the midpoint

or greater being rounded up and other numbers being rounded down.

Defined in this Act: acquire, amount, deduction, depreciation loss, income year, legal life

Compare: 2004 No 35 s EE 27B

EE 35 Special rate or provisional rate

Rate set for item of depreciable property

(1) A special rate or a provisional rate is set for an item of depreciable property under sections 91AAG to 91AAJ of the Tax Administration Act 1994.

No special rate for excluded depreciable property, special excluded depreciable property, or building

(2) A special rate may not be set for an item of excluded depreciable property, an item of special excluded depreciable property, or a building.

No provisional rate for fixed life intangible property or excluded depreciable property

(3) A provisional rate may not be set for an item of fixed life intangible property or an item of excluded depreciable property.

Exception

(4) Section FA 11B(7) (Adjustments for certain operating leases) overrides this section.

Defined in this Act: building, depreciable property, excluded depreciable property, fixed life intangible property, provisional rate, special excluded depreciable property special rate

Compare: 2004 No 35 s EE 28

Section EE 35(2) heading: substituted (with effect on 20 May 2010), on 28 May 2010, by section 78(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 35(2): substituted (with effect on 20 May 2010), on 28 May 2010, by section 78(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 35(4) heading: inserted, on 1 April 2008, by section 356 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EE 35(4): inserted, on 1 April 2008, by section 356 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EE 35 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 35 list of defined terms **special excluded depreciable property**: inserted (with effect on 20 May 2010), on 28 May 2010, by section 78(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 36 Using economic rate or provisional rate instead of special rate

Allowed to use economic or provisional rate

(1) A person may depreciate an item to which a special rate applies by applying, instead, the economic rate applicable to the item or a provisional rate applicable to the item. This subsection is overridden by subsection (2).

Not allowed to use economic or provisional rate

(2) The person must not depreciate the item by applying the economic rate or the provisional rate, if—

- (a) a special rate applies to the item; and
- (b) the special rate is higher than the economic rate; and
- (c) the person applies the special rate to the item for an income year; and
- (d) in a later income year, the item's market value declines at a rate equal to or greater than the special rate; and
- (e) it is a reasonable conclusion from all the circumstances of the case that the person's purpose, or 1 of the person's purposes, in wanting to change from the special rate to the economic rate or the provisional rate for the later income year is to enable the person to defer the deduction that the person is allowed for the amount of depreciation loss for the item's decline in value.

Defined in this Act: amount, deduction, depreciation loss, economic rate, income year, provisional rate, special rate

Compare: 2004 No 35 s EE 29

Improvements, items of low value, or items no longer used

EE 37 Improvements

When this section applies

(1) This section applies when a person makes an improvement to an item of depreciable property.

Income year in which improvement made

(2) In the income year in which the person makes the improvement, the provisions of this subpart apply to the improvement, as if it were a separate item of depreciable property, in the period that—

(a) starts at the start of the month in which the person first uses the improvement or has it available for use; and

(b) ends at the end of the income year.

Following income years

(3) For income years following the income year in which the person makes the improvement,—

(a) a person who uses the diminishing value method or the straight-line method for the item that was improved may choose to apply subsection (4) or (5), if paragraph (ab) does not apply:

(ab) a person who uses the diminishing value method or the straight-line method for the item that was improved must use subsection (3B) if—

(i) treating the improvement as an item, section EE 31(2A) does not apply, but section EE 31(3A) does apply; and

(ii) the item that was improved is a grandparented structure, or is not a building, is not a used import car, is not an international aircraft, or has not been used or held for use in New Zealand as an item of depreciable property before the date on which the person acquires it:

(b) a person who uses the pool method for the item that was improved must apply subsections (6) and (7).

Improvement compulsorily treated as separate item

(3B) For the purposes of subsection (3)(ab), a person must treat the improvement as a separate item of depreciable property.

Improvement treated as separate item

(4) For the purposes of subsection (3)(a), a person may choose to treat the improvement as a separate item of depreciable property.

Improvement treated as part of item

(5) For the purposes of subsection (3)(a), a person may choose to treat the improvement as part of the item of depreciable property that was improved. They must do 1 of the following for the first income year, after the income year in which they made the improvement, in which they use the improvement or have it available for use:

(a) if they use the diminishing value method for the item, add the improvement's adjusted tax value at the start of the income year to the item's adjusted tax value at the start of the income year:

(b) if they use the straight-line method for the item,—

(i) add the improvement's adjusted tax value at the start of the income year to the item's adjusted tax value at the start of the income year; and

(ii) add the improvement's cost to the item's cost.

Pool method

(6) For the purposes of subsection (3)(b), a person who uses the pool method for the item that was improved must treat the improvement as a separate item of depreciable property. If its cost is equal to or less than its maximum pooling value, they must include it in a pool in the first income year, after the income year in which they made the improvement, in which they use the improvement or have it available for use.

Adjustment of pool's value

(7) When an improvement is included in a pool under subsection (6),—

(a) the pool's adjusted tax value is increased by the improvement's adjusted tax value on the date it is included in the pool; and

(b) the improvement's adjusted tax value at the end of the previous income year is included in **starting adjusted tax value** in section EE 21(5).

Defined in this Act: adjusted tax value, building, depreciable property, diminishing value method, grandparented structure, improvement, income year, international aircraft, maximum pooling value, New Zealand, pool, pool method, straight-line method

Compare: 2004 No 35 s EE 30

Section EE 37(3)(a): substituted (with effect on 20 May 2010), on 28 May 2010, by section 79(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37(3)(a): substituted (with effect on 30 July 2009), on 28 May 2010, by section 79(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37(3)(ab): substituted (with effect on 20 May 2010), on 28 May 2010, by section 79(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37(3)(ab): inserted (with effect on 30 July 2009), on 28 May 2010, by section 79(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37(3)(ab)(i): substituted (with effect on 20 May 2010), on 21 December 2010, by section 50 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 37(3B) heading: inserted (with effect on 30 July 2009), on 28 May 2010, by section 79(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37(3B): inserted (with effect on 30 July 2009), on 28 May 2010, by section 79(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37 list of defined terms **grandparented structure**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 79(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37 list of defined terms **international aircraft**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 79(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 37 list of defined terms **New Zealand**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 79(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 38 Items of low value

When this section applies

(1) This section applies for an item of property that a person acquires, in an income year, when—

(a) the total cost for the item is equal to or less than the threshold value given for the item by subsection (2); and

(b) the person uses the item, or has the item available for use, in the income year; and

(c) the item would be depreciable property if the person did not deal with it under this section; and

(d) the item has not been and will not become part of any other property that is depreciable property; and

(e) the person is denied a deduction for the cost of the item if the person does not deal with the item under this section; and

(f) the item is one of a group of items, acquired at the same time and from the same supplier, to which the same depreciation rate would apply if they were all treated as items of depreciable property,—

(i) if subparagraph (ii) does not apply, the total cost for all the items in the group is equal to or less than the threshold value given for the item by subsection (2):

(ii) if the items generally constitute the person's trading stock, the total cost for all the items in the group not treated by the person solely as trading stock is equal to or less than the threshold value given for the item by subsection (2).

Threshold value for item

(2) The threshold value for an item is—

(a) $200, if the item is acquired before 19 May 2005:

(b) $500, if the item is acquired on or after 19 May 2005.

Amount of depreciation loss

(3) If the person chooses to deal with the item under this section, the amount of depreciation loss that the person has for the item for the income year is the item's cost.

How election made

(4) The person makes the election by claiming, in their return of income for the income year for which the election is made, a deduction for the amount of depreciation loss described in subsection (3).

Amount of depreciation recovery income

(5) If the person disposes in an income year of an item for which they have been allowed a deduction on a claim under subsection (3), the consideration they derive from the disposal is an amount of depreciation recovery income for the income year.

Change of use treated as disposal

(6) Subsection (7) applies when—

(a) a person has been allowed a deduction on a claim under subsection (3) for an item; and

(b) at a later time, the person stops using the item, or having the item available for use, mainly in deriving assessable

income or carrying on a business for the purpose of deriving assessable income; and

(c) the use to which the item is put at the later time is not subject to fringe benefit tax.

Disposal

(7) The person is treated as having disposed of the item for its market value at the later time.

Increase in specified sum

(8) The Governor-General may make an Order in Council increasing the sum specified in subsection (1)(a) and (f).

Defined in this Act: acquire, amount, assessable income, business, deduction, depreciable property, depreciation loss, depreciation recovery income, dispose, fringe benefit tax, income year, property, return of income trading stock

Compare: 2004 No 35 s EE 31

EE 39 Items no longer used

When this section applies

(1) This section applies when a person in an income year has an item of depreciable property that—

(a) is no longer used or, because the geothermal energy proving period has ended, becomes unavailable for use under section EE 6(4); and

(b) is not a building, unless the item meets the requirements of subsection (2); and

(c) has not been depreciated using the pool method.

Buildings

(2) This section applies to a building that meets the requirements of subsection (1)(a) and (c) if—

(a) the building has been irreparably damaged and rendered useless for the purpose of deriving income; and

(b) the damage occurs—

(i) in the 2005–06 income year or a later income year:

(ii) as a result of the extreme climatic conditions that occurred during the month of February 2004 in New Zealand:

(iii) as a result of the storm event that occurred during the month of July 2004 in the Bay of Plenty area; and

(c) the damage is caused other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

Amount of depreciation loss under this section

(3) The person has an amount of depreciation loss under this section and under no other provision of this subpart.

Circumstances

(4) The person has an amount of depreciation loss if—

(a) they no longer use the item in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(b) neither they nor a person associated with them intends to use the item in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(c) the costs of disposing of the item would be more than any consideration they could derive from disposing of it.

Amount

(5) The amount of depreciation loss is the item's adjusted tax value at the start of the income year.

Adjusted tax value at end of year

(6) The item's adjusted tax value at the end of the income year is zero.

Defined in this Act: adjusted tax value, amount, assessable income, associated person, building, business, depreciable property, depreciation loss, dispose, geothermal energy proving period, income year, pool method

Compare: 2004 No 35 s EE 32

Section EE 39 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Transfers of depreciable property: associated persons and certain amalgamations

EE 40 Transfer of depreciable property on or after 24 September 1997

When this section applies

(1) This section applies when, on or after 24 September 1997, a person (**person A**) acquires, directly or indirectly, an item of property from an associated person to whom any of subsections (2) to (6) applies. The income year referred to is the income year of the associated person.

Deduction for depreciation loss allowed in year of acquisition

(2) The associated person is allowed a deduction for an amount of depreciation loss for the item for the income year in which person A acquires it, or would have been allowed the deduction if section EE 11(1) had not applied.

Deduction for depreciation loss allowed in year before acquisition

(3) The associated person was allowed a deduction for an amount of depreciation loss for the income year before that in which person A acquired it.

When section DZ 9 applies

(4) The associated person has been allowed a deduction for the item under section DZ 9 (Premium paid on land leased before 1 April 1993)—

(a) for the income year in which person A acquired it; or

(b) for the income year before that in which person A acquired it; or

(c) would have been allowed a deduction in either income year if they had incurred a cost for the item for which they were denied any other deduction.

If costs incurred for which deduction denied

(5) The associated person would have been allowed a deduction for an amount of depreciation loss for the item—

(a) for the income year in which person A acquired it, if they had incurred a cost for the item for which they were denied any other deduction and if section EE 11(1) had not applied; or

(b) for the income year before that in which person A acquired it, if they had incurred a cost for the item for which they were denied any other deduction.

When section EE 8 applies

(6) The associated person would have been a person to whom any of subsections (2) to (5) applied, if they had not made an election under section EE 8.

Cost of item to person A

(7) For the purposes of determining the amount of depreciation loss that person A has, the cost of the item to person A is treated as 1 of the following:

(a) if section EE 58 applies to set a base value for the item, the lesser of—

(i) the cost of the item to person A:

(ii) the item's market value when the associated person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(b) if section EE 58 does not apply, the lesser of—

(i) the cost of the item to person A:

(ii) the cost of the item to the associated person.

Exclusions

(8) Subsection (7) does not apply if—

(a) the item is not depreciable intangible property, and the Commissioner decides that it is appropriate to use the cost of the item to person A for the purposes of determining the amount of depreciation loss that person A has for the item:

(b) the cost to person A is income of the associated person, other than under section EE 48(1):

(c) person A acquires the item on a settlement of relationship property to which section FB 21 (Depreciable property) applies.

Rate

(9) The annual rate that person A applies to the item must be 1 of the following:

(a) when person A uses the same depreciation method for the item as that used by the associated person for it, the annual rate must be no more than the annual rate that the associated person applied to it:

(b) when person A uses a depreciation method for the item that is different from the method the associated person used for it, the annual rate must be no more than a rate equivalent to the rate that the associated person applied to it, as determined by schedule 10 (Straight-line equivalents of diminishing value rates of depreciation).

Fixed life intangible property

(10) Subsection (6) does not apply to an item of fixed life intangible property whose rate is set in section EE 33.

Relationship with section EE 41 and subpart FC

(11) This section—

(a) is overridden by section EE 41:

(b) does not apply to a bequest of property when subpart FC (Distribution, transmission, and gifts of property) applies to it and the property is disposed of at market value.

Defined in this Act: acquire, amount, annual rate, assessable income, associated person, business, Commissioner, deduction, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, property, settlement of relationship property

Compare: 2004 No 35 s EE 33

EE 41 Transfer of depreciable property on certain amalgamations on or after 14 May 2002

When this section applies

(1) This section applies when, on or after 14 May 2002, an amalgamated company acquires, directly or indirectly, an item of property from an amalgamating company, and—

(a) the amalgamated company's acquisition of the item is part of an amalgamation that is not a resident's restricted amalgamation; and

(b) the amalgamating company is an associated person of the amalgamated company, treating the amalgamating company as existing at the time that the amalgamated company is treated under section FO 11(1)(b) or FO

15(3) (which relate to property passing on certain amalgamations) as having acquired the property from the amalgamating company.

Cost of item to person

(2) For the purposes of determining the amount of depreciation loss that the amalgamated company has, the cost of the item to it is treated as 1 of the following:

(a) if section EE 58 applies for the amalgamating company and the item, the lesser of—

(i) the value given under section FO 11 or FO 15, as applicable; and

(ii) the item's market value when the amalgamating company starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(b) if section EE 58 does not apply for the amalgamating company and the item, the lesser of—

(i) the value given under section FO 11 or FO 15, as applicable; and

(ii) the cost of the item to the amalgamating company.

Exclusions

(3) Subsection (2) does not apply if—

(a) the item is not depreciable intangible property, and the Commissioner decides that it is appropriate to use the cost of the item to the amalgamated company for the purposes of determining the amount of depreciation loss that it has for the item:

(b) the cost to the amalgamated company is income of the amalgamating company, other than under section EE 48(1).

Rate

(4) The annual rate that the amalgamated company applies to the item must be 1 of the following:

(a) when the amalgamated company uses the same depreciation method for the item as that used by the amalgamating company for it, the annual rate that the amalgamated

company applies to it must be no more than the annual rate that the amalgamating company applied to it:

(b) when the amalgamated company uses a depreciation method for the item that is different from the method the amalgamating company used for it, the annual rate that the amalgamated company applies to it must be no more than a rate equivalent to the rate that the amalgamating company applied to it, as determined by schedule 10 (Straight-line equivalents of diminishing value rates of depreciation).

Fixed life intangible property

(5) Subsection (4) does not apply to an item of fixed life intangible property whose rate is set in section EE 33.

Defined in this Act: acquire, amalgamated company, amalgamating company, amalgamation, amount, annual rate, assessable income, business, Commissioner, depreciable intangible property, depreciation loss, depreciation method, fixed life intangible property, income, income year, property, resident's restricted amalgamation

Compare: 2004 No 35 s EE 34

EE 42 Transfer of radiocommunications licence right on or after 24 September 1997

When this section applies

(1) This section applies when, on or after 24 September 1997, the holder of management rights created under the Radiocommunications Act 1989 grants a licence right under that Act to an associated person.

Exclusion

(2) This section does not apply when the Crown acting by and through the Secretary of Commerce is named as the manager under section 11(1) of the Radiocommunications Act 1989.

Cost of licence right

(3) For the purposes of determining the amount of depreciation loss that the associated person has, the cost of the licence right to the associated person is treated as zero.

Defined in this Act: amount, associated person, depreciation loss

Compare: 2004 No 35 s EE 35

EE 43 Transfer of depreciable intangible property on or after 1 July 1997

When this section applies

(1) This section applies when, on or after 1 July 1997, a person (**person A**) acquires, directly or indirectly, from an associated person an item of depreciable intangible property that—

(a) was not depreciable property of the associated person because it was not of a kind listed in schedule 14 (Depreciable intangible property) at the time the associated person acquired it; and

(b) was not an item for whose cost the associated person was allowed a deduction, other than a deduction for an amount of depreciation loss, under a provision of this Act outside this subpart.

No amount of depreciation loss

(2) Person A does not have an amount of depreciation loss for the item.

Defined in this Act: acquire, amount, associated person, deduction, depreciable intangible property, depreciable property, depreciation loss

Compare: 2004 No 35 s EE 36

Disposals and similar events

EE 44 Application of sections EE 48 to EE 52

When sections apply

(1) Sections EE 48 to EE 52 apply when a person has consideration from the disposal of an item or from an event involving an item, if—

(a) the consideration is consideration of a kind described in section EE 45; and

(b) either—

(i) the item is an item of a kind described in section EE 46; or

(ii) the event is an event of a kind described in section EE 47.

Exclusions

(2) Sections EE 48 to EE 52 do not apply when—

(a) a person disposes of an item of intangible property as part of an arrangement to replace it with an item of the same kind:

(b) a person's patent application has concluded because a patent is granted to the person in relation to the application:

(c) a person's geothermal well becomes unavailable for use under section EE 6(4) because the geothermal energy proving period has ended:

(d) a person receives, for an item of property, an amount of insurance to which section EZ 23B (Property acquired after depreciable property affected by Canterbury earthquakes) applies.

Defined in this Act: arrangement, consideration, dispose, geothermal energy proving period, geothermal well, property

Compare: 2004 No 35 s EE 37

Section EE 44(1): amended (with effect on 1 April 2008), on 21 December 2010, by section 51 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 44(2)(c): amended (with effect on 4 September 2010), on 29 August 2011, by section 24 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 44(2)(d): added (with effect on 4 September 2010), on 29 August 2011, by section 24 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EE 45 Consideration for purposes of section EE 44

General rule

(1) For the purposes of section EE 44, the **consideration** equals the amount that a person derives excluding any GST charged if the person is a registered person, as modified by subsections (3) to (11) minus the amount (the **disposal cost**) that they incur in deriving that amount, to the extent to which the disposal cost—

(a) is not allowed as a deduction to the person other than as a deduction for an amount of depreciation loss; and

(b) is not counted in "the amount that a person derives".

GST for disposal costs

(1B) All amounts deducted or deductible by the person under section 20(3) of the Goods and Services Tax Act 1985 in relation

to the disposal cost described in subsection (1) are subtracted from the disposal costs under that subsection.

Consideration may be zero or negative

(2) For the purposes of section EE 44, the **consideration** may be zero or a negative amount.

Other than market value

(3) If the person has consideration that is not the item's market value, the amount that the person derives is the item's market value. Three qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply:

(b) this subsection does not apply to a transfer under a relationship agreement; and

(c) this subsection does not apply in a case described in any of subsections (5) to (10).

Relationship with subpart FC

(4) Subsection (3) does not apply to a disposal of property to which any of sections FC 3 and FC 4 (which relate to the distribution or transmission of property) applies.

Change of use or location of use

(5) The consideration that a person derives from the event described in section EE 47(2) is the item's market value. Two qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply:

(b) this subsection does not apply to a transfer under a relationship agreement.

Loss or theft

(6) The amount that a person derives from the event described in section EE 47(3) is the amount of insurance, indemnity, or compensation they receive for the loss or theft (**amount A**). If the person is a registered person, amount A does not include the amount, if any, of GST charged on amount A to the extent to which amount A is treated as being consideration received for a supply of services by the registered person under section 5(13) of the Goods and Services Tax Act 1985.

Unused geothermal well brought into use

(7) The amount that a person derives from the event described in section EE 47(6) is the amount of the deduction for depreciation loss allowed under section EE 39(4).

Irreparable damage or damage rendering building useless

(8) The amount that a person derives from the event described in section EE 47(4) is the amount of insurance, indemnity, or compensation they receive for the affected item (**amount A**). If the person is a registered person, amount A does not include the amount, if any, of GST charged on amount A to the extent to which amount A is treated as being consideration received for a supply of services by the registered person under section 5(13) of the Goods and Services Tax Act 1985.

Repossession

(9) The amount that a person derives from the event described in section EE 47(5) is the item's cost minus the net amount paid. Two qualifications are—

(a) if the person is a registered person, the "amount that a person derives" does not include any GST charged on a taxable supply they make:

(b) "net amount paid" means the amount paid by the buyer to the seller for the item under the contract minus any amount refunded by the seller to the buyer.

Other items

(10) The amount that a person derives from the disposal of an item along with any other item, or from the occurrence of an event involving an item that also involves other items, is the item's market value. Two qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any GST that would be charged on the supply:

(b) this subsection does not apply to a transfer under a relationship agreement.

Item leaving New Zealand permanently

(11) The amount that a person derives from the event referred to in section EE 47(10) is described in section EZ 21(1) (Sections

EE 45 and EE 47: permanent removal: allowance before 1 April 1995).

Defined in this Act: amount, consideration, deduction, depreciation loss, dispose, geothermal well, GST, GST charged, New Zealand, registered person, relationship agreement, services, taxable supply

Compare: 2004 No 35 s EE 38

Section EE 45(1) heading: substituted (with effect on 1 April 2008), on 21 December 2010, by section 52(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(1): substituted (with effect on 1 April 2008), on 21 December 2010, by section 52(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(1B) heading: inserted (with effect on 1 April 2008), on 21 December 2010, by section 52(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(1B): inserted (with effect on 1 April 2008), on 21 December 2010, by section 52(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(2) heading: substituted (with effect on 1 April 2008), on 21 December 2010, by section 52(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(2): substituted (with effect on 1 April 2008), on 21 December 2010, by section 52(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(3): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(6): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(7): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(8) heading: substituted (with effect on 4 September 2010), on 29 August 2011, by section 25(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 45(8): amended (with effect on 4 September 2010), on 29 August 2011, by section 25(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 45(8): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(9): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(6)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(9)(b): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(6)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(10): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(7) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 45(11): amended (with effect on 1 April 2008), on 21 December 2010, by section 52(8) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

EE 46 Items for purposes of section EE 44

Items to which sections EE 48 to EE 52 apply

(1) For the purposes of section EE 44, an item of property to which sections EE 48 to EE 52 apply is an item of depreciable property that a person owns, including—

(a) an item for which the person has been allowed a deduction for an amount of depreciation loss they have had under section EE 33; and

(b) an item to which section CZ 11 (Recovery of deductions for software acquired before 1 April 1993) applies.

Exclusions

(2) Sections EE 48 to EE 52 do not apply to—

(a) an item of property that, on the date on which the disposal or the event occurs, is accounted for in a pool; or

(b) an item of petroleum-related depreciable property; or

(c) an item of intangible property that is excluded depreciable property, other than software; or

(d) a land improvement that is excluded depreciable property of a kind for which no deduction for depreciation was allowed under section 108 of the Income Tax Act 1976.

Defined in this Act: amount, deduction, depreciable property, depreciation loss, excluded depreciable property, own, petroleum-related depreciable property, pool, property

Compare: 2004 No 35 s EE 39

EE 47 Events for purposes of section EE 44

Events to which sections EE 48 to EE 52 apply

(1) For the purposes of section EE 44, this section describes the events to which sections EE 48 to EE 52 apply.

Change of use or location of use

(2) The first event is the change of use, or change of location of use, of an item of property, as a result of which a person is denied a deduction for an amount of depreciation loss for the item for the next income year. The event is treated as occurring on the first day of the next income year, and includes a change in use of an item for the purposes of the definition of **commercial fit-out** and a change in the status of a building related to an item for the purposes of that definition.

Loss or theft

(3) The second event is the loss or theft of an item of property, if the item is not recovered in the income year in which the loss or theft occurs.

Irreparable damage or damage rendering building or grandparented structure useless

(4) The third event is—

(a) the irreparable damage of an item of property that is not a building or grandparented structure; or

(b) the damage of an item of property that is a building or grandparented structure, or of the neighbourhood of the building or grandparented structure, causing the building or grandparented structure to be—

(i) useless for the purpose of deriving income; and

(ii) demolished or abandoned for later demolition.

Repossession

(5) The fourth event is the seller's repossession of an item of property to which section EE 3 applies because the buyer wholly or partly fails to pay the consideration. The event is treated as occurring on the date on which the item is repossessed.

Unused geothermal well brought into use

(6) The fifth event is, for a person's geothermal well that is unavailable for use under section EE 6(4) because the geothermal energy proving period has ended, is when the person starts to—

(a) use the well in deriving assessable income or carrying on a business for the purpose of deriving assessable income:

(b) have the well available for use in deriving assessable income or carrying on a business for the purpose of deriving assessable income.

Statutory acquisition

(7) The sixth event is the acquisition of an item of property by a person acting under statutory authority.

Cessation of ownership under section EE 4 or EE 5

(8) The seventh event is the cessation of ownership of a fixture or improvement—

(a) that a lessee is treated as having under section EE 4(2); or

(b) that a person is treated as having under section EE 5(3).

Cessation of rights in intangible property

(9) The eighth event is an occurrence that has the effect that the owner of an item of intangible property is no longer able, and will never be able, to exercise the rights that constitute or are part of the item.

Item leaving New Zealand permanently

(10) The ninth event is described in section EZ 21(2) (Sections EE 45 and EE 47: permanent removal: allowance before 1 April 1995).

Defined in this Act: amount, assessable income, business, deduction, depreciation loss, geothermal energy proving period, geothermal well, improvement, income year, lessee, New Zealand, own, pay, property

Compare: 2004 No 35 s EE 40

Section EE 47(2): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 53(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 47(4) heading: substituted (with effect on 4 September 2010), on 29 August 2011, by section 26 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 47(4): substituted (with effect on 4 September 2010), on 29 August 2011, by section 26 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EE 48 Effect of disposal or event

Amount of depreciation recovery income

(1) For the purposes of section EE 44, if the consideration is more than the item's adjusted tax value on the date on which the disposal or the event occurs, the lesser of the following amounts

is the amount of depreciation recovery income derived by the person:

(a) the amount by which the consideration is more than the item's adjusted tax value on the date on which the disposal or the event occurs; and

(b) the amount given by subsections (1B) and (1C).

Amount for subsection (1)(b)

(1B) The amount for the purposes of subsection (1)(b) is given by the following formula:

item depreciation loss + CZ 11 item amount + DB 64 item amount.

Definition of items in formula

(1C) In the formula in subsection (1B),—

(a) **item depreciation loss** is the total of the amounts of depreciation loss for which the person has been allowed deductions for the item:

(b) **CZ 11 item amount** is the amount of any deduction allowed for the acquisition of the item, for the person, if the item is one to which section CZ 11 (Recovery of deductions for software acquired before 1 April 1993) applies:

(c) **DB 64 item amount** is the amount of the capital contribution for the item, for the person, if the item is one to which section DB 64 (Capital contributions) applies.

Amount of depreciation loss

(2) For the purposes of section EE 44, if the consideration is less than the item's adjusted tax value on the date on which the disposal or the event occurs, the person has an amount of depreciation loss that is the amount by which the consideration is less than the item's adjusted tax value on that date.

Income year of depreciation recovery income

(2B) The person derives the depreciation recovery income in the income year that is the earliest income year in which the consideration can be reasonably estimated.

When subsection (2) does not apply

(3) Subsection (2) does not apply if the item is a building unless—

(a) the building or grandparented structure has been rendered useless for the purpose of deriving income, and demolished or abandoned for later demolition as a result of damage to the building or grandparented structure or of the neighbourhood of the building or grandparented structure; and

(b) *[Repealed]*

(c) the damage is caused—

(i) by a natural event not under the control of the person, an agent of the person, or an associated person; and

(ii) other than as a result of the action or failure to act of the person, an agent of the person, or an associated person.

Defined in this Act: acquire, adjusted tax value, amount, building, capital contribution, consideration, deduction, depreciation loss, depreciation recovery income, dispose, income, income year

Compare: 2004 No 35 s EE 41

Section EE 48(1): amended (with effect on 4 September 2010), on 29 August 2011, by section 27(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(1)(b): substituted (with effect on 20 May 2010), on 28 May 2010, by section 80(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 48(1B) heading: inserted (with effect on 20 May 2010), on 28 May 2010, by section 80(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 48(1B): inserted (with effect on 20 May 2010), on 28 May 2010, by section 80(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 48(1C) heading: inserted (with effect on 20 May 2010), on 28 May 2010, by section 80(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 48(1C): inserted (with effect on 20 May 2010), on 28 May 2010, by section 80(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 48(2): amended (with effect on 4 September 2010), on 29 August 2011, by section 27(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(2B) heading: inserted (with effect on 4 September 2010), on 29 August 2011, by section 27(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(2B): inserted (with effect on 4 September 2010), on 29 August 2011, by section 27(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(3) heading: substituted (with effect on 4 September 2010), on 29 August 2011, by section 27(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(3)(a): substituted (with effect on 4 September 2010), on 29 August 2011, by section 27(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(3)(b): repealed (with effect on 4 September 2010), on 29 August 2011, by section 27(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48(3)(c): substituted (with effect on 4 September 2010), on 29 August 2011, by section 27(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 48 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 48 list of defined terms **capital contribution**: inserted (with effect on 20 May 2010), on 28 May 2010, by section 80(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 49 Amount of depreciation recovery income when item partly used for business

Item to which this section applies

(1) This section applies to an item of property that—

(a) is an item to which this section applies, as described in section EE 46; and

(b) is, at any time during the period the person owns it, dealt with in—

(i) subpart DE (Motor vehicle expenditure); or

(ii) any applicable paragraph in section EZ 11 (Amounts of depreciation recovery income and depreciation loss for part business use up to 2004–05 income year); or

(iii) section EE 50.

Depreciation recovery income

(2) If the consideration referred to in section EE 44 is less than or equal to the cost of the item to the person, the amount of depreciation recovery income that the person has is an amount calculated using the formula in subsection (3).

Formula

(3) The formula is—

$$\frac{\text{all deductions}}{\text{(base value – adjusted tax value)}} \times \text{amount of depreciation recovery income.}$$

Definition of items in formula

(4) The items in the formula are defined in subsections (5) to (8).

All deductions

(5) **All deductions** is all amounts of depreciation loss for which the person has been allowed a deduction for the item in each of the income years in which the person has owned the item.

Base value

(6) **Base value** has the applicable one of the meanings in sections EE 57 to EE 59.

Adjusted tax value

(7) **Adjusted tax value** is the item's adjusted tax value on the date on which the disposal or the event occurs.

Amount of depreciation recovery income

(8) **Amount of depreciation recovery income** is the amount described in section EE 48(1).

Defined in this Act: adjusted tax value, amount, business, deduction, depreciation loss, depreciation recovery income, income year, own, property

Compare: 2004 No 35 s EE 42

EE 50 Amount of depreciation loss when item partly used to produce income

When subsection (2) applies

(1) Subsection (2) applies when—

(a) a person has an amount of depreciation loss for an item of depreciable property for an income year, other than an amount arising under section EE 48(2); and

(b) at a time during the income year, the item is partly used, or partly available for use, by the person—

(i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(ii) in a way that is subject to fringe benefit tax; and

(c) at the same time, the item is partly used, or is partly available for use, by the person for a use that falls outside both paragraph (b)(i) and (ii); and

(d) the item is not a motor vehicle to which subpart DE (Motor vehicle expenditure) applies.

Partial use: formula

(2) The deduction the person is allowed for the amount of depreciation loss must not be more than the amount calculated using the formula—

$$\text{depreciation loss} \times \frac{\text{qualifying use of day}}{\text{all days.}}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **depreciation loss** is the amount of depreciation loss for the income year:

(b) **qualifying use days** is the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within subsection (1)(b)(i) or (ii):

(c) **all days** is the number of days in the income year on which the person owns the item and uses it or has it available for use.

Other units of measurement

(4) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.

When subsection (6) applies

(5) Subsection (6) applies when—

(a) a person has an amount of depreciation loss for an item of depreciable property arising under section EE 48(2); and

(b) the item was, at any time during the period the person owned it, dealt with in—

(i) subsection (2); or

(ii) any applicable paragraph in section EZ 11 (Amounts of depreciation recovery income and depreciation loss for part business use up to 2004–05 income year); and

(c) the item is not a motor vehicle to which subpart DE applies.

Deduction for depreciation loss: formula

(6) The deduction the person is allowed for the amount of depreciation loss is calculated using the formula—

$$\text{disposal depreciation loss} \times \frac{\text{all deductions}}{\text{(base value – adjusted tax value at}}$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under section EE 48(2):

(b) **all deductions** is all amounts of depreciation loss relating to the item for which the person has been allowed a deduction in each of the income years in which the person has owned the item:

(c) **base value** has whichever is applicable of the meanings in sections EE 57 to EE 59:

(d) **adjusted tax value at date** is the item's adjusted tax value on the date on which the disposal or event occurs.

When subsection (9) applies

(8) Subsection (9) applies when—

(a) a person has an amount of depreciation loss for an item of depreciable property for an income year arising under section EE 48(2); and

(b) in the income year in which the amount of depreciation loss arises, the person starts to use the item, or have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(c) at a time during the income year, the item is partly used, or partly available for use, by the person—

(i) in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(ii) in a way that is subject to fringe benefit tax; and

(d) the item is not a motor vehicle to which subpart DE (Motor vehicle expenditure) applies.

Partial use: formula

(9) The deduction the person is allowed for the amount of depreciation loss is calculated using the formula—

$$\text{disposal depreciation loss} \times \frac{\text{qualifying use days}}{\text{all days}}.$$

Definition of items in formula

(10) In the formula in subsection (9),—

(a) **disposal depreciation loss** is the amount resulting from a calculation made for the item under section EE 48(2):

(b) **qualifying use days** is the number of days in the income year on which the person owns the item and uses it, or has it available for use, for a use that falls within subsection (8)(c)(i) or (ii):

(c) **all days** is the number of days in the income year on which the person owns the item and uses it or has it available for use for any purpose.

Other units of measurement

(11) A unit of measurement other than days, whether relating to time, distance, or anything else, is to be used in the formula if it achieves a more appropriate apportionment.

Defined in this Act: adjusted tax value, amount, assessable income, business, deduction, depreciable property, depreciation loss, fringe benefit tax, income year, motor vehicle, property

Compare: 2004 No 35 s FB 7

EE 51 Amount of depreciation recovery income when lost or stolen items recovered

When this section applies

(1) This section applies when an item of property to which section EE 47(3) applies—

(a) is recovered in a later income year; and

(b) is still owned by the person; and

(c) is still used or available for use by the person.

Person treated as acquiring item

(2) The person is treated as having acquired the item, on the date of recovery, for its adjusted tax value at the start of the income year in which it was lost or stolen.

Person treated as deriving income: amount

(3) The person is treated as deriving an amount of depreciation recovery income equal to the amount of depreciation loss that the person has under section EE 48(2) for which they have been allowed a deduction.

Person treated as deriving income: income year

(4) The income year in which the person derives the depreciation recovery income is—

(a) the income year in which the item is lost or stolen, if the person chooses that year; or

(b) the income year in which the item is recovered, in any other case.

Defined in this Act: adjusted tax value, amount, deduction, depreciation loss, depreciation recovery income, income year, own, property

Compare: 2004 No 35 s EE 43

EE 52 Amount of depreciation recovery income when compensation received

When this section applies

(1) This section applies when a person receives insurance, indemnity, or compensation for an item of property to which this section applies, as described in section EE 46, other than for an item that is lost, stolen, or irreparably damaged.

Compensation subtracted

(2) An amount must be subtracted from the item's adjusted tax value. The amount is the amount by which the insurance, indemnity, or compensation that the person receives is more than the expenditure that the person incurs because of the event for which the person receives the insurance, indemnity, or compensation.

Depreciation recovery income

(3) If the item's adjusted tax value becomes negative in an income year through the application of subsection (2), the negative amount is an amount of depreciation recovery income derived by the person in the income year.

Defined in this Act: adjusted tax value, amount, depreciation recovery income, income year, property

Compare: 2004 No 35 s EE 44

EE 53 Unused geothermal well brought into use

When this section applies

(1) This section applies to a person when an event occurs to which section EE 47(6) applies.

Person treated as acquiring well

(2) The person is treated as having acquired the geothermal well on the day on which the event occurs for the cost of the well under this subpart before the event occurs.

Defined in this Act: acquire, geothermal well

Compare: 2004 No 35 s EE 44B

Interpretation provisions

EE 54 Cost: GST

When this section applies

(1) This section applies when an amount of depreciation loss or an amount of depreciation recovery income is calculated by reference to the cost of an item of depreciable property to a person.

Cost reduced: input tax

(2) The item's cost is reduced by subtracting the amount, if any, of input tax applying to the supply of the item to the person. This subsection is overridden by subsections (3) and (4).

Deductions from output tax

(3) The item's cost is reduced by the amount of any adjustment taken into account in the income year under section 20(3)(e) of the Goods and Services Tax Act 1985.

Adjustments for output tax

(4) The item's cost is increased by adding an amount of deductible output tax that the person has for the income year.

Defined in this Act: amount, deductible output tax, depreciable property, depreciation loss, depreciation recovery income, GST, income year, input tax, output tax

Compare: 2004 No 35 s EE 45

Section EE 54(2): amended, on 1 April 2011, by section 54(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 54(3) heading: substituted, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 54(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 54(3): substituted, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 54(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 54(4) heading: substituted, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 54(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 54(4): substituted, on 1 April 2011 (applying to taxable supplies made on or after 1 April 2011), by section 54(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 54 list of defined terms **deductible output tax**: inserted, on 1 April 2011, by section 54(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EE 54 list of defined terms **taxable supply**: repealed, on 1 April 2011, by section 54(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Adjusted tax value

EE 55 Meaning of adjusted tax value

Meaning

(1) **Adjusted tax value** means,—

(a) for an item of depreciable property, the amount calculated using the formula in section EE 56:

(b) for a pool, the total adjusted tax value determined under section EE 21.

Exception

(2) Section FA 11B(6) (Adjustments for certain operating leases) overrides this section.

Defined in this Act: adjusted tax value, amount, depreciable property, pool

Compare: 2004 No 35 s EE 46

Section EE 55(1) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EE 55(1)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 120(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EE 55(2) heading: inserted, on 1 April 2008, by section 357 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EE 55(2): inserted, on 1 April 2008, by section 357 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EE 56 Formula

Formula

(1) The formula referred to in section EE 55 is—

base value – total deductions.

Definition of items in formula

(2) In the formula,—

(a) **base value** has the applicable meaning in sections EE 57, EE 58, EE 59, and EZ 22(1) (Base value and total deductions in EE 56: before 1 April 1995):

(b) **total deductions** is defined in section EE 60.

Defined in this Act: deduction

Compare: 2004 No 35 s EE 47

EE 57 Base value in section EE 56 when none of sections EE 58, EE 59, and EZ 22(1) applies

When this section applies

(1) This section applies when none of sections EE 58, EE 59, and EZ 22(1) (Base value and total deductions in section EE 56: before 1 April 1995) applies.

Base value

(2) **Base value** is the cost of the item to the person.

Cost

(3) In this section, "cost" is qualified as follows:

(a) expenditure is excluded from it if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under section EE 38(3) or EE 48(2) or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(b) expenditure is not excluded from it if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under any other provision of this subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(c) expenditure is excluded from it if it is expenditure for which a person has been allowed a deduction under

any other subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(d) expenditure—

(i) is not excluded from it if it is described in section EZ 22(2)(a); and

(ii) is excluded from it if it is described in section EZ 22(2)(b).

Defined in this Act: amount, deduction, depreciation loss

Compare: 2004 No 35 s EE 48

EE 58 Base value in section EE 56 when no previous deduction

When this section applies

(1) This section applies when all the following apply to the item:

(a) it is not a building; and

(b) it is not an item of petroleum-related depreciable property; and

(c) it is not an item that the person—

(i) acquired to use or have available for use in deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(ii) first used for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; and

(d) it has been, since the person acquired it and first used it or had it available for use for any purpose, an item for which the person could not in any income year have been allowed a deduction for an amount of depreciation loss, whether because of the nature of the person's use of the item or the person's non-residence or for any other reason; and

(e) in relation to the 1992–93 income year,—

(i) it was acquired by the person after the end of that income year; or

(ii) it was an item described in section EZ 22(3) (Base value and total deductions in section EE 56: before 1 April 1995).

Base value

(2) **Base value** is the item's market value when the person starts to use it, or to have it available for use, for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income.

Defined in this Act: acquire, amount, assessable income, building, business, deduction, depreciation loss, income year, petroleum-related depreciable property

Compare: 2004 No 35 s EE 49

Section EE 58 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 59 Base value in section EE 56 when property is petroleum-related depreciable property

When this section applies

(1) This section applies when the item is an item of petroleum-related depreciable property to which both the following apply:

(a) section EZ 22(1) (Base value and total deductions in section EE 56: before 1 April 1995) does not apply to it; and

(b) the person (**person A**) acquires it from an associated person.

Base value

(2) **Base value** is the lesser of—

(a) the cost of the item to person A; and

(b) the total of the amounts described in subsections (3) and (4).

First amount for purposes of subsection (2)(b)

(3) The amount is the cost of the item to—

(a) the associated person, if the associated person did not acquire the item from either person A or another person associated with person A; or

(b) whoever owned the item, whether person A or the associated person, at the start of an unbroken chain of ownership made up of person A and 1 or more persons associated with person A.

Second amount for purposes of subsection (2)(b)

(4) The amount is all expenditure incurred for the item by person A and the associated person or associated persons before the date on which person A acquired the item.

Cost and expenditure

(5) In this section, "cost" and "expenditure" are qualified as follows:

(a) expenditure is excluded from them if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under section EE 38(3) or EE 48(2) or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(b) expenditure is not excluded from them if it is expenditure for which a person has been allowed a deduction for an amount of depreciation loss they have had under any other provision of this subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(c) expenditure is excluded from them if it is expenditure for which a person is allowed a deduction under any other subpart or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994; and

(d) expenditure is excluded from them if it is expenditure for which a person would have been allowed a deduction under any other subpart if this Act had applied or the corresponding provision of the Income Tax Act 2004 or the Income Tax Act 1994 if the Act had applied.

Defined in this Act: acquire, amount, associated person, deduction, depreciation loss, own, petroleum-related depreciable property

Compare: 2004 No 35 s EE 50

EE 60 Total deductions in section EE 56

Total deductions

(1) **Total deductions** is the total, calculated as at a particular time, of—

(a) the amount described in subsection (2); and

(b) the amount described in subsection (3); and

(c) the amount of a deduction under section EE 25.

First amount for purposes of subsection (1)

(2) The amount is all amounts that 1 or more of the following provisions has required to be subtracted from the item's adjusted tax value since the start of the 1993–94 income year:

(a) section EE 52(2):

(b) section EE 44(2) of the Income Tax Act 2004:

(c) section EG 19(5) of the Income Tax Act 1994:

(d) the provision described in section EZ 22(4) (Base value and total deductions in section EE 56: before 1 April 1995).

Second amount for purposes of subsection (1)

(3) The amount is all deductions for amounts of depreciation loss, calculated using the method described in subsection (4), that, in the period described in subsection (5),—

(a) the person was allowed for the item and,—

(i) if the item is a patent, for the patent application in relation to which the item was granted:

(ii) if the item is a geothermal well that a person acquired under section EE 53(2), for the well before the person acquired it under that section; or

(b) the person would have been allowed if they had used the item wholly in deriving assessable income or carrying on a business for the purpose of deriving assessable income.

Treatment of mothballed assets

(3B) Subsection (3)(b) does not apply in relation to an amount of depreciation loss for an item that has been withdrawn from use in deriving assessable income or carrying on a business for the purpose of deriving assessable income. However, this exclusion does not apply to an amount of depreciation loss for which the person has a deduction under section EE 39.

Method

(4) The method is—

(a) the depreciation method that the person used in each relevant income year; or

(b) the diminishing value method, if the person did not make deductions for amounts of depreciation loss for the item.

Period

(5) The period ends with the end of the income year before the income year in which the particular time occurs, and starts with,—

(a) for an item to which section EE 57 applies,—

(i) unless subparagraph (ii) or (iii) applies, the date on which the person acquired the item; or

(ii) if the item is a geothermal well that a person acquired under section EE 53(2), the earliest date on which the person acquired the well under section EE 55(4) or otherwise; or

(iii) if the item is a patent and the person acquired the patent application in relation to which the patent was granted, the date on which the person acquired the patent application; or

(b) for an item to which section EE 58 applies,—

(i) unless subparagraph (ii) applies, the beginning of the month in which the person started to use the item, or to have it available for use for the purpose of deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(ii) if the item is a patent and the person acquired the patent application in relation to which the patent was granted, the beginning of the month in which the person acquired the patent application; or

(c) for an item to which section EE 59 applies, the date on which person A or the relevant associated person acquired the item; or

(d) for an item to which section EZ 22(1) applies, to the item, the end of the 1992–93 income year.

Defined in this Act: acquire, adjusted tax value, amount, assessable income, associated person, business, deduction, depreciation loss, depreciation method, diminishing value method, geothermal well, income year

Compare: 2004 No 35 s EE 51

Section EE 60(3B) heading: inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 31(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EE 60(3B): inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 31(1) of the Taxa-

tion (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Definitions

EE 61 Meaning of annual rate

Meaning

(1) **Annual rate** means the annual depreciation rate applying to an item of depreciable property that a person owns. The rate is 1 of the rates described in subsections (2) to (5).

1995–96 income year or later

(2) The rate is the rate set by section EE 31(2)(a) or (b), or by section EE 31(3)(a), as applicable, if both the following apply to the item:

(a) the person acquires it in their 1995–96 income year or a later income year; and

(b) the item is not dealt with in any of subsections (3) to (5).

1995–96 income year or later: international aircraft

(3) The rate is the rate set by section EE 31(2)(c), or by section EE 31(3)(b), as applicable, if the item is an international aircraft that the person acquires in their 1995–96 income year or a later income year.

1995–1996 income year or later: buildings with estimated useful lives of 50 years or more

(3B) The rate is the rate set by section EE 31(2)(d), or by section EE 31(3)(c), as applicable, if the item is a building that—

(a) has an economic rate or provisional rate of more than 0% due to an estimated useful life of 50 years or more; and

(b) the person acquires in their 1995–96 income year or a later income year.

Fixed life intangible property

(4) The rate is the rate set by section EE 33 if both the following apply to the item:

(a) the item is an item of fixed life intangible property; and

(b) the item is not an item of excluded depreciable property.

Patents, applications: complete specification before 1 April 2005

(5) The rate is the rate set by section EE 34 if the item is a patent and section EE 34 applies to the item and the person.

1994–95 income year

(6) The rate is the rate set by section EZ 13 (Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year) if all the following apply to the item:

(a) the person acquired it before the end of their 1994–95 income year; and

(b) the item is not an item of fixed life intangible property; and

(c) the item is not an item of excluded depreciable property.

Excluded depreciable property

(7) The rate is the rate set by section EZ 15 (Annual rate for excluded depreciable property: 1992–93 tax year) if the item is an item of excluded depreciable property.

Special excluded depreciable property

(7B) The rate is 0% for all depreciation methods, if the item is an item of special excluded depreciable property that would be an item of excluded depreciable property but for the exclusion in section EE 64(3).

Exception

(8) Section FA 11B(7) (Adjustments for certain operating leases) overrides this section.

Defined in this Act: acquire, annual rate, building, depreciable property, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property, income year, international aircraft, own, provisional rate, special excluded depreciable property

Compare: 2004 No 35 s EE 52

Section EE 61(2): amended (with effect on 20 May 2010), on 28 May 2010, by section 81(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61(3): amended (with effect on 20 May 2010), on 28 May 2010, by section 81(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61(3B) heading: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61(3B): inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61(7B) heading: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61(7B): inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61(8) heading: inserted, on 1 April 2008, by section 358 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EE 61(8): inserted, on 1 April 2008, by section 358 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EE 61 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61 list of defined terms **economic rate**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61 list of defined terms **estimated useful life**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61 list of defined terms **provisional rate**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 61 list of defined terms **special excluded depreciable property**: added, on 1 April 2011 (applying for the 2011–12 and later income years), by section 81(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 62 Meaning of depreciable intangible property

Meaning

(1) **Depreciable intangible property** means the property listed in schedule 14 (Depreciable intangible property).

Criteria for listing in schedule 14

(2) For property to be listed in schedule 14, the criteria are as follows:

(a) it must be intangible; and

(b) it must have a finite useful life that can be estimated with a reasonable degree of certainty on the date of its acquisition.

Schedule 14 prevails

(3) Property that is listed in schedule 14 is depreciable intangible property even if the criteria are not met.

Defined in this Act: acquire, depreciable intangible property, property

Compare: 2004 No 35 s EE 53

EE 63 Meaning of estimated useful life

Meaning for item of depreciable property, except for copyright in sound recording

(1) **Estimated useful life**, for an item of depreciable property, other than a copyright in a sound recording, means the period over which the item might reasonably be expected to be useful in deriving assessable income or carrying on a business for the purpose of deriving assessable income, taking into account—

(a) the passage of time, likely wear and tear, exhaustion, and obsolescence; and

(b) an assumption of normal and reasonable maintenance.

Meaning for copyright in sound recording

(2) **Estimated useful life**, for a copyright in a sound recording, means the period from the time at which the copyright might reasonably be expected to be first useful in deriving assessable income until the end of the income year in which it might reasonably be expected that 90% of all the income that will be derived from it has been derived.

Defined in this Act: assessable income, business, depreciable property, estimated useful life, income year, sound recording

Compare: 2004 No 35 s EE 54

EE 64 Meaning of excluded depreciable property

Meaning

(1) **Excluded depreciable property** means, for a person,—

(a) depreciable property for whose purchase or construction the person entered into a binding contract before 16 December 1991; or

(b) depreciable property that the person used or had available for use for any purpose whatever within New Zealand, other than as trading stock, before 1 April 1993; or

(c) depreciable property that is an intangible item that the person used or had available for use before 1 April 1993; or

(d) depreciable property that is or has been a qualifying asset for the person; or

(e) depreciable property to the extent to which it is or has been a qualifying improvement for the person.

Exclusion

(2) **Excluded depreciable property** does not include property to which both the following apply:

(a) it existed at the end of the 1992–93 income year; and

(b) the Commissioner allowed it to be accounted for in that income year using the standard value method, the replacement value method, or the annual revaluation method.

Another exclusion

(3) **Excluded depreciable property** does not include special excluded depreciable property.

Defined in this Act: Commissioner, depreciable property, excluded depreciable property, income year, New Zealand, property, qualifying improvement, qualifying asset, special excluded depreciable property, trading stock

Compare: 2004 No 35 s EE 55

Section EE 64(3) heading: added, on 1 April 2011 (applying for the 2011–12 and later income years), by section 82(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 64(3): added, on 1 April 2011 (applying for the 2011–12 and later income years), by section 82(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 64 list of defined terms **special excluded depreciable property**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 82(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 65 Meaning of maximum pooling value

Meaning

(1) **Maximum pooling value**, for an item of depreciable property, means the greater of—

(a) $2,000; and

(b) the value set in a determination issued under section 91AAL of the Tax Administration Act 1994 applying to the item.

Increase in specified sum

(2) The Governor-General may make an Order in Council increasing the sum specified in subsection (1)(a).

Defined in this Act: depreciable property, maximum pooling value

Compare: 2004 No 35 s EE 56

EE 66 Meaning of poolable property

Meaning

(1) **Poolable property**, for an income year, means an item of depreciable property that a person owns to which subsections (2) to (4) apply.

Not a building

(2) The item is not a building.

Maximum pooling value or globo method

(3) The item—

(a) is acquired in the income year for a cost equal to or less than its maximum pooling value; or

(b) was previously accounted for separately but has, as at the start of the income year, an adjusted tax value equal to or less than its maximum pooling value; or

(c) was accounted for at the end of the 1992–93 income year using, with the Commissioner's permission, the globo accounting method.

Wholly used or subject to fringe benefit tax

(4) The item—

(a) is wholly used or available for use by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income; or

(b) to the extent to which it is not wholly used or available for use by the person in deriving assessable income or carrying on a business for the purpose of deriving assessable income, is used in a way that is subject to fringe benefit tax.

Defined in this Act: acquire, adjusted tax value, assessable income, building, business, Commissioner, depreciable property, fringe benefit tax, income year, maximum pooling value, own, poolable property

Compare: 2004 No 35 s EE 57

Section EE 66 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EE 67 Other definitions

In this Act,—

depreciation method means a method described in section EE 12

diminishing value method means the method of calculating an amount of depreciation loss for an item of depreciable property by subtracting, in each income year, a constant percentage of the item's adjusted tax value from the item's adjusted tax value

diminishing value rate means the rate that a person using the diminishing value method applies to an item of depreciable property

economic rate means the economic depreciation rate of an item of depreciable property, set under sections EE 27 to EE 30

estimated residual market value means, for an item of depreciable property, its market value at the end of its estimated useful life, estimated reasonably as at the date of acquisition and based on an assumption of normal and reasonable maintenance over its estimated useful life

fixed life intangible property means property that—

(a) is depreciable intangible property; and

(b) has a legal life that could reasonably be expected, on the date of the property's acquisition, to be the same length as the property's remaining estimated useful life

improvement means an alteration, extension, or repair of an item of depreciable property that increases its capital value

international aircraft means a jet-engined aircraft that a person uses in an income year mainly in regular commercial service to transport passengers between New Zealand and any other place

legal life,—

(a) for an item to which paragraphs (b) and (c) do not apply, means the number of years, months, and days for which an owner's interest in an item of intangible property exists under the contract or statute that creates the owner's interest, assuming that the owner exercises any rights of renewal or extension that are either essentially unconditional or conditional on the payment of predetermined fees:

(b) for an item that is a patent application or a patent, means the legal life under paragraph (a) that a patent would have if granted when a patent application is first lodged:

(c) for an item that is plant variety rights, means the total of—

(i) the legal life that the rights would have under paragraph (a); and

(ii) the number of whole calendar months during which the person owns the plant variety rights application in relation to which the rights are granted

petroleum-related depreciable property means depreciable property that is—

(a) petroleum drilling rigs; or

(b) support vessels for offshore petroleum drilling rigs; or

(c) support vessels for offshore petroleum production platforms

pool means items of depreciable property that a person chooses under section EE 12 to depreciate as a pool using the pool method

pool method means the method of calculating an amount of depreciation loss set out in section EE 21

provisional rate means a provisional rate as described in section EE 35

special excluded depreciable property means all buildings that are items not specified in schedule 39 (Items for purposes of definition of special excluded depreciable property)

special rate means a special rate as described in section EE 35

straight-line method means the method of calculating an amount of depreciation loss for an item of depreciable property by subtracting, in each income year, a constant percentage of the item's cost, to its owner, from the item's adjusted tax value

straight-line rate means the rate that a person using the straight-line method applies to an item of depreciable property.

Defined in this Act: acquire, adjusted tax value, amount, building, depreciable intangible property, depreciable property, depreciation loss, depreciation method, diminishing value method, diminishing value rate, economic rate,

estimated residual market value, estimated useful life, fixed life intangible property, improvement, income year, international aircraft, legal life, New Zealand, own, pay, petroleum, petroleum-related depreciable property, plant variety rights, pool, pool method, property, provisional rate, special excluded depreciable property, special rate, straight-line method, straight-line rate

Compare: 2004 No 35 s EE 58

Section EE 67 definition **special excluded depreciable property**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 83(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 67 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EE 67 list of defined terms **special excluded depreciable property**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 83(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Subpart EF—Taxes and levies

EF 1 Fringe benefit tax

Fringe benefit tax for which a deduction is allowed may be deducted only in the income year in which the relevant fringe benefits are provided or granted, whether or not the tax actually becomes due and payable in the income year.

Defined in this Act: deduction, fringe benefit tax, income year, pay

Compare: 2004 No 35 s EF 1

EF 2 Employer's superannuation contribution tax

An amount of employer's superannuation contribution tax (ESCT) for which a deduction is allowed may be deducted only in the income year in which the employer's superannuation cash contributions to which the tax relates are made, whether or not the tax actually becomes due and payable in the income year.

Defined in this Act: deduction, employer's superannuation cash contribution, ESCT, income year, pay

Compare: 2004 No 35 s EF 2

Section EF 2: amended (with effect on 1 April 2008), on 6 October 2009, by section 121(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EF 2 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 121(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EF 2 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 121(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EF 3 Accident compensation levies and premiums

Timing of deduction

(1) A deduction that an employer or self-employed person is allowed for an Accident Compensation Corporation (ACC) levy or premium is allocated to the income year in which it becomes due and payable, except as provided in subsection (2) or (3).

Earlier income year

(2) If a deduction for an ACC levy or premium has been allocated to an income year earlier than the income year in which the levy or premium becomes due and payable and, because of the time bar or for another reason, the Commissioner cannot lawfully amend the assessment for the income year, the deduction is allocated to the income year in which it was allowed.

Balance dates between 1 October and 6 April

(3) If a person's income year ends on a balance date falling between 1 October and 6 April (both dates inclusive), an ACC levy or premium that is due on a date in schedule 3, part A, column H (Payment of provisional tax and terminal tax) is treated as if it were due and payable on the relevant date in schedule 3, part A, column G for the person's corresponding income year.

References to dates in schedule 3

(4) For the purposes of subsection (3), references to the date in schedule 3, part A, columns G and H (which refer to months only and not days) are references to the day in the relevant month that is fixed by the following:

(a) the definition of **instalment date** in section YA 1 (Definitions); and

(b) sections RA 3 (Terminal tax obligations), RC 1(2), and RC 20 to RC 24 (which relate to provisional tax instalments in transitional years).

Meaning of ACC levy or premium

(5) In this section, **ACC levy or premium** means any of the following levies, premiums, or penalties:

(a) the following levy or premium:
  (i) a levy to fund the Work Account under section 168 of the Accident Compensation Act 2001; or
  (ii) an employer's premium to fund the Employers' Account under section 281B of the Accident Insurance Act 1998:
(b) *[Repealed]*
(c) the following levy or premium:
  (i) a levy to fund the Work Account under section 168B or 211 of the Accident Compensation Act 2001; or
  (ii) a premium to fund the Self-Employed Work Account under section 300 of the Accident Insurance Act 1998:
(d) the following levy or premium:
  (i) a levy to fund the Earners' Account under section 219(1) of the Accident Compensation Act 2001; or
  (ii) a premium to fund the Earners' Account under section 283(1) of the Accident Insurance Act 1998:
(e) an Earners' Account levy under section 283(2) of the Accident Insurance Act 1998:
(f) a levy to meet the costs of the Regulator under section 236 of the Accident Insurance Act 1998:
(g) a contribution to the Insolvent Insurers Fund under section 246 or 247 of the Accident Insurance Act 1998:
(h) a levy or penalty payable to the Non-Compliers Fund under section 263 of the Accident Insurance Act 1998:
(i) a base premium under sections 466 to 470 of the Accident Insurance Act 1998.

Defined in this Act: ACC levy or premium, Commissioner, deduction, employer, income year, pay, time bar

Compare: 2004 No 35 s EF 3

Section EF 3(5)(a)(i): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section EF 3(5)(b): repealed, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section EF 3(5)(c)(i): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section EF 3(5)(d)(i): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section EF 3(5)(e): substituted, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

EF 4 Use of money interest payable by Commissioner

Timing of income

(1) Income that is interest payable by the Commissioner to a person under Part 7 of the Tax Administration Act 1994 is allocated to the income year in which the Commissioner pays the interest.

Interest paid in same year as liability arises
[Repealed]

(2) *[Repealed]*

Effect of amended assessment
[Repealed]

(3) *[Repealed]*

Amended assessment in same year
[Repealed]

(4) *[Repealed]*

Defined in this Act: Commissioner, income, income year, interest, pay

Compare: 2004 No 35 s EF 4

Section EF 4(1): amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 28(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4(2) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to section 28(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4(2): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 28(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4(3) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to section 28(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4(3): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 28(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4(4) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to sec-

tion 28(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4(4): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 28(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4 list of defined terms **assessment**: repealed (with effect on 1 April 2011), on 29 August 2011, by section 28(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4 list of defined terms **notice**: repealed (with effect on 1 April 2011), on 29 August 2011, by section 28(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 4 list of defined terms **tax year**: repealed (with effect on 1 April 2011), on 29 August 2011, by section 28(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EF 5 Use of money interest payable by person

Timing of deduction

(1) A deduction for interest payable by a person to the Commissioner under Part 7 of the Tax Administration Act 1994 is allocated to the income year in which the person pays the interest.

Assessment made in same year as liability arises
[Repealed]

(2) *[Repealed]*

Effect of amended assessment
[Repealed]

(3) *[Repealed]*

Terminal amended assessment
[Repealed]

(4) *[Repealed]*

Amended assessment in same year
[Repealed]

(5) *[Repealed]*

Defined in this Act: Commissioner, deduction, income year, pay

Compare: 2004 No 35 s EF 5

Section EF 5(1): substituted (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 29(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(2) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(2): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(3) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(3): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(4) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(4): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(5) heading: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), pursuant to section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5(5): repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 29(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **assessment**: repealed (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **Commissioner**: substituted (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **deduction**: substituted (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **income tax liability**: repealed (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **income year**: substituted (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **interest**: repealed (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **liquidation**: repealed (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **notice**: repealed (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **pay**: substituted (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EF 5 list of defined terms **tax year**: repealed (with effect on 1 April 2011), on 29 August 2011, section 29(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EF 6 Different tax years

[Repealed]

Section EF 6: repealed (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 30(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Subpart EG—Recognition of accounting treatment

EG 1 Election to use balance date used in foreign country

When this section applies

(1) This section applies when—

(a) a person has foreign source income or foreign expenditure that is taken into account in determining the income tax, not merely the withholding tax, payable by them in a foreign country or territory; and

(b) the foreign source income or foreign expenditure has been included in 1 of their income tax returns in the country or territory; and

(c) the annual income tax balance date that is relevant for them for the income tax return in the country or territory falls in a period that is an income year for them; and

(d) if the person did not make an election under this section,—

(i) the foreign source income would be allocated to their previous income year; or

(ii) the foreign expenditure would be a deduction allocated to the previous income year if the only income of the person were foreign source income to which this section applies.

Election to allocate

(2) If the person has not already included the foreign source income or foreign expenditure in their return of income for the previous tax year, they may choose to allocate the foreign source income or the foreign expenditure to the income year referred to in subsection (1)(c).

How election made

(3) The person makes the election by including the foreign source income or foreign expenditure in their return of income for the income year referred to in subsection (1)(c).

What election applies to

(4) The election applies to all the person's foreign source income and foreign expenditure to which subsection (1) applies, except for—

- (a) income or expenditure under the financial arrangements rules, unless the Commissioner agrees in writing; or
- (b) dividends, unless the Commissioner agrees in writing and the person is not a company; or
- (c) attributed controlled foreign company (CFC) income; or
- (d) foreign investment fund (FIF) income or income derived from an attributing interest; or
- (e) in the case of foreign expenditure, foreign expenditure that would be allowed as a deduction if the only income of the person were income to which paragraphs (a) to (d) apply.

Timing of income

(5) The foreign source income and foreign expenditure to which the election applies is allocated to the income year referred to in subsection (1)(c).

Election treated as continuing

(6) A person who has made an election is treated as making the same election for all later income years, unless—

- (a) the Commissioner agrees in writing to allow the person to revoke the election; or
- (b) the person's net income for the relevant income year would be more than $100,000 if their only income in the income year were foreign source income.

Net income of more than $100,000

(7) If subsection (6)(b) applies,—

(a) foreign source income and foreign expenditure is allocated to the income year referred to in subsection (1)(c) only if it was derived or incurred in that year; and

(b) foreign source income and foreign expenditure to which the election would have applied if subsection (6)(b) had not existed is allocated to the previous income year; and

(c) if necessary, the previous tax year's return is amended.

Factors considered

(8) In deciding whether to agree to an election applying to income or expenditure under the financial arrangements rules or dividends, the Commissioner must consider—

(a) whether the person is likely to incur significant compliance costs if the Commissioner does not agree to the election; and

(b) the risk to the revenue if the Commissioner agrees to the election; and

(c) any other factors the Commissioner considers relevant.

Person ceasing to be, or becoming, resident

(9) If the person ceases to be, or becomes, resident in New Zealand, this section applies in the same way as for other persons except that—

(a) it does not apply to income or expenditure that is allocated, other than under this section, to a period when the person is not resident in New Zealand; and

(b) if it allocates foreign source income derived or foreign expenditure incurred while the person is resident in New Zealand to a period after the person has ceased to be resident in New Zealand,—

(i) the foreign source income is assessable income in the income year in which the foreign source income is allocated under this section, despite section BD 1(5)(c) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income); and

(ii) the foreign expenditure is allowed as a deduction in the income year to which the foreign expenditure is allocated under this section.

Some definitions

(10) In this section,—

annual income tax balance date includes a date that is substantially equivalent to an annual income tax balance date

foreign expenditure means expenditure that is incurred in deriving foreign source income

foreign source income means income that does not have a source in New Zealand and that is not exempt income.

Defined in this Act: annual income tax balance date, assessable income, attributed CFC income, attributing interest, Commissioner, company, deduction, dividend, exempt income, FIF income, financial arrangements rules, foreign expenditure, foreign source income, income, income tax, income year, net income, pay, resident in New Zealand, return of income, source in New Zealand, tax year

Compare: 2004 No 35 s EG 1

Section EG 1(10): amended, on 21 December 2010, by section 55(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section EG 1 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 55(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section EG 1 list of defined terms **source in New Zealand**: repealed, on 21 December 2010, by section 55(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

EG 2 Adjustment for changes to accounting practice

When this section applies

(1) This section applies in an income year (the **year of change**) when a person changes from—

(a) a cash accounting method to an accrual accounting method of calculating their income tax liability; or

(b) an accrual accounting method to a cash accounting method of calculating their income tax liability.

From cash to accrual accounting method

(2) If subsection (1)(a) applies,—

(a) an amount owed to the person on the last day of the income year before the year of change is income of the person in the year of change; and

(b) an amount owed by the person on the last day of the income year before the year of change is allowed as a deduction in the year of change.

From accrual to cash accounting method

(3) If subsection (1)(b) applies,—

(a) an amount equal to the total of all amounts owing by the person in the year of change that have been allowed as a deduction in earlier income years is income of the person in the year of change; and

(b) an amount equal to the total of all amounts owing to the person in the year of change that have been treated as income of the person in earlier income years is allowed as a deduction in the year of change.

Some definitions

(4) In this section,—

accrual accounting method means a method of accounting that is regarded as accrual accounting under generally accepted accounting practice

cash accounting method means a method of accounting by which the income tax liability of a person is calculated by reference to cash receipts or outgoings.

Defined in this Act: accrual accounting method, amount, cash accounting method, deduction, generally accepted accounting practice, income, income tax liability, income year

Compare: 2004 No 35 s EG 2

EG 3 Allocation of income, deductions, and tax credits by portfolio tax rate entity

[Repealed]

Section EG 3: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 122(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EG 3 heading: amended, on 1 April 2008, by section 359(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EG 3(3) heading: inserted, on 1 April 2008, by section 359(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EG 3(3): inserted, on 1 April 2008, by section 359(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EG 3 list of defined terms **tax credit**: inserted, on 1 April 2008, by section 359(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart EH—Income equalisation schemes

Introductory provisions

EH 1 Income equalisation schemes

Description

(1) An income equalisation scheme allows a person to reduce their net income for a tax year by making a deposit with the Commissioner for the corresponding income year.

Three schemes

(2) The 3 income equalisation schemes are—

(a) the **main income equalisation scheme**, described in sections EH 3 to EH 36:

(b) the **adverse event income equalisation scheme**, described in sections EH 37 to EH 62:

(c) the **thinning operations income equalisation scheme**, described in sections EH 63 to EH 79.

Meaning of terms

(3) Terms used in the 3 schemes are defined as follows:

(a) terms used specifically in the main income equalisation scheme are defined in sections EH 34 to EH 36:

(b) terms used specifically in the adverse event income equalisation scheme are defined in sections EH 61 and EH 62:

(c) terms used specifically in the thinning operations income equalisation scheme are defined in sections EH 78 and EH 79.

Defined in this Act: adverse event income equalisation scheme, Commissioner, corresponding income year, deposit, income, main income equalisation scheme, net income, person, tax year, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 1

EH 2 Income Equalisation Reserve Account

Account

(1) There is a Crown Bank Account called the Income Equalisation Reserve Account that is operated under the Public Finance Act 1989.

Deposits paid into account

(2) Every deposit a person makes with the Commissioner under a scheme referred to in section EH 1(2)—

(a) is public money; and
(b) must be paid into the Income Equalisation Reserve Account.

Defined in this Act: Commissioner, deposit, person

Compare: 2004 No 35 s EH 2

Main income equalisation scheme

Application

EH 3 Persons to whom main income equalisation scheme applies

Meaning of farmer, fisher, and forester for main income equalisation scheme

(1) The main income equalisation scheme applies to—
(a) a **farmer**, which means a person carrying on a farming or agricultural business on land in New Zealand; or
(b) a **fisher**, which means a person carrying on a fishing business; or
(c) a **forester**, which means a person who—
(i) derives income from forestry; and
(ii) is not a company, a public authority, a Maori authority, or an unincorporated body.

Meaning of person for main income equalisation scheme

(2) In the main income equalisation scheme, **person** means a farmer, fisher, or forester.

Defined in this Act: business, company, farmer, fisher, fishing business, forester, income from forestry, main income equalisation scheme, Maori authority, New Zealand, person, public authority

Compare: 2004 No 35 s EH 3

Deposits and accounts

EH 4 Main deposit

Deposit for business or forestry

(1) A person may make a payment to the Commissioner for entry in their main income equalisation account for an accounting year as follows:
(a) a farmer may make a payment for the farmer's farming or agricultural business:

(b) a fisher may make a payment for the fisher's fishing business:

(c) a forester may make a payment for the forester's income from forestry.

Upper limit of deposit

(2) A person must not make, for an accounting year, deposits that in total are more than their main maximum deposit for the tax year.

Lower limit of deposit

(3) A person must not make, for an accounting year, a deposit less than the lesser of—

(a) $200; and

(b) the difference between—

(i) the total of the deposits the person has previously made for the accounting year; and

(ii) the person's main maximum deposit for the accounting year.

Time of making deposit

(4) A person makes a deposit for an accounting year by—

(a) making the deposit during the accounting year; or

(b) doing both the following:

(i) making the deposit during the specified period for the accounting year; and

(ii) at the time of making it, giving the Commissioner notice that the deposit is for the accounting year; or

(c) doing both the following:

(i) making the deposit within a time that is after the end of the specified period for the accounting year but that is allowed by the Commissioner in a case or class of cases; and

(ii) at the time of making it, giving the Commissioner notice that the deposit is for the accounting year.

Limit on making deposit

(5) If a refund has been made to a person for an accounting year under section EH 13 or EH 15, the person may later make a deposit for that accounting year only if the Commissioner is satisfied, before the deposit is made, that all the refund has

been used to develop or expand a farmer's business, if the person is a farmer, or a fishing business, if the person is a fisher, or the means by which a forester derives income from forestry, if the person is a forester.

Defined in this Act: accounting year, business, Commissioner, deposit, farmer, fisher, fishing business, forester, income from forestry, main deposit, main income equalisation account, main maximum deposit, notice, pay, person, specified period

Compare: 2004 No 35 s EH 4

EH 5 Main income equalisation account

Person's account

(1) The Commissioner must keep a main income equalisation account in the name of every person who makes a deposit with the Commissioner.

Deposits in account

(2) Every deposit a person makes with the Commissioner must be entered in the person's main income equalisation account.

Amounts in accounts

(3) The only amounts that may be entered in a person's main income equalisation account are—

(a) deposits made by the person with the Commissioner; and

(b) interest paid under section EH 6.

Amounts not available to others

(4) Despite section FC 2 (Transfer at market value), amounts entered in a person's main income equalisation account must not, while they are in the account,—

(a) be assigned or charged in any way; or

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation; or

(c) be assets for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation; or

(d) be assets for the payment of the debts or liabilities of a dead person's estate.

Amounts available only for refunds

(5) The only payments that may be made from a person's main income equalisation account are refunds under any of sections EH 8, EH 10, EH 13, EH 15, EH 17, EH 19, EH 23, and EH 25.

Defined in this Act: amount, Commissioner, deposit, interest, liquidation, main income equalisation account, pay, person

Compare: 2004 No 35 s EH 5

Interest

EH 6 Interest on deposits in main income equalisation account

No interest payable

(1) No interest is payable on a deposit in a main income equalisation account that is refunded within 1 year of the date of deposit.

Interest payable

(2) Interest is payable on every other deposit in a main income equalisation account.

Period

(3) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

Date to which accrues

(4) Interest on a deposit accrues until the earlier of—

(a) 31 March in each year; and

(b) the date the deposit is refunded.

Added to deposit

(5) Accrued interest on a deposit is added to the deposit.

Rate

(6) The interest rate is 3% a year.

Defined in this Act: deposit, interest, main income equalisation account, pay, year

Compare: 2004 No 35 s EH 6

Deduction

EH 7 Deduction of deposit

When this section applies

(1) This section applies when a person is allowed a deduction under section DQ 1 (Main income equalisation scheme).

Amount of deduction

(2) The amount of the deduction is the lesser of—

(a) the total of the person's deposits for the accounting year; and

(b) their main maximum deposit for the accounting year.

Timing of deduction

(3) The person is allowed the deduction in the accounting year.

Defined in this Act: accounting year, amount, corresponding income year, deduction, deposit, main maximum deposit, person

Compare: 2004 No 35 s EH 7

Refunds: automatic

EH 8 Refund of excess deposit

When this section applies

(1) This section applies when a person's deposits for an accounting year are more than their main maximum deposit for the accounting year.

Refund

(2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: accounting year, Commissioner, date the deposit ends, deposit, main maximum deposit, person

Compare: 2004 No 35 s EH 8

EH 9 Income does not include excess deposit

A refund under section EH 8 is excluded income under section CX 51 (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 9

EH 10 Refund at end of 5 years

When this section applies

(1) This section applies when a deposit is in a person's main income equalisation account at the end of 5 years after the end of the accounting year for which the deposit was made.

Refund

(2) The Commissioner must refund the deposit to the person. Section EH 28 overrides this subsection.

Defined in this Act: accounting year, Commissioner, deposit, main income equalisation account, person, year

Compare: 2004 No 35 s EH 10

EH 11 Income when refund given at end of 5 years

A refund under section EH 10 is income, under section CB 27 (Income equalisation schemes), derived by the person and is allocated to the income year in which the refund is given.

Defined in this Act: income, income year, person

Compare: 2004 No 35 s EH 11

Refunds: on application

EH 12 Application for refund by person, trustee of estate, Official Assignee, or liquidator

Who may apply

(1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's main income equalisation account:

- (a) the person may apply under section EH 13, EH 15, or EH 17:
- (b) the trustee of the person's estate may apply under section EH 19:
- (c) the Official Assignee having charge of the person's estate may apply under section EH 23:
- (d) the liquidator appointed for the person may apply under section EH 25.

Application

(2) An application for a refund must—

- (a) be in writing; and
- (b) state the grounds on which it is made; and

(c) state the amount applied for.

Defined in this Act: amount, Commissioner, liquidation, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 12

EH 13 Refund on request

When this section applies

(1) This section applies when a person wants a refund of some or all of the amount in their main income equalisation account, and none of sections EH 8, EH 10, EH 15, EH 17, EH 19, EH 23, and EH 25 applies.

Refund

(2) The Commissioner must refund to the person the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's main income equalisation account for at least 1 year before the date the deposit ends. Section EH 28 overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, deposit, main income equalisation account, person, year

Compare: 2004 No 35 s EH 13

EH 14 Income when refund given on request

Year of income

(1) A refund under section EH 13 is income, under section CB 27 (Income equalisation schemes), derived by the person and is allocated to the income year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, subsection (3) applies instead of subsection (1) if—

(a) the Commissioner receives the application for a refund in the specified period for an accounting year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the accounting year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income, under section CB 27, and is allocated to the income year to which the specified period or the longer period relates.

Defined in this Act: accounting year, Commissioner, income, income year, person, specified period

Compare: 2004 No 35 s EH 14

EH 15 Refund for development or recovery

Refund for development: application of subsection (2)

(1) Subsection (2) applies when a person wants a refund of some or all of the amount in their main income equalisation account for either or both of the following purposes:

(a) to enable them to undertake, immediately after the refund is given, planned development or maintenance work for their farming or agricultural business, fishing business, or forestry operation:

(b) to enable them to buy, immediately after the refund is given, livestock for use in their farming business, other than livestock replacing livestock disposed of or lost as a result of a self-assessed adverse event.

Refund

(2) If the Commissioner is satisfied that the person will use the refund for either or both of the purposes, the Commissioner must refund to them the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in their main income equalisation account for at least 6 months before the date the deposit ends. Section EH 28 overrides this subsection.

Refund for recovery: application of subsection (4)

(3) Subsection (4) applies when a person wants a refund of some or all of the amount in their main income equalisation account for 1 or more of the following purposes:

(a) to enable them to buy, immediately after the refund is given, livestock for use in their farming business to replace livestock disposed of or lost as a result of a self-assessed adverse event:

(b) to avoid them suffering serious hardship:

(c) to do anything else that the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

Refund

(4) If the Commissioner is satisfied that the person will use the refund for 1 or more of the purposes, the Commissioner must refund to them the amount applied for, regardless of the length of time it has been in the account. Section EH 28 overrides this subsection.

Defined in this Act: amount, business, Commissioner, date the deposit ends, deposit, fishing business, main income equalisation account, person, self-assessed adverse event

Compare: 2004 No 35 s EH 15

EH 16 Income when refund given for development or recovery

Year of income

(1) A refund under section EH 15 is income, under section CB 27 (Income equalisation schemes), derived by the person in the income year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, subsection (3) applies instead of subsection (1) if—

(a) the Commissioner receives the application for a refund in the specified period for an accounting year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the accounting year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income, under section CB 27, and is allocated to the income year to which the specified period or the longer period relates.

Defined in this Act: accounting year, Commissioner, income, income year, person, specified period

Compare: 2004 No 35 s EH 16

EH 17 Refund on retirement

When this section applies

(1) This section applies when a farmer or a fisher—

(a) has a main income equalisation account; and

(b) is neither a company nor a trustee; and

(c) retires from the farming or agricultural business or the fishing business.

Refund

(2) The Commissioner must refund to the person the amount that, on the date the deposit ends, is in their main income equalisation account, regardless of the length of time it has been in the account. EH 28 overrides this subsection.

Defined in this Act: amount, business, Commissioner, company, date the deposit ends, farmer, fisher, fishing business, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 17

EH 18 Income when refund given on retirement, and election to allocate amount to earlier year

Year of income

(1) A refund under section EH 17 is income, under section CB 27 (Income equalisation schemes), derived by the person in the income year in which they retire.

When year of income may be different

(2) However, subsection (3) applies instead of subsection (1) if—

(a) the refund includes a deposit made for an accounting year earlier than the tax year in which the person retires; and

(b) the person chooses to allocate some or all of the deposit to the earlier accounting year.

Different year of income

(3) The amount allocated by the person to the earlier accounting year is income, under section CB 27, derived by them in the corresponding income year.

How election made

(4) A person makes an election under this section by giving the Commissioner notice within 1 of the following times:

(a) the time within which the person is required to file a return of income for the tax year corresponding to the accounting year in which they retire:

(b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: accounting year, amount, Commissioner, corresponding income year, deposit, income, income year, notice, person, return of income, tax year

Compare: 2004 No 35 s EH 18

EH 19 Refund on death

When this section applies

(1) This section applies when a person—

(a) has a main income equalisation account; and

(b) dies.

Refund

(2) Despite section FC 2 (Transfer at market value), the Commissioner must refund to the trustee of the person's estate the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. Section EH 28 overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, main income equalisation account, person, trustee

Compare: 2004 No 35 s EH 19

EH 20 Income when refund given on death

Year of income

(1) A refund under section EH 19 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before their death.

When year of income may be different

(2) However, section EH 21 or EH 22 applies instead of subsection (1) if the circumstances described in section EH 21(1) or EH 22(1) apply in the person's case.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 20

EH 21 Income when refund given on death, and election to allocate amount to earlier year

When this section applies

(1) This section applies when—

(a) a refund under section EH 19 includes a deposit made for an accounting year earlier than the accounting year in which the person dies; and

(b) the trustee of the person's estate chooses to allocate some or all of the deposit to the earlier accounting year.

Different year of income

(2) The amount allocated by the trustee to the earlier accounting year is income, under section CB 27 (Income equalisation schemes), derived by the person in the corresponding income year.

How election made

(3) A trustee makes an election under this section by giving the Commissioner notice within 1 of the following times:

(a) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: accounting year, amount, Commissioner, corresponding income year, deposit, income, notice, person, return of income, trustee

Compare: 2004 No 35 s EH 21

EH 22 Income when refund given on death, and election to allocate amount to later year or years

When this section applies

(1) This section applies when—

(a) the trustee of the person's estate does not make an election under section EH 21; and

(b) the trustee chooses to allocate some or all of the amount that is in the person's main income equalisation account on the date of the person's death to an accounting year or years after that date.

Accounting year or years referred to in subsection (1)(b)

(2) The accounting year or years referred to in subsection (1)(b) must be within the earlier of—

(a) the 3 years after the date of the person's death; and

(b) the 5 years after the end of the accounting year for which a deposit or a part of a deposit was made, if the amount that the trustee allocates to a later accounting year or years includes the deposit or part of it.

Allocated amount remains in account

(3) An amount allocated by the trustee to a later accounting year remains in the person's main income equalisation account until—

(a) it is refunded to the trustee in the accounting year to which it is allocated; or

(b) it is not refunded because of the application of section EH 28.

Different year of income

(4) An amount allocated by the trustee to a later accounting year is income, under section CB 27 (Income equalisation schemes), derived by the person in the corresponding accounting year.

How election made

(5) A trustee makes an election under this section by a notice that—

(a) specifies—

(i) each amount allocated to a later accounting year; and

(ii) the accounting year to which each amount is allocated; and

(b) is given to the Commissioner within 1 of the following times:

(i) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(ii) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: accounting year, amount, Commissioner, corresponding income year, deposit, income, main income equalisation account, notice, person, return of income, trustee, year

Compare: 2004 No 35 s EH 22

EH 23 Refund on bankruptcy

When this section applies

(1) This section applies when a person—

(a) has a main income equalisation account; and

(b) is bankrupt.

Refund

(2) The Commissioner must refund to the Official Assignee having charge of the person's estate the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. Section EH 28 overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, main income equalisation account, person

Compare: 2004 No 35 s EH 23

EH 24 Income when refund given on bankruptcy

A refund under section EH 23 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before the bankruptcy starts.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 24

EH 25 Refund on liquidation

When this section applies

(1) This section applies when a person—

(a) has a main income equalisation account; and

(b) is put into liquidation.

Refund

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's main income equalisation account, regardless of the length of time it has been in the account. Section EH 28 overrides this subsection.

Defined in this Act: amount, Commissioner, date the deposit ends, liquidation, main income equalisation account, person

Compare: 2004 No 35 s EH 25

EH 26 Income when refund given on liquidation

A refund under section EH 25 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 26

Refunds: general provisions

EH 27 Amendment of assessment

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to section EH 18 or EH 21 or EH 22.

Defined in this Act: assessment, Commissioner, time bar

Compare: 2004 No 35 s EH 27

EH 28 Minimum refund

The Commissioner must not give a refund under any of sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25 that is less than the lesser of—

(a) $200; and

(b) the balance in the person's main income equalisation account on the date the deposit ends.

Defined in this Act: Commissioner, date the deposit ends, main income equalisation account, person

Compare: 2004 No 35 s EH 28

EH 29 Deposits from which refunds come

Each refund a person is given is treated as coming from the total amount of their deposits in the order in which the person made the deposits.

Defined in this Act: amount, deposit, person

Compare: 2004 No 35 s EH 29

Tax credit

EH 30 When person entitled to tax credit

A person who is given a refund is entitled to a tax credit if—

(a) the refund is of the kind and amount described in section EH 31; and

(b) the person is of the kind described in section EH 32.

Defined in this Act: amount, person

Compare: 2004 No 35 s EH 30

EH 31 Kind and amount of refund that entitles person to tax credit

Kind

(1) A refund that entitles a person to a tax credit is 1 to which both the following apply:

(a) the refund is given under any of sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25; and

(b) the refund does not come from a deposit made for the accounting year in which the refund is given; if the refund comes in part from a deposit made for the accounting year in which the refund is given and in part from a deposit made for some other accounting year, the refund that entitles the person to a tax credit is the part coming from the deposit for some other accounting year.

Amount

(2) Once a refund qualifies under subsection (1) as a refund that entitles a person to a tax credit, the amount of the refund is the lesser of the following:

(a) the amount of the refund given to the person under any of sections EH 10, EH 13, EH 15, EH 17, EH 19, EH 22(3), EH 23, and EH 25; and

(b) the total of the amounts by which the person's income was reduced in 1 or more earlier accounting years by subtracting the deposit or deposits or parts of deposits from which the refund comes.

Defined in this Act: accounting year, amount, deposit, income, income tax, person, tax credit

Compare: 2004 No 35 s EH 31

EH 32 Kind of person entitled to tax credit

A person in the following circumstances is entitled to a tax credit:

(a) the person's income in the accounting year in question includes a refund of the kind described in section EH

31(1) and of the amount described in section EH 31(2); and

(b) because of the refund, the person's income tax liability for the tax year corresponding to the accounting year is increased; and

(c) the amount by which the person's income tax liability for the corresponding tax year is increased because of the refund (the **extra tax**) is more than the total of the amounts by which the person's income tax liability for an earlier tax year or years was decreased because of the subtraction of the deposit or deposits or parts of deposits from which the refund comes (the **tax saving**).

Defined in this Act: accounting year, amount, deposit, income, income tax, income tax liability, person, tax credit, tax year

Compare: 2004 No 35 s EH 32

EH 33 Amount of tax credit

The amount of a tax credit to which a person is entitled under section EH 30 is the amount by which the extra tax, as described in section EH 32(c), is more than the tax saving, as described in section EH 32(c).

Defined in this Act: amount, income tax, tax credit

Compare: 2004 No 35 s EH 33

Definitions

EH 34 Meaning of income from forestry

Income

(1) **Income from forestry**—

(a) means income derived from either or both of the sales described in subsection (2) in the circumstances described in subsection (3):

(b) includes PFSI forestry income.

Sales

(2) The sales are—

(a) the sale of timber:

(b) the sale of a right to cut or remove timber.

Circumstances

(3) The circumstances are—

(a) the income is derived by a person who is the owner of land in New Zealand on which timber is grown, not including a person whose interest in the land is that of a licensee; and

(b) the timber the subject of the sale is standing or cut or fallen timber in its natural state grown on the land.

Defined in this Act: income, income from forestry, New Zealand, own, person, PFSI forestry income, timber

Compare: 2004 No 35 s EH 34

Section EH 34(1): substituted (with effect on 1 April 2008), on 7 December 2009, by section 18(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EH 34 list of defined terms **PFSI forestry income**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EH 35 Meaning of main maximum deposit

Meaning

(1) **Main maximum deposit** means the maximum deposit that this section says a person may make to their main income equalisation account for an accounting year.

Meaning of amount

(2) In subsections (3) to (5), **amount** means an amount calculated without applying—

(a) any provision allocating income derived or expenditure incurred to an income year other than the corresponding income year in which the income was in fact derived or the expenditure was in fact incurred; or

(b) any provision of any of the income equalisation schemes referred to in section EH 1(2).

Maximum deposit of farmer

(3) The maximum deposit that a farmer may make is—

(a) the amount determined by an Order in Council made under subsection (6); or

(b) if no order is in force, an amount equal to the net income that the farmer would have in the tax year corresponding to the accounting year if—

(i) the farmer derived income only from the farming or agricultural business in the accounting year; and

(ii) the farmer did not make a payment under section EH 38 for the farming or agricultural business for the accounting year.

Maximum deposit of fisher

(4) The maximum deposit that a fisher may make is an amount equal to the net income that the fisher would have in the tax year corresponding to the accounting year if the fisher derived income only from the fishing business in the accounting year.

Maximum deposit of forester

(5) The maximum deposit that a forester may make is an amount equal to the net income that the forester would have in the tax year corresponding to the accounting year if the forester derived only income from forestry in the accounting year.

Order in Council relating to farmers

(6) The Governor-General may make an Order in Council declaring that the maximum deposit a farmer may make for an accounting year or for every accounting year is—

(a) an amount calculated in the manner specified in the order; or

(b) an unlimited amount.

Defined in this Act: accounting year, amount, business, corresponding income year, deposit, farmer, fisher, fishing business, forester, income, main income equalisation account, main maximum deposit, net income, income year, pay, person, tax year

Compare: 2004 No 35 s EH 35

EH 36 Other definitions

In the main income equalisation scheme,—

date the deposit ends means—

(a) the date on which the refund is calculated, when section EH 8 applies:

(b) the date that is 5 years after the end of the accounting year for which the deposit was made, when section EH 10 applies:

(c) the date on which the Commissioner receives the application for the refund, when section EH 13 or EH 15 applies:

(d) the date of the person's retirement, when section EH 17 applies:

(e) the date of the person's death, when section EH 19 applies:

(f) the date on which the Commissioner receives notice of the adjudication, when section EH 23 applies:

(g) the date on which the Commissioner receives notice of the liquidation, when section EH 25 applies

deposit—

(a) means a main deposit; and

(b) includes, for the purposes of sections EH 6(2) to (4) and EH 10 to EH 33, interest that is added to a main deposit under section EH 6(5)

fishing business includes a business of—

(a) fish farming under a licence issued under the Freshwater Fish Farming Regulations 1983:

(b) mussel farming:

(c) rock oyster farming

main deposit means a payment made to the Commissioner under section EH 4(1)

main income equalisation account, for a person, means the account that the Commissioner keeps in the person's name under section EH 5

specified period, for a person's tax year, means the shorter of—

(a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and

(b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year.

Defined in this Act: accounting year, business, Commissioner, date the deposit ends, deposit, fishing business, interest, liquidation, main deposit, main income equalisation account, main income equalisation scheme, pay, person, return of income, specified period, tax year, year

Compare: 2004 No 35 s EH 37

Adverse event income equalisation scheme

Application

EH 37 Persons to whom adverse event income equalisation scheme applies

Person described

(1) The adverse event income equalisation scheme applies to a person who, in an accounting year,—

(a) carries on a farming or agricultural business on land in New Zealand; and

(b) sells livestock and does not replace it because of a self-assessed adverse event.

Meaning of person for adverse event income equalisation scheme

(2) In the adverse event income equalisation scheme, **person** means a person described in subsection (1).

Defined in this Act: accounting year, adverse event income equalisation scheme, business, New Zealand, person, self-assessed adverse event

Compare: 2004 No 35 s EH 38

Deposits and accounts

EH 38 Adverse event deposit

Deposit for adverse event

(1) A person may make a payment to the Commissioner for entry in their adverse event income equalisation account for an accounting year in which, because of a self-assessed adverse event, they sell and do not replace livestock.

Upper limit of deposit

(2) A person must not make, for an accounting year, deposits that in total are more than their adverse event maximum deposit for the accounting year.

Lower limit of deposit

(3) A person must not make, for an accounting year, a deposit less than the lesser of—

(a) $200; and

(b) the difference between the total of all the deposits they have previously made for the accounting year and their adverse event maximum deposit for the accounting year.

Time of making deposit

(4) A person makes a deposit for an accounting year by—

(a) making the deposit during the accounting year; or

(b) making the deposit during the month after the end of the accounting year.

Defined in this Act: accounting year, adverse event deposit, adverse event income equalisation account, adverse event maximum deposit, Commissioner, deposit, pay, person, self-assessed adverse event

Compare: 2004 No 35 s EH 39

EH 39 Adverse event income equalisation account

Person's account

(1) The Commissioner must keep an adverse event income equalisation account in the name of every person who makes a deposit with the Commissioner.

Deposits in accounts

(2) Every deposit a person makes with the Commissioner must be entered in their adverse event income equalisation account.

Amounts in accounts

(3) The only amounts that may be entered in a person's adverse event income equalisation account are—

(a) deposits made by the person with the Commissioner; and

(b) interest paid under section EH 40.

Amounts not available to others

(4) Amounts entered in a person's adverse event income equalisation account must not, while they are in the account,—

(a) be assigned or charged in any way; or

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation; or

(c) be assets for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation; or

(d) be assets for the payment of the debts or liabilities of a dead person's estate.

Amounts available only for refunds

(5) The only payments that may be made from a person's adverse event income equalisation account are refunds under any of sections EH 42, EH 45, EH 47, EH 49, EH 53, and EH 55.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, deposit, interest, liquidation, pay, person

Compare: 2004 No 35 s EH 40

Interest

EH 40 Interest on deposits in adverse event income equalisation account

Interest payable

(1) Interest is payable on every deposit in an adverse event income equalisation account.

Period

(2) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

Date to which interest accrues

(3) Interest on a deposit accrues until the earlier of—

(a) 31 March in each year; and

(b) the date the deposit is refunded.

Added to deposit

(4) Accrued interest on a deposit is added to the deposit.

Rate

(5) The interest rate is the rate set in regulations made by the Governor-General from time to time.

Defined in this Act: adverse event income equalisation account, deposit, interest, pay, year

Compare: 2004 No 35 s EH 41

Deduction

EH 41 Deduction of deposit

When this section applies

(1) This section applies when a person is allowed a deduction under section DQ 2 (Adverse event income equalisation scheme).

Amount of deduction

(2) The amount of the deduction is the lesser of—

(a) the total of their deposits for the accounting year; and

(b) their adverse event maximum deposit for the accounting year.

Timing of deduction

(3) The person is allowed the deduction and it is allocated to the corresponding income year.

Defined in this Act: accounting year, adverse event maximum deposit, amount, corresponding income year, deduction, deposit, person

Compare: 2004 No 35 s EH 42

Refunds: automatic

EH 42 Refund of excess deposit

When this section applies

(1) This section applies when a person's deposits for an accounting year are more than their adverse event maximum deposit for the accounting year.

Refund

(2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: accounting year, adverse event maximum deposit, Commissioner, date the deposit ends, deposit, person

Compare: 2004 No 35 s EH 43

EH 43 Income does not include excess deposit

A refund under section EH 42 is excluded income under section CX 51 (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 44

Refunds: on application

EH 44 Application for refund by person, trustee of estate, Official Assignee, or liquidator

Who may apply

(1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's adverse event income equalisation account:

(a) the person may apply under section EH 45 or EH 47:

(b) the trustee of the person's estate may apply under section EH 49:

(c) the Official Assignee having charge of the person's estate may apply under section EH 53:

(d) the liquidator appointed for the person may apply under section EH 55.

Application

(2) An application for a refund must—

(a) be in writing; and

(b) state the grounds on which it is made; and

(c) state the amount applied for.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, liquidation, person, trustee

Compare: 2004 No 35 s EH 45

EH 45 Refund on request

When this section applies

(1) This section applies when a person wants a refund of some or all of the amount in the person's adverse event income equalisation account, and none of sections EH 47, EH 49, EH 53, and EH 55 applies.

Refund

(2) The Commissioner must refund to the person the amount applied for.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, person

Compare: 2004 No 35 s EH 46

EH 46 Income when refund given on request

A refund under section EH 45 is income, under section CB 27 (Income equalisation schemes), derived by the person in the income year in which the Commissioner receives the application for the refund.

Defined in this Act: Commissioner, income, income year, person

Compare: 2004 No 35 s EH 47

EH 47 Refund on retirement

When this section applies

(1) This section applies when a person—

(a) has an adverse event income equalisation account; and

(b) is neither a company nor a trustee; and

(c) retires from the farming or agricultural business.

Refund

(2) The Commissioner must refund to the person the amount that, on the date the deposit ends, is in their adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, business, Commissioner, company, date the deposit ends, person, trustee

Compare: 2004 No 35 s EH 48

EH 48 Income when refund given on retirement, and election to allocate amount to earlier year

Year of income

(1) A refund under section EH 47 is income, under section CB 27 (Income equalisation schemes), derived by the person in the income year in which they retire.

When year of income may be different

(2) However, subsection (3) applies instead of subsection (1) if—

(a) the refund includes a deposit made for an accounting year earlier than the tax year in which the person retires; and

(b) the person chooses to allocate some or all of the deposit to the earlier accounting year.

Different year of income

(3) The amount allocated by the person to the earlier accounting year is income, under section CB 27, derived by them in the corresponding income year.

How election made

(4) A person makes an election under this section by giving the Commissioner notice within 1 of the following times:

(a) the time within which the person is required to file a return of income for the tax year corresponding to the accounting year in which they retire:

(b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: accounting year, amount, Commissioner, corresponding income year, deposit, income, notice, person, return of income, tax year

Compare: 2004 No 35 s EH 49

EH 49 Refund on death

When this section applies

(1) This section applies when a person—

(a) has an adverse event income equalisation account; and

(b) dies.

Refund

(2) Despite section FC 2 (Transfer at market value), the Commissioner must refund to the trustee of the person's estate the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, person, trustee

Compare: 2004 No 35 s EH 50

EH 50 Income when refund given on death

Year of income

(1) A refund under section EH 49 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before their death.

When year of income may be different

(2) However, section EH 51 or EH 52 applies instead of subsection (1) if the circumstances described in section EH 51(1) or EH 52(1) apply in the person's case.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 51

EH 51 Income when refund given on death, and election to allocate amount to earlier year

When this section applies

(1) This section applies when—

(a) a refund under section EH 49 includes a deposit made for an accounting year earlier than the accounting year in which the person dies; and

(b) the trustee of the person's estate chooses to allocate some or all of the deposit to the earlier accounting year.

Different year of income

(2) The amount allocated by the trustee to the earlier accounting year is income, under section CB 27 (Income equalisation schemes), derived by the person in the corresponding income year.

How election made

(3) A trustee makes an election under this section by giving the Commissioner notice within 1 of the following times:

(a) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(b) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: accounting year, amount, Commissioner, corresponding income year, deposit, income, notice, person, return, trustee

Compare: 2004 No 35 s EH 52

EH 52 Income when refund given on death, and election to allocate amount to later year or years

When this section applies

(1) This section applies when—

(a) the trustee does not make an election under section EH 51; and

(b) the trustee chooses to allocate some or all of the amount that is in the person's adverse event income equalisation account on the date of the person's death to an accounting year or years after that date.

Accounting year or years for purposes of subsection (1)(b)

(2) For the purposes of subsection (1)(b), the accounting year or years must be within the earlier of—

(a) the 3 years after the date of the person's death; and

(b) the 5 years after the end of the accounting year for which a deposit or a part of a deposit was made, if the amount that the trustee allocates to a later year or years includes the deposit or part of it.

Amount allocated remains in account

(3) An amount allocated by the trustee to a later accounting year remains in the person's adverse event income equalisation account until it is refunded to the trustee in the accounting year to which it is allocated.

Different year of income

(4) An amount allocated by the trustee to a later accounting year is income, under section CB 27 (Income equalisation schemes), derived by the person in the corresponding income year.

How election made

(5) A trustee makes an election under this section by a notice that—

(a) specifies—

(i) each amount allocated to a later accounting year; and

(ii) the accounting year to which each amount is allocated; and

(b) is given to the Commissioner within 1 of the following times:

(i) the time within which the trustee is required to file a return of the person's income for the period to the date of the person's death:

(ii) a further time allowed by the Commissioner in a case or class of cases.

Defined in this Act: accounting year, adverse event income equalisation account, amount, Commissioner, corresponding income year, deposit, income, notice, person, return, trustee, year

Compare: 2004 No 35 s EH 53

EH 53 Refund on bankruptcy

When this section applies

(1) This section applies when a person—

(a) has an adverse event income equalisation account; and

(b) is bankrupt.

Refund

(2) The Commissioner must refund to the Official Assignee having charge of the person's estate the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, person

Compare: 2004 No 35 s EH 54

EH 54 Income when refund given on bankruptcy

A refund under section EH 53 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before the bankruptcy starts.

Defined in this Act: income, person

Compare: 2004 No 35 s EH 55

EH 55 Refund on liquidation

When this section applies

(1) This section applies when a person—

(a) has an adverse event income equalisation account; and

(b) is put into liquidation.

Refund

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, Commissioner, date the deposit ends, liquidation, person

Compare: 2004 No 35 s EH 56

EH 56 Income when refund given on liquidation

A refund under section EH 55 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 57

Refunds: general provisions

EH 57 Amendment of assessment

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to any of sections EH 48, EH 51, and EH 52.

Defined in this Act: assessment, Commissioner, time bar

Compare: 2004 No 35 s EH 58

EH 58 Minimum refund

The Commissioner must not give a refund under any of sections EH 45, EH 47, EH 49, EH 53, and EH 55 that is less than the lesser of—

(a) $200; and

(b) the balance in the person's adverse event income equalisation account on the date the deposit ends.

Defined in this Act: adverse event income equalisation account, Commissioner, date the deposit ends, person

Compare: 2004 No 35 s EH 59

EH 59 Deposits from which refunds come

Each refund a person is given is treated as coming from the total amount of their deposits in the order in which they made the deposits.

Defined in this Act: amount, deposit, person

Compare: 2004 No 35 s EH 60

Transfers

EH 60 Transfer of deposit

Transfer from adverse event to main income equalisation account

(1) A deposit that is in a person's adverse event income equalisation account on the day 1 year after the date on which the deposit was made must be transferred to their main income equalisation account as soon as practicable.

Date of deposit in main income equalisation account

(2) The date on which a transferred deposit is treated as having been deposited in the person's main income equalisation account is as follows:

(a) the date on which it was transferred, for the purpose of computing interest payable under section EH 6:

(b) the date on which it was deposited in the adverse event income equalisation account, for any other purpose.

No deduction

(3) A transferred deposit is not an amount for which a deduction is allowed under section DQ 1 (Main income equalisation scheme).

Ceasing of deposit in adverse event income equalisation account

(4) A transferred deposit ceases to be a deposit in the person's adverse event income equalisation account.

Defined in this Act: adverse event income equalisation account, amount, deduction, deposit, interest, main income equalisation account, pay, person, year

Compare: 2004 No 35 s EH 61

Definitions

EH 61 Meaning of adverse event maximum deposit

Meaning

(1) **Adverse event maximum deposit** means the maximum deposit that this section says a person may make to their adverse event income equalisation account for an accounting year.

Maximum deposit

(2) The maximum deposit a person may make is an amount equal to the net income that the person would have in the tax year corresponding to the accounting year if, because of the self-assessed adverse event,—

(a) the only income derived by the person in the accounting year were income from their selling the livestock; and

(b) the only amount for which the person was allowed a deduction in the accounting year were the cost of the livestock sold.

Cost of livestock sold: matters excluded

(3) The cost of the livestock sold is an amount determined under subsection (4) or (5)—

(a) without applying any provision allocating income derived or expenditure incurred to an income year other than the income year in which the income was in fact derived or the expenditure was in fact incurred; and

(b) applying sections DQ 1 (Main income equalisation scheme), EH 7 to EH 33, and FB 15 to FB 17 (which relate to livestock).

Cost of livestock sold: person having livestock of class sold at end of previous accounting year

(4) This subsection applies when, at the end of the accounting year before the accounting year in which the livestock is sold, the person had livestock of the class that is sold in which the livestock would, if unsold, have been included at the end of the accounting year in which it is sold. Under this subsection, the cost of livestock sold is determined using the previous accounting year's closing value for the class of livestock in which the livestock sold would have been included.

Cost of livestock sold: other cases

(5) This subsection applies when subsection (4) does not. Under this subsection, the cost of livestock sold is calculated using the formula—

$$\frac{\text{number at start} \times \text{value} + \text{number bought} \times p}{\text{number at start} + \text{number bought}}.$$

Definition of items in formula

(6) In the formula,—

(a) **number at start** is the number of livestock of the class sold that the person has at the start of the accounting year in which the livestock is sold:

(b) **number bought** is the number of livestock of the class sold that the person buys in the accounting year in which the livestock is sold, before the sale:

(c) **price** is the average purchase price of the number bought:

(d) **value** is the opening value of the number at the start, determined without applying section (2) (Valuation under herd scheme).

Defined in this Act: accounting year, adverse event income equalisation account, adverse event maximum deposit, amount, corresponding income year, deduction, deposit, income, net income, person, self-assessed adverse event, tax year

Compare: 2004 No 35 s EH 62

EH 62 Other definitions

In the adverse event income equalisation scheme,—

adverse event deposit means a payment made to the Commissioner under section EH 38(1)

adverse event income equalisation account, for a person, means the account that the Commissioner keeps in the person's name under section EH 39

date the deposit ends means—

(a) the date on which the refund is calculated, when section EH 42 applies:

(b) the date on which the Commissioner receives the applications for the refund, when section EH 45 applies:

(c) the date of the person's retirement, when section EH 47 applies:

(d) the date of the person's death, when section EH 49 applies:

(e) the date on which the Commissioner receives notice of the adjudication, when section EH 53 applies:

(f) the date on which the Commissioner receives notice of the liquidation, when section EH 55 applies:

(g) the date on which the Commissioner transfers the deposit, when section EH 60(1) applies

deposit—

(a) means an adverse event deposit; and

(b) includes, for the purposes of sections EH 40(2) and (3) and EH 44 to EH 60, interest that is added to an adverse event deposit under section EH 40(4)

specified period, for a person's tax year, means the shorter of—

(a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and

(b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year.

Defined in this Act: accounting year, adverse event deposit, adverse event income equalisation account, adverse event income equalisation scheme, Commissioner, date the deposit ends, deposit, interest, liquidation, pay, person, return of income, specified period, tax year

Compare: 2004 No 35 s EH 64

Thinning operations income equalisation scheme

Application

EH 63 Persons to whom thinning operations income equalisation scheme applies

Person described

(1) The thinning operations income equalisation scheme applies to a company that, in an accounting year,—

(a) carries on a forestry business on land in New Zealand; and

(b) derives income from carrying out thinning operations on the land.

Meaning of person for thinning operations income equalisation scheme

(2) In the thinning operations income equalisation scheme, **person** means a person described in subsection (1).

Defined in this Act: accounting year, business, company, forestry business, income, New Zealand, person, thinning operations, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 65

Section EH 63 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Deposits and accounts

EH 64 Thinning operations deposit

Deposit for thinning operations

(1) A person may make a payment to the Commissioner for entry in their thinning operations income equalisation account for an accounting year in which they derive income from carrying out thinning operations.

Upper limit of deposit

(2) A person must not make, for an accounting year, deposits that in total are more than their thinning operations maximum deposit for the accounting year.

Lower limit of deposit

(3) A person must not make, for an accounting year, a deposit that is less than the lesser of—

(a) $200; and

(b) the difference between the total of all the deposits the person has previously made for the accounting year and their thinning operations maximum deposit for the accounting year.

Time of making deposit

(4) A person makes a deposit for an accounting year by—

(a) making the deposit during the accounting year; or

(b) doing both the following:

(i) making the deposit during the specified period for the accounting year; and

(ii) at the time of making it, giving the Commissioner notice that the deposit is for the accounting year; or

(c) doing both the following:

(i) making the deposit within a time that is after the end of the specified period for the accounting year but that is allowed by the Commissioner in a case or class of cases; and

(ii) at the time of making it, giving the Commissioner notice that the deposit is for the accounting year.

Limit on making deposit

(5) If a refund has been made to a person for an accounting year under section EH 71 or EH 73, the person may later make a deposit for the accounting year only if the Commissioner is satisfied, before the deposit is made, that all the refund has been used to expand or develop the person's business.

Defined in this Act: accounting year, business, Commissioner, deposit, income, notice, pay, person, specified period, thinning operations, thinning operations deposit, thinning operations income equalisation account, thinning operations maximum deposit

Compare: 2004 No 35 s EH 66

EH 65 Thinning operations income equalisation account

Person's account

(1) The Commissioner must keep a thinning operations income equalisation account in the name of every person that makes a deposit with the Commissioner.

Deposits in accounts

(2) Every deposit a person makes with the Commissioner must be entered in their thinning operations income equalisation account.

Amounts in accounts

(3) The only amounts that may be entered in a person's thinning operations income equalisation account are—

(a) deposits made by the person with the Commissioner; and

(b) interest paid under section EH 66.

Amounts not available to others

(4) Despite section FC 2 (Transfer at market value), amounts entered in a person's thinning operations income equalisation account must not, while they are in the account,—

(a) be assigned or charged in any way; or

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person has been put into liquidation; or

(c) be assets for the payment of the person's debts or liabilities, except when the person has been put into liquidation.

Amounts available only for refunds

(5) The only payments that may be made from a person's thinning operations income equalisation account are refunds under any of sections EH 68, EH 71, EH 73, and EH 75.

Defined in this Act: amount, Commissioner, deposit, interest, liquidation, pay, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 67

Interest

EH 66 Interest on deposits in thinning operations income equalisation account

No interest payable

(1) No interest is payable on a deposit in a thinning operations income equalisation account that is refunded within 1 year of the date of deposit.

Interest payable

(2) Interest is payable on every other deposit in a thinning operations income equalisation account.

Period

(3) Interest is computed with daily rests from the date of acknowledgment of the receipt of the deposit until the date the deposit is refunded.

Date to which interest accrues

(4) Interest on a deposit accrues until the earlier of—

(a) 31 March in each year; and

(b) the date the deposit is refunded.

Added to deposit

(5) Accrued interest on a deposit is added to the deposit.

Rate

(6) The interest rate is 3% a year.

Defined in this Act: deposit, interest, pay, thinning operations income equalisation account, year

Compare: 2004 No 35 s EH 68

Deductions

EH 67 Deduction of deposit

When this section applies

(1) This section applies when a person is allowed a deduction under section DQ 3 (Thinning operations income equalisation scheme).

Amount of deduction

(2) The amount of the deduction is the lesser of—

(a) the total of the person's deposits for the accounting year; and

(b) their thinning operations maximum deposit for the accounting year.

Timing of deduction

(3) The person is allowed the deduction in the accounting year.

Defined in this Act: accounting year, amount, deduction, deposit, person, thinning operations maximum deposit

Compare: 2004 No 35 s EH 69

Refunds: automatic

EH 68 Refund of excess deposit

When this section applies

(1) This section applies when a person's deposits for an accounting year are more than their thinning operations maximum deposit for the accounting year.

Refund

(2) The Commissioner must refund the excess to the person as soon as practicable after the date the deposit ends.

Defined in this Act: accounting year, Commissioner, date the deposit ends, deposit, person, thinning operations maximum deposit

Compare: 2004 No 35 s EH 70

EH 69 Income does not include excess deposit

A refund under section EH 68 is excluded income under section CX 51 (Income equalisation schemes).

Defined in this Act: excluded income

Compare: 2004 No 35 s EH 71

Refunds: on application

EH 70 Application for refund by person or liquidator

Who may apply

(1) The following may apply to the Commissioner for a refund of some or all of the amount in a person's thinning operations income equalisation account:

(a) the person may apply under section EH 71 or EH 73:

(b) the liquidator appointed for the person may apply under section EH 75.

Application

(2) An application for a refund must—

(a) be in writing; and

(b) state the grounds on which it is made; and

(c) state the amount applied for.

Defined in this Act: amount, Commissioner, liquidation, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 72

EH 71 Refund on request

When this section applies

(1) This section applies when a person wants a refund of some or all of the amount in the person's thinning operations income equalisation account, and neither section EH 73 nor EH 75 applies.

Refund

(2) The Commissioner must refund to the person the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's thinning operations income equalisation account for at least 1 year before the date the deposit ends.

Defined in this Act: amount, Commissioner, date the deposit ends, deposit, person, thinning operations income equalisation account, year

Compare: 2004 No 35 s EH 73

EH 72 Income when refund given on request

Year of income

(1) A refund under section EH 71 is income, under section CB 27 (Income equalisation schemes), derived by the person in the income year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, subsection (3) applies instead of subsection (1) if—

(a) the Commissioner receives the application for a refund in the specified period for an accounting year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the accounting year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income under section CB 27 in the corresponding income year to which the specified period or the longer period relates.

Defined in this Act: accounting year, Commissioner, corresponding income year, income, income year, person, specified period

Compare: 2004 No 35 s EH 74

EH 73 Refund for development or recovery

Refund for development: application of subsection (2)

(1) Subsection (2) applies when a person wants a refund of some or all of the amount in their thinning operations income equalisation account for the purpose of enabling them to undertake,

immediately after the refund is given, planned development or maintenance work for their forestry business.

Refund

(2) If the Commissioner is satisfied that the person will use the refund for the purpose, the Commissioner must refund to them the amount applied for, to the extent to which it can be made up of 1 or more deposits that have been in the person's thinning operations income equalisation account for at least 6 months before the date the deposit ends.

Refund for recovery: application of subsection (4)

(3) Subsection (4) applies when a person wants a refund of some or all of the amount in their thinning operations income equalisation account for either or both of the following purposes:

(a) to avoid them suffering serious hardship:

(b) to do anything else that the Commissioner determines, in a case or class of cases, is a purpose for which a refund should be given.

Refund

(4) If the Commissioner is satisfied that the person will use the refund for either or both of the purposes, the Commissioner must refund to them the amount applied for, regardless of the length of time it has been in the account.

Defined in this Act: amount, business, Commissioner, date the deposit ends, deposit, forestry business, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 75

Section EH 73 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EH 74 Income when refund given for development or recovery

Year of income

(1) A refund under section EH 73 is income, under section CB 27 (Income equalisation schemes), derived by the person in the income year in which the Commissioner receives the application for the refund.

When year of income may be different

(2) However, subsection (3) applies instead of subsection (1) if—

(a) the Commissioner receives the application for a refund in the specified period for an accounting year or, if the Commissioner allows in a case or class of cases, within a longer period; and

(b) the person chooses in the application that the refund is to be income in the accounting year to which the specified period or the longer period relates.

Different year of income

(3) The refund is income under section CB 27 derived in the corresponding income year to which the specified period or the longer period relates.

Defined in this Act: accounting year, Commissioner, corresponding income year, income, income year, person, specified period

Compare: 2004 No 35 s EH 76

EH 75 Refund on liquidation

When this section applies

(1) This section applies when a person—

(a) has a thinning operations income equalisation account; and

(b) is put into liquidation.

Refund

(2) The Commissioner must refund to the liquidator appointed for the person the amount that, on the date the deposit ends, is in the person's thinning operations income equalisation account on the date, regardless of the length of time it has been in the account.

Defined in this Act: amount, Commissioner, date the deposit ends, liquidation, person, thinning operations income equalisation account

Compare: 2004 No 35 s EH 77

EH 76 Income when refund given on liquidation

A refund under section EH 75 is income, under section CB 27 (Income equalisation schemes), derived by the person immediately before the liquidation starts.

Defined in this Act: income, liquidation, person

Compare: 2004 No 35 s EH 78

Refunds: general provisions, and tax credits

EH 77 Sections of main income equalisation scheme that apply to thinning operations income equalisation scheme

Sections EH 28 to EH 33 apply, with the necessary amendments, to the thinning operations income equalisation scheme.

Defined in this Act: main income equalisation scheme, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 79

Definitions

EH 78 Meaning of thinning operations maximum deposit

Meaning

(1) **Thinning operations maximum deposit** means the maximum deposit that this section says a person may make to their thinning operations income equalisation account for a tax year.

Maximum deposit

(2) The maximum deposit that a person may make is an amount equal to the income derived by them during the accounting year from carrying out thinning operations on the land on which they carry on their forestry business.

Meaning of amount

(3) In subsection (2), **amount** means an amount calculated without applying—

(a) any provision allocating income derived or expenditure incurred to an income year other than the income year in which the income was in fact derived or the expenditure was in fact incurred:

(b) any provision of any of the income equalisation schemes referred to in section EH 1(2).

Defined in this Act: accounting year, amount, business, deposit, forestry business, income, income year, person, thinning operations, thinning operations income equalisation account, thinning operations maximum deposit

Compare: 2004 No 35 s EH 80

Section EH 78 list of defined terms **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EH 79 Other definitions

In the thinning operations income equalisation scheme,—

date the deposit ends means—

(a) the date on which the refund is calculated, when section EH 68 applies:

(b) the date on which the Commissioner receives the application for the refund, when section EH 71 or EH 73 applies:

(c) the date on which the Commissioner receives notice of the liquidation, when section EH 75 applies

deposit—

(a) means a thinning operations deposit; and

(b) includes, for the purposes of sections EH 66(2) to (4) and EH 70 to EH 77, interest that is added to a thinning operations deposit under section EH 66(5)

specified period, for a person's tax year, means the shorter of—

(a) the period of 6 months after the end of the accounting year that corresponds to the tax year; and

(b) the period from the end of the accounting year that corresponds to the tax year to the date 1 month after the date by which the person must, under section 37 of the Tax Administration Act 1994, file their return of income for the accounting year that corresponds to the tax year

thinning operations means operations in which some trees in an immature stand of trees are felled for the purpose of improving the growth and form of the remaining trees and not for the purpose of permanently breaking the canopy

thinning operations deposit means a payment made to the Commissioner under section EH 64(1)

thinning operations income equalisation account, for a person, means the account that the Commissioner keeps in the person's name under section EH 65.

Defined in this Act: Commissioner, date the deposit ends, interest, liquidation, pay, person, return of income, specified period, tax year, thinning operations, thinning operations deposit, thinning operations income equalisation account, thinning operations income equalisation scheme

Compare: 2004 No 35 s EH 81

Subpart EI—Spreading of specific income

Farming and forestry

EI 1 Spreading backward of income from timber

When this section applies

(1) This section applies when a person derives income under section CB 24 (Disposal of timber or right to take timber) or CB 25 (Disposal of land with standing timber).

Timing of income

(2) The person may allocate the income between the income year in which they derive it and any 1 or more of the previous 3 income years.

Application

(3) A person who wants to make an allocation under subsection (2) must apply in writing to the Commissioner no later than 1 year after the end of the income year in which they derive the income.

Defined in this Act: Commissioner, income, income year, timber, year

Compare: 2004 No 35 s EI 1

Inflation-indexed instruments

EI 2 Interest from inflation-indexed instruments

When this section applies

(1) This section applies when—

(a) an amount of money lent is outstanding at the end of the lender's current income year; and

(b) an amount is payable to the lender for the money lent, in a future income year of the lender; and

(c) the amount payable is determined by a fixed relationship to 1 or more indices of general price inflation in New Zealand; and

(d) the amount payable that has accrued at the end of the lender's current income year differs from any amount payable that had accrued—

(i) at the time the money was lent, if it was lent during the lender's current income year; or

(ii) at the end of the lender's previous income year, if it was lent before the lender's current income year.

Increase treated as credited

(2) If the difference is an increase, the increase is treated as having been credited in account and capitalised by the borrower for the benefit of the lender on—

(a) the day following the day on which the level of the relevant index at the end of the lender's current income year becomes public knowledge; or

(b) if the level of the relevant index is not calculated for the end of the lender's current income year, the last date before the end of the income year for which the level is calculated.

This subsection is overridden by subsection (3).

Increase not treated as credited

(3) An increase is not treated as having been credited to the extent to which—

(a) the money lent has been repaid:

(b) an amount on account of the increase has already been paid to the lender:

(c) the increase represents a recovery of a decrease in the amount payable over an earlier income year of the lender.

Defined in this Act: amount, income year, interest, money lent, New Zealand, pay

Compare: 2004 No 35 s EI 2

Intellectual property

EI 3 Assigning or granting copyright

When this section applies

(1) This section applies when a person—

(a) is the author of a literary, dramatic, musical, or artistic work; and

(b) made the work over a period of more than 1 year; and

(c) receives consideration from—

(i) assigning some or all of the copyright in the work; or

(ii) granting an interest in the copyright by licence.

Timing of income: lump sum payment

(2) If some or all of the consideration is a lump sum payment that would be income in 1 tax year, the person may allocate the income equally between the income year in which they receive it and—

(a) the income year before that income year, if they made the work over a period of 2 years or less; or

(b) the 2 income years before that income year, if they made the work over a period of more than 2 years.

Timing of income: other payments

(3) If some or all of the consideration is not a lump sum payment, would be income in 1 tax year, and is received by the person within 2 years after the first publication of the work, the person may allocate the income equally between the income year in which they receive it and the previous income year.

Self-publication

(4) Subsection (3) applies to income that the person derives from being the publisher of their work.

Application

(5) The following provisions apply to an allocation for the purposes of subsections (2) and (3):

(a) for an allocation under subsection (2), the person must apply in writing to the Commissioner no later than 6 years after the end of the income year in which they receive the payment; and

(b) for an allocation under subsection (3), the person must apply in writing to the Commissioner no later than 8 years after the first publication of the work.

Some definitions

(6) In this section,—

author includes a joint author

first publication means the first occasion on which the work or a reproduction of it is published, performed, or exhibited

lump sum payment includes an advance on account of royalties.

Defined in this Act: author, Commissioner, first publication, income, income year, lump sum payment, pay, royalty, tax year, year

Compare: 2004 No 35 s EI 3

EI 4 Spreading income from patent rights

When this section applies

(1) This section applies when a person derives income under section CB 30 (Sale of patent applications or patent rights).

Timing of income

(2) The person may allocate the income equally between the income year in which they derive it and the following 2 income years.

Defined in this Act: income, income year, patent right

Compare: 2004 No 35 s EI 3B

Land

EI 5 Amount paid to lessor for non-compliance with covenant for repair

When this section applies

(1) This section applies when a lessor receives an amount of income under section CC 2 (Non-compliance with covenant for repair).

Timing of income: if election made

(2) The lessor may choose to allocate the income between the income year in which they receive the amount and any 1 or more of the following 4 income years.

Timing of income: if election not made

(3) Any part of the amount that the lessor does not allocate as described in subsection (2) is allocated to the fourth income year following the income year in which they receive the amount.

Notice

(4) The following provisions apply to an allocation for the purposes of subsection (2):

(a) the lessor must give a notice to the Commissioner that specifies how the income has been allocated; and

(b) the lessor must give the notice within the time required to file a return of income for the income year to which the income is allocated or within a longer time if the Commissioner agrees; and

(c) the lessor must not revoke the election.

Relationship with sections CC 2 and EI 6

(5) This section overrides section CC 2(2) and is overridden by section EI 6.

Defined in this Act: amount, Commissioner, income, income year, notice, return of income

Compare: 2004 No 35 s EI 4

EI 6 Amount paid for non-compliance: when lessor ceases to own land

When this section applies

(1) This section applies when a lessor—

(a) allocates income under section EI 5 to more than 1 income year; and

(b) ceases to own the land to which the income relates before the end of the third tax year following the tax year in which they receive the income.

Timing of income

(2) If the lessor has not allocated a part of the income, the part is allocated to the income year in which the lessor ceases to own the land.

Ownership of part of land ceasing

(3) If the lessor ceases to own part of the land to which the income relates,—

(a) this section applies to the part of the land that the lessor ceases to own; and

(b) section EI 5 applies to the part of the land that the lessor continues to own.

Defined in this Act: amount, income, income year, own, tax year

Compare: 2004 No 35 s EI 5

EI 7 Leases: income derived in anticipation

When this section applies

(1) This section applies when a person derives, in a tax year, income in anticipation from fines, premiums, a payment of goodwill on the grant of a lease, or in another similar way.

Timing of income

(2) The Commissioner may allocate the income between the income year in which the person derives it and any 5 later income years.

Notice

(3) The following provisions apply to an allocation for the purposes of subsection (2):

(a) the person must give a notice to the Commissioner requesting the Commissioner to make the allocation:

(b) the person must give the notice in the tax year following the tax year to which the income year of derivation corresponds:

(c) the Commissioner may cancel the allocation at any time.

Cancellation of allocation

(4) If the Commissioner cancels the allocation, the income allocated to the income year in which the cancellation occurs and to future income years is allocated to the income year before the income year in which the cancellation occurs.

Defined in this Act: Commissioner, income, income year, lease, notice, pay, tax year

Compare: 2004 No 35 s EI 6

EI 8 Disposal of land to the Crown

When this section applies

(1) This section applies when a person derives income from disposing of any of their land to the Crown.

Timing of income

(2) The person may choose to allocate the income between the income year in which they derive it and any 3 later income years.

Timing of deduction

(3) If the person allocates income to 2 or more income years, they must allocate part of any deduction allowed for the cost of the land to the same income years. The part must bear the same proportion to the total deduction as the allocated income bears to the total amount of income.

Application

(4) The following provisions apply to an allocation for the purposes of subsection (2):

(a) the person, or another person for them, must make a written application to the Commissioner:

(b) the application must be made within 1 year after the end of the tax year in which the person derives the income or within a longer time if the Commissioner agrees:

(c) the person must arrange to meet all income tax liabilities relating to the income:

(d) the Commissioner may cancel the allocation at any time.

Cancellation of allocation

(5) If the Commissioner cancels the allocation,—

(a) the whole of the income or deduction, as applicable, is allocated to the income year before the income year in which the cancellation occurs:

(b) the cancellation does not affect income or a deduction that has been allocated to an earlier income year.

Defined in this Act: amount, Commissioner, deduction, income, income tax liability, income year, tax year, year

Compare: 2004 No 35 s EI 7

Shareholder-employees

EI 9 Matching rule for employment income of shareholder-employee

Matching if company allowed deduction

(1) If a company is allowed a deduction for expenditure on employment income that is paid or is payable to a shareholder-employee under section CE 1 (Amounts derived in connection with employment), the income is allocated in the way set out in subsections (2) and (3).

Allocation to deduction year unless unexpired

(2) The income is allocated to the income year to which the deduction allowed to the company is allocated, except for an amount equal to any unexpired portion for the income year of the company's expenditure under section EA 4 (Deferred payment of employment income).

Allocation when no longer treated as unexpired

(3) The remaining income is allocated to the income year or years in which the corresponding amount of the company's expenditure on the income is no longer treated as an unexpired portion.

Defined in this Act: amount, company, deduction, employment income, income year, pay, shareholder-employee

Compare: 2004 No 35 s EI 8

Subpart EJ—Spreading of specific expenditure

Farming and forestry

EJ 1 Spreading backward of deductions for costs of timber

When this section applies

(1) This section applies when a person derives income under section CB 24 (Disposal of timber or right to take timber) or CB 25 (Disposal of land with standing timber).

Timing of deduction

(2) The person must allocate every amount allowed as a deduction for a cost of timber to the income years to which the income is allocated under section EI 1 (Spreading backward of income from timber), and in the same proportions as it is allocated.

Defined in this Act: amount, deduction, income, income year

Compare: 2004 No 35 s EJ 1

EJ 2 Spreading forward of deductions for repairs to fishing boats

When this section applies: generally

(1) This section applies when a person who carries on a fishing business in New Zealand is allowed a deduction for expenditure incurred in making repairs or alterations required by Part

10 of the Maritime Transport Act 1994 to the equipment, hull, or machinery of a fishing boat used wholly for the purposes of the business.

When subsection (3) applies

(2) Subsection (3) applies when the person does not cease to carry on the business before the end of the fourth tax year following the tax year in which the expenditure is incurred.

Business not ceasing within 4 years

(3) The person may do 1 of the following to the total amount of expenditure allowed as a deduction:

(a) deduct it in the income year in which the expenditure is incurred; or

(b) allocate it to any 1 of the 4 income years following the income year in which the expenditure is incurred, and deduct it in that income year; or

(c) allocate parts of it over some or all of the 4 income years following the income year in which the expenditure is incurred, and deduct each part allocated in the income year to which it is allocated; or

(d) deduct it, or any part of it that has not already been deducted, in the fourth income year following the income year in which the expenditure is incurred.

When subsection (5) applies

(4) Subsection (5) applies when the person ceases to carry on the business before the end of the fourth tax year following the tax year in which the expenditure is incurred.

Business ceasing within 4 years

(5) The person may do 1 of the following to the total amount of expenditure allowed as a deduction:

(a) deduct it, or any part of it that has not already been deducted, in the income year in which the person ceases to carry on the business; or

(b) allocate it, or any part of it that has not already been deducted, equally to the income year in which it is incurred and the following income years in which the person continues to carry on the business.

Some definitions

(6) In this section,—

fishing boat—

(a) means a boat registered as a fishing boat under Part 4 of the Fisheries Act 1983; and

(b) includes a small boat belonging to any boat that is so registered

fishing business means a business of catching or taking fish, including crustaceans and shellfish, for the purposes of sale.

Defined in this Act: amount, business, deduction, fishing boat, fishing business, income year, New Zealand, tax year

Compare: 2004 No 35 s EJ 2

EJ 3 Spreading forward of fertiliser expenditure

When this section applies

(1) This section applies when—

(a) a person carries on a farming or agricultural business on land in New Zealand; and

(b) the person incurs expenditure in buying fertiliser or lime or applying fertiliser or lime to some or all of the land; and

(c) the expenditure is expenditure for which the person is allowed a deduction.

Timing of deduction: if election made

(2) The person may choose to allocate the expenditure by allocating some or all of it, in the proportions they choose, to any 1 or more of the 4 income years following the income year in which they incur the expenditure.

Timing of deduction: if election not made

(3) The person is allowed a deduction in the fourth income year following the income year in which they incur the expenditure for any part of the expenditure—

(a) for which they do not claim a deduction in the income year in which they incur the expenditure; or

(b) that they do not allocate under subsection (2).

Timing of deduction: business ceasing within 4 years

(4) If the person ceases to carry on the business before the end of the fourth income year following the income year in which they incurred the expenditure, they must choose 1 of the fol-

lowing ways to deal with any part of the expenditure that has not so far been deducted:

(a) the part is to be deducted in the income year in which the person ceases to carry on the business; or

(b) the part is to be allocated equally to the income year in which they incurred the expenditure and the following income years in which the person carried on the business.

Notice

(5) The following provisions apply to an allocation for the purposes of subsections (2) and (4):

(a) for subsection (2), the person must give the Commissioner notice of the allocation within the time within which the person is required to file a return of income for the income year to which they allocated the expenditure:

(b) for subsection (4), the person must give the Commissioner notice of the allocation within the time within which the person is required to file a return of income for the income year in which the person ceases to carry on the business:

(c) for subsection (2) or (4), the Commissioner may allow a longer time in any case or class of cases:

(d) for subsection (2), the person must not revoke the allocation.

Personal representative

(6) An election under subsection (4) may be made by a deceased's personal representative.

Defined in this Act: business, Commissioner, deduction, income year, New Zealand, notice, return of income

Compare: 2004 No 35 s EJ 3

Films

EJ 4 Expenditure incurred in acquiring film rights in feature films

Feature films

(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is a feature film and—

(a) the deduction is allowed under section DS 1 (Acquiring film rights):

(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a large budget film grant is made.

Timing of deduction: retention of film right

(2) If the person has the film right at the end of an income year, the deduction that is allocated to the income year is the lesser of—

(a) the greater of—

(i) an apportioned amount of the deduction, calculated for the income year under subsection (3); and

(ii) the amount of film income derived in the income year; and

(b) the remaining deduction.

Calculation of apportioned amount

(3) The apportioned amount is calculated for the income year using the formula—

$$\frac{\text{completed months}}{\text{non-completed months}} \times \text{deduction.}$$

Definition of items in formula

(4) In the formula,—

(a) **completed months** is the number of months in the income year, including a part of a month, for which the film is completed:

(b) **non-completed months** is 24, reduced by the number of complete months in the period that—

(i) starts on the first day of the month in which the film is completed; and

(ii) ends on the last day of the income year before the income year referred to in subsection (2):

(c) **deduction** is the remaining deduction.

Timing of deduction: disposal of film right

(5) If the person disposes of the film right during an income year, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

Meaning of remaining deduction

(6) In this section, **remaining deduction** means, for an income year, the amount of the deduction for expenditure incurred before the end of the income year that has not been allocated to an earlier income year.

Defined in this Act: amount, completed, deduction, feature film, film, film income, film right, income year, large budget film grant, remaining deduction

Compare: 2004 No 35 s EJ 4

Section EJ 4(1): substituted, on 1 April 2008, by section 360 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EJ 4(1)(b): substituted, on 1 January 2010, by section 123(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 4(1)(b): amended (with effect on 1 January 2010), on 7 September 2010, by section 32(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 4 list of defined terms **government screen production payment**: repealed (with effect on 1 January 2010), on 7 September 2010, by section 32(2)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 4 list of defined terms **government screen production payment**: inserted, on 1 January 2010, by section 123(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 4 list of defined terms **large budget film grant**: inserted (with effect on 1 January 2010), on 7 September 2010, by section 32(2)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EJ 5 Expenditure incurred in acquiring film rights in films other than feature films

Films other than feature films

(1) A deduction for expenditure that a person incurs in acquiring a film right is allocated under this section if the film is not a feature film and—

(a) the deduction is allowed under section DS 1 (Acquiring film rights):

(b) the deduction is allowed under section DS 2 (Film production expenditure) and the film is one for which a large budget film grant is made.

Timing of deduction: retention of film right

(2) If the person has the film right at the end of an income year,—

(a) the deduction that is allocated to the income year in which the film right is acquired or the film is completed, whichever is later, is—

(i) 50% of the deduction; or

(ii) if the film income derived in the income year is more than 50% of the deduction, the lesser of the amount of film income and the total amount of the deduction; and

(b) the deduction that is allocated to the next income year is the remaining deduction.

Timing of deduction: disposal of film right

(3) If the person disposes of the film right during an income year, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

Meaning of remaining deduction

(4) In this section, **remaining deduction** means, for an income year, the amount of the deduction that has not been allocated to an earlier income year.

Defined in this Act: amount, completed, deduction, feature film, film, film income, film right, income year, large budget film grant, remaining deduction

Compare: 2004 No 35 s EJ 5

Section EJ 5(1): substituted, on 1 April 2008, by section 361 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EJ 5(1)(b): substituted, on 1 January 2010, by section 124(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 5(1)(b): amended (with effect on 1 January 2010), on 7 September 2010, by section 33(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 5 list of defined terms **government screen production payment**: repealed (with effect on 1 January 2010), on 7 September 2010, by section 33(2)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 5 list of defined terms **government screen production payment**: inserted, on 1 January 2010, by section 124(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 5 list of defined terms **large budget film grant**: inserted (with effect on 1 January 2010), on 7 September 2010, by section 33(2)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EJ 6 Certification of New Zealand films

Certification of New Zealand films

(1) The New Zealand Film Commission may certify that a film is a New Zealand film, if the Commission is satisfied that the film has, or will on completion have, a significant New Zealand content, as determined under section 18 of the New Zealand Film Commission Act 1978.

Final and provisional certificates

(2) The certificate issued by the New Zealand Film Commission must be—

(a) a provisional certificate, if the film is not completed:

(b) a final certificate, if the film is completed.

Applications for certification of New Zealand films

(3) An application to the New Zealand Film Commission for a certificate that a film is a New Zealand film must be in writing and must provide the information that the Commission requires.

Notice of certificate to Commissioner

(4) The New Zealand Film Commission must send a copy of the provisional certificate or the final certificate to the Commissioner immediately after issuing it.

Revocation of certificate

(5) The New Zealand Film Commission may revoke a provisional certificate or a final certificate if the Commission is satisfied that the certificate should not remain in force, whether because an incorrect statement was made in the provision of information for the purpose of obtaining a certificate or for any other reason.

Effect of revocation

(6) A revoked certificate is void from the time the certificate was issued.

Notice of revocation to Commissioner

(7) The New Zealand Film Commission must give notice to the Commissioner immediately after revoking a provisional certificate or a final certificate.

Defined in this Act: Commissioner, completed, film, New Zealand, notice

Compare: 2004 No 35 s EJ 6

EJ 7 Film production expenditure for New Zealand films having no large budget film grant

New Zealand films

(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—

(a) the film is not one for which a large budget film grant is made; and

(b) the film has a final certificate under section EJ 6.

Timing of deduction: up to completion of film

(2) A deduction for film production expenditure incurred in or before the income year in which the film is completed is allocated to the income year in which the film is completed.

Timing of deduction: after completion of film

(3) A deduction for film production expenditure incurred after the film is completed is allocated to the income year in which it is incurred.

Defined in this Act: completed, deduction, film, film production expenditure, income year, large budget film grant, New Zealand

Compare: 2004 No 35 s EJ 7

Section EJ 7 heading: amended (with effect on 1 January 2010), on 7 September 2010, by section 34(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 7 heading: amended, on 1 January 2010, by section 125(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 7 heading: amended, on 1 April 2008, by section 362(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EJ 7(1): substituted, on 1 April 2008, by section 362(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EJ 7(1)(a): substituted, on 1 January 2010, by section 125(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 7(1)(a): amended (with effect on 1 January 2010), on 7 September 2010, by section 34(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 7 list of defined terms **government screen production payment**: repealed (with effect on 1 January 2010), on 7 September 2010, by section 34(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 7 list of defined terms **government screen production payment**: inserted, on 1 January 2010, by section 125(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 7 list of defined terms **large budget film grant**: inserted (with effect on 1 January 2010), on 7 September 2010, by section 34(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EJ 8 Film production expenditure for other films having no large budget film grant

Films other than New Zealand films

(1) A deduction under section DS 2 (Film production expenditure) for film production expenditure is allocated under this section if—

(a) the film is not one for which a large budget film grant is made; and

(b) the film does not have a final certificate under section EJ 6.

Timing of deduction: up to completion of film

(2) If the person has a film right at the end of the income year in which the film is completed, the deduction for film production expenditure incurred in or before the income year is allocated as follows:

(a) to the income year in which the film is completed,—

(i) 50% of the deduction; or

(ii) if the film income derived in the income year is more than 50% of the deduction, the lesser of the amount of film income and the total amount of the deduction; and

(b) to the next income year, the remaining deduction.

Timing of deduction: after completion of film

(3) If the person has a film right in an income year after the film is completed, a deduction for film production expenditure in-

curred after the film is completed is allocated to the income year in which it is incurred.

Timing of deduction: disposal of film right

(4) If the person disposes of a film right in the income year in which the film is completed, and does not have a film right in the film at the end of the income year, the remaining deduction is allocated to the income year.

Meaning of remaining deduction

(5) In this section, **remaining deduction** means, for an income year, the amount of the deduction for film production expenditure that has not been allocated to an earlier income year.

Defined in this Act: amount, completed, deduction, film, film income, film production expenditure, film right, income year, large budget film grant, New Zealand, remaining deduction

Compare: 2004 No 35 s EJ 8

Section EJ 8 heading: substituted, on 1 April 2008, by section 363(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EJ 8 heading: amended (with effect on 1 January 2010), on 7 September 2010, by section 35(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 8 heading: amended, on 1 January 2010, by section 126(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 8(1): substituted, on 1 April 2008, by section 363(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EJ 8(1)(a): substituted, on 1 January 2010, by section 126(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 8(1)(a): amended (with effect on 1 January 2010), on 7 September 2010, by section 35(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 8 list of defined terms **government screen production payment**: repealed (with effect on 1 January 2010), on 7 September 2010, by section 35(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EJ 8 list of defined terms **government screen production payment**: inserted, on 1 January 2010, by section 126(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EJ 8 list of defined terms **large budget film grant**: inserted (with effect on 1 January 2010), on 7 September 2010, by section 35(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EJ 9 Avoidance arrangements

The allocation of a deduction under any of sections EJ 4, EJ 5, EJ 7, and EJ 8 may be subject to adjustment under—

(a) section GB 18 (Arrangements to acquire film rights or incur production expenditure):

(b) section GB 19 (When film production expenditure payments delayed or contingent).

Defined in this Act: deduction, film production expenditure, film right, pay

Compare: 2004 No 35 ss GC 11B, GD 12A, GD 12B

Leases

EJ 10 Personal property lease payments

What this section applies to

(1) This section applies to a lease that—

(a) is of a personal property lease asset; and

(b) is not a finance lease; and

(c) is not a specified lease.

Payments

(2) Personal property lease payments are treated as being paid for the term of the lease.

Formula

(3) The expenditure that the lessee incurs is allocated to income years using the formula—

$$\frac{\text{part of term}}{\text{term of the lease}} \times \text{total of payments.}$$

Definition of items in formula

(4) In the formula,—

(a) **part of term** is the part of the term of the lease that falls within the income year:

(b) **term of the lease** has the meaning given in section YA 1 (Definitions):

(c) **total of payments** is the total amount of the personal property lease payments.

Defined in this Act: finance lease, income year, lease, lessee, pay, personal property lease asset, personal property lease payment, specified lease, term of the lease

Compare: 2004 No 35 s EJ 9

EJ 11 Amount paid by lessee for non-compliance with covenant for repair

When this section applies

(1) This section applies when a lessee of land is allowed a deduction under section DB 21 (Amounts paid for non-compliance with covenant for repair).

Timing of deduction

(2) The lessee may choose to allocate some or all of the amount of the deduction to any 1 or more of the 3 income years before the income year in which the amount is paid or recovered. The lessee may make an allocation only to an income year in which they used the land for deriving income.

Effect of allocation

(3) If the lessee makes an allocation,—

(a) they are denied a deduction for the allocated amount in the income year in which the amount of the deduction is paid or recovered; and

(b) they are allowed a deduction for the allocated amount in the income year to which it is allocated.

Notice

(4) The following provisions apply to an allocation for the purposes of subsection (2):

(a) the lessee makes the election by giving a notice to the Commissioner that specifies how the amount of the deduction has been allocated; and

(b) the lessee must give the notice within the time required to file a return of income for the tax year in which the amount was paid or recovered or within a longer time if the Commissioner agrees; and

(c) the lessee must not revoke the allocation.

Defined in this Act: amount, Commissioner, deduction, income, income year, lessee, notice, return of income, tax year

Compare: 2004 No 35 s EJ 10

Petroleum mining

EJ 12 Petroleum development expenditure: default allocation rule

When this section applies

(1) This section applies to a petroleum miner's petroleum development expenditure that relates to petroleum mining developments in a permit area and that is incurred on or after 1 April 2008, when section EJ 12B does not apply to the expenditure.

Default allocation rule

(2) For the purposes of section DT 5(2)(a) (Petroleum development expenditure), a deduction for the petroleum development expenditure is allocated in equal amounts over a period of 7 income years. The period of 7 years starts with the income year in which the expenditure is incurred.

Relationship with other petroleum mining provisions

(3) Sections EJ 13 to EJ 16 override subsection (2). Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section.

Defined in this Act: amount, deduction, income year, permit area, petroleum development expenditure, petroleum miner, petroleum mining development

Section EJ 12: substituted (with effect on 1 April 2008), on 6 October 2009, by section 127(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 12B Petroleum development expenditure: reserve depletion method

When this section applies

(1) This section applies to a petroleum miner's petroleum development expenditure that relates to petroleum mining developments in a permit area, when the expenditure is incurred—

(a) on or after 1 April 2008; and

(b) an election to apply this section, described in subsection (2), is made for the permit area.

Choice: first year of commercial production and later years

(2) An election to apply this section may be made by a petroleum miner for a permit area, in a return of income for an income year, only if that income year is the first one in which petroleum is produced in commercial quantities in the permit area.

The election is irrevocable, and applies this section to petroleum development expenditure that relates to petroleum mining developments in the relevant permit area for the income year and later income years.

Reserve depletion method expense allocation rule

(3) For the purposes of section DT 5(2)(b) (Petroleum development expenditure), the deduction allocated to an income year for the petroleum development expenditure that relates to a petroleum mining development in the relevant permit area is the amount calculated using the following formula, if the amount is positive:

$$(\text{reserve expenditure} - \text{previous expenditure}) \times \frac{\text{reserve depletion for the year}}{\text{probable reserves.}}$$

Definition of items in formula

(4) The items in the formula are defined in subsections (5) to (8).

Reserve expenditure

(5) **Reserve expenditure** is the total petroleum development expenditure that relates to the petroleum mining development for the income year or an earlier income year to which this section applied.

Previous expenditure

(6) **Previous expenditure** is the total petroleum development expenditure that relates to the petroleum mining development and that has been allocated to an earlier income year to which this section applied.

Reserve depletion for the year

(7) **Reserve depletion for the year** is the amount, expressed in barrels of oil equivalent, of petroleum produced from the petroleum mining development for the income year.

Probable reserves

(8) **Probable reserves** is the amount, expressed in barrels of oil equivalent, of the reserves of petroleum for the petroleum mining development that are not yet proven but are estimated, at the beginning of the income year, to have a better than 50% chance of being technically and commercially producible.

Relationship with other petroleum mining provisions

(9) Sections EJ 13 to EJ 16 override subsection (3). Sections DT 7, DT 8, DT 10, DT 11, DT 16, and IS 5 (which relate to petroleum miners) override this section.

Defined in this Act: amount, deduction, income year, permit area, petroleum development expenditure, petroleum miner, petroleum mining development

Section EJ 12B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 127(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 13 Relinquishing petroleum mining permit

When this section applies

(1) This section applies when a petroleum miner relinquishes a petroleum permit.

Amount of deduction

(2) The amount of the deduction that the miner is allowed on relinquishing the permit is the difference between—

(a) the amount of the deduction allowed under section DT 5 (Petroleum development expenditure) and attributable to—

(i) the permit; or

(ii) an asset of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset) held solely in connection with the permit; and

(b) any part of the deduction allocated to earlier income years under section EJ 12(2) or EJ 12B(3).

Timing of deduction

(3) The deduction is allocated to the income year in which the miner relinquishes the permit.

Defined in this Act: amount, deduction, income year, petroleum miner, petroleum permit

Compare: 2004 No 35 s EJ 12

Section EJ 13(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 128(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 13B Dry well drilled

When this section applies

(1) This section applies when—

(a) the petroleum miner has petroleum development expenditure for a well, the drilling of which stops in an income year, and, from the time of stopping, the well—

(i) will never produce petroleum in commercial quantities; and

(ii) is abandoned; and

(b) part of a deduction under section DT 5(Petroleum development expenditure) for the petroleum development expenditure described in paragraph (a) has not been allocated under section EJ 12 or EJ 12B.

Allocation

(2) The part of the deduction described in subsection (1) is allocated to the income year.

Defined in this Act: amount, deduction, income year, petroleum development expenditure

Section EJ 13B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 129(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 13C Well not producing

When this section applies

(1) This section applies when—

(a) the petroleum miner has petroleum development expenditure for a well that, in an income year—

(i) stops producing petroleum in commercial quantities; and

(ii) is abandoned; and

(b) the petroleum miner has elected to apply section EJ 12B for the petroleum development expenditure described in paragraph (a) before the start of the income year; and

(c) part of a deduction under section DT 5 (Petroleum development expenditure) for the petroleum development expenditure described in paragraphs (a) and (b) has not been allocated under section EJ 12B.

Allocation

(2) The part of the deduction described in subsection (1) is allocated to the income year.

Defined in this Act: amount, deduction, income year, petroleum development expenditure

Section EJ 13C: inserted (with effect on 1 April 2008), on 6 October 2009, by section 129(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 14 Spreading deduction backwards

When this section applies

(1) This section applies when a petroleum miner has a deduction whose amount has been reduced under section IS 5 (Petroleum miners' tax losses).

Spreading backwards

(2) The petroleum miner may allocate the amount of the deduction to the tax year before that in which the net loss arises, or allocate parts of it to earlier tax years.

Amending returns

(3) The petroleum miner may amend their returns of income for the relevant tax years despite the operation of the time bar.

Defined in this Act: amount, deduction, petroleum miner, return of income, tax year, time bar

Compare: 2004 No 35 s IH 3(1)

EJ 15 Disposal of petroleum mining asset

When this section applies

(1) This section applies when a petroleum miner disposes of a petroleum mining asset.

Amount, and timing, of deduction

(2) Part of a deduction under section DT 5 (Petroleum development expenditure) is allocated to the income year in which the miner disposes of the asset. The part is that to which both the following apply:

(a) it is attributable to the asset; and

(b) it has not been allocated under section EJ 12 or EJ 12B to the income year in which the miner disposes of the asset or to an earlier income year.

Allocation to more than 1 year

(3) If the petroleum miner's income from disposing of the asset is derived in 2 or more income years,—

(a) the amount of the deduction is allocated among the income years in which the miner derives the income; and

(b) the amount allocated to each income year bears the same relation to the total amount of the deduction as the income that the miner derives in that income year bears to the total amount of income that the miner derives from the disposal.

Relationship with section EJ 16

(4) This section is overridden by section EJ 16.

Defined in this Act: amount, deduction, dispose, income, income year, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s EJ 13

Section EJ 15(2)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 130(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 16 Disposal of petroleum mining asset to associate

When this section applies

(1) This section applies when, in an income year, a petroleum miner disposes of a petroleum mining asset to—

(a) a person associated with the miner:

(b) a person who holds the asset for the miner:

(c) a person who holds the asset for a person associated with the miner.

Amount of deduction

(2) The maximum amount that may be allocated under section EJ 15 to the income year is the amount that would be the net income of the petroleum miner in the income year if their only income were from the disposal.

Defined in this Act: amount, associated person, dispose, income, income year, net income, petroleum miner, petroleum mining asset

Compare: 2004 No 35 s EJ 14

EJ 17 Partnership interests and disposal of part of asset

In sections EJ 12 to EJ 16, unless the context requires otherwise,—

(a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their interest in the income of the partnership:

(b) references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: dispose, income, petroleum permit

Compare: 2004 No 35 s EJ 15

EJ 18 Petroleum mining operations outside New Zealand

Sections EJ 12 to EJ 17, EJ 19, and EJ 20 apply with any necessary modifications to a petroleum miner undertaking petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by sections EJ 12 to EJ 17, EJ 19, and EJ 20.

Defined in this Act: controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 2004 No 35 s EJ 16

Definitions

EJ 19 Meaning of offshore development

[Repealed]

Section EJ 19: repealed (with effect on 1 April 2008), on 6 October 2009, by section 131(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EJ 20 Meaning of petroleum mining development

Meaning

(1) In sections EJ 12 and EJ 12B, **petroleum mining development** means a place where 1 or more of the activities described in subsection (2) is carried out.

Activities: inclusions

(2) The activities are those carried out in connection with—

(a) developing a permit area for producing petroleum:

(b) producing petroleum:

(c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user:

(d) removal or restoration operations.

Activities: exclusions

(3) The activities do not include further treatment to which all the following apply:

(a) it occurs after the well stream has been separated and stabilised into crude oil, condensate, or natural gas; and

(b) it is done—

(i) by liquefaction or compression; or

(ii) for the extraction of constituent products; or

(iii) for the production of derivative products; and

(c) it is not treatment at the production facilities.

Defined in this Act: permit area, petroleum, removal or restoration operations

Section EJ 20: substituted (with effect on 1 April 2008), on 6 October 2009, by section 131(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Superannuation contributions

EJ 21 Contributions to employees' superannuation schemes

When this section applies

(1) This section applies when an employer is allowed a deduction for a superannuation contribution to an employee's superannuation scheme under section DC 7 (Contributions to employees' superannuation schemes).

Timing of deduction

(2) The employer may choose to allocate the deduction to the income year for which the contribution was required by the superannuation scheme to be made, or for which the amount of the contribution was calculated taking into account the earnings paid to employees who were members of the scheme during the income year, if the employer makes the contribution within 63 days after the end of the income year.

Election

(3) The employer must make the election before filing a return of income for the income year or within a longer time if the Commissioner agrees.

Defined in this Act: amount, Commissioner, deduction, employee, employer, income year, return of income, superannuation contribution, superannuation scheme

Compare: 2004 No 35 s EJ 19

Research, development, and resulting market development

EJ 22 Deductions for market development: product of research, development

When this section applies

(1) This section applies when a person is allowed a deduction for expenditure under section DB 34 (Research or development) that is not interest and is incurred—

(a) on market development for a product that has resulted from expenditure incurred by the person on research or development; and

(b) before the person begins commercial production or commercial use of the product.

Choice for allocation of deduction

(2) The person may choose to allocate under section DB 34(7) all or part of the deduction to an income year—

(a) after the income year in which the person incurs the expenditure; and

(b) in the way required by section EJ 23.

Defined in this Act: deduction, development, income year, research

Compare: 2004 No 35 s EJ 20

EJ 23 Allocation of deductions for research, development, and resulting market development

When this section applies

(1) This section applies when a person has—

(a) a deduction for expenditure incurred on research or development that the person chooses to allocate under section DB 34(7) (Research or development):

(b) a deduction for an amount of depreciation loss for an item used for research or development, that the person chooses to allocate under section EE 1(5) (What this subpart does):

(c) a deduction for expenditure incurred on market development for a product that has resulted from expenditure incurred on research or development that the person chooses to allocate under section EJ 22(2).

Timing of deduction

(2) The person must allocate the deduction to an income year—

(a) in which the person derives an amount of income that is assessable income that the person would not have derived but for—

(i) expenditure that gives rise to a deduction that may be allocated under this section:

(ii) the use or disposal of an item for which the person has an amount of depreciation loss that may be allocated under this section:

(b) to which under Part I (Treatment of tax losses) a loss balance is carried forward for the income year in which the expenditure or depreciation loss was incurred.

Minimum amount of deduction allocated to income year

(3) The person must not allocate to an income year (the **current year**) an amount of deductions referred to in subsection (1) that is less than the lesser of—

(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year:

(b) the amount of the deductions that have not been allocated to an income year before the current year.

Maximum amount of deduction allocated to income year

(4) The person must not allocate to an income year (the **current year**) an amount of deductions referred to in subsection (1) that is more than the greater of—

(a) the amount of assessable income referred to in subsection (2)(a) that the person derives in the current year:

(b) the amount of the deductions that—

(i) arise in other income years from which a loss balance may be carried forward under Part I to the current year; and

(ii) have not been allocated to income years before the current year.

Defined in this Act: amount, assessable income, deduction, depreciation losses, development, income year, loss balance, research

Compare: 2004 No 35 s EJ 21

Subpart EK—Environmental restoration accounts

EK 1 Environmental Restoration Funds Account

Account

(1) There is a Crown Bank Account called the Environmental Restoration Funds Account that is operated under the Public Finance Act 1989.

Payments from person paid into account

(2) Every payment a person makes to the Commissioner under section EK 2—

(a) is public money; and

(b) must be paid into the Environmental Restoration Funds Account.

Defined in this Act: Commissioner, pay

Compare: 2004 No 35 s EK 1

EK 2 Persons who may make payment to environmental restoration account

A person may make a payment to the Commissioner for entry in the person's environmental restoration account for an income year if the person—

(a) carries on a business in New Zealand; and

(b) expects to incur, for a later income year, expenditure that—

(i) is not on revenue account property, other than land to which section CB 8 (Disposal: land used for landfill, if notice of election) applies; and

(ii) is of a kind listed in schedule 19, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and

(iii) is of a kind not listed in schedule 19, part C; and

(c) makes a provision for such expenditure in financial statements that are—

(i) prepared for external reporting purposes; and

(ii) audited by an accountant who is a chartered accountant or has equivalent professional qualifications; and

(iii) given by the accountant a standard audit opinion, without qualifications on matters relating to the effect of this subpart.

Defined in this Act: business, Commissioner, environmental restoration account, income year, pay, revenue account property

Compare: 2004 No 35 s EK 2

EK 3 Payments to environmental restoration account

Upper limit of payment

(1) A person must not make a payment for an income year of more than the person's maximum payment for the income year.

Lower limit of payment

(2) A person must not make a payment for an income year of less than $1,000.

Time for making payment

(3) A payment made after the day that is 6 months after the end of an income year is not made for the income year unless—

(a) the Commissioner has allowed a longer period for the payment; and

(b) the payment is made within the period allowed by the Commissioner.

Defined in this Act: Commissioner, income year, maximum payment, pay

Compare: 2004 No 35 s EK 3

EK 4 Environmental restoration account

Person's account

(1) The Commissioner must keep an environmental restoration account in the name of every person who makes a payment to the Commissioner under section EK 2.

Payments in account

(2) Every payment under section EK 2 that a person makes to the Commissioner must be entered in the person's environmental restoration account.

Amounts in account

(3) The only amounts that may be entered in a person's environmental restoration account are—

(a) payments made by the person to the Commissioner under section EK 2:

(b) transfers made to the account under subsection (6):

(c) interest paid under section EK 6.

Amounts not available to others

(4) An amount entered in a person's environmental restoration account may not, while in the account,—

(a) be assigned or charged in any way:

(b) pass by operation of law to, or into the custody or control of, someone else, except when the person is bankrupt or has been put into liquidation:

(c) be an asset for the payment of the person's debts or liabilities, except when the person is bankrupt or has been put into liquidation:

(d) be an asset for the payment of the debts or liabilities of a dead person's estate.

Amounts not available except for refunds or transfers

(5) An amount entered in a person's environmental restoration account may not be removed from the environmental restoration account except by a refund under section EK 9 or EK 12 or by a transfer under subsection (6).

Transfers of amounts

(6) An amount may be transferred from the environmental restoration account of a person—

(a) to an environmental restoration account of a person to whom the amount has been transferred under section EK 15 or EK 16(3)(b):

(b) to the department that is at the time responsible for administering the Environment Act 1986, if the amount has been transferred under section EK 16(3)(a):

(c) to an environmental restoration account of an amalgamated company to which the amount has been transferred under section EK 19.

Commissioner may close empty account

(7) The Commissioner may close an environmental restoration account of a person if the amount in the environmental restoration account is zero.

Defined in this Act: amalgamating company, amount, Commissioner, environmental restoration account, interest, liquidation, pay

Compare: 2004 No 35 s EK 4

EK 5 Details to be provided with payment to environmental restoration account

Notice and details required

(1) A person making a payment to an environmental restoration account must provide the Commissioner with a notice, in a form prescribed by the Commissioner, giving—

(a) the name of the person; and

(b) the income year for which the payment is made; and

(c) a calculation of the maximum payment for the person and the income year; and

(d) any additional information that the Commissioner requires.

Time for providing information

(2) The person must provide the information required by subsection (1) within 2 working days from the day of the payment.

Defined in this Act: Commissioner, environmental restoration account, income year, maximum payment, pay, working day

Compare: 2004 No 35 s EK 5

EK 6 Interest on payments to environmental restoration account

Interest payable

(1) Interest is payable by the Commissioner on—

(a) a payment under section EK 2 to an environmental restoration account:

(b) an amount that is treated under section EK 15, EK 16, or EK 19 as being a payment to an environmental restoration account.

Period

(2) Interest is computed with daily rests from the day after the date of the payment until the day before the date on which the payment is included in a refund under section EK 12 or in a transfer under section EK 15, EK 16, or EK 19.

Date to which interest accrues

(3) Interest that has accrued on a payment is payable to the person who has the environmental restoration account on the earlier of—

(a) 31 March in each year:

(b) the day on which the payment is included in a refund under section EK 12 or in a transfer under section EK 15, EK 16, or EK 19.

Rate

(4) The interest rate is 3% per year.

Defined in this Act: Commissioner, environmental restoration account, interest, pay, year

Compare: 2004 No 35 s EK 6

EK 7 Deduction for payment

When this section applies

(1) This section applies when a person is allowed a deduction under section DQ 4 (Environmental restoration accounts scheme) for a payment to their environmental restoration account under EK 2.

Amount of deduction

(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{payment}}{\text{tax rate}}.$$

Definition of items in formula

(3) The items in the formula are defined in subsections (4) and (5).

Payment

(4) **Payment** is the lesser of—

(a) the person's payment to the Commissioner under section EK 2 for the income year; and

(b) the person's maximum payment for the income year.

Tax rate

(5) **Tax rate** is the highest rate of income tax on taxable income that—

(a) is set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); and

(b) would apply to the person for the tax year if the person had sufficient taxable income.

Timing of deduction

(6) The person is allowed the deduction for the income year for which the payment is made.

Defined in this Act: Commissioner, deduction, environmental restoration account, income tax, income year, maximum payment, pay, tax year, taxable income

Compare: 2004 No 35 s EK 7

Section EK 7(5)(a): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EK 8 Deduction for transfer

When this section applies

(1) This section applies when a person is allowed a deduction under section DQ 4 (Environmental restoration accounts scheme) for a transfer to their environmental restoration account under section EK 15, EK 16, or EK 19.

Amount of deduction

(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{transfer}}{\text{tax rate}}.$$

Definition of items in formula

(3) The items in the formula are defined in subsections (4) and (5).

Transfer

(4) **Transfer** is the amount of the transfer to the person's environmental restoration account that is treated as a payment by the person under section EK 15(3), EK 16, or EK 19.

Tax rate

(5) **Tax rate** is the highest rate of income tax on taxable income that—

(a) is set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); and

(b) would apply to the person for the tax year if the person had sufficient taxable income.

Timing of deduction

(6) The person is allowed the deduction for the income year for which the transfer is made.

Defined in this Act: deduction, environmental restoration account, income tax, income year, maximum payment, pay, tax year, taxable income

Compare: 2004 No 35 s EK 8

Section EK 8(5)(a): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EK 9 Refund of payment if excess, lacking details

When this section applies

(1) This section applies when a person's payment under section EK 2 for an income year is—

(a) more than the person's maximum payment for the income year:

(b) made without providing the details required by section EK 5.

Refund

(2) As soon as practicable after the date on which the payment is received, the Commissioner must refund to the person—

(a) the excess, if the payment is more than the person's maximum payment for the income year:

(b) the payment, if the payment is described by subsection (1)(b).

No interest payable by Commissioner

(3) No interest is payable by the Commissioner under section EK 6 on the amount of the payment.

Defined in this Act: Commissioner, income year, interest, maximum payment, pay

Compare: 2004 No 35 s EK 9

EK 10 Certain refunds not income

A refund under section EK 9 is excluded income under section CX 52 (Refund from environmental restoration account).

Defined in this Act: excluded income

Compare: 2004 No 35 s EK 10

EK 11 Application for refund

Who may apply

(1) A person may apply to the Commissioner for a refund under section EK 12 of an amount in the person's environmental restoration account if the refund—

(a) corresponds to expenditure incurred by the person of a kind that is listed in schedule 19, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 19, part C:

(b) represents an excess in the person's environmental restoration account over the maximum account balance for the person's environmental restoration account for the income year.

Application

(2) An application for a refund must—

(a) be in writing; and

(b) state the grounds on which the application is made; and

(c) provide evidence satisfactory to the Commissioner verifying the existence of the grounds; and

(d) state the amount of the refund that the applicant wants.

Defined in this Act: Commissioner, environmental restoration account, income year

Compare: 2004 No 35 s EK 11

EK 12 Refund if request or excess balance

When this section applies

(1) This section applies when—

(a) a person wants a refund of some or all of the amount in the person's environmental restoration account and none of sections EK 9, EK 15, EK 16, and EK 19 applies:

(b) the amount in the person's environmental restoration account is more than the maximum account balance for an income year.

Refund if request made

(2) The Commissioner must make a refund under this section to a person if—

(a) the person applies for a refund and has incurred expenditure—

(i) of a kind that is listed in schedule 19, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 19, part C; and

(ii) of an amount equal to or greater than the amount given by subsection (3) for the amount of the refund; and

(iii) after the first date on which the person made to the Commissioner a payment under section EK 2 for entry in the person's environmental restoration account or a transfer under section EK 15, EK 16, or EK 19 was made to the person's environmental restoration account:

(b) the maximum account balance for the latest complete income year for the person's environmental restoration account is less than the amount in the environmental restoration account at the end of that income year.

Minimum amount of expenditure incurred

(3) The amount of expenditure incurred that corresponds to the amount of a refund is calculated using the formula—

$$\frac{\text{amount}}{\text{tax rate}}.$$

Definition of items in formula

(4) In the formula,—

(a) **amount** is the amount of the refund:

(b) **tax rate** is the highest rate of income tax on taxable income that—

(i) is set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); and

(ii) would apply to the person for the tax year if the person had sufficient taxable income.

Amount of refund if expenditure incurred

(5) If a person is entitled to a refund under subsection (2)(a), the amount that the Commissioner must refund to the person is the smallest of—

(a) the refund for which the person applies:

(b) the contents of the person's environmental restoration account at the time of the refund:

(c) the refund corresponding to the person's expenditure that meets the requirements of subsection (2)(a)(i) to (iii).

Amount of refund if maximum account balance decreases

(6) If a person is entitled to a refund under subsection (2)(b), the amount that the Commissioner must refund is the difference at the end of the latest complete income year between—

(a) the amount in the person's environmental restoration account after any transfer under section EK 15, EK 16, or EK 19 for the income year:

(b) the person's maximum account balance for the income year.

Relationship with section EK 17

(7) Section EK 17 overrides subsections (5) and (6).

Defined in this Act: amount, Commissioner, environmental restoration account, income tax, income year, maximum account balance, pay, tax year, taxable income

Compare: 2004 No 35 s EK 12

Section EK 12(4)(b)(i): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EK 13 Income when refund given on request

A refund under section EK 12 is income, of the amount given by section CB 28 (Environmental restoration accounts), derived by the person in the income year in which the person receives the refund.

Defined in this Act: Commissioner, income, income year

Compare: 2004 No 35 s EK 13

EK 14 Application for transfer

Who may apply

(1) A person may apply to the Commissioner for a transfer under section EK 15 from the amount in the person's environmental restoration account.

Application

(2) An application for a transfer must—

(a) be in writing; and

(b) state the grounds on which the application is made; and

(c) state the amount of the transfer that the applicant wants.

Defined in this Act: Commissioner, environmental restoration account

Compare: 2004 No 35 s EK 14

EK 15 Transfer on request

When this section applies

(1) This section applies when—

(a) a person applies under section EK 14 for a transfer of some or all of the amount in their environmental restoration account to a person who is nominated in the application; and

(b) the person has transferred to the nominated person the obligations to which the amount relates; and

(c) none of sections EK 9, EK 12, EK 16, and EK 19 applies.

Transfer if request made

(2) The Commissioner must make a transfer under this section to an environmental restoration account of the person nominated in the application.

Transfer treated as payment by nominated person

(3) A transfer under subsection (2) is treated as being a payment by the nominated person to the nominated person's environmental restoration account if the nominated person satisfies the Commissioner that—

(a) the obligations to which the transferred amount relates have been transferred to the nominated person; and

(b) in the absence of the transfer, the nominated person would be entitled to make a payment, of the amount of the transfer, to the nominated person's environmental restoration account.

Commissioner to reverse transfer if requirements of subsection (3) not met

(4) If the nominated person does not meet the requirements of subsection (3) in relation to an amount, the Commissioner must transfer the amount to the environmental restoration account of the person who made the application under subsection (1)(a).

Timing of reversal

(5) The transfer under subsection (4) is treated as taking place at the time of the original transfer under subsection (2).

Defined in this Act: Commissioner, environmental restoration account, pay

Compare: 2004 No 35 s EK 15

EK 16 Transfer on death, bankruptcy, or liquidation

When this section applies

(1) This section applies when a person—

(a) has an environmental restoration account; and

(b) does 1 of the following:

(i) dies:

(ii) becomes bankrupt:

(iii) is put into liquidation.

Transfer to other person

(2) Subsection (3) applies if the Commissioner is informed, by the administrator of the person's estate, the Official Assignee, or the person's liquidator, that the obligation to which the balance in the person's environmental restoration account relates has been transferred to another person.

Transfer by Commissioner

(3) The Commissioner must transfer the amount referred to in subsection (4) to an environmental restoration account of the person to whom the obligation has been transferred.

Amount of transfer

(4) The Commissioner must transfer under subsection (3) the amount that is in the person's environmental restoration account on the date on which—

(a) the person dies, if subsection (1)(b)(i) applies:

(b) the person becomes bankrupt, if subsection (1)(b)(ii) applies:

(c) the person is put into liquidation, if subsection (1)(b)(iii) applies.

Relationship with section EK 17

(5) Section EK 17 overrides subsection (4).

Transfer treated as payment

(6) A transfer to the environmental account of a person under subsection (3) is treated as a payment by the person to their environmental account.

Year of income

(7) The amount of a transfer under this section is income, under section CB 28 (Environmental restoration accounts), derived by the person on the day before the day on which the amount of the transfer is determined under subsection (4).

Defined in this Act: amount, Commissioner, environmental restoration account, income, liquidation, pay

Compare: 2004 No 35 s EK 16

EK 17 Minimum refund or transfer

The Commissioner must not give a refund or make a transfer under any of sections EK 9, EK 12, EK 15, EK 16, and EK 19 that is less than the lesser of—

(a) $1,000; and

(b) the balance in the person's environmental restoration account on the date on which the refund or transfer is made.

Defined in this Act: Commissioner, environmental restoration account

Compare: 2004 No 35 s EK 17

EK 18 Payments from which refunds come

Each refund to a person is treated as coming from the total amount in the person's environmental restoration account in the order in which the person made the payments into the account.

Defined in this Act: amount, environmental restoration account, pay

Compare: 2004 No 35 s EK 18

EK 19 Environmental restoration account of amalgamating company

If an amalgamating company with an environmental restoration account ends its existence on an amalgamation during an income year,—

(a) the contents of the environmental restoration account of the amalgamating company are transferred to an environmental restoration account of the amalgamated company on the date of the amalgamation:

(b) the amalgamated company is treated as having—

(i) made to the amalgamated company's environmental restoration account the payments that the amalgamating company made before the amalgamation to the amalgamating company's environmental restoration account; and

(ii) made from the amalgamated company's environmental restoration account the transfers that the amalgamating company made before the amalgamation from the amalgamating company's environmental restoration account; and

(iii) received from the amalgamated company's environmental restoration account the refunds that the amalgamating company received before the amalgamation from the amalgamating company's environmental restoration account.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, environmental restoration account, income year, pay

Compare: 2004 No 35 s EK 19

EK 20 Environmental restoration account of consolidated group company

Company with environmental restoration account

(1) A company that is part of a consolidated group may have an environmental restoration account.

Nominated company for group acting on behalf of company

(2) The nominated company for the consolidated group may act on behalf of the group company under this subpart to—

(a) make payments, applications, and transfers:

(b) receive refunds and transfers.

Use of consolidated financial statements for group

(3) In making payments and applications under this subpart, the nominated company may rely on the audited consolidated financial statements for the consolidated group.

Use of consolidated figures for liabilities anticipated and expenditure incurred

(4) If the nominated company relies on the audited consolidated financial statements for the consolidated group, the consolidated figures for the anticipated liabilities and incurred expenditure of the consolidated group are attributed to the group companies on the basis of the individual obligations of the companies to incur expenditure of a kind listed in schedule 19, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant) and not in schedule 19, part C.

Defined in this Act: consolidated group, environmental restoration account, nominated company, pay

Compare: 2004 No 35 s EK 20

EK 21 Notices in electronic format

The Commissioner may require a person to provide a notice under this subpart in an electronic format that the Commissioner prescribes under section 36BC of the Tax Administration Act 1994.

Defined in this Act: Commissioner, electronic format

Compare: 2004 No 35 s EK 21

EK 22 Meaning of maximum payment

Maximum payment

(1) In this subpart, **maximum payment** means the maximum payment that under subsection (2) a person may make to the person's environmental restoration account for an income year.

Amount of maximum payment

(2) The maximum payment that a person may make for an income year is the lesser of—

(a) the amount by which the maximum account balance for the income year for the environmental restoration account is more than the amount in the environmental restoration account at the end of the income year:

(b) the amount, if any, calculated under subsection (3) for the person and the income year.

Maximum payment for first 5 years of environmental restoration funds scheme

(3) If a person has a maximum account balance for the 2005–06 income year that is more than zero, the amount referred to in subsection (2)(b) for the person and for that income year, and for each of the later income years before the 2010–11 income year, is the amount calculated using the formula—

level increase + (year × 0.2 × initial level) - contents.

Definition of items in formula

(4) In the formula,—

(a) **level increase** is the greater of zero and the amount by which the maximum account balance for the income year is more than the maximum account balance for the 2005–06 income year:

(b) **year** is 1 for the 2005–06 income year and increases by 1 for each successive income year to a maximum of 5 for the 2009–10 income year:

(c) **initial level** is the maximum account balance for the 2005–06 income year:

(d) **contents** is the amount in the environmental restoration account at the end of the income year.

Defined in this Act: amount, business, environmental restoration account, income year, maximum payment, pay

Compare: 2004 No 35 s EK 22

EK 23 Other definitions

Meaning of maximum account balance

(1) In this subpart, **maximum account balance** for a person and an income year means—

(a) if the person does not meet the requirements of section EK 2 for the income year, zero:

(b) if the person meets the requirements of section EK 2 for the income year, the amount calculated using the formula—

provision × tax rate.

Definition of items in formula

(2) In the formula,—

(a) **provision** is the provision in the person's financial statements for future expenditure that—

(i) is of a kind listed in schedule 19, part B (Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant); and

(ii) is not of a kind listed in schedule 19, part C:

(b) **tax rate** is the highest rate of income tax on taxable income that—

(i) is set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); and

(ii) would apply to the person for the tax year if the person had sufficient taxable income.

Meaning of environmental restoration account

(3) In this subpart, **environmental restoration account**, for a person, means the account that the Commissioner keeps in the person's name under section EK 4.

Defined in this Act: business, Commissioner, environmental restoration account, income tax, income year, taxable income

Compare: 2004 No 35 s EK 23

Section EK 23(2)(b)(i): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart EW—Financial arrangements rules

Introductory provisions

EW 1 What this subpart does

Financial arrangements rules

(1) This subpart contains most of the financial arrangements rules.

Meaning of financial arrangements rules

(2) **Financial arrangements rules** means—

(a) the sections in this subpart; and

(b) sections CC 3 (Financial arrangements), DB 11 to DB 15 (which relate to financial arrangements adjustments), EZ 51 (Transitional adjustment when changing to financial arrangements rules), FB 9 (Financial arrangements rules), GB 21 (Dealing that defeats intention of financial arrangements rules), RA 11 and RA 12 (which relate to adjustments to correct errors); and

(c) sections 90AA to 90AD of the Tax Administration Act 1994.

Purposes of financial arrangements rules

(3) The purposes of the financial arrangements rules are—

(a) to require the parties to a financial arrangement to accrue over the term of the arrangement a fair and reasonable amount of income derived or expenditure incurred under the arrangement, and so to prevent the deferral of income or the advancement of expenditure; and

(b) to require the parties to a financial arrangement to disregard any distinction between capital and revenue amounts; and

(c) to require a party to a financial arrangement to calculate a base price adjustment when the rights and obligations of the party under the arrangement cease.

Defined in this Act: amount, financial arrangement, financial arrangements rules, income

Compare: 2004 No 35 s EW 1

EW 2 Relationship of financial arrangements rules with other provisions

Financial arrangements rules override other provisions

(1) The financial arrangements rules prevail over any other provision in relation to the timing and quantifying of income and expenditure under a financial arrangement to which the financial arrangements rules apply, unless the other provision expressly or by necessary implication requires otherwise.

Interest excluded from certain valuations

(2) Expenditure under a financial arrangement to which the financial arrangements rules apply is not included in—

(a) the cost of trading stock for low-turnover traders under subpart EB (Valuation of trading stock (including dealer's livestock)):

(b) the cost of livestock under subpart EC (Valuation of livestock):

(c) the cost of bloodstock under subpart EC:

(d) the cost of revenue account property:

(e) the cost of timber:

(f) the cost of acquiring a film or a film right:

(g) film production expenditure:

(h) petroleum development expenditure:

(i) petroleum exploration expenditure.

Defined in this Act: bloodstock, film, film production expenditure, film right, financial arrangement, financial arrangements rules, income, low-turnover trader, petroleum development expenditure, petroleum exploration expenditure, revenue account property trading stock

Compare: 2004 No 35 s EW 2

Meaning of financial arrangement and excepted financial arrangement

EW 3 What is a financial arrangement?

Meaning

(1) **Financial arrangement** means an arrangement described in any of subsections (2) to (4).

Money received for money provided

(2) A financial arrangement is an arrangement under which a person receives money in consideration for that person, or another person, providing money to any person—

(a) at a future time; or

(b) on the occurrence or non-occurrence of a future event, whether or not the event occurs because notice is given or not given.

Examples of money received for money provided

(3) Without limiting subsection (2), each of the following is a financial arrangement:

(a) a debt, including a debt that arises by law:

(b) a debt instrument:

(c) the deferral of the payment of some or all of the consideration for an absolute assignment of some or all of a person's rights under another financial arrangement or under an excepted financial arrangement:

(d) the deferral of the payment of some or all of the consideration for a legal defeasance releasing a person from some or all of their obligations under another financial arrangement or under an excepted financial arrangement.

Excepted financial arrangement ceasing to be excepted

(4) For sections EW 7 and EW 8,—

(a) an excepted financial arrangement that ceases to be an excepted financial arrangement through the operation of section EW 7 is a financial arrangement:

(b) an excepted financial arrangement that ceases to be an excepted financial arrangement for a party through the operation of section EW 8 is a financial arrangement for the party.

Defined in this Act: consideration, excepted financial arrangement, financial arrangement, legal defeasance, money, pay

Compare: 2004 No 35 s EW 3

EW 4 What is not a financial arrangement?

Absolute assignment

(1) An absolute assignment of some or all of a person's rights under another financial arrangement or under an excepted fi-

nancial arrangement is not a financial arrangement, except to the extent described in section EW 3(3)(c).

Legal defeasance

(2) A legal defeasance releasing a person from some or all of their obligations under another financial arrangement or under an excepted financial arrangement is not a financial arrangement, except to the extent described in section EW 3(3)(d).

Excepted financial arrangement

(3) An excepted financial arrangement is not a financial arrangement. The relationship between financial arrangements and excepted financial arrangements is dealt with in section EW 6.

Defined in this Act: excepted financial arrangement, financial arrangement, legal defeasance

Compare: 2004 No 35 s EW 4

EW 5 What is an excepted financial arrangement?

Meaning

(1) **Excepted financial arrangement** means an arrangement described in any of subsections (2) to (25). However,—

(a) an arrangement described in any of subsections (18) to (20) may cease to be an excepted financial arrangement through the operation of section EW 7:

(b) an arrangement described in any of subsections (21) to (25) may cease to be an excepted financial arrangement for a party who makes an election under section EW 8.

Annuity

(2) Each of the following is an excepted financial arrangement to the extent to which it is not life financial reinsurance:

(a) an annuity for a term contingent on human life:

(b) an annuity for a term not contingent on human life to which section EY 8(2)(c) (Meaning of life insurance) applies.

Bet

(3) A bet on any of the following is an excepted financial arrangement:

(a) a race, as defined in section 5 of the Racing Act 2003:

(b) a sporting event under a sports betting system administered under Part 6 of the Racing Act 2003:

(c) gambling, including a New Zealand lottery, as those terms are defined in section 4(1) of the Gambling Act 2003.

Emissions unit

(3B) An emissions unit is an excepted financial arrangement.

Non-Kyoto greenhouse gas unit

(3C) A non-Kyoto greenhouse gas unit is an excepted financial arrangement.

Research and development agreement

(3D) An agreement between a person and another person (the **provider**) that the provider will provide property or services to the person in consideration for a payment to the provider by a public authority under a technology development grant, or technology transfer voucher, for the benefit of the person is an excepted financial arrangement for the person.

Employment contract

(4) An employment contract is an excepted financial arrangement.

Farm-out arrangement

(5) A farm-out arrangement is an excepted financial arrangement.

Group investment fund

(6) An interest in a group investment fund is an excepted financial arrangement.

Hire purchase: livestock or bloodstock

(7) A hire purchase agreement for livestock or bloodstock is an excepted financial arrangement.

Insurance contract

(8) An insurance contract to the extent to which it is not life financial reinsurance is an excepted financial arrangement.

Lease not finance lease

(9) A lease that is not a finance lease is an excepted financial arrangement.

Loan in New Zealand currency

(10) A loan to which all the following apply is an excepted financial arrangement for the lender:

(a) the loan is in New Zealand currency; and

(b) the loan is interest-free; and

(c) the loan is repayable on demand.

Partnership or joint venture

(11) An interest in a partnership or a joint venture is an excepted financial arrangement.

Look-through companies

(11B) A look-through interest for a look-through company is an excepted financial arrangement.

Share-lending arrangement

(12) A share-lending arrangement is an excepted financial arrangement.

Share or option

(13) A share, or an option to acquire or to dispose of shares, is an excepted financial arrangement, if the share is acquired, or the person becomes a party to the option, on or after 20 May 1999. This subsection does not apply to a withdrawable share or to an option to acquire or to dispose of withdrawable shares.

Specified preference share

(14) A specified preference share to which section FZ 1 (Deduction for dividends paid on certain preference shares) of the Income Tax Act 2004 applies is an excepted financial arrangement.

Superannuation

(15) A membership of a superannuation scheme is an excepted financial arrangement.

Warranty

(16) A warranty for goods or services is an excepted financial arrangement.

Certain arrangements to which transitional resident is party

(17) An arrangement to which a transitional resident is a party is an excepted financial arrangement for the transitional resident if—

(a) no other party to the arrangement is a New Zealand resident; and

(b) the arrangement is not for a purpose of a business carried on in New Zealand by a party to the arrangement.

Loan in foreign currency: private or domestic purpose

(18) A loan to which all the following apply is an excepted financial arrangement for the borrower:

(a) the loan is in foreign currency; and
(b) the borrower is a cash basis person; and
(c) the borrower uses the loan for a private or a domestic purpose.

Option: private or domestic purpose

(19) An option to acquire or dispose of property, other than an interest in a financial arrangement, is an excepted financial arrangement for a person who becomes a party to the option for a private or a domestic purpose.

Private or domestic agreement for the sale and purchase of property or services

(20) An agreement for the sale and purchase of property or services entered into by a person, or a specified option granted to or by a person, is an excepted financial arrangement for the person if,—

(a) first,—
  (i) the agreement is entered into by the person for a private or a domestic purpose; or
  (ii) the option is granted to or by the person for a private or a domestic purpose; and
(b) second, the subject matter of the agreement or option is—
  (i) real property whose purchase price is less than $1,000,000; or
  (ii) any other property whose purchase price is less than $400,000; or
  (iii) services whose purchase price is less than $400,000; and
(c) third,—
  (i) the agreement requires settlement of the property, or performance of the services, to take place on or before the 365th day after the date on which the agreement is entered into; or
  (ii) the option requires settlement of the property, or performance of the services, if an agreement is entered into as a result of the exercise of the option, to take place on or before the 365th day after the date on which the option is granted.

Agreement for the sale and purchase of property or services

(21) An agreement for the sale and purchase of property or services is an excepted financial arrangement, except for a party who makes an election under section EW 8, if—

(a) all a party's sales or purchases under the agreement are prepaid; and

(b) for all the party's agreements under which all sales and purchases are prepaid, the total value of prepayments, on every day in an income year, is $50,000 or less.

Short-term agreement for sale and purchase

(22) A short-term agreement for sale and purchase is an excepted financial arrangement, except for a party who makes an election under section EW 8.

Short-term option

(23) A short-term option is an excepted financial arrangement, except for a party who makes an election under section EW 8.

Travellers' cheques

(24) Travellers' cheques are excepted financial arrangements, except for a party who makes an election under section EW 8.

Variable principal debt instrument

(25) A variable principal debt instrument is an excepted financial arrangement, except for a party who makes an election under section EW 8, if the total value on every day in an income year of all variable principal debt instruments to which a person is a party is $50,000 or less.

Defined in this Act: agreement for the sale and purchase of property or services, arrangement, bloodstock, cash basis person, emissions unit, excepted financial arrangement, farm-out arrangement, finance lease, group investment fund, hire purchase agreement, income year, insurance contract, lease, life financial reinsurance, look-through company, look-through interest, New Zealand, New Zealand resident, non-Kyoto greenhouse gas unit, non-resident, pay, property, public authority, share, share-lending arrangement, short-term agreement for sale and purchase, short-term option, superannuation scheme, transitional resident, variable principal debt instrument, withdrawable share

Compare: 2004 No 35 s EW 5

Section EW 5(2): amended, on 1 July 2010, by section 132(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5(3B) heading: substituted (with effect on 1 January 2009), on 6 October 2009, by section 132(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5(3B): substituted (with effect on 1 January 2009), on 6 October 2009, by section 132(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5(3B) heading: inserted, on 26 September 2008, by section 74(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section EW 5(3B): inserted, on 26 September 2008, by section 74(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section EW 5(3C) heading: inserted (with effect on 1 January 2009), on 6 October 2009, by section 132(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5(3C): inserted (with effect on 1 January 2009), on 6 October 2009, by section 132(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5(3D) heading: inserted (with effect on 1 October 2010), on 21 December 2010, by section 56(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EW 5(3D): inserted (with effect on 1 October 2010), on 21 December 2010, by section 56(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EW 5(8): amended, on 1 July 2010, by section 132(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5(11B) heading: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 56(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EW 5(11B): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 56(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EW 5 list of defined terms **emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 132(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5 list of defined terms **ETS unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 132(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5 list of defined terms **ETS unit**: inserted, on 26 September 2008, by section 74(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section EW 5 list of defined terms **life financial reinsurance**: inserted, on 1 July 2010, by section 132(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 56(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EW 5 list of defined terms **look-through interest**: inserted, on 1 April 2011, by section 56(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EW 5 list of defined terms **non-Kyoto greenhouse gas unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 132(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 5 list of defined terms **public authority**: inserted (with effect on 1 October 2010), on 21 December 2010, by section 56(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

EW 6 Relationship between financial arrangements and excepted financial arrangements

Part of financial arrangement

(1) An excepted financial arrangement may be part of a financial arrangement.

Income or expenditure under specific excepted financial arrangements

(2) If an excepted financial arrangement described in any of section EW 5(2) to (16) is part of a financial arrangement, an amount solely attributable to the excepted financial arrangement is not an amount taken into account under the financial arrangements rules.

Income or expenditure under remaining excepted financial arrangements

(3) If an excepted financial arrangement described in any of section EW 5(17) to (25) is part of a financial arrangement, an amount solely attributable to the excepted financial arrangement is an amount taken into account under the financial arrangements rules.

Defined in this Act: amount, excepted financial arrangement, financial arrangement, financial arrangements rules, income

Compare: 2004 No 35 s EW 6

EW 7 Change from private or domestic purpose

When this section applies

(1) This section applies when a person who is a party to an excepted financial arrangement described in any of section EW 5(18) to (20) stops using it for a private or a domestic purpose.

Excepted financial arrangement becomes financial arrangement

(2) On and after the date on which the person stops using the excepted financial arrangement for a private or a domestic purpose,—

(a) it ceases to be an excepted financial arrangement for the person; and

(b) the person becomes a party to a financial arrangement.

Defined in this Act: excepted financial arrangement, financial arrangement

Compare: 2004 No 35 s EW 7

EW 8 Election to treat certain excepted financial arrangements as financial arrangements

Election

(1) A person may choose to treat as financial arrangements all the excepted financial arrangements to which the person is a party that are described in any of section EW 5(21) to (25).

Election for class of short-term agreements

(2) A person may choose to treat a class of short-term agreements for sale and purchase as financial arrangements. The person must identify the class by—

(a) the currency that applies to the agreements; or

(b) the term of the agreements; or

(c) both the currency and the term.

How election made

(3) The person makes an election by returning income derived or expenditure incurred under the chosen arrangements under the financial arrangements rules in their return of income.

How election revoked

(4) The person revokes the election by giving notice to the Commissioner with their return of income and within the time that the return must be filed under section 37 of the Tax Administration Act 1994.

Effect of revocation

(5) The revocation applies to financial arrangements the person enters into after the income year in which the notice is given.

Defined in this Act: Commissioner, excepted financial arrangement, financial arrangement, financial arrangements rules, income, income year, notice, return of income, short-term agreement for sale and purchase

Compare: 2004 No 35 s EW 8

Application of financial arrangements rules

EW 9 Persons to whom financial arrangements rules apply

Residents

(1) A person who is a party to a financial arrangement must calculate and allocate income or expenditure under the arrangement for an income year under the financial arrangements rules, if the arrangement is one to which the rules apply under section EW 10. This subsection is overridden by subsection (2).

Non-residents

(2) Subsection (1) applies to a person who is not resident in New Zealand only if subsection (3) or (4) applies.

Non-resident with New Zealand fixed establishment

(3) Subsection (1) applies to a person who is not resident in New Zealand to the extent to which the person is a party to a financial arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand.

Non-resident trustee for New Zealand settlor

(4) Subsection (1) applies to a person who is not resident in New Zealand if—

(a) the person is a trustee for a settlor who is resident in New Zealand; and

(b) the trustee is not a person to whom section HC 25 (Foreign-sourced amounts: non-resident trustees) apply.

Defined in this Act: financial arrangement, financial arrangements rules, fixed establishment, income, New Zealand, resident in New Zealand, trustee

Compare: 2004 No 35 s EW 9

EW 10 Financial arrangements to which financial arrangements rules apply

Entered into on or after 20 May 1999

(1) The financial arrangements rules apply to a financial arrangement that all its parties enter into on or after 20 May 1999.

Existing immediately before 20 May 1999

(2) The financial arrangements rules apply to a financial arrangement existing immediately before 20 May 1999 to the extent to which a person becomes a party to the arrangement on or after 20 May 1999.

Rollover, extension, or advance on or after 20 May 1999

(3) The financial arrangements rules apply to a financial arrangement that is rolled over or extended, or under which an advance is made, on or after 20 May 1999, under a binding contract entered into before 20 May 1999.

Binding contract before 20 May 1999

(4) However, the financial arrangements rules do not apply to a financial arrangement if—

(a) all its parties enter into it on or after 20 May 1999; and

(b) they enter into it under a binding contract entered into before 20 May 1999.

Transferred under relationship agreement

(5) The financial arrangements rules apply to a financial arrangement to which all the following apply, to the extent to which the transferee becomes a party to it:

(a) the transferor is a party to it before 20 May 1999; and

(b) it is rolled over or extended, or an advance is made under it, on or after 20 May 1999, under a binding contract entered into before 20 May 1999; and

(c) it is transferred under a relationship agreement on or after 20 May 1999.

Binding contract before 20 May 1999 and transfer under relationship agreement

(6) However, the financial arrangements rules do not apply to a financial arrangement if—

(a) all its parties enter into it on or after 20 May 1999; and

(b) they enter into it under a binding contract entered into before 20 May 1999; and

(c) it is transferred under a relationship agreement on or after 20 May 1999.

Defined in this Act: financial arrangement, financial arrangements rules, relationship agreement

Compare: 2004 No 35 s EW 10

EW 11 What financial arrangements rules do not apply to

The financial arrangements rules do not apply to—

(a) the calculation of resident passive income:

(b) the calculation of non-resident passive income:

(c) interest paid by the Commissioner under Part 7 of the Tax Administration Act 1994 for an overpayment of income tax:

(d) interest payable to the Commissioner under Part 7 of the Tax Administration Act 1994 for an underpayment of income tax.

Defined in this Act: Commissioner, financial arrangements rules, income tax, interest, non-resident passive income, pay, resident passive income

Compare: 2004 No 35 s EW 11

Calculation and allocation of income and expenditure over financial arrangement's term

EW 12 When use of spreading method required

A party to a financial arrangement must use 1 of the spreading methods to calculate an amount of income or expenditure under the arrangement for each income year over the arrangement's term, and to allocate it to the income year, unless section EW 13 applies.

Defined in this Act: amount, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 12

EW 13 When use of spreading method not required

Base price adjustment year

(1) A person does not use any of the spreading methods for a financial arrangement in the income year in which section EW 29 requires them to calculate a base price adjustment for it.

Trustee of personal injury compensation trust

(2) A trustee who holds a financial arrangement in trust to manage compensation paid for personal injury under the Accident Compensation Act 2001, the Accident Insurance Act 1988, any of the former Acts as defined in section 13 of the Accident Insurance Act 1998, the Workers' Compensation Act 1956, or a court order does not use any of the spreading methods for the financial arrangement if the trustee is a cash basis person.

Cash basis person

(3) A cash basis person is not required to use any of the spreading methods, but may choose to do so under section EW 61.

Defined in this Act: cash basis person, financial arrangement, income year, pay, spreading method, trustee

Compare: 2004 No 35 s EW 13

Section EW 13(2): substituted, on 1 April 2009, by section 6(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 13(2): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

EW 14 What spreading methods do

Description

(1) The spreading methods are methods of calculating and allocating income and expenditure under a financial arrangement over the arrangement's term.

Methods

(2) A **spreading method** is 1 of the following:

- (aa) a method for IFRS, to which sections EW 15B to EW 15I relate; or
- (a) the yield to maturity method or an alternative, to which sections EW 16, EW 19, and EW 23 are relevant; or
- (b) the straight-line method, to which sections EW 17 and EW 19 are relevant; or
- (c) a market valuation method, to which sections EW 18, EW 19, and EW 23 are relevant; or
- (d) a determination method or an alternative, to which sections EW 20 and EW 23 are relevant; or
- (e) a financial reporting method, to which sections EW 21 and EW 23 are relevant; or
- (f) a default method, to which section EW 22 is relevant.

Result

(3) The amount calculated for and allocated to the income year under a spreading method is—

(a) income, under section CC 3 (Financial arrangements), derived by the person in the income year; or

(b) expenditure incurred by the person in the income year.

Defined in this Act: amount, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 14

Section EW 14(2)(aa): inserted, on 1 April 2008, by section 364(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 14(2)(e): substituted (with effect on 1 April 2008), on 6 October 2009, by section 133 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 15 What is included when spreading methods used

Consideration and amounts

(1) A person using a spreading method must include, for the purpose of calculating and allocating income and expenditure under the financial arrangement,—

(a) all consideration that has been paid, and all consideration that is or will be payable, to the person for or under the financial arrangement, ignoring—

(i) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D:

(ii) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D or the modified fair value method in section EW 15G; and

(b) all consideration that has been paid, and all consideration that is or will be payable, by the person for or under the financial arrangement, ignoring—

(i) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D:

(ii) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D or the modified fair value method in section EW 15G; and

(c) all amounts that have been remitted, and all amounts that are to be remitted, by the person under the financial arrangement; and

(d) all amounts that would have been payable to the person under the financial arrangement if the amounts had not been remitted by law.

Consideration in particular cases

(2) If any of sections EW 32 to EW 48 applies, the consideration referred to in subsection (1)(a) and (b) is adjusted under the relevant section.

Defined in this Act: amount, consideration, financial arrangement, IFRS, income, non-contingent fee, non-integral fee, pay, spreading method

Compare: 2004 No 35 s EW 15

Section EW 15(1)(a): amended, on 1 April 2008, by section 365(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15(1)(a)(i): added, on 1 April 2008, by section 365(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15(1)(a)(ii): added, on 1 April 2008, by section 365(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15(1)(a)(ii): amended (with effect on 1 April 2008), on 29 August 2011, by section 31(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 15(1)(b): amended, on 1 April 2008, by section 365(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15(1)(b)(i): added, on 1 April 2008, by section 365(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15(1)(b)(ii): added, on 1 April 2008, by section 365(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15(1)(b)(ii): amended (with effect on 1 April 2008), on 29 August 2011, by section 31(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 15 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 365(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15 list of defined terms **non-integral fee**: inserted, on 1 April 2008, by section 365(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 15B Applying IFRSs to financial arrangements

When sections EW 15C to EW 15I apply

(1) Sections EW 15C to EW 15I apply when a person who is a party to a financial arrangement uses IFRSs to prepare financial statements and to report for financial arrangements.

Certain methods available for use and certain mandatory

(2) Sections EW 15C to EW 15I set out—

(a) the methods available to the person to use for calculating and allocating income and expenditure under a financial arrangement:

(b) the circumstances in which a person must use certain other methods.

Functional currency

(3) Even if another currency may be used as the functional currency under IFRSs, the methods must be applied using New Zealand dollars.

Financial statements

(4) Unless the context otherwise requires, references to IFRSs in sections EW 15D to EW 15I are references to IFRS rules used to prepare the person's financial statements.

Defined in this Act: financial arrangement , financial statements, IFRS, income

Compare: 2004 No 35 s EW 15B

Section EW 15B: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15B(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 134 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15B(3): added (with effect on 1 April 2008), on 6 October 2009, by section 134 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15B(4) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 134 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15B(4): added (with effect on 1 April 2008), on 6 October 2009, by section 134 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 15C Preparing and reporting methods

Who this section applies to

(1) A person who uses IFRSs to prepare financial statements and to report for financial arrangements must use 1 of the following methods for the financial arrangement:

(a) the IFRS financial reporting method in section EW 15D:

(b) a determination alternative in section EW 15E:

(c) the expected value method in section EW 15F:

(d) the modified fair value method in section EW 15G.

Exclusions

(2) Subsection (1) does not apply in the circumstances set out in sections EW 15H and EW 15I.

Defined in this Act: fair value method, financial arrangement, financial statements, IFRS

Compare: 2004 No 35 s EW 15B(6)

Section EW 15C: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 15D IFRS financial reporting method

General IFRS rules

(1) Under the IFRS financial reporting method, a person must allocate an amount to an income year under IFRS rules modified, as applicable, under subsection (2).

Modifications

(2) The allocation is modified as follows:

(a) if the financial arrangement is a financial asset, an amount arising from an impaired credit adjustment under IFRSs is not allocated to an income year. However, when the fair value method is used, adjustments for financial arrangements held by the person are excluded from this paragraph, if the financial arrangements are not derivative instruments and the person's business includes dealing in those financial arrangements:

(ab) borrowing costs are not capitalised under NZIAS 23:

(b) even though an amount arising from the use of the fair value method may be allocated to equity reserves under

IFRSs, the amount must be allocated to an income year for tax purposes.

Fair value method not used for certain financial arrangements

(2B) A person must not use the fair value method for a financial arrangement if—

(a) the financial arrangement is treated under IFRSs by the person as a hedge of another financial arrangement; and

(b) the person uses for the other financial arrangement a method that is neither of the following:

(i) the IFRS financial reporting method:

(ii) the method required under *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure*.

Meaning of impaired credit adjustment

(3) For the purposes of this section, **impaired credit adjustment** means—

(a) for a financial arrangement accounted for under the fair value method, the movement in fair value through the decline in credit quality of the arrangement:

(b) for a financial arrangement not accounted for under the fair value method, credit impairment adjustments made under IFRSs.

Defined in this Act: amount, derivative instrument, fair value method, IFRS, impaired credit adjustment, income year, NZIAS 23, tax

Compare: 2004 No 35 s EW 15C

Section EW 15D: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15D(2)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 135(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15D(2)(ab): inserted (with effect on 1 April 2008), on 6 October 2009, by section 135(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15D(2B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 135(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15D(2B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 135(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15D(2B)(b): substituted (with effect on 1 April 2008), on 29 August 2011, by section 32 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 15D list of defined terms **derivative instrument**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 135(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15D list of defined terms **NZIAS 23**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 135(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 15E Determination alternatives

When this section applies

(1) This section applies when—

(a) a person chooses in a return of income to use a determination alternative to IFRS for a financial arrangement; and

(b) the method is available under its terms for the person to use; and

(c) the financial arrangement—

(i) is not treated under IFRSs by the person as a hedge; or

(ii) is treated under IFRSs by the person as a hedge of other financial arrangements, for each of which the person does not use the fair value method; or

(iii) is treated under IFRSs by the person as a hedge of something that is not a financial arrangement.

General IFRS rules

(2) The person must use 1 of the following methods modified, as applicable, under subsection (3) or (3B):

(aa) *Determination G3: Yield to maturity*, but only if the financial arrangement is denominated in New Zealand currency and is not a derivative instrument. When applying *Determination G3*, *Determination G25: Variation in the terms of a financial arrangement* must be used:

(a) *Determination G9C: Financial arrangements that are denominated in a currency other than New Zealand dollars: an expected value approach:*

(b) *Determination G14B: Forward contracts for foreign exchange and commodities: an expected value approach:*

(c) *Determination G27: Swaps:*

(d) a determination made by the Commissioner under section 90AC(1)(bb) of the Tax Administration Act 1994:

(e) a method other than those set out in paragraphs (aa) to (d) if the alternative—

(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

(ii) is for a financial arrangement similar to 1 to which the methods set out in paragraphs (aa) to (d) may apply; and

(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in paragraphs (aa) to (d).

Modifications

(3) For a determination alternative that is *Determination G9C or G14B*, the allocation is modified as follows:

(a) the term **forward contract** is treated as including a conditional or unconditional agreement to pay or be paid an amount calculated by reference to the price of property or services, without the property being delivered or the services being performed:

(b) a requirement that all companies in a group of companies to which the person belongs choose to use the determination alternative is treated as met if—

(i) all companies in the group choose *Determination G9C or G14B* in writing on or before the 63rd day after the person enters into the financial arrangement, or a later time as the Commissioner allows; and

(ii) the financial arrangement is the first financial arrangement of the group for which *Determination G9C or G14B* may be used.

Modifications

(3B) For a determination alternative that is *Determination G27*, the allocation is modified as follows:

(a) method C must be used, and not methods A, B, or D:

(b) for method C, if relevant, *Determination G9C* and not *Determination G9A* must be used.

Succeeding determinations

(4) For the purposes of this section, the determinations set out in subsection (2)(a) to (c) include a determination that succeeds the determination.

Defined in this Act: amount, company, derivative instrument, financial arrangement, financial arrangements rules, group of companies, IFRS, income year, New Zealand, pay, return of income

Compare: 2004 No 35 s EW 15D

Section EW 15E: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15E(1)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 136(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15E(1)(c)(ii): amended (with effect on 1 April 2008), on 7 September 2010, by section 36 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 15E(1)(c)(iii): added (with effect on 1 April 2008), on 7 September 2010, by section 36 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 15E(2): amended (with effect on 1 April 2009), on 6 October 2009, by section 136(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15E(2)(aa): inserted (with effect on 1 April 2008), on 6 October 2009, by section 136(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15E(2)(e): amended (with effect on 1 April 2009), on 7 December 2009, by section 19(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 15E(2)(e)(ii): amended (with effect on 1 April 2009), on 7 December 2009, by section 19(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 15E(2)(e)(iii): amended (with effect on 1 April 2009), on 7 December 2009, by section 19(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 15E(3B) heading: inserted (with effect on 1 April 2009), on 6 October 2009, by section 136(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15E(3B): inserted (with effect on 1 April 2009), on 6 October 2009, by section 136(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15E list of defined terms **derivative instrument**: inserted (with effect on 1 April 2009), on 6 October 2009, by section 136(5) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15E list of defined terms **New Zealand**: inserted (with effect on 1 April 2009), on 6 October 2009, by section 136(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 15F Expected value method

When this section applies

(1) This section applies when—

(a) a person has entered into a financial arrangement in the ordinary course of their business and the person is not in the business of dealing in relation to the financial arrangement; and

(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and

(c) the financial arrangement—

(i) is not treated under IFRSs by the person as a hedge; or

(ii) is treated under IFRSs by the person as a hedge of other financial arrangements, for each of which the person does not use the fair value method; or

(iii) is treated under IFRSs by the person as a hedge of something that is not a financial arrangement; and

(d) the person and all companies in a group of companies to which the person belongs have chosen to use the expected value method and have notified the Commissioner at the time of filing a return of income.

Exception for some group members and financial arrangements

(1B) A person who is a member of a group of companies and has notified an election under subsection (1)(d) is not required under this section to use the expected value method for a financial arrangement if—

(a) the person does not have a business of a substantially similar nature to a business of another company in the group; and

(b) the financial arrangement is with other parties, of which—

(i) none are associated with the person or a member of the group; or

(ii) all are associated with the person and use the method used by the person for the arrangement.

Method chosen

(2) The person must use a method that—

(a) has the features of an expected value approach described in *Determinations G9C and G14B*; and

(b) allocates a reasonable amount for each income year of the term of the financial arrangement, having regard to the purposes of the financial arrangements rules under section EW 1(3).

Meaning of derivative instrument

[Repealed]

(3) *[Repealed]*

Defined in this Act: amount, associated person, business, Commissioner, company, derivative instrument, financial arrangement, financial arrangements rules, group of companies, IFRS, notify, NZIAS 39, return of income

Compare: 2004 No 35 s EW 15E(1), (2)

Section EW 15F: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15F(1)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 137(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F(1)(c)(ii): amended (with effect on 1 April 2008), on 7 September 2010, by section 37 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 15F(1)(c)(iii): added (with effect on 1 April 2008), on 7 September 2010, by section 37 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 15F(1)(d): substituted (with effect on 1 April 2008), on 6 October 2009, by section 137(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 137(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 137(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F(3) heading: repealed (with effect on 1 October 2008), on 6 October 2009, pursuant to section 137(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F(3): repealed (with effect on 1 October 2008), on 6 October 2009, by section 137(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F list of defined terms **associated person**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 137(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15F list of defined terms **NZIAS 39**: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EW 15G Modified fair value method

When this section applies

(1) This section applies when—

(a) a person has entered into a financial arrangement in the ordinary course of their business and the person is not in the business of dealing in relation to the financial arrangement; and

(b) the financial arrangement is denominated in a currency other than New Zealand dollars or is a derivative instrument; and

(c) the financial arrangement—

(i) is not treated under IFRSs by the person as a hedge; or

(ii) is treated under IFRSs by the person as a hedge of other financial arrangements, for each of which the person does not use the fair value method; or

(iii) is treated under IFRSs by the person as a hedge of something that is not a financial arrangement; and

(d) the person and all companies in a group of companies to which the person belongs have chosen to use the modified fair value method and have notified the Commissioner at the time of filing a return of income.

Exception for some group members and financial arrangements

(1B) A person who is a member of a group of companies and has notified an election under subsection (1)(d) is not required under this section to use the modified fair value method for a financial arrangement if—

(a) the person does not have a business of a substantially similar nature to a business of another company in the group; and

(b) the financial arrangement is with other parties, of which—

(i) none are associated with the person or a member of the group; or

(ii) all are associated with the person and use the method used by the person for the arrangement; and

(c) subsection (3) does not require the person to use the modified fair value for the financial arrangement.

Method chosen

(2) The person must use the fair value method, modified so that the following are not required to be allocated to an income year:

(a) an amount allocated by the person to equity reserves under IFRSs for the financial arrangement:

(b) an amount not allocated by the person to equity reserves under IFRSs for the financial arrangement, if—

(i) the person and another person (the **other person**) are members of the same wholly-owned group; and

(ii) the person and the other person are members of the same group consolidated under IFRSs; and

(iii) the financial arrangement is related to an arrangement (the **other arrangement**) of the other person; and

(iv) the other person does not use the fair value method for the other arrangement; and

(v) the group consolidated under IFRSs makes an allocation, to equity reserves under IFRSs, corresponding to the amount.

Some financial arrangements with amounts allocated to equity reserves

(3) A person who is a member of a wholly-owned group and of a group consolidated under IFRSs (the **consolidated group**) must use the modified fair value method for a financial arrangement if—

(a) the person or the consolidated group allocates an amount to equity reserves under IFRSs for the financial arrangement; and

(b) a member of the consolidated group, under subsection (2)(b), does not allocate to the income year an amount for a financial arrangement.

Defined in this Act: amount, business, Commissioner, company, derivative instrument, fair value method, financial arrangement, group of companies, IFRS, notify, return of income , wholly-owned group

Compare: 2004 No 35 s EW 15E(1), (3)

Section EW 15G: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15G(1)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 138(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G(1)(c)(ii): amended (with effect on 1 April 2008), on 7 September 2010, by section 38 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 15G(1)(c)(iii): added (with effect on 1 April 2008), on 7 September 2010, by section 38 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 15G(1)(d): substituted (with effect on 1 April 2008), on 6 October 2009, by section 138(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 138(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 138(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 138(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 138(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G(3): added (with effect on 1 April 2008), on 6 October 2009, by section 138(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15G list of defined terms **wholly-owned group**: added (with effect on 1 April 2008), on 6 October 2009, by section 138(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 15H Mandatory use of some determinations

Required methods

(1) Section EW 15C(1) does not apply when any of the following determinations apply to a person and a financial arrangement:

(a) *Determination G5C: Mandatory conversion convertible notes:*

(b) *Determination G22: Optional conversion convertible notes denominated in New Zealand dollars convertible at the option of the holder:*

(c) *Determination G22A: Optional convertible notes denominated in New Zealand dollars:*

(d) *Determination G29: Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure*. However, when applying *Determination G29*, *Determination G9C*, and not *Determination G9A*, must be used:

(e) a method other than those set out in paragraphs (a) to (d) if the alternative—

(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

(ii) is for a financial arrangement similar to 1 to which the methods set out in paragraphs (a) to (d) may apply; and

(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in paragraphs (a) to (d).

Succeeding determinations

(2) For the purposes of this section, the determinations set out in subsection (1)(a), (c), and (d) include a determination that succeeds the determination.

Defined in this Act: amount, financial arrangement, financial arrangements rules, income year

Compare: 2004 No 35 s EW 15B(3)

Section EW 15H: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15H(1)(d): amended (with effect on 1 April 2009), on 6 October 2009, by section 139(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 15I Mandatory use of yield to maturity method for some arrangements

When this section applies

(1) This section applies and section EW 15C(1) does not apply when—

- (a) a person is not required to use a method under section EW 15H for a financial arrangement; and
- (b) the financial arrangement—
  - (i) includes in part an excepted financial arrangement; or
  - (ii) is treated by the person or its issuer, all or in part, as an equity instrument under IFRSs; or
  - (iib) is, under NZIAS 17 and in the person's financial statements, classified as an operating lease; or
  - (iii) is an agreement for the sale and purchase of property or services.

Methods

(2) The person must use 1 of the following methods to allocate an amount to an income year if the method is available under its terms for the person to use:

- (a) the yield to maturity method:
- (b) *Determination G26: Variable rate financial arrangements* or a determination that succeeds it:
- (c) a determination made by the Commissioner under section 90AC(1)(bb) of the Tax Administration Act 1994:
- (d) a method other than those set out in paragraphs (a) to (c) if the alternative—

(i) has regard to the purposes of the financial arrangements rules under section EW 1(3); and

(ii) is for a financial arrangement similar to 1 to which the methods set out in paragraphs (a) to (c) may apply; and

(iii) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using 1 of the methods set out in paragraphs (a) to (c).

Meaning of equity instrument

(3) For the purposes of this section, equity instrument has the same meaning as in NZIAS 32.

Defined in this Act: agreement for the sale and purchase of property or services , amount , Commissioner , equity instrument , excepted financial arrangement , financial arrangement , financial arrangements rules , IFRS , income year, issue, NZIAS 17, NZIAS 32

Compare: 2004 No 35 s EW 15B(4)

Section EW 15I: inserted, on 1 April 2008, by section 366 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 15I(1)(b)(iib): inserted (with effect on 1 April 2008), on 6 October 2009, by section 140(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15I list of defined terms **NZIAS 17**: added (with effect on 1 April 2008), on 6 October 2009, by section 140(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 15I list of defined terms **NZIAS 32**: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EW 16 Yield to maturity method or alternative

Who may use yield to maturity method

(1) A person who is a party to a financial arrangement may use the yield to maturity method, if the person is not required to use a method under section EW 15B.

Who may use alternative

(2) A person who is a party to a financial arrangement may use an alternative to the yield to maturity method, if the person is not required to use a method under section EW 15B, but may do so only if the alternative—

(a) has regard to the principles of accrual accounting; and

(b) conforms with commercially acceptable practice; and

(c) results in the allocation to each income year of amounts that are not materially different from those that would have been allocated using the yield to maturity method; and

(d) is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although section EW 23 may apply if the alternative is not used in this way.

Defined in this Act: amount, financial arrangement, IFRS, income year

Compare: 2004 No 35 s EW 16

Section EW 16(1): amended, on 1 April 2008, by section 367(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 16(2): amended, on 1 April 2008, by section 367(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 16 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 367(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 17 Straight-line method

Who may use straight-line method

(1) A person who is a party to a financial arrangement may use the straight-line method if—

(a) the total value of all the financial arrangements to which the person is a party in an income year has been $1,850,000 or less on every day in the income year; and

(b) the person complies with section EW 25(1); and

(c) the person is not required to use a method under section EW 15B.

Calculation of total value of financial arrangements

(2) When calculating total value, the person must—

(a) include every one of their financial arrangements, whether the financial arrangements rules or the old financial arrangements rules apply to it; and

(b) use the following values:

(i) for a fixed principal financial arrangement, its face value:

(ii) for a variable principal debt instrument, the amount owing by or to the person under the financial arrangement on the relevant day:

(iii) for a financial arrangement to which the old financial arrangements rules apply, the value determined under those rules.

Increase in specified sum

(3) The Governor-General may make an Order in Council increasing the sum specified in subsection (1).

Defined in this Act: amount, financial arrangement, financial arrangements rules, fixed principal financial arrangement, IFRS, income year, old financial arrangements rules, variable principal debt instrument

Compare: 2004 No 35 s EW 17

Section EW 17(1)(a): amended, on 1 April 2009, by section 7(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 17(1)(b): amended, on 1 April 2008, by section 368(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 17(1)(c): added, on 1 April 2008, by section 368(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 17 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 368(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 18 Market valuation method

Who may use market valuation method

(1) A person who is a party to a financial arrangement may use, for the arrangement, a market valuation method if—

(a) either—

(i) the person's business includes dealing in financial arrangements of the class to which the arrangement belongs; or

(ii) the financial arrangement is an exchange-traded option, a forward contract for foreign exchange, or a futures contract; and

(b) the parties to the financial arrangement are not associated persons; and

(c) either—

(i) the Commissioner has approved the market, the method, and the source of information used to determine market values by a determination under section 90AC(1)(c) of the Tax Administration Act 1994; or

(ii) the person can demonstrate market prices that are reliable; and

(d) the method conforms with commercially acceptable practice; and

(e) the person complies with section EW 25(4); and

(f) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements, although section EW 23 may apply if the method is not used in this way; and

(g) the person is not required to use a method under section EW 15B.

Application of Tax Administration Act 1994

(2) Section 22A(1) of the Tax Administration Act 1994 applies to a person to whom subsection (1)(c)(ii) applies.

Defined in this Act: associated person, business, Commissioner, financial arrangement, forward contract, futures contract, IFRS

Compare: 2004 No 35 s EW 18

Section EW 18(1)(f): amended, on 1 April 2008, by section 369(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 18(1)(g): added, on 1 April 2008, by section 369(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 18 list of defined terms **IFRS**: amended, on 1 April 2008, by section 369(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 19 Choice among some spreading methods

A person who is not required to use a method under section EW 15B and who may use the yield to maturity method or an alternative, the straight-line method, or a market valuation method for a financial arrangement may choose to use whichever of those methods the person can use for the arrangement.

Defined in this Act: financial arrangement, IFRS, spreading method

Compare: 2004 No 35 s EW 19

Section EW 19 heading: amended, on 1 April 2008, by section 370(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 19: amended, on 1 April 2008, by section 370(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 19 list of defined terms **IFRS**: amended, on 1 April 2008, by section 370(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 20 Determination method or alternative

Who may use determination method

(1) A person who is a party to a financial arrangement may use a determination method, that is, a method in a determination made by the Commissioner under section 90AC(1)(d) of the Tax Administration Act 1994 and applying to the arrangement, if—

- (a) the person cannot use the yield to maturity method or an alternative; and
- (b) the person—
  - (i) may not use the straight-line method or a market valuation method; or
  - (ii) may use the straight-line method or a market valuation method but chooses not to do so; and
- (c) the person is not required to use a method under section EW 15B.

Who may use alternative

(2) A person who is a party to a financial arrangement may use an alternative to a determination method, but may do so only if—

- (a) the person cannot use the yield to maturity method or an alternative; and
- (b) the person—
  - (i) may not use the straight-line method or a market valuation method; or
  - (ii) may use the straight-line method or a market valuation method but chooses not to do so; and
- (bb) the person is not required to use a method under section EW 15B; and
- (c) the alternative has regard to the principles of accrual accounting; and
- (d) the alternative conforms with commercially acceptable practice; and
- (e) the alternative results in the allocation to each income year of amounts that are not materially different from

those that would have been allocated using the determination method; and

(f) the alternative is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangements although section EW 23 may apply if the alternative is not used in this way.

Defined in this Act: amount, Commissioner, financial arrangement, IFRS

Compare: 2004 No 35 s EW 20

Section EW 20(1)(b)(ii): amended, on 1 April 2008, by section 371(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 20(1)(c): added, on 1 April 2008, by section 371(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 20(2)(bb): inserted, on 1 April 2008, by section 371(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 20 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 371(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 21 Financial reporting method

A person who is a party to a financial arrangement may use a financial reporting method if—

(a) the person cannot use the yield to maturity method or an alternative; and

(b) the person—

(i) may not use the straight-line method or a market valuation method; or

(ii) may use the straight-line method or a market valuation method but chooses not to do so; and

(c) the person is not required to use a method under section EW 15B; and

(d) the Commissioner has not made a determination for the financial arrangement under section 90AC(1)(d) of the Tax Administration Act 1994; and

(e) the method conforms with commercially acceptable practice; and

(f) the method is also used by the person for financial reporting purposes for financial arrangements that are the same as, or similar to, the arrangement (although sec-

tion EW 23 may apply if the method is not used in this way); and

(g) the method allocates a reasonable amount to each income year over the financial arrangement's term.

Defined in this Act: amount, Commissioner, financial arrangement, income year

Section EW 21: substituted (with effect on 1 April 2008), on 6 October 2009, by section 141 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 22 Default method

A person who is a party to a financial arrangement may use a default method if—

(a) the person cannot use the yield to maturity method or an alternative; and

(b) the person—

(i) may not use the straight-line method or a market valuation method; or

(ii) may use the straight-line method or a market valuation method but chooses not to do so; and

(c) the person may not use a determination method or an alternative, or a financial reporting method; and

(d) *[Repealed]*

(e) the method conforms with commercially acceptable practice; and

(f) the method allocates a reasonable amount to each income year over the financial arrangement's term.

Defined in this Act: amount, financial arrangement, income, income year

Compare: 2004 No 35 s EW 22

Section EW 22(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 142 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 22(c): amended, on 1 April 2008, by section 373(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 22(d): repealed, on 1 April 2008, by section 373(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 23 Failure to use method for financial reporting purposes

When this section applies

(1) This section applies when a person would be allowed to use a method but for the fact that the person does not comply with whichever is relevant of sections EW 16(2)(d), EW 18(1)(f), EW 20(2)(f) and EW 21(f).

Person treated as complying

(2) The person is treated as complying with whichever is relevant of sections EW 16(2)(d), EW 18(1)(f), EW 20(2)(f) and EW 21(f) if the method that the person uses for each financial arrangement—

(a) is used for the financial arrangement, and each financial arrangement that is the same as, or similar to, the arrangements, for every income year over its term for the purposes of the financial arrangements rules; and

(b) appropriately reflects the dominant purpose for which the person entered into the financial arrangement; and

(c) is not used for the purpose of tax avoidance; and

(d) has been approved for use in circumstances applying to the person by the Commissioner, either by giving notice to the person or by making a determination under section 90AC(1)(f) of the Tax Administration Act 1994.

Qualification on subsection (2)(a)

(3) A method complies with subsection (2)(a), even if it is a change from a previous method, as long as the Commissioner approves the change in method under the circumstances or conditions specified in a determination under 90AC(1)(g) of the Tax Administration Act 1994.

IFRS financial reporting

(4) This section is modified by section EZ 32B (Transitional rule for IFRS reporting).

Defined in this Act: Commissioner, financial arrangement, financial arrangements rules, IFRS, income year, notice, tax avoidance

Compare: 2004 No 35 s EW 23

Section EW 23(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 143(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 23(1): amended, on 1 April 2008, by section 374(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 23(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 143(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 23(2): amended, on 1 April 2008, by section 374(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 23(4) heading: added, on 1 April 2008, by section 374(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 23(4): added, on 1 April 2008, by section 374(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 23 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 374(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 24 Consistency of use of spreading method

Consistency required

(1) A person must use the same spreading method for financial arrangements that are the same as, or similar to, the arrangements for every income year. This subsection is overridden by subsection (3).

Straight-line method and market valuation method

(2) Section EW 25 sets out particular consistency requirements for the straight-line method and a market valuation method.

IFRS method

(2B) Section EW 25B sets out a particular consistency requirement for a method for IFRS preparers.

Change of spreading method

(3) Section EW 26 sets out the circumstances in which a person may change their spreading method.

Defined in this Act: financial arrangement, IFRS, income year, spreading method

Compare: 2004 No 35 s EW 24

Section EW 24(2B) heading: inserted, on 1 April 2008, by section 375(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 24(2B): inserted, on 1 April 2008, by section 375(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 24 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 375(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 25 Consistency of use of straight-line method and market valuation method

Straight-line method for all financial arrangements

(1) A person using the straight-line method in an income year for a financial arrangement must use it for all financial arrangements—

(a) to which the person is a party at the end of the income year; and

(b) for which the person can use it.

Straight-line method for every income year of term

(2) A person who starts to use the straight-line method for a financial arrangement must use it over the arrangement's remaining term until section EW 29 requires them to calculate a base price adjustment for the arrangement, unless section EW 26(1) applies.

Total value may be over $1,850,000

(3) Subsection (2) applies even if the total value of all the financial arrangements to which the person is a party is over $1,850,000 at any time in the arrangement's remaining term.

Market valuation method

(4) A person who starts to use a market valuation method for a financial arrangement must use it over the arrangement's remaining term until section EW 29 requires them to calculate a base price adjustment for the arrangement, unless section EW 26(1) applies.

Increase in specified sum

(5) The Governor-General may make an Order in Council under section EW 17(3) increasing the sum specified in subsection (3).

Defined in this Act: financial arrangement, income year

Compare: 2004 No 35 s EW 25

Section EW 25(3) heading: amended, on 1 April 2009, by section 8(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 25(3): amended, on 1 April 2009, by section 8(2) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 25B Consistency of use of IFRS method

Consistency

(1) A person who uses a method for IFRS under section EW 15C for a financial arrangement must use the method for—

(a) the remaining term of the arrangement until section EW 29 requires them to calculate a base price adjustment for the arrangement:

(b) other financial arrangements that are the same as, or similar to, the arrangement unless a different accounting treatment under IFRSs is used.

Exception

(2) Despite subsection (1)(a), a person may change a method for IFRS if—

(a) the new method is available to them to use; and

(b) the accounting treatment for the financial arrangement under IFRSs is changed in the same income year in which the method is changed for tax purposes.

Spreading method adjustment

(3) For the purposes of subsection (2), section EW 26(3), (4), and EW 27 apply as if the change in method were a change under section EW 26(2). However, those sections do not apply if the change—

(a) is from the fair value method; and

(b) relates to a financial arrangement that is not subject to a creditor workout.

Modification

(4) Section EZ 52B (Consistency of use of IFRS method: *Determination G3* change allowed) modifies subsection (2).

Defined in this Act: creditor workout, fair value method, financial arrangement, IFRS, income year

Compare: 2004 No 35 s EW 25B

Section EW 25B: inserted, on 1 April 2008, by section 376 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 25B(3): amended (with effect on 1 April 2008), on 7 December 2009, by section 20 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 25B(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 144(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 25B(3)(a): substituted (with effect on 1 April 2008), on 7 December 2009, by section 20 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 25B(3)(a): added (with effect on 1 April 2008), on 6 October 2009, by section 144(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 25B(3)(b): substituted (with effect on 1 April 2008), on 7 December 2009, by section 20 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 25B(3)(b): added (with effect on 1 April 2008), on 6 October 2009, by section 144(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 25B(4) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 144(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 25B(4): added (with effect on 1 April 2008), on 6 October 2009, by section 144(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 25B list of defined terms **creditor workout**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 144(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 26 Change of spreading method

Requirements for change from straight-line and market value method

(1) A person may change from the straight-line method or the market value method if they change to a method that is not a method for IFRS under section EW 15B, and the Commissioner has given written authorisation for the change.

Change of other method

(2) A person may change from any spreading method to any other method if the Commissioner's written authorisation under subsection (1) is not required for the change, and they have a sound commercial reason for the change. The advancement, deferral, or reduction of an income tax liability is not a sound commercial reason.

Spreading method adjustment

(3) When a person changes their spreading method under subsection (2),—

(a) they must use the formula in section EW 27 to calculate a spreading method adjustment for the income year in which they change the method; and

(b) their only income or expenditure under the financial arrangement for the income year to which the formula is applied is the spreading method adjustment.

Positive or negative spreading method adjustment

(4) A spreading method adjustment calculated under section EW 27 is,—

(a) if positive, income, under section CC 3 (Financial arrangements), derived by the person in the income year for which the calculation is made:

(b) if negative, expenditure incurred by the person in the income year for which the calculation is made.

Application of Tax Administration Act 1994

(5) Section 22A(2) of the Tax Administration Act 1994 applies to a person to whom subsection (2) applies.

Exception for fair value method

(6) Section EW 29(13) applies, and subsections (3) and (4) do not apply, to a financial arrangement, if the person's change of spreading method involves a change—

(a) from the fair value method and the financial arrangement is not subject to a creditor workout:

(b) from the market value method to a method for IFRS under section EW 15B.

Meaning of sound commercial reason

(7) In this section, **sound commercial reason** includes—

(a) starting or stopping the use of IFRSs to prepare financial statements at the same time as starting or stopping the use of a method for IFRS under section EW 15B:

(b) starting to use a method for IFRS under section EW 15B for a financial arrangement for the first time.

Modification

(8) Section EZ 52C (Change of spreading method: *Determination G22* to *Determination G22A*) modifies this section.

Defined in this Act: Commissioner, creditor workout, fair value method, financial arrangement, financial statements, IFRS, income, income tax liability, income year, sound commercial reason, spreading method

Compare: 2004 No 35 s EW 26

Section EW 26(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 145(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 26(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 145(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 26(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 145(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 26(6) heading: added, on 1 April 2008, by section 377(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26(6): substituted (with effect on 1 April 2008), on 6 October 2009, by section 145(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 26(6): added, on 1 April 2008, by section 377(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26(7) heading: added, on 1 April 2008, by section 377(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26(7): added, on 1 April 2008, by section 377(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26(7)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 145(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 26(8) heading: added, on 26 September 2010, by section 39 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 26(8): added, on 26 September 2010, by section 39 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 26 list of defined terms **creditor workout**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 145(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 26 list of defined terms **fair value method**: inserted, on 1 April 2008, by section 377(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26 list of defined terms **financial statements**: inserted, on 1 April 2008, by section 377(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 377(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 26 list of defined terms **sound commercial reason**: inserted, on 1 April 2008, by section 377(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 27 Spreading method adjustment formula

Calculation of spreading method adjustment

(1) A person calculates a spreading method adjustment using the formula in subsection (3).

What formula applies to

(2) The person must apply the formula to each financial arrangement to which they—

(a) are a party at the end of the income year in which they change their spreading method; and

(b) were a party at the end of the previous income year.

Formula

(3) The formula is—

income (new method) - expenditure (new method) - income (old method) + expenditure (old method).

Definition of items in formula

(4) The items in the formula are defined in subsections (5) to (8).

Income (new method)

(5) **Income (new method)** is the amount that would have been income derived by the person under the financial arrangement if the new method had been used for the arrangement in the period starting on the date on which the person became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Expenditure (new method)

(6) **Expenditure (new method)** is the amount that would have been expenditure incurred by the person under the financial arrangement if the new method had been used for the arrangement in the period starting on the date on which the person became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Income (old method)

(7) **Income (old method)** is income, under section CC 3 (Financial arrangements), derived by the person under the financial arrangement in earlier income years.

Expenditure (old method)

(8) **Expenditure (old method)** is expenditure incurred by the person under the financial arrangement in earlier income years.

Modification

(9) Section EZ 52C (Change of spreading method: *Determination G22* to *Determination G22A*) modifies this section.

Defined in this Act: amount, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 27

Section EW 27(9) heading: added, on 26 September 2010, by section 40 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 27(9): added, on 26 September 2010, by section 40 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Calculation and allocation of income and expenditure when rights and obligations under financial arrangement cease

EW 28 How base price adjustment calculated

A party to a financial arrangement who must calculate a base price adjustment, as described in sections EW 29 and EW 30, calculates it using the formula in section EW 31.

Defined in this Act: financial arrangement

Compare: 2004 No 35 s EW 28

EW 29 When calculation of base price adjustment required

Ceasing to be New Zealand resident

(1) A party to a financial arrangement who ceases to be a New Zealand resident must calculate a base price adjustment as at the date of the party's ceasing to be a New Zealand resident. This subsection is overridden by section EW 30(1) and (2).

Ceasing to be party for purpose of New Zealand business

(2) A person who is not a New Zealand resident and who is a party to a financial arrangement for the purpose of a business the

party carries on through a fixed establishment in New Zealand must calculate a base price adjustment as at the date of the party's ceasing to be a party to the arrangement for that purpose.

Maturity

(3) A party to a financial arrangement must calculate a base price adjustment as at the date on which the arrangement matures.

Treated as maturity

(4) A financial arrangement that has not matured because an amount has not been paid is treated as if it had matured if—

(a) the amount not paid is immaterial; and

(b) the arrangement has been structured to avoid the application of section EW 31.

Disposal

(5) A party to a financial arrangement who disposes of the arrangement must calculate a base price adjustment as at the date of the disposal.

Absolute assignment

(6) A party to a financial arrangement who makes an absolute assignment of all the party's rights under the arrangement must calculate a base price adjustment as at the date of the absolute assignment.

Defeasance

(7) A party to a financial arrangement who makes a legal defeasance of all the party's obligations under the arrangement must calculate a base price adjustment as at the date of the legal defeasance.

Sale at discount to associated person

(8) A party to a financial arrangement that is a debt must calculate a base price adjustment as at the date on which the creditor sells the debt to a person associated with the debtor and at a discount in the circumstances described in section EW 43.

Discharge without consideration

(9) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is discharged from making all remaining payments under the arrangement without fully adequate consideration.

Operation of law

(10) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is released from making all remaining payments under the arrangement under the Insolvency Act 2006 or the Companies Act 1993 or the laws of a country or territory other than New Zealand.

Composition with creditors

(11) A party to a financial arrangement must calculate a base price adjustment as at the date on which a party to the arrangement is released from making all remaining payments under the arrangement by a deed or agreement of composition with the party's creditors.

Lapse of time

(12) A party to a financial arrangement must calculate a base price adjustment as at the date on which all remaining payments under the arrangement become irrecoverable or unenforceable through the lapse of time.

Changing from fair value method

(13) A party to a financial arrangement must calculate a base price adjustment, for the first income year for which a changed method is used for the financial arrangement, where the change in method is—

(a) from the fair value method and the financial arrangement is not subject to a creditor workout:

(b) from the market value method to a method for IFRS under section EW 15B.

Defined in this Act: amount, associated person, business, consideration, creditor workout, fair value method, financial arrangement, fixed establishment, legal defeasance, maturity, New Zealand, New Zealand resident, pay

Compare: 2004 No 35 s EW 29

Section EW 29(13) heading: added, on 1 April 2008, by section 378(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 29(13): substituted (with effect on 1 April 2008), on 6 October 2009, by section 146(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 29(13): added, on 1 April 2008, by section 378(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 29(13): amended (with effect on 1 April 2008), on 29 August 2011, by section 33 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 29 list of defined terms **creditor workout**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 146(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 29 list of defined terms **fair value method**: added, on 1 April 2008, by section 378(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EW 30 When calculation of base price adjustment not required

Cash basis person who ceases to be temporary New Zealand resident

(1) A cash basis person who ceases to be a New Zealand resident before the first day of the fourth income year following the income year in which they first became a New Zealand resident does not calculate a base price adjustment for a financial arrangement to which they—

(a) were a party before first becoming a New Zealand resident; and

(b) are a party on the date on which they cease to be a New Zealand resident.

Other party who ceases to be New Zealand resident

(2) A party to a financial arrangement who ceases to be a New Zealand resident does not calculate a base price adjustment to the extent to which the arrangement relates to a business the party carries on through a fixed establishment in New Zealand.

Creditor when legal defeasance occurs

(3) A party who has a right to receive money under a financial arrangement the obligations of which are the subject of a legal defeasance does not calculate a base price adjustment on the date of the defeasance if the defeasance requires another person to meet the remaining obligations of the arrangement.

Debtor when legal defeasance occurs

(4) A party to a financial arrangement does not calculate a base price adjustment if—

(a) their obligations under the arrangement are the subject of an absolute legal defeasance; and

(b) some or all of the consideration for the defeasance is deferred.

Creditor when assignment occurs

(5) A party to a financial arrangement does not calculate a base price adjustment if—

(a) their rights under the arrangement are the subject of an absolute assignment; and

(b) some or all of the consideration for the assignment is deferred.

Defined in this Act: business, cash basis person, consideration, financial arrangement, fixed establishment, income year, legal defeasance, money, New Zealand, New Zealand resident

Compare: 2004 No 35 s EW 30

EW 31 Base price adjustment formula

Calculation of base price adjustment

(1) A person calculates a base price adjustment using the formula in subsection (5).

When formula applies

(2) The person calculates the base price adjustment for the income year in which section EW 29 applies to them.

Positive base price adjustment

(3) A base price adjustment, if positive, is income, under section CC 3 (Financial arrangements), derived by the person in the income year for which the calculation is made. However, it is not income to the extent to which it arises from expenditure incurred by the person under the financial arrangement in earlier income years and for which a deduction was denied in those income years.

Negative base price adjustment

(4) A base price adjustment, if negative, is expenditure incurred by the person in the income year for which the calculation is made. The person is allowed a deduction for the expenditure under sections DB 6 to DB 8 (which relate to deductions for interest) or, if none of those sections applies, under section DB 11 (Negative base price adjustment).

Formula

(5) The formula is—

consideration - income + expenditure + amount remitted.

Definition of items in formula

(6) The items in the formula are defined in subsections (7) to (11).

Consideration

(7) **Consideration** is all consideration that has been paid, and all consideration that is or will be payable, to the person for or under the financial arrangement, minus all consideration that has been paid, and all consideration that is or will be payable, by the person for or under the financial arrangement. For the purposes of this subsection, the following are ignored:

(a) non-contingent fees, if the relevant method is not the IFRS financial reporting method in section EW 15D:

(b) non-integral fees, if the relevant method is the IFRS financial reporting method in section EW 15D.

Consideration in particular cases

(8) If any of sections EW 32 to EW 48, or EZ 52D applies, the consideration referred to in subsection (7) is adjusted under the relevant section.

Income

(9) **Income** is—

(a) income derived by the person under the financial arrangement in earlier income years; and

(b) dividends derived by the person from the release of the obligation to repay the amount lent; and

(c) income derived under section CF 2(2) and (3) (Remission of specified suspensory loans).

Expenditure

(10) **Expenditure** is expenditure incurred by the person under the financial arrangement in earlier income years.

Amount remitted

(11) **Amount remitted** is an amount that is not included in the consideration paid or payable to the person because it has been remitted—

(a) by the person; or

(b) by law.

Defined in this Act: amount, consideration, deduction, dividend, financial arrangement, IFRS, income, income year, non-contingent fee, non-integral fee, pay

Compare: 2004 No 35 s EW 31

Section EW 31(4): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 34(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 31(7): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 31(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 147(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 31(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 147(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 31(7): amended, on 1 April 2008, by section 379(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 31(7)(a): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 31(7)(b): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 31(8): amended, on 26 September 2010, by section 41 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EW 31(9)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 147(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 31 list of defined terms **IFRS**: inserted, on 1 April 2008, by section 379(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 31 list of defined terms **non-integral fee**: inserted, on 1 April 2008, by section 379(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Consideration

Consideration when financial arrangement involves property or services

EW 32 Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease

When this section applies

(1) This section applies when an original party to an agreement for the sale and purchase of property or services, a hire purchase agreement, a specified option, or a finance lease pays or is paid consideration that includes property or services.

Value of property or services

(2) The value of the property or services is determined by applying subsections (3) to (6) in numerical order until a subsection applies.

Lowest price

(3) The value of the property or services is the lowest price the parties would have agreed on for the property or services, on the date the agreement, option, or lease was entered into, if payment had been required in full at the time the first right in the property was transferred or the services provided. Two qualifications are—

(a) this subsection does not apply to an agreement for the sale and purchase of property or services that is part of another financial arrangement:

(b) section EW 34 applies if the consideration is in a foreign currency.

Cash price

(4) The value of the property or services is the cash price of the property or services to which the agreement, option, or lease relates, as determined by section 5 of the Credit Contracts and Consumer Finance Act 2003, if that Act applies to the agreement, option, or lease.

Future or discounted value

(5) The value of the property or services is the future value, or the discounted value, or a combination of both the future and

discounted values, of the amounts paid or payable on the date on which the first right in the property is transferred or the services are provided, as determined by the Commissioner under a determination under section 90AC(1)(i) of the Tax Administration Act 1994.

Determined by Commissioner

(6) The value of the property or services is the amount determined by the Commissioner when either party to the arrangement applies to the Commissioner for a specific determination. Both parties must use this amount.

Exclusion

(7) This section does not apply if the agreement, option, or lease has lapsed or does not proceed.

Defined in this Act: agreement for the sale and purchase of property or services, amount, Commissioner, consideration, finance lease, financial arrangement, hire purchase agreement, pay, property, right, specified option

Compare: 2004 No 35 s EW 32

EW 33 Consideration for hire purchase agreement or finance lease

When this section applies

(1) This section applies when a party to a hire purchase agreement or a finance lease pays or is paid consideration for the agreement or lease.

Consideration

(2) The consideration for a hire purchase agreement or a finance lease includes expenditure or loss incurred by the lessor in preparing and installing the hire purchase asset or personal property lease asset for use to the extent to which it is not taken into account under EW 32.

Defined in this Act: consideration, finance lease, hire purchase agreement, hire purchase asset, pay, personal property lease asset, lessor

Compare: 2004 No 35 s EW 33

EW 34 Consideration in foreign currency

When this section applies

(1) This section applies when the consideration payable under a financial arrangement to which section EW 32(3) applies is in a foreign currency.

Lowest price

(2) The lowest price referred to in section EW 32(3) is the lowest price the parties would have agreed on in the foreign currency, converted into New Zealand dollars using the rate that the original party applying section EW 32(3) selects from the rates in subsection (4). The party may select the rate in subsection (4)(b) only if the period between the date on which the first right in the property is to be transferred and the date on which final payment is to be made is 5 years or less.

Consistent application of rate

(3) The party must apply the selected rate to the financial arrangement for every income year over its term.

Rates

(4) The rates are—

(a) the rate, on the date on which the parties enter into the financial arrangement, available to the party from a New Zealand registered bank for the exchange of New Zealand dollars for the foreign currency for 1 of the following dates:

(i) the date on which the first right in the property is to be transferred; or

(ii) if that date is uncertain on the date on which the parties enter into the financial arrangement, the date on which the parties reasonably expect, when entering into the arrangement, that the first right in the property will be transferred; or

(b) the rate, on the date on which the parties enter into the financial arrangement, available to the party from a New Zealand registered bank for the exchange of New Zealand dollars for the foreign currency for 1 of the following dates:

(i) the date on which final payment is to be made; or

(ii) if that date is uncertain on the date on which the parties enter into the financial arrangement, the date on which the parties reasonably expect, when entering into the arrangement, that final payment will be made; or

(c) an exchange rate approved by the Commissioner for this subsection in the circumstances applicable to the party in a determination under section 90AC(1)(k) of the Tax Administration Act 1994.

Defined in this Act: Commissioner, consideration, financial arrangement, income year, New Zealand, pay, property, registered bank, right, year

Compare: 2004 No 35 s EW 34

EW 35 Value relevant for non-financial arrangements rule

When this section applies

(1) This section applies when the value of property acquired or disposed of under a financial arrangement, or the consideration for it, is relevant in determining a person's income or deductions under any provision of this Act that is not a financial arrangements rule.

Value

(2) The person is treated as having acquired or disposed of the property for a value determined by applying section EW 32(2).

Defined in this Act: consideration, deduction, financial arrangement, financial arrangements rules, income, property

Compare: 2004 No 35 s EW 35

Consideration treated as paid to person

EW 36 Consideration when person exits from rules: accrued entitlement

When this section applies

(1) This section applies when—

(a) a person is a party to a financial arrangement; and

(b) 1 of the following situations arises:

(i) the person ceases to be resident in New Zealand and is not a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or

(ii) the person, not resident in New Zealand, ceases to be a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or

(iii) the person starts using the arrangement for a private or domestic purpose and so it becomes an excepted financial arrangement described in any of section EW 5(18) to (20); and

(c) at the time the situation arises, the person has an accrued entitlement to be paid consideration under the arrangement.

Disposal and consideration

(2) The person is treated as having disposed of their accrued entitlement immediately before the situation arose and as having been paid the market value that the accrued entitlement had at that time.

Defined in this Act: accrued entitlement, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s EW 36

EW 37 Consideration when person enters rules: accrued obligation

When this section applies

(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued obligation to pay consideration under the arrangement, 1 or more of the following situations arise:

(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(b) the person is a non-resident who—

(i) becomes a New Zealand resident who is not a transitional resident; and

(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(c) the person is a transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in section EW 5(17):

(d) the person is a transitional resident who becomes a New Zealand resident who is not a transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in section EW 5(17):

(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of section EW 5(18) to (20).

Assumption and consideration

(2) The person is treated as having assumed the accrued obligation immediately after the situation arose and as having been paid the market value that a contract to assume the obligation had at that time.

Defined in this Act: accrued obligation, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, New Zealand resident, non-resident, pay, transitional resident

Compare: 2004 No 35 s EW 37

EW 38 Consideration when disposal for no, or inadequate, consideration

When this section applies

(1) This section applies when—

(a) a person is a party to a financial arrangement; and

(b) the person has an accrued entitlement under the arrangement; and

(c) the person disposes of the arrangement; and

(d) the disposal of the accrued entitlement—

(i) is not for monetary consideration; or

(ii) is for a consideration that is less than the market value of the entitlement on the date of the disposal.

Consideration is market value

(2) The person is treated as having been paid the market value that the accrued entitlement had on the date of the disposal.

Defined in this Act: accrued entitlement, consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 38

EW 39 Consideration affected by unfavourable factors

When this section applies

(1) This section applies when—

(a) a person is a party to a financial arrangement; and

(b) the person has an accrued entitlement under the arrangement; and

(c) the person disposes of the arrangement; and

(d) the consideration for the disposal is affected by any of the following factors:

(i) a decline in the other party's creditworthiness between the date on which the arrangement was entered into and the date of the disposal; or

(ii) an increase, between the date on which the arrangement was entered into and the date of the disposal, in the possibility that the other party will not meet an obligation under the arrangement; or

(iii) the occurrence of an event reducing or cancelling the other party's obligations under the arrangement.

Exclusion

(2) This section does not apply when—

(a) the person's business includes holding or dealing in financial arrangements of the class disposed of; and

(b) the parties to the arrangement disposed of are not associated persons.

Consideration is market value

(3) The person is treated as having been paid the market value that the accrued entitlement had on the date of the disposal, as if

the consideration had not been affected by a factor described in subsection (1)(d).

Defined in this Act: accrued entitlement, associated person, business, consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 40

Consideration treated as paid by person

EW 40 Consideration when person exits from rules: accrued obligation

When this section applies

(1) This section applies when—

(a) a person is a party to a financial arrangement; and

(b) 1 of the following situations arises:

(i) the person ceases to be resident in New Zealand and is not a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or

(ii) the person, not resident in New Zealand, ceases to be a party to the arrangement for the purpose of a business carried on by them through a fixed establishment in New Zealand; or

(iii) the person starts using the arrangement for a private or domestic purpose and so it becomes an excepted financial arrangement described in any of section EW 5(18) to (20); and

(c) at the time the situation arises, the person has an accrued obligation to pay consideration under the arrangement.

Relief and consideration

(2) The person is treated as having been relieved of the accrued obligation immediately before the situation arose and as having paid the market value that a contract to assume the obligation had at that time.

Defined in this Act: accrued obligation, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, pay, resident in New Zealand

Compare: 2004 No 35 s EW 41

EW 41 Consideration when person enters rules: accrued entitlement

When this section applies

(1) This section applies to a person who is a party to a financial arrangement if, when the person has an accrued entitlement to receive consideration under the arrangement, 1 or more of the following situations arise:

(a) the person is a non-resident who becomes a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(b) the person is a non-resident who—

(i) becomes a New Zealand resident who is not a transitional resident; and

(ii) is not, immediately before becoming a New Zealand resident, a party to the arrangement for the purpose of a business carried on by the person through a fixed establishment in New Zealand:

(c) the person is a transitional resident for whom the arrangement ceases to be an excepted financial arrangement described in section EW 5(17):

(d) the person is a transitional resident who becomes a New Zealand resident who is not a transitional resident, resulting in the arrangement ceasing to be an excepted financial arrangement described in section EW 5(17):

(e) the person stops using the arrangement for a private or domestic purpose, resulting in the arrangement ceasing to be an excepted financial arrangement described in any of section EW 5(18) to (20).

Acquisition and consideration

(2) The person is treated as having acquired the accrued entitlement immediately after the situation arose and as having paid the market value that the accrued entitlement had at that time.

Defined in this Act: accrued entitlement, business, consideration, excepted financial arrangement, financial arrangement, fixed establishment, New Zealand, New Zealand resident, non-resident, pay, transitional resident

Compare: 2004 No 35 s EW 42

EW 42 Consideration when acquisition for no, or inadequate, consideration

When this section applies

(1) This section applies when—

(a) a person becomes a party to a financial arrangement; and

(b) the person acquires an entitlement under the arrangement—

(i) not for monetary consideration; or

(ii) for a consideration that is less than the market value of the entitlement on the date of the acquisition.

Consideration is market value

(2) The person is treated as having paid the market value that the entitlement had on the date of the acquisition.

Defined in this Act: consideration, financial arrangement, pay

Compare: 2004 No 35 s EW 43

EW 43 Consideration when debt sold at discount to associate of debtor

When this section applies

(1) This section applies when a creditor sells a debt on or after 20 May 1999 to a person associated with the debtor and at a discount.

At a discount

(2) A creditor sells a debt at a discount if the creditor sells it for 80% or less of the market value of the debt.

Market value

(3) The market value of a debt affected by any of the following factors is determined as if its market value were not affected by the factor. The factors are—

(a) the occurrence of an event reducing or cancelling the debtor's obligations under the debt; or

(b) the occurrence of 1 of the following between the date on which the debt was entered into and the date of the disposal:

(i) a decline in the debtor's creditworthiness; or

(ii) an increase in the possibility that the debtor will not meet an obligation under the debt.

Consideration

(4) The debtor is treated as having paid the creditor the amount that the person associated with the debtor pays the creditor.

Defined in this Act: amount, associated person, consideration, pay

Compare: 2004 No 35 s EW 45

Section EW 43(1): amended, on 1 April 2010, by section 21 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 43 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 44 Consideration when debt forgiven for natural love and affection

When this section applies: first case

(1) This section applies when—

(a) a person is a debtor; and

(b) the creditor is a natural person; and

(c) the creditor forgives the debtor's debt because of the natural love and affection the creditor has for the debtor.

When this section applies: second case

(2) This section also applies when—

(a) a trust is a debtor; and

(b) the trust was established mainly to benefit 1 or both of the following:

(i) a natural person for whom the creditor has natural love and affection:

(ii) an organisation or a trust whose income is exempt under section CW 41 (Charities: non-business income) or CW 42 (Charities: business income); and

(c) the creditor is a natural person; and

(d) the creditor forgives the debtor's debt.

Two points about subsections (1) and (2)

(3) For the purposes of subsections (1) and (2),—

(a) the debtor's debt includes an amount accrued and unpaid at the time of the forgiveness; and

(b) the means by which the debt is forgiven, whether in a will or otherwise, is immaterial.

Consideration

(4) The debtor is treated as having paid the debt on the date on which the creditor forgives it.

Defined in this Act: amount, consideration, income, pay

Compare: 2004 No 35 s EW 46

EW 45 Consideration when debtor released from obligation

When this section applies

(1) This section applies when—

(a) a person is released from the obligation to pay an amount owing under a financial arrangement; and

(b) the release occurs under—

(i) section 304 of the Insolvency Act 2006; or

(ii) any of the Inland Revenue Acts; or

(iii) a loan described in subsection (2).

Social assistance suspensory loan

(2) A loan referred to in subsection (1)(b)(iii) is a loan that—

(a) is made by a department or instrument of the executive government of New Zealand; and

(b) provides for the person's liability to pay to be wholly or partly remitted if they meet conditions intended to promote a social policy objective of the government of New Zealand; and

(c) is of a class declared by the Governor-General by Order in Council to be a social assistance suspensory loan.

Declaration as social assistance suspensory loan

(3) The Governor-General may make an Order in Council declaring a class of loan that meets the criteria in subsection (2) to be a social assistance suspensory loan.

Consideration

(4) The person is treated as having paid the amount owing on the date on which they are released from the obligation to pay it.

Defined in this Act: amount, consideration, financial arrangement, Inland Revenue Acts, New Zealand, pay

Compare: 2004 No 35 s EW 47

EW 46 Consideration when debtor released as condition of new start grant

When this section applies

(1) This section applies when in an income year of a person—

(a) the person carries on a business of—

(i) animal husbandry:

(ii) poultry-keeping:

(iii) beekeeping:

(iv) breeding horses other than bloodstock:

(v) horticulture:

(vi) cropping; and

(b) the person is paid a new start grant for the business for an event that is declared to be an emergency event; and

(c) the person incurs a liability to make a payment under a financial arrangement—

(i) in carrying on the business; and

(ii) before the declaration of the emergency event; and

(d) the liability is forgiven or otherwise remitted—

(i) as a prerequisite for the payment of the new start grant; and

(ii) before the date that is 18 months after the end of the period for which the declaration applies; and

(e) in the absence of this section, the amount of the remitted liability would be income of the person.

Consideration

(2) The person is treated as having paid, on the date on which the liability is forgiven or remitted, the part of the amount owing that is the greater of zero and the amount calculated using the formula—

remitted amount - current loss - loss balance - other loss.

Definition of items in formula

(3) In the formula,—

(a) **remitted amount** is the amount of the remitted liability:

(b) **current loss** is the tax loss that the person would have for the income year in which the liability is remitted in the absence of this section:

(c) **loss balance** is the amount of loss balance that the person may subtract from their net income for the income year in which the liability is remitted:

(d) **other loss** is a loss that—

(i) is incurred by a person associated with the person who receives the new start grant; and

(ii) meets the requirements of subsection (4).

Loss incurred by associated person from business or land

(4) The loss referred to in subsection (3)(d)—

(a) is incurred by a person who—

(i) carries on or has carried on the business for which the new start grant is paid or owns or has owned an estate in fee simple or leasehold estate in land used in the business; and

(ii) in the opinion of the Commissioner, is under a substantial degree of control by the person; and

(iii) in the opinion of the Commissioner, has a substantial identity of interests with the person; and

(b) is incurred in relation to—

(i) the business referred to in paragraph (a)(i):

(ii) land that is used in the business; and

(c) is, for the income year in which the liability is remitted,—

(i) a tax loss of the associated person:

(ii) a loss balance for the associated person; and

(d) is included in the calculation in subsection (3) to an extent to which the Commissioner determines, having regard to the interests of the associated person that are separate from those of the person.

Notice to associated person

(5) The Commissioner must give the associated person notice of a determination under subsection (4)(d).

Defined in this Act: associated person, business, Commissioner, deduction, diminished value, emergency event, income, income year, loss balance, notice, pay, tax loss

Compare: 2004 No 35 s EW 47B

Section EW 46(1): substituted, on 6 October 2009, by section 148(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 46 list of defined terms **emergency event**: inserted, on 6 October 2009, by section 148(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EW 46 list of defined terms **qualifying event**: repealed, on 6 October 2009, by section 148(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 46B Consideration when party changes from fair value method

When this section applies

(1) This section applies when a party to a financial arrangement—

(a) changes from the fair value method to another method; and

(b) is required under section EW 29(13) to calculate a base price adjustment at the end of the first income year for which the replacement method is used for the financial arrangement.

Consideration

(2) The person is treated as having been paid an amount equal to the market value of the financial arrangement at the end of the first income year for which the replacement method is used for the financial arrangement.

Defined in this Act: amount, fair value method, financial arrangement

Compare: 2004 No 35 s EW 48B

Section EW 46B: inserted, on 1 April 2008, by section 380 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EW 46B(1)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 35(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EW 46B(2): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 35(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Consideration when legal defeasance has occurred

EW 47 Legal defeasance

When this section applies

(1) This section applies when—

(a) the obligations of a financial arrangement were the subject of a legal defeasance that required another person

to meet the remaining obligations of the arrangement; and

(b) the person who has a right to receive money under the arrangement is now required by section EW 29 to calculate a base price adjustment for it.

Consideration

(2) The consideration received by the person who has a right to receive money under the arrangement is the total of—

(a) the amounts received from the original debtor; and

(b) the amounts received from the person required to meet the remaining obligations.

Defined in this Act: amount, consideration, financial arrangement, legal defeasance, money

Compare: 2004 No 35 s EW 48

Consideration when anti-avoidance provision applies

EW 48 Anti-avoidance provisions

When this section applies

(1) This section applies when it is necessary to determine the consideration that is paid to or by a person in a case to which any of the following provisions applies:

(a) section GB 21 (Dealing that defeats intention of financial arrangements rules); or

(b) section GC 7 (Excess amount payable by person); or

(c) section GC 8 (Insufficient amount receivable by person).

Consideration

(2) The consideration is the amount determined under the relevant provision.

Defined in this Act: amount, consideration, pay

Compare: 2004 No 35 s EW 49

Income and deduction provisions specifically related to financial arrangements

EW 49 Income and deduction when debt sold at discount to associate of debtor

When this section applies

(1) This section applies when a creditor sells a debt on or after 20 May 1999 to a person associated with the debtor and at a discount.

At a discount

(2) A creditor sells a debt at a discount if the creditor sells it for 80% or less of the market value of the debt.

Market value

(3) The market value of a debt affected by any of the following factors is determined as if its market value were not affected by the factor. The factors are—

(a) the occurrence of an event reducing or cancelling the debtor's obligations under the debt; or

(b) the occurrence of 1 of the following between the date on which the debt was entered into and the date of the disposal:

(i) a decline in the debtor's creditworthiness; or

(ii) an increase in the possibility that the debtor will not meet an obligation under the debt.

Original debt replaced with interest-free loan

(4) The associated person is treated as having provided the debtor with an interest-free loan for the amount paid for the debt.

Repayment: income and deduction

(5) If the debtor later repays the person associated with the debtor more than the amount the associated person paid for the debt, the excess amount paid by the debtor is—

(a) income, under section CC 3(1) (Financial arrangements), of the person associated with the debtor; and

(b) a deduction that the debtor is allowed under section DB 13(1) (Repayment of debt sold at discount to associate of debtor).

Defined in this Act: amount, associated person, deduction, income, pay

Compare: 2004 No 35 s EW 50

Section EW 49(1): amended, on 1 April 2010, by section 22 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EW 49 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EW 50 Income when debt forgiven to trustee

When this section applies

(1) This section applies when—

(a) a trust is a debtor; and

(b) the trust was established mainly to benefit 1 or both of the following:

(i) a natural person for whom the creditor has natural love and affection; or

(ii) an organisation or a trust whose income is exempt under section CW 41 (Charities: non-business income) or CW 42 (Charities: business income); and

(c) the creditor is a natural person; and

(d) the creditor forgives the debtor's debt; and

(e) a trustee of the trust makes a distribution, including a distribution of beneficiary income, to a beneficiary; and

(f) the beneficiary is—

(i) not a natural person for whom the creditor has natural love and affection; and

(ii) not an organisation or a trust whose income is exempt under section CW 41 or CW 42; and

(g) the distribution is made on or after 20 May 1999.

Exclusion

(2) This section does not apply when—

(a) a trust (**trust A**) is a debtor; and

(b) trust A was established mainly to benefit 1 or both of the following:

(i) a natural person for whom the creditor has natural love and affection; or

(ii) an organisation or a trust whose income is exempt under section CW 41 or CW 42; and

(c) the creditor is a natural person; and

(d) the creditor forgives the debtor's debt; and

(e) a trustee of the trust makes a distribution to another trust (**trust B**); and

(f) at the time the distribution is made, trust B is also established mainly to benefit 1 or both of the following:

(i) a natural person for whom the creditor has natural love and affection; or

(ii) an organisation or a trust whose income is exempt under section CW 41 or CW 42.

Two points about subsections (1) and (2)

(3) For the purposes of subsections (1) and (2),—

(a) the debtor's debt includes an amount accrued and unpaid at the time of the forgiveness; and

(b) the means by which the debt is forgiven, whether in a will or otherwise, is immaterial.

Distribution is income of trustee

(4) The distribution is income of the trustee, under section CC 3(2) (Financial arrangements), to the extent to which it is less than or equal to the total amount of the debts of the trust forgiven to it by the creditor.

Distribution subtracted from total amount forgiven

(5) The distribution is subtracted from the total amount of the debts of the trust forgiven to it by the creditor as the total amount stands at the time of the distribution.

Timing

(6) The income is derived by the trustee in the income year in which the distribution is made.

Application of Tax Administration Act 1994

(7) Section 22B of the Tax Administration Act 1994 applies to a trustee to whom this section applies.

Defined in this Act: amount, beneficiary income, distribution, income, income year, pay, trustee

Compare: 2004 No 35 s EW 51

EW 51 Deduction for security payment

When subsection (2) applies: loss generally

(1) Subsection (2) applies when a person is allowed a deduction under section DB 14(2) (Security payment).

Amount of deduction

(2) The person is allowed a deduction no greater than the amount of the security payment.

When subsection (4) applies: share loss

(3) Subsection (4) applies when a person is allowed a deduction under section DB 14(4).

Amount of deduction

(4) The person is allowed a deduction no greater than the amount of the security payment.

Defined in this Act: amount, deduction, pay, security payment

Compare: 2004 No 35 s EW 52

Treatment of original share acquired under financial arrangement

EW 52 Share supplier under share-lending arrangement

When this section applies

(1) This section applies to a person who—

(a) acquires a share under a financial arrangement (the **original financial arrangement**); and

(b) is the share supplier for a share-lending arrangement; and

(c) disposes of the share to the share user as an original share under the share-lending arrangement.

Treatment of reacquisition of original share

(2) If the person reacquires the original share under the share-lending arrangement, for the purposes of applying the financial arrangements rules to the original financial arrangement,—

(a) the person did not dispose of the original share to the share user; and

(b) the person continued to own the original share until the time that the person reacquired the original share.

Treatment of acquisition of replacement share

(3) If the person acquires an identical share under the share-lending arrangement, for the purposes of the financial arrangements rules in relation to the original financial arrangement,—

(a) the identical share is the share that the person acquired under the original financial arrangement; and

(b) the person continued to own the identical share until the time that the person acquired the replacement share.

Defined in this Act: financial arrangement, financial arrangements rules, identical share, original share, share, share-lending arrangement, share supplier, share user

Compare: 2004 No 35 s EW 52B

One kind of avoidance

EW 53 Adjustment required

When this section applies

(1) This section applies when—

(a) the terms of a financial arrangement give either party, both parties, or an associated person the discretion to decide on an amount payable under the arrangement; and

(b) it is not generally accepted commercial practice to make financial arrangements containing such terms; and

(c) a change in the amount brought about by the exercise of the discretion does not reflect changes in commodity, economic, financial, or industrial indices, or in banking or general commercial rates; and

(d) the effect of the financial arrangement is to defeat the intention of the financial arrangements rules.

Parties to calculate adjustment

(2) Each person who is a party to the financial arrangement must calculate an adjustment for the income years specified in subsection (3) by following the steps in subsections (4) to (6).

Income years

(3) The adjustment must be calculated for the following income years:

(a) until the person ceases to be a party, the fifth income year after the income year in which the parties entered into the financial arrangement and every fifth income year after that; and

(b) the income year in which the person ceases to be a party.

First step

(4) The first step the person takes is to calculate income or expenditure under the financial arrangement for each income

year using the yield to maturity method in the manner prescribed by the Commissioner in a determination under section 90AC(1)(a) of the Tax Administration Act 1994.

Consideration and amounts to be included at first step

(5) The person must include the following amounts in the calculation:

(a) for every income year for which the calculation is made, as described in subsection (3), the consideration and amounts described in section EW 15 for the period starting on the date on which the person became a party to the financial arrangement and ending on the last day of the income year for which the calculation is made; and

(b) for every fifth income year, as described in subsection (3)(a),—

(i) an amount equal to the financial arrangement's market value on the last day of the income year, as if the person had disposed of the arrangement for that amount; or

(ii) if the financial arrangement has no market value, the amount that might reasonably be expected to be paid on a disposal at arm's length.

Second step

(6) The second step the person takes is to calculate the income tax liability for each income year using the income or expenditure calculated under subsections (4) and (5) in substitution for the income or expenditure previously calculated for the financial arrangement for each income year.

Defined in this Act: amount, associated person, Commissioner, consideration, financial arrangement, financial arrangements rules, income, income tax liability, income year, pay, prescribed

Compare: 2004 No 35 s EW 53

Application of financial arrangements rules to cash basis persons

EW 54 Meaning of cash basis person

Who is cash basis person

(1) A person is a **cash basis person** for an income year if—

(a) 1 of the following applies in the person's case for the income year:
  (i) section EW 57(1); or
  (ii) section EW 57(2); and
(b) section EW 57(3) applies in the person's case for the income year.

Persons excluded by Commissioner

(2) A person may be excluded under section EW 59 from being a cash basis person for a class of financial arrangements.

Defined in this Act: cash basis person, financial arrangement, income year

Section EW 54: substituted, on 1 April 2009, by section 9(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 55 Effect of being cash basis person

Use of spreading method

(1) A cash basis person is not required to apply any of the spreading methods to any of their financial arrangements, but may choose to do so under section EW 61.

Calculation of base price adjustment

(2) The fact that a cash basis person does not use any of the spreading methods for the financial arrangement does not excuse them from the requirement to calculate a base price adjustment when any of section EW 29(1) to (12) applies to them.

Defined in this Act: cash basis person, financial arrangement, spreading method

Compare: 2004 No 35 s EW 55

EW 56 Natural person

[Repealed]

Section EW 56: repealed, on 1 April 2009, by section 10(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 57 Thresholds

Income and expenditure threshold

(1) For the purposes of section EW 54(1)(a)(i), this subsection applies if the absolute value of the person's income and expenditure in the income year under all financial arrangements to which the person is a party is $100,000 or less.

Absolute value threshold

(2) For the purposes of section EW 54(1)(a)(ii), this subsection applies if, on every day in the income year, the absolute value of all financial arrangements to which the person is a party added together is $1,000,000 or less. The value of each arrangement is,—

(a) for a fixed principal financial arrangement, its face value:

(b) for a variable principal debt instrument, the amount owing by or to the person under the financial arrangement:

(c) for a financial arrangement to which the old financial arrangements rules apply, the value determined under those rules.

Deferral threshold

(3) For the purposes of section EW 54(1)(b), this subsection applies if the result of applying the formula in subsection (4) to each financial arrangement to which the person is a party at the end of the income year and adding the outcomes together is $40,000 or less.

Formula

(4) The formula is—

(accrual income - cash basis income) + (cash basis expenditure - accrual expenditure).

Definition of items in formula

(5) The items in the formula are defined in subsections (6) to (9).

Accrual income

(6) **Accrual income** is the amount that would have been income derived by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. It is calculated using 1 of the following methods, as chosen by the person:

(a) the yield to maturity method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(b) the straight-line method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(c) an alternative method approved by the Commissioner.

Cash basis income

(7) **Cash basis income** is the amount that would have been income derived by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Cash basis expenditure

(8) **Cash basis expenditure** is the amount that would have been expenditure incurred by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Accrual expenditure

(9) **Accrual expenditure** is the amount that would have been expenditure incurred under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made. It is calculated using 1 of the following methods, as chosen by the person:

(a) the yield to maturity method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(b) the straight-line method, whether or not the person may use it, or has chosen to use it, for their financial arrangement; or

(c) an alternative method approved by the Commissioner.

Increase in specified sums

(10) The Governor-General may make an Order in Council increasing a sum specified in any of subsections (1) to (3).

Defined in this Act: absolute value, amount, cash basis person, Commissioner, financial arrangement, fixed principal financial arrangement, income, income

year, old financial arrangements rules, spreading method, variable principal debt instrument

Compare: 2004 No 35 s EW 57

Section EW 57(1): amended, on 1 April 2009, by section 11(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 57(2): amended, on 1 April 2009, by section 11(2) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 57(3): amended, on 1 April 2009, by section 11(3) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 57(10) heading: added, on 1 April 2009, by section 11(4) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 57(10): added, on 1 April 2009, by section 11(4) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 58 Financial arrangements, income, and expenditure relevant to criteria

Inclusions in and exclusions from thresholds

(1) The calculations required by section EW 57(1) to (3) are done for every financial arrangement to which the person is a party or, as the relevant subsection requires, to income and expenditure under such an arrangement, whether the financial arrangements rules or the old financial arrangements rules apply to the arrangement. Two qualifications are—

(a) the calculations include an arrangement, or income and expenditure, to which subsection (2) or (3) applies only to the extent of the person's interest in it, as described in each subsection; and

(b) the calculations exclude the value of an arrangement, and income and expenditure, in which the person has the interest described in subsection (4) or (5).

Natural person who is partner

[Repealed]

(2) *[Repealed]*

Beneficiary of bare trust

(3) This subsection applies when the trustee of a bare trust is a party to a financial arrangement. A person who is a beneficiary of the bare trust—

(a) is treated as a party to the arrangement to the extent of the beneficiary's share of the beneficial interest in the arrangement; and

(b) is treated as deriving income or incurring expenditure under the arrangement to the extent of the beneficiary's share of the beneficial interest in the arrangement.

Beneficiary of trust other than bare trust

(4) This subsection applies when a person is a beneficiary of a trust, other than a bare trust, whose trustee is a party to a financial arrangement. The following are excluded from the calculations required by section EW 57(1) to (3):

(a) the value of the arrangement, if it produces trustee income or beneficiary income under the trust rules; and

(b) income under the arrangement that is trustee income or beneficiary income under the trust rules.

Trustee

(5) This subsection applies when a person is a party to a financial arrangement as a trustee. The following are excluded from the calculations required by section EW 57(1) to (3):

(a) the value of the arrangement, if it produces trustee income or beneficiary income under the trust rules; and

(b) income under the arrangement that is trustee income or beneficiary income under the trust rules; and

(c) the value of the arrangement, if expenditure is incurred under it; and

(d) expenditure incurred under the arrangement.

Defined in this Act: beneficiary income, financial arrangement, financial arrangements rules, income, old financial arrangements rules, return of income, trust rules, trustee, trustee income

Compare: 2004 No 35 s EW 58

Section EW 58(1): amended, on 1 April 2009, by section 12(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 58(2) heading: repealed, on 1 April 2008, by section 13(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section EW 58(2): repealed, on 1 April 2008, by section 13(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section EW 58(3) heading: substituted, on 1 April 2009, by section 12(2)(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 58(3): amended, on 1 April 2009, by section 12(2)(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 58(4) heading: substituted, on 1 April 2009, by section 12(3)(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 58(4): amended, on 1 April 2009, by section 12(3)(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 58(5) heading: substituted, on 1 April 2009, by section 12(4)(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 58(5): amended, on 1 April 2009, by section 12(4)(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 59 Exclusion by Commissioner

The Commissioner may treat a person who would otherwise be a cash basis person for a class of financial arrangements as not being a cash basis person for the class if—

(a) the person, or any other person, has structured and promoted the class to defer an income tax liability:

(b) the parties to a financial arrangement are associated, and the person's calculation of income and expenditure under the financial arrangement differs from that used by the associated person.

Defined in this Act: associated person, cash basis person, Commissioner, financial arrangement, income, income tax liability

Section EW 59: substituted, on 1 April 2009, by section 13(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 60 Trustee of deceased's estate

When trustee of estate is cash basis person

(1) A trustee of a deceased's estate is a cash basis person for financial arrangements in the estate in the circumstances described in subsection (2) for the period described in subsection (3).

Circumstances

(2) The circumstances are that, at the time of the deceased's death,—

(a) the deceased is a cash basis person; and

(b) the financial arrangements in the deceased's estate meet the requirements of section EW 54(1)(a) and (b).

Period

(3) The period is the income year in which the deceased dies and in each of the 4 following income years. However, if at any time in those 5 income years the financial arrangements in the deceased's estate cease to meet the requirements of section EW 54(1)(a) and (b), the trustee ceases to be a cash basis person for financial arrangements in the estate and cannot again be a cash basis person for them.

Modifications to be read in

(4) For the purposes of this section, sections EW 54 and EW 55 are read with the modifications necessary to make them refer to the case of a deceased estate.

Defined in this Act: cash basis person, financial arrangement, income year, trustee

Compare: 2004 No 35 s EW 60

Section EW 60(2)(b): amended, on 1 April 2009, by section 14(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 60(3): amended, on 1 April 2009, by section 14(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section EW 60(4): amended, on 1 April 2009, by section 14(2) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

EW 61 Election to use spreading method

Election of spreading method

(1) A cash basis person may choose to use a spreading method, unless subsection (2) applies.

Election not allowed

(2) A cash basis person may not choose to use a spreading method for a financial arrangement in the income year in which section EW 29 requires them to calculate a base price adjustment for the arrangement.

How election made

(3) The person makes the election by calculating a cash basis adjustment under section EW 62(1).

Effect of election

(4) The person must use a spreading method for—

(a) all financial arrangements to which the person is a party at the time of making the election; and

(b) all financial arrangements the person enters into after the income year in which they make the election.

How election revoked

(5) The person revokes the election by giving notice to the Commissioner with a return of income and within the time that the return must be filed under section 37 of the Tax Administration Act 1994.

Effect of revocation

(6) The revocation applies to all financial arrangements the person enters into after the income year in which the notice is given.

Defined in this Act: cash basis person, Commissioner, financial arrangement, income year, notice, return of income, spreading method

Compare: 2004 No 35 s EW 61

EW 62 When and how calculation of cash basis adjustment required

Choosing spreading method

(1) A cash basis person who chooses to use a spreading method must calculate a cash basis adjustment for the income year in which they choose to use a spreading method as if they had ceased to be a cash basis person.

Person becoming cash basis person

(2) A person who becomes a cash basis person in an income year must calculate a cash basis adjustment for a financial arrangement to which they—

(a) are a party at the end of the income year; and

(b) were a party at the end of the previous income year.

Exclusions

(3) However,—

(a) a person who becomes a cash basis person in an income year and who chooses to continue using a spreading method in the income year must not calculate a cash basis adjustment; and

(b) a person who becomes a cash basis person in an income year must not calculate a cash basis adjustment for a financial arrangement that is already being accounted for on a cash basis.

Person ceasing to be cash basis person

(4) A person who ceases to be a cash basis person in an income year must calculate a cash basis adjustment for a financial arrangement to which they—

(a) are a party at the end of the income year; and

(b) were a party at the end of the previous income year.

Exclusion

(5) However, a person who ceases to be a cash basis person must not calculate a cash basis adjustment for a financial arrangement that is already subject to a spreading method.

Person not cash basis person if adjustment not made

(6) A person who would be a cash basis person for a financial arrangement if they calculated a cash basis adjustment for it, and who does not calculate the adjustment, is not a cash basis person for the arrangement.

Cash basis adjustment

(7) A person calculates a cash basis adjustment using the formula in section EW 63.

Adjustment is income or expenditure

(8) The only income or expenditure under the financial arrangement for the income year to which the formula is applied is the cash basis adjustment.

Positive or negative cash basis adjustment

(9) A cash basis adjustment is,—

(a) if positive, income, under section CC 3(1) (Financial arrangements), derived by the person in the income year for which the calculation is made:

(b) if negative, expenditure incurred by the person in the income year for which the calculation is made.

Defined in this Act: cash basis person, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 62

EW 63 Cash basis adjustment formula

Formula

(1) A person calculates a cash basis adjustment using the formula—

adjusted income - adjusted expenditure - previous income + previous expenditure.

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (6).

Adjusted income

(3) **Adjusted income** is,—

(a) for a person who becomes a cash basis person, the amount that would have been income derived by the person under the financial arrangement if the person had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made; and

(b) for a person who ceases to be a cash basis person, the amount that would have been income derived by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Adjusted expenditure

(4) **Adjusted expenditure** is,—

(a) for a person who becomes a cash basis person, the amount that would have been expenditure incurred by the person under the financial arrangement if they had been a cash basis person in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made; and

(b) for a person who ceases to be a cash basis person, the amount that would have been expenditure incurred by the person under the financial arrangement if the person had been required to use a spreading method in the period starting on the date on which they became a party to the arrangement and ending on the last day of the income year for which the calculation is made.

Previous income

(5) **Previous income** is income derived by the person under the financial arrangement in earlier income years.

Previous expenditure

(6) **Previous expenditure** is expenditure incurred by the person under the financial arrangement in earlier income years.

Defined in this Act: amount, cash basis person, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s EW 63

Subpart EX—Controlled foreign company and foreign investment fund rules

Controlled foreign company (CFC) rules

When is a company a controlled foreign company?

EX 1 Meaning of controlled foreign company

Tests of control

(1) A foreign company is a **controlled foreign company (CFC)** if any of the following tests is met:

(a) there is a group of 5 or fewer New Zealand residents whose total control interests in the company are more than 50% in any one of the control interest categories:

(b) a single New Zealand resident holds a control interest of 40% or more unless at the same time—

(i) the person's control interest is less than or equal to a control interest in the same category held by another person; and

(ii) the other person is not a New Zealand resident; and

(iii) the other person is not associated with the New Zealand resident:

(c) there is a group of 5 or fewer New Zealand residents who can control the exercise of the shareholder decision-making rights for the company and, as a result, control the company's affairs.

Exception

(2) Even if a test in subsection (1) is met, a foreign company is not a CFC if—

(a) the foreign company is a foreign PIE equivalent; and

(b) 1 of the New Zealand residents is—

(i) a portfolio investment entity:

(ii) an entity that qualifies for PIE status:

(iii) a life insurance company.

Status applies for whole accounting period

(3) If any of the tests in subsection (1) is met at any time in a foreign company's accounting period and the exception in sub-

section (2) does not apply at the time, the company is treated as a CFC for the whole of the accounting period.

Defined in this Act: accounting period, associated person, CFC, company, control interest, control interest category, foreign company, foreign investment vehicle, life insurance, New Zealand resident, portfolio investment entity, shareholder decision-making right

Compare: 2004 No 35 s EX 1

Section EX 1(1)(b)(i): substituted (with effect on 1 April 2008), on 7 September 2010, by section 42(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EX 1(2): amended, on 1 April 2008, by section 381 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 1(2)(a): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 149(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 1(2)(b)(ii): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 149(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 1 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculation of person's control interest

EX 2 Four categories for calculating control interests

Separate categories

(1) Under section EX 5(1), a direct **control interest** in a foreign company can arise in each of 4 separate categories of rights.

List of categories

(2) The 4 categories are—

(a) shareholding in the foreign company:

(b) shareholder decision-making rights for the foreign company:

(c) rights to receive income from the foreign company:

(d) rights to receive distributions of the company's net assets.

Detailed calculation rules

(3) In each category, more detailed calculation rules appear in section EX 5.

Four categories of control interests

(4) Accordingly, the rules in section EX 3 for calculating control interests by totalling various direct and indirect control inter-

ests and associated parties' interests are applied on a category by category basis, by reference to those categories of direct control interest.

Defined in this Act: associated person, control interest, direct control interest, foreign company, income, shareholder decision-making right

Compare: 2004 No 35 s EX 2

EX 3 Control interest: total of direct, indirect, and associated person interests

Calculation of control interest

(1) A New Zealand resident's control interest in a foreign company at any time is the total of the following for the relevant control interest category:

- (a) any direct control interest that the New Zealand resident holds in the company:
- (b) any direct control interests in the company held by persons associated with the New Zealand resident:
- (c) any indirect control interests that the New Zealand resident holds in the company:
- (d) any indirect control interests in the company held by persons associated with the New Zealand resident.

Avoidance arrangements: first kind

(2) Section GB 7 (Arrangements involving CFC control interests) may apply to treat a control interest as being held by a group of New Zealand residents in equal proportions.

Avoidance arrangements: other kinds

(3) Any of the following sections may apply to the calculation of a person's control interest:

- (a) section GB 9 (Temporary disposals of direct control or income interests):
- (b) section GB 10 (Temporary acquisitions of direct control or income interests):
- (c) section GB 11 (Temporary increases in totals for control interest categories):
- (d) section GB 12 (Temporary reductions in totals for control interest categories):
- (e) section GB 13 (When combination of changes reduces income):

(f) section GB 14 (When combination of changes increases loss).

Defined in this Act: associated person, control interest, direct control interest, foreign company, New Zealand resident

Compare: 2004 No 35 ss EX 3, GC 7, GC 9

EX 4 Limits to requirement to include associated person interests

Non-resident relatives

(1) For the purposes of section EX 3, a New Zealand resident is associated with a non-resident relative only if the New Zealand resident holds a direct control interest or indirect control interest in the foreign company.

No double counting

(2) Despite section EX 3(1)(b) and (d), for the purposes of determining whether a foreign company is a CFC, a direct control interest or indirect control interest may be counted only once.

Defined in this Act: associated person, CFC, control interest, direct control interest, foreign company, New Zealand resident, non-resident, relative

Compare: 2004 No 35 s EX 4

EX 5 Direct control interests

Categories of direct control interests

(1) A person has a **direct control interest** in a foreign company at any time if they hold—

(a) any of the shares in the foreign company:

(b) any of the shareholder decision-making rights for the company:

(c) a right to receive, or to control the application of, any of the income of the company for the accounting period in which the time falls:

(d) a right to receive, or to control the application of, any of the value of the net assets of the company, if they are distributed.

Percentage of total is counted

(2) The direct control interest in each control interest category is the percentage of the total that the person holds.

Measurement of available subscribed capital

(3) When the direct control interest in the category in subsection (1)(a) is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company.

Varying decision-making rights

(4) When the direct control interest in the category in subsection (1)(b) is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in section YA 1 (Definitions), the highest percentage is taken.

Income distribution rights: assumptions

(5) When the direct control interest in the category in subsection (1)(c) is calculated, it is assumed that—

(a) the income is distributed on the last day of the accounting period; and

(b) the person's entitlement is unchanged during the period; and

(c) a payment of interest on a debenture subject to section FA 2 (Recharacterisation of certain debentures), FA 2B (Stapled debt securities), or FZ 1 (Treatment of interest payable under debentures issued before certain date) is a distribution of income.

Defined in this Act: accounting period, available subscribed capital, control interest category, direct control interest, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 5

Section EX 5(5)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 150 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 6 Direct control interests include options and similar rights

Entitlement to acquire or extinguish

(1) For the purposes of section EX 5, a person is treated as holding something if they are entitled to acquire it or extinguish it.

Entitlement arises in various ways

(2) A person is entitled to acquire or extinguish something if the entitlement is absolute or contingent and whether the entitlement—

(a) arises under a company's constitution; or

(b) arises under the terms of an option; or

(c) arises under the terms of a convertible note; or

(d) arises under the terms of any arrangement substantially similar to any of those described in paragraphs (a) to (c); or

(e) arises in some other way.

Standard security arrangements

(3) Despite subsections (1) and (2), a person is not treated as being entitled to acquire something if—

(a) the entitlement arises under a security arrangement; and

(b) the person acquired the security arrangement in a transaction entered into on an arm's length basis; and

(c) the security arrangement's terms conform to generally accepted commercial practice.

No double counting

(4) Despite subsections (1) and (2), for the purpose of determining whether a foreign company is a CFC, each of the percentage holdings described in section EX 5 may be counted only once.

Defined in this Act: arrangement, CFC, company, convertible note, direct control interest, foreign company, security arrangement

Compare: 2004 No 35 s EX 6

EX 7 Indirect control interests

How indirect control interests arise

(1) A person has an indirect **control interest** in a foreign company to the extent to which the rules in this section attribute to them some or all of the direct control interests held by a CFC in the foreign company.

Attribution of CFC's direct interests

(2) A CFC's direct control interest in another foreign company is attributed under subsections (3) to (11).

Associates

(3) For the purposes of this section, the CFC is treated as also holding any direct control interests in the foreign company held by persons associated with the CFC.

Attribution to smallest controlling group

(4) Subsections (6) to (11) apply to attribute the CFC's direct control interests to the smallest controlling group, to ensure that the attribution exercise does not dilute recognition of a factual chain of control.

Attribution on basis of respective income interests

(5) If the CFC's direct control interests are attributed to more than 1 person, the direct control interests are divided in proportion to each group member's respective income interest in the CFC.

One controlling group

(6) If there is only 1 group of New Zealand residents whose control interests have caused the CFC to be a CFC under section EX 1, the CFC's direct control interests are treated as being held by that group.

More than 1 group

(7) If there is more than 1 group whose control interests have caused the CFC to be a CFC under section EX 1, the CFC's direct control interests are attributed to the smallest group.

Equal smallest groups

(8) If there are 2 or more groups that are equally the smallest, and 1 group has the greatest total control interests in the CFC, the attribution is to that group.

Equal smallest groups with equal greatest control interests

(9) If there are 2 or more smallest groups with equal greatest total control interests in the CFC, the attribution is made in full to each group.

No double counting

(10) Despite subsection (9), for the purpose of determining whether a foreign company is a CFC, a direct control interest may be counted only once.

Sequential application

(11) If a foreign company becomes a CFC under this section, this section is then applied to attribute its direct control interests.

Defined in this Act: associated person, CFC, control interest, direct control interest, foreign company, income interest, New Zealand resident

Compare: 2004 No 35 s EX 7

Section EX 7 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculation of person's income interest

EX 8 Income interests: total of direct and indirect interests

Calculation of income interest

(1) A person's income interest in a CFC at any time is the total of the following:

(a) any direct income interest that the person holds in the CFC:

(b) any indirect income interest that the person holds in the CFC.

Avoidance arrangements

(2) Any of the following sections may apply to the calculation of a person's income interest:

(a) section GB 9 (Temporary disposals of direct control or income interests):

(b) section GB 10 (Temporary acquisitions of direct control or income interests):

(c) section GB 11 (Temporary increases in totals for control interest categories):

(d) section GB 12 (Temporary reductions in totals for control interest categories):

(e) section GB 13 (When combination of changes reduces income):

(f) section GB 14 (When combination of changes increases loss).

Defined in this Act: CFC, control interest category, direct control interest, direct income interest, income, income interest, indirect income interest

Compare: 2004 No 35 s EX 8

EX 9 Direct income interests

Categories of direct income interest

(1) A person has a **direct income interest** in a CFC at any time if they hold—

(a) any of the shares in the foreign company:

(b) any of the shareholder decision-making rights for the company:

(c) a right to receive, or to control the application of, any of the income of the company for the accounting period in which the time falls:

(d) a right to receive, or to control the application of, any of the value of the net assets of the company, if they are distributed.

Percentage of total is counted

(2) The person's direct income interest is the percentage of the total that the person holds.

Varying percentages

(3) However, if the percentage varies between the different categories, the person's direct income interest is the highest.

Measurement of available subscribed capital

(4) When the direct income interest in the category in subsection (1)(a) is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company.

Varying decision-making rights

(5) When the direct income interest in the category in subsection (1)(b) is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in section YA 1 (Definitions), the highest percentage is taken.

Income distribution rights: assumptions

(6) When the direct income interest in the category in subsection (1)(c) is calculated, it is assumed that—

(a) the income is distributed on the last day of the accounting period; and

(b) the person's entitlement is unchanged during the period; and

(c) a payment of interest on a debenture subject to section FA 2 (Recharacterisation of certain debentures), FA 2B (Stapled debt securities), or FZ 1 (Treatment of interest payable under debentures issued before certain date) is a distribution of income.

Defined in this Act: accounting period, available subscribed capital, CFC, debentures, direct income interest, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 9

Section EX 9(6)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 151 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 10 Indirect income interests

Looking through CFCs

(1) If a person has a direct income interest in a CFC, and the first CFC has a direct income interest in another CFC, the person has an **indirect income interest** in the other CFC.

Calculation of indirect income interest

(2) The indirect income interest is calculated by multiplying the person's direct income interest in the first CFC by the first CFC's direct income interest in the other CFC.

Chains of CFCs

(3) If there are 2 or more CFCs in a chain of direct income interests between the person and a CFC, the person has an indirect income interest in the CFC at the end of the chain that is calculated by multiplying all the direct income interests in the chain.

Defined in this Act: CFC, direct income interest, indirect income interest

Compare: 2004 No 35 s EX 10

EX 11 Options and similar rights in certain cases

Increase in income interest

(1) The rules in this section apply to increase a person's income interest in a CFC (the **first CFC**) in some cases.

Entitlement to acquire

(2) This section applies when the person, or some other person, such as another CFC taken into account when calculating an

indirect income interest of the person in the first CFC, has at any time an entitlement (the **option**) to acquire 1 of the things listed in section EX 9(1) in relation to the first CFC but does not hold it.

Actual holder outside CFC rules attribution

(3) For this section to apply, the actual holder of the thing subject to the option must not be—

(a) another CFC:

(b) a New Zealand resident, unless they are a New Zealand resident whose income interest in the first CFC for the accounting period in question is less than 10% under sections EX 14 to EX 17.

Terms of option indicating economic ownership

(4) For this section to apply, the option must have 1 of the following features:

(a) in the absence of this section, the effect of the option would be to defeat the intent and application of subpart CQ (Attributed income from foreign equity) or DN (Attributed losses from foreign equity) or this subpart, taking into account the economic benefit that the person gets as a result of the CFC deriving income:

(b) the consideration payable for the exercise of the option is less than the market value of the thing acquired at the time of the acquisition:

(c) the holder of the option (or an associated person) has directly or indirectly funded or assisted the actual holder to acquire or hold the thing subject to the option.

Calculation as if option exercised

(5) If each requirement for this section to apply is met, the person's income interest is calculated as if the option holder had exercised the option.

Defined in this Act: accounting period, associated person, CFC, income, income interest, indirect income interest, New Zealand resident, pay

Compare: 2004 No 35 s EX 11

Section EX 11(3)(b): amended, on 1 April 2008, by section 382 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 12 Reduction of total income interests

Application of this section

(1) This section applies when the total income interests for a CFC for an accounting period would be more than 100%, because section EX 9(3) requires the highest percentage to be taken if varying percentage shareholder rights are held.

Proportional reduction

(2) Each person's income interest for the period is reduced to the amount calculated using the formula—

$$\text{income interest before reduction} \times \frac{100}{\text{total income interest before reduction.}}$$

Defined in this Act: accounting period, amount, CFC, income interest, shareholder

Compare: 2004 No 35 s EX 12

EX 13 Income interests of partners

[Repealed]

Section EX 13: repealed, on 1 April 2008, by section 14(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Ten percent threshold and variations in income interest level

EX 14 Attribution: 10% threshold

A person has attributed CFC income or attributed CFC loss from a CFC only if the person's income interest in the CFC is 10% or more for the relevant accounting period.

Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, income interest

Compare: 2004 No 35 s EX 14

EX 15 Associates and 10% threshold

Associates included

(1) For the purpose of applying the 10% threshold in sections CD 45, CQ 2, EX 14, EX 21, EX 34, and EX 58., a person's income interest in a CFC is increased by each income interest in the CFC, for the relevant accounting period, of a person associated with the person.

Exception

(2) Despite subsection (1), the income interest of an associate is not counted if the associate is a CFC.

Defined in this Act: accounting period, associated person, CFC, income interest

Compare: 2004 No 35 s EX 15

Section EX 15(1): substituted, on 1 April 2008, by section 383 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 15(1): amended (with effect on 30 June 2009), on 6 October 2009, by section 152(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 15(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 152(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 16 Income interests for certain purposes

When this section applies

(1) This section applies for the purposes of determining the attributed CFC income or loss of a person for a period if the person holds an income interest in the CFC on a day in the period.

Zero income interest

(2) For the purposes of calculating the attributed CFC income or loss of a person for a period, the person has an income interest in a CFC of zero on a day in the period if, on the day, the person is—

(a) a non-resident:

(b) a transitional resident.

Attribution not prevented

(3) This section does not override—

(a) section CD 21 (Attributed repatriations from controlled foreign companies), which treats a dividend resulting from attributed repatriation as being derived while the person deriving it is a New Zealand resident; or

(b) section CQ 2(3) (When attributed CFC income arises), which treats any attributed CFC income as being derived while the person deriving it is a New Zealand resident; or

(c) section CQ 5(4) (When FIF income arises), which treats any foreign investment fund (FIF) income as being de-

rived while the person deriving it is a New Zealand resident.

Defined in this Act: accounting period, attributed CFC income, attributed repatriation, CFC, dividend, FIF income, income interest, New Zealand resident, non-resident, transitional resident

Compare: 2004 No 35 s EX 16

EX 17 Income interest if variations within period

When this section applies

(1) This section applies when a person's income interest in a CFC, calculated under sections EX 8 to EX 16, varies between days in a period.

Weighted average

(2) The person's income interest for the period is the total of the amounts for the period, each of which is calculated using the formula in subsection (3) for a day in the period.

Formula

(3) The formula is—

$$\frac{\text{income interest for day}}{\text{days in period.}}$$

Definition of items in formula

(4) In the formula,—

(a) **income interest for day** is—

(i) the income interest during the day, if the income interest does not vary during the day:

(ii) the income interest at the start of the day, if the income interest varies during the day:

(b) **days in period** is the number of days in the period.

Defined in this Act: CFC, income interest

Compare: 2004 No 35 s EX 17

Calculation of attributed CFC income or loss

EX 18A Scheme for finding person's attributed CFC income or loss

Formula and rules for calculation

(1) The attributed CFC income or loss of a person (an **interest holder**) holding an income interest in a CFC, for the purposes

of the general rules in sections CQ 2(1) and DN 2(1)(which relate to attributed CFC income or loss), is found for the CFC and an accounting period from—

(a) the formula in section EX 18, which uses the interest holder's income interest and the CFC's net attributable CFC income or loss determined as described in subsection (2):

(b) the interest holder's additional CFC attributed income under section EX 19:

(c) the reduction in the interest holder's attributed CFC loss under section EX 20.

Determination of attributed CFC income or loss from attributable CFC amount

(2) An interest holder with an income interest of a fraction (the **fraction**) in a CFC with an attributable CFC amount under section EX 20B for an accounting period has under section EX 18, for the CFC and accounting period,—

(a) attributed CFC income or loss equal to the fraction of the CFC's net attributable CFC income or loss under sections EX 20C to EX 20E and the rules in sections EX 21 and EX 24 to EX 27, if paragraph (b) does not apply:

(b) no attributed CFC income or attributed CFC loss, if the CFC is—

(i) a non-attributing active CFC under section EX 21B, determined as described in subsection (3):

(ii) a non-attributing Australian CFC under section EX 22.

Non-attributing active CFCs

(3) Whether a CFC is a non-attributing active CFC is determined under section EX 21B using—

(a) a test in—

(i) section EX 21D, if the interest holder does not use a test referred to in subparagraph (ii); or

(ii) section EX 21E, if the CFC has accounts prepared to a standard meeting the requirements of section EX 21C and the interest holder chooses to

use a test in that section based on those accounts; and

(b) the rules in sections EX 21 and EX 24 to EX 27.

Defined in this Act: accounting period, attributable CFC amount, attributed CFC income, attributed CFC loss, CFC, non-attributing active CFC, non-attributing Australian CFC

Section EX 18A: inserted (with effect on 30 June 2009), on 6 October 2009, by section 153(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 18 Formula for calculating attributed CFC income or loss

If a person has attributed CFC income under section CQ 2 (When attributed CFC income arises) or an attributed CFC loss under section DN 2 (When attributed CFC loss arises), the amount of a person's attributed CFC income or loss from a CFC for an accounting period is calculated using the formula—

person's income interest for accounting period × net attributable CFC income or loss of CFC for accounting period.

Defined in this Act: accounting period, amount, attributed CFC income, attributed CFC loss, CFC, income interest, loss, net attributable CFC income

Compare: 2004 No 35 s EX 18

Section EX 18 formula: amended (with effect on 30 June 2009), on 6 October 2009, by section 154(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 18 list of defined terms **branch equivalent income**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 154(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 18 list of defined terms **net attributable CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 154(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 19 Taxable distribution from non-complying trust

Application of this section

(1) This section applies when—

(a) a CFC derives a taxable distribution from a non-complying trust in an accounting period; and

(b) a person has attributed CFC income or loss from the CFC for the period, or would have if the taxable distri-

bution were included in the CFC's net attributable CFC income.

Additional attributed CFC income

(2) The taxable distribution is excluded under section EX 21(32) when calculating the CFC's net attributable CFC income or loss, and instead the person has additional attributed CFC income.

Calculation of additional attributed CFC income

(3) The amount of the additional attributed CFC income is calculated using the formula—

person's income interest in CFC for accounting period × taxable distribution.

Non-complying trust tax rate

(4) The person is liable for income tax on the additional attributed CFC income at the rate in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) that applies to amounts under HC 19 (Taxable distributions from non-complying trusts).

Disclosure restrictions on grey list CFCs
[Repealed]

(5) *[Repealed]*

Defined in this Act: accounting period, amount, attributed CFC income, CFC, income interest, income tax, loss, net attributable CFC income, non-complying trust, taxable distribution

Compare: 2004 No 35 s EX 19

Section EX 19(1)(b): amended (with effect on 30 June 2009), on 6 October 2009, by section 155(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 19(2): amended (with effect on 30 June 2009), on 6 October 2009, by section 155(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 19(4): amended, on 1 April 2008, by section 384 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 19(5) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 155(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 19(5): repealed (with effect on 30 June 2009), on 6 October 2009, by section 155(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 19 list of defined terms **branch equivalent income**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 155(4)(a) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 19 list of defined terms **net attributable CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 155(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 20 Reduction in attributed CFC loss

Application of this section: no economic loss

(1) This section applies when—

(a) a person has an amount of attributed CFC loss; and

(b) the person suffers no, or substantially no, corresponding economic loss, whether because of a call option, a put option, or any other reason.

Application of this section: attributed CFC loss excessive

(2) This section also applies if—

(a) a person has an amount of attributed CFC loss; and

(b) the amount is more than any corresponding economic loss of the person, whether because of the application of the rules for calculating the person's income interest or for any other reason.

Reduction to economic loss

(3) The attributed CFC loss is reduced to be equal to the economic loss, if any.

Defined in this Act: amount, attributed CFC loss, income interest

Compare: 2004 No 35 s EX 20

Attributable CFC amount and net attributable CFC income or loss

Heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 156(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 20B Attributable CFC amount

Attributable CFC amount

(1) **Attributable CFC amount**, for an accounting period and a CFC, means the amount calculated under the rules in section EX 21 using the formula—

gross + arrangement.

Definition of items in formula

(2) The items in the formula in subsection (1) are defined in subsections (3) and (4).

Gross

(3) **Gross** is the total amount of income derived in the accounting period by the CFC that is 1 or more of the following:

(a) a dividend that is paid in relation to rights that are a direct income interest of less than 10% in a foreign company and are described in—

(i) section EX 31:

(ii) section EX 32:

(iii) section EX 36:

(iv) section EX 37:

(v) section EX 37B:

(vi) section EX 39:

(b) a dividend that is paid by a company resident in New Zealand to the extent to which the dividend is not fully imputed:

(c) an amount that is a deductible foreign equity distribution or a distribution for fixed-rate foreign equity:

(d) a royalty of a type referred to in subsection (5):

(e) rent of a type referred to in subsection (6):

(f) income from a business of general insurance or life insurance that is a premium under an insurance contract or reinsurance contract:

(g) income from a life insurance policy of a type referred to in subsection (8):

(h) income from the supply of personal services of a type referred to in subsection (9):

(i) income from the disposal of revenue account property that is a share, other than a share referred to in subsection (10):

(j) income from the disposal of revenue account property that is an option to acquire or dispose of a share:

(k) income from the disposal of revenue account property that is—

(i) not a share, financial arrangement, or life insurance policy; and

(ii) used by the CFC with a purpose or effect of giving rise to income of the CFC referred to in another paragraph of this subsection:

(l) income from a service, other than a telecommunications service, to the extent to which the service is physically performed in New Zealand:

(m) income from a service relating to the use of equipment to provide a telecommunications service, to the extent to which the equipment is at the time—

(i) physically located outside any country or territory; and

(ii) owned by the CFC or by another CFC that is associated with the CFC; and

(iii) not a mobile telephone handset or a radio receiver and transmitter for a ship or aircraft:

(n) income from a telecommunications service to the extent to which the service is physically performed in New Zealand and is not described in subsection (11):

(o) attributed PIE income that, for a CFC, is not excluded income under section CX 56 (Attributed income of certain investors in multi-rate PIEs).

Arrangement

(4) **Arrangement** is the total for the CFC and the accounting period of amounts of income under section CC 3 (Financial arrangements) for—

(a) an arrangement that—

(i) is a financial arrangement, or a short-term agreement for sale and purchase for which the CFC has made an election under section EW 8 (Election to treat certain excepted financial arrangements as financial arrangements); and

(ii) is not a derivative instrument; and

(iii) is not referred to in subsection (12):

(b) a derivative instrument—

(i) that is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument:

(ii) that is not entered in the ordinary course of a business of the CFC:

(iii) to the extent to which the income is from a hedging relationship, of a type referred to in NZIAS 39, with income of the CFC referred to in subsection (3) or paragraph (a) or with a transaction producing such income of the CFC.

Attributable CFC amount: royalties

(5) A royalty derived by a CFC is included in an attributable CFC amount under subsection (3)(d) if none of the following are satisfied:

(a) the CFC is regularly engaged in creating, developing, or adding value to property that produces royalties and the royalty is—

(i) paid by a person who is not associated with the CFC under section YB 2 (Two companies); and

(ii) from property that is not linked to New Zealand under subsection (13); and

(iii) from property that the CFC has created or developed or to which the CFC has added substantial value:

(b) the CFC is regularly engaged in creating, developing, or adding value to property that produces royalties and the royalty is—

(i) paid by a person who is associated with the CFC under section YB 2; and

(ii) from property that is not linked to New Zealand under subsection (13); and

(iii) from property that the CFC has created or developed, or to which the CFC has added substantial value; and

(iv) an arm's length amount determined under section GC 13 (Calculation of arm's length amounts) for the arrangement between the CFC and the associated person:

(c) the royalty is—

(i) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and subsections (7)(c) and (12)(a); and

(ii) from property that is not linked to New Zealand under subsection (13):

(d) the royalty is—

(i) paid to the CFC by a person who is not associated with the CFC under section YB 2, or by a CFC associated with the CFC under section YB 2 that has received a corresponding royalty payment from such a person; and

(ii) from property owned by a New Zealand resident who is not treated as a non-resident under a double tax agreement; and

(iii) from property licensed to the CFC by the New Zealand resident for an arm's length amount determined under section GC 13 for the arrangement between the CFC and the New Zealand resident.

Attributable CFC amount: rent

(6) Rent derived by a CFC is included in an attributable CFC amount under subsection (3)(e) if the rent is not of a type referred to in subsection (7) and is from—

(a) a lease or sublease of land:

(b) a lease or sublease of personal property:

(c) a licence to use intangible property:

(d) a hire or bailment.

Attributable CFC amount: exclusions from rent

(7) Rent derived by a CFC from a source referred to in subsection (6) is not included in an attributable CFC amount under subsection (3)(e) if the rent is—

(a) from land in a country or territory under the laws of which the CFC is liable to income tax on the CFC's income because of its domicile, residence, place of incorporation, or centre of management:

(b) from property other than land, to the extent to which the rent relates to the use of the property in a country or territory referred to in paragraph (a):

(c) paid by a person who would be an associated non-attributing active CFC in the absence of this paragraph and subsections (5)(c) and (12)(a):

(d) a payment under a hire purchase agreement:

(e) a payment under a finance lease:
(f) a royalty:
(g) a payment under a licence to use intangible property that—
  (i) is not a royalty; and
  (ii) would not be included in an attributable CFC amount under subsection (5) if treated as a royalty for the purposes of that subsection.

Attributable CFC amount: income from life insurance contract

(8) Income from a life insurance policy is included in an attributable CFC amount under subsection (3)(g) if the income is not included in a calculation of FIF income or loss and is—
(a) a distribution, if the life insurance policy is not intended to compensate the CFC for financial losses arising from the death or extended incapacity of a specified employee or member involved in the CFC's business:
(b) a distribution that is not intended to compensate the CFC for financial losses arising from the death or extended incapacity of a specified employee or member involved in the CFC's business, if the life insurance policy is intended to compensate the CFC for such losses:
(c) income from a disposal of the life insurance policy, if the policy is revenue account property.

Attributable CFC amount: income from personal services

(9) Income derived by a CFC from the supply of personal services is included in an attributable CFC amount under subsection (3)(h) if the personal services are performed by another person (the **working person**) and—
(a) the working person is a New Zealand resident; and
(b) the personal services are not essential support for a product supplied by the CFC; and
(c) the working person is associated with the CFC under section YB 3 (Company and person other than company) at the time the services are performed or is a relative, at the beginning of the accounting period, of a person associated with the CFC under section YB 3; and
(d) 80% or more of the CFC's total income in the accounting period from supplying personal services is derived

through personal services meeting the requirements of paragraph (a) performed by working persons meeting the requirements of paragraph (b); and

(e) to derive the income, the CFC uses a business structure that requires depreciable property having, at the end of the accounting period, a total cost under section GB 28(7) (Interpretation of terms used in section GB 27) less than or equal to the greater of $75,000 and 25% of the CFC's total income from personal services performed in the accounting period.

Exclusions from attributable CFC amount: shares

(10) Income derived by a CFC from the disposal of a share that is revenue account property is not included in an attributable CFC amount under subsection (3)(i) if the CFC's FIF income or loss from the share in the period ending with the disposal is calculated using—

(a) the comparative value method:

(b) the deemed rate of return method:

(c) the fair dividend rate method:

(d) the cost method.

Exclusions from attributable CFC amount: telecommunications services in New Zealand

(11) Income of a CFC from a telecommunications service physically performed in New Zealand is not included in an attributable CFC amount under subsection (3)(n) if—

(a) the service is the transmission, emission, or reception of information between New Zealand and the country or territory in which the CFC is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and

(b) the CFC is a network operator under the Telecommunications (Interception Capability) Act 2004 (a **network operator**), or—

(i) a group of persons has, for the whole of the CFC's accounting period, voting interests and, if a market value circumstance exists, market value interests, of more than 50% in the CFC; and

(ii) the group of persons also has, for the whole of the CFC's accounting period, voting interests and, if

a market value circumstance exists, market value interests, of more than 50% in a network operator; and

(c) the service is not performed using equipment that at the time is physically located in New Zealand and is in the possession of the CFC or of another CFC that is associated with the CFC; and

(d) the service is not performed by a person who at the time is physically located in New Zealand and is an employee or contractor of the CFC or of another CFC that is associated with the CFC.

Exclusions from attributable CFC amount: income from financial arrangements other than derivative instruments

(12) Income of a CFC from a financial arrangement or excepted financial arrangement that is referred to in subsection (4)(a)(i) is not included in an attributable CFC amount under subsection (4)(a) if the financial arrangement or agreement is—

(a) an agreement by the CFC to lend money to a person who would be an associated non-attributing active CFC in the absence of this paragraph and subsections (5)(c) and (7)(c):

(b) an agreement for the sale or purchase of property or services or a hire purchase agreement—

(i) entered in the ordinary course of business by the CFC:

(ii) for property or services produced or used by the CFC in business.

Royalties: property linked to New Zealand

(13) Property giving rise to a royalty is linked to New Zealand at a time in an accounting period for the purposes of subsection (5) if the property meets the requirements of subsection (14) at a time in the period—

(a) beginning—

(i) at the time the property was created, if the property has not since met the requirements of subsection (15); or

(ii) from the time the property most recently met the requirements of subsection (15); and

(b) ending at the time in the accounting period.

Situations creating link with New Zealand

(14) Property owned by a CFC has a link with New Zealand if the property—

(a) has been owned by a New Zealand resident:

(b) has been owned by a non-resident for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand:

(c) was created or developed in New Zealand:

(d) has had substantial value added in New Zealand:

(e) has been acquired by a person who had a deduction for expenditure or loss incurred in the acquisition:

(f) is based on knowledge acquired by a person who—

(i) acquired the knowledge with a purpose or intention of creating the property; and

(ii) had a deduction for expenditure or loss incurred in the acquisition:

(g) is created or developed from activities, or from the extension, continuation, development, or completion of activities, if the activities produced knowledge acquired by a person who had a deduction for expenditure or loss incurred in the acquisition.

Situations breaking link with New Zealand

(15) There is no link between property and New Zealand for a CFC when the property is owned by a non-resident who—

(a) is not a CFC and is not associated with the CFC; and

(b) is not associated with a person who has owned the property while it had a link with New Zealand.

Defined in this Act: accounting period, agreement for the sale or purchase of property or services, associated, associated non-attributing active CFC, attributable CFC amount, attributed PIE income, business, CFC, comparative value method, deductible foreign equity distribution, deduction, deemed rate of return method, depreciable property, derivative instrument, dividend, excluded income, exempt income, fair dividend rate method, finance lease, financial arrangement, fixed-rate foreign equity, fully imputed, general insurance, group of persons, hire purchase agreement, income, insurance contract, interest, land, life insurance, life insurance policy, loan, loss, market value circumstance, market value interest, money lent, New Zealand, New Zealand resident, non-attributing active CFC, non-resident, reinsurance contract, relative, resident in New Zealand, revenue account property, royalty, share, short-term agreement for sale and purchase, telecommunications service, voting interest

Section EX 20B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 156(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20B(3)(n): amended, on 29 August 2011, by section 36(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 20B(3)(o): added, on 29 August 2011, by section 36(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 20B(4) heading: substituted (with effect on 30 June 2009), on 7 December 2009, by section 23(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20B(4)(b)(iii): amended (with effect on 30 June 2009), on 7 December 2009, by section 23(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20B(5)(a)(i): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 157(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20B(9)(c): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 157(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20B(11)(b): substituted (with effect on 30 June 2009), on 7 December 2009, by section 23(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20B(11)(b)(i): amended (with effect on 30 June 2009), on 7 September 2010 (applying for the income years beginning on or after 1 July 2009), by section 43(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EX 20B list of defined terms **attributed PIE income**: inserted, on 29 August 2011, by section 36(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 20B list of defined terms **excluded income**: inserted, on 29 August 2011, by section 36(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 20B list of defined terms **group of persons**: inserted (with effect on 30 June 2009), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20B list of defined terms **market value circumstance**: inserted (with effect on 30 June 2009), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20B list of defined terms **market value interest**: inserted (with effect on 30 June 2009), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20B list of defined terms **voting interest**: added (with effect on 30 June 2009), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EX 20C Net attributable CFC income or loss

CFC's net attributable CFC income or loss

(1) For the purpose of calculating the attributed CFC income or loss for an accounting period of a person (the **interest holder**) with an income interest in a CFC,—

(a) the CFC's **net attributable CFC income** for the accounting period is the greater of zero and the amount calculated using the formula in subsection (2):

(b) the CFC's **net attributable CFC loss** for the accounting period is—

(i) the absolute value of the amount calculated using the formula in subsection (2), if that amount is less than zero:

(ii) zero, if subparagraph (i) does not apply.

Formula for net attributable CFC income or loss

(2) The amount of a CFC's net attributable CFC income or loss for an accounting period is calculated using the rules in section EX 21 and the formula—

attributable CFC – (limited funding costs × fraction) – other deductions – later losses.

Definition of items in formula

(3) The items in the formula in subsection (2) are defined in subsections (4) to (6), (8), and (9).

Attributable CFC

(4) **Attributable CFC** is the CFC's attributable CFC amount for the accounting period.

Limited funding costs

(5) **Limited funding costs** is—

(a) if paragraph (b) does not apply, the amount of the item **funding costs** in subsection (6)(a); or

(b) if the item **funding** in subsection (6)(b) is not zero and the interest holder chooses to rely on this paragraph, the amount calculated using the formula—

$$\text{funding costs} \times \frac{\text{funding} - \text{group funding}}{\text{funding}}.$$

Definition of items in formula

(6) In the formula in subsection (5)(b),—

(a) **funding costs** is the total of amounts in the accounting period—

(i) for which the CFC would have a deduction relating to a financial arrangement referred to in subsection (7)(a):

(ii) that are distributions relating to fixed-rate foreign equity or deductible foreign equity distributions of the CFC and paid by the CFC to companies resident in New Zealand or to CFCs:

(b) **funding** is the total amount of outstanding balances for financial arrangements referred to in subsection (7)(a) and of shares referred to in subsection (7)(b):

(c) **group funding** is the lesser of the item **funding** and the total amount of outstanding balances for financial arrangements—

(i) under which the CFC provides funds to another CFC associated with the CFC under section YB 2 (Two companies); and

(ii) which produce for the CFC an amount included in the item **arrangement** under section EX 20B(4).

Financial arrangements and shares contributing to funding costs

(7) A financial arrangement to which a CFC is a party, or a share issued by the CFC, contributes to the item **funding costs** under subsection (6)(a) for the CFC if it is—

(a) a financial arrangement that provides funds for the CFC:

(b) a share that is—

(i) held by a company that is a New Zealand resident or a CFC; and

(ii) a fixed-rate foreign equity or a share giving a right to a deductible foreign equity distribution.

Fraction

(8) **Fraction** is,—

(a) if the CFC is not excessively debt funded under section EX 20D, the amount calculated under subsection (10); or

(b) if the CFC is excessively debt funded under section EX 20D, the lesser of—

(i) the amount calculated under subsection (10):

(ii) the amount calculated under section EX 20D.

Other deductions

(9) **Other deductions** is the amount of expenditure and loss incurred in the accounting period by the CFC to the extent to which the expenditure and loss,—

(a) if not consisting of deductions relating to financial arrangements and shares, is—

(i) incurred for the purpose of deriving an attributable CFC amount; and

(ii) not incurred for the purpose of deriving an amount that is not an attributable CFC amount; and

(iii) a deduction of the CFC:

(b) if consisting of deductions relating to financial arrangements and shares referred to in subsection (7)(a) and (b), exceeds the amount of the item **limited funding costs** referred to in subsection (5):

(c) if consisting of deductions relating to financial arrangements not referred to in subsection (7)(a), relates to a financial arrangement referred to in section EX 20B(4).

Later losses

(9B) **Later losses** is the total amount of adjustments to the accounting period under section EZ 32C (Treatment in section EX 20C of currency effects on CFC's borrowing) for an accounting period and financial arrangements for which that section applies.

Proportion by value of assets producing attributable CFC amount

(10) The amount referred to in subsection (8)(a) and (b)(i) is calculated using the formula—

$$\frac{\text{attributable CFC's assets – group funding}}{\text{total CFC's assets – group funding.}}$$

Definition of items in formula

(11) In the formula in subsection (10),—

(a) **attributable CFC's assets** is the total value of the CFC's assets, to the extent to which each asset is used for the purpose of deriving an attributable CFC amount and not used for the purpose of deriving an amount that is not an attributable CFC amount:

(b) **group funding** is zero or, if subsection (5)(b) applies for the interest holder and the CFC, the amount of the item **group funding** referred to in subsection (6)(c):

(c) **total CFC's assets** is the total value of the CFC's assets.

Determining debts and assets of CFC

(12) For the items referred to in subsection (11), the debts and assets of the CFC are determined under sections FE 8 to FE 11 (which contain rules for determining the apportionment of interest) as if the CFC were—

(a) an excess debt outbound company; and

(b) the only member of the CFC's New Zealand group.

Defined in this Act: accounting period, attributable CFC amount, CFC, deductible foreign equity distribution, deduction, financial arrangement, fixed-rate foreign equity, generally accepted accounting practice, income interest, interest, loss, net attributable CFC income, net attributable CFC loss, share

Section EX 20C: inserted (with effect on 30 June 2009), on 6 October 2009, by section 156(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20C(2) formula: substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009; and before 1 July 2013), by section 37(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 20C(6)(c)(i): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 158(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20C(6)(c)(ii): amended (with effect on 30 June 2009), on 7 December 2009, by section 24(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 20C(9B) heading: inserted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009; and before 1 July 2013), by section 37(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 20C(9B): inserted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009; and before 1 July 2013), by section 37(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EX 20D Adjustment of fraction for excessively debt funded CFC

When this section applies

(1) This section applies for the purposes of section EX 20C(8) to a CFC that is excessively debt funded under subsection (2) in relation to a person (the **interest holder**) with an income interest in the CFC.

Excessive debt funding

(2) A CFC is excessively debt funded under this section if—

(a) the amount (the CFC's **debt-asset ratio**) calculated using the formula in subsection (4) is more than 0.75; and

(b) the amount (the CFC's **relative debt-asset ratio**) given by section EX 20E is more than 1.10.

Calculations for CFC

(3) For the purposes of subsections (4) to (8), the debts and assets of the CFC are determined under sections FE 8 to FE 11 (which contain rules for determining the apportionment of interest) as if the CFC were—

(a) an excess debt outbound company; and

(b) the only member of the CFC's New Zealand group.

Formula for debt-asset ratio of CFC

(4) The formula for the CFC's debt-asset ratio referred to in subsection (2)(a) is—

$$\frac{\text{total CFC's debts} - \text{group funding}}{\text{total CFC's assets} - \text{group funding}}.$$

Definition of items in formula

(5) The items in the formula in subsection (4) are defined in subsections (6) to (8).

Total CFC's debts

(6) **Total CFC's debts** is the total amount for the CFC and the accounting period, determined under generally accepted accounting practice, of the outstanding balances of—

(a) financial arrangements entered by the CFC, each of which—

(i) provides funds to the CFC; and

(ii) gives rise to an amount for which the CFC would have a deduction:

(b) fixed-rate foreign equity issued by the CFC and held by a company that is a New Zealand resident or another CFC:

(c) shares issued by the CFC in relation to which the CFC makes deductible foreign equity distributions to a company that is a New Zealand resident or another CFC.

Group funding

(7) **Group funding** is—

(a) if paragraph (b) does not apply, zero; or

(b) if the interest holder chooses to rely on this paragraph and the item **total CFC's assets** is greater than the item **total CFC's debts**, the lesser of the item **total CFC's debts** and the total amount of outstanding balances for financial arrangements—

(i) under which the CFC provides funds to another CFC associated with the CFC under section YB 2 (Two companies); and

(ii) which produce for the CFC an amount included in the item **arrangement** under section EX 20B(4).

Total CFC's assets

(8) **Total CFC's assets** is the total value of the CFC's assets determined under generally accepted accounting practice.

Fraction for excessively debt funded CFC

(9) For a CFC that is excessively debt funded, the item **fraction** for the purposes of this section is the amount calculated using the formula in subsection (10) and determining the debts and assets of a CFC under sections FE 8 to FE 11 as if the CFC were—

(a) an excess debt outbound company; and

(b) the only member of the CFC's New Zealand group.

Formula for fraction

(10) The formula for the CFC's fraction is—

$$\frac{\text{attributable CFC assets}}{\text{total CFC assets.}}$$

Definition of items in formula

(11) The items in the formula in subsection (10) are defined in subsections (12) and (13).

Attributable CFC assets

(12) **Attributable CFC assets** is the total value of assets, consolidated under generally accepted accounting practice for all the interest holder's CFCs and the accounting period, to the extent to which each asset is—

(a) used for the purpose of deriving an attributable CFC amount; and

(b) not used for the purpose of deriving an amount that is not an attributable CFC amount.

Total CFC assets

(13) **Total CFC assets** is the total value of assets, consolidated under generally accepted accounting practice, for all the interest holder's CFCs and the accounting period.

Defined in this Act: accounting period, CFC, deductible foreign equity distribution, deduction, excess debt outbound company, financial arrangement, fixed-rate foreign equity, New Zealand resident

Section EX 20D: inserted (with effect on 30 June 2009), on 6 October 2009, by section 156(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20D(7)(b)(i): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 159(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 20D(7)(b)(ii): amended (with effect on 30 June 2009), on 7 December 2009, by section 25(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EX 20E Relative debt-asset ratio for CFC

What this section does

(1) This section determines the relative debt-asset ratio of a CFC for the purposes of section EX 20D(2)(b) by determining an amount (the **group debt-asset ratio**) for the CFC's group and comparing that amount with the debt-asset ratio of the CFC determined under section EX 20D(4).

Members of CFC's group and calculations for group

(2) For the purposes of subsections (3) to (8),—

(a) the members of a CFC's group are—

(i) the CFC:

(ii) if the interest holder is a company, the members of the worldwide group that the interest holder would have under sections FE 31B, FE 31C, and FE 32 (which relate to the determination of groups) if the interest holder were an excess debt outbound company:

(iii) if the interest holder is a trustee, the members of the trustee's worldwide group under section FE 3(1)(b) (Interest apportionment for individuals):

(iv) if the interest holder is a natural person, the person's worldwide group referred to in section FE 5(1C)(a) to (c) (Thresholds for application of interest apportionment rules):

(b) the debts and assets of the CFC's group are determined under sections FE 8 to FE 11 and FE 18 (Measurement of debts and assets of worldwide group) as if the interest holder, if a company, were an excess debt outbound company.

Formula for CFC's group debt-asset ratio

(3) The formula for the CFC's group debt-asset ratio is—

$$\frac{\text{total group debts}}{\text{total group assets.}}$$

Definition of items in formula

(4) The items in the formula in subsection (3) are defined in subsections (5) and (6).

Total group debts

(5) **Total group debts** is the total amount, consolidated under generally accepted accounting practice for the CFC's group and the accounting period, of the outstanding balances of—

(a) financial arrangements entered by the group's members, each of which—

(i) provides funds to a group member; and

(ii) gives rise to an amount for which a group member would have a deduction:

(b) fixed-rate foreign equity issued by a member of the group and held by a company that is a New Zealand resident or a CFC:

(c) equity interests issued by a member of the group in relation to which the member makes deductible foreign equity distributions to a company that is a New Zealand resident or a CFC.

Total group assets

(6) **Total group assets** is the total value, consolidated under generally accepted accounting practice for the accounting period, of the assets of the CFC's group.

Formula for CFC's relative debt-asset ratio

(7) The formula for the CFC's relative debt-asset ratio is—

$$\frac{\text{CFC's debt-asset ratio}}{\text{group debt-asset ratio.}}$$

Definition of items in formula

(8) In the formula in subsection (7),—

(a) **CFC's debt-asset ratio** is the CFC's debt-asset ratio under section EX 20D(4):

(b) **group debt-asset ratio** is the CFC's group debt-asset ratio under subsection (3).

Defined in this Act: accounting period, CFC, deductible foreign equity distribution, deduction, excess debt outbound company, financial arrangement, fixed-rate foreign equity, New Zealand resident

Section EX 20E: inserted (with effect on 30 June 2009), on 6 October 2009, by section 156(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculation of branch equivalent income or loss [Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 160 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 21 Attributable CFC amount and net attributable CFC income or loss: calculation rules

Calculation rules for CFC

(1) The rules in this section apply for the purposes of—

(a) calculating the attributable CFC amount for a CFC under section EX 20B:
(b) calculating the net attributable CFC income or loss for a CFC under section EX 20C:
(c) determining under section EX 21D whether a CFC is a non-attributing active CFC.

Calculation rules for test group of CFCs

(1B) For the purpose of determining under section EX 21D whether a member of a group of CFCs is a non-attributing active CFC,—

(a) the consolidated annual gross income of the group is calculated under the rules in this section; and
(b) the consolidated attributable CFC amount of the group is calculated under the rules in this section.

CFC treated as New Zealand resident

(2) The rules in this Act are applied as if the CFC were always a New Zealand resident.

Modifications to rules

(3) However, the rules in the Act are modified for the purposes of the calculation by the following subsections.

Conversion to New Zealand dollars

(4) The taxpayer must choose—

(a) for all the calculations to be done in New Zealand dollars; or
(b) for all the calculations to be done in the currency of the CFC's financial accounts; and if the CFC has no financial accounts, the currency used is that of the CFC's country of residence, the result being then converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the period.

Consent for change of currency

(5) Having chosen a currency, the taxpayer must use the same currency for calculating attributable CFC amount and net attributable CFC income or loss attributable to the CFC for each later consecutive accounting period, unless the Commissioner allows the taxpayer to choose again.

Change for commercial purpose

(6) The Commissioner may consent to a change under subsection (5) only if satisfied that—

(a) the taxpayer's main purpose in changing is a commercial one, and for this purpose, the reducing of tax is not a commercial purpose; and

(b) the change does not have an effect of defeating the intent and application of subpart CQ (Attributed income from foreign equity) or DN (Attributed losses from foreign equity) or this subpart.

New Zealand currency for financial arrangements

(7) Despite subsections (4) to (6), New Zealand currency calculations must be used to calculate that part of the attributable CFC amount and net attributable CFC income or loss arising from financial arrangements if—

(a) the total value of financial arrangements to which the CFC is a party is more than $1,000,000 at any time during the relevant accounting period, applying section EW 17(2)(b) (Straight-line method) to measure the values; or

(b) the CFC's total net foreign exchange loss attributable to financial arrangements, calculated under subsections (4) to (6) for the accounting period, is more than $100,000.

Limit to subsection (7)

(8) Subsection (7) does not apply to a financial arrangement if—

(a) it is a variable principal debt instrument; and

(b) all the rights and obligations of all the parties to the financial arrangement are expressed in the currency chosen under subsection (4)(b); and

(c) no other party to the financial arrangement is associated with the CFC; and

(d) no person enters into the financial arrangement under an arrangement that has a purpose of defeating the application of subsection (7).

Opening cost base: tangible assets: first period

(9) If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must

choose whether to measure the cost base at the start of an accounting period of premises, plant, machinery, equipment, and trading stock of the CFC at—

(a) historical cost minus any accumulated amounts of depreciation loss, or another value used by the CFC as the starting value for the period for income tax calculations in the country in which the CFC is resident, but only if the value is below market value; or

(b) the starting value that would be used under this Act if the CFC had always been a New Zealand resident.

Opening cost base: tangible assets: later periods

(10) If the taxpayer had attributed CFC income or loss from the CFC for the previous period, the cost base at the start of an accounting period of premises, plant, machinery, equipment, and trading stock of the CFC is the closing value at the end of the previous period used to calculate the income or loss.

Opening cost base: financial arrangements: first period

(11) If the taxpayer had no attributed CFC income or loss from the CFC for the previous accounting period, the taxpayer must choose to calculate the consideration under the financial arrangements rules for a financial arrangement at the start of an accounting period, at—

(a) the market value of the financial arrangement; or

(b) the absolute value calculated using the formula—

consideration paid to the CFC + expenditure - consideration paid by the CFC - income.

Definition of items in formula

(12) In the formula,—

(a) **consideration paid to the CFC** is the consideration paid to the CFC for all periods before the accounting period:

(b) **expenditure** is expenditure that would have been incurred under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand:

(c) **consideration paid by the CFC** is the consideration paid by the CFC for all periods before the accounting period:

(d) **income** is income that would have been derived under the financial arrangements rules for all periods before the accounting period if the CFC had been resident in New Zealand.

Provisions that do not apply

(13) The following provisions do not apply:

(a) the consolidation rules:

(b) section CB 27 (Income equalisation schemes) and subparts DQ (Income equalisation schemes and environmental restoration accounts schemes) and EH (Income equalisation schemes):

(c) sections CD 45 to CD 52 (which relate to the CFC attributed repatriation calculation rules) or subpart CQ (Attributed income from foreign equity) or DN (Attributed losses from foreign equity) or this subpart to the extent to which any of the sections or subparts would result in attributed CFC income, attributed CFC loss, or attributed repatriation for the CFC:

(d) section CW 8 (Money lent to government of New Zealand):

(db) section CW 9 (Dividend derived from foreign company):

(dc) section CW 10 (Dividend within New Zealand wholly-owned group:

(e) section CW 40(1) (Local and regional promotion bodies):

(f) sections DO 1 (Enhancements to land, except trees) and DO 2 (Erosion and shelter plantings):

(g) sections EW 9 (Persons to whom financial arrangements rules apply) and EW 11(b) (What financial arrangements rules do not apply to):

(h) subpart FE (Interest apportionment on thin capitalisation):

(i) section GB 5 (Arrangements involving trust beneficiaries):

(j) sections IA 2 to IA 9, subpart IC, and sections IP 3 to IP 7, IZ 4, and IZ 5 (which relate to the use of tax losses).

Business treated as if carried on in New Zealand

(14) The following provisions apply as if the CFC's business activities were carried on in New Zealand:

(a) sections CT 1 to CT 3, CT 5 to CT 7, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5 (which relate to petroleum mining):

(b) sections DO 4 to DO 7, DO 12, DP 1 to DP 3, DP 8, and DP 11 (which relate to farming, aquacultural, and forestry expenditure):

(c) section EZ 16 (Amount of depreciation loss for plant or machinery additional to section EZ 15 amount):

(d) the definitions in subpart YA (General definitions) that specifically apply for the purposes of those sections.

Transfer pricing rules

(15) Sections GC 6 to GC 14 (which relate to transfer pricing arrangements between associated persons) apply only to a transaction that has a purpose or effect of defeating any of the jurisdictional ring-fencing rules for CFC losses and tax credits in—

(a) section DN 4 (Ring-fencing cap on deduction):

(b) section IQ 2 (Ring-fencing cap on attributed CFC net losses):

(c) section IQ 4 (Group companies using attributed CFC net losses):

(d) sections LK 1 to LK 7 (which relate to foreign tax credits and CFCs).

Dividends

(16) Dividends that are not part of the CFC's attributable CFC amount are exempt income of the CFC.

Dividends: exempt income
[Repealed]

(17) *[Repealed]*

Benefits from money advanced

(18) When section CC 7 (Consideration other than in money) is applied, the borrower is treated as if it carries on a business in New Zealand.

No tainting by association

(19) Sections CB 9 to CB 13 (which relate to the disposal of land) and CV 1 (Group companies) do not apply to treat an amount derived by the CFC as income merely because of the activities of a person associated with the CFC if the associate is a non-resident.

Crown acquisition of land

(20) The reference in section EI 8(1) (Disposal of land to the Crown) to the Crown includes any relevant government outside New Zealand.

Amount of depreciation loss recovered

(21) When sections EE 48 to EE 52 (which relate to disposals and similar events) are applied, the CFC is treated as having had a deduction for an amount of depreciation loss, and to have an adjusted tax value accordingly, if an amount of depreciation loss has been deducted when calculating the CFC's branch equivalent income or loss for any period and the attributed CFC income or loss of any person.

GST and value-added taxes

(22) When sections CX 1 (Goods and Services Tax), DB 2 (Goods and Services Tax), EE 45 (Consideration for purposes of section EE 44), EE 54 (Cost: GST), and EZ 17 (Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994) are applied, references to output tax, input tax, or goods and services tax (GST) payable include a reference to the equivalent item arising under the value-added tax or other tax rules of a country or territory outside New Zealand if the rules have a similar intent and application to the New Zealand GST rules.

Government grants to businesses

(23) When section DF 1 (Government grants to businesses) is applied, a reference to the New Zealand government includes a government outside New Zealand but, to the extent to which section DF 1 still does not apply to a grant or subsidy to the CFC from a government, the grant or subsidy is income of the CFC.

Subvention payments

(24) If an amount is paid as consideration for the transfer of tax losses,—

(a) it is income if derived by the CFC; and

(b) it is a deduction if—

(i) paid by the CFC to a person who is resident in the same country as the CFC and not a non-attributing active CFC; and

(ii) deductible under the taxation law of that country.

Life insurers

(25) Subsection (26) applies if—

(a) the CFC itself carries on the business of providing life insurance; or

(b) shares in the CFC are held, directly or indirectly, by a foreign company (the **parent company**, in subsection (26)) that carries on the business of providing life insurance and those shares have to be taken into account under sections EX 8 to EX 13 to calculate the taxpayer's income interest in the CFC.

Policyholders

(26) If the test in subsection (25) is met, the life insurance rules do not apply and the net attributable CFC income or loss of the CFC is the amount actuarially determined to be the part of the CFC's net attributable CFC income or loss to which shareholders, and not policyholders in either the CFC or the parent company, are entitled.

When subsection (26) does not apply

(27) Despite subsection (25), subsection (26) does not apply if the Commissioner—

(a) considers that the amount calculated is not a reasonable reflection of the part attributable to shareholders; or

(b) has requested and not received sufficient information to enable the actuarial calculation to be reviewed.

Mineral mining activities

(28) Sections BC 7, CU 1 to CU 29, CX 44 to CX 46, CZ 2, CZ 4, DU 1 to DU 12, DZ 12, IS 1 to IS 4 (which relate to mineral mining) apply, with any necessary modifications, if the CFC carries on activities outside New Zealand that are substantially

the same as the mineral mining activities to which those sections apply.

Petroleum mining activities

(29) Sections CT 1 to CT 3, CT 5, CX 42, CX 43, CZ 8, DT 1 to DT 15, DT 17 to DT 19, and IS 5 (which relate to petroleum mining) apply, with any necessary modifications, if the CFC carries on petroleum mining activities outside New Zealand that are substantially the same as the petroleum mining activities to which those sections apply.

Finance leases and specified leases

(30) A lease entered into by the CFC before the start of the first accounting period in which the CFC is a CFC is neither a finance lease (subject to the financial arrangements rules and sections FA 6 to FA 11 , which relate to finance leases), nor a specified lease (subject to sections FZ 2 to FZ 4, which relate to leases).

When subsection (30) does not apply

(31) Subsection (30) does not apply if another party to the lease is either a CFC or a New Zealand resident.

Taxable distributions from non-complying trust

(32) If the CFC gets a taxable distribution from a non-complying trust—

(a) section HC 22 (Use of tax losses to reduce taxable distributions from non-complying trusts) does not apply; and

(b) the taxable distribution is not taken into account in calculating the CFC's net attributable CFC income or loss; and

(c) section EX 19 applies.

CFCs with interest in FIFs

(33) If the CFC has rights in a FIF,—

(a) the rights are not prevented from being an attributing interest of the CFC in a FIF merely because the notional New Zealand residence of the CFC under subsection (2) causes section EX 34 to apply; and

(b) the CFC's FIF income or loss is not taken into account in calculating the net attributable CFC income; and

(c) section EX 58 applies.

Transitional treatment of cross-border reinsurance

(34) Section CZ 12 (General insurance with risk period straddling 1 July 1993) applies as if the reference to New Zealand were a reference to the CFC's country of residence.

Disclosure restrictions on grey list CFCs
[Repealed]

(35) *[Repealed]*

Defined in this Act: absolute value, accounting period, adjusted tax value, amount, annual gross income, arrangement, associated person, attributable CFC amount, attributed CFC income, attributed CFC loss, attributed repatriation, attributing interest, branch equivalent loss, business, CFC, close of trading spot exchange rate, Commissioner, consideration, consolidation rules, deduction, depreciation loss, dividend, exempt income, FIF, FIF income, finance lease, financial arrangement, financial arrangements rules, foreign company, GST, GST payable, income, income interest, income tax, income year, input tax, lease, life insurance, life insurance rules, loss, mineral, net attributable CFC income, net attributable CFC loss, net income, net loss, New Zealand, New Zealand resident, non-attributing active CFC, non-complying trust, non-resident, output tax, pay, petroleum, resident in New Zealand, share, shareholder, specified lease, tax, taxable distribution, trading stock variable principal debt instrument

Compare: 2004 No 35 s EX 21

Section EX 21 heading: amended (with effect on 30 June 2009), on 6 October 2009, by section 161(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(1) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 161(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 161(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(1B) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(1B): inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 161(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(5): amended (with effect on 30 June 2009), on 6 October 2009, by section 161(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(7): amended (with effect on 30 June 2009), on 6 October 2009, by section 161(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(13)(db): inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(13)(dc): inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(15): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 161(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(15): amended (with effect on 1 April 2008), on 6 October 2009, by section 161(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(16) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 161(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(16): substituted (with effect on 30 June 2009), on 6 October 2009, by section 161(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(17) heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 161(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(17): repealed (with effect on 30 June 2009), on 6 October 2009, by section 161(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(24)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 161(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(26): amended (with effect on 30 June 2009), on 6 October 2009, by section 161(11)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(26): amended (with effect on 30 June 2009), on 6 October 2009, by section 161(11)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(26): amended (with effect on 1 April 2008), on 7 December 2009, by section 26(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 21(32)(b): amended (with effect on 30 June 2009), on 6 October 2009, by section 161(12) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(33)(b): amended (with effect on 30 June 2009), on 6 October 2009, by section 161(13) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(35) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 161(14) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21(35): repealed (with effect on 30 June 2009), on 6 October 2009, by section 161(14) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **1973 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 161(15) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **1988 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 161(15) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **1990 version provisions**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 161(15) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **annual gross income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(16)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **attributable CFC amount**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(16)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **branch equivalent income**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 161(16)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **net attributable CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(16)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **net attributable CFC loss**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(16)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21 list of defined terms **non-attributing active CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 161(16)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Non-attributing active CFCs

Heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 162(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 21B Non-attributing active CFCs

Non-attributing active CFC

(1) **Non-attributing active CFC**, for an accounting period and a person (the **interest holder**), means a CFC that, alone or as part of a test group of companies under section EX 21D or EX 21E, meets the requirements of subsection (2) or (3).

CFC meeting test in section EX 21D or EX 21E

(2) A CFC is a non-attributing active CFC—

(a) under section EX 21D, if the CFC meets the requirements of that section and paragraph (b) does not apply:

(b) under EX 21E, if—

(i) the CFC meets the requirements of section EX 21C for the use of an applicable accounting standard in the application of EX 21E; and

(ii) the person chooses to use the applicable accounting standard in applying EX 21E; and

(iii) the CFC meets the requirements of EX 21E.

Insurer meeting requirements of determination

(3) A CFC that is an insurer meeting the requirements of a determination made by the Commissioner under section 91AAQ of the Tax Administration Act 1994 is a non-attributing active CFC.

Defined in this Act: accounting period, CFC, non-attributing active CFC

Section EX 21B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 162(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Tests for non-attributing active CFCs

Heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 162(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 21C Applicable accounting standards for section EX 21E

Applicable accounting standards

(1) In applying EX 21E to determine whether a CFC is a non-attributing active CFC for a person (the **interest holder**) with an interest in the CFC, the interest holder may use as an accounting standard (the **applicable accounting standard**) 1 of the standards given by subsections (2) to (7) if section GB 15C (Arrangements related to accounting test for non-attributing active CFC) does not apply.

Generally accepted accounting practice with IFRS for CFC

(2) The interest holder may use generally accepted accounting practice in New Zealand including IFRSs and the framework for differential reporting for entities applying the New Zealand equivalents to the international financial standards reporting regime (the **generally accepted accounting practice with IFRS**) for the CFC, if the interest holder or another person has accounts that—

(a) include the accounts of the CFC; and

(b) comply with generally accepted accounting practice with IFRS; and

(c) meet the audit requirements of subsection (8).

Generally accepted accounting practice with IFRS for test group

(3) The interest holder may use generally accepted accounting practice with IFRS for the CFC's test group under section EX 21E(2), if the interest holder or another person has accounts that—

(a) include the accounts of the members of the test group; and

(b) comply with generally accepted accounting practice with IFRS; and

(c) meet the audit requirements of subsection (8).

IFRSEs for CFC

(4) The interest holder may use IFRSEs for the CFC, if the interest holder or another person has accounts that—

(a) include the accounts of the CFC; and

(b) comply with the relevant IFRSEs; and

(c) meet the audit requirements of subsection (8).

IFRSEs for test group

(5) The interest holder may use IFRSEs for the CFC's test group under section EX 21E(2), if the interest holder or another person has accounts that—

(a) include the accounts of the members of the test group; and

(b) comply with the relevant IFRSEs; and

(c) meet the audit requirements of subsection (8).

Generally accepted accounting practice without IFRS for CFC

(6) The interest holder may use generally accepted accounting practice in New Zealand for persons not required to use IFRS but required to comply with standards, other than IFRSs, approved or issued under the Financial Reporting Act 1993 (the **generally accepted accounting practice without IFRS**) for the CFC, if the interest holder or another person is a company resident in New Zealand that—

(a) has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and

(b) is an issuer under section 4 of the Financial Reporting Act 1993 in neither of the current and preceding accounting periods; and

(c) is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and

(d) is not a large company under section 19A(1)(b) of the Financial Reporting Act 1993; and

(e) does not have accounts that are prepared and audited under generally accepted accounting practice with IFRS; and

(f) is not a subsidiary of a company having accounts that—

(i) include the accounts of the subsidiary; and

(ii) are prepared and audited, or required to be prepared, under generally accepted accounting practice with IFRS; and

(g) has accounts that—

(i) include the accounts of the CFC; and

(ii) comply with generally accepted accounting practice without IFRS; and

(iii) meet the audit requirements of subsection (8).

Generally accepted accounting practice without IFRS for CFC's test group

(7) The interest holder may use generally accepted accounting practice without IFRS for the CFC's test group under section EX 21D(1), if the interest holder or another person is a company resident in New Zealand that—

(a) has no revenue under Financial Reporting Standard 34 and Financial Reporting Standard 35; and

(b) is an issuer under section 4 of the Financial Reporting Act 1993 in neither of the current and preceding accounting periods; and

(c) is not required by section 19 of the Financial Reporting Act 1993 to file its accounts with the Registrar of Companies; and

(d) is not a large company under section 19A(1)(b) of the Financial Reporting Act 1993; and

(e) does not have accounts that are prepared and audited under generally accepted accounting practice with IFRS; and

(f) is not a subsidiary of a company having accounts that—

(i) include the accounts of the subsidiary; and

(ii) are prepared and audited, or required to be prepared, under generally accepted accounting practice with IFRS; and

(g) has accounts that—

(i) include the accounts of the members of the CFC's test group; and

(ii) comply with generally accepted accounting practice without IFRS; and

(iii) meet the audit requirements of subsection (8).

Audit requirements

(8) Accounts meet the audit requirements of this subsection if they—

(a) are audited by an accountant who is—

(i) a chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and

(ii) independent of the CFC and the person; and

(b) are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared.

Compliance with accounting standards

(9) For the purposes of subsections (2) to (7), accounts are treated as complying with the accounting standard relevant to the subsection if—

(a) the accounts state that they comply with the accounting standard; and

(b) the accounts meet the audit requirements of subsection (8); and

(c) the Commissioner does not have reasonable grounds to suspect—

(i) fraudulent activity by the interest holder, the CFC, a CFC in the CFC's test group, or the auditor:

(ii) preparation of the accounts with an intent to mislead:

(iii) incompetence of the auditor.

Defined in this Act: accounting period, annual gross income, associated, attributable CFC amount, CFC, generally accepted accounting practice, IFRS, IFRSE, insurer, New Zealand resident, non-attributing active CFC, rent, royalty

Section EX 21C: inserted (with effect on 30 June 2009), on 6 October 2009, by section 162(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21C(6): amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

EX 21D Non-attributing active CFC: default test

CFC as part of test group

(1) A person (the **interest holder**) with an interest in a CFC may choose to apply this section for the CFC as a member of a group (a **test group**) if the group consists of companies—

(a) each subject to the laws of the same country or territory under which the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and

(b) in each of which the interest holder holds an income interest of more than 50%; and

(c) each of which is required to use the same currency under section EX 21(4); and

(d) that are consolidated for the purposes of this section—

(i) using like tax treatments for like transactions and for other events in similar circumstances; and

(ii) eliminating in full all balances, transactions, income, and expenses arising between members of the test group.

Threshold ratio

(2) A CFC is a non-attributing active CFC under section EX 21B(2)(a) for an accounting period and a person if the amount calculated under subsection (3) using the formula in subsection (4)—

(a) is less than 0.05; and

(b) is not zero under subsection (3)(f).

Application of formula

(3) In using the formula in subsection (4)—

(a) each item in the formula is determined—

(i) for the CFC's consolidated test group, if the interest holder chooses to apply the formula to the test group; or

(ii) for the CFC, if subparagraph (i) does not apply; and

(b) each item in the formula is determined for a test group after amounts included in the item are adjusted to remove amounts corresponding to income interests not held by the interest holder; and

(c) a reference to a company that is associated is treated as being a reference to a company that is—

(i) associated with a member of the CFC's test group, although not a member of the CFC's test group, if the interest holder chooses to apply the formula to the test group; or

(ii) associated with the CFC, if subparagraph (i) does not apply; and

(d) a reference to a company that is in the same group of companies is treated as being a reference to a company that is—

(i) in the same group of companies as a member of the CFC's test group, although not a member of the CFC's test group, if the interest holder chooses to apply the formula to the test group; or

(ii) in the same group of companies as the CFC, if subparagraph (i) does not apply; and

(e) a numerator or denominator that is a negative number is treated as being zero; and

(f) the amount calculated using the formula is zero if the denominator is zero.

Formula

(4) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula—

$$\frac{\text{attributable} - \text{attributable adjustments}}{\text{gross} - \text{gross adjustments}}.$$

Definition of items in formula

(5) The items in the formula are defined in subsections (6) to (9).

Attributable

(6) **Attributable** is the attributable CFC amount for the accounting period.

Attributable adjustments

(7) **Attributable adjustments** is the total of amounts included in the item **attributable**, in subsection (6), that are—

(a) if the interest holder chooses that this paragraph apply, income derived from the supply of personal services—

(i) included in an attributable CFC amount under section EX 20B(3)(h); and

(ii) not included in an attributable CFC amount under another paragraph of section EX 20B(3) and (4):

(b) if the interest holder chooses that this paragraph apply, the cost of revenue account property producing an amount (the **included amount**) included in the attributable CFC amount under section EX 20B(3)(k) to the extent, not exceeding the included amount, to which—

(i) the cost is treated as a deduction of the CFC in the accounting period; and

(ii) the deduction exceeds the amount of any income under subpart CH (Adjustments) relating to the deduction.

Gross

(8) **Gross** is the annual gross income for the accounting period in the absence of income under subpart CQ (Attributed income from foreign equity).

Gross adjustments

(9) **Gross adjustments** is the total of the following amounts for the accounting period:

(a) the amount of the item "attributable adjustments" in subsection (7):

(b) expenditure or loss that is included in the calculation of the attributable CFC amount under section EX 20B:

(c) income derived from a company that would meet the requirements of subsection (1)(a) to (c) for a member of a test group with the CFC:

(d) income from a supply that meets the requirements of section GB 15B (Supplies affecting default test for non-attributing active CFC).

Defined in this Act: accounting period, annual gross income, associated non-attributing active CFC, attributable CFC amount, CFC, company, group of companies, income, interest, non-attributing active CFC, resident in New Zealand, royalty

Section EX 21D: inserted (with effect on 30 June 2009), on 6 October 2009, by section 162(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21D(7): amended (with effect on 30 June 2009), on 7 September 2010, by section 44 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EX 21D(7)(b): amended (with effect on 30 June 2009), on 7 December 2009, by section 27(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EX 21E Non-attributing active CFC: test based on accounting standard

Applicable accounting standard

(1) A person (the **interest holder**) who chooses to determine under this section whether a CFC is a non-attributing active CFC for the person for an accounting period must use an accounting standard (the **applicable accounting standard**) permitted by section EX 21C.

CFC as part of test group

(2) The interest holder may choose to apply this section for the CFC as a member of a group (a **test group**) if—

- (a) the group consists of companies required under the applicable accounting standard to consolidate, whether or not with companies that are not in the group; and
- (b) each company is subject to the laws of the same country or territory under which the company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and
- (c) the interest holder holds an income interest of more than 50% in each company; and
- (d) each company has the same functional currency; and
- (e) there are audited and consolidated financial statements that—
  - (i) include the accounts of the companies in the group, whether or not with accounts of companies that are not in the group; and
  - (ii) comply with the applicable accounting standard.

Threshold ratio

(3) A CFC is a non-attributing active CFC under section EX 21B(2)(b) for an accounting period and an interest holder if, under subsection (4),—

- (a) the amount calculated using the formula in subsection (5) is less than 0.05; and
- (b) the amount calculated using the numerator in the formula in subsection (5) is equal to or more than zero; and
- (c) the amount calculated using the denominator in the formula in subsection (5) is more than zero.

Application of formula

(4) In using the formula in subsection (5),—

(a) each item in the formula is—

(i) determined under the applicable accounting standard; and

(ii) adjusted so that no amount is included in the item more than once; and

(b) each item in the formula is determined—

(i) from amounts consolidated for the CFC's test group under the applicable accounting standard, if the interest holder chooses to apply the formula to the test group; or

(ii) from amounts for the CFC, if subparagraph (i) does not apply; and

(c) each item in the formula is determined after adjustment of amounts included in the item by removing amounts corresponding to minority interests not held by the interest holder; and

(d) a reference to a company that is associated is treated as being a reference to a company that is—

(i) associated with a member of the CFC's test group, although not a member of the CFC's test group, if the interest holder chooses to apply the formula to the test group; or

(ii) associated with the CFC, if subparagraph (i) does not apply; and

(e) a reference to a company that is in the same group of companies is treated as being a reference to a company that is—

(i) in the same group of companies as a member of the CFC's test group, although not a member of the CFC's test group, if the person chooses to apply the formula to the test group; or

(ii) in the same group of companies as the CFC, if subparagraph (i) does not apply; and

(f) amounts determined for a CFC other than as part of a test group are—

(i) determined in the functional currency of the CFC; and

(ii) converted between currencies under the applicable accounting standard, but ignoring exchange differences arising on a monetary item that forms part of a net investment of the CFC in a foreign operation; and

(g) amounts determined for a test group are—

(i) converted from the functional currency of the CFC to the presentation currency of the consolidated accounts for the test group using the average conversion rate for the accounting period; and

(ii) otherwise converted between currencies under the applicable accounting standard.

Formula

(5) The amount that determines whether the CFC is a non-attributing active CFC is calculated using the formula—

$$\frac{\text{reported passive} + \text{added passive} - \text{removed passive}}{\text{reported revenue} + \text{added revenue} - \text{removed revenue}}.$$

Definition of items in formula

(6) The items in the formula are defined in subsections (7) to (12).

Reported passive

(7) **Reported passive** is the total amount of—

(a) income from a dividend:

(b) income from interest:

(c) income from a royalty:

(d) income from rent:

(e) income, other than rent or interest, from a finance lease or operating lease:

(f) income or loss from a financial asset, other than a derivative as defined in NZIAS 39 or a share that is not revenue account property, in the form of—

(i) a change in the reported fair value of the asset:

(ii) a gain or loss on the derecognition, as defined in NZIAS 39, of the asset:

(iii) a foreign exchange gain or loss on the asset:

(g) income or loss from a derivative instrument, as defined in NZIAS 39, and included in the CFC's statement of income—

(i) if the instrument is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument:

(ii) if the instrument is not entered in the ordinary course of a business of the CFC:

(iii) to the extent to which the income or loss is from a hedging relationship, of a type referred to in NZIAS 39, with an amount that would change the numerator of the formula in subsection (5) or with a transaction producing such an amount of income or gain:

(h) income or gains from a business of insurance, including income or gains from property used to back insurance assets.

Added passive

(8) **Added passive** is the total of amounts not included in the item **reported passive** for the accounting period that are 1 or more of the following:

(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(g):

(b) income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(k), if the property is—

(i) not a share, financial arrangement, or life insurance policy; and

(ii) used by the CFC in a way giving rise to income or gains that increase the numerator of the formula in subsection (5):

(c) income from a supply of services performed in New Zealand that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(l):

(d) income from a supply of telecommunications services that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(m) or (n):

(e) attributed PIE income that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(o).

Removed passive

(9) **Removed passive** is zero if the interest holder does not choose to include an amount for this item or is the total of amounts that are included in the item **reported passive** or **added passive** for the accounting period and are in a category included in categories chosen by the interest holder from the following:

(a) a dividend that is not included in the attributable CFC amount for the accounting period under section EX 20B(3)(a) to (c):

(b) a royalty that would be included in the attributable CFC amount for the accounting period but for section EX 20B(5)(a) to (d):

(c) rent that would be included in the attributable CFC amount for the accounting period but for section EX 20B(7)(a) to (c):

(d) the cost of revenue account property producing an amount (the **included amount**) included in the attributable CFC amount under section EX 20B(3)(k) to the extent, not exceeding the included amount, to which—

(i) the cost would be a deduction of the CFC in the accounting period if the CFC were a resident of New Zealand; and

(ii) the deduction would exceed the amount of any income arising under subpart CH (Adjustments) relating to the deduction.

Reported revenue

(10) **Reported revenue** is the total amount that is—

(a) included under the applicable accounting standard in—

(i) operating revenue, if the applicable accounting standard is generally accepted accounting practice without IFRS; or

(ii) revenue, if subparagraph (i) does not apply:

(b) income, other than rent, from a finance lease or operating lease:

(c) a gain or loss on a financial asset, other than a derivative as defined in NZIAS 39 or a share not on revenue account, in the form of—
  (i) a change in the reported fair value of the asset:
  (ii) a gain or loss on the derecognition, as defined in NZIAS 39, of the asset:
  (iii) a foreign exchange gain or loss on the asset:

(d) a gain or loss from a derivative instrument, as defined in NZIAS 39, and included in the CFC's statement of income—
  (i) if the derivative instrument is held in the course of a business of the CFC for the purpose of dealing with the derivative instrument:
  (ii) if the derivative instrument is not entered in the ordinary course of a business of the CFC:
  (iii) to the extent to which the gain or loss is from a hedging relationship, of a type referred to in NZIAS 39, with an amount that would change the denominator of the formula in subsection (5) or with a transaction producing such an amount of income or gain:

(e) income or a gain from a business of insurance, including from property used to back insurance assets, if the applicable accounting standard is not generally accepted accounting practice without IFRS.

Added revenue

(11) **Added revenue** is zero if the interest holder does not choose to include an amount for this item or is the total of amounts that are not included in the item **reported revenue** for the accounting period and are either or both of the following:

(a) income from a life insurance policy that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(g):

(b) income from the disposal of revenue account property that is included in the attributable CFC amount for the accounting period under section EX 20B(3)(k), if the property is—
  (i) not a share, financial arrangement, or life insurance policy; and

(ii) used by the CFC in a way giving rise to income or gains that increase the numerator of the formula in subsection (5).

Removed revenue

(12) **Removed revenue** is the total of amounts that are included under the applicable accounting standard in the item reported revenue or added revenue for the accounting period and are 1 or more of the following:

(a) an amount included in the item removed passive under subsection (9)(d):

(b) a dividend to the extent to which it is included in the item removed passive, under subsection (9)(a):

(c) income from a supply of personal services that is included in the item reported revenue, and in the attributable CFC amount for the accounting period under section EX 20B(3)(h):

(d) income or loss from a share that is not revenue account property under this Act in the form of—

(i) a change in the reported fair value of the share:

(ii) income or loss on the derecognition, as defined in NZIAS 39, of the share:

(iii) a foreign exchange gain or loss on the share:

(e) income derived from another CFC that—

(i) is subject to the laws of the country or territory under which the CFC is liable to income tax on the CFC's income because of the CFC's domicile, residence, place of incorporation, or centre of management; and

(ii) is liable to tax on its income in that country or territory because of its domicile, residence, place of incorporation, or centre of management; and

(iii) could be consolidated with the CFC for the purposes of this section if appropriate audited accounts were prepared:

(f) if the applicable standard is generally accepted accounting practice without IFRS, income from a liability, other than income derived in the normal course of business from a sale or supply of services, in the form of—

(i) a reduction in the liability:

(ii) a gain on the disposal or other derecognition of the liability:

(iii) a foreign exchange gain on the liability:

(g) if the applicable standard is generally accepted accounting practice without IFRS, income from an asset that is not a financial asset under NZIAS 32 and not revenue account property as defined in section YA 1 (Definitions) in the form of—

(i) an increase in the fair value of the asset:

(ii) a gain on the disposal of the asset:

(iii) a foreign exchange gain on the asset.

Compliance with accounting standards

(13) If accounts meet the requirements of section EX 21C for the relevant accounting standard—

(a) the accounts are treated as complying with the relevant accounting standard for the purposes of subsection (2):

(b) amounts drawn from the accounts, or from information that is used to prepare the accounts and is consistent with them, are treated as complying with the relevant accounting standard for the purposes of subsection (4) if the Commissioner does not have reasonable grounds to suspect—

(i) fraudulent activity by the interest holder, the CFC, a CFC in the CFC's test group, or the auditor:

(ii) preparation of the accounts with an intent to mislead:

(iii) incompetence of the auditor.

Defined in this Act: accounting period, associated non-attributing active CFC, attributable CFC amount, CFC, company, dividend, financial arrangement, finance lease, group of companies, IFRS, income, life insurance policy, non-attributing active CFC, operating lease, premium, revenue account property, royalty

Section EX 21E: inserted (with effect on 30 June 2009), on 6 October 2009, by section 162(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 21E(7)(g)(iii): amended (with effect on 30 June 2009), on 7 December 2009, by section 28(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 21E(8)(e): added, on 29 August 2011, by section 38 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 21E(9)(d): amended (with effect on 30 June 2009), on 7 December 2009, by section 28(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 21E(10)(d)(iii): amended (with effect on 30 June 2009), on 7 December 2009, by section 28(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Non-attributing Australian CFCs

Heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 163(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 22 Non-attributing Australian CFCs

Criteria

(1) A CFC is a **non-attributing Australian CFC** for an accounting period if—

(a) at all times in the accounting period the CFC is—

(i) resident in Australia; and

(ii) under Australian law, subject to income tax on its income or treated as part of the head company of a consolidated group subject to income tax on its income; and

(iii) treated as being resident in Australia under all agreements between the government of Australia and the governments of other countries or territories that would be a double tax agreement if between the government of New Zealand and the government of the other country or territory; and

(b) the CFC's liability for income tax has not been reduced by—

(i) an exemption from income tax for income derived from business activities carried on outside Australia:

(ii) a special allowance, relief, or exemption with respect to offshore banking units.

No attributed CFC income or loss

(2) Sections CQ 2(1)(i) (When attributed CFC income arises) and DN 2(1)(i) (When attributed CFC loss arises) provide that no attributed CFC income or attributed CFC loss arises from a non-attributing Australian CFC.

CFCs with interest in FIF: look-through approach

(3) This section does not prevent FIF income or FIF loss arising under section EX 58 from an interest of a non-attributing Australian CFC in a FIF.

Defined in this Act: accounting period, attributed CFC income, attributed CFC loss, CFC, double tax agreement, FIF, FIF income, FIF loss, income tax, non-attributing Australian CFC, resident in Australia

Section EX 22: substituted (with effect on 30 June 2009), on 6 October 2009, by section 163(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 23 Tax concession grey list CFCs

[Repealed]

Section EX 23: repealed (with effect on 30 June 2009), on 6 October 2009, by section 164(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Change of residence of companies

EX 24 Companies moving to or from New Zealand

Companies becoming foreign

(1) If a company becomes a foreign company, an accounting period of the company starts on the day when the company becomes a foreign company and the former accounting period ends on the previous day.

Companies ceasing to be foreign

(2) If a foreign company ceases to be a foreign company, an accounting period of the company starts on the day when the company ceases to be a foreign company and the former accounting period ends on the previous day.

Pro-rating

(3) If subsection (1) or (2) applies to shorten an accounting period of a CFC, a person with attributed CFC income or loss from the CFC for the period may choose to calculate the branch equivalent income or loss of the CFC—

(a) using the results for the shortened period only; or

(b) by applying the pro-rating formula in subsection (4) to the results for the unshortened period.

Formula

(4) The formula for calculating branch equivalent income or loss under subsection (3)(b) is—

$$\text{unshortened period branch equivalent income or loss} \times \frac{\text{days in shortened perio}}{\text{days in unshortened peri}}$$

Defined in this Act: accounting period, attributed CFC income, branch equivalent income, CFC, company, foreign company, loss, New Zealand

Compare: 2004 No 35 s EX 25

Change of CFC's balance date

EX 25 Change of CFC's balance date

Application of this section

(1) This section applies when a person—

(a) has an income interest in a CFC; and

(b) has calculated attributed CFC income or loss or attributed repatriation from the CFC on the basis of 1 accounting year (the **old accounting year**); and

(c) wants to change to use a different accounting year (the **new accounting year**) for the calculations.

Change requiring Commissioner's consent

(2) The person may make the change only if the Commissioner agrees.

Commissioner's reasons

(3) The Commissioner may consider any relevant factors when making the decision, including—

(a) whether the change is sought because ownership of the CFC has changed:

(b) whether the change is sought because of taxation or other legal requirements in a country where the CFC is resident or does business:

(c) whether the change is sought to achieve consistent balance dates in a group of companies:

(d) whether the change would postpone liability to income tax on attributed CFC income or on attributed repatriation.

No transitional deferral

(4) If the new accounting year ends in a later income year than the year the old accounting year ends in, and that fact would result in an amount of attributed CFC income or attributed repatriation being derived in the later income year, the amount is not deferred to the later income year and instead is treated as derived in the previous income year. However, this subsection applies only once, in the year of the transition.

Defined in this Act: accounting year, amount, attributed CFC income, attributed repatriation, business, CFC, Commissioner, group of companies, income interest, income tax, income year, loss

Compare: 2004 No 35 s EX 26

Section EX 25(3)(d): substituted (with effect on 30 June 2009), on 6 October 2009, by section 165(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 25 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 165(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Ownership measurement concession

EX 26 Use of quarterly measurement

Interests held at end of quarter

(1) In order to simplify the process of calculating a person's control interest or income interest in a foreign company, the person is treated as holding at all times during a quarter the same interest, including a zero interest, as the interest they hold at the end of the quarter.

Anti-avoidance

(2) The concession in subsection (1) is overridden by the anti-avoidance rules in sections GB 9 to GB 16 (which relate to arrangements involving CFCs).

Ignoring concession

(3) A person may choose not to apply the concession in subsection (1) when calculating their attributed CFC income or loss from a foreign company.

Election

(4) An election under subsection (3)—

(a) must be in the form required by the Commissioner; and

(b) is irrevocable; and

(c) applies in the income year in which it is made and later.

Defined in this Act: attributed CFC income, Commissioner, control interest, foreign company, income interest, income year, loss, quarter

Compare: 2004 No 35 s EX 27

Anti-avoidance rule: stapled stock

EX 27 Anti-avoidance rule: stapled stock

When this section applies

(1) This section applies when—

(a) a New Zealand resident holds rights (the **stapled rights**) that give rise to an income interest or control interest in a foreign company; and

(b) the rights may, or may ordinarily, be disposed of only together with rights in another company; and

(c) the other company is a New Zealand resident or a CFC.

Stapled rights held by company

(2) When each of subparts CQ (Attributed income from foreign equity) and DN (Attributed losses from foreign equity) and this subpart is applied, the stapled rights are held by the other company and not by the person.

Defined in this Act: CFC, company, control interest, foreign company, income interest, New Zealand resident

Compare: 2004 No 35 s EX 28

Foreign investment fund (FIF) rules

What is a foreign investment fund?

EX 28 Meaning of FIF

A **foreign investment fund**, or **FIF**, is any of the following

(a) a foreign company:

(b) a foreign superannuation scheme:

(c) an insurer under a life insurance policy, but not if the policy is offered or entered into in New Zealand (in which case the insurer must comply with the life insurance rules in relation to the policy):

(d) an entity described in schedule 25, part A (Foreign investment funds).

Defined in this Act: FIF, foreign company, foreign investment fund, foreign superannuation scheme, life insurance policy, life insurance rules, offered or entered into in New Zealand

Compare: 2004 No 35 s EX 29

Attributing interests in FIFs

EX 29 Attributing interests in FIFs

Three categories

(1) A person has an **attributing interest** in a FIF if—

(a) the person holds rights in 1 of the categories of rights described in subsections (2) to (4); and

(b) none of the exemptions in sections EX 31 to EX 43 applies to those rights.

Category 1: direct income interest in foreign company

(2) The first category is a direct income interest, as defined in section EX 30, in a foreign company or in an entity described in schedule 25, part A (Foreign investment funds).

Category 2: foreign superannuation scheme entitlement

(3) The second category is rights to benefit from a foreign superannuation scheme, as a beneficiary or a member.

Category 3: foreign life policy entitlement

(4) The third category is rights to benefit from a life insurance policy in relation to which a FIF is the insurer.

Contingent rights

(5) The second and third categories include rights that are contingent or discretionary.

Defined in this Act: attributing interest, direct income interest, FIF, foreign company, foreign superannuation scheme, life insurance policy

Compare: 2004 No 35 s EX 30

Section EX 29(1)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 166 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 30 Direct income interests in FIFs

Categories of direct income interest

(1) A person has a direct income interest in a foreign company at any time if they hold—

(a) any of the shares in the foreign company:

(b) any of the shareholder decision-making rights for the company:

(c) a right to receive, or to apply, any of the income of the company for the accounting period in which the time falls:

(d) a right to receive, or to apply, any of the value of the net assets of the company, if they are distributed.

Percentage of total

(2) The person's direct income interest is the percentage of the total that the person holds.

Varying percentages

(3) However, if the percentage varies between the different categories, the person's direct income interest is the highest.

Measurement of available subscribed capital

(4) When the direct income interest in the category in subsection (1)(a) is calculated, the percentage is the total of the available subscribed capital per share calculated under the slice rule of the shares held as a percentage of the total available subscribed capital per share calculated under the slice rule of all shares in the company.

Varying decision-making rights

(5) When the direct income interest in the category in subsection (1)(b) is calculated, if the percentage varies between the rights described in the different paragraphs of the definition of **shareholder decision-making rights** in section YA 1 (Definitions), the highest percentage is taken.

Income distribution rights: assumptions

(6) When the direct income interest in the category in subsection (1)(c) is calculated, it is assumed that—

(a) the income is distributed on the last day of the accounting period; and

(b) the person's entitlement is unchanged during the period; and

(c) a payment of interest on a debenture subject to section FA 2 (Recharacterisation of certain debentures) or FA 2B (Stapled debt securities) is a distribution of income.

Meaning of company

(7) In this section, and in defined terms referred to in this section, **company** includes an entity listed in schedule 25, part A (Foreign investment funds).

Partnerships

(8) In this section, if a partnership holds any rights, each partner is treated as holding a share of those rights in proportion to the partner's interest in the partnership.

Defined in this Act: accounting period, available subscribed capital, company, debentures, direct income interest, FIF, foreign company, income, interest, pay, share, shareholder decision-making right, slice rule

Compare: 2004 No 35 s EX 31

Section EX 30(6)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 167 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 31 Exemption for ASX-listed Australian companies

Exemption

(1) A person's rights in a FIF in an income year are not an attributing interest if—

(a) the rights are a share; and

(b) the share is not a share that may not, or ordinarily may not, be disposed of unless together with rights in another company; and

(c) the FIF is a company that meets the requirements of subsection (2).

Australian listed company on approved index

(2) The company must—

(a) at all times in the year when the person holds a right in the company, be resident in Australia; and

(b) at all times in the year when the person holds a right in the company, not be treated as resident in a country other than Australia under an agreement that—

(i) is between Australia and that other country; and

(ii) would be a double tax agreement if negotiated between New Zealand and that other country; and

(c) have shares included in an index that is an approved index under the ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),—

(i) at the beginning of an income year, if subparagraphs (ii) and (iii) do not apply; or

(ii) when the person acquires the shares, if the person does not own shares in the company earlier in the year; or

(iii) at the beginning of the final month of the preceding income year if, in the first month of an income year, the shares are cancelled or transferred under a scheme of arrangement entered into under Part 5.1 of the Corporations Act 2001 (Aust); and

(d) at all times in the year when the person holds a right in the company, not be an entity described in schedule 25, part B (Foreign investment funds); and

(e) at all times in the year when the person holds a right in the company, be required under the Income Tax Assessment Act 1997 (Aust) and Income Tax Assessment Act 1936 (Aust) to maintain a franking account.

Defined in this Act: attributing interest, cancellation, company, double tax agreement, FIF, income year, resident in Australia, resident in New Zealand, share, year

Compare: 2004 No 35 s EX 33C

Section EX 31(1) heading: inserted, on 1 April 2008, by section 385(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 31(1): substituted, on 1 April 2008, by section 385(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 31(2) heading: inserted, on 1 April 2008, by section 385(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 31(2): inserted, on 1 April 2008, by section 385(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 31(2)(c)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 168(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 31(2)(c)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 168(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 31(2)(c)(iii): added (with effect on 1 April 2008), on 6 October 2009, by section 168(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 31 list of defined terms **cancellation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 168(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 31 list of defined terms **direct income interest**: repealed, on 1 April 2008, by section 385(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 31 list of defined terms **income tax**: repealed, on 1 April 2008, by section 385(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 32 Exemption for Australian unit trusts with adequate turnover or distributions

Exemption

(1) A person's rights in a FIF in an income year are not an attributing interest if—

- (a) the rights are a direct income interest; and
- (b) the FIF is a unit trust; and
- (c) at all times in the year when the person holds a right in the unit trust, the unit trust is resident in Australia; and
- (d) at all times in the year when the person holds a right in the unit trust, the unit trust is not treated as resident in a country other than Australia under an agreement that—
  - (i) is between Australia and that other country; and
  - (ii) would be a double tax agreement if negotiated between New Zealand and that other country; and
- (e) the unit trust is, at all times in the year, not an entity described in schedule 25, part B (Foreign investment funds); and
- (f) at all times in the year when the unit trust makes a distribution to investors, there is an RWT proxy under section 15N of the Tax Administration Act 1994 for the unit trust and payments by the unit trust to the person; and
- (g) for the trust's accounting year (the **trust's year**) that ends in the person's income year, the unit trust meets—
  - (i) the 25% minimum share turnover test in subsection (2):
  - (ii) the 70% minimum distribution test in subsection (7).

25% minimum turnover test

(2) The 25% minimum turnover test requires that, for the trust's year, the amount of total net realised gains calculated under subsection (3) must be 25% or more of the amount of total net unrealised gains at the end of the year calculated under subsection (5).

Calculation of total net realised gains

(3) The amount of total net realised gains is calculated using the formula—

total disposal gain – total cost

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **total disposal gain** is the total of amounts derived from disposal of shares by the unit trust during the trust's year:

(b) **total cost** is the total cost to the unit trust of those shares.

Calculation of total net unrealised gains

(5) The amount of total net unrealised gains is calculated using the formula—

total profitable shares – total cost.

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **total profitable shares** is the total of the market values of shares of the unit trust that are—

(i) held at the end of the trust's year; and

(ii) have a market value greater than or equal to their cost to the unit trust:

(b) **total cost** is the total cost to the unit trust of those shares.

70% minimum distribution test

(7) The 70% minimum distribution test requires that, for the trust's year, the total amount of distributions by the unit trust during the trust's year must be 70% or more of the total distributable gains for the trust's year calculated under subsection (8).

Calculation of total distributable gains

(8) The amount of total distributable gains is calculated using the formula—

closing equity + distributions − opening equity − contributions.

Definition of items in formula

(9) In the formula in subsection (8),—

(a) **closing equity** is the amount by which, at the end of the trust's year, the market value of the unit trust's assets is more than the market value of the unit trust's liabilities:

(b) **distributions** is the total amount of distributions to investors by the unit trust during the trust's year:

(c) **opening equity** is the amount by which, at the beginning of the trust's year, the market value of the unit trust's assets is more than the market value of the unit trust's liabilities:

(d) **contributions** is the total amount of contributions by investors to the unit trust during the trust's year.

Currency

(10) The calculations must be done in the currency of the unit trust's financial accounts.

Defined in this Act: accounting year, attributing interest, company, direct income interest, FIF, income year, resident in Australia, resident in New Zealand, RWT proxy, share, unit trust, year

Compare: 2004 No 35 s EX 33D

Section EX 32: substituted, on 1 April 2008, by section 386 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 32(1)(f): amended (with effect on 1 April 2008), on 7 December 2009, by section 29(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 32(9)(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 169(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 33 Exemption for Australian regulated superannuation savings

A person's rights in a FIF are not an attributing interest if—

(a) the person is a natural person; and

(b) the FIF is a foreign superannuation scheme that is—

(i) an Australian approved deposit fund:

(ii) an Australian exempt public sector superannuation scheme:

(iii) an Australian regulated superannuation fund:

(iv) an Australian retirement savings account.

Defined in this Act: attributing interest, Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund, Australian retirement savings account, FIF, foreign superannuation scheme

Compare: 2004 No 35 s EX 33E

EX 34 CFC rules exemption

A person's rights in a FIF at any time are not an attributing interest if—

(a) the FIF is a CFC at the time; and

(b) the person has, under sections EX 14 to EX 17, an income interest of 10% or more in the CFC for the accounting period during which the time falls.

Defined in this Act: accounting period, attributing interest, CFC, FIF, income interest

Compare: 2004 No 35 s EX 32

Section EX 34(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 170 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 35 Exemption for 10% or greater interest in grey list company

A person's rights in a FIF in an income year are not an attributing interest if, at all times in the year,—

(a) the rights are a direct income interest of 10% or more; and

(b) the FIF is a grey list company; and

(c) the person is not—

(i) a portfolio investment entity:

(ii) a superannuation scheme:

(iii) a unit trust:

(iv) a life insurer:

(v) a group investment fund; and

(d) the FIF is not an entity described in schedule 25, part B (Foreign investment funds).

Defined in this Act: attributing interest, company, direct income interest, FIF, grey list company, group investment fund, income year, life insurer, portfolio investment entity, superannuation scheme, unit trust

Compare: 2004 No 35 s EX 33(1), (2)

EX 36 Venture capital company emigrating to grey list country: 10-year exemption

A person's rights in a FIF in an income year are not an attributing interest if—

(a) the rights are a direct income interest; and

(b) the FIF is a grey list company; and

(c) the FIF is not an entity described in schedule 25, part B (Foreign investment funds); and

(d) the person has held shares in the company at all times after a time when—

  (i) the company was resident in New Zealand; and

  (ii) the shares were not listed on a recognised exchange; and

(e) the company became a grey list company immediately after having, for 12 months or more,—

  (i) carried on business in New Zealand; and

  (ii) had in New Zealand more than 50% of its assets; and

  (iii) had in New Zealand more than 50% of its employees; and

(f) the year begins less than 10 years after the company became a grey list company; and

(g) at all times in the year, the company has a fixed establishment in New Zealand; and

(h) the company through the fixed establishment—

  (i) incurs in the year, expenditure other than interest of at least $1,000,000 or, if less than $1,000,000, at least 25% of the total expenditure, other than interest, incurred by the company in the year; and

  (ii) at all times in the year, engages at least 10 full-time employees or contractors or, if less than 10, at least 25% of the total number engaged by the company.

Defined in this Act: attributing interest, company, direct income interest, employee, FIF, fixed establishment, grey list company, income year, interest, New Zealand resident, recognised exchange, share, year

Compare: 2004 No 35 s EX 33(3)

Section EX 36(d): amended, on 1 April 2008, by section 387(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 36(e)(i): substituted, on 1 April 2008, by section 387(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 36(h)(i): substituted, on 1 April 2008, by section 387(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 36(h)(ii): substituted, on 1 April 2008, by section 387(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 37 Grey list company owning New Zealand venture capital company: 10-year exemption

A person's rights in a FIF in an income year are not an attributing interest if—

(a) the rights are a direct income interest; and

(b) the FIF is a grey list company; and

(c) the FIF is not an entity described in schedule 25, part B (Foreign investment funds); and

(d) the person has held shares in the grey list company at all times after a time when the shares were not listed on a recognised exchange; and

(e) at all times in the year, the grey list company holds more than 50% of the voting interests in a company resident in New Zealand (the **resident company**) that, for 12 months or more, has—

  (i) carried on a business in New Zealand; and

  (ii) had in New Zealand more than 50% of the resident company's assets; and

  (iii) had in New Zealand more than 50% of the resident company's employees; and

(f) the year begins less than 10 years after the grey list company first held more than 50% of the voting interests in the resident company; and

(g) the resident company through a fixed establishment in New Zealand—

  (i) incurs in the year expenditure, other than interest, of at least $1,000,000 or, if less than $1,000,000, at least 25% of the total expenditure, other than interest, incurred by the company in the year:

  (ii) at all times in the year, engages at least 10 full-time employees or contractors or, if less than 10,

at least 25% of the total number engaged by the company.

Defined in this Act: attributing interest, company, direct income interest, employee, FIF, fixed establishment, grey list company, income year, interest, New Zealand resident, recognised exchange, share, voting interest, year

Compare: 2004 No 35 s EX 33(4)

Section EX 37(d): substituted, on 1 April 2008, by section 388(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 37(e): substituted, on 1 April 2008, by section 388(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 37(e): amended (with effect on 1 April 2008), on 6 October 2009, by section 171(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 37(f): substituted (with effect on 1 April 2008), on 6 October 2009, by section 171(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 37(g)(i): substituted, on 1 April 2008, by section 388(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 37(g)(ii): substituted, on 1 April 2008, by section 388(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 37 list of defined terms **voting interest**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 171(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 37B Share in grey list company acquired under venture investment agreement

A person's rights in a FIF in an income year are not an attributing interest if—

(a) the FIF is a grey list company; and

(b) the person first acquires a share or option to buy a share in the company—

(i) under a venture investment agreement; and

(ii) at the same time and on the same terms as an acquisition of an interest in the FIF by the Venture Investment Fund or a company owned by the Venture Investment Fund.

Defined in this Act: attributing interest, company, FIF, grey list company, income year, share

Compare: 2004 No 35 s EX 37(4B)

Section EX 37B: inserted, on 1 April 2008, by section 389 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 38 Exemption for employee share purchase scheme of grey list company

A person's rights in a FIF in an income year are not an attributing interest if—

(a) the person is a natural person; and

(b) the rights are a direct income interest; and

(c) the FIF is a grey list company; and

(d) the FIF is not an entity described in schedule 25, part B (Foreign investment funds); and

(e) at the time the person acquires the shares, the FIF—

(i) employs the person:

(ii) owns, directly or indirectly, the person's employer; and

(f) the person acquires the shares under a share purchase agreement; and

(g) the share purchase agreement includes a restriction on the disposal of the shares; and

(h) at the beginning of the year, the period of the restriction—

(i) has not expired:

(ii) has expired for a period of less than 6 months.

Defined in this Act: attributing interest, company, direct income interest, employer, FIF, grey list company, share, share purchase agreement, year

Compare: 2004 No 35 s EX 33(5)

Section EX 38(g): substituted (with effect on 1 April 2008), on 6 October 2009, by section 172 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 38(g): substituted, on 1 April 2008, by section 390 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 39 Terminating exemption for grey list company with numerous New Zealand shareholders

Qualifying requirements

(1) A person's rights in a FIF are not an attributing interest if—

(a) the rights are a direct income interest; and

(b) the FIF is a grey list company; and

(c) on 17 May 2006, the company—

(i) was a grey list company; and

(ii) was not an entity described in schedule 25, part B (Foreign investment funds); and

(iii) had more than 20,000 shareholders who had addresses in New Zealand on the company's share register; and

(iv) had shareholders referred to in subparagraph (iii) who between them held shares in the company carrying voting interests of more than 50%; and

(v) had assets of which more than 50% in total value were shares in other companies carrying voting interest of more than 50%; and

(d) on 17 May 2006, the shares were listed—

(i) on a recognised exchange in New Zealand; and

(ii) on a recognised exchange in a grey list country.

Notification requirement

(2) The exemption in subsection (1) does not apply unless the grey list company notified the Commissioner, by 17 January 2007, that the company met the requirements of subsection (1)(b) and (c) on 17 May 2006.

Exemption terminating after 2011–12 year

(3) The exemption in subsection (1) does not apply to the 2012–13 income year and later income years.

Choosing not to apply exemption

(4) The exemption in subsection (1) does not apply for a person, for an income year (the **initial year**) and for later income years, if the person completes a return of income for the initial year on the basis that the exemption does not apply for the person and the initial income year.

Additional temporary exemption

(5) An additional temporary exemption for a grey list company with numerous New Zealand shareholders is contained in section EZ 32 (Terminating exemption for grey list FIF investing in Australasian equities).

Defined in this Act: attributing interest, company, direct income interest, FIF, grey list company, income year, recognised exchange, New Zealand, shareholder

Compare: 2004 No 35 s EX 33B(1), (3)

Section EX 39(1): substituted, on 1 April 2008, by section 391(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 39(2): amended, on 1 April 2008, by section 391(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 40 Foreign exchange control exemption

A person's rights in a FIF are not an attributing interest if and to the extent to which—

(a) the person is a natural person; and

(b) the person acquired the rights—

(i) before first becoming a New Zealand resident; or

(ii) before exchange controls applying to the person and the interest were imposed by a foreign country; or

(iii) before 8.00 pm New Zealand Standard Time on 2 July 1992; and

(c) the exchange controls prevent the person from deriving amounts from the rights, or from disposing of the rights, in New Zealand dollars, or consideration that is readily convertible into New Zealand dollars.

Defined in this Act: amount, attributing interest, FIF, New Zealand, New Zealand resident

Compare: 2004 No 35 s EX 34

EX 41 Income interest of non-resident or transitional resident

Categories 2 and 3

(1) Subsection (2) applies only to rights described in section EX 29(3) or (4).

Exemption for non-resident or transitional resident

(2) A person's rights in a FIF at any time are not an attributing interest if—

(a) the person is a natural person; and

(b) the person acquires the rights when a non-resident or transitional resident; and

(c) at the time, the person is a non-resident or transitional resident.

Defined in this Act: attributing interest, FIF, income year, New Zealand resident, non-resident, transitional resident

Compare: 2004 No 35 s EX 35

EX 42 New resident's accrued superannuation entitlement exemption

Exemption

(1) The rights of a natural person to benefit, as a beneficiary or a member, from a foreign superannuation scheme at any time are not an attributing interest in a FIF—

(a) to the extent to which the requirements of subsections (2) to (4) are met at the time; and

(b) if the requirements of subsections (5) to (9) are met at the time.

Rights accruing before or after becoming resident

(2) The rights must have accrued during a period—

(a) for which the person is not a New Zealand resident:

(b) for which the person is a New Zealand resident and that—

(i) begins when the person becomes a New Zealand resident; and

(ii) ends before the first day of the fifth income year following the income year in which the person becomes a New Zealand resident.

Calculation of rights accruing

(3) The extent to which the rights have accrued during a period referred to in subsection (2) is calculated using the formula—

closing value - opening value.

Definition of items in formula

(4) In the formula,—

(a) **closing value** is the market value of the rights on the day that ends the period:

(b) **opening value** is the market value of the rights on the day that begins the period.

Employee scheme or self-employed

(5) Either—

(a) the scheme must be one where the person's rights can be acquired only through the person's employment; or

(b) the person must be wholly or mainly self-employed, either when the person first acquired the rights or at the relevant time for applying this section.

Contributions or benefits: link to income

(6) The amount contributed to the scheme by or for the person must be calculated—

(a) by some fixed relationship to the person's income from employment or self-employment; or

(b) to provide benefits that bear a fixed relationship to the person's income from employment or self-employment, except to the extent to which the benefits are adjusted by reference to an objective measure of inflation.

Contributions by person, employer, or other scheme

(7) Contributions to the scheme for the person's benefit must be made only by or for—

(a) the person; or

(b) the person's employer, or a person associated with the employer; or

(c) the representatives of another superannuation scheme—

(i) as a transfer of the person's benefit rights in the other scheme; and

(ii) if those benefit rights would have qualified for the exemption in this section.

Restricted rights to assign or cash in

(8) The person's future benefits under the scheme must not be able to be assigned, or exchanged for a current receipt of cash, or other property, except—

(a) if the person becomes physically incapacitated; or

(b) if the person is transferring the benefit rights into another, similar, scheme; or

(c) when or after the person retires at normal retiring age; or

(d) if the person is assigning the benefit rights to a spouse under a relationship agreement; or

(e) at the cost of a substantial decrease in the present value of the benefits.

Relationship property assignment

(9) When the person has obtained the rights by their being assigned under a relationship agreement, the exemption in this

section applies if the assignor spouse would have been entitled to it.

Defined in this Act: amount, associated person, attributing interest, employer, FIF, foreign superannuation scheme, income, income from employment, market value, New Zealand resident, relationship agreement, superannuation scheme

Compare: 2004 No 35 s EX 36

EX 43 Non-resident's pension or annuity exemption

Exemption

(1) The rights of a natural person to benefit from a pension or annuity provided by a FIF are not an attributing interest if the requirements of subsections (2) and (3) are met.

Relevant period of non-residence

(2) The person must have provided the consideration for acquiring the rights—

(a) when the person was not resident in New Zealand; or

(b) when the person was resident in New Zealand but in the period ending 3 years after the end of the income year in which they last became a New Zealand resident; or

(c) when the person was resident in New Zealand but as a result of commuting or transferring their interest in a superannuation fund in anticipation of their ceasing to be a New Zealand resident.

Restricted rights to assign or cash in

(3) The person's future benefits must not be able to be assigned, or exchanged for a current receipt of cash, or other property, except—

(a) if the person is assigning the benefit rights to a spouse under a relationship agreement; or

(b) at the cost of a substantial decrease in the present value of the benefits.

Elective exclusion of pre-1996–97 rights

(4) Subsection (1) does not apply if—

(a) the rights were acquired before the 1996–97 income year; and

(b) the person chose to treat the rights as an interest in a foreign investment fund for the 1996–97 income year and

later income years by complying with the requirements of section CG 15(4) of the Income Tax Act 1994.

Defined in this Act: attributing interest, FIF, foreign investment fund, income year, matrimonial agreement, New Zealand resident, non-resident, relationship agreement, resident in New Zealand, superannuation fund, year

Compare: 2004 No 35 s EX 37

Calculation of FIF income or loss

EX 44 Six calculation methods

Use of 1 method

(1) If the tests in section CQ 5 (When FIF income arises) or DN 6 (When FIF loss arises) are met, the amount of a person's FIF income or loss is calculated under—

(a) the accounting profits method; or

(b) the branch equivalent method; or

(c) the comparative value method; or

(d) the deemed rate of return method; or

(e) the fair dividend rate method; or

(f) the cost method.

Choosing method

(2) The person must choose which calculation method applies by completing their return of income accordingly, but the choice is limited by sections EX 46, EX 47, EX 48, and EX 62.

Defined in this Act: accounting profits method, amount, branch equivalent method, calculation method, comparative value method, cost method, deemed rate of return method, fair dividend rate, FIF income, loss, return of income

Compare: 2004 No 35 s EX 38

EX 45 Exclusion of amounts of death benefit

No FIF income

(1) When this section applies, a person is treated as not deriving FIF income to the extent to which the income arises solely from receiving a death benefit under a life insurance policy.

Application of this section: contract before becoming resident

(2) This section applies if—

(a) the person or the deceased (the **contracting party**), when not a New Zealand resident, entered into a binding contract that gave rise to the benefit; and

(b) at the time the contract was entered into, the contracting party either had not previously been a New Zealand resident or had not been a resident for at least the previous 10 years; and

(c) the benefit was not increased by a voluntary action taken after the contracting party became a resident.

Application of this section: pre-1992 contracts

(3) This section also applies if—

(a) before 2 July 1992 the person or the contracting party entered into a binding contract giving rise to the benefit; and

(b) the benefit was not increased by a voluntary action taken on or after 2 July 1992.

Defined in this Act: amount, FIF income, life insurance policy, New Zealand resident, year

Compare: 2004 No 35 s EX 39

EX 46 Limits on choice of calculation methods

Same method for same FIF

(1) If a person has 2 or more attributing interests in the same FIF for the same period, the person must use the same calculation method for calculating FIF income or loss from each interest in that period, except to the extent to which—

(a) the interests are of different classes; and

(b) this section prevents the same method being used.

Accounting profits method

(2) A person may use the accounting profits method for an accounting period to calculate FIF income or loss from an attributing interest in a FIF only if—

(a) the FIF is a company; and

(b) at all times during the accounting period when the FIF exists, interests in the FIF similar to the person's attributing interest were—

(i) quoted on the official list of a recognised exchange; or

(ii) offered widely by or for the FIF to the public in 1 or more countries; and

(c) the net after-tax accounting profits or losses of the FIF for the accounting period are calculated under generally

accepted accounting practice, or an equivalent standard for consistent and undistorted reporting of net profits, of the country in which the FIF is resident; and

(d) the net after-tax accounting profits or losses are detailed in financial statements—

(i) sent or made available to shareholders in the FIF; and

(ii) readily available to interested members of the public; and

(iii) audited by a chartered accountant, or accountant of equivalent professional standard in the country in which the FIF is resident; and

(iv) for which such an accountant has given a standard audit opinion, without qualifications, to the effect that the financial statements represent the income and financial position of the FIF to the degree of validity normally required in the country in which the FIF is resident; and

(e) the net after-tax accounting profits or losses are calculated, in any case in which the FIF has 1 or more subsidiaries, on a consolidated basis; and

(f) the net after-tax accounting profits or losses include any extraordinary items; and

(g) the person has no reason to believe that the net after-tax accounting profits or losses do not fairly represent the net after-tax profits or losses of the FIF for the accounting period; and

(h) the FIF is not an entity described in schedule 25, part C (Foreign investment funds); and

(i) the Commissioner has not concluded that the net after-tax accounting profits or losses do not fairly represent the net after-tax profits or losses of the FIF for the accounting period.

Branch equivalent method

(3) A person may use the branch equivalent method to calculate FIF income or loss from an attributing interest in a FIF for an accounting period only if—

(a) the FIF is a company; and

(b) the person can provide to the Commissioner, if requested, sufficient information to enable the Commissioner to check the calculations required by section EX 50.

Deemed rate of return method: general rule

(4) A person may use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF for an income year only if the interest is not a direct income interest of less than 10% in a foreign company and any of the following applies:

(a) it is not reasonably practicable for the person to use—

(i) the comparative value method, because the person cannot determine the market value of the attributing interest at the end of the income year; or

(ii) the accounting profits method for any accounting period that falls wholly or partly in the year; or

(b) the person is a natural person and at all times during the income year the total value of attributing interests in FIFs held by the person is $250,000 or less, the value of each interest being—

(i) its book value, calculated under section EX 55(7), at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year:

(ii) its market value, in any other case; or

(c) section EX 48 requires the person to use that method; or

(d) section EX 62 requires the person to continue using that method.

Deemed rate of return method: exception when section EX 47 applies

(5) Despite subsection (4), a person may use the deemed rate of return method to calculate FIF income or loss from an attributing interest in a FIF if—

(a) the interest is a direct income interest in a foreign company of less than 10%; and

(b) the person is required by section EX 47 to use the deemed rate of return method for the interest.

Comparative value method: shares in foreign companies

(6) A person may use the comparative value method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company for an income year only if—

(a) the person is a natural person:

(b) the person is the trustee of a trust that—

(i) has no gifting settlor who is not a natural person or deceased person; and

(ii) at all times in the income year, is a complying trust for a distribution made at the time; and

(iii) is, at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection (or had natural love and affection when alive) or is mainly for the benefit of an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities); and

(iv) is not a superannuation scheme:

(c) the person's direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with them, is 10% or more at any time in the income year:

(d) the share is a non-ordinary share described in subsection (10).

Fair dividend rate method: shares in foreign companies

(7) A person may use the fair dividend rate method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company for an income year only if—

(a) the person's direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with them, is less than 10%—

(i) at any time in the year, if the FIF is a grey list company; or

(ii) at all times in the year, if the FIF is not a grey list company:

(b) the FIF is a foreign PIE equivalent and the person is—

(i) a portfolio investment entity or an entity that qualifies for PIE status:

(ii) a life insurance company.

Fair dividend rate method: exemption for shares in foreign companies

(8) Despite subsection (7), a person must not use the fair dividend rate method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company for an income year if—

(a) the share is a non-ordinary share described in subsection (10):

(b) the person chooses to use the comparative value method for another attributing interest that is a share in a foreign company and for which the person would be allowed, in the absence of this paragraph, to use the fair dividend rate method.

Cost method for shares in foreign companies

(9) A person may use the cost method to calculate FIF income or loss from an attributing interest in a FIF that is a share in a foreign company only if—

(a) the person's direct income interest in the FIF, increased for the purposes of this paragraph by each direct income interest of a person associated with them, is less than 10%—

(i) at any time in the income year, if the FIF is a grey list company; or

(ii) at all times in the income year, if the FIF is not a grey list company; and

(b) use of the fair dividend rate method is allowed but is not practical because the person cannot determine the market value of the attributing interest at the start of the income year except by an independent valuation.

Certain non-ordinary shares

(10) For the purposes of subsections (6)(d) and (8)(a), a non-ordinary share in a foreign company is—

(a) a fixed-rate share:

(b) a non-participating redeemable share:

(c) an interest in a non-resident holding directly or indirectly assets of which 80% or more by value at a time in the income year—

(i) consist of fixed-rate foreign equities, or financial arrangements providing funds to a person; and

(ii) are denominated in New Zealand dollars or, under NZIAS 39, are hedged items having a value in New Zealand dollars governed by a hedging instrument that is highly effective:

(cb) an interest in a non-resident if—

(i) the non-resident holds directly or indirectly assets of which 80% or more by value at a time in the income year consist of fixed-rate foreign equities or financial arrangements providing funds to a person ignoring financial arrangements between the non-resident and other members of a group of companies that it is a member of; and

(ii) the non-resident is not listed on a recognised exchange or is listed on a recognised exchange but is a foreign PIE equivalent, ignoring section HL 10(4) (Further eligibility requirements relating to investments) for the purposes of this subparagraph; and

(iii) the interest is, under NZIAS 39, a hedged item having a value in New Zealand dollars governed by a hedging instrument that is highly effective:

(d) a share that involves an obligation—

(i) of another person to provide to the investor, directly or indirectly through an arrangement, an amount that is more than the issue price of the share; and

(ii) that is non-contingent or subject to a contingency that is sufficiently remote to be immaterial:

(e) a share of a kind that the Commissioner determines under section 91AAO of the Tax Administration Act 1994 to be an interest for which the fair dividend rate method is not available.

Commissioner's determination overriding subsection (10)(a) to (d)

(11) Subsection (10)(a) to (d) does not apply to a share if the Commissioner determines under section 91AAO of the Tax Administration Act 1994 that the share is an interest for which the fair dividend rate is available.

Meaning of gifting settlor

(12) A **gifting settlor**, for a trust (the **relevant trust**), means a person who—

(a) makes a transfer of value, by disposing of property, to the trustee of—

(i) the relevant trust:

(ii) a trust with a trustee who settles property on the relevant trust, directly or through the trustees of other trusts; and

(b) is not the trustee of a trust.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, Commissioner, company, comparative value method, complying trust, cost method, deemed rate of return method, direct income interest, exempt income, fair dividend rate method, FIF, FIF income, financial arrangement, fixed-rate foreign equity, foreign company, foreign PIE equivalent, generally accepted accounting practice, grey list company, income, income year, loss, market value, PIE, portfolio investment entity, recognised exchange, share, shareholder, superannuation scheme, tax, trustee

Compare: 2004 No 35 s EX 40

Section EX 46(6)(b): substituted, on 1 April 2008, by section 392(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 46(6)(b)(iii): amended (with effect on 1 April 2008), on 6 October 2009, by section 173(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(6)(b)(iv): added (with effect on 1 April 2008), on 6 October 2009, by section 173(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(6)(d): substituted (with effect on 1 April 2008), on 6 October 2009, by section 173(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(7)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 173(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(7)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 173(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(8)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 173(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(10) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 173(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(10): amended (with effect on 1 April 2008), on 6 October 2009, by section 173(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(10)(a): substituted (with effect on 30 June 2009), on 29 August 2011, by section 39(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 46(10)(c): substituted, on 1 April 2008, by section 392(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 46(10)(c)(i): amended (with effect on 1 April 2009), on 7 December 2009, by section 30 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 46(10)(cb): inserted (with effect on 1 April 2009), on 6 October 2009, by section 173(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(10)(cb)(i): amended (with effect on 1 April 2009), on 7 December 2009, by section 30 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EX 46(10)(cb)(ii): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 173(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46(11) heading: amended, on 1 April 2008, by section 392(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 46(11): amended, on 1 April 2008, by section 392(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 46(12) heading: added, on 1 April 2008, by section 392(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 46(12): added, on 1 April 2008, by section 392(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 46 list of defined terms **fixed-rate foreign equity**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 173(13) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46 list of defined terms **foreign investment vehicle**: repealed, on 1 April 2010, by section 173(12)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46 list of defined terms **foreign investment vehicle**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 173(11)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46 list of defined terms **foreign PIE**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 173(11)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46 list of defined terms **foreign PIE equivalent**: inserted, on 1 April 2010, by section 173(12)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 46 list of defined terms **PIE**: inserted, on 1 April 2010, by section 173(12)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 47 Method required for certain non-ordinary shares

A person must calculate FIF income or loss for an income year from an attributing interest that is a non-ordinary share described in section EX 46(10) using—

(a) the comparative value method; or

(b) the deemed rate of return method, if use of the comparative value method is not practical because the person cannot determine the market value of the attributing interest at the end of the income year.

Defined in this Act: attributing interest, comparative value method, deemed rate of return method, fair dividend rate method, FIF income, FIF loss, income year, market value, share

Section EX 47: substituted (with effect on 1 April 2008), on 6 October 2009, by section 174 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 48 Default calculation method

When this section applies

(1) This section applies when—

(a) a person does not choose a calculation method to calculate FIF income or loss from an attributing interest for a period; and

(b) sections EX 46, EX 47, and EX 62 do not have the effect of requiring a particular calculation method to be used.

Default choice for direct income interests in FIF of less than 10%

(2) The person is treated as having chosen to use, for the period,—

(a) for a direct income interest in a foreign company of less than 10% for which section EX 46(7) allows the use of the fair dividend rate method,—

(i) the fair dividend rate method if it is practical to use it; and

(ii) the cost method if it is not practical to use the fair dividend rate method.

(b) for any other interest,—

(i) the accounting profits method, if section EX 46(2) allows the use of that method and it is practical to use it; or

(ii) the comparative value method, if use of the accounting profits method is not allowed or is not practical, and it is practical to use the comparative value method; or

(iii) the deemed rate of return method, if use of the accounting profits method is not allowed or is not practical, and it is not practical to use the comparative value method.

Defined in this Act: accounting profits method, attributing interest, calculation method, comparative value method, cost method, deemed rate of return method, direct income interest, fair dividend rate method, FIF income, foreign company, loss

Compare: 2004 No 35 s EX 41

EX 49 Accounting profits method

Formula

(1) If a person is using the **accounting profits method** to calculate FIF income or loss from an attributing interest in a FIF, the total FIF income or loss from all their attributing interests in the FIF for the relevant accounting period is calculated using the formula—

(accounting profits or losses - foreign tax) × income interest.

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (5).

Accounting profits or losses

(3) **Accounting profits or losses** is the net after-tax accounting profits or losses of the FIF for the accounting period.

Foreign tax

(4) **Foreign tax** is the total for the accounting period of income tax on the income of the FIF—

(a) for which the person is liable under the laws of a country or territory outside New Zealand; and
(b) paid by the person in the accounting period.

Income interest

(5) **Income interest** is the person's income interest in the FIF for the accounting period. The income interest is calculated under all the following CFC rules, applying as if the FIF were a CFC:
(a) sections EX 8 to EX 11 and EX 13:
(b) sections EX 16 and EX 17:
(c) section EX 26, unless the person chooses to apply subsection (6).

Election to measure on 31 March only

(6) For an income interest that the person has held for more than 12 months, the person may follow a simplified calculation process by choosing to be treated as holding, at all times in the income year, the same interest, including zero interest, that they held at the end of the income year. The person makes the election by completing their return of income accordingly for the relevant income year.

Election irrevocable

(7) An election under subsection (6) is—
(a) irrevocable and applies to the person and all their attributing interests in the FIF in later years; and
(b) overridden by the anti-avoidance rules in sections GB 9 to GB 16 (which relate to CFCs).

Conversion to New Zealand dollars

(8) The person must choose, for the accounting period and each later accounting period and for all interests for which the person uses the accounting profits method,—
(a) for all the calculations to be done in the currency of the FIF's financial accounts, with the result then converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the accounting period; or
(b) for all the calculations of the net after-tax accounting profits or losses of the FIF to be done in New Zealand dollars.

Reduction in FIF loss to economic loss

(9) In the cases described in subsections (10) and (11), the amount of any FIF loss calculated under subsection (1) is reduced to be equal to the person's corresponding economic loss, if any.

Application of subsection (9): no economic loss

(10) Subsection (9) applies if the person suffers no, or substantially no, economic loss corresponding to the FIF loss, whether because of a call option, a put option, or any other reason.

Application of subsection (9): FIF loss excessive

(11) Subsection (9) also applies if the amount of FIF loss is more than any corresponding economic loss suffered by the person, whether because of the application of the rules for calculating the person's income interest or any other reason.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, CFC, close of trading spot exchange rate, FIF, FIF income, FIF loss, income interest, income year, loss, New Zealand, non-resident, pay, quarter, return of income, tax, tax year

Compare: 2004 No 35 s EX 42

Section EX 49(6): substituted (with effect on 1 April 2008), on 7 December 2009, by section 31(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EX 50 Branch equivalent method

Formula

(1) If a person is using the **branch equivalent method** to calculate FIF income or loss from an attributing interest in a FIF, the total FIF income or loss from all their attributing interests in the FIF for the relevant accounting period is calculated using the formula—

branch equivalent income or loss × income interest.

Definition of items in formula

(2) The items in the formula in subsection (1) are defined in subsections (3) and (4).

Branch equivalent income or loss

(3) **Branch equivalent income or loss** is the branch equivalent income or loss of the FIF for the accounting period. This is calculated by applying section EX 21 of the CFC rules as that provision reads ignoring section 161(1) to (6), (9) to (14), (16),

and (17) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009—

(a) as if the FIF were a CFC and the person were calculating their attributed CFC income or loss; and

(b) applying subsections (5) and (6).

Income interest

(4) **Income interest** is the person's income interest in the FIF for the accounting period. The income interest is calculated under all the following CFC rules, applying as if the FIF were a CFC:

(a) sections EX 8 to EX 11 and EX 13:

(b) sections EX 16 and EX 17:

(c) section EX 26.

Taxable distributions

(5) If the FIF derives a taxable distribution from a non-complying trust in the accounting period,—

(a) the taxable distribution is excluded when calculating the FIF's branch equivalent income or loss, due to the combined effect of subsection (1) and section EX 21(32); and

(b) the person has additional attributed CFC income calculated by multiplying the taxable distribution by the person's income interest in the FIF; and

(c) the person is liable for income tax on the additional attributed CFC income at the rate in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) that applies to amounts under section HC 22 (Use of tax losses to reduce taxable distributions from non-complying trusts).

Calculation of additional FIF income or loss

(6) If the FIF itself has an income interest, calculated under subsection (4), in a foreign company for the accounting period, the person has additional FIF income or loss calculated using the formula—

interest × FIF's FIF income or loss.

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **interest** is the person's income interest in the FIF for the period:

(b) **FIF's FIF income or loss** is the FIF's FIF income or loss calculated under the rules in section EX 58(4) and (5), as if—

(i) the FIF were the CFC referred to; and

(ii) the FIF's interest in the foreign company were an attributing interest, despite any application of section EX 34.

Application of CFC rules tax credit rules

(8) The rules in sections LK 1 to LK 7 (which relate to tax credits for attributed CFC income) apply to allow the person to claim foreign tax credits but on the basis of the assumptions made in subsection (9). The rules in those sections allow foreign tax credits relating to attributed CFC income but apply a jurisdictional ring-fencing approach to the use of tax credits.

Assumptions in reading tax credit rules

(9) Sections LK 1 to LK 7 are applied as if—

(a) the FIF were a CFC; and

(b) the FIF income of the person from the FIF were attributed CFC income; and

(c) the person's income interest, calculated under subsection (4) were their relevant income interest for the purposes of those sections; and

(d) any relevant person's FIF income calculated under the branch equivalent method from a FIF that is resident in the relevant country were attributed CFC income.

Reduction in FIF loss to economic loss

(10) In the cases described in subsections (11) and (12), the amount of any FIF loss calculated under subsections (1) and (6) is reduced to be equal to the person's corresponding economic loss, if any.

Application of subsection (10): no economic loss

(11) Subsection (10) applies if the person suffers no, or substantially no, economic loss corresponding to the FIF loss, whether because of a call option, a put option, or any other reason.

Application of subsection (10): FIF loss excessive

(12) Subsection (10) also applies if the amount of FIF loss is more than any corresponding economic loss suffered by the person,

whether because of the application of the rules for calculating the person's income interest or any other reason.

Defined in this Act: accounting period, amount, attributed CFC income, attributing interest, branch equivalent income, branch equivalent method, CFC, FIF, FIF income, FIF loss, foreign company, income interest, income tax, loss, non-complying trust, non-resident, quarter, tax, taxable distribution

Compare: 2004 No 35 s EX 43

Section EX 50(3): amended (with effect on 30 June 2009), on 6 October 2009, by section 175(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 50(5)(c): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EX 51 Comparative value method

Formula

(1) If a person is using the **comparative value method** to calculate FIF income or loss from an attributing interest in a FIF, the FIF income or loss from that interest for the relevant income year is calculated using the formula—

(closing value + gains) - (opening value + costs).

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (6).

Closing value

(3) **Closing value** is the market value of the person's interest in the FIF at the end of the income year. The value is zero if the person has disposed of the interest or is then applying another calculation method to it.

Gains

(4) **Gains** is the total of all amounts that the person derives during the income year from holding or disposing of the interest. The amounts include any foreign withholding tax or other amount that the person is allowed as a credit under section LE 1 (Tax credits for imputation credits) or LJ 2 (Tax credits for foreign income tax).

Opening value

(5) **Opening value** is the market value of the person's interest in the FIF at the end of the previous income year, calculated using the exchange rate applying under section EX 57 for that previous year. The value is zero if the person did not hold the

interest then or was then applying another calculation method to it.

Costs

(6) **Costs** is the total for the income year of—

(a) all expenditure, if any, that the person incurs in acquiring or increasing the interest:

(b) income tax on the income of the FIF—

(i) for which the person is liable under the laws of a country or territory outside New Zealand; and

(ii) paid by the person in the income year.

Losses from some attributing interests not subject to rule

(7) Subsection (8) applies to a person who calculates under subsection (1) an amount of FIF loss for an attributing interest in a FIF (the **affected interest**) that is neither of the following:

(a) a direct income interest in a foreign company equal to or more than 10% at all times in the relevant income year:

(b) a non-ordinary share described in section EX 46(10).

No total FIF loss from other attributing interests

(8) If, in the absence of this subsection, the person would have under subsection (1) a total FIF loss for the income year from all the person's affected interests, the FIF loss for the income year for the person from each affected interest is reduced to the extent necessary for the total FIF loss from the affected interests to be zero.

Defined in this Act: amount, attributing interest, calculation method, comparative value method, direct income interest, FIF, FIF income, FIF loss, foreign company, foreign withholding tax, income year, loss, market value, pay, tax

Compare: 2004 No 35 s EX 44

Section EX 51(4): amended, on 1 April 2008, by section 393 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 51(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 176(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 51(7) heading: substituted (with effect on 1 April 2009), on 6 October 2009, by section 176(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 51(7): substituted (with effect on 1 April 2009), on 6 October 2009, by section 176(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 51(8) heading: substituted (with effect on 1 April 2009), on 6 October 2009, by section 176(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 51(8): substituted (with effect on 1 April 2009), on 6 October 2009, by section 176(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 52 Fair dividend rate method: usual method

When this section applies

(1) This section applies when a person—

(a) calculates FIF income from an attributing interest in a FIF for an income year under the fair dividend rate method; and

(b) is neither—

(i) a unit-valuing fund that is subject to section EX 53; nor

(ii) another person that determines the market value of the attributing interest for each period of a day in the income year and that chooses to apply the method in section EX 53.

FIF income

(2) The person's total FIF income for the income year from the attributing interests in FIFs (the **FDR interests**) for which the person uses the fair dividend rate method is calculated using the formula in subsection (3).

FIF income formula

(3) The formula is—

(0.05 × opening value) + quick sale adjustment.

Definition of items in FIF income formula

(4) The items in the FIF income formula in subsection (3) are defined in subsections (5) to (7).

Opening value

(5) **Opening value** is the total of the market values of the FDR interests that—

(a) the person holds at the start of the income year; and

(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.

Exclusion for certain managed funds

(5B) Subsection (5)(b) does not apply if—

(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

(b) the FIF is a foreign PIE equivalent.

When quick sale adjustment required

(6) The quick sale adjustment is required, and is not zero, only if the person, in the income year,—

(a) acquires or increases an FDR interest to which this section applies; and

(b) later disposes of or reduces the FDR interest.

Quick sale adjustment

(7) **Quick sale adjustment** is the lesser of—

(a) the total of the amounts (the **peak holding method amount**) calculated for each FDR interest using the formula in subsection (8):

(b) the total of the amounts (the **quick sale gain amount**) calculated for each FDR interest using the formula in subsection (12), treating a negative total as being zero.

Peak holding method amount formula

(8) The formula is—

$$0.05 \times \text{peak holding differential} \times \text{average cost}.$$

Definition of items in formula

(9) The items in the formula in subsection (8) are defined in subsections (10) and (11).

Peak holding differential

(10) **Peak holding differential** is,—

(a) if no share reorganisation occurs in the income year, the lesser of—

(i) the difference between the greatest shareholding in the year and the shareholding at the start of the year:

(ii) the difference between the greatest shareholding in the year and the shareholding at the end of the year; or

(b) if a share reorganisation occurs in the income year, the amount calculated under section EX 54 for the year.

Average cost

(11) **Average cost** is—

(a) if no share reorganisation occurs in the income year, the total amount of expenditure that the person incurs in acquiring or increasing during the income year the attributing interest in the FIF divided by the total for the year of the shareholding increase in the attributing interest in the FIF for each acquisition or increase; or

(b) if a share reorganisation occurs in the income year, the amount calculated under section EX 54 for the year.

Quick sale gain amount formula

(12) The formula, for each acquisition or increase in the attributing interest that is disposed of or reduced in the income year, is—

gain - (interest × average cost).

Definition of items in formula

(13) In the formula in subsection (12),—

(a) **gain** is the total amount that the person derives from holding or disposing of the acquisition or increase:

(b) **interest** is the amount of the shareholding acquisition or increase:

(c) **average cost** is,—

(i) if no share reorganisation occurs in the income year, the total amount of expenditure that the person incurs in acquiring or increasing the attributing interest in the FIF divided by the total for the income year of the shareholding increase in the interest for each acquisition or increase; or

(ii) if a share reorganisation occurs in the income year, the amount calculated under section EX 54 for the year.

LIFO for identifying attributing interests disposed of

(14) For the purposes of subsection (12), attributing interests in a FIF are treated as being disposed of in the reverse order of their acquisition (last in-first out).

Treatment of transaction under section EX 63 or EX 67

(14B) For the purposes of subsection (7), if the person is treated as disposing of or acquiring an attributing interest in an income

year under section EX 63(5) or EX 67, the disposal or acquisition is ignored.

Treatment of attributing interests subject to returning share transfer

(14C) If an attributing interest in a FIF is an original share subject to a returning share transfer, for the purposes of a person using the fair dividend rate method to calculate FIF income, the attributing interest is treated as held by the share supplier.

Meaning of shareholding

(15) In this section, **shareholding** means the number of shares or units in an attributing interest.

Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, foreign PIE equivalent, income year, investor, life insurance, market value, original share, portfolio investment entity, returning share transfer, share, shareholding, share reorganisation, share supplier

Compare: 2004 No 35 ss EX 44B(2), EX 44C

Section EX 52(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 177(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(1)(b): substituted, on 1 April 2008, by section 394(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 177(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 177(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(5): amended, on 1 April 2008, by section 394(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(5)(a): added, on 1 April 2008, by section 394(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(5)(b): added, on 1 April 2008, by section 394(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(5B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(5B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(5B)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 177(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(6): substituted (with effect on 1 April 2008), on 6 October 2009, by section 177(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(7)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 177(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(7)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 177(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(11)(a): amended, on 1 April 2008, by section 394(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(12) formula: amended, on 1 April 2008, by section 394(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(13)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 177(8)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(13)(b): substituted, on 1 April 2008, by section 394(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(13)(c): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for income years beginning on or after 1 April 2008), by section 40(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 52(14B) heading: inserted, on 1 April 2008, by section 394(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(14B): inserted, on 1 April 2008, by section 394(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 52(14C) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52(14C): inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **foreign investment vehicle**: repealed, on 1 April 2010, by section 177(11)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **foreign investment vehicle**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **foreign PIE equivalent**: inserted, on 1 April 2010, by section 177(11)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **life insurance**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **original share**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **portfolio investment entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **returning share transfer**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **share**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 52 list of defined terms **share supplier**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 177(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 53 Fair dividend rate method for unit-valuing funds and others by choice

When this section applies: first case

(1) This section applies when a person—

(a) calculates FIF income from an attributing interest in a FIF for an income year under the fair dividend rate method; and

(b) is a unit trust or other entity (the **fund**) that—

(i) makes investments for the benefits of other persons (the **investors**); and

(ii) assigns each investor an interest (the **unit**) in a proportion of the net returns from the investments; and

(iii) determines the value of the investor's units for each of a number of periods (the **unit valuation periods**) making up the income year.

When this section applies: second case

(1B) This section applies also when a person—

(a) calculates FIF income from an attributing interest in a FIF for an income year under the fair dividend rate method; and

(b) the person is not subject to subsection (1); and

(c) the person—

(i) determines the market value of the attributing interest for each period of a day (the **unit valuation period**) in the income year; and

(ii) chooses that this section applies.

FIF income

(2) The total FIF income for the income year of the fund or person (the **interest holder**) from the attributing interests in FIFs (the **FDR interests**) for which the fund or person uses the fair dividend rate method is the total of the amounts calculated using the formula in subsection (3) for each unit valuation period.

Formula

(3) The formula is—

$$(0.05 \times \text{opening value} \times \frac{\text{period}}{\text{year}}) + \text{quick sale adjustmer}$$

Definition of items in formula

(4) The items in the formula in subsection (3) are defined in subsections (5) to (15).

Opening value

(5) **Opening value** is the total of the market values of the FDR interests that—

(a) the interest holder holds at the start of the unit valuation period; and

(b) are not, at the beginning of the income year, included in a direct income interest of 10% or more in a grey list company.

Exclusion for certain managed funds

(5B) Subsection (5)(b) does not apply if—

(a) the interest holder is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

(b) the FIF is a foreign PIE equivalent.

Period

(6) **Period** is the number of days in the unit valuation period.

Year

(7) **Year** is the number of days in the income year.

When quick sale adjustment required

(8) The quick sale adjustment is required, and is not zero, only if the interest holder has a unit valuation period of more than 1 day and, in the unit valuation period,—

(a) acquires or increases an FDR interest to which this section applies; and

(b) later disposes of or reduces the FDR interest.

Quick sale adjustment

(9) **Quick sale adjustment** is the lesser of—

(a) the total of the amounts (the **peak holding method amount**) calculated for each FDR interest using the formula in subsection (10):

(b) the total of the amounts (the **quick sale gain amount**) calculated for each FDR interest using the formula in subsection (14), treating a negative total as being zero.

Peak holding method amount formula

(10) The formula is—

$$0.05 \times \text{peak holding differential} \times \text{average cost}.$$

Definition of items in formula

(11) The items in the formula in subsection (10) are defined in subsections (12) and (13).

Peak holding differential

(12) **Peak holding differential** is,—

(a) if no share reorganisation occurs in the unit valuation period, the lesser of—

(i) the difference between the greatest shareholding in the period and the shareholding at the start of the period:

(ii) the difference between the greatest shareholding in the period and the shareholding at the end of the period; or

(b) if a share reorganisation occurs in the period, the amount calculated under section EX 54 for the period.

Average cost

(13) **Average cost** is—

(a) if no share reorganisation occurs in the unit valuation period, the total amount of expenditure that the interest holder incurs in acquiring or increasing during the

period the attributing interest in the FIF divided by the total for the period of the shareholding increase in the attributing interest in the FIF for each acquisition or increase; or

(b) if a share reorganisation occurs in the period, the amount calculated under section EX 54 for the period.

Quick sale gain amount formula

(14) The formula, for each acquisition or increase in the attributing interest that is disposed of or reduced in the unit valuation period, is—

gain - (interest × average cost).

Definition of items in formula

(15) In the formula in subsection (14),—

(a) **gain** is the total amount that the interest holder derives from holding or disposing of the acquisition or increase:

(b) **interest** is the amount of the shareholding acquisition or increase:

(c) **average cost** is the total amount of expenditure that the interest holder incurs in acquiring or increasing the attributing interest in the FIF divided by the total for the period of the shareholding increase in the interest for each acquisition or increase.

LIFO for identifying attributing interests disposed of

(16) For the purposes of subsection (14), attributing interests in a FIF are treated as being disposed of in the reverse order of their acquisition (last in-first out).

Deemed transaction under section EX 67 ignored

(16B) For the purposes of subsection (9), if the person is treated as disposing of or acquiring an attributing interest in an income year under section EX 67, the disposal or acquisition is ignored.

Treatment of attributing interests subject to returning share transfer

(16C) If an attributing interest in a FIF is an original share subject to a returning share transfer, for the purposes of a person using the fair dividend rate method to calculate FIF income, the attributing interest is treated as held by the share supplier.

Meaning of shareholding

(17) In this section, **shareholding** means the number of shares or units in an attributing interest.

Defined in this Act: amount, attributing interest, fair dividend rate method, FIF, FIF income, foreign PIE equivalent, income year, investor, life insurance, market value, New Zealand, original share, portfolio investment entity, returning share transfer, share, share reorganisation, share supplier, unit valuation period

Compare: 2004 No 35 ss EX 44B(1), (3), EX 44D

Section EX 53 heading: amended, on 1 April 2008, by section 395(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(1) heading: amended, on 1 April 2008, by section 395(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 178(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(1B) heading: inserted, on 1 April 2008, by section 395(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(1B): inserted, on 1 April 2008, by section 395(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(1B)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 178(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 178(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(2): amended, on 1 April 2008, by section 395(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 178(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(5): amended, on 1 April 2008, by section 395(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(5)(a): added, on 1 April 2008, by section 395(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(5)(b): added, on 1 April 2008, by section 395(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(5B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(5B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(5B)(b): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 178(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(8): substituted (with effect on 1 April 2008), on 6 October 2009, by section 178(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(8): amended, on 1 April 2008, by section 395(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(9)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 178(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(9)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 178(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(13)(a): amended, on 1 April 2008, by section 395(7) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(14) formula: amended, on 1 April 2008, by section 395(8) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(15)(a): substituted, on 1 April 2008, by section 395(9) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(15)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 178(9)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(15)(b): substituted, on 1 April 2008, by section 395(9) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(15)(c): added, on 1 April 2008, by section 395(9) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(15)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 178(9)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(16B) heading: inserted, on 1 April 2008, by section 395(10) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(16B): inserted, on 1 April 2008, by section 395(10) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 53(16C) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53(16C): inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **foreign investment vehicle**: repealed, on 1 April 2010, by section 178(12)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **foreign investment vehicle**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **foreign PIE equivalent**: inserted, on 1 April 2010, by section 178(12)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **life insurance**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **original share**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **portfolio investment entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **returning share transfer**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **share**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 53 list of defined terms **share supplier**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 178(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 54 Fair dividend rate method and cost method: when periods affected by share reorganisations

Relevant items and formulas

(1) This section provides for the calculation, for an income year or unit valuation period (the **affected period**) in which a share reorganisation occurs, of the following:

(a) the item **peak holding differential** for the purposes of the formulas in sections EX 52(8), EX 53(10), and EX 56(15):

(b) the item **average cost** for the purposes of the formulas in sections EX 52(8), EX 52(12), EX 53(10) and EX 56(5) and (15):

(c) the item **increase** for the purposes of the formula in section EX 56(5).

Identifying reorganisation periods

(2) For the purposes of calculating the items for an affected period under this section,—

(a) the affected period is treated as consisting of periods (the **reorganisation periods**) that do not overlap:

(b) a reorganisation period—

(i) begins with the start of the affected period and immediately before each share reorganisation in the affected period; and

(ii) ends immediately before each share reorganisation in the affected period and at the end of the affected period.

Identifying equivalent shareholdings

(3) For the purposes of calculating the items for an affected period under this section,—

(a) the amount of the attributing interest in the FIF held by the person at any time (the **comparison time**) in a reorganisation period, is treated as being the amount (the **equivalent shareholding**) of the attributing interest in the FIF that the person would hold at the end of the affected period if, after the comparison time, the person did not increase or reduce the attributing interest in the FIF except under share reorganisations occurring in the affected period:

(b) the amount of an acquisition or increase (the **acquired shareholding**) by the person of the attributing interest in the FIF other than under a share reorganisation is treated as being the amount (the **equivalent acquired shareholding**) equal to the difference between—

(i) the equivalent shareholding for the time of the acquisition or increase; and

(ii) the amount that would be the equivalent shareholding for the time of the acquisition or increase if the person were not to have the acquired shareholding.

Peak holding differential

(4) The item **peak holding differential**, for a person and an affected period, is the lesser of the following:

(a) the difference between the equivalent shareholding that is the greatest for the affected period and the equivalent shareholding at the start of the affected period:

(b) the difference between the equivalent shareholding that is the greatest for the affected period and the equivalent shareholding at the end of the affected period.

Average cost

(5) The item **average cost**, for a person and an affected period, is the total amount of expenditure that the person incurs during the affected period in acquiring or increasing the attributing interest in the FIF divided by the total for the affected period of the equivalent acquired shareholding for each acquisition or increase.

Increase

(6) The item **increase**, for a person and an affected period, is the difference between the equivalent shareholding at the start of the affected period and the equivalent shareholding at the start of the period before the affected period.

Defined in this Act: amount, attributing interest, FIF, income year, share reorganisation, unit valuation period

Compare: 2004 No 35 s EX 44E

Section EX 54(1)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for income years beginning on or after 1 April 2008), by section 41(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EX 55 Deemed rate of return method

Formula changes if interest changes

(1) If a person is using the **deemed rate of return method** to calculate FIF income or loss from an attributing interest in a FIF for an income year, the FIF income or loss is calculated—

(a) by the formula in subsection (3) (the **standard formula**) if the person has held the interest unchanged throughout the income year; and

(b) by totalling the amounts calculated by the formula in subsection (5) (the **part-year formula**) for each part of the income year during which the interest is unchanged, in any other case.

When interest changes

(2) A person's attributing interest in a FIF changes during an income year if the person—

(a) acquires or increases the interest; or

(b) disposes of or reduces the interest, but merely receiving an annuity payment from the interest is not a disposal or reduction.

Standard formula

(3) The standard formula is—

opening book value × deemed rate.

Definition of items in standard formula

(4) In the standard formula,—

(a) **opening book value** is the book value of the interest at the end of the previous income year, calculated under subsection (7):

(b) **deemed rate** is the rate set by the Governor-General by Order in Council for this section for the relevant income year.

Part-year formula

(5) The part-year formula is—

$$(\text{opening value book value} + \text{costs}) \times \frac{(\text{deemed rate} \times \text{da}}{365}.$$

Definition of items in part-year formula

(6) In the part-year formula,—

(a) **opening book value** is the book value, if any, of the interest at the end of the period before the part of the income year, calculated under subsection (7):

(b) **costs** is the total for the part of the income year of—

(i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:

(ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the part of the income year:

(c) **deemed rate** is the rate set by the Governor-General by Order in Council for this section for the relevant income year:

(d) **days** is the number of days in the part of the income year; and for this purpose, an acquisition or increase is treated as occurring at the start of a day, and a disposition or reduction is treated as occurring at the end of a day.

Closing book value formula

(7) The book value, at the end of an income year or, in a case in which subsection (5) applies, a part of an income year, of an attributing interest of a person in a FIF under the deemed rate of return method is, unless subsection (9) applies, calculated using the formula (the **closing book value formula**)—

(opening book value + costs + deemed income + top-up amounts) - gains.

Definition of items in closing book value formula

(8) In the closing book value formula,—

(a) **opening book value** is the book value, if any, of the interest at the end of the previous income year or the part of the income year, calculated under subsection (7):

(b) **costs** is the total for the income year or part of the income year of—

(i) all expenditure, if any, that the person incurs in acquiring or increasing the interest:

(ii) income tax on the income of the FIF for which the person is liable under the laws of a country or territory outside New Zealand and which is paid by the person in the income year or part of the income year:

(c) **deemed income** is the FIF income from the interest for the year or the part of the income year calculated under subsection (3) or (5):

(d) **top-up amounts** is amounts, gains from holding or disposing of the interest, that are top-up FIF income in the year under section EX 60 or EX 61:

(e) **gains** is the total of all amounts that the person derives during the year or the part of the income year from holding or disposing of the interest; the amounts including any foreign withholding tax or other amount that the person is allowed as a credit under section LE 1 (Tax

credits for imputation credits) or LJ 2 (Tax credits for foreign income tax).

Closing book value zero if changing method

(9) The closing book value is always zero if the person is using a calculation method for the interest different from the deemed rate of return method at the end of the income year or, in a case to which subsection (5) applies, the part of the income year.

Top-up income if deemed rate inadequate

(10) If the closing book value of a person's attributing interest in a FIF at the end of an income year or a part of an income year is below zero, the person has additional FIF income equal to the deficit for the relevant income year.

When subsection (10) does not apply

(11) Subsection (10) does not apply if—

(a) the person is a natural person; and

(b) at all times during the income year the total value of the person's attributing interests in FIFs is $250,000 or less, the value of each interest being—

(i) its book value, calculated under subsection (7), at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year:

(ii) its market value, in any other case; and

(c) the deficit in closing book value arises only because the person disposed of some or all of the interest; and

(d) the gain that the person derived from disposing of the interest or part-interest is not income, or is income only to the extent to which it gives rise to FIF income.

Top-up income if gains more than deemed income

(12) A person calculating FIF income under the deemed rate of return method can also have additional FIF income under section EX 60.

FIF income reduced on disposal if deemed rate excessive

(13) If a person has disposed of the whole of an attributing interest in a FIF and the closing book value for the relevant income year or the part of the income year is more than zero, the excess is

subtracted when the person's FIF income under the deemed rate of return method for the income year is calculated.

When subsection (13) does not apply

(14) Subsection (13) does not apply if—

(a) the person is a natural person; and

(b) at all times during the income year the total value of attributing interests in FIFs held by the person is $250,000 or less, the value of each interest being—

(i) its book value, calculated under subsection (7), at the end of the previous income year, if the person held the interest then and used the deemed rate of return method to calculate FIF income for all attributing interests in the previous income year:

(ii) its market value, in any other case; and

(c) the gain that the person derived from disposing of the interest or part-interest is not income, or is income only to the extent to which it gives rise to FIF income.

Defined in this Act: amount, attributing interest, calculation method, deemed rate of return method, FIF, FIF income, foreign withholding tax, income, income year, loss, market value, pay, tax

Compare: 2004 No 35 s EX 45

Section EX 55(8)(e): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

EX 56 Cost method

Cost method formula

(1) If a person is using the cost method to calculate FIF income or loss from an attributing interest in a FIF for an income year, the person's total FIF income from their attributing interests in the FIF for the income year is calculated using the formula—

(0.05 × opening value) + quick sale adjustment.

Definition of items in formula

(2) The items in the formula in subsection (1) are defined in subsections (3) to (18).

Opening value

(3) **Opening value** is the total of the market values of the person's attributing interests in the FIF, being—

(a) zero, if the relevant income year is the year in which the person acquires an attributing interest in the FIF; or

(ab) the amount that is shown as the net asset value of the interest in audited financial statements of the person for the relevant income year made available to the general public, if—

(i) paragraph (a) does not apply; and

(ii) the FIF makes available to the general public audited financial statements for its accounting year ending in the relevant income year; and

(iii) the person chooses that this paragraph applies; or

(ac) the amount of the cost of the interest, if—

(i) paragraphs (a) and (ab) do not apply; and

(ii) the person acquires the interest in the 2005–06 or 2006–07 income year; and

(iii) the interest was not an attributing interest for the income year before the relevant income year; or.

(b) the amount of an independent valuation of the market value of the interest at the start of the relevant income year, if paragraphs (a), (ab) and (ac) do not apply and the person holds the interest at the start of the relevant income year, and—

(i) the interest was not an attributing interest for which the person has FIF income or loss for the income year before the relevant income year:

(ii) the person has used the cost method for the interest for a period of 4 or more income years ending before the relevant income year and has not applied this paragraph to the interest for any of those income years; or

(c) the amount calculated using the formula in subsection (4), if paragraphs (a), (ab), (ac), and (b) do not apply and the person's shareholding (the **current opening shareholding**) at the start of the relevant income year is the same as the person's shareholding (the **preceding opening shareholding**) at the start of the preceding income year; or

(d) the amount calculated using the formula in subsection (5), if paragraphs (a), (ab), (ac), and (b) do not apply

and the person's current opening shareholding is more than the preceding opening shareholding; or

(e) the amount calculated using the formula in subsection (6), if paragraphs (a), (ab), (ac), and (b) do not apply and the person's current opening shareholding is less than the preceding opening shareholding.

Opening value formula: no shareholding change

(4) The formula referred to in subsection (3)(c) is—

1.05 × preceding opening.

Opening value formula: shareholding increase

(5) The formula referred to in subsection (3)(d) is—

1.05 × preceding opening + (increase × average cost).

Opening value formula: shareholding decrease

(6) The formula referred to in subsection (3)(e) is—

$$\frac{\text{opening shareholding}}{\text{preceding shareholding}} \times 1.05 \times \text{preceding opening.}$$

Definition of items in formulas

(7) The items in the formula in subsections (4) to (6) are defined in subsections (8) to (13).

Preceding opening

(8) **Preceding opening** is the opening value for the income year before the relevant income year.

FIF income
[Repealed]

(9) *[Repealed]*

Increase

(10) **Increase** is,—

(a) if no share reorganisation occurs in the preceding income year, the difference between the person's shareholding at the start of the relevant income year and the person's shareholding at the start of the preceding income year:

(b) if a share reorganisation occurs in the preceding income year, the amount calculated under section EX 54 for the preceding income year.

Average cost

(11) **Average cost** is,—

(a) if no share reorganisation occurs in the preceding income year, the total amount of expenditure that the person incurs in acquiring or increasing during the preceding income year the attributing interest in the FIF divided by the total for the preceding income year of the increase in the attributing interest in the FIF for each acquisition or increase; or

(b) if a share reorganisation occurs in the preceding income year, the amount calculated under section EX 54 for the preceding income year.

Opening shareholding

(12) **Opening shareholding** is the amount of the person's shareholding at the start of the relevant income year.

Preceding shareholding

(13) **Preceding shareholding** is the amount of the person's shareholding at the start of the preceding income year.

When quick sale adjustment required

(14) The quick sale adjustment is required only if, in the relevant income year, the person disposes of or reduces their attributing interest in the FIF after acquiring it or increasing it. The quick sale adjustment is zero in any other case.

Quick sale adjustment

(15) **Quick sale adjustment** is calculated using the formula—

$$0.05 \times \text{peak holding differential} \times \text{average cost}.$$

Definition of items in formula

(16) The items in the formula in subsection (15) are defined in subsections (17) and (18).

Peak holding differential

(17) **Peak holding differential** is,—

(a) if no share reorganisation occurs in the relevant income year, the lesser of—

(i) the difference between the greatest shareholding in the year and the shareholding at the start of the year:

(ii) the difference between the greatest shareholding in the year and the shareholding at the end of the year; or

(b) if a share reorganisation occurs in the relevant income year, the amount calculated under section EX 54 for the year.

Average cost

(18) **Average cost** is,—

(a) if no share reorganisation occurs in the relevant income year, the total amount of expenditure that the person incurs in acquiring or increasing during the relevant income year the attributing interest in the FIF divided by the total for the year of the shareholding increase in the attributing interest in the FIF for each acquisition or increase; or

(b) if a share reorganisation occurs in the relevant income year, the amount calculated under section EX 54 for the year.

Meaning of shareholding

(19) In this section, **shareholding** means the number of shares or units in an attributing interest.

Defined in this Act: amount, attributing interest, cost method, FIF, FIF income, FIF loss, income year, market value, New Zealand, share reorganisation, unit valuation period

Compare: 2004 No 35 s EX 45B

Section EX 56(3)(ac)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 179(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(3)(ac)(iii): added (with effect on 1 April 2008), on 6 October 2009, by section 179(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(3)(ab): inserted, on 1 April 2008, by section 396(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(3)(ac): inserted, on 1 April 2008, by section 396(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(3)(b): amended, on 1 April 2008, by section 396(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(3)(b)(i): amended, on 1 April 2008, by section 396(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(3)(c): amended, on 1 April 2008, by section 396(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(3)(d): amended, on 1 April 2008, by section 396(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(3)(e): amended, on 1 April 2008, by section 396(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(4) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 179(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(5) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 179(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(6) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 179(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(9) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 179(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(9): repealed (with effect on 1 April 2008), on 6 October 2009, by section 179(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(11)(a): amended, on 1 April 2008, by section 396(7) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56(15) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 179(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 56(18)(a): amended, on 1 April 2008, by section 396(8) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 56 list of defined terms **close of trading spot exchange rate**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 179(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 57 Conversion of foreign currency amounts: most methods

When this section applies

(1) This section applies when—

(a) an amount in a foreign currency is the market value of, or is derived from or incurred on, an attributing interest in a FIF that a person has in an income year; and

(b) the person is using one of the following calculation methods (the **relevant method**) to calculate their FIF income or loss from the interest for the income year:

(i) the comparative value method:
(ii) the fair dividend rate method:
(iii) the deemed rate of return method:
(iv) the cost method.

Choosing conversion rates

(2) The person must choose either that—

(a) each foreign currency amount in the income year is converted into New Zealand dollars using the exchange rate on the day for which the market value is determined or on which the amount is derived or incurred; or

(b) all foreign currency amounts in the income year are converted into New Zealand dollars at the average of the close of trading spot exchange rates for the 15th day of each month that falls in the income year.

Election applying method-wide and for future years

(3) The election by the person must be applied for all attributing interests for which they use the relevant method for the income year and each later income year.

Defined in this Act: amount, attributing interest, calculation method, close of trading spot exchange rate, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF income, FIF loss, income year, New Zealand

Compare: 2004 No 35 ss EX 44(7), EX 44C(11), EX 44D(13), EX 45(15), EX 45B(17)

EX 58 Additional FIF income or loss if CFC owns FIF

Application of this section

(1) This section applies when—

(a) a person has an income interest of 10% or more in a CFC for an accounting period under sections EX 14 to EX 17; and

(b) because section EX 21(33) applies, FIF income and FIF loss is not taken into account in calculating the branch equivalent income or loss of the CFC for the period for the person.

Calculation of FIF income or loss

(2) The person instead has FIF income or loss, for the income year in which the period ends, calculated using the formula—

income interest × CFC's FIF income or loss.

Definition of items in formula

(3) In the formula,—

(a) **income interest** is the person's income interest in the CFC for the period under sections EX 8 to EX 13:

(b) **CFC's FIF income or loss** is the CFC's FIF income or loss for the period calculated under subsections (4) and (5).

Application of FIF rules to choice of method

(4) The person must—

(a) choose, under sections EX 44 to EX 48, the calculation method for calculating the CFC's FIF income or loss; and

(b) otherwise apply the calculation rules in sections EX 44 to EX 61 as if the person directly held the attributing interest; and

(c) apply the FIF loss ring-fencing rules in section DN 8 (Ring-fencing cap on deduction: branch equivalent method) as if the person directly held the attributing interest.

Exclusion of policyholders' entitlements

(5) Despite subsection (4), the CFC's FIF income or loss does not include any amount actuarially determined to be attributable to policyholders in the CFC or another company as a result of applying section EX 21(25) and (26) to the CFC.

Non-attributing Australian CFCs

(6) This section applies whether or not the CFC is a non-attributing Australian CFC under section EX 22 for the period.

Exclusion for insurance CFC meeting requirements of determination

(7) The CFC's FIF income or loss does not include income from an income interest of less than 10% in a FIF if the CFC meets the requirements of a determination made by the Commissioner under section 91AAQ of the Tax Administration Act 1994.

Defined in this Act: accounting period, amount, attributing interest, branch equivalent income, calculation method, CFC, company, FIF, FIF income, FIF loss, FIF rules, grey list, income interest, income year, loss

Compare: 2004 No 35 s EX 46

Section EX 58(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 180(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 58(6) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 180(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 58(6): substituted (with effect on 30 June 2009), on 6 October 2009, by section 180(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 58(7) heading: substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 42(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section EX 58(7): added (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 42(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Relationship with other provisions in Act

EX 59 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method

When this section applies

(1) This section applies when a person has an attributing interest in a FIF and calculates their FIF income or loss from the interest for a period using—

(a) the comparative value method:

(b) the deemed rate of return method:

(c) the fair dividend rate method:

(d) the cost method.

Exclusion for interests in grey list companies

(1B) Subsection (1)(c) does not apply if—

(a) the FIF is a grey list company; and

(b) the person holds a direct income interest of 10% or more in the FIF at the beginning of the income year in which the period falls.

Application of rule for certain managed funds

(1C) Subsection (1B) does not apply if—

(a) the person is a portfolio investment entity, an entity eligible to be a portfolio investment entity, or a life insurance company; and

(b) the FIF is a foreign PIE equivalent.

No income other than FIF income

(2) The person is treated as not having any income from the interest for the period other than FIF income and, in particular, any dividends derived in the period from the interest and any income gained from disposing of the interest in the period are disregarded.

Exception to subsection (2): fees rebate

(2B) An amount derived by the person from the interest is not disregarded under subsection (2) if—

(a) the amount is a rebate of fees; and

(b) the person was allowed a deduction for the payment of the fees.

No deductions other than FIF loss

(3) The person is denied a deduction for any amount incurred in the period on acquiring some or all of the interest, except to the extent to which the amount is taken into account under the relevant calculation method in calculating FIF income or loss for the period.

Application of trading stock rules

(4) The interest is not trading stock in the period and accordingly subpart EB (Valuation of trading stock (including dealer's livestock)) does not apply.

Defined in this Act: amount, attributing interest, calculation method, company, comparative value method, cost method, deduction, deemed rate of return method, direct income interest, dividend, fair dividend rate method, FIF, FIF income, FIF loss, foreign PIE equivalent, grey list company, income, life insurance, loss, portfolio investment entity trading stock

Compare: 2004 No 35 s EX 47

Section EX 59(1)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 181(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(1)(c): substituted, on 1 April 2008, by section 397 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 59(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(1C) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(1C): inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(1C)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 181(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(2B) heading: inserted (with effect on 1 April 2009), on 6 October 2009, by section 181(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59(2B): inserted (with effect on 1 April 2009), on 6 October 2009, by section 181(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **direct income interest**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **foreign investment vehicle**: repealed, on 1 April 2010, by section 181(6)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **foreign investment vehicle**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **foreign PIE equivalent**: inserted, on 1 April 2010, by section 181(6)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **grey list company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **life insurance**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 59 list of defined terms **portfolio investment entity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 181(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 60 Top-up FIF income: deemed rate of return method

When this section applies

(1) This section applies at any time when a person—

(a) has an attributing interest in a FIF for a period; and

(b) is calculating the FIF income or loss from the interest using the deemed rate of return method; and

(c) derives in the period, from holding or disposing of the interest, an amount that would have been income if section EX 59(2) had not applied.

Formula

(2) The gain is FIF income to the extent to which the amount calculated using the following formula is positive:

total income gains - total FIF income.

Definition of items in formula

(3) In the formula,—

(a) **total income gains** is the total of amounts, including the amount in question, derived by the person until that time from holding or disposing of the interest that would have been income if EX 59(2) had not applied:

(b) **total FIF income** is the total of FIF income, reduced by the total of any FIF losses, derived by the person from the interest until, and including, the relevant period.

Consequence of partial sales

(4) If the person disposes of part of the interest, this section applies to the part disposed of and the part retained as if they were separate interests. If this means that an apportionment is necessary, it must be done on the basis of the respective market values at the time the part interest is disposed of.

Defined in this Act: amount, attributing interest, deemed rate of return method, FIF, FIF income, FIF loss, income, loss, market value

Compare: 2004 No 35 s EX 48

EX 61 Top-up FIF income: 1 April 1993 uplift interests

When this section applies

(1) This section applies at any time if a person—

(a) has an attributing interest in a FIF for a period; and

(b) held the interest on 2 July 1992; and

(c) calculated their FIF income from the interest in the period starting on 1 April 1993 under the comparative value method or the deemed rate of return method; and

(d) was treated as having reacquired the interest on 1 April 1993 for an uplifted cost under section CG 23(1)(d) of

the Income Tax Act 1994 or EZ 7 of the Income Tax Act 2004; and

(e) derives in the period, from holding or disposing of the interest, an amount that would have been income if section EX 59(2) had not applied.

Formula

(2) The gain is FIF income to the extent to which the amount calculated using the following formula is positive:

total income gains - total FIF income.

Definition of items in formula

(3) In the formula,—

(a) **total income gains** is the total of amounts, including the amount in question, that the person derived until that time from holding or disposing of the interest that would have been income if EX 59(2) had not applied:

(b) **total FIF income** is the total of FIF income, reduced by the total of any FIF losses, that the person derived from the interest until, and including, the relevant period.

Consequence of partial sales

(4) If the person disposes of part of the interest, this section applies to the part disposed of and the part retained as if they were separate interests. If this means that an apportionment is necessary, it must be done on the basis of the respective market values at the time the part interest is disposed of.

Defined in this Act: amount, attributing interest, comparative value method, deemed rate of return method, FIF, FIF income, FIF loss, income, market value

Compare: 2004 No 35 s EX 49

Changing calculation method

EX 62 Limits on changes of method

No change unless allowed

(1) Once a person uses a particular calculation method to calculate FIF income or loss for an attributing interest in a FIF for a particular period, they must use the same method for interests in the FIF for the next period unless they are allowed to change under subsections (2) to (9).

Change on practical grounds

(2) The person may change if it is not practical to continue with the same method because—

(a) in the case of the accounting profits method, section EX 46(2) prevents its continued use or it is impossible to obtain enough information to continue to use it:

(b) in the case of the branch equivalent method, it is impossible to obtain enough information to continue to use it:

(c) in the case of the comparative value method, it is impossible to find out the end-of-year market value of the interest:

(d) in the case of the deemed rate of return method, if the person was entitled to use that method only by falling under the $250,000 threshold in section EX 46(4)(b), the threshold is exceeded:

(e) in the case of the deemed rate of return method, if it was the default method under section EX 48, it ceases to be the default method:

(f) in the case of the fair dividend rate method, it is impossible to find out the start-of-year market value of the interest except by an independent valuation:

(g) in the case of the cost method, if it was the default method under section EX 48, it ceases to be the default method.

Choosing to change

(3) The person may also change by notice to the Commissioner if—

(a) the notice complies with subsection (4); and

(b) either—

(i) the person is a natural person and the $250,000 threshold in subsection (5) is not exceeded; or

(ii) the change is to, or from, the branch equivalent method and within subsections (6) and (7).

Notice of election

(4) The notice of an election to change under subsection (3) must—

(a) give the reasons for the change; and

(b) comply with the Commissioner's notice requirements; and

(c) be given before the end of the first income year or accounting period for which the change is to take effect, unless the Commissioner agrees to a retrospective notice; and

(d) in the case of a natural person relying on the $250,000 threshold test in subsection (3)(b)(i), be given before the end of the year or period that is before the one from the end of which the change takes effect.

Natural person: $250,000 threshold

(5) A natural person may make an election under subsection (3) if the total market value of their attributing interests in FIFs is $250,000 or less at the end of the income year or accounting period before the year or period from the end of which the change takes effect.

Changing to or from branch equivalent method

(6) A person may make an election under subsection (3) to change—

(a) to the branch equivalent method if—

(i) this is the first time they have chosen to change to the branch equivalent method for an attributing interest in the FIF; or

(ii) subsection (7) allows them to make another election:

(b) from the branch equivalent method if—

(i) they are changing back to a calculation method that they used for attributing interests in the fund before they used the branch equivalent method; and

(ii) this is the first time they have chosen to change from the branch equivalent method, unless subsection (7) allows them to make another election.

Repeated changes to or from branch equivalent method

(7) A person may change more than once to, or from, the branch equivalent method if—

(a) there has been a change in circumstances, such as a significant change in shareholding, that significantly changes their ability to obtain enough information to use the branch equivalent method; and

(b) altering their income tax liability is not the principal purpose or effect of the change.

Repeated changes between fair dividend rate method and comparative value method

(8) A person may change more than once from the fair dividend rate method to the comparative value method and from the comparative value method to the fair dividend rate method if the person is a natural person or the trustee of a trust that—

(a) has no gifting settlor who is not a natural person or deceased person; and

(b) at all times in the income year, is a complying trust for a distribution made at the time; and

(c) is—

(i) at all times in the income year, mainly for the benefit of a natural person for whom the gifting settlors of the trust have natural love and affection, or had natural love and affection when alive:

(ii) mainly for the benefit of an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to the income of charities); and

(d) is not a superannuation scheme.

Change to fair dividend rate method in return for 2008–09, 2009–10 tax year

(9) A person may change to the fair dividend rate method from the branch equivalent method or the accounting profits method in the person's return of income for—

(a) the 2008–09 tax year, if the person has not furnished a return for that tax year before the date on which the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 receives the Royal assent; or

(b) the 2009–10 tax year, if the person has furnished a return for the 2008–09 tax year before the date on which that Act receives the Royal assent.

Defined in this Act: accounting period, accounting profits method, attributing interest, branch equivalent method, calculation method, Commissioner, comparative value method, complying trust, cost method, deemed rate of return method, exempt income, fair dividend rate method, FIF, FIF income, income

tax liability, income year, loss, market value, notice, return, return of income, settlor, superannuation scheme, tax year, trustee

Compare: 2004 No 35 s EX 50

Section EX 62(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 182(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 62(8)(a): substituted, on 1 April 2008, by section 398 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 62(8)(b): substituted, on 1 April 2008, by section 398 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 62(8)(c): substituted, on 1 April 2008, by section 398 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 62(8)(d): substituted, on 1 April 2008, by section 398 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 62(9) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 182(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 62(9): added (with effect on 1 April 2008), on 6 October 2009, by section 182(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 62 list of defined terms **return**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 182(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 62 list of defined terms **return of income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 182(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 62 list of defined terms **tax year**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 182(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 63 Consequences of changes in method

Changes between cost-based methods and look-through methods

(1) Subsection (2) applies if a person holding an attributing interest in a FIF changes the calculation method for calculating FIF income or loss from the interest—

(a) from 1 of the 4 cost-based calculation methods (the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method) to either of the look-through calculation methods (the accounting profits method or the branch equivalent method); or

(b) from either of the look-through calculation methods to 1 of the 4 cost-based calculation methods.

Treatment as sale for market value

(2) The person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first accounting period to which the new method applies; and

(b) reacquired it immediately after the start of the period; and

(c) received for the disposal and paid for the reacquisition an amount equal to the interest's market value at the time.

Changes from comparative value method or fair dividend rate method to cost method or deemed rate of return method

(3) If a person holding an attributing interest in a FIF changes from either of the comparative value method and the fair dividend rate method to either of the cost method and the deemed rate of return method for calculating FIF income or loss from the interest, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

(b) reacquired it immediately after the start of the income year; and

(c) received for the disposal and paid for the reacquisition an amount equal to the interest's market value at the time of the disposal.

Changes from cost method or deemed rate of return method to comparative value method or fair dividend rate method

(4) If a person holding an attributing interest in a FIF changes from either of the cost method or the deemed rate of return method to either of the comparative value method or fair dividend rate method for calculating FIF income or loss from the interest, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

(b) reacquired it immediately after the start of the income year; and

(c) received for the disposal and paid for the reacquisition an amount equal to,—

(i) for a person changing from the cost method, what would have been the interest's opening value under section EX 56 if the person had applied the cost method for the income year; or

(ii) for a person changing from the deemed rate of return method, the interest's closing book value under section EX 55(7) for the preceding income year.

Changes between comparative value method and fair dividend rate method

(5) If a person holding an attributing interest in a FIF changes from either of the comparative value method and the fair dividend rate method to the other of the comparative value method and the fair dividend rate method for calculating the FIF income or loss from the interest, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the start of the first income year to which the new method applies; and

(b) reacquired the interest at the start of the income year; and

(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, income year, loss, market value, pay

Compare: 2004 No 35 s EX 51

Section EX 63(5) heading: added, on 1 April 2008, by section 399 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 63(5): added, on 1 April 2008, by section 399 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Cases of entry into and exit from FIF rules

EX 64 Migration of persons holding FIF interests

Leaving New Zealand

(1) Subsection (2) applies if a person—

(a) ceases to be resident in New Zealand; and

(b) holds an attributing interest in a FIF at the time; and

(c) for the period before the change of residence, calculates FIF income or loss from the interest using—

(i) the comparative value method:

(ii) the deemed rate of return method:

(iii) the fair dividend rate method:

(iv) the cost method.

Treatment as sale at market value

(2) The person is treated as—

(a) having sold the interest immediately before the change of residence for an amount equal to its market value at the time; and

(b) not holding the interest when not resident in New Zealand, unless they become resident again and subsections (3) and (4) apply.

Coming to New Zealand

(3) Subsection (4) applies if a person—

(a) is a non-resident or a transitional resident; and

(b) becomes a New Zealand resident who is not a transitional resident; and

(c) holds an attributing interest in a FIF at the time; and

(d) for the period after the change of residence or status, calculates FIF income or loss from the interest using—

(i) the comparative value method:

(ii) the deemed rate of return method:

(iii) the fair dividend rate method:

(iv) the cost method.

Treatment as purchase at market value

(4) The person is treated as—

(a) having bought the interest immediately after the change of residence or status for an amount equal to its market value at the time; and

(b) not holding it when the person is a transitional resident or not a New Zealand resident, unless they had previously ceased being resident and subsections (1) and (2) applied.

Look-through calculation method: relevance of income interest rules

(5) Subsection (6) applies if a person—

(a) ceases to be—

(i) a New Zealand resident who is not a transitional resident, and becomes a non-resident:

(ii) a non-resident, and becomes a New Zealand resident who is not a transitional resident:

(iii) a transitional resident, and becomes a New Zealand resident who is not a transitional resident; and

(b) holds an attributing interest in a FIF at the time; and

(c) for the accounting period in which the change occurs, uses the accounting profits method or branch equivalent method to calculate FIF income or loss from the interest.

Income interest rules

(6) The income interest rule in section EX 16 is relevant to the calculation of the amount of FIF income or loss for the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, FIF loss, income interest, loss, market value, New Zealand, New Zealand resident, non-resident, resident in New Zealand, transitional resident

Compare: 2004 No 35 s EX 52

EX 65 Changes in application of FIF exemptions

Exemptions ceasing to apply

(1) Subsections (2) to (4) apply if a person—

(a) holds rights in 1 of the categories of rights described in section EX 29(2) to (4); and

(b) either—

(i) the rights become an attributing interest in a FIF because 1 of the exemptions in sections EX 31 to EX 43 ceases to apply; or

(ii) the person starts having FIF income or loss from the rights because they incur a cost on an attributing interest in a FIF and exceed the $50,000 threshold in sections CQ 5(1)(d) or (e) (When FIF income arises) and DN 6(1)(d) or (e) (When FIF loss arises).

Market value for cost-based methods

(2) If the person uses the comparative value method, deemed rate of return method, the fair dividend rate method, or the cost method to calculate FIF income or loss from the rights for the period following the change, the person is treated as having—

(a) disposed of the rights to an unrelated person immediately before the change; and

(b) reacquired them immediately after the change; and

(c) received for the sale and paid for the repurchase an amount equal to their market value at the time.

Calculation of reduction in FIF income or loss

(3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or the branch equivalent method to calculate FIF income or loss from the rights for that period, the FIF income or loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period}}.$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **FIF income or loss** is the FIF income or loss of the person from the rights for the period before allowing for the reduction:

(b) **days before change** is the number of complete days in the period before the change occurs:

(c) **days in period** is the number of days in the period.

Exemptions applying

(5) Subsections (6) to (8) apply if a person—

(a) holds an attributing interest in a FIF; and

(b) either—

(i) the interest ceases to be an attributing interest in a FIF because 1 of the exemptions in sections EX 31 to EX 43 starts to apply; or

(ii) the person ceases having FIF income or loss from the interest because they dispose of an attributing interest in a FIF and fall below the $50,000 threshold in sections CQ 5(1)(d) or (e) and DN 6(1)(d) or (e).

Market value for cost-based methods

(6) If the person uses the comparative value method, the deemed rate of return method, fair dividend rate method, or cost method to calculate FIF income or loss from the interest for the period before the change, the person is treated as having—

(a) disposed of the interest to an unrelated person immediately before the change; and

(b) reacquired it immediately after the change; and

(c) received for the sale and paid for the repurchase an amount equal to its market value at the time.

Calculation of reduction in FIF income or loss

(7) If the change occurs during an accounting period of the FIF and the person uses the accounting profits methods or the branch equivalent method to calculate FIF income or loss from the interest for that period, the FIF income or loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days after change}}{\text{days in period.}}$$

Definition of items in formula

(8) In the formula in subsection (7),—

(a) **FIF income or loss** is the FIF income or loss of the person from the interest for the period before allowing for the reduction:

(b) **days after change** is the number of complete days in the period after the change occurs:

(c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, loss, market value, pay

Compare: 2004 No 35 s EX 53

Section EX 65(1)(b)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 183(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EX 65(5)(b)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 183(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 66 Entities emigrating from New Zealand

When this section applies

(1) This section applies when a person holds rights that become an attributing interest in a FIF because an entity becomes a FIF.

Treatment as sale and repurchase

(2) The person is treated as having—

(a) disposed of the interest immediately before the change to an unrelated person; and

(b) repurchased it immediately after the change; and

(c) received for the sale and paid for the repurchase an amount equal to the market value of the interest at the end of the business day on which the change occurred.

Calculation of reduction in FIF income or loss

(3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or branch equivalent method to calculate FIF income or loss from the rights for that period, section EX 24 does not apply and the FIF income or loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days before change}}{\text{days in period}}.$$

Definition of items in formula

(4) In the formula,—

(a) **FIF income or loss** is the FIF income or loss of the person from the rights for the period before allowing for the reduction:

(b) **days before change** is the number of complete days in the period before the change occurs:

(c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, business, FIF, FIF income, loss, market value, New Zealand, pay

Compare: 2004 No 35 s EX 54

EX 66B Entities ceasing to be FIFs

When this section applies

(1) This section applies when a person holds rights that cease to be an attributing interest in a FIF because an entity ceases to be a FIF.

Treatment as sale and repurchase

(2) The person is treated as having,—

(a) immediately before the change, disposed of the interest to an unrelated person; and

(b) immediately after the change, repurchased the interest; and

(c) received for the sale and paid for the repurchase an amount equal to the market value of the interest at the end of the business day on which the change occurred.

Calculation of reduction in FIF income or loss

(3) If the change occurs during an accounting period of the FIF and the person uses the accounting profits method or branch equivalent method to calculate FIF income or FIF loss from the rights for that period, section EX 24 does not apply and the FIF income or FIF loss is reduced by subtracting the amount calculated using the formula—

$$\text{FIF income or loss} \times \frac{\text{days after change}}{\text{days in period.}}$$

Definition of items in formula

(4) In the formula,—

(a) **FIF income or loss** is the FIF income or FIF loss of the person from the rights for the period before allowing for the reduction:

(b) **days after change** is the number of complete days in the period after the change occurs:

(c) **days in period** is the number of days in the period.

Defined in this Act: accounting period, accounting profits method, amount, attributing interest, branch equivalent method, FIF, FIF income, FIF loss, market value, pay

Section EX 66B: inserted (with effect on 1 April 2009), on 6 October 2009, by section 184(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EX 67 FIF rules first applying to interest on or after 1 April 2007

When this section applies

(1) This section applies when a person has rights in a FIF that—

(a) for the period ending on a day (the **preceding day**) are—

(i) not an attributing interest:

(ii) an attributing interest for which the person does not have FIF income or loss:

(iii) rights for which the person is a share supplier in a returning share transfer; and

(b) for the period beginning on the day (the **application day**) following the preceding day are an attributing interest for which the person has FIF income or loss.

Treatment as disposal and acquisition

(2) The person is treated as having—

(a) disposed of the interest immediately before the application day to an unrelated person; and

(b) reacquired it immediately at the start of the application day; and

(c) received for the disposal and paid for the reacquisition an amount equal to the market value of the interest at the time of the disposal.

Payment of tax liability arising from transition

(3) A person who is liable to pay an amount of income tax (the **amount of tax**) because of the disposals in an income year, and related acquisitions, treated as occurring under this section—

(a) may satisfy the liability by paying the Commissioner at least—

(i) one third of the amount of tax in the income year following the income year in which the disposals are treated as occurring; and

(ii) one half of the balance of the amount of tax remaining owing after payment made under subparagraph (i), in the second income year following the income year in which the disposals are treated as occurring; and

(iii) the balance of the amount of tax remaining owing after payments made under subparagraphs (i) and (ii), in the third income year following the income year in which the disposals are treated as occurring:

(b) is not liable to pay any penalty or interest for which the person would otherwise be liable for an inaccuracy in an estimate, or shortfall in the payment, of provisional tax to the extent to which the inaccuracy or shortfall arises because of the disposals.

Defined in this Act: amount, attributing interest, Commissioner, FIF, FIF income, FIF loss, income tax, income year, loss, market value, New Zealand, pay, tax

Compare: 2004 No 35 s EX 54B

Section EX 67(1) heading: substituted, on 1 April 2008, by section 400(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 67(1): substituted, on 1 April 2008, by section 400(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 67(3): amended, on 1 April 2008, by section 400(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 67(3)(a)(i): amended, on 1 April 2008, by section 400(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 67(3)(a)(ii): amended, on 1 April 2008, by section 400(2)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 67(3)(a)(iii): amended, on 1 April 2008, by section 400(2)(d) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 67(3)(b): amended, on 1 April 2008, by section 400(2)(e) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Measurement of cost

EX 68 Measurement of cost

When this section applies

(1) This section applies when the cost of a person's attributing interest in a FIF is being measured for the purposes of—

(a) the natural person $50,000 threshold in sections CQ 5(1)(d) or (e) (When FIF income arises) and DN 6(1)(d) or (e) (When FIF loss arises):

(b) the comparative value method:

(c) the deemed rate of return method:

(d) the fair dividend rate method:

(e) the cost method.

FIFO cost flow identification

(2) If sections EX 52(14) and EX 53(16) do not apply and it is not possible to specifically identify the cost of the interest because of multiple acquisitions or dispositions or both by the person, the first-in-first-out (the **FIFO**) method of identifying cost flows is applied.

Definition of items in formula

[Repealed]

(3) *[Repealed]*

Share splits or similar

(4) If the person acquires the interest as the result of a share split, non-taxable bonus issue, or similar event, and the acquisition is not income for the person, subsections (5) and (6) apply.

Allocation of original cost

(5) The cost of the interest is a fair allocation, based on market values at the time of the split, of the cost of the original property that is split.

Allocation replacing original cost

(6) For the income year in which the split occurs and later,—

(a) the cost allocated to the interest is no longer the cost of the original property that was split; and

(b) the person is treated as having incurred the allocated cost amount on acquiring the interest when the original property was acquired; and

(c) the person is treated as not incurring any other cost on the interest merely because the original property ceases to exist.

Non-monetary cost

(7) If any cost is incurred in kind and not in money, the amount of the cost is equal to the market value of the cost incurred in kind, measured as at the time incurred.

Exclusion of term life insurance element of premiums

(8) If the interest is rights to benefit under a life insurance policy, the cost of the interest excludes a premium incurred in an earlier income year, or accounting period, to the extent to which the premium relates only to term life insurance for the previous period and does not increase the policy's surrender value.

Exclusion of holding costs

(9) The cost of the interest does not include any expenditure under the financial arrangements rules or interest on money borrowed to acquire it, or other holding costs, incurred after its acquisition.

Transitional rule: interests acquired before 1 January 2000

(10) Subsection (11) applies, for the purposes of the $50,000 threshold in sections CQ 5(1)(d) or (e) and DN 6(1)(d) or (e), if—

(a) the interest was acquired before 1 January 2000; and

(b) the person chooses, for the income year for which the relevant paragraph is applied or an earlier income year, that subsection (11) applies to all interests acquired before 1 January 2000.

Cost treated as half 1 April 2007 value

(11) Despite subsections (1) to (9), the cost of the interest is treated as equal to half the market value of the interest on 1 April 2007.

Defined in this Act: accounting period, amount, attributing interest, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, financial arrangements rules, income, income year, interest, life insurance, life insurance policy, market value, non-taxable bonus issue, premium, share

Compare: 2004 No 35 s EX 56

Section EX 68(2) heading: substituted, on 1 April 2008, by section 401 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 68(2): substituted, on 1 April 2008, by section 401 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 68(3) heading: repealed, on 1 April 2008, by section 401 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EX 68(3): repealed, on 1 April 2008, by section 401 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Change of FIF's balance date

EX 69 Change of FIF's balance date

When this section applies

(1) This section applies when a person—

(a) has an attributing interest in a FIF; and

(b) calculates their FIF income or loss from the FIF using the accounting profits method or the branch equivalent method; and

(c) has calculated FIF income or loss from the FIF on the basis of 1 accounting year (the **old accounting year**); and

(d) wants to change to use a different accounting year (the **new accounting year**) for the calculations.

Commissioner's consent

(2) The person may make the change only if the Commissioner agrees.

Commissioner's reasons

(3) The Commissioner may take into account any relevant factors when making the decision, including—

(a) whether the change is sought because ownership of the FIF has changed; and

(b) whether the change is sought because of taxation or other legal requirements in a country where the FIF is resident or does business; and

(c) whether the change would postpone liability to income tax on FIF income.

New accounting year

(4) If the change is approved, the person may use the new accounting year.

Limit on transitional deferral

(5) If, in order to make the transition, the transitional accounting period is more than 1 year and ends in a later income year than the old accounting year ends in, and that would result in an amount of FIF income being derived in the later income year, subsection (6) applies and section CQ 5(1)(g) (When FIF income arises) does not.

Income pro-rated over whole period

(6) For the transitional accounting period, the FIF income is divided by the number of days in the period and the resulting amount is FIF income of the person derived on each day in the period.

Defined in this Act: accounting period, accounting profits method, accounting year, amount, attributing interest, branch equivalent method, business, Commissioner, FIF, FIF income, income tax, income year, loss, year

Compare: 2004 No 35 s EX 57

Market value rules

EX 70 Market value of life policy and superannuation entitlements

When this section applies

(1) This section applies when, in order to calculate a person's FIF income or loss, it is necessary to calculate the market value of a person's rights to benefit under a life insurance policy or as a beneficiary under a superannuation scheme.

Value of life insurance policy

(2) The **market value** of rights to benefit under a life insurance policy is equal to their surrender value.

Limit to subsection (2)

(3) Subsection (2) applies only for the purpose of calculating the cost of a person's rights to benefit from a life insurance policy under—

(a) section EX 64(4); and

(b) section EX 65(2).

Value of superannuation scheme entitlement

(4) The **market value** at any time of a person's rights to benefit under a superannuation scheme is equal to the total of costs

incurred up to that time by or for the person on acquiring the rights if—

(a) it is not reasonably practicable to calculate the actual market value; and

(b) they have not derived any material gain from the rights up to that time.

Defined in this Act: FIF income, life insurance policy, loss, market value, superannuation scheme

Compare: 2004 No 35 s EX 58

EX 71 Non-market transactions in FIF interests

Section GC 4 (Disposals and acquisitions of FIF attributing interests) applies to acquisitions and dispositions of attributing interests in FIFs when the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method is used.

Defined in this Act: attributing interest, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF

Compare: 2004 No 35 s EX 59

Commissioner's default assessment power

EX 72 Commissioner's default assessment power

When this section applies

(1) This section applies when—

(a) a person has failed to disclose their control interest or income interest in a CFC or attributing interest in a FIF, under section 61 of the Tax Administration Act 1994:

(b) a person has failed to disclose information regarding their control interest or income interest in a CFC or attributing interest in a FIF, requested under section 17 of that Act:

(c) a person cannot obtain enough information to calculate their attributed CFC income or loss, FIF income or loss, or attributed repatriation for a period.

Commissioner's power

(2) The Commissioner may make an assessment of the amount of attributed CFC income or loss, FIF income or loss, or attributed repatriation for the relevant period.

Examples of methods

(3) Without limiting the Commissioner's discretion, the assessment may be based on any of the following:

(a) the accounts of the CFC or FIF for the relevant period prepared for tax authorities, creditors, shareholders, or others:

(b) the application of a rate of presumed increase of 10% or more, compounding annually, to the CFC's or FIF's branch equivalent income calculated under section EX 21 for a previous period:

(c) the application of a rate of presumed increase of 10% or more, compounding annually, to the CFC's or FIF's accounting profits as shown in its accounts for a previous period:

(d) an imputed rate of return on the market value of the interest at the start of the period:

(e) the actual gains or losses of the person in the period from holding or disposing of the interest:

(f) the change in the market value of the interest over the period.

Defined in this Act: amount, assessment, attributed CFC income, attributed repatriation, attributing interest, branch equivalent income, CFC, Commissioner, control interest, FIF, FIF income, income interest, loss, market value, shareholder

Compare: 2004 No 35 s EX 60

Subpart EY—Life insurance rules

Introductory provisions

EY 1 What this subpart does

Two bases

(1) This subpart provides for the taxation of life insurers on 2 separate bases, the policyholder base and the shareholder base. Sections EY 2 and EY 3 describe the general apportionment of income and deductions between the 2 bases under this Part. Section LA 8B (General rules particular to life insurers) provides some general rules for tax credits relating to the 2 bases. Parts L and O include tax credit rules and memorandum account rules specific to the 2 bases.

Schedular policyholder base income and PIE schedular income

(2) Section EY 2 uses the assessable income in a life insurer's policyholder base income, and the life insurer's policyholder base allowable deductions, to calculate their schedular policyholder base income. A life insurer's schedular income derived by their life fund PIE that is a multi-rate PIE is excluded from their schedular policyholder base income, along with deductions for that income.

Counting once

(3) Income and deductions must be apportioned to either the policyholder base or the shareholder base. There is no double-counting.

Defined in this Act: assessable income, deduction, income, life fund PIE, life insurance, life insurer, life reinsurance, memorandum account, multi-rate PIE, policyholder base, policyholder base income, schedular policyholder base income, shareholder base, tax credit

Section EY 1: substituted, on 1 July 2010, by section 185(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 2 Policyholder base

Policyholder base income

(1) A life insurer has policyholder base income,—

(a) for savings product policies that are not profit participation policies, under section EY 15:

(b) for profit participation policies, under section EY 17:

(c) under section EY 27(4).

Policyholder base allowable deductions

(2) A life insurer has policyholder base allowable deductions,—

(a) for savings product policies that are not profit participation policies, under section EY 16:

(b) for profit participation policies, under section EY 18:

(c) under section EY 27(4):

(d) under section EZ 61 (Allowance for cancelled amount: spreading):

(e) under section LE 2B (Use of remaining credits by life insurer on policyholder base).

Schedular policyholder base income

(3) A life insurer's **schedular policyholder base income** is the amount given by subtracting their policyholder base allowable deductions for an income year, and any amount carried forward to the income year under subsection (5), from the assessable income in their policyholder base income for the income year.

Cap on subtracting: ring-fencing policyholder base allowable deductions

(4) Despite subsection (3), the total amount that is subtracted under subsection (3), including an amount carried forward to the current year under subsection (5), is no more than the amount of the assessable income in the life insurer's policyholder base income for the income year.

Excess allocations: carrying forward and re-instating next year

(5) Any excess not able to be subtracted in the current year because of subsection (4) is carried forward to the next income year.

Exception

(6) Despite subsections (3) to (5) a life insurer's schedular income derived by their life fund PIE that is a multi-rate PIE is excluded from their schedular policyholder base income, along with deductions for that income.

Defined in this Act: amount, assessable income, income year, life fund PIE, life insurance, life insurer, multi-rate PIE, policyholder base allowable deduction, policyholder base income, profit participation policy, savings product policy, schedular income, schedular policyholder base income

Section EY 2: substituted, on 1 July 2010, by section 185(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 3 Shareholder base

Shareholder base income

(1) A life insurer has shareholder base income,—

(a) for policies that are not profit participation policies, under section EY 19: *see also* subsection (3), for reserves:

(b) for profit participation policies, under sections EY 21, EY 28, and EY 29:

(c) for annuities, under section EY 31.

Shareholder base allowable deductions

(2) A life insurer has shareholder base allowable deductions,—

(a) for policies that are not profit participation policies, under section EY 20: *see also* subsection (3), for reserves:

(b) for profit participation policies, under sections EY 22 and EY 28:

(c) for the period and policies described in section EY 30, under that section:

(d) for annuities, under section EY 31.

Reserves

(3) Under sections EY 23 to EY 27, a life insurer calculates reserving amounts for life insurance policies, other than annuities, that have a life risk component and are not profit participation policies. A reserving amount may be income included in their shareholder base income, or a deduction that is included in their shareholder base allowable deduction, as provided by the relevant sections.

Defined in this Act: deduction, life insurance, life insurance policy, life insurer, life risk, profit participation policy, shareholder base allowable deduction, shareholder base income

Section EY 3: substituted, on 1 July 2010, by section 185(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 4 Apportionment of income of particular source or nature, and of tax credits

Default basis

(1) For a class of policies, income of a particular source or nature, and tax credits received, are apportioned between the policyholder base and shareholder base—

(a) in the same proportion as the policyholder base income relating to the particular source, nature, or credits bears to the life insurer's total gross gains relating to the particular source, nature, or credits, in the case of the policyholder base:

(b) in the same proportion as the shareholder base income relating to the particular source, nature, or credits bears to the life insurer's total gross gains relating to the particular source, nature, or credits, in the case of the shareholder base.

More equitable or reasonable basis

(2) For a class of policies, the life insurer may use a basis of apportionment that is different from the basis described in subsection (1), if that basis results in an amount, actuarially determined, that is more equitable and reasonable than an amount determined using the basis described in subsection (1).

Defined in this Act: actuarially determined, amount, class of policies, income, life insurer, policyholder base, policyholder base income, shareholder base, shareholder base income, tax credit

Section EY 4: substituted, on 1 July 2010, by section 185(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 5 Part-year tax calculations

Part-year tax calculations

(1) For their life insurance and for their general insurance contracts outstanding claims reserve, a life insurer does part-year tax calculations, described in subsection (2), if they do not have an early life regime application day and 1 July 2010 is not the first day of their income year.

First year part-year calculations: description

(2) For calculating their income tax liability for the tax year that corresponds to the income year that includes 1 July 2010, where 1 July 2010 is not the first day of the income year, the life insurer treats references, in the new life insurance rules and in the rules they replace, to an income year or a tax year as if they are references to 2 separate tax years and corresponding income years (the **part-years**) within that first tax year, divided by 1 July 2010 (for example: a rule to calculate an amount of policyholder income for an income year under the replaced rules means the calculation is done for the relevant part-year before 1 July 2010. A rule to calculate an opening reserve amount under sections EY 23 to EY 27 at the beginning of an income year under the new rules means the calcu-

lation is done on 1 July 2010, at the beginning of the relevant part-year).

Part-year calculations: effect

(3) The part-year calculations may give rise to income and deductions for the income year, but they do not create any part-year tax return obligations. The 2 part-year calculations compose 1 income tax liability for 1 income year.

Part-year calculations for transfers

(4) Where a life insurer (the **transferor**) transfers life insurance business to another life insurer (the **transferee**), the transferor does a part-year calculation, as described in subsection (2), for each class of policy in the transferred business, but only for their part-year ending on the day the transfer occurs. The transferee also does a part-year calculation for the transferred policies, as described in subsection (2), but only for their part-year starting on the day the transfer occurs. The transferee's relevant opening part-year reserve amounts under sections EY 23 to EY 27 equal the transferor's relevant closing part-year reserve amounts, and if the life reinsurance associated with a class of policies is not assigned by the transferor to the transferee, those reserve amounts are calculated without subtracting relevant life reinsurance amounts.

Part-year calculations for transfers: effect

(5) Transferor's and transferee's part-year calculations may give rise to income and deductions for the income year, but they do not create any part-year tax return obligations.

Part-year calculations: end of transitional adjustments

(6) If, for a life insurance policy, the transitional adjustment under section EY 30(7) is calculated for part of an income year, because section EY 30 ceases to apply to the policy before the end of the income year, the life insurer does part-year tax calculations for the policy for the income year, as described in subsection (2), but the income year is divided by the day that section EY 30 ceases to apply. The effect of the part-year calculations is described in subsection (3).

Part-year calculations: end of transitional adjustments

[Repealed]

(7) *[Repealed]*

Defined in this Act: amount, class of policies, deduction, early life regime application day, income, income tax liability, income year, life insurance, life insurance policies, life insurer, life reinsurance, outstanding claims reserve

Section EY 5: substituted, on 1 July 2010, by section 185(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 5(3) heading: amended (with effect on 1 July 2010), on 7 September 2010, by section 45(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 5(4): amended (with effect on 1 July 2010), on 7 September 2010, by section 45(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 5(6) heading: substituted (with effect on 1 July 2010), on 7 September 2010, by section 45(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 5(6): substituted (with effect on 1 July 2010), on 7 September 2010, by section 45(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 5(7) heading: repealed (with effect on 1 July 2010), on 7 September 2010, by section 45(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 5(7): repealed (with effect on 1 July 2010), on 7 September 2010, by section 45(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EY 6 Actuarial advice and guidance

The Commissioner may seek the advice of an actuary on anything that is required to be actuarially determined, or any related matter.

Defined in this Act: actuarially determined, actuary, Commissioner

Section EY 6: substituted, on 1 July 2010, by section 186(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 6: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

EY 7 Meaning of claim

Meaning in life insurance rules

(1) In the life insurance rules, **claim**—

(a) means the amount that a life insurer is liable to pay under a life insurance policy because the contingency

against which the life insured is covered under the policy has occurred; subsections (2) to (5) expand on "the amount that a life insurer is liable to pay":

(b) excludes a payment made by a life insurer on the transfer of some or all of its life insurance business:

(c) in the expression "claim arising", does not have the meaning given to the word "claim" in paragraph (a) or (b).

Cash and non-cash benefits

(2) For the purposes of subsection (1)(a), the amount that a life insurer is liable to pay includes—

(a) a payment on the death of a life insured:

(b) a payment on maturity:

(c) a payment of a cash bonus:

(d) a payment on the surrender of a policy:

(e) an annuity payment:

(f) a benefit other than in cash.

Advance or amount in actuarial reserves

(3) For the purposes of subsection (1)(a), the amount that a life insurer is liable to pay does not include—

(a) an advance against the security of the policy; or

(b) a bonus or other discretionary amount added to the actuarial reserves.

Amount before certain subtractions

(4) For the purposes of subsection (1)(a), the amount that a life insurer is liable to pay means the amount before the subtraction of the following amounts payable to the life insurer:

(a) an advance against the security of the policy; and

(b) an unpaid premium for the policy; and

(c) interest on an amount referred to in paragraph (a) or (b).

Amount zero

(5) For the purposes of subsection (1)(a), the amount that a life insurer is liable to pay may be zero.

Defined in this Act: actuarial reserves, amount, business, claim, interest, life insurance, life insurance policy, life insurance rules, life insured, life insurer, pay, premium

Compare: 2004 No 35 s EY 7

Section EY 7(1)(b): amended, on 1 July 2010, by section 187(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 8 Meaning of life insurance

Meaning

(1) **Life insurance** means insurance under which—

(a) person A (the **life insurer**) is liable to provide person B (the **policyholder**) with a benefit described in subsection (2); and

(b) the life insurer is entitled to receive consideration in return, either from the policyholder or from some other person.

Benefits

(2) The benefits are—

(a) a benefit whose payment is contingent on the death of 1 or more human beings, including an annuity whose term is contingent on human life; or

(b) a benefit whose payment is contingent on the survival of 1 or more human beings to a date, or an age, specified as part of the insurance, including an annuity whose term is contingent on human life; or

(c) a benefit that is an annuity whose term is not contingent on human life, if the life insurer enters into the arrangement to provide the annuity as part of their business of providing life insurance.

Exclusion: death benefits provided under accident or medical insurance

(3) **Life insurance** does not include accident or medical insurance under which—

(a) 1 or more benefits are payable for the death of the person whose life is insured; and

(b) all the benefits referred to in paragraph (a) are—

(i) payable if the death is caused by a specified cause named in the policy; or

(ii) payable incidentally to the provision of accident or medical benefits, if the death is caused by a specified cause named in the policy.

Exclusion: death benefits provided by superannuation funds

(4) **Life insurance** does not include an arrangement in which—

(a) a superannuation fund is liable to pay, as a benefit to a beneficiary of the fund, a lump sum on—

(i) the death of 1 or more human beings specified in the trust deed; or

(ii) the survival of 1 or more human beings specified in the trust deed to a date, or an age, specified in the trust deed; and

(b) the lump sum is made up of—

(i) superannuation contributions made by or for the beneficiary; and

(ii) allocated investment earnings attributable to contributions made by or for the beneficiary; and

(iii) any other allocation from the profits of the superannuation fund attributable to contributions made by or for the beneficiary.

Defined in this Act: arrangement, business, life insurance, life insurer, pay, superannuation contribution, superannuation fund

Compare: 2004 No 35 s EY 8

EY 9 Meaning of life insurance policy

Life insurance policy means a policy to the extent to which it states the terms under which life insurance is covered.

Defined in this Act: life insurance, life insurance policy

Compare: 2004 No 35 s EY 9

EY 10 Meaning of life insurer

Meaning

(1) **Life insurer** means a person carrying on a business of providing life insurance.

Exclusion

(2) A person carrying on a business of providing life insurance in an income year is treated as not carrying on a business of providing life insurance while the person has full reinsurance.

Inclusion

(3) An association of persons, a body of persons, or a trustee is treated as carrying on a business of providing life insurance to the extent to which—

(a) the association, body, or trustee provides life insurance; and

(b) the consideration for the provision is something other than natural love and affection.

Parties to policies treated as being unrelated

(4) Every life insurance policy entered into by the association, body, or trustee as insurer is treated as entered into with an unrelated party, even if the life insurer and the policyholder are, for example,—

(a) an association and a member of the association; or

(b) a trustee and a beneficiary of the trust.

Relationship with subpart HE

(5) Subpart HE (Mutual associations) does not apply to the business of providing life insurance of the association, body, or trustee.

Defined in this Act: business, full reinsurance, income year, life insurance, life insurance policy, life insurer, trustee

Compare: 2004 No 35 s EY 10

EY 11 Superannuation schemes providing life insurance

Benefits treated as life insurance

(1) The provision by a trustee of a superannuation scheme of a benefit to a member or beneficiary of the scheme is treated as the provision of life insurance if the trustee provides life insurance to any member or beneficiary, unless subsection (2) applies.

Exemption for certain schemes

(2) A trustee of a superannuation fund is treated as not carrying on the business of life insurance for an income year if the fund meets all the requirements of subsections (3) to (9) for the income year.

Fund must be registered

(3) At all times in the income year, the fund must be registered under the Superannuation Schemes Act 1989.

Trustee cannot be a life insurance company

(4) At all times in the income year, no trustee of the fund is a company carrying on the business of providing life insurance to which the Life Insurance Act 1908 applies.

Nature of funds

(5) At all times in the income year, the fund must be 1 of the following kinds:

(a) a fund established by an employer, or a group of employers who are associated, to provide benefits only to persons who are employees of, or related by employment to, such an employer, or to another associated employer who agrees after the fund's establishment to make contributions to it:

(b) a fund constituted under the Government Superannuation Fund Act 1956 that provides benefits only to persons who are employees of, or related by employment to, an employer who agrees or is required to contribute, or on whose behalf contributions are made, to the fund:

(c) a fund constituted under the National Provident Fund Act 1950, the National Provident Fund Restructuring Act 1990, or the National Provident Fund Restructuring Amendment Act 1997 that has as its trustee the Board of Trustees of the National Provident Fund.

Only certain fund beneficiaries allowed

(6) At all times in the income year, each beneficiary of the fund must be—

(a) a natural person that is an employee of or related by employment to an employer of the kind referred to in subsection (5)(a) or (b):

(b) a natural person that is a beneficiary of the fund, in the case of a fund referred to in subsection (5)(c) (which refers to funds related to the National Provident Fund):

(c) an employer of members of the fund, to the extent of the employer's contingent interest in a fund surplus.

Significant employer superannuation contributions required

(7) At all times in the income year, each employer is required by the trust deed or Act constituting the fund to make or is making, or having made on their behalf, superannuation contribu-

tions to provide to a significant extent the fund benefits, except to the extent to which subsection (10) applies.

No avoidance effect

(8) The fund must not have been established, and must not be being used at any time in the income year, in a way that has the effect of defeating the intent and application of the life insurance rules.

FMA approval required

(9) The trustee of the fund must have made a written application to the FMA for, and the FMA must have granted, approval that the fund is for the income year one that complies with subsections (3) to (8).

Exemptions to requirements of subsection (7)

(10) Subsection (7) does not apply if—

(a) the FMA is satisfied that, for the income year, subsection (7) would have been complied with but for the fund assets exceeding the accrued benefits from the fund:

(b) the fund is one referred to in subsection (5)(c) (which refers to funds related to the National Provident Fund).

Limited superannuation contributions disregarded for subsection (7)

(11) For the purposes of subsection (7), superannuation contributions that are merely nominal or that only meet the costs of administration and investment management are disregarded.

Notice by FMA

(12) The FMA must notify the trustee of a superannuation fund as soon as practicable after determining that—

(a) the fund complies with subsections (3) to (8) for an income year:

(b) the fund ceases to comply with the subsections for an income year.

Objection under Superannuation Schemes Act

(13) A person dissatisfied with the FMA's decision may appeal against the decision under section 23 of the Superannuation Schemes Act 1989 and has no right of objection under the Tax Administration Act 1994.

Meaning of related by employment

(14) In this section, a person is **related by employment** to an employer if the person is—

(a) a former employee, in the case of deferred benefits relating to prior employment:

(b) a relative or dependent of an employee, in the case of benefits arising from the employee's or former employee's membership in the fund.

Defined in this Act: associated, company, employee, employer, income year, life insurance, life insurance rules, related by employment, relative, superannuation contribution, superannuation fund, superannuation scheme, trustee

Compare: 2004 No 35 s GD 8(1), (3)–(8)

Section EY 11(3): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11(5) heading: substituted (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 57(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 11(5): substituted (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 57(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 11(7) heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 188(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 11(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 188(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 11(9) heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11(9): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11(10)(a): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11(11) heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 188(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 11(11): amended (with effect on 1 April 2008), on 6 October 2009, by section 188(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 11(12) heading: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11(12): amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11(13): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section EY 11 list of defined terms **superannuation contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 188(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 12 Meaning of life reinsurance

Meaning

(1) **Life reinsurance**—

(a) means a contract of insurance between a life insurer and another person (**person C**) under which the life insurer is secured, fully or partially, against a risk by person C:

(b) does not include a contract that—

(i) secures against financial risk unless, in the contract, it is incidental to securing against life risk:

(ii) is, or is part of, a tax avoidance arrangement.

"*Fully*" *and* "*partially*"

(1B) The words "fully" and "partially" describe the extent to which the life insurer is secured against life risk; they do not describe the term for which the reinsurance is provided.

Full reinsurance

(2) The life insurer has **full reinsurance** if all the following apply:

(a) the life insurer offered or was offered or entered into a life insurance policy or policies,—

(i) in the case of a life insurer resident in New Zealand, as part of their business of providing life insurance; or

(ii) in the case of a life insurer not resident in New Zealand, as part of their New Zealand business; and

(b) the life insurer holds a life reinsurance policy or policies covering every life insurance policy described in paragraph (a); and

(c) the life insurer is fully secured against liability under the life insurance policy or policies by the life reinsurance policy or policies; and

(d) the life insurer offered or was offered or entered into the life reinsurance policy or policies in New Zealand.

Partial reinsurance

(3) The life insurer has **partial reinsurance** if all the following apply:

(a) the life insurer—

(i) holds a life reinsurance policy or policies fully securing them against liability for 1 or some, but not all, of the life insurance policies described in paragraph (b); or

(ii) holds a life reinsurance policy or policies for all the life insurance policies described in paragraph (b) but only partially securing them against liability; or

(iii) holds a life reinsurance policy or policies partially securing them against liability for 1 or some, but not all, of the life insurance policies described in paragraph (b); and

(b) the life insurer offered or was offered or entered into the life insurance policy or policies covered by the life reinsurance policy or policies,—

(i) in the case of a life insurer resident in New Zealand, as part of their business of providing life insurance; or

(ii) in the case of a life insurer not resident in New Zealand, as part of their New Zealand business; and

(c) the life insurer offered or was offered or entered into the life reinsurance policy or policies in New Zealand.

Exclusion: financial arrangements and general insurance

(4) To the extent to which a contract is a financial arrangement or is insurance that secures a life insurer against liability that arises from insurable events other than death or survival of a human being, that contract is not life reinsurance.

Other definitions

(5) In this Act,—

life financial reinsurance is a contract that may be life reinsurance under subsection (1)(a), but is not included under subsection (1)(b)

financial risk—

(a) means risk, whether or not specific to a party to the relevant arrangement relating to risk, that is contingent on a valuation or disposal of financial arrangements, or contingent on profitability or creditworthiness, or contingent on a variable such as future expenditure:

(b) does not include life risk

life reinsurer means a person in the position of person C.

Relationship with subject matter

(6) Section EZ 62 (Reinsurance transition: life financial reinsurance may be life reinsurance) overrides this section.

Defined in this Act: business, financial arrangement, financial risk, full reinsurance, life financial reinsurance, life insurance, life insurance policy, life insurer, life reinsurance, life reinsurance policy, life reinsurer, New Zealand business, offered or was offered or entered into, partial reinsurance, resident in New Zealand

Compare: 2004 No 35 s EY 11

Section EY 12(1) heading: substituted, on 1 July 2010, by section 189(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(1): substituted, on 1 July 2010, by section 189(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(1B) heading: inserted, on 1 July 2010, by section 189(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(1B): inserted, on 1 July 2010, by section 189(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(4) heading: substituted, on 1 July 2010, by section 189(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(4): substituted, on 1 July 2010, by section 189(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(5) heading: added, on 1 July 2010, by section 189(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(5): added, on 1 July 2010, by section 189(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(6) heading: added, on 1 July 2010, by section 189(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12(6): added, on 1 July 2010, by section 189(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12 list of defined terms **financial arrangement**: inserted, on 1 July 2010, by section 189(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12 list of defined terms **financial risk**: inserted, on 1 July 2010, by section 189(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 12 list of defined terms **life financial reinsurance**: inserted, on 1 July 2010, by section 189(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 13 Meaning of life reinsurance policy

Life reinsurance policy means a policy to the extent to which it states the terms under which life reinsurance is covered.

Defined in this Act: life reinsurance, life reinsurance policy

Compare: 2004 No 35 s EY 12

EY 14 Life insurance and life reinsurance: how sections relate

Life insurance definitions

(1) Sections EY 8 to EY 11 define terms relating to life insurance.

Life reinsurance definitions

(2) Sections EY 12 and EY 13 define terms relating to life reinsurance.

Life insurance term usually includes life reinsurance term

(3) A reference in this Act to any of the terms defined in sections EY 8 to EY 11 includes the equivalent term in sections EY 12 and EY 13—for example, **life insurer** includes **life reinsurer**—unless the context requires otherwise.

Defined in this Act: life insurance, life insurer, life reinsurance, life reinsurer

Compare: 2004 No 35 s EY 13

Policyholder base

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Non-participation policies

Heading: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 15 Policyholder base income: non-participation policies

What is included

(1) For an income year, a life insurer's income is included as their policyholder base income if it relates to life insurance policies that are not profit participation policies, and it—

(a) does not relate to life risk components of premiums and claims:

(b) is investment income that—

(i) is included in investment income gains or losses in the financial statements of the life insurer; and

(ii) is not a premium; and

(iii) is fairly attributable to savings product policies.

Certain income: basis of apportionment

(2) Despite subsection (1), if an amount of investment income is included in a life insurer's policyholder base income under subsection (1), but may also be shareholder base income under section EY 19, ignoring section EY 19(1)(d), then the investment income is included in policyholder base income to the extent provided by the formula—

$$\text{income} \times \frac{\text{average surrender value}}{\text{average savings assets.}}$$

Definition of items in formula

(3) In the formula,—

(a) **income** is the income described in subsection (2):

(b) **average surrender value** is, for the savings product policies to which the income relates, the average surrender value of the policies for the income year. The life insurer may determine an equitable and reasonable basis for the measurement of the average:

(c) **average savings assets** is, for the savings product policies to which the income relates, the average market value of assets held by the life insurer for the policies

for the income year. The life insurer may determine an equitable and reasonable basis for the measurement of the average.

More equitable or reasonable basis of apportionment

(4) Despite subsections (2) and (3), for investment income described in subsection (2), the life insurer may use a basis of apportionment that is different from the one described in subsections (2) and (3), if that basis results in an amount, actuarially determined, that is more equitable and reasonable than an amount determined using the basis described in subsections (2) and (3).

Treatment of de minimis life risk component amounts

(5) An amount of income relating to a policy that, but for this subsection, is an amount related to the life risk of a premium or life reinsurance claim, is treated as not relating to the relevant life risk component for the purposes of subsection (1), if—

(a) the life insurer has actuarially determined that the life risk is 1% or less of the premium or life reinsurance claim; and

(b) chooses to apply this subsection for the policy.

Defined in this Act: actuarially determined, amount, claim, income, income year, life insurance policy, life insurer, life reinsurance, life risk, life risk component, market value, premium, policyholder base income, profit participation policy, savings product policy, shareholder base income, surrender value

Section EY 15: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 15(5): amended, on 1 July 2010 (applying for income years beginning on or after 1 July 2010), by section 32(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EY 16 Policyholder base allowable deductions: non-participation policies

What is included

(1) For an income year, a life insurer's deduction that relates to life insurance policies that are not profit participation policies is included as their policyholder allowable deduction to the extent to which it is incurred in relation to their policyholder base income under section EY 15.

Basis of apportionment

(2) Despite subsection (1), if a deduction is included in a life insurer's policyholder base allowable deduction under subsection (1), but may also be a shareholder base allowable deduction under section EY 20, ignoring section EY 20(1)(d), the life insurer must use a basis of apportionment for the deduction which is—

(a) the same as in section EY 15(2) and (3) with necessary modifications; or

(b) is the same as in section EY 15(4) with necessary modifications.

Defined in this Act: deduction, income year, life insurance policy, life insurer, premium loading, premium loading formula, policyholder base allowable deduction, policyholder base income, profit participation policy, shareholder base allowable deduction

Section EY 16: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Profit participation policies

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 17 Policyholder base income: profit participation policies

What is included

(1) For an income year, a life insurer has policyholder base income to the extent to which they have an amount for profit participation policies calculated using the formula—

asset base gross income × (1 − retained earnings average − future shareholder transfers average) + net transfers.

Definition of items in formula

(2) In the formula,—

(a) **asset base gross income** is the amount of annual gross income that the life insurer would have for the policies' asset base, if—

(i) the life insurer is treated as having no assets other than the asset base; and

(ii) amounts under sections EY 28 and EY 29 are ignored:

(b) **retained earnings average** is an actuarially determined amount that is the average of the following 2 proportions:

(i) the proportion of the value of the policies' asset base that is attributable to the life insurer's shareholder's retained earnings at the end of the year before the income year:

(ii) the proportion of the value of the policies' asset base that is attributable to the life insurer's shareholder's retained earnings at the end of the income year:

(c) **future shareholder transfers average** is an actuarially determined amount that is the average of the following 2 proportions:

(i) the proportion of the value of the policies' asset base that is attributable to the present value (net) of future transfers to the life insurer's shareholders for future bonus declarations that are able to be supported by the supporting asset base at the beginning of the income year:

(ii) the proportion of the value of the policies' asset base that is attributable to the present value (net) of future transfers to the life insurer's shareholders for future bonus declarations that are able to be supported by the supporting asset base at the end of the income year:

(d) **net transfers** is the amount transferred to the benefit of policyholders from shareholders in relation to profit participation policies.

Meaning of supporting asset base

(3) **Supporting asset base** means the asset base for relevant policies excluding—

(a) the value of assets supporting the life insurer's policyholder unvested liabilities:

(b) the value of assets attributable to the life insurer's shareholders.

Defined in this Act: actuarially determined, amount, annual gross income, asset base, income year, life insurer, policyholder base income, present value (net), profit participation policy, supporting asset base

Section EY 17: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 17(2)(b)(i): amended, on 1 July 2010, by section 33(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 17(2)(b)(ii): amended, on 1 July 2010, by section 33(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 17(2)(d): amended, on 1 July 2010, by section 33(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 17(3)(a): amended, on 1 July 2010, by section 33(4) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EY 18 Policyholder base allowable deductions: profit participation policies

For an income year, a life insurer has policyholder base allowable deductions equal to the amount they would have, for profit participation policies, under the formula in section EY 17(1), if—

(a) the life insurer is treated as having no assets other than the asset base; and

(b) the item **asset base gross income** is treated as being the annual total deduction for the policies' asset base; and

(c) the item **net transfers** is ignored.

Defined in this Act: amount, annual total deduction, asset base, income year, life insurer, policyholder base allowable deduction, profit participation policy

Section EY 18: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 18(b): amended, on 1 July 2010, by section 34(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 18(c): added, on 1 July 2010, by section 34(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Shareholder base

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Non-participation policies

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 19 Shareholder base income: non-participation policies

What is included

(1) For an income year, a life insurer's income is included as their shareholder base income if it relates to life insurance policies that are not profit participation policies, and it—

(a) relates to life risk components of premiums and claims, other than for annuities, and is not described in paragraphs (b) to (d):

(b) relates to fees and commissions:

(c) relates to the life risk component of life reinsurance claims:

(d) is investment income that is not included as their policyholder base income under section EY 15:

(e) is not otherwise accounted for in this subpart, for the income year.

Treatment of de minimis life risk component amounts

(2) An amount of income relating to a policy that, but for this subsection, is an amount related to the life risk of a premium or life reinsurance claim, is treated as not relating to the life risk component for the purposes of subsection (1), if—

(a) the life insurer has actuarially determined that the life risk is 1% or less of the premium or life reinsurance claim; and

(b) chooses to apply section EY 15(5) for the policy.

No double-counting

(3) If an amount is included as shareholder base income under sections EY 23 to EY 29, it is not included under this section.

Defined in this Act: actuarially determined, amount, claim, income year, life insurer, life insurance policy, life reinsurance, life risk, life risk component, pol-

icyholder base income, premium, profit participation policy, shareholder base income

Section EY 19: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 19(2): amended, on 1 July 2010 (applying for all income years beginning on or after 1 July 2010), by section 35(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EY 20 Shareholder base allowable deductions: non-participation policies

What is included

(1) For an income year, a life insurer's deduction is included as their shareholder base allowable deduction if it relates to life insurance policies that are not profit participation policies, and it—

(a) relates to life risk components of premiums and claims, other than for annuities, and is not described in paragraphs (b) to (e):

(b) relates to fees and commissions:

(c) relates to the life risk component of life reinsurance premiums:

(d) is a deduction in relation to investment income that is not included as their policyholder base allowable deduction under section EY 16:

(e) is a premium payback amount, and—

(i) section EY 19 applies or has applied to include the original premium as shareholder base income; and

(ii) section EY 30(7) does not apply or has not applied to calculate a transitional amount for the original premium:

(f) is not otherwise accounted for in this subpart, for the income year.

No double-counting

(2) If an amount is included as shareholder base allowable deduction under sections EY 23 to EY 29, it is not included under this section.

Defined in this Act: amount, claim, deduction, income year, life insurance policy, life insurer, life reinsurance, life risk component, policyholder base allow-

able deduction, premium, premium payback amount, profit participation policy, shareholder base allowable deduction, shareholder base income

Section EY 20: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Profit participation policies

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 21 Shareholder base income: profit participation policies

What is included

(1) For an income year, a life insurer has shareholder base income to the extent to which they have an amount for profit participation policies calculated using the formula—

asset base gross income × (retained earnings average + future shareholder transfers average) − net transfers.

Definition of items in formula

(2) In the formula,—

(a) **asset base gross income** is the amount of annual gross income that the life insurer would have for the profit participation policies' asset base, if—

(i) the life insurer is treated as having no assets other than the asset base; and

(ii) amounts under sections EY 28 and EY 29 are ignored:

(b) **retained earnings average** is an actuarially determined amount that is the average of the following 2 proportions:

(i) the proportion of the value of the policies' asset base that is attributable to the life insurer's shareholder's retained earnings at the end of the year before the income year:

(ii) the proportion of the value of the policies' asset base that is attributable to the life insurer's shareholder's retained earnings at the end of the income year:

(c) **future shareholder transfers average** is an actuarially determined amount that is the average of the following 2 proportions:

(i) the proportion of the value of the policies' asset base that is attributable to the present value (net) of future transfers to the life insurer's shareholders for future bonus declarations that are able to be supported by the supporting asset base at the beginning of the income year:

(ii) the proportion of the value of the policies' asset base that is attributable to the present value (net) of future transfers to the life insurer's shareholders for future bonus declarations that are able to be supported by the supporting asset base at the end of the income year:

(d) **net transfers** is the amount transferred to the benefit of policyholders from shareholders in relation to profit participation policies.

Defined in this Act: actuarially determined, amount, annual gross income, asset base, income, income year, life insurer, present value (net), profit participation policy, shareholder base income, supporting asset base

Section EY 21: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 21(2)(b)(i): amended, on 1 July 2010, by section 36(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 21(2)(b)(ii): amended, on 1 July 2010, by section 36(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 21(2)(d): amended, on 1 July 2010, by section 36(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EY 22 Shareholder base allowable deductions: profit participation policies

For an income year, a life insurer has shareholder base allowable deductions equal to the amount they would have, for profit participation policies, under the formula in section EY 21(1) if—

(a) the life insurer is treated as having no assets other than the asset base; and

(b) the item **asset base gross income** is treated as being the annual total deduction for the policies' asset base; and

(c) the item **net transfers** is ignored.

Defined in this Act: amount, annual total deduction, asset base, income year, life insurer, profit participation policy, , shareholder base allowable deduction

Section EY 22: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 22(b): amended, on 1 July 2010, by section 37(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 22(c): added, on 1 July 2010, by section 37(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Non-participation policies: reserves

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 23 Reserving amounts for life insurers: non-participation policies

Reserves

(1) Sections EY 24 to EY 27 apply to calculate a life insurer's reserving amounts for life insurance policies, other than annuities, that have a life risk component and that are not profit participation policies.

Actuarial determination

(2) All reserving amounts must be actuarially determined, for each class of policies.

Positive and negative amounts: shareholder base income or shareholder base allowable deduction

(3) If a reserving amount calculated under sections EY 24 to EY 27 is a positive amount, the life insurer has that amount as income included in their shareholder base income. If a reserving amount calculated under sections EY 24 to EY 27 is a negative amount, the life insurer has that amount as a deduction included in their shareholder base allowable deductions.

Which reserve can be used when?

(4) For an income year, for a relevant class of policies, a life insurer has a reserving amount described in—

(a) section EY 24, for outstanding claims reserves (the **outstanding claims reserving amount**):

(b) section EY 25, for premium smoothing reserves (the **premium smoothing reserving amount**) if the life insurer chooses to calculate a premium smoothing reserving amount and the PSR periods for policies in the class of policies begins, continues or ends in the income year:

(c) section EY 26, for unearned premium reserves (the **unearned premium reserving amount**), if the life insurer chooses to not calculate a premium smoothing reserving amount:

(d) section EY 27, for capital guarantee reserves (the **capital guarantee reserving amount**).

Choice

(5) Despite subsection (4)(b) and (c), a life insurer may not change between calculating a premium smoothing reserving amount and an unearned premium reserving amount for a class of policies once the premium smoothing reserving amount is used for the class of policies. If a policy in a class of policies does not meet the relevant requirements described in subsection (6), then a life insurer has an unearned premium reserving amount for that class of policy.

Meaning of PSR period

(6) **PSR period** means, for a policy in the relevant class of policies, a period beginning, continuing or ending in the income year for which—

(a) premiums payable are level or substantially level, and the period is 1 or more years; or

(b) there is a material mismatch between the incidence of life risk components and the timing of premiums payable, and the period is 1 or more years.

Defined in this Act: actuarially determined, amount, class of policies, deduction, income year, life insurance policy, life insurer, life risk, life risk component, premium, profit participation policy, PSR period, shareholder base allowable deduction, shareholder base income

Section EY 23: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 24 Outstanding claims reserving amount: non-participation policies not annuities

Calculation of reserving amount

(1) For an income year (the **current year**), a life insurer has an outstanding claims reserving amount for a class of policies calculated using the formula—

opening outstanding claims reserve
– closing outstanding claims reserve.

Definition of items in formula

(2) In the formula in subsection (1),—

(a) **opening outstanding claims reserve** is—

(i) the amount of the life insurer's closing outstanding claims reserve for the class of policies, for the income year before the current year (the **prior year**); or

(ii) if the life insurer has no closing outstanding claims reserve for the prior year, the amount that would be the outstanding claims reserve for the class of policies, using subsections (3) and (4) with necessary modifications, calculated at the end of the prior year, but using a basis consistent with the one that the insurer used for tax purposes in that prior year (for example, if IBNR liability was not accounted for, for tax purposes, in the prior year, the opening balance calculation does not take into account IBNR liability):

(b) **closing outstanding claims reserve** is the amount of the life insurer's outstanding claims reserve calculated under subsections (3) and (4) for the class of policies at the end of the current year.

Outstanding claims reserve calculation

(3) A life insurer's outstanding claims reserve is calculated for the relevant policies using the formula—

life risk claims incurred + life risk claims reported + risk margin.

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **life risk claims incurred** is the actuarially determined estimate of present values (gross) for the life risk components of claims not yet reported to the life insurer before the end of the current year, but the insured-against event has occurred. The life risk components must take into account the probability of the claims being paid, and future expenses for administering the claims, but the present value (gross) of relevant life reinsurance claims must be subtracted from the total:

(b) **life risk claims reported** is the present values (gross) of the life risk components of claims reported but not yet paid. The life risk components must take into account the probability of the claims being paid, and future expenses for administering the claims, but the present values (gross) of relevant life reinsurance claims must be subtracted from the total:

(c) **risk margin** is the appropriate margin for the life risk components of claims described in paragraph (a) or (b), to the extent to which the margin is actuarially determined, reflects the uncertainty of the estimates that arise from the use of the relevant best estimate assumptions, and is not already included in the life risk components of the claims.

Defined in this Act: amount, best estimate assumptions, claim, class of policies, income year, life insurer, life reinsurance, life risk, life risk component, mortality profit present value (gross)

Section EY 24: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 24(2)(a)(ii): amended (with effect on 1 July 2010), on 21 December 2010, by section 58(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 24(2)(a)(ii): amended (with effect on 1 July 2010), on 7 September 2010, by section 46(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EY 25 Premium smoothing reserving amount: non-participation policies not annuities

Calculation of reserving amount

(1) For an income year (the **current year**), a life insurer has a premium smoothing reserving amount for a class of policies, during the policies' PSR periods, calculated using the formula—

opening premium smoothing reserve
– closing premium smoothing reserve.

Definition of items in formula

(2) In the formula,—

(a) **opening premium smoothing reserve** is—

(i) the amount of the life insurer's closing premium smoothing reserve for the class of policies, for the income year (the **prior year**) before the current year; or

(ii) the amount that would be the premium smoothing reserve for the class of policies, using the principles in subsection (3) with necessary modifications, calculated at the end of the prior year, if the life insurer has no closing premium smoothing reserve for the prior year:

(b) **closing premium smoothing reserve** is the amount of the life insurer's premium smoothing reserve calculated under the principles in subsection (3) for the class of policies, calculated at the end of the current year.

Premium smoothing reserve calculation: principles

(3) A premium smoothing reserve for policies in a class of policies, during their PSR periods, is calculated using the following principles:

(a) the premium smoothing reserve must allow the calculation of a reserving amount for an income year, such that the reserving amount plus the life risk component of premiums for the policies for the income year must equal the expected life risk proportion:

(b) the life risk component of premiums plus reserving amount recognised for tax purposes during the policies' PSR periods must equal the total life risk component of

premiums recognised for financial reporting purposes during the PSR periods.

Best estimate assumptions for PSR

(4) Closing and opening premium smoothing reserve amounts must be actuarially determined, using best estimate assumptions.

Special grouping rule for the purposes of best estimate assumptions

(5) For the purposes of determining premium smoothing reserve amounts, life insurance policies may be grouped together if the policies have in common,—

(a) substantially the same contractual terms and conditions, other than their PSR periods; and

(b) substantially the same assumptions for pricing their life risk.

Meaning of expected life risk proportion

(6) In this section, **expected life risk proportion** means a proportion of the total life risk and life risk renewal expenses of premiums for life insurance policies in the relevant class during their PSR periods, where that proportion fairly reflects the life risk and an amount of life risk renewal expenses expected to be borne in that income year if the policies were still existing at the earlier of—

(a) the end of the income year:

(b) immediately before the end of the policies' PSR period.

Defined in this Act: amount, , actuarially determined, best estimate assumptions, class of policies, expected life risk proportion, income year, life insurance policy, life insurer, life risk, life risk component, premium, PSR period

Section EY 25: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 25(2)(a)(ii): amended (with effect on 1 July 2010), on 7 September 2010, by section 47(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EY 26 Unearned premium reserving amount: non-participation policies not annuities

Calculation of reserving amount

(1) For an income year (the **current year**), a life insurer has an unearned premium reserving amount for a class of policies calculated using the formula—

opening unearned premium reserve
– closing unearned premium reserve.

Definition of items in formula

(2) In the formula,—

(a) **opening unearned premium reserve** is—

(i) the amount of the life insurer's closing unearned premium reserve for the class of policies, for the income year before the current year; or

(ii) the amount that would be the unearned premium reserve for the class of policies, using subsection (3) with necessary modifications, calculated at the end of the prior year, if the life insurer has no closing unearned premium reserve for the income year before the current year:

(b) **closing unearned premium reserve** is the amount of the life insurer's unearned premium reserve under subsection (3) for the class of policies, calculated at the end of the current year.

Unearned premium reserve

(3) A life insurer's unearned premium reserve is the amount of the premium in the current year or a prior year, for the relevant policies, that relates to life risk components and relevant costs, in income years after the current year, but subtracting relevant life reinsurance premiums.

Defined in this Act: amount, class of policies, income year, life insurer, life reinsurance, life risk component

Section EY 26: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 26(2)(a)(ii): amended (with effect on 1 July 2010), on 7 September 2010, by section 48(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EY 27 Capital guarantee reserving amount: non-participation policies not annuities

Calculation of reserving amount

(1) For an income year (the **current year**), a life insurer has a reserving amount for a class of policies calculated using the formula—

opening capital guarantee reserve − closing capital guarantee reserve.

Definition of items in formula

(2) In the formula,—

(a) **opening capital guarantee reserve** is—

(i) the amount of the life insurer's closing capital guarantee reserve for the class of policies, for the income year before the current year; or

(ii) the amount that would be the capital guarantee reserve for the class of policies, using subsection (3) with necessary modifications, calculated at the end of the income year before the current year, if the life insurer has no closing capital guarantee reserve for the income year before the current year:

(b) **closing capital guarantee reserve** is the amount of the life insurer's capital guarantee reserve under subsection (3) for the class of policies, calculated at the end of the current year.

Capital guarantee reserve

(3) A life insurer's capital guarantee reserve is the net amount of credits and debits on account of a risk-linked provision for future obligations in relation to a guarantee, for the class of policies, by the life insurer that capital invested will be returned or that a minimum return on capital will be paid.

Reflex in policyholder base

(4) For the current year, if the reserving amount under this section is positive, the life insurer has that amount as a deduction included in their policyholder base allowable deductions. For the current year, if the reserving amount under this section is

negative, the life insurer has that amount as income included in their policyholder base income.

Reflex in policyholder base: exception

(5) Despite subsection (4), for the current year, the life insurer does not have that amount as income included in their policyholder base income to the extent to which the amount represents payment on account of lost capital in the policyholder base.

Defined in this Act: amount, class of policies, income year, life insurer, pay, policyholder base, policyholder base allowable deduction, policyholder base income

Section EY 27: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 27(2)(a)(ii): amended (with effect on 1 July 2010), on 7 September 2010, by section 49(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Shareholder base other profit: profit participation policies

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 28 Shareholder base other profit: profit participation policies that are existing business

Calculation of income

(1) For an income year, a life insurer has an amount, for profit participation policies that are existing business, that is calculated using the formula—

$$\text{other profit} \times \frac{\text{gate}}{(1 + \text{gate}).}$$

Definition of items in formula

(2) In the formula in subsection (1),—

(a) **other profit** is the amount calculated for the income year under subsection (4):

(b) **gate** is the proportion of a policyholder's share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer's shareholders from the profits of the asset base, as described in paragraph (a)(iii) of the definition of **profit participation policy**.

Formula: negative amounts and positive amounts

(3) If, for an income year, the formula in subsection (1) calculates a positive amount, that amount is included as income in the life insurer's shareholder base income. If it is a negative amount, then that amount is included as a deduction in the life insurer's shareholder base allowable deductions.

Other profit

(4) For the purposes of the item **other profit** in subsection (2), an amount is calculated, for the income year (the **current year**) for profit participation policies that are existing business, using the following formula:

(premiums − premiums estimate) − (claims − claims estimate)
− (closing policy liabilities − estimated closing policy liabilities).

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **premiums** is the amount of premiums for policies for the current year, but subtracting relevant life reinsurance premiums:

(b) **premiums estimate** is the actuarially determined total amount of premiums that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that were in force at the start of the current year or are first entered into in the current year, after subtracting the present value (net) of relevant life reinsurance premiums:

(c) **claims** is the amount of claims for the current year, after subtracting relevant life reinsurance claims:

(d) **claims estimate** is the actuarially determined total amount of claims that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that were in force at the start of the current year or are first entered into in the current year,

after subtracting the present value (net) of relevant life reinsurance claims:

(e) **closing policy liabilities** is the total amount of policy liabilities for policies determined at the end of the current year for vested benefits after the previous year's bonus declaration:

(f) **estimated closing policy liabilities** is the total estimated policy liabilities at the end of the current year for policies in force at the start of the current year and expected to be in force at the end of the current year, taking into account vested benefits after the previous year's bonus. The estimated policy liabilities must not take into account any future bonus declarations, and must use best estimate assumptions.

Meaning of policy liabilities

(6) For the purposes of subsection (5), **policy liabilities** means, for a policy, an actuarially determined amount that is the present value (net) of future claims, plus the present value (net) of future expenditure or loss, plus the present value (net) of future tax payments, less the present value (net) of future premiums. Relevant life reinsurance premiums and claims must be subtracted.

Basis of best estimate assumptions in actuarially determining items

(7) The same best estimate assumptions must be used for actuarially determining the items **premiums estimate**, **claims estimate**, and **policy liabilities** in this section. The assumptions may be appropriate for the start of the year, or for the end of the year, but once the choice is made between start of the year and end of the year, that basis may not be changed.

Meaning of existing business

(8) For the purposes of this section and section EY 29, **existing business** means, for a policy, that it is—

(a) issued on or before 30 June 2009; or

(b) issued after 30 June 2009, if—

(i) issued on the same substantial and material terms, conditions, and bonus entitlements as profit participation policies that the life insurer

issued on or before 30 June 2009, ignoring any annual increase in life insurance cover that is less than 10% or less than annual percentage change in the consumer price index:

(ii) issued as the result of conversion rights in a policy issued on or before 30 June 2009.

Defined in this Act: actuarially determined, amount, best estimate assumptions, claim, existing business, income year, life insurance, life insurance policy, life insurer, life reinsurance, premium, present value (net), profit participation policy

Section EY 28: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 29 Shareholder base other profit: profit participation policies that are new business

Calculation of income

(1) For an income year, a life insurer has an amount, for profit participation policies that are new business, that is calculated using the formula—

$$\text{other profit} \times \frac{\text{gate}}{(1 + \text{gate})} - \text{previous negative amount.}$$

Definition of items in formula

(2) In the formula in subsection (1),—

(a) **other profit** is the amount calculated for the income year under subsections (5) to (9):

(b) **gate** is the proportion of a policyholder's share of profits from the asset base that is used in the formula that calculates a transfer to the benefit of the life insurer's shareholders from the profits of the asset base, as described in paragraph (a)(iii) of the definition of **profit participation policy**:

(c) **previous negative amount** is the amount from the previous year described in subsections (3) and (4).

Formula: negative amounts and positive amounts

(3) If, for an income year, the formula in subsection (1) calculates a positive amount, that amount is included as income in the life insurer's shareholder base income. If it is a negative

amount, then that amount is not included as a deduction in the life insurer's shareholder base allowable deductions, but *see* subsection (4).

Negative amounts: carry forward

(4) The amount by which the amount calculated using the formula in subsection (1) is less than zero is carried forward to the next income year, to be used under this section in the formula as the item **previous negative amount** in that next year.

Other profit

(5) For the purposes of the item **other profit** in subsection (2), an amount is calculated, for the income year (the **current year**) for profit participation policies that are new business, using the following formula:

(premiums − premiums estimate) − (claims − claims estimate)
− (closing policy liabilities − estimated closing policy liabilities).

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **premiums** is the amount of premiums for policies for the current year, but subtracting relevant life reinsurance premiums:

(b) **premiums estimate** is the amount of valuation premiums that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, after subtracting the present value (net) of relevant life reinsurance premiums:

(c) **claims** is the amount of claims for the current year, after subtracting relevant life reinsurance claims:

(d) **claims estimate** is the actuarially determined amount of claims that the life insurer expected, using best estimate assumptions, to receive in the current year for policies that are in force at the start of the current year, or are first entered into in the current year, ignoring surrenders and after subtracting the present value (net) of relevant life reinsurance claims:

(e) **closing policy liabilities** is the amount of policy liabilities for policies determined at the end of the current

year for vested benefits after the previous year's bonus declaration:

(f) **estimated closing policy liabilities** is the estimated policy liabilities at the end of the current year for policies in force at the start of the current year and expected to be in force at the end of the current year, taking into account vested benefits after the previous year's bonus. The estimated policy liabilities must not take into account any future bonus declarations, and must use best estimate assumptions.

Meaning of valuation premiums

(7) In this section, **valuation premiums** means the amount of premiums payable for a policy, actuarially determined by reference to the premium formula used when the policy was first entered into, or, if the premium formula is unavailable, by reference to mortality, expense, and other assumptions applicable to premiums for similar policies at the beginning of the income year in which the policy was first entered into. The valuation premiums must not include any allowance for future bonus declarations or future shareholder profits. The amount of the valuation premium for a policy must not change, unless significant changes to the policy justify changing the valuation premium.

Meaning of policy liabilities

(8) In this section, **policy liabilities** means, for a policy, an actuarially determined amount that is the present value (net) of future mortality and maturity claims, plus the present value (net) of future expenditure or loss, plus the present value (net) of future tax payments, less the present value (net) of future valuation premiums. The amount of policy liabilities must not include any allowance for surrenders or the payment of surrender values and relevant life reinsurance premiums and claims must be subtracted. The minimum amount of policy liabilities for a policy is the current surrender value of the policy.

Basis of best estimate assumptions in actuarially determining items

(9) The same best estimate assumptions must be used for actuarially determining the items **premiums estimate**, **claims esti-**

mate, and **policy liabilities** in this section. The assumptions may be appropriate for the start of the year, or for the end of the year, but once the choice is made between start of the year and end of the year, the assumptions must not be changed.

Meaning of new business

(10) For the purposes of this section, **new business** means, for a policy, that it is not existing business under section EY 28.

Defined in this Act: actuarially determined, amount, best estimate assumptions, claim, existing business, income year, life insurance policy, life insurer, life reinsurance, new business, premium, present value (net), profit participation policy, valuation premiums

Section EY 29: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 24(2)(a)(ii): amended (with effect on 1 July 2010), on 21 December 2010, by section 58(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Transitional adjustments and annuities

Heading: inserted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 30 Transitional adjustments: life risk

When this section applies: treatment of old and new policies

(1) This section applies to life insurance policies described in subsections (2) to (4). For the purposes of this section, a policy (the **new policy**) is treated as being issued at the same time as another policy (the **old policy**) that the new policy replaces, if the replacement is caused by—

(a) reinstating the old policy due to a lapse by the insured in premium payments, if the new policy comes into force within 90 days of the lapse, and the life insurer treats the new policy and old policy the same; or

(b) the life insurer being sold, or the life insurer selling its rights and obligations under the old policy.

Separation of products into separate policies for purposes of transitional adjustment

(1B) If a life insurance policy is comprised of 2 or more life insurance product types that are capable of being sold separately,

and the life insurance cover amounts for each product type are separately identified in the policy, then each of the product types may be treated as a separate life insurance policy for the purposes of this section.

Life insurance policies

(2) This section applies to a life insurance policy, excluding an annuity, a multiple life policy through which the life insurer can look to the individual lives covered, credit card repayment insurance, and a workplace group policy, if the policy is issued by the life insurer before the grandparenting start day or if the life insurer receives an application and a deposit in money before the grandparenting start day for the policy which is issued after that day, and—

(a) the life insurer has no policyholder base income or policyholder base allowable deduction for the policy; and

(b) the policy meets the relevant requirements for the relevant period described in subsection (5)(a) to (c); and

(c) the amount of life insurance cover at the finish of a cover review period, or at the finish of any shorter period, if the life insurer chooses to measure within the cover review period, has not increased by more than the greater of 10% and the percentage change in the consumer price index for the relevant period, as compared to the amount of life insurance cover at the beginning of the relevant cover review period; and

(d) no new or replacement individual life is covered for a period beginning after the grandparenting start day.

Multiple life policies

(3) This section applies to a multiple life policy through which the life insurer can look to the individual lives covered, if the policy is issued by the life insurer before the grandparenting start day or if the life insurer receives an application and a deposit in money before the grandparenting start day for the policy which is issued after that day, and—

(a) the life insurer has no policyholder base income or policyholder base allowable deduction for the policy; and

(b) the policy meets the requirements for the period described in subsection (5)(c), or, looking through to the individual lives covered, to the extent to which the pol-

icy meets the requirements for the period described in subsection (5)(a), (b), or (c); and

(c) to the extent to which, looking through to the individual lives covered, the cover was first in place before the grandparenting start day; and

(d) the substantial and material terms and conditions of the policy do not change on or after the grandparenting start day; and

(e) either—

(i) to the extent to which, looking through to the individual lives covered, the amount of life insurance cover at the finish of a cover review period, or at the finish of any shorter period if the life insurer chooses to measure within the cover review period, has not increased by more than the greater of 10% and the percentage change in the consumer price index for the relevant period, as compared to the amount of life insurance cover at the beginning of the relevant cover review period; or

(ii) in the case of a policy that is life reinsurance, to the extent to which a relevant underlying life insurance policy is, or would be ignoring section EY 10(2), one that this subsection or subsection (2) applies to.

Credit card repayment insurance and workplace group policies

(4) This section applies to a credit card repayment insurance and to a workplace group policy, if the policy is issued by the life insurer before the grandparenting start day or if the life insurer receives an application and a deposit in money before the grandparenting start day, and—

(a) the life insurer has no policyholder base income or policyholder base allowable deduction for the policy; and

(b) the policy, if it is a credit card repayment insurance, meets the requirements for the period described in subsection (5)(c), or, if it is a workplace group policy, meets the requirements for the period described in subsection (5)(d); and

(c) *[Repealed]*

(d) the substantial and material terms and conditions of the policy do not change on or after the grandparenting start day.

Requirements and periods for which this section applies

(5) The following are the requirements and periods for the purposes of subsections (2)(b), (3)(b), and (4)(b), for a policy:

(a) for a life insurance policy for which only 1 premium is ever payable, or for which the amount of each premium is the same, the period that—

(i) starts on the grandparenting start day; and

(ii) finishes on the day that the policy ceases to be in force:

(b) for a life insurance policy for which the premium is set for a continuous period beginning before the grandparenting start day and for which the premium does not go up in that period (the **continuous rate period**) ignoring any increase directly linked to the percentage change in the consumer price index if that increase was the subject of agreement before the grandparenting start day, the period that starts on the grandparenting start day and ends on the later of the following:

(i) the day that is the last day of the continuous rate period:

(ii) whichever day described in paragraph (c)(i) and (ii) is earlier:

(c) for a life insurance policy for which the premium may vary each year, the period that starts on the grandparenting start day and ends on the earlier of the following:

(i) the day that the policy expires:

(ii) the day that is before the 5 years anniversary of the grandparenting start day:

(d) for a life insurance policy for which the premium may vary each year, the period that starts on the grandparenting start day and ends on the earlier of the following:

(i) the day that the policy expires:

(ii) the day that is before the 3 years anniversary of the grandparenting start day.

When this section does not apply: life insurance cover increase for whole cover review period

(5B) This section does not apply for a policy for the whole of an income year if a cover review period finishes in the year and, for that cover review period, there has been an increase in the amount of life insurance cover as described in subsection (2)(c) or (3)(e) and the life insurer has not made an election for measuring within the cover review period under those subsections.

When this section does not apply: continuity

(5C) This section does not apply for a policy for any period after this section has ceased to apply for the policy.

When this section does not apply: once-only opt out

(6) This section does not apply to a class of policies after the life insurer irrevocably chooses in a notice received by the Commissioner that this section does not apply for the class.

Adjustment

(7) A life insurer has an amount of shareholder base allowable deduction for a policy calculated using the following formula, to the extent to which this section applies for the relevant income year for the policy—

premiums − total net reserving amounts
− (1.2 × expected death strain).

Definition of items in formula

(8) In the formula,—

(a) **premiums** is the life insurer's total premiums for the income year or part of the income year, as applicable, for the policy, but subtracting relevant life reinsurance premiums:

(b) **total net reserving amounts** is the total of reserving amounts for the income year or part of the income year, as applicable, for the policy, under section EY 25 or EY 26 (as applicable), but treating amounts that are shareholder base income as negative amounts, and amounts that are shareholder base allowable deductions as positive amounts:

(c) **expected death strain** is the amount calculated under the expected death strain formula (life) in accordance with sections EZ 53 to EZ 60 (which relate to the transitional adjustment for expected death strain) for the income year or part of the income year, as applicable, for the policy.

Negative amounts

(9) If subsection (7) gives a negative amount for a policy, it is ignored for that policy.

Meaning of cover review period

(10) **Cover review period** means—

(a) the relevant income year, if the life insurer has not chosen a different period under paragraph (b):

(b) a period of a year that has a starting and anniversary date that the life insurer irrevocably chooses, for a class of policies, in a return of income for the tax year corresponding to the income year in which the grandparenting start day is included.

Meaning of credit card repayment insurance

(11) **Credit card repayment insurance** means a life insurance policy, if the benefits of the cover are for the repayment of an outstanding debt balance of a credit card, or life reinsurance to the extent to which it reinsures such a life insurance policy.

Meaning of employer sponsored group policies
[Repealed]

(12) *[Repealed]*

Meaning of grandparenting start day

(13) **Grandparenting start day** means—

(a) 1 July 2010, if paragraph (b) does not apply:

(b) a life insurer's early life regime application day, if the life insurer irrevocably chooses that day as their grandparenting start day.

Meaning of multiple life policy

(14) **Multiple life policy**—

(a) means a life insurance policy with multiple individuals' life insurance cover grouped under it, if the group of individuals is identified in the policy:

(b) does not include—

(i) a workplace group policy:
(ii) credit card repayment insurance:
(iii) life reinsurance to the extent to which it reinsures a workplace group policy or credit card repayment insurance.

Meaning of workplace group policy

(15) **Workplace group policy** means a life insurance policy with multiple individuals' life insurance cover grouped under it, or life reinsurance to the extent to which it reinsures such a life insurance policy, if—

(a) the individuals under the policy are—
(i) a group that includes, or consists of, a class of employees of an employer or group of employers, and may include 1 or more of the employers or directors of the employers, and the policy is sponsored by the employers or by the trustees of a superannuation scheme:
(ii) members of a union registered under the Employment Relations Act 2000 or members of an industry association, and the union or association is the sponsor of the policy:
(iii) the spouses, civil union partners, and de facto partners of employees or members described in subparagraphs (i) and (ii); and

(b) in the case of the sponsor being the employer,—
(i) the employer is required to offer an employee who is a member of the relevant class the opportunity to join the life insurance policy; and
(ii) the life insurer and the employer have entered an agreement about who pays the premium.

Defined in this Act: amount, Commissioner, cover review period, credit card repayment insurance, class of policies, early life regime application day, grandparenting start day, group life master policy, income year, life insurance, life insurer, life reinsurance, pay, policyholder base allowable deduction, policyholder base income, shareholder base allowable deduction, shareholder base income, workplace group policy

Section EY 30: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 30(1B) heading: inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(1B): inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(2): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(2): amended, on 1 July 2010, by section 38(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(2)(c): substituted (with effect on 1 July 2010), on 7 September 2010, by section 50(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(2)(d): added (with effect on 1 July 2010), on 7 September 2010, by section 50(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(3) heading: substituted (with effect on 1 July 2010), on 7 September 2010, by section 50(4)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(3): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(4)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(3)(b): amended (with effect on 1 July 2010), on 21 December 2010, by section 59(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 30(3)(b): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(4)(c) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(3)(b): amended, on 1 July 2010, by section 38(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(3)(e): substituted (with effect on 1 July 2010), on 21 December 2010, by section 59(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 30(4) heading: amended, on 1 July 2010, by section 38(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(4): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(6) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(4): amended, on 1 July 2010, by section 38(4) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(4)(b): substituted, on 1 July 2010, by section 38(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(4)(c): repealed, on 1 July 2010, by section 38(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(5): amended, on 1 July 2010, by section 38(6) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(5)(b): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(7) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(5)(c)(ii): amended, on 1 July 2010, by section 38(7) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(5)(d): added, on 1 July 2010, by section 38(7) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(5B) heading: inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(8) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(5B): inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(8) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(5C) heading: inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(8) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(5C): inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(8) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(7): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(9) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(8)(a): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(10) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(8)(b): amended (with effect on 1 July 2010), on 21 December 2010, by section 59(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 30(8)(b): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(11) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(8)(c): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(12) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(11) heading: substituted, on 1 July 2010, by section 38(8) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(11): substituted, on 1 July 2010, by section 38(8) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(11): amended (with effect on 1 July 2010), on 7 September 2010, by section 50(13) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(12) heading: repealed, on 1 July 2010, by section 38(9) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(12): repealed, on 1 July 2010, by section 38(9) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(14) heading: substituted (with effect on 1 July 2010), on 7 September 2010, by section 50(14) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(14): substituted (with effect on 1 July 2010), on 7 September 2010, by section 50(14) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(14): amended, on 1 July 2010, by section 38(10) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(15) heading: added, on 1 July 2010, by section 38(11) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30(15): substituted (with effect on 1 July 2010), on 7 September 2010, by section 50(15) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30(15): added, on 1 July 2010, by section 38(11) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30 list of defined terms **employer sponsored group policy**: repealed, on 1 July 2010, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section EY 30 list of defined terms **pay**: inserted (with effect on 1 July 2010), on 7 September 2010, by section 50(16) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section EY 30 list of defined terms **workplace group policy**: added, on 1 July 2010, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EY 31 Annuities

When this section applies

(1) This section applies when a life insurance policy is an annuity.

Adjustment

(2) For the income year, a life insurer has an amount calculated for the relevant annuities using the formula—

closing actuarial reserves − (0.99 × expected death strain).

Definition of items in formula

(3) In the formula,—

(a) **closing actuarial reserves** is the life insurer's closing actuarial reserves (active annuities), calculated in accordance with section EZ 59(2) (Meaning of actuarial reserves):

(b) **expected death strain** is the amount calculated under the expected death strain formula (active annuities) in accordance with sections EZ 53 to EZ 60 (which relate to the transitional adjustment for expected death strain) for the income year.

Positive and negative amounts

(4) If the formula in subsection (2) gives a positive amount, the life insurer has that amount as income included in their shareholder base income. If the formula in subsection (2) gives a negative amount, the life insurer has that amount as a deduction included in their shareholder base allowable deductions.

Defined in this Act: amount, income year, life insurance policy, life insurer, shareholder base allowable deduction, shareholder base income

Section EY 31: substituted, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 32 Mortality profit formula: when partial reinsurance exists

[Repealed]

Section EY 32: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 33 Mortality profit formula: individual result may be negative only in some cases

[Repealed]

Section EY 33: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 34 Mortality profit formula: negative result

[Repealed]

Section EY 34: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 35 How discontinuance profit is calculated

[Repealed]

Section EY 35: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 36 Discontinuance profit for income year

[Repealed]

Section EY 36: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 37 Discontinuance profit formula (existing policies)

[Repealed]

Section EY 37: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 38 Discontinuance profit formula (new policies)

[Repealed]

Section EY 38: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 39 Discontinuance profit formula (existing policies): when partial reinsurance exists

[Repealed]

Section EY 39: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 40 Discontinuance profit formula (new policies): when partial reinsurance exists

[Repealed]

Section EY 40: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 41 Discontinuance profit formulas: individual result may never be negative

[Repealed]

Section EY 41: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 42 How policyholder income is calculated

[Repealed]

Section EY 42: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 43 Policyholder income formula

[Repealed]

Section EY 43: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 43B Policyholder income formula: FDR adjustment

[Repealed]

Section EY 43B: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 43C Policyholder income formula: PILF adjustment

[Repealed]

Section EY 43C: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 44 Policyholder income formula: when partial reinsurance exists

[Repealed]

Section EY 44: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 45 Policyholder income formula: when life insurance business transferred

[Repealed]

Section EY 45: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 46 Income from disposal of property

[Repealed]

Section EY 46: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EY 47 Deductions for disposal of property

[Repealed]

Section EY 47: repealed, on 1 July 2010, by section 190(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Non-resident life insurers

EY 48 Non-resident life insurers with life insurance policies in New Zealand

When this section applies

(1) This section applies when a life insurer not resident in New Zealand offers or is offered or enters into life insurance policies in New Zealand.

Income having source in New Zealand

(2) The life insurer's income from the business of providing life insurance, as determined under this section, is income that has a source in New Zealand.

Shareholder base and policyholder base

(3) The life insurer's income and deductions are apportioned between their policyholder base or shareholder base under the provisions of this subpart to the extent to which the income or deductions relate to—

(a) life insurance policies that the life insurer, as insurer, offered or was offered or entered into in New Zealand:

(b) life reinsurance policies held by the life insurer that relate exclusively to life insurance policies described in paragraph (a).

Other income

(4) The life insurer's income from the business of providing life insurance, other than under the provisions of this subpart, is determined only in relation to the life insurer's New Zealand business.

Defined in this Act: business, discontinuance profit formula, income, life insurance, life insurance policy, life insurer, life reinsurance policy, mortality profit formula, New Zealand, New Zealand business, non-resident, offered or was offered or entered into, policyholder income formula, premium loading formula, resident in New Zealand, source in New Zealand

Compare: 2004 No 35 s EY 47

Section EY 48(2) heading: substituted, on 21 December 2010, by section 60(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 48(2): amended, on 21 December 2010, by section 60(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 48(3) heading: substituted, on 1 July 2010, by section 193(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 48(3): substituted, on 1 July 2010, by section 193(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 48(4): amended, on 1 July 2010, by section 193(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EY 48 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 60(3)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section EY 48 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 60(3)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

EY 49 Non-resident life insurer becoming resident

Non-resident life insurer may apply

(1) A life insurer not resident in New Zealand may apply to be treated for its New Zealand business as resident in New Zealand on and after the first day of a particular income year.

Application

(2) The life insurer applies by—

(a) completing a written application specifying the particular income year; and

(b) giving the application to the Commissioner not less than 20 working days before the start of the particular income year.

Commissioner may grant

(3) The Commissioner may grant the application.

Company resident in New Zealand

(4) If the application is granted, the life insurer's New Zealand business is treated, on and after the first day of the particular income year, as being carried on by a company resident in New Zealand in which the life insurer holds all the issued shares.

Life insurer agent for company

(5) The life insurer is treated as carrying on its New Zealand business as agent for the company and is liable, as agent for the company, to pay amounts payable to the Commissioner and to provide returns of income and other information required by the Commissioner.

Company and life insurer separate persons

(6) The life insurer and the company are treated as being separate persons in relation to the life insurer's New Zealand business.

Defined in this Act: agent, amount, Commissioner, company, income year, life insurer, New Zealand business, non-resident, pay, resident in New Zealand, return of income, share, working day

Compare: 2004 No 35 s EY 48

Subpart EZ—Terminating provisions

Life insurance

EZ 1 Life insurers acquiring property before 1 April 1988

When this section applies

(1) This section applies when section DZ 2 (Life insurers acquiring property before 1 April 1988) applies.

Amount of deduction

(2) The amount of the deduction is calculated using the formula—

$$\frac{\text{specific liability}}{\text{total liability}} \times \text{property sum.}$$

Definition of items in formula

(3) The items in the formula are defined in subsections (4) to (9).

Specific liability

(4) **Specific liability** is the amount in the life insurer's total liability on the last day of the 1987–88 income year for the following matters covered by the life insurer's Life Insurance Fund:

(a) superannuation policies; and

(b) pre-1983 mortgage repayment insurance policies; and

(c) annuities that have been granted.

Total liability

(5) **Total liability** is the life insurer's liability for life insurance policies on the last day of the 1987–88 income year.

Property sum

(6) The **property sum** is calculated under whichever is relevant of subsections (7) to (9).

Property acquired before last day of 1982–83 income year

(7) For property acquired on or before the last day of the 1982–83 income year, the property sum is calculated by subtracting the specified base cost for 1983 income year property from the market value of the property on 1 April 1988.

Property acquired after end of 1982–83 income year: not financial arrangement

(8) For property acquired after the end of the 1982–83 income year that is not a financial arrangement, the property sum is calculated by subtracting the cost price or acquisition value of the property from the market value of the property on 1 April 1988.

Property acquired after end of 1982–83 income year: financial arrangement

(9) For property acquired after the end of the 1982–83 income year that is a financial arrangement, the property sum is the base price adjustment for the arrangement, calculated as if the arrangement had matured on 1 April 1988 but using the formula in section EW 31 (Base price adjustment formula).

Timing of deduction

(10) The life insurer is allowed the deduction in the income year in which they dispose of the property.

Defined in this Act: amount, deduction, financial arrangement, income year, Life Insurance Fund, life insurance policy, life insurer, property, specified base cost for 1983 income year property, superannuation policy

Compare: 2004 No 35 s EZ 1

EZ 2 Deductions for disposal of property: 1982–83 and 1989–90 income years

Deduction

(1) For the purposes of this Act, for property to which both the following apply, the amount of the deduction is the market value of the property on the last day of the 1989–90 income year:

(a) the property is land or buildings acquired on or before the last day of the 1989–90 income year; and

(b) the profit from the property's disposal on or before the last day of the 1989–90 income year, had it been disposed of then at a profit, would have been a capital profit or gain and not a profit on disposal of an investment subject to income tax under section 204 of the Income Tax Act 1976 (as that section was immediately before its repeal and substitution by section 13(1) of the Income Tax Amendment Act (No 2) 1990).

Deduction

(2) For the purposes of this Act, for property to which both the following apply, the amount of the deduction is the specified base cost for 1983 income year property:

(a) the property was acquired on or before the last day of the 1982–83 income year; and

(b) subsection (1) does not apply to the property.

Defined in this Act: amount, deduction, income year, property, specified base cost for 1983 income year property

Compare: 2004 No 35 s EZ 2

Section EZ 2(1) heading: substituted, on 1 July 2010, by section 194(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EZ 2(1): amended, on 1 July 2010, by section 194(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EZ 2(2) heading: substituted, on 1 July 2010, by section 194(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EZ 2(2): amended, on 1 July 2010, by section 194(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Petroleum mining

EZ 3 Petroleum development expenditure from 1 October 1990 to 15 December 1991

Timing of deduction

(1) Expenditure that is allowed as a deduction under section DZ 3 (Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991) must be deducted in equal amounts over the 10 years starting with the later of—

(a) the income year in which commercial production starts; and

(b) the income year in which the expenditure is incurred.

Petroleum mining operations outside New Zealand

(2) This section applies with any necessary modifications to a petroleum miner who undertakes petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the petroleum mining activities governed by this Act.

Partnership interests

(3) For the purposes of this section, a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their income interest in the partnership.

Disposal of part of asset

(4) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: amount, commercial production, controlled foreign company, deduction, dispose, income year, New Zealand, petroleum, petroleum miner, petroleum mining operations, petroleum permit

Compare: 2004 No 35 s EZ 3

Livestock

EZ 4 Valuation of livestock bailed or leased as at 2 September 1992

When this section applies

(1) This section applies when—

(a) an owner of livestock valued a class of livestock for the 1991–92 income year under section 86 of the Income Tax Act 1976 (as that section was in force before its repeal by section 21 of the Income Tax Amendment Act (No 2) 1993); and

(b) either—

(i) the livestock was, as at 2 September 1992, at the use of a person under a bailment, lease, or other agreement that the owner entered into on or before that date, or was, on or before that date, livestock that was subject to a binding contract to bail or lease the livestock to a person, or otherwise allow them to use the livestock; or

(ii) the class of livestock was not one that the owner had on hand in the previous income year, but was a class that, as at 2 September 1992, was at the use of a person under a bailment, lease, or other agreement that the owner entered into on or before that date.

Rolling average value

(2) The owner may value the livestock at a value equal to 70% of the rolling average value of that class of livestock.

When subsection (2) applies

(3) Subsection (2) applies for the 1992–93 income year and any later income year in which the livestock continues to be bailed,

leased, or otherwise used by the person under the bailment, lease, or other agreement.

Number of livestock valued

(4) The number of specified livestock of a class that may be valued under this section is the number that is the least of—

(a) the number of livestock of the class bailed, leased, or otherwise used (or, for a binding contract entered into before 2 September 1992 but not yet applying, the number of livestock of that class provided for in the contract); and

(b) the number of livestock of the class bailed, leased, or otherwise used as at the end of the 1992–93 income year; and

(c) the lesser of the opening and closing number of stock of the class bailed, leased, or otherwise used in a later income year up to and including the income year in which the livestock is being valued.

Meaning of rolling average value

(5) In this section, **rolling average value**, for an income year and a class of specified livestock, means one-third of the sum of the national average market values set for that income year and each of the 2 previous income years for livestock of that class.

Defined in this Act: class, income year, lease, national average market value, rolling average value, specified livestock

Compare: 2004 No 35 s EZ 4

EZ 5 Reduction: bloodstock not previously used for breeding in New Zealand: pre-1 August 2006

Bloodstock to which this section applies

(1) This section applies to bloodstock that—

(a) was not used for breeding in New Zealand before 16 December 1991; and

(b) before a person (**person A**) acquired it, was not used for breeding in New Zealand by any other person, unless—

(i) the other person transferred the bloodstock to person A under a matrimonial agreement to which section FB 18 (Bloodstock) applies; or

(ii) the other person and person A were companies in the same wholly-owned group at the time person

A acquired the bloodstock from the other person; and

(c) section EC 39(1) or (2) (First income year in breeding business) applies to,—

(i) before 1 August 2006; or

(ii) for an income year ending on or after 1 August 2006, if a requirement of paragraphs (a) to (c) of section EC 39(1) or (2) is first met before 1 August 2006.

Stallion

(2) For the purposes of sections EC 39 and EC 40 (which relate to bloodstock), the reduction applying to the value of a stallion is 25% of the cost price of the stallion unless person A chooses to value the stallion by the reducing value method.

Stallion valued by reducing value method

(3) When person A chooses to value the stallion by the reducing value method, the reduction applying to the value of the stallion is 37.5% of its cost price in the first income year and 37.5% of its opening value in each later income year. Person A must give notice to the Commissioner of their election in their return of income for the first income year.

Broodmare when first used before 1 April 2001

(4) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a broodmare is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{15 - \text{age of broodmare.}}$$

Definition of item in formula

(5) In the formula in subsection (4), **age of broodmare** is—

(a) 12 years of age; or

(b) the actual age in years, if the broodmare is 11 years of age or less at the end of the income year.

Broodmare when first used on or after 1 April 2001 but before 1 August 2006

(6) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a broodmare to which section EC 39(2) applies is calculated using the formula—

$$\frac{1.25 \times \text{cost price of broodmare}}{11 - \text{age of broodmare}}.$$

Definition of item in formula

(7) In the formula in subsection (6), **age of broodmare** is—

(a) 8 years of age; or

(b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Defined in this Act: bloodstock, broodmare, Commissioner, company, cost price, income year, matrimonial agreement, New Zealand, notice, return of income, stallion, wholly-owned group, year

Compare: 2004 No 35 s EZ 4B

EZ 6 Reduction: broodmare previously used for breeding in New Zealand: pre-1 August 2006

Broodmare to which this section applies

(1) This section applies to a broodmare that section EC 39(1) or (2) (First income year in breeding business) applies to,—

(a) before 1 August 2006; or

(b) for an income year ending on or after 1 August 2006, if a requirement of paragraphs (a) to (c) of section EC 39(1) or (2) is first met before 1 August 2006.

Broodmare when first used before 1 April 2001

(2) For the purposes of sections EC 39 and EC 40 (which relate to bloodstock), the reduction applying to the value of a broodmare to which section EC 39(1) applies and sections EC 41 (Reduction: bloodstock not previously used for breeding in New Zealand) and EZ 5 do not apply is calculated using the formula—

$$\frac{\text{cost price of broodmare}}{15 - \text{age of broodmare}}.$$

Definition of item in formula

(3) In the formula in subsection (2), **age of broodmare** is—

(a) 12 years of age; or

(b) the actual age in years, if the broodmare is 11 years of age or less at the end of the income year.

Broodmare when first used on or after 1 April 2001 but before 1 August 2006

(4) For the purposes of sections EC 39 and EC 40, the reduction applying to the value of a broodmare to which section EC 39(2) applies and sections EC 41 and EZ 5 do not apply is calculated using the formula—

$$\frac{\text{cost price of broodmare}}{11 - \text{age of broodmare}}.$$

Definition of item in formula

(5) In the formula in subsection (4), **age of broodmare** is—

(a) 8 years of age; or

(b) the actual age in years, if the broodmare is 7 years of age or less at the end of the income year.

Defined in this Act: broodmare, cost price, income year, year

Compare: 2004 No 35 s EZ 4C

Patent rights

EZ 7 Buying patent rights before 1 April 1993

When this section applies

(1) This section applies when section DZ 8 (Buying patent rights before 1 April 1993) applies.

Amount of deduction

(2) The amount of the deduction is the expenditure that the person has incurred in buying the patent rights.

Amount when patent rights expired or disposed of

(3) If, before the expiry of the patent rights, the rights have come to an end or have been disposed of, the person is allowed a deduction of an amount that bears to the total sum of the expenditure on the purchase of the rights the same proportion as the unexpired term of the rights when they came to an end or were disposed of bears to their unexpired term at the date of their purchase. An amount that the person has otherwise been allowed as a deduction is not included.

Timing of deduction: subsection (2)

(4) The deduction referred to in subsection (2) is allocated to the income years in relation to which the term of the patent rights that is unexpired at the date of purchase applies.

Timing of deduction: subsection (3)

(5) The deduction referred to in subsection (3) is allocated to the income year in which the rights have come to an end or been disposed of.

Defined in this Act: amount, deduction, income year, patent rights

Compare: 2004 No 35 s EZ 5

Leases of land

EZ 8 Premium paid on land leased before 1 April 1993

When this section applies

(1) This section applies when section DZ 9 (Premium paid on land leased before 1 April 1993) applies.

Amount of deduction

(2) The amount of the deduction is the premium paid on the grant or renewal of the lease. If person A does not use the land for the whole of a tax year, the amount of the deduction is reduced proportionately.

Amount when lease or renewal granted to another person

(3) If the lease or the renewal of the lease is granted to another person, the deduction must not be more than the amount of the premium paid by person A on the acquisition of the lease.

Timing of deduction

(4) The deduction is allocated evenly to the income years in relation to which the term of the lease applies.

Meaning of term of the lease

(5) In this section, **term of the lease**, for a lease of indefinite duration, means the minimum period it has to run.

Defined in this Act: amount, deduction, income year, lease, pay, premium, tax year, term of the lease

Compare: 2004 No 35 s EZ 6

Depreciation

EZ 9 Pool method for items accounted for by globo method for 1992–93 income year

If a person chooses the pool method for an item of property of a kind described in section EE 66(3)(c) (Meaning of poolable property), they must also choose to treat as a single pool all

such items of property they still own that they accounted for at the end of their 1992–93 income year within the same globo account.

Defined in this Act: income year, pool, pool method

Compare: 2004 No 35 s EZ 8

EZ 10 Pool items accounted for by globo method for 1992–93 income year

Limit on amount of income

(1) If a person's pool consists solely of items of depreciable property accounted for at the end of the person's 1992–93 income year using, with the Commissioner's permission, the globo accounting method, the amount of income under section EE 22(5)(a) (Cases affecting pool) is no more than the amount calculated using the formula—

depreciation allowed - income.

Definition of items in formula

(2) In the formula,—

(a) **depreciation allowed** is the total of deductions for amounts of depreciation loss that the person has been allowed in all earlier income years for all items in the pool, including amounts allowed before the person's 1993–94 income year under the globo accounting method:

(b) **income** is all amounts of income under section EE 22(5)(a) in all previous income years.

Defined in this Act: amount, Commissioner, depreciable property, depreciation loss, income year, pool

Compare: 2004 No 35 s EZ 9

EZ 11 Amounts of depreciation recovery income and depreciation loss for part business use up to 2004–05 income year

For the purposes of sections EE 49(1)(b)(ii) and EE 50(5)(b)(ii) (which relate to depreciation for partial income-producing use), the item is an item of property to which 1 or more of the following applies:

(a) the item is, at any time during the period the person owns it, subject to section FB 7 of the Income Tax Act 2004:

(b) the item is, at any time during the period the person owns it, subject to section EG 2(1)(d) or (e) of the Income Tax Act 1994:

(c) the item is, at any time during the period the person owns it, subject to section 108A(1)(d) or (e) of the Income Tax Act 1976:

(d) the item was, in the 1992–93 income year or an earlier income year, an item that the person did not use wholly in deriving assessable income or carrying on a business for the purpose of deriving assessable income and for which, consequently, the person was allowed a smaller deduction for depreciation under section 108 of the Income Tax Act 1976 than they would have been allowed if they had used the item wholly for 1 of those purposes.

Defined in this Act: assessable income, business, income year

Compare: 2004 No 35 s EZ 10

EZ 12 Amount of depreciation loss for item acquired from associated person on or before 23 September 1997

When this section applies

(1) This section applies when, on or before 23 September 1997, a person (**person A**) acquires an item from an associated person entitled to a deduction for an amount of depreciation loss for it.

Exclusions

(2) This section does not apply—

(a) if the item is acquired under a relationship agreement in circumstances to which section FB 21 (Depreciable property) applies; or

(b) if the item is listed in schedule 14 (Depreciable intangible property) and the price that person A pays is income of the associated person; or

(c) if the item is not listed in schedule 14 and the Commissioner is of the opinion that the circumstances are such that a person should be allowed a deduction for an

amount of depreciation loss for the item based on the actual price or other consideration given for it.

No greater amount of depreciation loss

(3) Whether or not the associated person has been allowed a deduction for an amount of depreciation loss, person A does not have a greater amount of depreciation loss for the item than that which the associated person would have had if the associated person had kept the item.

Amount of depreciation loss dealt with under section EE 48

(4) If the associated person has an amount of depreciation loss that has been dealt with under section EE 48 (Effect of disposal or event), person A has an amount of depreciation loss for the item based on the total of—

(a) all amounts dealt with under section EE 48; and

(b) the depreciated value of the item immediately before person A acquired it.

When subsection (6) applies and does not apply

(5) Subsection (6) applies when, on or before 23 September 1997, the holder of management rights created under the Radiocommunications Act 1989 grants a licence right under that Act to an associated person. However, it does not apply when the Crown acting by and through the Secretary of Commerce is named as the manager under section 11(1) of the Radiocommunications Act 1989.

Licence right price

(6) The price of the licence right is treated as being zero for the purposes of subpart EE (Depreciation).

Defined in this Act: amount, associated person, Commissioner, depreciation loss, pay, relationship agreement

Compare: 2004 No 35 s EZ 11

EZ 13 Annual rate for item acquired on or after 1 April 1993 and before end of person's 1994–95 income year

What this section is about

(1) This section is about the annual rate that applies to an item of depreciable property that a person acquires before the end of their 1994–95 income year (not including fixed life intangible property or excluded depreciable property, for which rates are

set in sections EE 33 (Annual rate for fixed life intangible property) and EZ 15 respectively).

Rate

(2) The rate is—

(a) the item's economic rate, if the item is not a building that has an economic rate or provisional rate of more than 0% due to an estimated useful life of 50 years or more; or

(b) the pre-1993 depreciation rate described in section EZ 14, if the person chooses under that section; or

(c) 0%, for a building that has an economic rate or provisional rate of more than 0% due to an estimated useful life of 50 years or more.

Defined in this Act: annual rate, building, depreciable property, economic rate, estimated useful life, excluded depreciable property, fixed life intangible property, income year, provisional rate

Compare: 2004 No 35 s EZ 12

Section EZ 13(2) heading: substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 85(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 13(2): substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 85(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 13 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 13 list of defined terms **estimated useful life**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 85(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 13 list of defined terms **provisional rate**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 85(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EZ 14 Pre-1993 depreciation rate

Scope of election

(1) A person may choose the pre-1993 depreciation rate for all items, or any item, that they acquire before the end of their 1994–95 income year excluding buildings that have an economic rate or provisional rate of more than 0% due to an estimated useful life of 50 years or more.

How election made

(2) The election is made by applying the pre-1993 depreciation rate for the item to the item in the person's return of income for the income year for which the election is made.

Election unchangeable

(3) The election must not be changed for the income year for which it is made.

Moving from diminishing value to straight-line and vice versa

(4) A person who chooses the pre-1993 depreciation rate has the following choices:

(a) if the rate is a diminishing value rate, the person may instead use the straight-line rate by—

(i) rounding the diminishing value rate to the nearest rate specified in schedule 10, column 1 (Straight-line equivalents of diminishing value rates of depreciation); and

(ii) taking the equivalent straight-line rate specified in column 2 of the schedule; or

(b) if the rate is a straight-line rate, the person may instead use the diminishing value rate by—

(i) rounding the straight-line rate to the nearest rate specified in schedule 10, column 2; and

(ii) taking the equivalent diminishing value rate specified in column 1 of the schedule.

Pre-1993 depreciation rate

(5) The pre-1993 depreciation rate is the rate calculated using the formula—

section 108 rate + section 108A rate + section 113A rate.

Definition of items in formula

(6) The items in the formula are defined in subsections (7) to (9).

Section 108 rate

(7) **Section 108 rate** is the rate of depreciation that the Commissioner allowed persons with a standard balance date to use for the 1992–93 tax year to calculate a deduction for depreciation under section 108 of the Income Tax Act 1976, as in force for the 1992–93 tax year, for property of the same kind as the item.

Section 108A rate

(8) **Section 108A rate** is the rate of additional deduction under section 108A of the Income Tax Act 1976, as in force for the 1992–93 tax year, for which the item was eligible for the 1992–93 tax year.

Section 113A rate

(9) **Section 113A rate** is the rate of supplementary deduction under section 113A of the Income Tax Act 1976 for which the item was eligible for the 1992–93 tax year.

Defined in this Act: building, Commissioner, diminishing value rate, economic rate, estimated useful life, income year, provisional rate, return of income, standard balance date, straight-line rate, tax year

Compare: 2004 No 35 s EZ 13

Section EZ 14(1): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 86(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 14 list of defined terms **building**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 84 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 14 list of defined terms **economic rate**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 86(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 14 list of defined terms **estimated useful life**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 86(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section EZ 14 list of defined terms **provisional rate**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 86(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

EZ 15 Annual rate for excluded depreciable property: 1992–93 tax year

What this section is about

(1) This section is about the annual rate that applies to an item of excluded depreciable property.

Rate

(2) The rate is the section 108 rate, without adding the section 108A rate or the other sections rate. The rates referred to in this subsection are described in subsections (3) to (5).

Section 108 rate

(3) **Section 108 rate** means the rate of depreciation that the Commissioner allowed persons with a standard balance date to use

for the 1992–93 tax year to calculate a deduction for depreciation under section 108 of the Income Tax Act 1976, as in force for the 1992–93 tax year, for property of the same kind as the item.

Section 108A rate

(4) **Section 108A rate** means the rate of additional deduction under section 108A of the Income Tax Act 1976, as in force for the 1992–93 tax year, for which the item was eligible for the 1992–93 tax year.

Other sections rate

(5) **Other sections rate** means a rate of additional or supplementary deduction under section 113A or any other provision of the Income Tax Act 1976 for which the item was eligible for the 1992–93 tax year.

Amount of depreciation loss under any other provision

(6) If a person has an additional amount of depreciation loss for an income year for an item of excluded depreciable property under section EZ 16 or EZ 17 or any other provision of this Act,—

(a) the rate applicable to the item under subsection (2) may be adjusted to incorporate the additional amount of depreciation loss in a manner prescribed or allowed by the Commissioner; and

(b) when an adjusted rate is applied to the item, the person does not have a separate amount of depreciation loss for the item under section EZ 16 or EZ 17 or the other provision.

Changing rate

(7) A person applying the rate in subsection (2) has the following choices:

(a) if the rate is a diminishing value rate, the person may instead use the straight-line rate by—

(i) rounding the diminishing value rate to the nearest rate specified in schedule 10, column 1 (Straight-line equivalents of diminishing value rates of depreciation); and

(ii) taking the equivalent straight-line rate specified in column 2 of the schedule; or

(b) if the rate is a straight-line rate, the person may instead use the diminishing value rate by—

(i) rounding the straight-line rate to the nearest rate specified in schedule 10, column 2; and

(ii) taking the equivalent diminishing value rate specified in column 1 of the schedule.

Defined in this Act: annual rate, Commissioner, depreciation loss, diminishing value rate, excluded depreciable property, prescribed, standard balance date, straight-line rate, tax year

Compare: 2004 No 35 s EZ 14

EZ 16 Amount of depreciation loss for plant or machinery additional to section EZ 15 amount

When this section applies

(1) This section applies when a person carrying on a business in New Zealand incurs, wholly for the purpose of the business, capital expenditure in acquiring, installing, or extending plant or machinery that—

(a) is excluded depreciable property; and

(b) is—

(i) plant or machinery that is normally in operation for an average of at least 16 hours each working day and is not normally in operation for 24 hours each working day:

(ii) plant or machinery that is normally in operation for 24 hours each working day.

Exclusions

(2) This section does not apply to—

(a) aluminium smelting plant or machinery:

(b) cars:

(c) petroleum refining plant or machinery:

(d) ships, aircraft, or hovercraft:

(e) plant or machinery for which a deduction by way of a fixed rate was denied under section 108 of the Income Tax Act 1976 for the 1992–93 income year or an earlier relevant income year:

(f) plant or machinery for which the Commissioner did not prescribe a differential rate for more than 1 shift operation when determining under section 108 of the

Income Tax Act 1976 the rate of depreciation for the 1992–93 income year or an earlier relevant income year.

Additional amount of depreciation loss

(3) The person has an amount of depreciation loss for the plant or machinery under this section in addition to any amounts of depreciation loss that they have for the plant or machinery under section EZ 15.

Relevant income years

(4) The person has the additional amount of depreciation loss in the first, second, third, fourth, and fifth income years in which the plant or machinery is used in deriving assessable income.

Rate

(5) The rate of the additional amount of depreciation loss is,—

(a) for plant or machinery described in subsection (1)(b)(i), 3% of the diminishing value of the plant or machinery in each income year:

(b) for plant or machinery described in subsection (1)(b)(ii), 6% of the diminishing value of the plant or machinery in each income year.

Defined in this Act: amount, assessable income, business, car, Commissioner, depreciation loss, excluded depreciable property, income year, New Zealand, petroleum, working day

Compare: 2004 No 35 s EZ 15

EZ 17 Additional amount of depreciation loss: between 16 December 1991 and 1 April 1994

When this section applies

(1) This section applies when a person incurs expenditure of the kind described in subsection (2) in—

(a) the acquisition or installation of a qualifying asset; or

(b) the making of a qualifying improvement to an item the person owns.

Expenditure described

(2) The expenditure is expenditure of a capital nature, excluding any amount of input tax applying to the supply of the qualifying asset or qualifying improvement to the person.

Additional amount of depreciation loss

(3) The person has an amount of depreciation loss for the asset or item under this section in addition to any amount of depreciation loss they have for it under subpart EE (Depreciation) and section EZ 16. This subsection is overridden by section EE 48(2) (Effect of disposal or event).

Amount

(4) The additional amount of depreciation loss for an income year is 25% of the lesser of—

(a) the amount of depreciation loss that the person has under subpart EE and section EZ 16 for the asset or item and for the income year; and

(b) the amount of depreciation loss that the person would have had under subpart EE and section EZ 16 for the asset or item and the income year had its value been equal to its qualifying capital value.

Defined in this Act: acquire, amount, depreciation loss, income year, qualifying capital value, qualifying asset, qualifying improvement

Compare: 2004 No 35 s EZ 16

EZ 18 Section EZ 17 amount of depreciation loss when items transferred between companies in wholly-owned group before 1 April 1993

When this section applies

(1) This section applies when, before 1 April 1993, a company in a wholly-owned group of companies disposes of a qualifying asset, or an item to which the company has made a qualifying improvement, to another company in the same wholly-owned group.

Transferee has amount of depreciation loss

(2) The transferee company has an amount of depreciation loss under section EZ 17 for the period after the disposal as if the transferee company were the same person as the transferor company.

Amount

(3) The amount of depreciation loss that the transferor company has under section EZ 17 for the asset or item for the income year in which the disposal occurs must be subtracted when the

amount of depreciation loss that the transferee company has under section EZ 17 for the income year is calculated.

How definitions affected

(4) This section applies despite any limitations in the definitions of **new asset**, **New Zealand-new asset**, **qualifying asset**, **qualifying capital value**, and **qualifying improvement** as to the identity of the person for whom an asset or item or improvement will be treated as a qualifying asset or qualifying improvement.

Defined in this Act: amount, company, depreciation loss, dispose, income year, new asset, New Zealand-new asset, qualifying asset, qualifying capital value, qualifying improvement, wholly-owned group of companies

Compare: 2004 No 35 s EZ 17

EZ 19 Section EZ 17 amount of depreciation loss when person previously exempt from tax acquires item

When this section applies

(1) This section applies when a person who has derived nothing but exempt income—

(a) starts in an income year to derive income that is not exempt income; and

(b) would have had an amount of depreciation loss under section EZ 17 for an item and an income year if the person had been deriving income that was not exempt income at the time they acquired the item to which section EZ 17 applies or made a qualifying improvement to the item to which section EZ 17 applies.

How qualifying capital value determined

(2) The item's qualifying capital value is determined as if the person had had an amount of depreciation loss for the period during which they derived nothing but exempt income.

Defined in this Act: amount, depreciation loss, exempt income, income, income year, qualifying capital value, qualifying improvement

Compare: 2004 No 35 s EZ 18

EZ 20 Adjusted tax value for software acquired before 1 April 1993

What this section applies to

(1) This section applies to any of the following items for the acquisition of which a person was allowed a deduction before 1 April 1993:

(a) the copyright in software:

(b) the right to use the copyright in software:

(c) the right to use software.

Meaning of adjusted tax value

(2) The **adjusted tax value** of the item is its cost to the person minus all deductions that the person was allowed for it.

Defined in this Act: acquire, adjusted tax value

Compare: 2004 No 35 s EZ 19

EZ 21 Sections EE 45 and EE 47: permanent removal: allowance before 1 April 1995

Section EE 45(11)

(1) For the purposes of section EE 45(11) (Consideration for purposes of section EE 44), the consideration that a person derives from the event described in subsection (2) is the item's market value. Two qualifications are—

(a) if the person makes a taxable supply, "market value" means the market value minus any goods and services tax (GST) that would be charged on the supply; and

(b) this subsection does not apply to a transfer under a relationship agreement.

Section EE 47(10)

(2) For the purposes of section EE 47(10) (Events for purposes of section EE 44), the ninth event is the cessation of use in New Zealand, and the taking out of New Zealand for use outside New Zealand, of an item of property for which a first-year allowance has been granted under section 112(1) to (7) of the Income Tax Act 1976, except when the item—

(a) has been taken out of New Zealand temporarily; and

(b) will, after its return to New Zealand, be used in or for the purpose of a business in New Zealand.

Defined in this Act: business, GST, New Zealand, relationship agreement, taxable supply

Compare: 2004 No 35 s EZ 20

EZ 22 Base value and total deductions in section EE 56: before 1 April 1995

Base value in section EE 56 when section 108 of the Income Tax Act 1976 applies

(1) For the purposes of section EE 56 (Formula), this subsection applies when a person could have been allowed a deduction for depreciation for an item under section 108 of the Income Tax Act 1976 for the 1992–93 income year and they have owned the item continuously since the 1992–93 income year. **Base value** is the amount at which the item was recorded in the person's accounts for taxation purposes for the 1992–93 income year.

Section EE 57(3)(d)

(2) For the purposes of section EE 57(3)(d) (Base value in section EE 56 when none of sections EE 58, EE 59, and EZ 22(1) applies),—

(a) the expenditure is expenditure for which a person has been allowed a deduction for depreciation under any of sections 108 to 108N or section 113A of the Income Tax Act 1976; or

(b) the expenditure is expenditure for which a person has been allowed a deduction for depreciation under any other provision of the Income Tax Act 1976.

Section EE 58(1)(e)(ii)

(3) For the purposes of section EE 58(1)(e)(ii) (Base value in section EE 56 when no previous deduction), the item is one for which the person could not have been allowed a depreciation deduction under section 108 of the Income Tax Act 1976 for the 1992–93 income year.

Section EE 60(2)(c)

(4) For the purposes of section EE 60(2)(c) (Total deductions in section EE 56), the provision is section 117(5) of the Income Tax Act 1976.

Defined in this Act: amount, income year

Compare: 2004 No 35 s EZ 21

EZ 23 Economic rate for plant or equipment acquired before 1 April 2005 and buildings acquired before 19 May 2005

What this section is about

(1) This section is about setting the economic depreciation rate that applies to items of a kind of depreciable property if—

- (a) the kind of depreciable property is not fixed life intangible property, or excluded depreciable property, for which an economic rate cannot be set; and
- (b) the items are—
  - (i) plant or equipment acquired before 1 April 2005:
  - (ii) buildings acquired before 19 May 2005:
  - (iii) buildings acquired on or after 19 May 2005, as relationship property or from a company in the same wholly-owned group of companies, from a person who applied to the item an economic depreciation rate set under this section or a corresponding provision.

Rate set by Commissioner

(2) The Commissioner sets the rate from time to time by—

- (a) following the procedure set out in this section; and
- (b) issuing a determination under section 91AAF of the Tax Administration Act 1994.

Procedure for setting economic rate

(3) To set the diminishing value rate for a kind of item of depreciable property, the Commissioner—

- (a) gets a figure by applying the formula in subsection (4) to items of that kind; and
- (b) rounds the figure up or down to the nearest rate specified in schedule 12, column 1 (Old banded rates of depreciation); and

(c) sets the same rate for some or all of the kinds of items of depreciable property that are similar to one another, if the Commissioner thinks it is appropriate to do so having regard to—

(i) the rate calculated for each kind; and

(ii) the reduction in compliance costs that is likely to be achieved.

Formula

(4) The formula is—

$$1 - \left(\left(\frac{\text{residual value}}{\text{cost}}\right)^{\frac{1}{\text{estimated useful life}}}\right).$$

Definition of items in formula

(5) In the formula,—

(a) **residual value** is the greater of—

(i) estimated residual market value, which is defined in section EE 67 (Other definitions):

(ii) 13.5% of cost:

(b) **cost** is the cost of items of the kind to which the formula is applied:

(c) **estimated useful life** is defined in section EE 63 (Meaning of estimated useful life).

Defined in this Act: Commissioner, depreciable property, diminishing value rate, economic rate, estimated residual market value, estimated useful life, excluded depreciable property, fixed life intangible property

Compare: 2004 No 35 s EZ 21B

EZ 23B Property acquired after depreciable property affected by Canterbury earthquakes

When this section applies

(1) This section applies for a person and an income year (the **current year**) before the 2016–17 income year when the person,—

(a) in or before the current year, receives insurance or compensation for items of depreciable property (the **affected property**) each of which, as a result of a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011,—

(i) if not a building or grandparented structure, is irreparably damaged; or

(ii) if a building or grandparented structure, is rendered useless for the purpose of deriving income, and demolished or abandoned for later demolition, because of damage to the building or grandparented structure or to the neighbourhood of the building or grandparented structure; and

(b) in the absence of this section, would have in or before the current year, from insurance or compensation for the items of affected property (the **affected class**) in 1 of the categories referred to in subsection (10)(b), total depreciation recovery income under section EE 48 (Effect of disposal or event) exceeding the total amount for the affected class of depreciation loss, treated as a positive amount, under section EE 48; and

(c) plans in the current year to acquire depreciable property (the **replacement property**) meeting the requirements of subsection (7); and

(d) gives written notice to the Commissioner under subsection (9)—

(i) specifying the affected property:

(ii) linking, for the purposes of this section, each item of acquired replacement property with an affected class.

Depreciation recovery income and suspended recovery income

(2) The amount for the affected class of the excess referred to in subsection (1)(b) (the **excess recovery**) is not depreciation recovery income except to the extent of the amount that—

(a) remains after adjustment under subsection (3) or (6) (the **suspended recovery income**); and

(b) is attributed to an income year by subsection (7).

Effect of acquiring item of replacement property if suspended recovery income from affected property not in pool

(3) If the person acquires an item of replacement property (the **replacement item**) and links the replacement item with affected property for which the person does not use the pool method, the amount given by subsection (4)—

(a) is treated as not being included in the amount of the person's expenditure on the replacement item, for the purposes of determining—

(i) under section EE 16(4) (Amount resulting from standard calculation) the item value or cost for the replacement item, if the person uses the diminishing value method or straight-line method for the replacement item; or

(ii) under section EE 22 (Cases affecting pool) the cost of the replacement item, if the person uses the pool method for the replacement item; and

(b) is a reduction in the amount of the suspended recovery income for the affected property.

Amount of reduction: expenditure on replacement item and suspended recovery income

(4) The amount of the reduction under subsection (3)(a) or (b) for a replacement item and affected property for which the person does not use the pool method is—

(a) zero, if the cost of the affected property equals or is less than the person's total expenditure in acquiring, with or before the replacement item, other replacement property linked with the affected property; or

(b) the amount calculated using the formula—

$$\frac{\text{limited replacement cost} \times \text{excess}}{\text{affected cost}}.$$

Definition of items in formula

(5) In the formula,—

(a) **limited replacement cost** is the lesser of the following:

(i) the amount by which the cost of the affected property exceeds the total expenditure in acquiring, with or before the replacement item, other replacement property linked with the affected property:

(ii) the amount of the expenditure on the replacement item:

(b) **excess** is the excess recovery for the affected property:

(c) **affected cost** is the total cost for the person of the affected property.

Effect of acquiring item of replacement property if suspended recovery income from affected property in pool

(6) If the person acquires an item of replacement property (the **replacement item**) and links the replacement item with affected property for which the person uses the pool method,—

(a) the amount of the person's expenditure on the replacement item is treated as being reduced, by the amount equal to the lesser of the amount of expenditure on the replacement item and the amount of suspended recovery income for the affected property after the acquisition of other replacement property with or before the replacement item, for the purposes of determining—

(i) the adjusted tax value of the replacement item, if subparagraphs (ii) or (iii) do not apply; or

(ii) the cost of the replacement item for the straight-line method, if that method is used to determine depreciation loss for the replacement item; and

(iii) the adjusted tax value of the pool of the replacement item, if the person uses the pool method for the replacement item; and

(b) the amount of the suspended recovery income for the affected property is reduced by the amount of the treated reduction under paragraph (a).

Requirements for replacement property

(7) An item of replacement property for a person must—

(a) be depreciable property that is not depreciable intangible property; and

(b) be acquired in or before the person's 2015–16 income year; and

(c) be included in the same category under subsection (10)(b) as the affected class with which the person links the item, if the affected class is described in subsection (10)(b)(i) or (ii); and

(d) be located in greater Christchurch as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011, if the item is a building, grandparented structure, or commercial fit-out.

Amount of depreciation recovery income

(8) The person has, in an income year for affected property, an amount of depreciation recovery income equal to the amount of suspended recovery income for the affected property—

(a) at the end of the income year, if that year is the 2015–16 income year and neither of paragraphs (b) and (c) apply earlier; or

(b) when in the income year the person decides not to acquire more replacement property, if neither of paragraphs (a) and (c) apply earlier; or

(c) when in the income year the person goes into liquidation or becomes bankrupt, if neither of paragraphs (a) and (b) apply earlier.

Notice of election for affected property

(9) A person choosing to rely on this section to suspend in a current year the recognition of suspended recovery income from the insurance or compensation for affected property must give written notice to the Commissioner—

(a) for the earliest income year (the **estimate year**) in which the amount of the insurance or compensation for the affected property can be reasonably estimated, by the later of 31 January 2012 and the date on which the return of income is filed for the estimate year; and

(b) if the current year is after the estimate year,—

(i) for each income year between the estimate year and the current year, by the date on which the return of income is filed for that income year; and

(ii) for the current year, by the date on which the return of income is filed for the current year.

Contents of notice of election

(10) A notice under subsection (9) must—

(a) describe the items of affected property; and

(b) indicate in which of the following categories each item of affected property is included:

(i) a building or grandparented structure not referred to in subparagraph (iii):

(ii) commercial fit-out not referred to in subparagraph (iii):

(iii) depreciable property for which the person uses the pool method:

(iv) depreciable property not referred to in subparagraphs (i) to (iii); and

(c) give details of each item of replacement property acquired in the current year and the affected class to which the person is linking the item; and

(d) give the amount of the expenditure on the replacement item and the reduction under subsection (3) or (6) of that expenditure for the purposes of determining adjusted tax value or depreciation loss; and

(e) give the amount, for the affected class, of the suspended recovery income at the end of the current year.

Disposal of replacement property: reduction in cost treated as depreciation loss

(11) For the purposes of section EE 48, the amount by which a person's expenditure on a replacement item is treated as being reduced under subsection (3) or (6) is an amount of depreciation loss for the item for which the person has been allowed a deduction.

Relationship to subpart EE

(12) This section overrides subpart EE (Depreciation).

Defined in this Act: adjusted tax value, amount, assessable income, building, commercial building, commercial fit-out, , depreciable intangible property, , depreciable property, depreciation loss, depreciation recovery income, grandparented structure, income year, liquidation, notice, pool, pool method, return of income, straight-line method

Section EZ 23B: inserted (with effect on 4 September 2010), on 29 August 2011, by section 43 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Definitions

EZ 24 Meaning of new asset

Meaning

(1) **New asset** means an item of property that a person owns to which subsections (2) to (4) apply and to which subsection (5) does not apply.

Acquisition date

(2) The item is—

(a) acquired by the person in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract that they entered into before 16 December 1991; or

(b) acquired by the person in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract that they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; or

(c) one to which all the following apply:

(i) it was acquired by the person before 16 December 1991 as trading stock; and

(ii) it was used by the person as a capital item for the first time in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and

(iii) it qualified for a deduction for depreciation under section 108 of the Income Tax Act 1976 in the period starting on 16 December 1991 and ending with the close of 31 March 1993.

Used before 1 April 1994

(3) The item is used by the person before 1 April 1994.

Not used by anyone previously

(4) The item is—

(a) not acquired by any other person before the date on which the person acquired it; and

(b) not used by any other person before the date on which the person acquired it; and

(c) not held for use by any other person before the date on which the person acquired it; and

(d) not an item or part of an item that qualified for a deduction for depreciation under the Income Tax Act 1976 for a period before the date on which the person acquired it.

Exclusion

(5) A constructed item that a person owns is not a new asset if—

(a) its construction started before 16 December 1991 (but this paragraph does not apply to the extent to which the

item is trading stock to which subsection (2)(c) applies); or

(b) its construction started on or after 16 December 1991 under a binding contract that the person entered into before 16 December 1991; or

(c) its construction was not completed before 1 April 1994; or

(d) the item was not first used by the person before 1 April 1994.

Defined in this Act: acquire, new asset trading stock

Compare: 2004 No 35 s EZ 22

EZ 25 Meaning of New Zealand-new asset

Meaning

(1) **New Zealand-new asset** means an item of property that a person owns to which subsections (2) to (5) apply.

Not new

(2) The item is not a new asset.

Date of acquisition

(3) The item is—

(a) acquired by the person in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract that they entered into before 16 December 1991; or

(b) acquired by the person in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract that they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; or

(c) one to which all the following apply:

(i) it was acquired by the person before 16 December 1991 as trading stock; and

(ii) it was used by the person as a capital item for the first time in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and

(iii) it qualified for a deduction for depreciation under section 108 of the Income Tax Act 1976 in the

period starting on 16 December 1991 and ending with the close of 31 March 1993.

Used before 1 April 1994

(4) The item is used by the person before 1 April 1994.

Not used

(5) The item is—

(a) not used in New Zealand before the date on which the person acquired it; and

(b) not an item or part of an item that qualified for a deduction for depreciation under the Income Tax Act 1976 for a period before the date on which the person acquired it.

Defined in this Act: acquire, new asset, New Zealand, New Zealand-new asset trading stock

Compare: 2004 No 35 s EZ 23

EZ 26 Meaning of qualifying capital value

Meaning

(1) **Qualifying capital value** means, for an income year,—

(a) for a qualifying asset that a person owns, the amount calculated for the income year using the formula in subsection (2); or

(b) for an item that a person owns that is not a qualifying asset but to which they have made a qualifying improvement, the amount calculated for the income year using the formula in subsection (7).

Formula

(2) The formula referred to in subsection (1)(a) is—

(acquisition cost + improvement cost) - item's depreciation.

Definition of items in formula

(3) The items in the formula in subsection (2) are defined in subsections (4) to (6).

Acquisition cost

(4) **Acquisition cost** is the amount of capital expenditure the person incurs in acquiring the asset or item. In the case of a constructed item, the amount of capital expenditure is reduced by the amount of capital expenditure the person incurs on the con-

struction on or after 1 April 1993, other than under a binding contract that the person entered into before 1 April 1993.

Improvement cost

(5) **Improvement cost** is the amount of capital expenditure, if any, the person incurs in making a qualifying improvement to the asset or item.

Item's depreciation

(6) **Item's depreciation** is the amount of depreciation loss for which the person has been allowed a deduction for the qualifying capital value of the asset or item in earlier income years, not including an amount of depreciation loss calculated using the straight-line method.

Formula

(7) The formula referred to in subsection (1)(b) is—

capital expenditure - improvement's depreciation.

Definition of items in formula

(8) The items in the formula in subsection (7) are defined in subsections (9) and (10).

Capital expenditure

(9) **Capital expenditure** is the amount of capital expenditure the person incurs for the improvement.

Improvement's depreciation

(10) **Improvement's depreciation** is the amount of depreciation loss for which the person has been allowed a deduction for the qualifying capital value of the improvement in earlier income years, not including an amount of depreciation loss calculated using the straight-line method.

Defined in this Act: acquire, amount, depreciation loss, income year, qualifying asset, qualifying capital value, qualifying improvement, straight-line method

Compare: 2004 No 35 s EZ 24

EZ 27 Meaning of qualifying improvement

Meaning

(1) **Qualifying improvement**, for a person's income year, means an improvement of an item that the person owns, if all the following apply:

(a) the person incurred the expenditure on the improvement—

(i) in the period starting on 16 December 1991 and ending with the close of 31 March 1993, other than under a binding contract they entered into before 16 December 1991; or

(ii) in the period starting on 1 April 1993 and ending with the close of 31 March 1994, under a binding contract they entered into in the period starting on 16 December 1991 and ending with the close of 31 March 1993; and

(b) the person used the item in its improved form before 1 April 1994; and

(c) the person is allowed a deduction for depreciation under the Income Tax Act 1976 for the improvement for the income year.

Exclusions

(2) **Qualifying improvement** does not include—

(a) an improvement to a building; or

(b) an improvement requiring construction, if—

(i) the construction started before 16 December 1991; or

(ii) the construction started on or after 16 December 1991 under a binding contract that the person entered into before 16 December 1991; or

(iii) the construction was not completed before 1 April 1994; or

(iv) the improvement was not first used by the person before 1 April 1994.

Defined in this Act: income year, qualifying improvement

Compare: 2004 No 35 s EZ 25

EZ 28 Meaning of qualifying asset

Qualifying asset means—

(a) a new asset, other than a building, that a person owns in an income year and for which they are allowed a deduction for depreciation under the Income Tax Act 1976 for the income year; or

(b) a New Zealand-new asset, other than a building or a car, that a person owns in an income year and for which they are allowed a deduction for depreciation under the Income Tax Act 1976 for the income year.

Defined in this Act: car, income year, new asset, New Zealand-new asset, qualifying asset

Compare: 2004 No 35 s EZ 26

Accident insurance

EZ 29 Private insurers under Accident Insurance Act 1998

When this section applies

(1) This section applies when an insurer, as defined in paragraph (a) of the definition of **insurer** in section 13 of the Accident Insurance Act 1998, has a reserve in a tax year to cover the following, all of which relate to events covered by the Accident Insurance Act 1998 occurring before the end of the tax year:

(a) claims that have been made with the insurer but have not been settled before the end of the tax year; and

(b) claims that are expected to be made with the insurer in relation to events that the insurer knows about; and

(c) an estimate of claims that have not been reported to the insurer in relation to events that the insurer does not know about.

Adjustment to deduction

(2) When the closing value of the reserve for a tax year is more than the opening value, the deduction that the insurer is allowed is adjusted by an amount equal to the amount calculated using the formula—

closing value - opening value.

Adjustment to income

(3) When the opening value of the reserve for a tax year is more than the closing value, the income of the insurer is adjusted by an amount equal to the amount calculated using the formula—

opening value - closing value.

Amount

(4) The reserve at the end of the tax year is—

(a) an amount calculated by an actuary applying subsection (5) and adopted by the insurer for financial reporting purposes; or

(b) if no such amount has been calculated, an amount determined by the Commissioner, who may seek the advice of an actuary in determining it.

Calculation or determination of reserve

(5) A person calculating or determining the amount of a reserve under subsection (4) must ensure that the amount has regard to—

(a) generally accepted accounting practice; and

(b) generally accepted actuarial practice; and

(c) the present value of expected future payments.

Link with subpart DA

(6) This section supplements the general permission. The general limitations still apply.

Defined in this Act: actuary, amount, Commissioner, deduction, general limitation, general permission, generally accepted accounting practice, pay, supplement, tax year

Compare: 2004 No 35 s EZ 27

Section EZ 29(4)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

EZ 30 Base premium for 1998–99 premium year under Accident Insurance Act 1998

Discount payment date

(1) An amount of base premium for the 1998–99 premium year that is paid on or before the discount payment date is treated as expenditure in the tax year in which the discount payment date falls if the discount payment date is before the date on the invoice that specifies when payment is due. This subsection overrides section EF 3(1) (Accident compensation levies and premiums).

Monthly instalment plan

(2) Interest payable on a base premium for the 1998–99 premium year under a monthly instalment plan is treated as being payable on the date that the interest is applied under regulation 8 of the Accident Insurance (Payment of Base Premiums) Regulations 1999.

Some definitions

(3) In this section, **base premium for the 1998–99 premium year, discount payment date**, and **monthly instalment plan** have the meanings given to them in the Accident Insurance (Payment of Base Premiums) Regulations 1999.

Defined in this Act: amount, base premium for the 1998–99 premium year, discount payment date, interest, monthly instalment plan, pay, tax year

Compare: 2004 No 35 s EZ 28

Controlled foreign company and foreign investment fund rules

EZ 31 Disclosure restrictions on grey list CFCs before 2011–12

[Repealed]

Section EZ 31: repealed (with effect on 30 June 2009), on 6 October 2009, by section 195(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 32 Terminating exemption for grey list FIF investing in Australasian listed equities

Initial qualifying requirements

(1) A person's rights in a FIF are not an attributing interest if—

(a) the rights are a direct income interest (the **shares**); and

(b) on 17 May 2006, the company—

(i) was a grey list company; and

(ii) was not an entity described in schedule 25, part B (Foreign investment funds); and

(iii) had shareholders of which more than 40% had addresses in New Zealand on the company's share register; and

(iv) had shareholders referred to in subparagraph (iii) who between them held shares in the company carrying voting interests of more than 50%; and

(v) had assets of which more than 50% in total value were shares in other companies that were resident in New Zealand or Australia and were listed on a recognised exchange in New Zealand or Australia; and

(c) on 17 May 2006, the shares were listed —

(i) on a recognised exchange in New Zealand; and

(ii) on a recognised exchange in a grey list country.

Ongoing qualifying requirements

(2) The exemption in subsection (1) does not apply unless, at all times in the income year, the company—

(a) is a grey list company; and

(b) has assets of which more than 50% in total value are shares in other companies that are resident in New Zealand; and

(c) has assets of which more than 90% in total value are shares in other companies that are—

(i) resident in New Zealand or Australia; and

(ii) listed on a recognised exchange in New Zealand or Australia.

Notification requirement

(3) The exemption in subsection (1) does not apply unless the grey list company notified the Commissioner, by 17 January 2007, that the company met the requirements of subsection (1)(b) and (c) on 17 May 2006.

Exemption terminating after 2008–09 year

(4) The exemption in subsection (1) does not apply to the 2009–10 income year and later income years.

Choosing not to apply exemption

(5) The exemption in subsection (1) does not apply for a person, for an income year (the **initial year**) and for later income years, if the person completes a return of income for the initial year on the basis that the exemption does not apply for the person and the initial income year.

Defined in this Act: attributing interest, company, direct income interest, FIF, grey list company, income year, recognised exchange, New Zealand, shareholder

Compare: 2004 No 35 s EX 33B(2), (3)

Section EZ 32(1): substituted, on 1 April 2008, by section 404(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section EZ 32(3): amended, on 1 April 2008, by section 404(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EZ 32B Transitional rule for IFRS reporting

[Repealed]

Section EZ 32B: repealed (with effect on 1 April 2008), on 6 October 2009, by section 196 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EZ 32B: inserted, on 1 April 2008, by section 405 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

EZ 32C Treatment in section EX 20C of currency effects on CFC's borrowing

When this section applies

(1) This section applies for a person for an accounting period (the **current period**) and a CFC when—

(a) the CFC is not an entity that carries on a business of banking or insurance and is not controlled by such an entity; and

(b) the main activity of the CFC in the period described in subsection (9) (the **offset period**) is borrowing to invest in shares in a foreign company controlled by the CFC; and

(c) the CFC is a party to financial arrangements (the **funding arrangements**) for each of which—

(i) the financial arrangement is a liability of the CFC providing funds to the CFC; and

(ii) when the financial arrangement is entered, none of the parties to the financial arrangement, the person, and the associated persons, has a reasonable expectation that the CFC will have more income than expenditure under the financial arrangement; and

(d) as a result of changes in currency exchange rates, the CFC has an amount (a **loan currency amount**) of loss (treated as a negative amount) or gain (treated as a positive amount) from a funding arrangement for the current period; and

(e) the CFC has a loan currency amount from a funding arrangement for an accounting period—

(i) other than the current period; and

(ii) in the offset period for the current period; and

(f) for either accounting period, a loan currency amount is included in the calculation for the funding arrangement of the amount of expenditure that contributes to the item limited funding costs in the formula in section EX 20C(2) (Net attributable CFC income or loss); and

(g) for the relevant accounting period, the contribution of the item limited funding costs to the CFC's net attributable CFC income or net attributable CFC loss is reduced because the item fraction in that formula is less than 1; and

(h) the person chooses in a return of income to have this section apply to the income year corresponding to the accounting period or to an earlier income year.

Included loan currency amount for funding arrangement and current period

(2) For a funding arrangement having a loan currency amount for an accounting period (the **currency movement period**) in the offset period that is included in the calculation of an item, other than later losses, in the formula in section EX 20C(2), an amount (the **included currency amount**) relating to the currency movement period is calculated for the item, the funding arrangement, and the current period using the formula—

currency contribution × fraction − earlier adjustments.

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **currency contribution** is the loan currency amount contributed to the item for the funding arrangement and the currency movement period:

(b) **fraction** is—

(i) 1, if the loan currency amount is included in the calculation of the item attributable CFC; or

(ii) the value for the funding arrangement and the currency movement period of the item fraction in the formula in section EX 20C(2), to the extent that the loan currency amount is included in the calculation of the item limited funding costs; or

(iii) the fraction of the loan currency amount that is included in the item other deductions, to the ex-

tent that the loan currency amount is included in the calculation of that item:

(c) **earlier adjustments** is the total amount of adjustments (treated as positive amounts) to the included currency amount for the funding arrangement and the currency movement period, each resulting from the application of subsection (7) for an accounting period that is not the current period and is in the offset period.

Conditions for adjustment of included currency amounts

(4) For the current period, subsection (7) applies to decrease included currency amounts that are zero or negative and relate to funding arrangements and currency movement periods in the offset period if, for the offset period and the funding arrangements of the CFC, the total of the included currency amounts—

(a) is greater than zero; and

(b) is greater than the total of the loan currency amounts.

Total amount of adjustments for included currency amounts

(5) For the current period, subsection (7) decreases included currency amounts referred to in subsection (4) by a total amount (the **total current adjustment**) equal to the lowest of the following:

(a) the total, for the offset period and the funding arrangements, of the included currency amounts:

(b) the amount obtained for the offset period and the funding arrangements by subtracting the total of the loan currency amounts from the total of the included currency amounts:

(c) the total of the amounts calculated, for each accounting period in the offset period and each funding arrangement, using the formula—

loan contribution × fraction − earlier adjustments.

Definition of items in formula

(6) In the formula in subsection (5)(c),—

(a) **loan contribution** is the amount included in the calculation of an item, other than later losses, in the formula

in section EX 20C(2) for the funding arrangement and the accounting period:

(b) **fraction** is—

(i) 1, if the amount is included in the calculation of the item attributable CFC; or

(ii) the value for the funding arrangement and the accounting period of the item **fraction** in the formula in section EX 20C(2), to the extent that the amount is included in the calculation of the item limited funding costs; or

(iii) the fraction of the amount that is included in the item **other deductions**, to the extent that the amount is included in the calculation of that item:

(c) **earlier adjustments** is the total amount of adjustments (treated as positive amounts) to the amount for the funding arrangement and the accounting period, each resulting from the application of subsection (7) for an accounting period that is not the current period and is in the offset period.

Adjustment of included currency amount for funding arrangement and period

(7) The amount of the total current adjustment is—

(a) applied first to the current period and then, in the order of earliest to latest, to the other accounting periods in the offset period:

(b) reduced, for each accounting period, by an amount corresponding to the total amount subtracted under paragraph (d) for the accounting period, with the result being the amount (the **available current adjustment**) available to be applied to the next accounting period referred to in paragraph (a):

(c) applied for funding arrangements having, for an accounting period,—

(i) a negative loan currency amount that contributed an amount of expenditure to the item **limited funding costs** in the formula in section EX 20C(2); and

(ii) an included currency amount that is negative or zero and from which the loan currency amount

can be obtained by subtracting a positive amount (the **difference**):

(d) applied for each such funding arrangement, for the accounting period, by subtracting from the included currency amount for the funding arrangement an amount calculated using the formula—

$$\text{difference} \times \frac{\text{available}}{\text{total differences.}}$$

Definition of items in formula

(8) In the formula in subsection (7)(d),—

(a) **difference** is the amount of the difference for the funding arrangement and the accounting period:

(b) **available** is the lesser of the available current adjustment for the accounting period and the total amount of differences for the accounting period:

(c) **total differences** is the total amount of differences for the accounting period.

Requirements for accounting periods in which adjustments made

(9) For a current period for a CFC, adjustments may be made under subsection (7) for a funding arrangement and an accounting period if the following requirements are met:

(a) the accounting period is the current period or 1 of the 4 accounting periods immediately before the current period; and

(b) the accounting period begins on or after 1 July 2009; and

(c) the CFC is resident under section YD 3 (Country of residence of foreign companies) in the same country or territory for the period (the **continuity period**) consisting of the current period, the accounting period, and the accounting periods between the accounting period and the current period; and

(d) a group of persons exists that has, for the CFC and the continuity period,—

(i) voting interests of 49% or more in total; and

(ii) market value interests of 49% or more in total.

Amount of adjustment included in item later losses in section EX 20C

(10) For the purposes of section EX 20C(9B), the amount of an adjustment under subsection (7) for a CFC's funding arrangement and an accounting period is included in the item later losses for the funding arrangement and the accounting period.

Amount of adjustment is expenditure of CFC under funding arrangement

(11) For the purposes of section EW 31 (Base price adjustment formula), the amount of an adjustment under subsection (7) for a CFC's funding arrangement and an accounting period is expenditure incurred by the CFC under the funding arrangement in the accounting period to the extent that the included currency amount corresponding to the adjustment is not, in the absence of this subsection, included in expenditure incurred under the funding arrangement in the accounting period.

Carrying back loss amounts arising from adjustments

(12) If adjustments for a CFC under subsection (7) for an accounting period result in a net loss, or an increase in the net loss, of the person for the corresponding income year, the person—

(a) may use under section DZ 19 (Attributed CFC loss carried back under section EZ 32C) the amount of the net loss, or of the increase, to offset net income—

(i) for an earlier income year in the offset period; and

(ii) that has not previously been offset under this subsection; and

(iii) to the extent given by subsection (13); and

(b) must not use in the corresponding income year the amount of net loss carried back to the earlier income year.

Limit on loss amounts carried back

(13) The total amount of net loss carried back under subsection (12) to an earlier income year must not exceed the amount, calculated for the earlier income year in the absence of adjustments under subsection (7) and offsets under subsection (12), that is the lesser of—

(a) the net income, or the increase in net income, of the person for the earlier income year produced by including foreign currency amounts in the calculation of net attributable CFC income or loss from CFCs; and

(b) the net income, or the increase in net income, of the person for the earlier income year produced by including net attributable CFC income or loss from funding arrangements of CFCs.

No interest if tax payment excessive because of offset under subsection (12)

(14) An amount of tax paid by a person for an income year is not overpaid tax for the purposes of Part 7 of the Tax Administration Act 1994 to the extent that the amount—

(a) exceeds the income tax liability of the person for the income year because of the use under subsection (12) of net loss from a later income year to offset net income; and

(b) is paid before the offset occurs.

Defined in this Act: accounting period, associated person, attributable CFC amount, CFC, financial arrangement, income year, market value interest, net attributable CFC income, net attributable CFC loss, net income, net loss, return of income, voting interest

Section EZ 32C: inserted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009; and before 1 July 2013), by section 44(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Old financial arrangements rules

EZ 33 Application of old financial arrangements rules

The old financial arrangements rules apply to financial arrangements entered into on or after the implementation date and before 20 May 1999.

Compare: 2004 No 35 s EZ 30

EZ 34 Election to apply financial arrangements rules in subpart EW

Despite section EZ 33, a person may elect to apply the financial arrangements rules by calculating a transitional adjustment under section EZ 51.

Compare: 2004 No 35 s EZ 31

EZ 35 Accruals in relation to income and expenditure in respect of financial arrangements

(1) For the purpose of calculating the amount deemed to be income or expenditure of any person under subsections (2) to (7), regard must be had to,—

(a) if the person is a holder in relation to the financial arrangement,—

(i) the amount of all consideration paid and to be paid to the person in relation to the financial arrangement; and

(ii) any amount remitted and to be remitted by the person in relation to the financial arrangement; and

(iii) the acquisition price of the financial arrangement in relation to the person; and

(b) if the person is an issuer in relation to the financial arrangement,—

(i) the amount of all consideration paid and to be paid by the person in relation to the financial arrangement; and

(ii) the acquisition price of the financial arrangement in relation to the person.

(2) Subject to this section, where any person is a holder or an issuer of a financial arrangement, the amount that is deemed to be income or expenditure of that person in respect of the financial arrangement in any income year is an amount calculated using the yield to maturity method so as to result in the allocation to each income year of an amount that is fair and reasonable, and such amount so allocated to each income year is income deemed to be derived by or expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year:

provided that the Commissioner must accept an alternative method to the yield to maturity method, that has regard to the principles of accrual accounting, and—

(a) conforms with commercially acceptable practice; and

(b) except to the extent that the Commissioner may otherwise allow under subsection (8), is adopted by the person and is or will be consistently applied in respect of

all such financial arrangements for financial reporting purposes; and

(c) results in the allocation to each income year of amounts that are not materially different from amounts that would be calculated but for this proviso.

(3) Notwithstanding subsection (2), but subject to the other provisions of this section, where in any income year the total value of all financial arrangements of which a person is a holder or an issuer has on no day within that income year exceeded $1,500,000 or such greater amount as the Governor-General may by Order in Council declare for the purposes of this section,—

(a) the person may calculate income or expenditure for that income year in respect of those financial arrangements by using the straight-line method so as to result in the allocation to that income year and subsequent income years of amounts that are fair and reasonable in respect of those arrangements; and

(b) where the straight-line method is used under paragraph (a), that method must be used by the person in respect of all financial arrangements of which the person was the holder or issuer during that income year; and

(c) where the person has in accordance with this subsection calculated income or expenditure using the straight-line method in respect of a financial arrangement for any income year, the person must, unless otherwise authorised in writing by the Commissioner, continue to use that method in respect of that financial arrangement for any subsequent income year, until the maturity, remittance, sale, or other transfer of the arrangement, notwithstanding that the total value of all financial arrangements of which the person is holder or issuer may at any time in any such subsequent income year exceed $1,500,000 or such other amount as may be declared for the purposes of this section,—

and any amount calculated in respect of a financial arrangement in accordance with this subsection is income deemed to be derived by or expenditure deemed to be incurred by the per-

son in respect of the financial arrangement for the relevant income year.

(4) For the purposes of subsection (3), a person must take into account financial arrangements to which subpart EW applies.

(5) For the purposes of subsection (3),—

(a) the value of any financial arrangement to be taken into account in determining whether the total value of all financial arrangements of which a person is the holder or issuer on any day exceeds $1,500,000 or such other amount as may be declared for the purposes of this section is,—

(i) in the case of a fixed principal financial arrangement, the nominal or face value of the arrangement; and

(ii) in the case of a variable principal debt instrument, the amount owing by or to the person under the arrangement on the relevant day; and

(iii) in the case of a financial arrangement to which subpart EW applies, the value determined under that subpart; and

(b) in the first income year for which income or expenditure is calculated under subsection (3) in respect of a financial arrangement that—

(i) was acquired or issued by the person in a previous income year; and

(ii) continues to be held or issued by the person at the end of the first income year for which income or expenditure is calculated under subsection (3),—

the amount of income or expenditure of the person in respect of that financial arrangement for that first income year is an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

a is the sum of all amounts that would have been income derived by the person in respect of the financial arrangement if the straight-line method referred to in subsection (3) had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year

b is the sum of all amounts that would have been expenditure incurred by the person in respect of the financial arrangement if the straight-line method referred to in subsection (3) had been applied to the financial arrangement from the date it was acquired or issued by the person until the end of that first income year

c is the sum of all amounts of income deemed to have been derived by the person in respect of the financial arrangement before the commencement of that first income year

d is the sum of all amounts deemed to have been expenditure incurred by the person in respect of the financial arrangement before the commencement of that first income year;—

and any amount so calculated is, if a positive amount, deemed to be income derived by the person in that first income year and, if a negative amount, deemed to be expenditure incurred by the person in that first income year.

(6) Where it is not possible to calculate an amount to be deemed to be income or expenditure in respect of a financial arrangement using the yield to maturity method as provided for in subsection (2) or (in a case to which subsection (3) applies) the straight-line method as provided for in subsection (3), the amount that is deemed to be income or expenditure of the person in any income year is an amount calculated by the person—

(a) using the method, if any, prescribed by the Commissioner for the financial arrangement in a determination made under section 90(1)(c) of the Tax Administration Act 1994:

provided that the Commissioner must accept an alternative method to the method prescribed in any such determination that has regard to the principles of accrual accounting, and—

(i) conforms with commercially acceptable practice; and

(ii) except to the extent that the Commissioner may otherwise allow under subsection (8), is adopted by the person and is or will be consistently ap-

plied in respect of all such financial arrangements for financial reporting purposes; and

(iii) results in the allocation to each income year of amounts that are not materially different from the amounts that would be calculated, but for this proviso; and

(b) in the absence of any such determination, by applying a method that meets the requirements of subparagraphs (i) and (ii) of the proviso to paragraph (a) and that results in the allocation to each income year of an amount that, having regard to the tenor of subsection (2), is fair and reasonable;—

and such amount of income or expenditure so allocated to each income year is income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in the income year.

(7) Notwithstanding subsections (2) and (6), the Commissioner must accept an alternative method for calculating the amount to be deemed to be income or expenditure of the person, in respect of a financial arrangement, to the methods provided for under subsections (2) and (6), if the alternative method has regard to market valuation, and—

(a) conforms with commercially acceptable practice; and

(b) except to the extent that the Commissioner may otherwise allow under subsection (8), is adopted by the person and is or will be consistently applied in respect of all such financial arrangements for financial reporting purposes; and

(c) either—

(i) the business of the person comprises dealing in such financial arrangements; or

(ii) the financial arrangement is a forward or future contract for foreign exchange, or a futures contract; and

(d) the market, the method, and the source of the information used to determine the market values have been approved by the Commissioner under a determination issued under section 90(1)(e) of the Tax Administration Act 1994; and

(e) the person and any other person who is a holder (where the person is an issuer) or an issuer (where the person is a holder) of the financial arrangement are not associated persons;—

and such amount of income or expenditure so calculated is income deemed to be derived or, as the case may be, expenditure deemed to be incurred by the person in respect of the financial arrangement in the income year:

provided that where income or expenditure in respect of a financial arrangement has been calculated by a person under this subsection, income or expenditure in respect of that financial arrangement must, except as otherwise allowed under subsection (8), continue to be calculated on that basis by that person until the maturity, remittance, sale, or other transfer of the arrangement.

(8) Where a method of calculating income or expenditure in respect of a financial arrangement fails to meet the requirements of paragraph (b) of the proviso to subsection (2) or subparagraph (ii) of the proviso to subsection (6)(a) or (7)(b) by virtue of the fact that the method is not or will not be consistently applied by a person in respect of all such financial arrangements for financial reporting purposes, that method is nevertheless deemed to meet the relevant one of those provisions where the method—

(a) appropriately reflects the dominant purpose for which the person acquired or issued the financial arrangement (or each such arrangement); and

(b) has been and will be consistently applied by the person in respect of the particular financial arrangement (or each such financial arrangement) for the purposes of the old financial arrangements rules for every income year during its term (except to the extent that the Commissioner approves or may approve a change in method under the circumstances or conditions specified in a determination under section 90(1)(f) of the Tax Administration Act 1994); and

(c) is not adopted for purposes that include the purpose of tax avoidance; and

(d) has been approved by the Commissioner for adoption in the circumstances applicable to the taxpayer either by notice to the taxpayer or in a determination issued under section 90 of the Tax Administration Act 1994.

(9) Subsections (2) to (7) do not apply—

(a) to a cash basis holder; or

(b) in relation to a financial arrangement and a person, in any income year where section EZ 38 applies to that person and to that financial arrangement; or

(c) in relation to a financial arrangement where—

(i) the financial arrangement is held by a trustee upon trust for the management of compensation paid for personal injury where that compensation is paid under the Workers Compensation Act 1956 or the Accident Compensation Act 1972 or the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Compensation Act 2001 or an order of court; and

(ii) the trustee is, or if it were a natural person would be, a cash basis holder in respect of the financial arrangement.

(10) For the purposes of this section, the Commissioner may determine whether and to what extent any issuer or class of issuers is not required to comply with this section in relation to expenditure incurred or income derived in respect of any class of financial arrangements, having regard to—

(a) the nature and amount of the expenditure incurred or income derived by the issuer or class of issuers in respect of financial arrangements of that class; and

(b) the costs of the issuer or class of issuers in complying with this section in relation to the class of financial arrangements; and

(c) whether, in respect of that issuer or class of issuers and that class of financial arrangements, the application of the discretion given to the Commissioner under this subsection would result in a material difference in the amount of deductions or income allocated to any in-

come year, in relation to the amount that would have been allocated had the discretion not been exercised.

(11) The Commissioner may at any time cancel any determination made in respect of any person or class of persons under subsection (10).

Compare: 2004 No 35 s EZ 32

Section EZ 35(9)(c)(i): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

EZ 36 Excepted financial arrangement that is part of financial arrangement

The amount of the income deemed to be derived or the expenditure deemed to be incurred by a person in respect of a financial arrangement under the old financial arrangements rules does not include the amount of any income, gain or loss, or expenditure, that is solely attributable to an excepted financial arrangement that is part of the financial arrangement.

Compare: 2004 No 35 s EZ 33

EZ 37 Cash basis holder

(1) Subject to this section, a natural person is a cash basis holder in respect of financial arrangements held by that person in any income year, where—

(a) either—

(i) the income derived by that person in that income year in respect of those financial arrangements, calculated in accordance with subpart EW or section EZ 35 or EZ 38, as the case may be, does not exceed $70,000 (or such greater amount as the Governor-General may by Order in Council declare); or

(ii) the total value of financial arrangements held by the person in the income year does not exceed at any time in the income year $600,000 (or such greater amount as the Governor-General may by Order in Council declare), the value in respect of each financial arrangement being,—

(A) in the case of a fixed principal financial arrangement, the greater of the acquisition

price of the arrangement or the nominal or face value of the arrangement; and

(B) in the case of a variable principal debt instrument, the amount of money owing to the person according to the arrangement; and

(C) in the case of a financial arrangement to which subpart EW applies, the value determined under that subpart; and

(b) the difference between the following amounts does not exceed $20,000 (or such greater amount as the Governor-General may by Order in Council declare):

(i) the amount of income that would be calculated by the person for the income year—

(A) using, at the option of the person, either the yield to maturity method or the straight-line method referred to in section EZ 35(3) (regardless of whether or not the person is entitled or has opted to use that method) or in accordance with subpart EW, as the case may be, or, where it is not possible to calculate an amount of income or expenditure in respect of the financial arrangements by using either of those methods, an alternative method approved by the Commissioner; and

(B) under either section EW 31 or EZ 38—in respect of financial arrangements held by the person at the end of the income year; and

(ii) the amount of income that would be calculated by the person for the income year in respect of financial arrangements held by the person at the end of the income year if the person were a cash basis holder.

(2) For the purposes of subsection (1), a person must take into account financial arrangements to which subpart EW applies.

(3) Notwithstanding anything in subsection (1), the Commissioner may,—

(a) where the Commissioner is satisfied, having regard to the tenor of section EZ 35(2), that treatment of a class of financial arrangements other than under section EZ 35 results in a fair and reasonable allocation of income or expenditure among income years, deem natural persons to be cash basis holders in respect of such financial arrangements; and

(b) where the Commissioner is satisfied that a class of financial arrangements has been structured and promoted with the objective of postponing any liability to income tax which would have arisen had those financial arrangements not been so structured, deem natural persons not to be cash basis holders in respect of such financial arrangements.

(4) In any income year where a person who was a cash basis holder in the previous income year ceases to be a cash basis holder, the person must take into account, in calculating income or deductions for the income year, an accruals basis adjustment, in respect of every financial arrangement (other than arrangements that are already dealt with according to section EZ 35 or in respect of which the Commissioner has exercised the discretion given under subsection (3)(a)) acquired in a previous income year and held by the person at the end of the income year equal to an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

a is the sum of all amounts which would have been income derived by the person in respect of the financial arrangement from the date it was acquired to the end of the income year if the person had not been a cash basis holder at any time during that period

b is the sum of all amounts that would have been deductions of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had not been a cash basis holder at any time during the period

c is the sum of all amounts of income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year

d is the sum of all amounts that have been deductions of the person in respect of the financial arrangement since it was acquired to the end of the previous income year;—

and the person must not take into account in the income year any other amount in respect of any such financial arrangement except those calculated under the accruals basis adjustment.

(5) In any income year where a person who was not a cash basis holder in the previous income year becomes a cash basis holder, that person may take into account, in calculating income or deductions for the income year, a cash basis adjustment, in respect of every financial arrangement (other than arrangements already treated on a cash basis) acquired in a previous income year and held by the person at the end of the income year, equal to an amount calculated in accordance with the following formula:

$$a - b - c + d$$

where—

a is the sum of all amounts which would have been income derived by the person in respect of the financial arrangement from the date it was acquired to the end of the income year if the person had been a cash basis holder in respect of the financial arrangement for the whole of that period

b is the sum of all amounts which would have been deductions of the person in respect of the financial arrangement from the date the financial arrangement was acquired to the end of the income year if the person had been a cash basis holder in respect of the financial arrangement for the whole of the period

c is the sum of all amounts treated as income of the person in respect of the financial arrangement since it was acquired to the end of the previous income year

d is the sum of all amounts that have been deductions of the person in respect of the financial arrangement

since it was acquired to the end of the previous income year;—

and, where the cash basis adjustment has been taken into account, the person must not take into account any other amount in respect of any such financial arrangement in the income year except those calculated under the cash basis adjustment:

provided that the person is deemed not to be a cash basis holder in relation to any financial arrangement in respect of which the person does not take into account a cash basis adjustment.

(6) The amount of the accruals basis adjustment or the cash basis adjustment in respect of any financial arrangement and any income year is,—

(a) where it is a positive amount, income deemed to be derived by the holder in the income year; and

(b) where it is a negative amount, deemed to be a deduction of the holder in the income year.

(7) For the purposes of subsection (1), but subject to subsections (8) and (9),—

(a) all income in respect of financial arrangements that is trustee income or beneficiary income under the trust rules is disregarded, as is the value of all such financial arrangements producing such income; and

(b) no person who holds such financial arrangements is a cash basis holder in relation to such financial arrangements.

(8) Subsection (7) does not apply to financial arrangements held on a bare trust, or to income in respect of such financial arrangements, and the financial arrangements held and the income derived by the trustees is treated as being held or, as the case may be, derived by a beneficiary of the trust to the extent of the beneficiary's share of the beneficial interest in the financial arrangement.

(9) Where a deceased person was at the time of his or her death a cash basis holder,—

(a) nothing in subsection (7) or in any requirement under this section that a cash basis holder be a natural person, in respect of the income year in which the death occurred and in each of the 4 immediately succeeding income years, applies to prevent the trustee of the estate

of the deceased person from being a cash basis holder for the purposes of this Act in respect of financial arrangements issued or held by the estate, where the estate would otherwise qualify as a cash basis holder under this section; but

(b) if at any time during those income years the estate ceases to so otherwise qualify as a cash basis holder, it does not again qualify to become a cash basis holder by operation of paragraph (a);—

and for the purposes of subsections (4) and (5), any trustee of an estate who is a cash basis holder under this subsection is deemed to be the same person as the deceased cash basis holder.

(10) *[Repealed]*

Compare: 2004 No 35 s EZ 34

Section EZ 37(10): repealed, on 1 April 2008, by section 15(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

EZ 38 Income and expenditure where financial arrangement redeemed or disposed of

(1) Subject to subsection (2), where, in relation to any person, a financial arrangement matures or is remitted (other than by way of being written off as a bad debt), sold, or otherwise transferred by the person in any income year, the amount of the base price adjustment in relation to that income year, that person, and that financial arrangement is an amount calculated in accordance with the following formula:

$$a - (b + c)$$

where—

a is,—

(i) in the case of a holder, the sum of—

(A) the amount of all consideration that has been paid, and all further consideration that has or will become payable, to the person; and

(B) any amounts that have been remitted by the person and that are not included in subsubparagraph (A):

(ii) in the case of an issuer, the sum of—

(A) the amount of all consideration that has been paid, and all further consideration that has or will become payable, by the person; and

(B) the amount paid by the person associated with the issuer if the issuer is the debtor of a debt to which section EZ 41 applies—

in relation to the financial arrangement

b is the acquisition price of the financial arrangement in relation to the person

c is,—

(i) in the case of a holder, all amounts that are income derived, less the aggregate of amounts of expenditure deemed to be incurred under section EZ 35 or EZ 42 or deemed to be a deduction under section EZ 37 by the person in respect of the financial arrangement in all previous income years since the acquisition of the financial arrangement; and

(ii) in the case of an issuer, all amounts of expenditure incurred in respect of the financial arrangement in all previous income years since the issue of the financial arrangement, less the aggregate of—

(A) all amounts that are income deemed to be derived under section EZ 35 or EZ 37 or EZ 42 by the person in respect of the financial arrangement in all previous income years since the issue of the financial arrangement; and

(B) all amounts that are dividends derived by the person from the release of the obligation to repay the amount lent; and

(C) all amounts that are income of the person under section CF 2 in respect of the financial arrangement.

(2) Where, in relation to a financial arrangement, a person is a cash basis holder, and the financial arrangement matures or is remitted (other than by way of being written off as a bad debt), sold,

or otherwise transferred by that person in any income year, the amount of the cash base price adjustment in relation to that income year, that person, and that financial arrangement is an amount calculated in accordance with the following formula:

$$a - (b + c)$$

where—

a is the sum of all consideration derived in respect of the financial arrangement by the person, and amounts remitted by the person

b is the acquisition price of the financial arrangement

c is the sum of all amounts that are income derived by the person, less the aggregate of amounts of expenditure deemed to be incurred under sections EZ 35 and EZ 42 or deemed to be a deduction under section EZ 37.

(3) Subject to subsection (5), the amount of the base price adjustment in relation to any financial arrangement and any income year is,—

(a) in relation to a holder,—

(i) where it is a positive amount, deemed to be income derived by the holder in the income year; and

(ii) where it is a negative amount, deemed to be a deduction of the holder in the income year:

(b) in relation to an issuer,—

(i) where it is a positive amount, deemed to be expenditure incurred by the issuer in the income year; and

(ii) where it is a negative amount, deemed to be income derived by the issuer in the income year.

(4) Subject to subsection (5), the amount of the cash base price adjustment in relation to any financial arrangement and any income year is,—

(a) where it is a positive amount, deemed to be income derived by the cash basis holder in the income year; and

(b) where it is a negative amount, deemed to be a deduction of the cash basis holder in the income year.

(5) Notwithstanding anything in section EZ 50(3), where a financial arrangement is sold or otherwise transferred by a person for a consideration influenced by—

(a) a decline in the creditworthiness of the issuer between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or

(b) an increase in the possibility that the issuer may fail to meet any obligations under the financial arrangement between the date of acquisition of the financial arrangement by the holder and the date of sale or other transfer; or

(c) the occurrence of any event reducing or cancelling the obligations of an issuer under the financial arrangement,—

all amounts that would have been received but for the factors listed above are deemed, in calculating the base price adjustment or cash base price adjustment, to have become payable to the holder:

provided that this subsection does not apply where the business of the holder comprises holding or dealing in financial arrangements of that class, and the issuer of the financial arrangement and the holder are not associated persons.

(6) Where—

(a) a person has been released from the obligation to make payment of an amount—

(i) under a financial arrangement by operation of section 304 of the Insolvency Act 2006; or

(ii) under any of the Inland Revenue Acts (and whether the relief arises through remission, waiver, or cancellation); or

(iii) under a social assistance suspensory loan by virtue of that person satisfying the conditions referred to in subsection (8)(c)(ii); and

(b) that amount would, but for this subsection, be taken into account in determining the income derived by or expenditure incurred by that person under the old financial arrangements rules,—

that amount is, for the purpose of determining the income derived by or expenditure incurred by that person, and notwith-

standing the old financial arrangements rules (other than this subsection), deemed to have been paid under that financial arrangement when the obligation to make payment has been so released.

(7) Notwithstanding anything in this Act, where and to the extent that a person (in this subsection called the **surety**) suffers expenditure or a loss under a security arrangement and the expenditure or loss, in whole or in part, is due to—

(a) the actions of; or

(b) the occurrence, or failure to occur, of an event that was potentially or actually subject to the influence of—

the surety or any person with whom the surety was, during the term of the security arrangement, an associated person, no deduction is allowed to the surety or any person in relation to the expenditure or loss.

(8) In this section,—

(a) the expression **holder**, in relation to a financial arrangement, includes a person who ceases to be a holder of the financial arrangement as provided in subsection (1) or (2); and

(b) the expression **issuer**, in relation to a financial arrangement, includes a person who ceases to be an issuer of the financial arrangement as provided in subsection (1); and

(c) the expression **social assistance suspensory loan** means a loan—

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

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

(iii) of a kind that is declared by the Governor-General by Order in Council to be a social assistance suspensory loan; and

(d) a financial arrangement is deemed to be remitted where—

(i) the issuer has been discharged from making all remaining payments under that financial arrangement without fully adequate consideration; or

(ii) the issuer has been released from making all remaining payments under that financial arrangement by the operation of the Insolvency Act 2006 or the Companies Act 1955 or the Companies Act 1993 or the laws of any country or territory other than New Zealand, or by any deed or agreement of composition with its creditors; or

(iii) all of the remaining payments under the financial arrangement have become irrecoverable or unenforceable by action through the lapse of time; or

(iv) the financial arrangement is a debt that is sold at a discount to a person associated with the debtor under the circumstances described in section EZ 41; and

(e) where a person ceases to be a New Zealand resident any financial arrangement in relation to which that person is an issuer or a holder is deemed, in relation to the person, to have been transferred for its market value at that date.

Compare: 2004 No 35 s EZ 35

Section EZ 38(6)(a)(iii): amended (with effect on 1 April 2008), on 6 October 2009, by section 197(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 39 Forgiveness of debt

(1) In determining the income or expenditure under the base price adjustment in section EZ 38, an amount owing under a debt, including an amount accrued and unpaid at the time of the forgiveness, is treated as paid when forgiven under the old financial arrangements rules if—

(a) the creditor is a natural person who forgives the debt, whether in a will or otherwise, because of the natural love and affection the creditor has for the debtor; or

(b) the creditor is a natural person who forgives the debt owing by a trust, whether in a will or otherwise, and the trust was established primarily to benefit—

(i) a natural person for whom the creditor has natural love and affection; or

(ii) an organisation or a trust whose income is exempt under section CW 41 or CW 42; or

(iii) a natural person that meets paragraph (b)(i) and an organisation or a trust that meets paragraph (b)(ii).

(2) Subsection (3) applies when a trustee makes a distribution, including a distribution of beneficiary income, to a beneficiary that is neither—

(a) a natural person for whom the creditor has natural love and affection; nor

(b) an organisation or a trust whose income is exempt under section CW 41 or CW 42.

(3) Subsection (4) does not apply when a trustee of a trust (**trust A**) to which subsection (1)(b) applies makes a distribution to another trust (**trust B**) if—

(a) trust B is a trust described in subparagraph (i), (ii), or (iii) of subsection (1)(b); and

(b) subsection (1)(b) would apply to trust B if, at the time the distribution is made, the creditor of trust A were a creditor of trust B, and the creditor had forgiven a debt owing by trust B.

(4) A distribution to the beneficiary is income derived by the trustee—

(a) in the income year in which the distribution is made; and

(b) to the extent that the distribution is less than or equal to the total amount of debts forgiven by the creditor.

(5) If subsection (4) applies, the income derived by the trustee is not income for the purposes of the **beneficiary income** definition.

(6) For the purposes of subsection (4), the total amount of debts forgiven by the creditor is reduced by the amount of each distribution that is income derived by the trustee.

(7) Subsection (4) applies to a distribution made on or after 20 May 1999.

Compare: 2004 No 35 s EZ 36

EZ 40 Accrued income written off

(1) A deduction is allowed to a person for an amount written off by the person as a bad debt in respect of a financial arrangement where and to the extent that—

(a) the person derives income in respect of the financial arrangement under any of sections EZ 35, EZ 37(4), EZ 38, and EZ 42; and

(b) the amount written off is attributable to that income.

(2) A deduction is allowed to a person for an amount written off by the person as a bad debt in respect of a financial arrangement (not being an amount allowed as a deduction under subsection (1)) where—

(a) the person—

(i) carries on a business which comprises holding or dealing in such financial arrangements; and

(ii) is not associated with the person owing the amount written off; or

(b) the financial arrangement is a trade credit and the person carries on a business of dealing in the goods or services for which the trade credit is a debt.

(3) Where a person receives a security payment in relation to a loss and a deduction is denied to the person for the loss other than under this subsection, the person is allowed a deduction for the loss no greater than the amount of the security payment.

(4) A deduction for bad debts is allowed under this section only where the requirements of section DB 31(1) and (5) have been met.

(5) A deduction for a share loss (within the meaning of section DB 24) is allowed under subsection (3) only where the requirements of section DB 24 have been met.

Compare: 2004 No 35 s EZ 37

EZ 41 Sale of debt to associate of debtor

(1) This section applies to a financial arrangement that is a debt which is sold at a discount to a person associated with the debtor on or after 20 May 1999.

(2) A creditor is treated as having sold a debt at a discount if the debt is sold to a person associated under the 1988 version pro-

visions with the debtor for 80% or less of the market value of the debt.

(3) Subsection (4) applies to a debt that is sold if its market value was influenced by—

(a) the decline in the original debtor's creditworthiness between the date the debt was entered into and the date of sale; or

(b) an increase in the possibility that the original debtor would not pay an amount owing under the debt between the date the debt was entered into and the date of sale; or

(c) an event that occurred which reduced or cancelled the original debtor's obligations under the debt.

(4) For the purposes of subsection (2), a debt's market value is determined as if its market value were not influenced by a factor listed in subsection (3)(a) to (c).

(5) If a debt is sold at a discount to a person associated with the debtor, the associated person is treated as having provided the debtor with an interest free loan for the amount paid for the debt.

(6) If the debtor subsequently repays the person associated with the debtor more than the amount the associated person paid for the debt, the excess amount paid by the debtor is—

(a) a deduction to the debtor; and

(b) income of the person associated with the debtor.

Compare: 2004 No 35 s EZ 38

EZ 42 Post facto adjustment

(1) A financial arrangement is subject to the provisions of this section where—

(a) any of the amount or amounts payable under the financial arrangement are determined in the terms of the financial arrangement, as to whole or part, at the discretion of either the issuer or the holder, or both of them, or at the discretion of any other person where either the issuer or the holder and the other person are associated persons; and

(b) the change in the amount or amounts payable under the financial arrangement upon the exercise of a discretion

as provided for in paragraph (a) does not reflect changes in economic, commodity, industrial, or financial indices or banking or general commercial rates; and

(c) the making of such financial arrangements is not generally accepted commercial practice; and

(d) the effect of the arrangement is to defeat the intent and application of the old financial arrangements rules.

(2) Where a financial arrangement is subject to the provisions of this section, both the holder and the issuer of the financial arrangement are required to calculate a post facto adjustment in respect of the following income years:

(a) the income year in which the person ceases to be a holder or an issuer, as the case may be, in respect of the financial arrangement; and

(b) where the person has not ceased to be a holder or an issuer of the financial arrangement at the end of the fifth income year following the income year of its issue or acquisition by the person, in that fifth income year; and

(c) until the person ceases to be an issuer or a holder in respect of the financial arrangement, in every fifth income year succeeding the income year in which the post facto adjustment was last required to be made under this section.

(3) In order to calculate the post facto adjustment, a person must,—

(a) having regard to all amounts specified in section EZ 35(1) which have been paid or are payable, in respect of the financial arrangement, since acquisition or issue of the financial arrangement by the person to the end of the income year in which the post facto adjustment applies, calculate amounts of income or expenditure under the arrangement for each income year using the yield to maturity method as prescribed in a determination made by the Commissioner for the purposes of section EZ 35(2):

provided that where the post facto adjustment is made at a time determined by subsection (2)(b) or (c), the person is, for the purpose of the post facto adjustment calculation, deemed to have transferred the financial arrange-

ment for an amount equal to its market value on the last day of the income year; and

(b) recalculate the income tax liability for each income year using the amounts of income or expenditure calculated under paragraph (a) in substitution for the amounts of income or expenditure previously calculated in respect of the financial arrangement for each income year.

(4) Where a person has been required to calculate the post facto adjustment, the person is required to make a special return in respect of the post facto adjustment in the form required by the Commissioner, no later than the time at which that person is required to file an annual return for the income year in which the post facto adjustment is made.

(5) Despite the time bar, the Commissioner must amend the person's assessment for the income years to which the post facto adjustment relates in accordance with the alterations to that income or expenditure as calculated by the post facto adjustment.

Compare: 2004 No 35 s EZ 39

EZ 43 Variable principal debt instruments

For the purposes of the old financial arrangements rules, where a person is a party to a variable principal debt instrument on the implementation date, the person is deemed to have acquired or, as the case may be, issued it on that day for a consideration equal to the amount of money that would be payable to the holder on that day if the amount or amounts payable under the financial arrangement were due and payable on that day.

Compare: 2004 No 35 s EZ 40

EZ 44 Relationship with rest of Act

(1) Notwithstanding any other provision in this Act, income or expenditure in an income year in respect of a financial arrangement under the old financial arrangements rules is calculated under those rules.

(2) Expenditure incurred under the old financial arrangements rules is not included in—

(a) the cost of trading stock, for small taxpayers:

(b) the cost of revenue account property:

(c) the cost of livestock:
(d) the cost of bloodstock:
(e) the cost of acquiring a film or a film right:
(f) film production expenditure:
(g) the cost of timber:
(h) petroleum exploration expenditure or petroleum development expenditure.

(3) Where—

(a) property is transferred under a financial arrangement; and

(b) the property or the consideration given for the property is relevant under any provision of this Act other than the old financial arrangements rules for the purpose of determining any amount of income or deduction of a person,—

the property is treated for the purpose of that provision as having been transferred under the financial arrangement for an amount equal to the acquisition price of the property.

Compare: 2004 No 35 s EZ 41

EZ 45 Application of old financial arrangements rules

The old financial arrangements rules do not apply—

(a) in relation to a person and a financial arrangement, where the financial arrangement was issued or acquired by the person before the implementation date for the financial arrangement; or

(b) in relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is under a binding contract in existence before the implementation date in relation to that financial arrangement:

provided that this paragraph does not apply in relation to a rollover, extension, or advance provided for before the implementation date in relation to the financial arrangement where the rollover, extension, or advance occurs on or after 1 April 1990; or

(c) in relation to a person and a financial arrangement, where the person acquired the financial arrangement in accordance with a relationship agreement and the

transferor, in relation to the financial arrangement, was a person to whom paragraph (a) or (b) applied; or

(d) in relation to a financial arrangement, where the issue, in the case of an issuer, or acquisition, in the case of a holder, of the financial arrangement is under and in terms of a rollover, extension, or advance provided for before the implementation date in relation to the financial arrangement and the rollover, extension, or advance occurs before 1 April 1990; or

(e) to the determination of—

(i) income of or expenditure incurred by a person not resident in New Zealand in relation to a financial arrangement where and to the extent that the financial arrangement does not relate to a business carried on by that person through a fixed establishment in New Zealand; or

(ii) non-resident passive income; or

(f) in relation to a financial arrangement to the extent that the income or expenditure incurred by a person in respect of the financial arrangement consists of interest payable to or by the Commissioner under Part 7 of the Tax Administration Act 1994, being interest payable in relation to the income tax liability of the taxpayer in respect of the 1994–95 income year or any subsequent income year.

Compare: 2004 No 35 s EZ 42

EZ 46 Election to treat short term trade credit as financial arrangement

(1) For the purposes of the old financial arrangements rules, a taxpayer may elect by notice given in accordance with subsection (2) to treat short term trade credits specified in subsection (4) as financial arrangements.

(2) Notice of an election under subsection (1) in relation to an income year must be given to the Commissioner within the time within which a vendor or a purchaser is required under section 37 of the Tax Administration Act 1994 to furnish a return of income for the income year to which the election is to apply.

(3) An election by the taxpayer under subsection (1) may be revoked by notice given to the Commissioner during any income year and the revocation applies only to short term trade credits created on or after the commencement of the subsequent income year.

(4) An election under subsection (1) may be made in respect of—

(a) all short term trade credits of the taxpayer; or

(b) 1 or more classes of short term trade credits of the taxpayer that the taxpayer defines by reference either—

(i) to the particular currency in which the short term trade credit is denominated; or

(ii) to the term of the short term trade credit; or

(iii) to both the term and the particular currency in which the short term trade credit is denominated.

Compare: 2004 No 35 s EZ 43

EZ 47 Election to continue to treat certain excepted financial arrangements as financial arrangements

(1) A person may elect to continue to treat all excepted financial arrangements under any of paragraphs (p), (q), (r), (s), (t), (u), and (v) of the definition of **excepted financial arrangement** as financial arrangements if the person is a holder or an issuer of an arrangement that was entered into on or after the person's last balance date and before 20 May 1999.

(2) A person elects to treat their excepted financial arrangements as financial arrangements by returning income derived and expenditure incurred from the elected arrangements under the old financial arrangements rules in their return of income.

(3) A financial arrangement that is an excepted financial arrangement under any of paragraphs (p), (q), (r), (s), (t), (u), and (v) of the definition of **excepted financial arrangement** is not an excepted financial arrangement for the holder or issuer who elects to treat it as a financial arrangement under subsection (1).

Compare: 2004 No 35 s EZ 44

EZ 48 Definitions

For the purposes of the old financial arrangements rules, each of the following terms has the meaning given to it, despite any

other meaning given to the term in section YA 1 for any other purpose and unless the context otherwise requires:

acquisition price,—

(a) in relation to a financial arrangement and a holder of the financial arrangement, means an amount calculated in accordance with the following formula:

y - z

where—

y is the core acquisition price of the financial arrangement

z is the smaller of—

(i) the amount of consideration provided in relation to the financial arrangement by the holder that is not contingent on the implementation of the financial arrangement; and

(ii) an amount equal to 2% of the core acquisition price of the financial arrangement; and

(b) in relation to a financial arrangement and an issuer of the financial arrangement, means an amount calculated in accordance with the following formula:

y + z

where—

y is the core acquisition price of the financial arrangement

z is the smaller of—

(i) the amount of consideration provided in relation to the financial arrangement by the issuer that is not contingent on the implementation of the financial arrangement; and

(ii) an amount equal to 2% of the core acquisition price of the financial arrangement

agreement for the sale and purchase of property, in relation to a person, means a financial arrangement that is an agreement (whether conditional or unconditional) entered into by the person to purchase or otherwise acquire or sell or otherwise dis-

pose of property; but does not include an option, a specified option, or a futures contract

amount of all consideration, in the definition of **core acquisition price**, in relation to a person and to an agreement for the sale and purchase of property or a specified option, where all or part of the consideration provided to the holder is property, means the aggregate of the amount calculated in respect of that property in the manner provided in subparagraph (i) or (ii) of item "w" in paragraph (c) of the definition of **core acquisition price** and any consideration provided to the holder in relation to the financial arrangement, other than the property provided to the holder

core acquisition price, in relation to a financial arrangement, means,—

(a) where section EZ 50 applies, the amount determined under that section; and

(b) where the financial arrangement is a trade credit, an amount calculated in accordance with the following formula:

$$u + v$$

where—

u is—

(i) the cash price of the goods or services to which the trade credit relates (referred to in this item and item "v" as the **specified goods or services**), as determined by 5 of the Credit Contracts and Consumer Finance Act 2003; or

(ii) if subparagraph (i) is not applicable, the lowest price at which the specified goods or services could be purchased under a short term trade credit; or

(iii) if subparagraphs (i) and (ii) are not applicable, the discounted value of the amounts payable for the specified goods or services, as determined under a determination made by the Commissioner under 90(1)(h) of the Tax Administration Act 1994

v is,—

(i) in relation to a holder of the financial arrangement, the amount of all consideration provided by the holder in relation to the financial arrangement, other than the specified goods or services; or

(ii) in relation to an issuer of the financial arrangement, the amount of all consideration provided to the issuer in relation to the financial arrangement, other than the specified goods or services; and

(c) where the financial arrangement is an agreement for the sale and purchase of property (not being an agreement for the sale and purchase of property that has lapsed or otherwise does not proceed) or a specified option (not being a specified option that has lapsed or otherwise does not proceed), an amount calculated in accordance with the following formula:

$$w + x$$

where—

w is—

(i) the lowest price (determined in accordance with section EZ 49, if the consideration payable under the relevant financial arrangement is denominated in a foreign currency) that the parties would have agreed upon for the property that is the subject of the agreement for the sale and purchase of property or the specified option (referred to in this item and item "x" as the **specified property**) at the time at which the agreement for the sale and purchase of property was entered into or the specified option was granted on the basis of payment in full at the time at which the first right in the specified property is to be transferred; or

(ii) if subparagraph (i) is not applicable, the discounted value of the amounts payable for the specified property as determined

under a determination made by the Commissioner under section 90(1)(h) of the Tax Administration Act 1994

x is,—

(i) in relation to the holder of the financial arrangement, the amount of all consideration provided by the holder in relation to the financial arrangement other than the specified property; or

(ii) in relation to an issuer of the financial arrangement, the amount of all consideration provided to the issuer in relation to the financial arrangement other than the specified property; and

(d) where the financial arrangement is a hire purchase agreement and the holder is the first holder in relation to the hire purchase agreement, either—

(i) an amount calculated in accordance with the following formula:

$$a + b + c$$

where—

a is—

(A) the cash price of the hire purchase asset (as **cash price** is defined in section 5 of the Credit Contracts and Consumer Finance Act 2003); or

(B) if subsubparagraph (A) of this item is not applicable, the lowest price at which the hire purchase asset could be purchased under a short term trade credit at the time of commencement of the hire purchase agreement

b is the amount of all expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use to the extent to which any such expenditure or loss is not taken into account in determining the amount of item "a"

c is,—

(A) in relation to the holder, the amount of all consideration provided by the holder in relation to the hire purchase agreement, other than the hire purchase asset and the expenditure or loss referred to in item "b"; or

(B) in relation to the issuer, the amount of all consideration provided to the issuer in relation to the hire purchase agreement, other than the hire purchase asset and the expenditure or loss referred to in item "b"; or

(ii) if subparagraph (i) is not applicable, or if either the holder or the issuer in relation to the hire purchase agreement applies to the Commissioner for a specific determination, an amount calculated in accordance with the following formula:

d + e

where—

d is—

(A) the discounted value of all hire purchase payments payable under the hire purchase agreement, as determined under a determination made by the Commissioner under section 90(1)(i) of the Tax Administration Act 1994; or

(B) where either the holder or the issuer in relation to the hire purchase agreement applies to the Commissioner for a specific determination, an amount determined by the Commissioner in relation to that application (and the amount so determined applies for both the holder and the issuer to the exclusion of any determination made in respect of that

hire purchase agreement under subsubparagraph (A) of this item)

e is,—

(A) in relation to the holder, the amount of all consideration provided by the holder in relation to the hire purchase agreement, other than the hire purchase asset and any expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use; or

(B) in relation to the issuer, the amount of all consideration provided to the issuer in relation to the hire purchase agreement, other than the hire purchase asset and any expenditure or loss incurred by the holder in preparing and installing the hire purchase asset for use; and

(e) where none of paragraphs (a) to (d) applies to a financial arrangement,—

(i) in relation to a holder of the financial arrangement, the value of all consideration provided by the holder in relation to the financial arrangement; or

(ii) in relation to an issuer of the financial arrangement, the value of all consideration provided to the issuer in relation to the financial arrangement

excepted financial arrangement, other than an arrangement listed in paragraphs (p), (q), (r), (s), (t), (u), and (v) that a taxpayer has treated as a financial arrangement in a return of income already filed, means any of the following arrangements

(a) an annuity for a term contingent upon human life or an annuity for a term not contingent on human life to which section EY 8(2)(c) applies:

(b) an insurance contract or membership of a superannuation scheme:

(c) a debenture to which section FA 2 applies:

(d) a short term trade credit, unless the purchaser or vendor has elected in accordance with section EZ 46 to treat the short term trade credit as a financial arrangement to which the old financial arrangements rules apply:

(e) a specified preference share to which section FZ 1 of the Income Tax Act 2004 applies:

(f) in relation to a holder or an issuer, shares, other than withdrawable shares, or an option to buy shares, other than withdrawable shares, where those shares were or that option was acquired or issued by the person before 8.00 pm New Zealand Standard Time on 18 June 1987:

(g) in relation to a holder or an issuer, shares, other than withdrawable shares, or an option to acquire or to sell or otherwise dispose of shares, other than withdrawable shares, where those shares were or that option was acquired or issued by the person after 8.00 pm New Zealand Standard Time on 18 June 1987:

(h) a lease:

(i) a bet on any—

(i) race, as defined in section 5 of the Racing Act 2003; or

(ii) sporting event under a sports-betting system administered under Part 6 of the Racing Act 2003; or

(iii) gambling, including a New Zealand lottery, as those terms are defined in section 4(1) of the Gambling Act 2003:

(j) in relation to an issuer or a holder, an option to acquire or to sell or otherwise dispose of property (other than an interest in a financial arrangement) where the option was issued or acquired by the person after 8.00 pm New Zealand Standard Time on 18 June 1987 for private or domestic purposes only:

(k) a short term agreement for the sale and purchase of property:

(l) a short term option:

(m) a private or domestic agreement for the sale and purchase of property:

(n) a farm-out arrangement:

(o) a hire purchase agreement, as defined in section YA 1, but including an agreement that would be a hire purchase agreement but for the exclusion in paragraph (f) of the definition of that term, entered into before 1 April 1993, or any assignment of such an agreement:
(p) a loan that is interest free, repayable on demand, and denominated in New Zealand dollars, for the lender of the loan only:
(q) an employment contract:
(r) an interest in a group investment fund:
(s) an interest in a partnership or a joint venture:
(t) travellers' cheques:
(u) a warranty for goods or services:
(v) a hire purchase agreement for livestock or bloodstock entered into on or after 1 April 1993

financial arrangement means—

(a) any debt or debt instrument; and
(b) any arrangement (whether or not such arrangement includes an arrangement that is a debt or debt instrument, or an excepted financial arrangement) whereby a person obtains money in consideration for a promise by any person to provide money to any person at some future time or times, or upon the occurrence or non-occurrence of some future event or events (including the giving of, or failure to give, notice); and
(c) any arrangement which is of a substantially similar nature (including, without restricting the generality of the preceding provisions of this subparagraph, sell-back and buy-back arrangements, debt defeasances, and assignments of income);—

but does not include any excepted financial arrangement that is not part of a financial arrangement

fixed principal financial arrangement means any financial arrangement other than a variable principal debt instrument

forward contract, in the definitions of **holder** and **implementation date**, includes, but is not limited to, a forward contract for—

(a) foreign exchange:
(b) commodities:

(c) financial arrangements:
(d) excepted financial arrangements;—

but does not include an agreement for the sale and purchase of property or a specified option

holder—

(a) means,—
  (i) in relation to—
    (A) an agreement for the sale and purchase of property; or
    (B) a forward contract or a futures contract,—
  a person who is a vendor in relation to the financial arrangement:
  (ii) in relation to an option to purchase or otherwise acquire property, a person who is a grantor of the option:
  (iii) in relation to an option to sell or otherwise dispose of property, a person who is a grantee of the option:
  (iv) in relation to a hire purchase agreement, the lessor:
  (v) in relation to any other financial arrangement, a person who, if the amount or amounts payable under the financial arrangement were due and payable at that time, would be entitled to receive, or would receive a pecuniary benefit from, payment of the amount or amounts so payable or any part of them;—

  and **hold** has a corresponding meaning; and
(b) is further defined in section EZ 38(8) for the purposes of that section

implementation date means,—

(a) in the case of—
  (i) forward or future contracts, including, but not limited to, contracts for—
    (A) foreign exchange:
    (B) commodities:
    (C) financial arrangements:
    (D) excepted financial arrangements; and
  (ii) futures contracts; and

(iii) trade credits; and
(iv) annuities; and
(v) agreements for the sale and purchase of property; and
(vi) convertible notes,—

8.00 pm New Zealand Standard Time on 23 October 1986; and

(b) in the case of debt defeasances and assignments of income, 20 December 1986; and
(c) in the case of variable principal debt instruments, 1 April 1987; and
(d) in the case of a financial arrangement under which—
(i) the monetary obligations of the parties are expressed in New Zealand currency; and
(ii) it is contemplated that the holder may, upon demand or call, require the return of sums advanced to the issuer; and
(iii) it is not contemplated that the holder may advance further sums to the issuer upon demand or call under the financial arrangement,—

1 April 1987; and

(e) in every other case, 8.30 pm New Zealand Standard Time on 31 July 1986

issuer,—

(a) in relation to a financial arrangement at any time, means a person who is a party to the financial arrangement and is not a holder in relation to the financial arrangement; and
(b) is further defined in section EZ 38(8) for the purposes of that section

maturity, in relation to a financial arrangement, means the date on which the last payment contingent upon the financial arrangement is made, and **matures** has a corresponding meaning

provided that where a financial arrangement has not matured and where the amount which has not been paid is immaterial and the financial arrangement has been structured to avoid the application of section EZ 38, the financial arrangement is deemed to have matured

money, in paragraph (b) of the definition of **financial arrangement** and in the definition of **security payment**, includes money's worth, whether or not convertible into money, and the right to money, including the deferral or cancellation of any obligation to pay money whether in whole or in part

private or domestic agreement for the sale and purchase of property, in the definition of **excepted financial arrangement**, in relation to any person, means an agreement for the sale and purchase of property or a specified option where—

(a) the agreement was entered into by that person or the specified option was granted to or by that person for private or domestic purposes; and

(b) the subject-matter of the agreement or specified option is—

(i) real property, the purchase price of which is less than $750,000; or

(ii) any other property, the purchase price of which is less than $250,000; and

(c) settlement is required to take place within 365 days after the day on which the agreement was entered into or the specified option granted

property,—

(a) in the definition of **specified base cost for 1983 income year property** and in the life insurance rules, includes any real or personal property; and

(b) in paragraph (a) of the definition of **holder** and paragraph (c) of the definition of **lease** and in the definitions of **agreement for the sale and purchase of property**, **amount of all consideration**, **core acquisition price**, **excepted financial arrangement**, **private or domestic agreement for the sale and purchase of property**, **right in the specified property**, **short term agreement for the sale and purchase of property**, **short term option**, and **specified option**, means—

(i) any capital asset that is not foreign exchange or a financial arrangement; and

(ii) trading stock; and

(iii) consumable aids; and

(iv) property to be purchased or otherwise acquired or sold or otherwise disposed of for private or domestic purposes only

right in the specified property, in the definition of **core acquisition price**, means—

(a) the right to possession of the property; or

(b) the right to any income or the right to control or influence the disposition of income derived from the property; or

(c) the right, directly or indirectly, to exercise, or to influence any other person in the exercise of, any decision-making in respect of the property; or

(d) any other right of a substantially similar nature:

provided that the mere right to enforce any agreement for the sale and purchase of property or any specified option does not of itself constitute a right in the specified property

secured arrangement, in the definitions of **security arrangement** and **security payment**, means an arrangement against which the failure to perform is secured by a financial arrangement

security arrangement, in the definition of **security payment**, means a financial arrangement that secures the holder against failure of any person to perform their obligations under a secured arrangement

security payment means money received by the holder of a security arrangement to the extent that the money is received in relation to a loss incurred due to the failure of performance of the secured arrangement and the value of the money is income of the holder

short term agreement for the sale and purchase of property means an agreement for the sale and purchase of property where—

(a) the property is real property and settlement is required to take place within 93 days of the day on which the agreement was entered into; or

(b) the property is not real property and settlement is required to take place within 63 days of the day on which the agreement was entered into

short-term option, in the definition of **excepted financial arrangement**, means a specified option where—

(a) the subject-matter of the option is real property and settlement is required to take place within 93 days of the day on which the option was granted; or

(b) the subject-matter of the option is not real property and settlement is required to take place within 63 days of the day on which the option was granted

short term trade credit, in the definitions of **core acquisition price**, **excepted financial arrangement**, and **trade credit**, means any debt for goods or services where payment is required by the vendor—

(a) within 63 days after the supply of the goods or services; or

(b) because the supply of the goods or services is continuous and the vendor renders periodic invoices for the goods or services, within 63 days after the date of an invoice rendered for those goods or services

social assistance suspensory loan is defined in section EZ 38(8)(c) for the purposes of that section

specified option means an option to purchase or otherwise acquire or sell or otherwise dispose of property, and the agreement for the sale and purchase of property, if any, entered into as a result of the exercise of the option is deemed to be part of the option

trade credit, in the definitions of **core acquisition price** and **implementation date**, means any debt for goods or services, but does not include a short term trade credit

trading stock, in paragraph (b) of the definition of **property**, means—

(a) any thing acquired for the purposes of manufacture, sale, or exchange:

(b) livestock:

(c) any other real or personal property where the business of the person by whom it is sold or disposed of comprises dealing in such property or the property was acquired by the person for the purpose of sale or other disposal:

(d) any land, any amount derived from the sale or other disposal of which would be income to which any of sections CB 6 to CB 23 applies:

(e) anything in respect of which expenditure is incurred and which, if possession were taken, would fall within any of paragraphs (a) to (d);—

but does not include any financial arrangement

variable principal debt instrument means a bank deposit account or other financial arrangement where it is contemplated that the holder may—

(a) advance further sums to the issuer; or

(b) where the rights and obligations of the person under the financial arrangement are expressed in a currency other than New Zealand currency, require the return of sums advanced to the issuer—

in either case upon demand or call, and where all such sums form part of that bank deposit account or other instrument.

Compare: 2004 No 35 s EZ 45

EZ 49 Determination of core acquisition price where consideration for property denominated in foreign currency

(1) For the purposes of paragraph (c) of the definition of **core acquisition price** in section EZ 48, if the consideration payable under the relevant financial arrangement for the specified property is denominated in a foreign currency, the lowest price referred to in that paragraph must be the lowest price the parties would have agreed upon in that foreign currency converted into New Zealand dollars using, at the option of the taxpayer,—

(a) the rate, on the day on which the financial arrangement was entered into (in this section referred to as the **contract date**), available to the taxpayer from a New Zealand registered bank for the exchange of New Zealand dollars for that foreign currency on the day on which the first right in the specified property is to be transferred (in this section referred to as the **rights date**); or

(b) if the period between the rights date and the day on which final payment is to be made under the financial ar-

rangement (in this section referred to as the **settlement date**) is not greater than 5 years, the rate, on the contract date, available to the taxpayer from a New Zealand registered bank for the exchange of New Zealand dollars for that foreign currency on the settlement date; or

(c) an exchange rate approved by the Commissioner for adoption under this subsection in the circumstances applicable to the taxpayer in a determination issued under section 90(1)(k) of the Tax Administration Act 1994.

(2) The rate adopted by a taxpayer in relation to a financial arrangement under subsection (1) must be consistently applied by that taxpayer in respect of that particular financial arrangement for the purposes of the old financial arrangements rules for every income year during its term.

(3) If the terms of the financial arrangement referred to in subsection (1) are such that the actual rights date is uncertain as at the contract date, then the rights date is for the purposes of subsection (1) the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that the first right in the specified property will be transferred.

(4) If the terms of the financial arrangement referred to in subsection (1) are such that the actual settlement date is uncertain as at the contract date, then the settlement date is for the purposes of subsection (1) the date on which it is reasonably expected by the parties at the time of entering into the financial arrangement that final payment will be made.

Compare: 2004 No 35 s EZ 46

EZ 50 Rules for non-market transactions

(1) Where the Commissioner, having regard to any connection between the parties to the issue or transfer of a financial arrangement and to any other relevant circumstances, is satisfied that the parties were dealing with each other in relation to the issue or transfer in a manner that has the effect of defeating the intent and application of the old financial arrangements rules, the Commissioner may, under section EZ 35 or EZ 37 or EZ 38 or EZ 42, deem the consideration for the issue or transfer to be equal to the consideration that might reasonably be expected for the issue or transfer if the parties to the issue or

transfer were independent parties dealing at arm's length with each other in relation to the issue or transfer.

(2) If at any time a person not resident in New Zealand—

(a) commences to hold, whether temporarily or otherwise, a financial arrangement, for the purposes of a business carried on through a fixed establishment in New Zealand, the person is deemed to have acquired the financial arrangement at that time; or

(b) ceases to hold, whether temporarily or otherwise, a financial arrangement for the purposes of a business carried on through a fixed establishment in New Zealand, the person is deemed to have disposed of the financial arrangement at that time; or

(c) being a holder or an issuer of a financial arrangement, becomes a New Zealand resident, the person is deemed to acquire or to issue the financial arrangement at the time at which the person becomes a New Zealand resident;—

and that acquisition or that disposal is deemed to have been made for a consideration equal to the consideration that might reasonably be expected for the acquisition or disposal if the acquisition or disposal had been made at arm's length.

(3) A financial arrangement is treated as having been sold and purchased or transferred and realised at its market value on the date of its sale or transfer if the sale or transfer, including a transfer by way of distribution to shareholders, is not for consideration in money or is for a consideration that is less than the market value of the financial arrangement.

(4) The market value of a financial arrangement is the market value for both seller and purchaser or transferor and transferee.

Compare: 2004 No 35 s EZ 47

EZ 51 Transitional adjustment when changing to financial arrangements rules

(1) A person may elect to apply the financial arrangements rules to a financial arrangement to which the old financial arrangements rules apply.

(2) A person who makes an election must apply the financial arrangements rules to all financial arrangements to which the person is a holder or an issuer.

(3) Despite subsections (1) and (2), a person must apply section EZ 38 if that section applies to a financial arrangement in the income year in which the election is made.

(4) Once an election is made, the financial arrangement is subject to the financial arrangements rules and is treated in the same way as a financial arrangement that was entered into on or after 20 May 1999.

(5) A person who makes an election must calculate a transitional adjustment for the income year of election and return the resulting income or expenditure.

(6) The transitional adjustment is calculated using the formula—

income (financial arrangements rules) - expenditure (financial arrangements rules) - income (old financial arrangements rules) + expenditure (old financial arrangements rules)

where—

income (financial arrangements rules) is the total amount of income that would be derived by the person from the financial arrangement if the financial arrangements rules were applied to the financial arrangement for the period beginning on the date the person acquires the arrangement and ending on the last day of the income year in which this calculation is made

expenditure (financial arrangements rules) is the total amount of expenditure that would be incurred by the person under the financial arrangement if the financial arrangements rules were applied to the financial arrangement for the period beginning on the date the person acquires the arrangement and ending on the last day of the income year in which this calculation is made

income (old financial arrangements rules) is the total amount of income of the person from the financial arrangement in all income years before the income year in which this calculation is made

expenditure (old financial arrangements rules) is the total amount of expenditure incurred by the person under the finan-

cial arrangement in all income years before the income year in which this calculation is made.

(7) The result of the transitional adjustment is,—

(a) if a positive amount, income derived by the person in the income year; and

(b) if a negative amount, expenditure incurred by the person in the income year.

(8) In the income year in which the transitional adjustment is made to a financial arrangement, a person must take into account only the income derived or the expenditure incurred as a result of the adjustment for the financial arrangement.

(9) Despite subsections (2) to (8), a person is treated as transferring a financial arrangement at market value at the end of the income year of election and must calculate a base price adjustment under section EZ 38 if—

(a) the financial arrangement is an arrangement to which the old financial arrangements rules apply; and

(b) the financial arrangement were entered into on or after 20 May 1999 and would not have been subject to the financial arrangements rules; and

(c) the person elects to apply the financial arrangements rules to a financial arrangement to which the old financial arrangements rules apply.

Compare: 2004 No 35 s EZ 48

EZ 52 References to new rules include old rules

(1) Subsection (2) applies if—

(a) the old financial arrangement rules apply to a financial arrangement (**old financial arrangement**); and

(b) a taxation law in this Act (**rewritten law**) refers only to, or applies only to, a financial arrangement to which the financial arrangements rules apply; and

(c) the rewritten law is in neither subpart EW nor sections EZ 33 to EZ 51; and

(d) the rewritten law corresponds to and replaces, with or without amendments, a taxation law that applied to the old financial arrangement before 20 May 1999.

(2) The rewritten law applies to the old financial arrangement as if the rewritten law referred to, or applied to, a financial arrangement to which the old financial arrangements rules apply.

(3) Subsection (2) does not apply to—

(a) a definition, or parts of a definition, in section YA 1 if that definition or part refers to section EZ 48; or

(b) section GB 21, because the former taxation law to which it corresponds has been re-enacted as section EZ 50.

(4) Section FM 8(3)(b)(ii) applies to a financial arrangement to which the old financial arrangements rules apply as if—

(a) the reference to section EW 31 were to section EZ 38; and

(b) the words "financial arrangements rules" read "old financial arrangements rules".

Compare: 2004 No 35 s EZ 49

EZ 52B Consistency of use of IFRS method: *Determination G3* change allowed

When this section applies

(1) This section applies to a financial arrangement of a person—

(a) for the 2009–10 income year, unless paragraph (b) or (c) applies:

(b) for the 2008–09 or the 2009–10 income year (a **retrospective year**) if—

(i) the financial arrangement is subject to a creditor workout in a retrospective year; and

(ii) the person notifies the Commissioner in writing of their election to apply this section to the financial arrangement for a retrospective year:

(c) for an income year after the 2009–10 income year, if—

(i) the financial arrangement is subject to a creditor workout in the relevant income year; and

(ii) the person notifies the Commissioner in writing of their election to apply this section to the financial arrangement for the relevant income year before the last day for filing a return of income for that income year.

Exception modified

(2) For the purposes of the exception in section EW 25B(2) (Consistency of use of IFRS method), the person may change a method for IFRS for the financial arrangement if—

(a) the method they change to or from is *Determination G3* under section EW 15E(2)(aa) (Determination alternatives) or an alternative to *Determination G3* under section EW 15E(2)(e) (What is included when spreading methods used); and

(b) that method is available to them to use.

Defined in this Act: creditor workout, financial arrangement, IFRS, income year

Section EZ 52B: added (with effect on 1 April 2008), on 6 October 2009, by section 198 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section EZ 52B(2)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 40 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

EZ 52C Change of spreading method: *Determination G22* to *Determination G22A*

How and when this section applies

(1) This section does not alter or affect a person's tax position in relation to *Determination G22: Optional convertible notes denominated in New Zealand dollars convertible at the option of the holder* or the person's litigation of their tax position in relation to *Determination G22*. It does not alter or affect the Commissioner's assessment of, or litigation of, that tax position. It applies after *Determination G22* has applied for a person's financial arrangement, and only if, for the financial arrangement,—

(a) *Determination G22A: Optional convertible notes denominated in New Zealand dollars* did not apply while *Determination G22* applied, because of the application of section 90AE of the Tax Administration Act 1994, or the application of *Determination G22A*, clause 3(1)(b); and

(b) *Determination G22A* starts applying immediately after—

(i) section 90AE of the Tax Administration Act 1994 stops applying; or

(ii) *Determination G22A*, clause 3(1)(b) stops applying.

Spreading method adjustment

(2) Despite sections EW 26 and EW 27 (which relate to changes of spreading method), the person must not calculate a spreading method adjustment under section EW 27 for the change of spreading method, for the financial arrangement, from *Determination G22* to *Determination G22A*.

Part years under Determinations instead of spreading method adjustment

(3) In the income year in which subsection (2) applies, for the financial arrangement, *Determination G22* applies for the part-year before the change to *Determination G22A*, and *Determination G22A* applies for the part-year after the change from *Determination G22*.

Defined in this Act: amount, assessment, financial arrangement, spreading method

Section EZ 52C: inserted, on 26 September 2010, by section 51 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

EZ 52D Base price adjustment: financial arrangements to which *Determination G22* and *Determination G22A* applied

How and when this section applies

(1) This section does not alter or affect a person's tax position in relation to *Determination G22* or the person's litigation of their tax position in relation to *Determination G22*. It does not alter or affect the Commissioner's assessment of, or litigation of, that tax position. It applies after *Determination G22* has applied for a person's financial arrangement, and only if, for the financial arrangement,—

(a) section EZ 52C applied; and

(b) *Determination G22A* applies when the person is required to calculate a base price adjustment for the financial arrangement.

Consideration adjustment

(2) For the financial arrangement, the consideration referred to in section EW 31(7) (Base price adjustment formula) is adjusted in accordance with subsections (3) to (6).

Issuer

(3) If the person is the issuer of the financial arrangement, an amount calculated under subsections (5) and (6) is added to all consideration that has been paid, and all consideration that is or will be payable, by the issuer for or under the financial arrangement.

Holder

(4) If the person is a holder of the financial arrangement, an amount, referrable to the person's holding, calculated under subsections (5) and (6) is added to all consideration that has been paid, and all consideration that is or will be payable, to the holder for or under the financial arrangement.

Calculation

(5) For the purposes of subsections (3) and (4) the amount is calculated using the following formula:

$$X - Z.$$

Definition of items in formula

(6) In the formula,—

(a) **X** is, for the financial arrangement, an amount equal to the item **s** in *Determination G22*, clause 6(1), if that item were calculated in accordance with that Determination at the time immediately before the change of spreading method described in section EZ 52C(2):

(b) **Z** is, for the financial arrangement, an amount equal to the item **s** in *Determination G22*, clause 6(1), if that item were calculated in accordance with that Determination at the time when it first applied.

Defined in this Act: amount, consideration, financial arrangement

Section EZ 52D: inserted, on 26 September 2010, by section 51 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Life insurance transitional adjustment: expected death strain

Heading: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Expected death strain formulas

Heading: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 53 How expected death strain is calculated

Calculation of expected death strain: steps

(1) For an income year, the life insurer calculates their expected death strain by following these steps:

(a) first, use the relevant expected death strain formula to calculate an amount for each life insured under each life insurance policy existing at the start of the income year (*see:* subsections (2) and (3) for guidance on the relevant expected death strain formula):

(b) second, for each such life insurance policy, add together the amounts for the lives insured under it:

(c) third, add together the totals reached under paragraph (b).

Expected death strain formula (life)

(2) Section EZ 54(1) sets out the expected death strain formula (life). This is the formula a life insurer uses for an income year, to calculate an amount for a life insured under a life insurance policy, except to the extent to which an annuity is being paid under the policy at some time in the income year.

Expected death strain formula (active annuities)

(3) Section EZ 54(2) sets out the expected death strain formula (active annuities). This is the formula a life insurer uses for an income year, to calculate an amount for a life insured under a life insurance policy, to the extent to which an annuity is being paid under the policy at some time in the income year.

Defined in this Act: business, income year, life insurance, life insurance policy, life insured, life insurer, pay

Section EZ 53: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 54 Expected death strain formulas

Expected death strain formula (life)

(1) The expected death strain formula (life) is—

claim probability × (opening sum assured
− opening actuarial reserves).

Expected death strain formula (active annuities)

(2) The expected death strain formula (active annuities) is—

claim probability × opening actuarial reserves.

Definition of items in formulas

(3) The items in the formulas are defined in subsections (4) to (6).

Claim probability

(4) **Claim probability** is the probability of a claim arising under the policy for the life insured's death in the income year. It is determined at the start of the income year using the same mortality assumptions as are used to calculate the life insurer's actuarial reserves at the start of the income year. It is expressed as a decimal. Variations to **claim probability** are in sections EZ 55(2) and EZ 57(2).

Opening sum assured

(5) **Opening sum assured** is the claim that would be payable under the policy for the life insured's death in the income year or, if no such claim would be payable, the claim that would be payable under the policy for the life insured's survival to the relevant date or age specified in the policy. It is determined at the start of the income year. It may be zero. Variations to **opening sum assured** are in sections EZ 56(2), EZ 57(3), and EZ 58(2).

Opening actuarial reserves

(6) **Opening actuarial reserves** is the amount in the life insurer's actuarial reserves for the life insured under the policy. It is determined at the start of the income year.

Defined in this Act: actuarial reserves, amount, claim, income year, life insured, life insurer, pay

Section EZ 54: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 55 Expected death strain formulas: option when more than 1 life insured

When this section applies

(1) This section applies when a life insurance policy covers more than 1 life insured.

Claim probability

(2) In using the relevant expected death strain formula, the life insurer may use as **claim probability** a common factor for all the lives insured under the policy.

Features of common factor

(3) The common factor must be a reasonable approximation of the average probability of a claim arising under the policy for each life insured's death in the income year. It must be weighted as necessary to take account of—

(a) differing claims for individual lives insured under the policy; and

(b) differing amounts in the life insurer's actuarial reserves for individual lives insured under the policy.

Defined in this Act: actuarial reserves, amount, claim, income year, life insurance policy, life insured, life insurer

Section EZ 55: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 56 Expected death strain formula (life): when annuity payable on death

When this section applies

(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's death.

Opening sum assured

(2) In using the expected death strain formula (life), the life insurer uses as **opening sum assured** the present value (net) of the annuity. The present value (net) is determined—

(a) at the start of the income year; and

(b) on the assumption that the life insured died at the start of the income year; and

(c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year.

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, payment present value (net)

Section EZ 56: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 57 Expected death strain formulas: when annuity payable on survival to date or age specified in policy

When this section applies

(1) This section applies when, and to the extent to which, a life insurance policy provides for the payment of an annuity the start of which is contingent on the life insured's survival to the relevant date or age specified in the policy.

Claim probability

(2) In using the relevant expected death strain formula, the life insurer must use **claim probability** as defined in section EZ 54(4), without regard to the fact that the payment of the annuity is not contingent on the life insured's death.

Opening sum assured

(3) In using the expected death strain formula (life), the life insurer must use as **opening sum assured** the present value (net) of the annuity. The present value (net) is determined—

(a) at the relevant date or age specified in the policy; and

(b) on the assumption that the life insured survived to the date or age; and

(c) using the same assumptions and bases of calculation as are used to calculate the life insurer's actuarial reserves for the income year.

Defined in this Act: actuarial reserves, income year, life insurance policy, life insured, life insurer, pay, payment present value (net)

Section EZ 57: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 58 Expected death strain formula (life): when partial reinsurance exists

When this section applies

(1) This section applies when a life insurer has partial life reinsurance.

Opening sum assured

(2) In using the expected death strain formula (life), the life insurer must reduce **opening sum assured** by the claim receivable by the life insurer under the life reinsurance policy for the contingency against which the life insured is covered under the life insurance policy.

Defined in this Act: claim, life insurance policy, life insured, life insurer, life reinsurance policy, partial reinsurance

Section EZ 58: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Actuarial reserves

Heading: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 59 Meaning of actuarial reserves

Actuarial reserves generally

(1) For the purposes of sections EZ 53 to EZ 58, **actuarial reserves** means a life insurer's reserves as calculated under section EZ 60.

Closing actuarial reserves for annuities

(2) For the purposes of the item **closing actuarial reserves** in section EY 31(3) (Annuities), **closing actuarial reserves (active annuities)** means a life insurer's opening actuarial reserves under section EZ 54(6) for a life insurance policy, to the extent to which an annuity is being paid under the policy where the life insured dies in the income year for which the formula in section EY 31 is applied. Where the life insured survives to the end of that income year, the **closing actuarial reserves (active annuities)** is zero.

Link between actuarial reserves and life insurer

(3) Actuarial reserves, for a life insurer at any time, means the life insurer's actuarial reserves at that time.

Defined in this Act: actuarial reserves, life insurance policy, life insurer

Section EZ 59: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 60 Actuarial reserves: calculation

Calculation by actuary

(1) The life insurer's actuarial reserves must be actuarially determined.

All reserves or 1 or more amounts

(2) The actuary may calculate—

(a) the actuarial reserves for all the life insurance policies for which the life insurer is the insurer; or

(b) the amount in the life insurer's actuarial reserves for 1 or more life insurance policies for which the life insurer is the insurer.

Interest, mortality, and other assumptions and bases of calculation

(3) The actuary must do the calculation using interest, mortality, and other assumptions and bases of calculation that—

(a) are based on the same principles as those used in the actuarial advice on which the following are calculated:

(i) the level of surplus funds available to the life insurer for allotment or payment to shareholders or policyholders; or

(ii) the level of surplus funds available to the life insurer, if a superannuation scheme, for allotment to objects of the scheme other than the object of providing for members' benefits; and

(b) are likely to produce a reasonable estimation of the future experience of the life insurer in relation to life insurance policies of which the life insurer is the insurer, having regard to the past experience of the life insurer in relation to life insurance policies of which the life insurer was the insurer; and

(c) conform with commercially acceptable practice.

Reserves for policy never negative

(4) The amount in the actuarial reserves for a life insurance policy must never be negative.

Reserves for all policies never less than total of surrender values

(5) The actuarial reserves at any time must not be less than the total of the surrender values of all the life insurance policies they cover at that time.

Reserves for policies same at end of one, and start of next, income year

(6) The amount in the actuarial reserves for life insurance policies at the start of an income year is the same as the amount in the actuarial reserves for the life insurance policies at the end of the previous income year.

Effect of partial reinsurance

(7) The actuarial reserves of a life insurer who has partial life reinsurance must be reduced by an amount that the actuary responsible for actuarial control of the life insurer considers appropriate having regard to the nature of the life reinsurance policies.

Defined in this Act: actuarial reserves, actuary, amount, income year, life insurance policy, life insurer, life reinsurance policy, partial reinsurance, payment shareholder, superannuation scheme

Section EZ 60: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Entry to new life insurance regime: transitional and miscellaneous provisions

Heading: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 61 Allowance for cancelled amount: spreading

Policyholder base allowable deduction

(1) For an income year that includes 1 July 2010 and later income years, a life insurer may choose, by a notice received by the Commissioner on or before the last day for furnishing a return of income for the relevant income year or within such further time as the Commissioner may allow, that an amount (the **deduction amount**) is included as their policyholder base allowable deduction for the income year, if—

(a) the life insurer has no taxable income, other than in relation to its policyholder base, for the tax year corresponding to the income year, and no taxable income, other than in relation to its policyholder base, for every earlier tax year going back to, and including, the tax year that corresponds with the income year that includes 1 July 2010; and

(b) the deduction amount is stated in the notice and it is equal to or less than the least of the following:

(i) the available tax loss for the tax year that corresponds with the income year, before applying this section; and

(ii) the available concession amount for the income year, described in subsection (2); and

(iii) the amount that would be the life insurer's schedular policyholder base income for the income year, before applying this section for the year.

Available concession amount

(2) For the purposes of subsection (1), the available concession amount for the income year is a positive amount calculated using the formula—

base concession amount − used.

Definition of items in formula

(3) In the formula,—

(a) **base concession amount** is the lesser of the following:

(i) the cancelled amount described in section IT 1 (Cancellation of life insurer's policyholder net losses); and

(ii) the amount of available tax loss for the tax year that corresponds with the income year that includes 1 July 2010, before applying this section for the year:

(b) **used** is the total amount of policyholder base allowable deductions that have arisen under this section for income years before the income year.

Defined in this Act: amount, Commissioner, income year, life insurer, net loss, policyholder base, policyholder base allowable deduction, return of income, schedular policyholder base income, tax loss, tax year, taxable income

Section EZ 61: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 62 Reinsurance transition: life financial reinsurance may be life reinsurance

(1) If a life contract that is entered into before a life insurer's reinsurance grandparenting start day would be a contract for life financial reinsurance but for this section, then it is treated as life reinsurance, instead of life financial reinsurance, for the period starting on the reinsurance grandparenting start day, and ending on the earlier of,—

(a) the last day of the term of the contract, as that term is stated in the contract before the reinsurance grandparenting start day; and

(b) the day 5 years after the reinsurance grandparenting start day.

Meaning of reinsurance grandparenting start day

(2) **Reinsurance grandparenting start day** means—

(a) 1 July 2010, if the life insurer does not have an early life regime application day; or

(b) a life insurer's early life regime application day, if the life insurer has an early life regime application day.

Defined in this Act: early life regime application day, income year, life financial reinsurance, life insurer, life reinsurance, reinsurance grandparenting start day

Section EZ 62: inserted, on 1 July 2010, by section 199(1)of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

EZ 63 Disposal and acquisition upon entry

When this section applies

(1) This section applies for a life insurer immediately before a day (the **application day**) that is—

(a) 1 July 2010, if the life insurer does not have an early life regime application day; or

(b) their early life regime application day, if the life insurer does have an early life regime application day.

Disposal and acquisition upon entry

(2) Immediately before the application day, all of the property of a life insurer that supports actuarial reserves for the purposes of the policyholder income formula in section EY 43 (Policyholder income formula) is treated as disposed of, for market value consideration, to a third person, and immediately re-acquired from that person for the same consideration.

Exclusion

(3) Property that is an interest in a PIE that is not a listed PIE is excluded from the disposal and re-acquisition described in subsection (2).

Defined in this Act: actuarial reserves, amount, dispose, early life regime application day, income year, life insurer, listed PIE, market value, PIE portfolio-listed company

Section EZ 63: added, on 30 June 2010, by section 200 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part F
Recharacterisation of certain transactions

Subpart FA—Recharacterisation of certain commercial arrangements

Introductory provision

FA 1 What this subpart does

This subpart alters the tax treatment of certain commercial arrangements by—

(a) recharacterising either their nature or that of the amounts derived under the arrangements; and

(b) providing rules for the treatment of the parties to the arrangement.

Defined in this Act: amount, arrangement, tax

Debentures and shares

FA 2 Recharacterisation of certain debentures

Treatment of debenture and interest

(1) A profit-related debenture or a substituting debenture is treated for tax purposes as a share described in paragraph (b) of the definition of **share** in section YA 1 (Definitions), and the interest payable under the debenture is treated as a dividend.

No deduction

(2) A company issuing either a profit-related debenture or a substituting debenture is denied a deduction under section DB 10 (Interest or expenditure connected to profit-related or substituting debentures) for—

(a) interest payable under the debenture; or

(b) expenditure or loss incurred in connection with the debenture; or

(c) expenditure or loss incurred in borrowing the money secured by or owing under the debenture.

When interest fixed to certain rates or indices [Repealed]

(3) *[Repealed]*

Profit-related debenture

(4) A **profit-related debenture**—

(a) means a debenture with a rate of interest that is set from time to time by reference to—

(i) the dividend payable by the company issuing the debenture; or

(ii) the profits of the company issuing the debenture, however measured:

(b) does not include a debenture under which the interest payable is determined by a fixed relationship to—

(i) banking rates; or

(ii) general commercial rates; or

(iii) economic, commodity, industrial, or financial indices, but the application of this subparagraph is subject to section FZ 1(3) (Treatment of interest payable under debentures issued before certain date):

(c) does not include a debenture treated as a share under section FA 2B (Stapled debt securities).

Substituting debenture

(5) **Substituting debenture**—

(a) means a debenture issued by a company to a shareholder or class of shareholders of the company when the amount of the debenture is determined by reference to 1 or more of the following aspects of the shares in the company or another company held by the shareholder or class of shareholder at the time the debenture is issued or at an earlier time:

(i) the number of shares:

(ii) the available subscribed capital of the relevant company calculated under the slice rule set out in section CD 23 (Ordering rule and slice rule):

(iii) some other reference to the shares:

(b) includes a debenture issued to a shareholder or a class of shareholder when the amount of the debenture is determined by reference to 1 or more aspects of the shares as described in paragraph (a) held by the shareholder in a company other than that issuing the debenture, whether or not the company is being, or has been, liquidated:

(c) does not include a debenture that is a convertible note:

(d) does not include a debenture treated as a share under section FA 2B.

Shares or available subscribed capital in another company [Repealed]

(6) *[Repealed]*

Amount of debenture

(7) For the purposes of subsection (5), the amount of the debenture means the principal sum secured by or owing under the debenture.

Terminating provisions

(8) For the treatment of debentures issued before 8pm New Zealand standard time on 23 October 1986, *see* section FZ 1.

Relationship with agency rules

(9) Section HD 14 (Companies issuing debentures) does not apply to a profit-related debenture described in this section, or to an amount paid or payable under it.

Defined in this Act: amount, available subscribed capital, company, convertible note, debenture, deduction, dividend, interest, liquidation, loss, pay, profit-related debenture, share, shareholder, slice rule, substituting debenture, tax

Compare: 2004 No 35 ss FC 1, FC 2

Section FA 2(3) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 201(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(3): repealed (with effect on 1 April 2008), on 6 October 2009, by section 201(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 201(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(4)(b)(iii): amended (with effect on 1 April 2008), on 6 October 2009, by section 201(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(4)(c): added (with effect on 1 April 2008), on 6 October 2009, by section 201(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 201(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(5)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 201(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(5)(d): added (with effect on 1 April 2008), on 6 October 2009, by section 201(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(6) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 201(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(6): repealed (with effect on 1 April 2008), on 6 October 2009, by section 201(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2(7): substituted (with effect on 1 April 2008), on 6 October 2009, by section 201(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FA 2B Stapled debt securities

When subsection (2) applies

(1) Subsection (2) applies when—

(a) a company has issued a debt security; and

(b) the debt security is stapled to a share in the company or to a share in another company; and

(c) the share is not a fixed-rate share.

Stapled debt treated as equity

(2) The stapled debt security is treated as a share issued by the company and—

(a) interest payable under the stapled debt security is treated as a dividend; and

(b) section DB 10B (Interest or expenditure connected to stapled debt security) may deny deductions for expenditure or loss related to the security.

Stapled securities aggregated

(3) A stapled debt security and a share to which it is stapled are treated as a single share for the purposes of applying—

(a) the definition of **non-participating redeemable share** in section CD 22(9) (Returns of capital: off-market share cancellations); and

(b) *[Repealed]*

(c) the definitions, in section YA 1 (Definitions), of—

(i) **fixed-rate foreign equity**; and

(ii) **fixed-rate share**, except for the purposes of subsection (1)(c).

Meaning of debt security

(4) In this section, **debt security** means a financial arrangement if—

(a) the financial arrangement provides funds to the company; and

(b) the financial arrangement gives rise to an amount for which the company would have a deduction but for this section; and

(c) the amount does not arise only from either a movement in a currency exchange rate or a non-contingent fee.

Meaning of stapled

(5) In this section, a debt security is **stapled** to a share if—

(a) the debt security can, or ordinarily can, be disposed of only together with the share; and

(b) the arrangement that requires the debt security and the share to be disposed of together is an arrangement to which the company that issued the debt security or the company that issued the share is a party.

Exclusion: small company shareholder agreements

(6) This section does not apply if the debt security is stapled to the share using a shareholder agreement for a company that is not a widely-held company.

Exclusion: stapling before 25 February 2008

(7) This section does not apply if the debt security was stapled to the share before 25 February 2008.

Defined in this Act: amount, associated person, company, debt security, deduction, dividend, financial arrangement, fixed-rate share, interest, non-contingent fee, share, shareholder agreement, stapled, widely-held company

Section FA 2B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 202(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FA 2B(3)(b): repealed (with effect on 30 June 2009), on 6 October 2009, by section 202(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FA 3 Recharacterisation of certain dividends: recovery of cost of shares held on revenue account

When this section applies

(1) This section applies to the amount of a dividend derived from shares that are revenue account property of a person when—

(a) the payment of the dividend realises or recovers the price the person paid for the shares; and

(b) the payment is made at the person's control or direction, or is part of a scheme that includes the acquisition of the shares and the payment of the dividend.

Treatment of amount derived

(2) The dividend is treated as an amount derived on a sale of the shares to the extent to which the actual amount realised by the person on the disposal of the shares is less than the cost to the person of acquiring the shares.

Dividend

(3) Despite subsection (2), a dividend taken into account under this section remains a dividend derived by the person in the income year.

Defined in this Act: amount, dividend, income year, pay, revenue account property, share

Compare: 2004 No 35 s FC 3

Section FA 3 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FA 4 Recharacterisation of shareholder's base: company repurchasing share

When this section applies

(1) This section applies to a shareholder in a company in relation to an off-market cancellation of shares by the company under section CD 22 (Returns of capital: off-market share cancellations) when—

(a) the shareholder holds the share as revenue account property; and

(b) after the cancellation, they continue to hold some shares of the same class.

When whole amount treated as dividend

(2) If the whole of the amount that the shareholder receives for the cancellation is treated as a dividend, the following paragraphs apply:

(a) the shareholder is not regarded as having disposed of the cancelled share, except for the purpose of determining whether they have derived a dividend; and

(b) the amount is added to the cost of the shareholder's remaining shares of the same class under subsection (6).

Below market value of shares

(3) If subsection (2) does not apply, and the amount paid by the company is less than the market value of the shares at the time when notice is first given of the cancellation either by the shareholder or the company, the following paragraphs apply:

(a) an amount calculated using the formula in subsection (4) is added to the cost of the shareholder's remaining shares of the same class under subsection (6); and

(b) the amount is excluded from the cost of the share being cancelled so that the shareholder is denied a deduction under section DB 25 (Cancellation of shares held as revenue account property) for the amount unless the share is trading stock of the shareholder; and

(c) sections GC 1 and GC 2 (which relate to the disposal of trading stock for inadequate consideration) does not apply.

Formula

(4) The formula referred to in subsection (3)(a) is—

$$\text{share cost} - \left(\text{cost pre-cancellation} \times \frac{\text{amount from cancellation}}{\text{market value}}\right).$$

Definition of items in formula

(5) In the formula,—

(a) **share cost** is the cost of the cancelled share to the shareholder:

(b) **cost pre-cancellation** is the total cost to the shareholder of all their shares of the same class immediately before the cancellation:

(c) **amount from cancellation** is the amount derived by the shareholder from the company for the cancellation:

(d) **market value** is the total market value of all the shareholder's shares of the same class immediately before the cancellation.

When subsection (7) applies

(6) Subsection (7) applies at a time after the cancellation when the cost of the remaining shares is taken into account under subpart EB (Valuation of trading stock (including dealer's livestock)), or otherwise.

Adding amount to cost of shares

(7) The amount referred to in subsection (2)(b) or (3)(a) must be fairly divided among, and added to, the cost of the shareholder's remaining shares of the same class.

Defined in this Act: amount, company, deduction, dividend, market value, notice, off-market cancellation, revenue account property, share, shareholder, shares of the same class trading stock

Compare: 2004 No 35 s FC 4

Leases

FA 5 Assets acquired and disposed of after deduction of payments under lease

When this section applies

(1) This section applies when a person (the **lessee**)—

(a) leases, rents, or hires an asset that is—

(i) plant, machinery, or other equipment; or

(ii) a motor vehicle; or

(iii) a temporary building; and

(b) is allowed a deduction for the rental payments; and

(c) acquires the asset and later disposes of it; and

(d) the consideration derived on the disposal is not income of the lessee under a provision of this Act other than this section.

Income

(2) If the consideration derived by the lessee for the asset is more than the cost of its acquisition, the excess is income of the lessee under section CG 7 (Recoveries after deduction of payments under lease). Subsection (3) overrides this subsection.

Adjustment to income

(3) If the total amount of the deductions referred to in subsection (1)(b) is less than or equal to the excess, the amount of income under subsection (2) is the total amount of the deductions.

Apportionment

(4) If the asset is disposed of together with other assets, the total consideration must be apportioned to reflect the respective market values of the assets.

Disposal below market value

(5) If the asset is disposed of without consideration or for a consideration that is less than market value at the date of disposal, the asset is treated as having been disposed of at its market value.

Associated persons acquiring asset

(6) Subsection (2) also applies if a person associated with the lessee acquires the asset, whether from the lessee or not, and disposes of it for an amount that is more than the amount paid to acquire it. Association is determined at the time of acquisition by the associated person. The lesser of the excess and the total amount of the lessee's deductions is treated as income of the lessee.

Transfers on settlement of relationship property

(7) In this section,—

(a) subsection (1)(c) does not apply to an acquisition on a settlement of relationship property:

(b) subsection (5) does not apply to a disposal on a settlement of relationship property.

Defined in this Act: amount, associated person, deduction, income, lease, lessee, market value, pay, settlement of relationship property, temporary building

Compare: 2004 No 35 s FC 5

Finance leases

FA 6 Recharacterisation of amounts derived under finance leases

When a personal property lease asset is leased under a finance lease, the lease is treated as a sale of the lease asset by the

lessor to the lessee on the date on which the term of the lease starts, and—

(a) the lessor is treated as giving a loan to the lessee for the lease asset; and

(b) the lessee is treated as using the loan to buy the lease asset; and

(c) subpart EE (Depreciation), the financial arrangements rules, and the other provisions of this Act apply to the arrangement as recharacterised.

Defined in this Act: finance lease, financial arrangements rules, lessee, lessor, loan, personal property lease asset, term of the lease

Compare: 2004 No 35 ss FC 8A(1), FC 8F, FC 8G

FA 7 Determining amount of loan

Value to lessor

(1) For a lessor under a finance lease, the amount of the loan is determined under section EW 32 (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease).

Value to lessee

(2) For a lessee under a finance lease, the amount of the loan is determined under sections EW 32 and EW 33 (which relate to the value of consideration under the financial arrangements rules).

Defined in this Act: amount, finance lease, lessee, lessor

Compare: 2004 No 35 ss FC 8A(2), (3), OB 1 **consideration**, **lessee's acquisition cost**, **lessor's disposition value**

FA 8 Deductibility of expenditure under finance lease

Lessee treated as owner

(1) The lessee under a finance lease is treated as the owner of the personal property lease asset for the purposes of subpart EE (Depreciation).

Lessor not treated as owner

(2) The lessor under a finance lease is not treated as the owner of the personal property lease asset for the purposes of subpart EE.

Defined in this Act: finance lease, lessee, lessor, personal property lease asset

Compare: 2004 No 35 s FC 8B(1)

FA 9 Treatment when lease ends: lessee acquiring asset

Acquisition treated as sale

(1) When a lessee under a finance lease acquires the personal property lease asset by the date on which the term of the lease ends, the acquisition is treated as the same sale that is treated as occurring under section FA 6.

When lessee or associated person acquires lease asset and later disposes of it

(2) If a lessee under a finance lease, or a person associated with them, acquires the lease asset and later disposes of it for an amount that is more than the consideration they paid for it, the excess is income of the lessee under section CC 11 (Lessee acquiring lease asset on expiry of term of lease).

Allocation and association

(3) For the purposes of subsection (2),—

(a) the excess is income of the lessee in the income year in which the lessee or associated person disposes of the asset:

(b) association is determined at the time of acquisition by the associated person.

Exception

(4) Subsection (2) does not apply if the consideration derived on the disposal is income of the lessee or an associated person under a provision of this Act other than this section.

Defined in this Act: amount, associated person, finance lease, income, income year, lessee, personal property lease asset, term of the lease

Compare: 2004 No 35 ss FC 8B(2), FC 8E

FA 10 Treatment when lease ends: lessor acquiring asset

When this section applies

(1) This section applies when a finance lease ends by the date on which its term ends.

Acquisition by lessor at end of lease

(2) If the lessee does not acquire the personal property lease asset by the date on which the term of the lease ends, the lessor is treated as having acquired it on that date at its guaranteed residual value. If there is no guaranteed residual value, the consideration is treated as zero. In this section, the consideration is called the **notional sale price**.

Further sale, assignment, or lease

(3) Subsections (4) and (5) apply when the lessor sells, assigns, or leases the lease asset to another person under another finance lease on or after the date on which the term of the original lease ends.

When consideration more than notional sale price

(4) If the consideration is more than the notional sale price,—

(a) to the extent to which it is paid by the lessor to the lessee under the original finance lease, the notional sale price is increased by the amount of the difference; and

(b) to the extent to which it is not paid by the lessor to the lessee under the original finance lease, the amount of the difference is income of the lessor under section CC 12 (Lessor acquiring lease asset on expiry of term of lease) in the income year in which the original lease term ends.

When consideration less than notional sale price

(5) If the consideration is less than the notional sale price, and the lessee is required to pay the amount of the deficit to the lessor, the notional sale price is reduced by that amount.

Acquisition by lessor when lease ends early

(6) If the lease is terminated before the end of its term and the lessee does not acquire the lease asset, the lessor is treated as acquiring it for an amount calculated using the formula—

outstanding balance – release payment.

Definition of items in formula

(7) In the formula,—

(a) **outstanding balance** is the amount of the outstanding balance of the loan on the date on which the lease is terminated:

(b) **release payment** is the amount the lessee paid to be released from their obligations under the lease.

Relationship with section EE 45

(8) Subsections (2) to (6) override section EE 45 (Consideration for purposes of section EE 44).

Defined in this Act: amount, finance lease, guaranteed residual value, income, lease, lessee, lessor, loan, notional sale price, outstanding balance, pay, personal property lease asset, term of the lease

Compare: 2004 No 35 ss FC 8B(3), FC 8C, FC 8D

FA 11 Adjustments for leases that become finance leases

When this section applies

(1) This section applies when a lease is entered into on or after 20 May 1999 and—

(a) the lease is a consecutive or a successive lease—

(i) that is treated as 1 lease under the definition of **lease** ; and

(ii) with a term of the lease that the lessor and lessee do not contemplate, at the start of the term, will be more than 75% of the personal property lease asset's estimated useful life; and

(iii) with a term of the lease that is more than 75% of the asset's estimated useful life:

(b) the lease is an operating lease that becomes a finance lease under paragraph (c) of the definition of **finance lease**.

Adjustment required

(2) The lessor and lessee must each adjust their income and expenditure calculated for the lease by including an adjustment in a return of income for the tax year corresponding to the income year in which the lease becomes a finance lease.

Amount of adjustment

(3) The amount of the adjustment is calculated for the relevant person in relation to the period described in subsection (5) using the formula—

finance income − finance expenditure − unadjusted income
+ unadjusted expenditure.

Definition of items in formula

(4) In the formula,—

(a) **finance income** is the income that would have been derived by the person under the lease if the lease were a finance lease for the period:

(b) **finance expenditure** is the expenditure that would have been incurred by the person under the lease if the lease were a finance lease for the period:

(c) **unadjusted income** is the income derived by the person under the lease:

(d) **unadjusted expenditure** is the expenditure incurred by the person under the lease.

Adjustment period

(5) The period starts on the date on which the lease starts and ends on the last day of the income year in which the lease becomes a finance lease.

Adjustment positive

(6) If the adjustment is positive, the amount is income of the relevant person under section CH 6 (Adjustments for certain finance and operating leases).

Adjustment negative

(7) If the adjustment is negative, the amount is a deduction of the relevant person under section DB 51B (Adjustments for leases that become finance leases).

Defined in this Act: amount, estimated useful life, finance lease, income, income year, lease, lessee, lessor, operating lease, personal property lease asset, return of income, tax year, term of the lease

Compare: 2004 No 35 s FC 8H

Section FA 11: substituted, on 1 April 2008, by section 406 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

FA 11B Adjustments for certain operating leases

When this section applies

(1) This section applies when a lease is an operating lease that—

(a) is entered into on or after 20 May 1999 and before 20 June 2007; and

(b) is an arrangement, or part of an arrangement that, on 20 June 2007, meets the requirements of paragraph (c)(i) to (iii) of the definition of **finance lease**; and

(c) has a term of the lease ending after the end of the income year in which 20 June 2007 falls (the **adjustment year**); and

(d) does not meet the requirements of section FA 11(1) before the end of the income year after the adjustment year.

Adjustment required

(2) The lessor must adjust their income and expenditure calculated for the lease asset by including an adjustment in a return of income for the tax year corresponding to the income year after the adjustment year.

Amount of adjustment

(3) The amount of the adjustment is calculated using the formula—

$$\frac{\text{total depreciation losses}}{6.}$$

Definition of item in formula

(4) In the formula, total **depreciation losses** is the total amount of depreciation loss for the lease asset for which the lessor is allowed a deduction in the period that begins with the start of the term of the lease and ends with the end of the adjustment year.

Income

(5) The amount of the adjustment is income of the lessor under the lease under section CH 6 (Adjustments for certain finance and operating leases) in the income year after the adjustment year.

Adjusted tax value

(6) The adjusted tax value of the lease asset at the beginning of the income year after the adjustment year is the total of the amount of the adjustment and the adjusted tax value that the lease asset would have in the absence of this section.

Depreciation loss

(7) For an income year beginning after 20 June 2007 in which the lease is an operating lease, the amount of depreciation loss al-

lowed for the lease asset other than under section EE 48 (Effect of disposal or event) is five-sixths of the amount of depreciation loss that would be allowed for the lease asset in the absence of this subsection.

Defined in this Act: adjusted tax value, amount, arrangement, deduction, depreciation loss, finance lease, income, income year, lease, lessee, lessor, operating lease, return of income, tax year, term of the lease

Compare: 2004 No 35 s FC 8I

Section FA 11B: inserted, on 1 April 2008, by section 406 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Hire purchase agreements

FA 12 Recharacterisation of amounts derived under hire purchase agreements

When a person (the **seller**) provides personal property other than livestock or bloodstock to another person (the **buyer**) under a hire purchase agreement, the agreement is treated as a sale by the seller to the buyer on the date on which the term of the agreement starts, and—

(a) the seller is treated as giving a loan to the buyer for the property; and

(b) the buyer is treated as using the loan to buy the property; and

(c) subpart EE (Depreciation), the financial arrangements rules, and the other provisions of this Act apply to the agreement as recharacterised.

Defined in this Act: amount, bloodstock, financial arrangements rules, hire purchase agreement, loan

Compare: 2004 No 35 ss FC 9, FC 10

FA 13 Agreements recharacterised as sale with finance provided

Value to seller

(1) For a seller under a hire purchase agreement, the amount of the loan is determined under section EW 32 (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease).

Value to buyer

(2) For a buyer under a hire purchase agreement, the amount to the buyer is determined under sections EW 32 and EW 33

(which relate to the value of consideration under the financial arrangements rules).

Defined in this Act: amount, hire purchase agreement, loan

Compare: 2004 No 35 ss FC 10(1)(a), OB 1 **consideration**, **lessee's acquisition cost**, **lessor's disposition value**

FA 14 Deductibility of expenditure or loss under hire purchase agreement

Buyer treated as owner

(1) The buyer in section FA 12 is treated as the owner of the property for the purposes of subpart EE (Depreciation).

Seller not treated as owner

(2) The seller in section FA 12 is not treated as the owner of the property for the purposes of subpart EE.

Discounted or bad debts

(3) Subsection (4) applies if the seller takes an amount calculated under section FA 15 into account as the cost of trading stock or in the calculation of their net income for an income year.

No deduction for seller

(4) The seller is denied a deduction under section DB 14 or DB 31 (which relate to debts sold at a discount and bad debts) for an amount owing under the hire purchase agreement.

Defined in this Act: amount, deduction, hire purchase agreement, income year, net income trading stock

Compare: 2004 No 35 s FC 10(1)(c), (5)(c)

FA 15 Treatment when agreement ends: seller acquiring property

When this section applies

(1) This section applies, subject to sections FA 16 and FA 17, when—

(a) a hire purchase agreement described in section FA 12 ends by the date on which its term ends or after that date; and

(b) the buyer does not acquire ownership of the property; and

(c) a person associated with the buyer does not acquire ownership of the property.

Sale of property

(2) The seller is treated as buying the property from the buyer for an amount equal to the outstanding balance calculated under subsection (3), and the buyer is treated as selling the property to the seller for that amount. The date of the sale is the date the agreement ends.

Outstanding balance

(3) The outstanding balance is the amount calculated using the formula—

net balance due on termination – buyer's termination payment + seller's termination payment.

Definition of items in formula

(4) In the formula,—

(a) **net balance due on termination** is the net balance due under the hire purchase agreement on the date the agreement ends less any costs and expenses referred to in section 31(2)(c) and (d) of the Credit (Repossession) Act 1997:

(b) **buyer's termination payment** is the sum of the following amounts, as applicable:

(i) an amount paid by the buyer, or an associated person, to the seller, or an associated person, under the agreement; and

(ii) an amount paid as a consequence of the ending of the agreement; and

(iii) an amount required to be taken into account by the buyer under the base price adjustment in section EW 31 (Base price adjustment formula) or in item "a" of the formula in section EZ 38(1) (Income and expenditure where financial arrangement redeemed or disposed of):

(c) **seller's termination payment** is the sum of the following amounts, as applicable:

(i) an amount paid by the seller, or an associated person, to the buyer, or an associated person, under the agreement; and

(ii) an amount paid as a consequence of the ending of the agreement; and

(iii) an amount required to be taken into account by the buyer under the base price adjustment in section EW 31 or by the seller in item "b" or "c" of the formula in section EZ 38(1) or (2).

Base price adjustment

(5) For the purposes of section EW 31, the outstanding balance is taken into account as the consideration paid by the buyer to the seller under the hire purchase agreement.

Defined in this Act: amount, associated person, hire purchase agreement, outstanding balance

Compare: 2004 No 35 ss FC 10(2), (5)(a), OB 1 **lessee's outstanding balance**, **lessor's outstanding balance**, **net balance due**

FA 16 Treatment when agreement ends: when seller is cash basis person

When this section applies

(1) This section applies for the purposes of section FA 15 when the seller is a cash basis person.

Reduction

(2) The amount treated as the seller's purchase price in section FA 15(2) is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula—

accrual income – income.

Definition of items in formula

(3) In the formula,—

(a) **accrual income** is the amount of income that would have been derived under 1 of the spreading methods for payments under the hire purchase agreement if—

(i) the seller were not a cash basis person; and

(ii) section EW 31 (Base price adjustment formula) did not apply to the seller and the agreement in the income year when the agreement ends:

(b) **income** is the amount of the seller's income from payments received under the hire purchase agreement.

Defined in this Act: amount, cash basis person, hire purchase agreement, income, income year, interest, pay, spreading method

Compare: 2004 No 35 s FC 10(3)

FA 17 Treatment when agreement ends: when buyer is cash basis person

When this section applies

(1) This section applies for the purposes of section FA 15 when the buyer is a cash basis person.

Reduction

(2) The amount treated as the buyer's sale price in section FA 15(2) is reduced by an amount for accrued but unpaid interest on the hire purchase agreement calculated using the formula—

prepaid expenditure – expenditure.

Definition of items in formula

(3) In the formula,—

(a) **prepaid expenditure** is the amount of prepaid expenditure that would have been incurred under 1 of the spreading methods for payments under the hire purchase agreement if—

(i) the buyer were not a cash basis person; and

(ii) section EW 31 (Base price adjustment formula) did not apply to the buyer and the agreement in the income year when the agreement ends:

(b) **expenditure** is the amount of expenditure incurred by the buyer and treated as interest under the hire purchase agreement.

Defined in this Act: amount, cash basis person, hire purchase agreement, income year, interest, pay, prepaid expenditure, spreading method

Compare: 2004 No 35 s FC 10(4)

FA 18 Treatment of amounts paid in income years after agreement ends

When this section applies

(1) This section applies when an amount that is liable to be paid under a hire purchase agreement is paid in an income year that is later than the income year in which the agreement ends.

Liability under agreement

(2) If the buyer is liable to pay the amount under the terms of the agreement to the seller, the amount is income of the seller under section CC 13(2) (Amounts paid in income years after hire purchase agreement ends).

Payment after end of agreement

(3) If the seller pays the amount to the buyer under the agreement and, consequent on the ending of the agreement, the amount was not taken into account, the amount is treated as—

(a) expenditure incurred by the seller in the income year in which the amount is paid; and

(b) income of the buyer under section CC 13(3), if they have been allowed a deduction in relation to the property under the agreement in the income year in which the amount is paid.

Associated persons

(4) In this section, the seller or the buyer includes a person associated with them.

Defined in this Act: amount, associated person, deduction, hire purchase agreement, income, income year, pay

Compare: 2004 No 35 s FC 10(5)(d)–(f)

Subpart FB—Transfers of relationship property

FB 1 What this subpart does

When this subpart applies

(1) This subpart sets out the tax treatment when property is transferred on a settlement of relationship property.

General treatment of parties to agreement

(2) The tax consequences for the transferee on a settlement of relationship property are the same as if the transferor had continued to hold the property.

Meaning of settlement of relationship property

(3) A **settlement of relationship property** means a transaction between parties to a relationship agreement that creates a disposal and acquisition of property under this subpart.

Look-through interests

(4) For the purposes of this subpart, **property** includes a look-through interest for a look-through company.

Defined in this Act: look-through company, look-through interest, relationship agreement, settlement of relationship property, tax

Section FB 1(4) heading: added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 61(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section FB 1(4): added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 61(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section FB 1 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 61(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section FB 1 list of defined terms **look-through interest**: inserted, on 1 April 2011, by section 61(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

FB 2 Personal property

When this section applies

(1) This section applies for the purposes of sections CB 4 (Personal property acquired for purpose of disposal) and CB 5 (Business of dealing in personal property) when personal property, or an interest in personal property, is transferred on a settlement of relationship property.

Transfer at cost

(2) The transfer is treated as a disposal and acquisition of the property for an amount that equals the cost of the property or, as applicable, the interest in the property, to the transferor.

Further disposal treated as dealing

(3) If, after the transfer, the transferee disposes of the property, they are treated in relation to the disposal as carrying on a business of dealing in the property.

Defined in this Act: amount, business, settlement of relationship property

Compare: 2004 No 35 s FF 4

FB 3 Land acquired for certain purposes or under certain conditions

When this section applies

(1) This section applies for the purposes of sections CB 6 to CB 12, CB 14, CB 17, CB 20, and CB 23 (which relate to the disposal of land) and Part D (Deductions) when land was acquired for a purpose set out in or under the conditions set out in any of those sections, and the land is transferred on a settlement of relationship property.

Transfer at cost

(2) The transfer is treated as a disposal and acquisition for an amount that equals the total cost of the land to the transferor at the date of transfer.

Date of acquisition

(3) The transferee is treated as having acquired the land on the date it was acquired by the transferor.

Further disposal

(4) For the tax consequences if the transferee disposes of the land, *see* section FB 5.

Defined in this Act: amount, date of transfer, dispose, land, settlement of relationship property, tax

Compare: 2004 No 35 s FF 6(1)(a)

FB 4 Land under scheme for major development or division

When this section applies

(1) This section applies for the purposes of section CB 13 (Disposal: amount from major development or division and not already in income) and Part D (Deductions) when land is transferred on a settlement of relationship property.

Transfer at market value plus expenditure

(2) If the transferor has already begun an undertaking or scheme of the kind referred to in section CB 13, the transfer is treated as a disposal by them for an amount that equals the sum of—

(a) the market value of the land on the date on which they began the undertaking or scheme:

(b) the expenditure that they have incurred in carrying on the undertaking or scheme before the date of transfer.

Expenditure incurred by transferee

(3) For the purposes of subsection (2), the transferee is treated as having incurred expenditure in—

(a) acquiring the land of an amount equal to the market value referred to in subsection (2)(a); and

(b) carrying on the undertaking or scheme of an amount equal to the expenditure in subsection (2)(b).

When scheme not begun at date of transfer

(4) If no undertaking or scheme as described in subsection (2) has begun at the date of transfer, the transferee is treated as having

acquired the land for an amount that equals the total cost of the land to the transferor at the date of transfer.

Further disposal

(5) For the tax consequences if the transferee disposes of the land, *see* section FB 5.

Defined in this Act: amount, date of transfer, dispose, land, market value, settlement of relationship property, tax

Compare: 2004 No 35 s FF 6(1)(b)

FB 5 Disposal of land

When this section applies

(1) This section applies for the purposes of sections FB 3 and FB 4 when the transferor and the transferee are not associated persons.

Persons treated as associated

(2) If the transferee disposes of the land, section CB 15 (Transactions between associated persons) applies as if the transferor and the transferee were associated persons.

Land disposed of by mortgagee

(3) If a mortgagee disposes of land because the transferee defaults under the mortgage, the disposal is treated as a disposal of land.

Defined in this Act: associated person, dispose, land, mortgage

Compare: 2004 No 35 s FF 6(1)(a)(iv), (b)(iv), (2)

FB 6 Timber or right to take timber

When this section applies

(1) This section applies for the purposes of section CB 24 (Disposal of timber or right to take timber) when timber, or a right to take timber, is transferred on a settlement of relationship property.

Transfer at cost of timber at date of transfer

(2) The transfer is treated as if—

(a) it were a disposal and acquisition for consideration; and

(b) the amount of consideration were equal to the total cost of timber, or the right to take timber, to the transferor at the date of transfer.

Defined in this Act: amount, cost of timber, date of transfer, right to take timber, settlement of relationship property, timber

Compare: 2004 No 35 s FF 7(1), (2)

FB 7 Land with standing timber

When this section applies

(1) This section applies for the purposes of section CB 25 (Disposal of land with standing timber) when—

(a) land with standing timber on it is transferred on a settlement of relationship property; and

(b) the standing timber does not consist of ornamental or incidental trees, as evidenced by a certificate given under section 44C of the Tax Administration Act 1994.

Transfer at cost of timber at date of transfer

(2) The transfer is treated as if—

(a) it were a disposal and acquisition for consideration; and

(b) the amount of consideration were equal to the total cost of timber to the transferor at the date of transfer.

Defined in this Act: amount, cost of timber, date of transfer, land, settlement of relationship property, standing timber, timber

Compare: 2004 No 35 s FF 7(3), (4)

FB 8 Patent applications and patent rights

When this section applies

(1) This section applies for the purposes of sections CB 30 and DB 38 to DB 40 (which relate to patent applications and patent rights) when a patent application with complete specifications or a patent right is transferred on a settlement of relationship property.

Transfer: part of expenditure or cost of rights

(2) The transfer is treated as a disposal and acquisition for an amount that equals, as applicable,—

(a) expenditure referred to in section DB 38 (Patent rights: devising patented inventions) for which the transferor is denied a deduction; or

(b) the cost of the applications or rights referred to in section DB 39 (Patent rights acquired before 1 April 1993) for which the transferor is denied a deduction.

Defined in this Act: amount, deduction, patent rights, settlement of relationship property

Compare: 2004 No 35 s FF 8

FB 9 Financial arrangements rules

The financial arrangements rules do not apply to a financial arrangement transferred on a settlement of relationship property if the financial arrangement meets the criteria set out in section EW 10(6) (Financial arrangements to which financial arrangements rules apply). For the application of the old financial arrangements rules, *see* section EZ 45(c) (Application of old financial arrangements rules).

Defined in this Act: financial arrangement, financial arrangements rules, old financial arrangement rules, settlement of relationship property

Compare: 2004 No 35 s FF 2

Section FB 9: amended (with effect on 1 April 2008), on 6 October 2009, by section 203(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FB 10 Continuity provisions: shares and options

When this section applies

(1) This section applies to modify sections YC 2 to YC 6 (which relate to voting interests and market value interests) for the purposes of the application of the continuity provisions when a share, or option over a share, is transferred on a settlement of relationship property.

Transferee treated as holding share or option

(2) The transferee is treated as having acquired the share or option on the date it was acquired by the transferor, and to have held it at all times up to the date of transfer.

Defined in this Act: continuity provisions, date of transfer, option, settlement of relationship property, share

Compare: 2004 No 35 s FF 1

FB 10B Look-through companies

When this section applies

(1) This section applies for the purposes of sections HB 4 to HB 10 (which relate to transfers of interests) when a look-through interest for a look-through company is transferred on a settlement of relationship property.

Transferee treated as holding interest

(2) The transferee is treated as having acquired the look-through interest on the date it was acquired by the transferor, and to have held it at all times up to the date of transfer.

Defined in this Act: date of transfer, look-through company, look-through interest, settlement of relationship property

Section FB 10B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 62(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

FB 11 Pension payments to former employees

When this section applies

(1) This section applies for the purposes of section DC 2 (Pension payments to former employees) when a person is entitled to the payment of a pension from a former employer, and because of a settlement of relationship property, the employer pays some or all of the amount of the pension to another person.

Deduction for employer

(2) Section DC 2(1) and (2) applies to the amount paid as if it were the payment of a pension to the former employee.

Defined in this Act: amount, deduction, employee, employer, pay, settlement of relationship property

Compare: 2004 No 35 s FF 17(1)

FB 12 Pension payments to former partners

When this section applies

(1) This section applies for the purposes of section DC 3 (Pension payments to former partners) when a person is entitled to the payment of a pension from a partner in a partnership or from any person, and because of a settlement of relationship property, the partnership, partner, or person pays some or all of the amount of the pension to another person.

Deduction for partner

(2) Section DC 3 applies to the amount paid as if it were the payment of a pension to the former partner.

Defined in this Act: amount, deduction, pay, settlement of relationship property

Compare: 2004 No 35 s FF 17(2), (3)

FB 13 Trading stock

When this section applies

(1) This section applies for the purposes of subpart EB (Valuation of trading stock (including dealer's livestock)) when trading stock is transferred on a settlement of relationship property.

When transferor holds and uses trading stock in business

(2) If the transferor used trading stock in carrying on a business and held the trading stock at the start of the year of transfer, the transfer is treated as a disposal by the transferor and an acquisition by the transferee for an amount equal to the greater of—

(a) the value of the trading stock under section EB 3 (Valuation of trading stock) for the transferor at the end of the income year before the year of transfer; or

(b) the value of the trading stock under section EB 3 for the transferee at the end of the year of transfer.

When transferor acquires and uses trading stock in business

(3) If the transferor used the trading stock in carrying on a business and acquired the trading stock during the year of transfer, the transfer is treated as a disposal by the transferor and an acquisition by the transferee for an amount equal to the cost of the trading stock to the transferor.

When transferor has not used trading stock in business

(4) If the transferor did not use the trading stock in the carrying on of a business, the transfer is treated as a disposal by the transferor and acquisition by the transferee for an amount equal to the cost of the trading stock to the transferor.

When transferee disposes of trading stock

(5) If, after a transfer under subsection (2) or (3), the trading stock was not used by the transferee in the carrying on of a business and they dispose of the trading stock at any time, the disposal

is treated as a disposal of trading stock used by the transferee in the carrying on of a business.

Specified livestock in dealing operation

(6) For the purposes of subsection (2), trading stock does not include specified livestock unless it is used in a dealing operation and sections FB 14 and FB 17 apply.

Relationship with sections GC 1 and GC 2

(7) This section overrides sections GC 1 and GC 2 (which relate to the disposal of trading stock for inadequate consideration).

Defined in this Act: amount, business, consideration, income year, settlement of relationship property, specified livestock, trading stock year of transfer

Compare: 2004 No 35 s FF 13

FB 14 Specified livestock

When this section applies

(1) This section applies for the purposes of sections EC 6 to EC 26 (which relate to the valuation of specified livestock) when—

(a) specified livestock is transferred on a settlement of relationship property; and

(b) the transferor used the livestock in the carrying on of a business other than a business of dealing in livestock, and held the livestock at the start of the year of transfer; and

(c) the value of the livestock is not determined under the herd scheme, *see* section FB 15.

Transfer at amount determined under subparts EA and EC

(2) The transfer is treated as a disposal and acquisition for an amount equal to the value that the transferor determined under subpart EC (Valuation of livestock) and took into account in section EA 1 (Trading stock, livestock, and excepted financial arrangements) at the end of the income year before the year of transfer.

Relationship with section GC 1 and GC 2

(3) This section overrides sections GC 1 and GC 2 (which relate to the disposal of trading stock for inadequate consideration).

Defined in this Act: amount, business, herd scheme, income year, settlement of relationship property, specified livestock, year of transfer

Compare: 2004 No 35 s FF 13(1)(a)(i), (3)

FB 15 Specified livestock valued under herd scheme

When this section applies

(1) This section applies for the purposes of sections EC 8 to EC 26 (which relate to the valuation of specified livestock) when—

(a) specified livestock is transferred on a settlement of relationship property and the transferor—

(i) used the livestock in the carrying on of a business; and

(ii) held the livestock at the start of the year of transfer; and

(b) the value of the livestock is determined under the herd scheme—

(i) by the transferor at the end of the income year before the year of transfer; and

(ii) by the transferee at the end of the year of transfer.

Transfer at national average market value

(2) The transfer is treated as a disposal and acquisition for an amount equal to the national average market value of the livestock for the year of transfer. If the transferor adopted a herd value ratio, the amount is equal to the national average market value of the livestock for the year of transfer multiplied by the herd value ratio applying in the income year before the year of transfer.

Defined in this Act: amount, business, herd scheme, herd value ratio, income year, market value, national average market value, settlement of relationship property, specified livestock, year of transfer

Compare: 2004 No 35 s FF 9

FB 16 Non-specified livestock

When subsections (2) to (4) apply

(1) Subsections (2) to (4) apply for the purposes of section EC 31 (Enhanced production) in an income year when—

(a) non-specified livestock is transferred on a settlement of relationship property; and

(b) because of the transfer, the transferee starts to derive, or once again derives, income from non-specified livestock.

Transferee not starting to derive income

(2) The transferee is treated as not starting to derive, or once again deriving income from non-specified livestock. However, the transfer is taken into account in working out whether any later acquisition by the transferee of non-specified livestock means that they start to derive, or once again derive, income from non-specified livestock.

When subsection (4) applies

(3) Subsection (4) applies when the transferee uses the non-specified livestock in deriving income and was not, before the transfer, deriving income from non-specified livestock.

Livestock being written down to standard value

(4) If the year of transfer falls in the first or second year of the 3-year period referred to in section EC 31(1)(b), the transferee must apply section EC 31(2) as if they were the transferor and the transfer had not taken place.

Transferee not acquiring land for production

(5) For the purposes of section EC 31(1)(a)(ii) and (iii), if land is transferred on a settlement of relationship property, the transferee is treated as having acquired the land on the date it was acquired by the transferor.

Defined in this Act: income, income year, land, non-specified livestock, settlement of relationship property, standard value, year of transfer

Compare: 2004 No 35 s FF 10

FB 17 High-priced livestock

When this section applies

(1) This section applies for the purposes of sections EC 32 to EC 37 (which relate to the valuation of high-priced livestock) when high-priced livestock is transferred on a settlement of relationship property.

Transfer at cost

(2) The transfer is treated as a disposal and acquisition for an amount equal to the cost of the livestock to the transferor. The transferee is treated as having acquired the livestock on the day it was acquired by the transferor.

Straight-line method of valuation

(3) In determining the value of the livestock at the end of the year of transfer, the transferee must take into account the amount referred to in subsection (2) reduced by the depreciation percentage of its cost price under section EC 34(2) (General rule). Subsection (4) overrides this subsection.

When diminishing value chosen

(4) If the transferor had chosen to apply the diminishing value method to the valuation of the livestock, the transferee is treated as also having made that choice, and the reduction is calculated under section EC 34(3). But if the transferor had not chosen to apply the diminishing value method, the transferee may make a choice between the methods set out in section EC 34(2) and (3) only if the livestock was acquired by the transferor in the year of transfer.

Defined in this Act: amount, cost price, depreciation percentage, diminishing value method, high-priced livestock, settlement of relationship property, straight-line method, year of transfer

Compare: 2004 No 35 s FF 11

FB 18 Bloodstock

When this section applies

(1) This section applies for the purposes of section EC 41 (Reduction: bloodstock not previously used for breeding in New Zealand) when bloodstock is transferred on a settlement of relationship property.

Use for breeding purposes in New Zealand

(2) If the bloodstock has been used for breeding purposes in New Zealand by the transferor, then for valuation purposes by the transferee and the amount of reduction applying to the value of an animal, the bloodstock is treated as not having been used for breeding purposes in New Zealand by the transferor.

Defined in this Act: amount, bloodstock, New Zealand, settlement of relationship property

Compare: 2004 No 35 s FF 12

FB 19 Leased assets

When this section applies

(1) This section applies when—

(a) a person leases, rents, or hires plant, machinery, or other equipment, including a motor vehicle or a temporary building; and

(b) they are allowed a deduction in an income year for an amount paid under the agreement to lease, rent, or hire; and

(c) they acquire the lease asset at any time, or a person associated with them acquires the asset; and

(d) either they, or the associated person, transfer the asset on a settlement of relationship property.

Income when transferee disposes of asset

(2) If the transferee disposes of the asset for an amount that is more than the transfer amount, they are treated as deriving income as described in section FA 5 (Assets acquired and disposed of after deduction of payments under lease) in the income year of the disposal of the asset equal to the lesser of—

(a) the amount by which the amount derived on disposal is more than the transfer amount; or

(b) the sum of the amounts for which the transferor has been allowed a deduction.

Transfer amount

(3) In this section, the **transfer amount** is the amount that equals, as applicable,—

(a) the adjusted tax value of the asset at the start of the year of transfer; or

(b) if the asset was acquired by the transferor or the associated person during the year of transfer, the base value of the asset.

Defined in this Act: adjusted tax value, amount, associated person, deduction, income, income year, lease, pay, settlement of relationship property, temporary building, transfer amount, year of transfer

Compare: 2004 No 35 s FF 14

FB 20 Mining assets

When this section applies

(1) This section applies when a resident mining operator transfers on a settlement of relationship property an asset that they used immediately before the transfer in deriving assessable income from mining.

Transfer at cost, reduced value, or reduced expenditure

(2) The transfer is treated as a disposal and acquisition for an amount equal to the least of—

(a) the amount of expenditure incurred by the transferor in acquiring the asset:

(b) when the transferor has been allowed a deduction for an amount of depreciation loss in relation to the asset, the adjusted tax value at the start of the year of transfer:

(c) when the asset has been acquired as a result of mining exploration expenditure or mining development expenditure incurred by the transferor for which they have been allowed a deduction under sections DU 1 and DU 9(1) (which relate to mineral mining expenditure), the amount of expenditure not allowed as a deduction under those provisions.

Transferee's expenditure

(3) The transferee is treated as having incurred expenditure in acquiring the asset equal to the amount determined under subsection (2).

When transferee not a resident mining operator

(4) Subsections (5) and (6) apply when—

(a) the transferor is treated as having disposed of the asset for an amount determined under subsection (2)(c); and

(b) the transferee is not a resident mining operator at and after the date of transfer.

Treatment of disposal and transferee

(5) If the transferee disposes of the asset, they are treated as a resident mining operator in relation to the disposal, and the disposal is treated as a sale to which sections CU 3, CU 12(1), DU 2, and DU 9(1) (which relate to mining) apply.

Consideration for disposal

(6) For the purposes of subsection (5), and sections CU 1 to CU 11, DU 1 to DU 8, IA 7(7), IS 1 to IS 4, and IS 6 (which relate to mining and mining companies' tax losses), the consideration for the disposal is the amount by which the amount derived on the disposal under subsection (5) is more than the amount determined under subsection (2)(c).

When transferee is resident mining operator

(7) If the transferee is, at and after the date of transfer, a resident mining operator, and the transferor is treated as having disposed of the asset for an amount determined under subsection (2)(c), then for the purposes of sections CU 3, CU 10, DU 2, and DU 6, the transferee is treated as having acquired the asset as a result of mining exploration expenditure or mining development expenditure incurred by the transferee.

Defined in this Act: adjusted tax value, amount, assessable income, date of transfer, deduction, depreciation loss, income from mining, mining development expenditure, mining exploration expenditure, resident mining operator, settlement of relationship property, year of transfer

Compare: 2004 No 35 s FF 19

FB 21 Depreciable property

When this section applies

(1) This section applies when a person who is allowed a deduction for an amount of depreciation loss for an item of property transfers the item on a settlement of relationship property.

Persons to whom section does not apply

(2) This section does not apply if the person is a resident mining operator to whom section FB 20 applies.

Transfer at cost or adjusted tax value

(3) The transfer is treated as a disposal and acquisition for an amount equal to, as applicable,—

(a) if the transferor acquired the item in the year of transfer, the cost of the item to them; or

(b) in any other case, the adjusted tax value of the item measured at the start of the year of transfer.

Treatment of transferee

(4) In relation to amounts of depreciation loss for the item, the transferee—

(a) has an amount of depreciation loss for the item from the date of transfer, whether or not the transferor has in fact had an amount of depreciation loss:

(b) is treated as having had an amount of depreciation loss equal to all amounts of depreciation loss that the transferor had for the item in income years before the year of transfer:

(c) does not have a greater amount of depreciation loss than that which the transferor would have had if they had kept the item.

When item is building

(5) If the item is a building, the transferee's amount of depreciation loss must be determined having regard to the original cost of the building to the transferor.

Activities in year of transfer

(6) If the item has been acquired, erected, installed, altered, extended, improved, or attached by the transferor in the year of transfer, the item is treated as if it were acquired, erected, installed, altered, extended, improved, or attached by the transferee in the income year.

Conditions applying to item

(7) For the purposes of determining the rate that applies to the item under section EE 31(2)(b) or EZ 23(4) (which relate to depreciation rates for new assets), if either of the following conditions applied to the item when the transferor acquired or erected it, the condition is treated as applying to the item at the date of transfer:

(a) the item had not previously been used by a person, or acquired or held by a person for their use; and

(b) if the item is a building or part of a building, it had not previously been occupied.

Defined in this Act: acquire, adjusted tax value, amount, date of transfer, deduction, depreciable property, depreciation loss, dispose, income year, resident mining operator, settlement of relationship property, year of transfer

Compare: 2004 No 35 ss FF 15, FF 16

Subpart FC—Distribution, transmission, and gifts of property

Introductory provisions

FC 1 What this subpart does

Types of distributions and gifts

(1) This subpart provides a value for property that is disposed of under the following transactions:

(a) the transfer of a person's estate to an executor or administrator on the death of the person:

(b) the transfer of property on a distribution by an executor, administrator, or trustee of a deceased person's estate to a beneficiary who is beneficially entitled to receive the property under the will or the rules governing intestacy:

(c) the transfer of property on a distribution by a trustee of a trust to a beneficiary of the trust:

(d) the transfer of property on a distribution in kind by a company in a transfer of value caused by a shareholding in the company under section CD 6 (When is a transfer caused by a shareholding relationship?):

(e) the transfer of property on the making of a gift:

(f) the transfer of property on a settlement by the trustee of a trust on the trustee of another trust, if authorised under—

(i) a trust instrument as a power of advancement or resettlement:

(ii) section 41 of the Trustee Act 1956 as the payment of money or the application of property.

Some definitions

(2) In this subpart,—

close relative, in relation to a transfer from a person's estate, means—

(a) a surviving spouse, civil union partner, or de facto partner of the deceased person:

(b) a person who is within the second degree of relationship to the deceased person

property includes a look-through interest for a look-through company

tax-base property means—

(a) revenue account property:

(b) an attributing interest in a foreign investment fund (FIF):

(c) a financial arrangement other than an arrangement for which the deceased person, or their trustee, was a cash basis person:

(d) an item for which a deduction for an amount of depreciation loss arises.

Defined in this Act: amount, attributing interest, cash basis person, company, deduction, de facto partner, depreciation loss, FIF, financial arrangement, look-

through company, look-through interest, revenue account property, settlement, transfer of value, trustee

Compare: 2004 No 35 s FI 1

Section FC 1(2) **property**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 63(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section FC 1 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 63(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section FC 1 list of defined terms **look-through interest**: inserted, on 1 April 2011, by section 63(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

FC 2 Transfer at market value

Market value

(1) The transfer of property under section FC 1(1) is treated as a disposal by the transferor and an acquisition by the transferee at the market value of the item for the transferor. The disposal is treated as occurring on the date of the transaction.

Date of transfer of estate of deceased person

(2) For property referred to in section FC 1(1)(a), the disposal and acquisition is treated as occurring immediately before the death of the person.

Exceptions to general rule

(3) Sections FC 3 to FC 6 override this subsection.

Defined in this Act: dispose, market value

Compare: 2004 No 35 ss FI 2, FI 3

Section FC 2(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 204 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Exceptions for property transferred on death of person

FC 3 Property transferred to spouse, civil union partner, or de facto partner

When this section applies

(1) This section applies in the circumstances described in section FC 1(1)(a) or (b) when property is transferred on a person's death to the surviving spouse, civil union partner, or de facto

partner of the deceased person. However, this section does not apply if—

(a) the property is tax-base property; and

(b) a person who is not a close relative of the deceased person is beneficially entitled under the will or intestacy to other property that is tax-base property.

Disposal to spouse or partner

(2) The transfer of property to the surviving spouse, civil union partner, or de facto partner of the deceased person, including any intervening transfer to an executor or administrator, is treated as a transfer of property under a settlement of relationship property under subpart FB (Transfers of relationship property).

Defined in this Act: close relative, de facto partner, settlement of relationship property, tax base property

Compare: 2004 No 35 s FI 4

FC 4 Property transferred to charities or to close relatives and others

When this section applies

(1) This section applies in the circumstances described in section FC 1(1)(b) when tax-base property is transferred on a person's death when the only beneficiaries of the deceased person are—

(a) a close relative of the deceased person:

(b) a person exempt under section CW 43 (Charitable bequests).

Treated as transfer under settlement of relationship property

(2) The transfer is treated as a transfer of property on a settlement of relationship property for the purposes of subpart FB (Transfers of relationship property) if the following requirements are met:

(a) no life interest in the property is created; and

(b) no trust over the property is created, other than a trust to execute the will and administer the estate; and

(c) while the administration of the estate is continuing, the net income of the estate is distributed to the extent allowed—

(i) under the will or the rules governing intestacy; and

(ii) by the trustee's legal obligations.

Defined in this Act: close relative, net income, settlement of relationship property, tax-base property, trustee

Compare: 2004 No 35 s FI 5

Section FC 4(1): substituted, on 6 October 2009, by section 205(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FC 4(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 205(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FC 4(2): amended, on 6 October 2009, by section 205(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FC 4 list of defined terms **tax base property**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 205(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FC 4 list of defined terms **tax-base property**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 205(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FC 5 Land transferred to close relatives

What this section applies to

(1) This section applies in the circumstances described in section FC 1(1)(a) or (b) when land is transferred on a person's death to a close relative of the person.

Land

(2) Sections CB 9 to CB 11 and CB 14 (which relate to the disposal of land) do not apply to the transfer of land, including any intervening transfer to an executor or administrator that, if it had been disposed of by the deceased person, would have resulted in income under any of those sections.

Cost of land

(3) If the land is transferred to a person who disposes of it within 10 years of its acquisition by the deceased person, and the person derives income under any of sections CB 9 to CB 11 and CB 14, the cost of land to the person is—

(a) the cost of the land incurred by the deceased person; and

(b) all other expenditure incurred by both the person and the deceased person that relate to the land for which no deduction has been allowed.

Defined in this Act: close relative, deduction, dispose, income, land, year

Compare: 2004 No 35 s FI 7

FC 6 Forestry assets transferred to close relatives

What this section applies to

(1) This section applies in the circumstances described in section FC 1(1)(a) or (b) when forestry assets are transferred on a person's death to a close relative of the person.

Forestry assets

(2) A transfer of a forestry asset, including any intervening transfer to an executor or administrator, is treated as a transfer of property on a settlement of relationship property for the purposes of subpart FB (Transfers of relationship property).

Meaning of forestry assets

(3) In this section, **forestry assets** means timber, standing timber, or a right to take timber.

Defined in this Act: close relative, forestry assets, right to take timber, settlement of relationship property, standing timber, timber

Compare: 2004 No 35 s FI 6

FC 7 Transfer of prepaid property

What this section applies to

(1) This section applies, in the circumstances described in section FC 1(1)(a) or (b), to a transfer of property on a person's death for which the deceased person has, in the year of transfer, an unexpired portion of expenditure under section EA 3 (Prepayments).

Unexpired prepayments

(2) If section EA 3 applies to the property transferred, the property must be valued under section EA 3(4) to (7), as if the date of transfer were the end of an income year.

Defined in this Act: income year, year

Compare: 2004 No 35 s FI 8

FC 8 Transfer of certain financial arrangements

What this section applies to

(1) This section applies, in the circumstances described in section FC 1(1)(a) or (b), to a transfer of a financial arrangement on a person's death.

Financial arrangements: cash basis person

(2) If the deceased person was a cash basis person and the trustee of the deceased person's estate is a cash basis person under section EW 60(1) (Trustee of deceased's estate), the property must be valued at cost.

Defined in this Act: cash basis person, financial arrangement, trustee

Compare: 2004 No 35 s FI 11

Subpart FE—Interest apportionment on thin capitalisation

Introductory provisions

FE 1 What this subpart does

Interest apportionment

(1) This subpart applies—

(a) to apportion certain interest expenditure between income that has a source in New Zealand and other income for a New Zealand taxpayer who—

(i) is controlled by a single non-resident, or is a New Zealand resident (an **outbound entity**) with an income interest in a CFC, or a New Zealand resident that controls an outbound entity; and

(ii) has a disproportionately high level of debt funding in relation to their worldwide interest expenditure; and

(b) to prescribe an acceptable level of equity for a foreign-owned bank for the application of the interest apportionment rules.

Structure of subpart

(2) This subpart sets out—

(a) the persons to whom the interest apportionment rules may apply:

(b) the thresholds for the application of the rules:

(c) the consequences of application of the rules:
(d) how to calculate the debt percentages of a New Zealand group and a worldwide group:
(e) how to calculate a reporting bank's New Zealand equity threshold, net equity, and funding debt:
(f) how to determine the membership of a New Zealand group, a worldwide group, and a New Zealand banking group:
(g) how to measure ownership interests in companies for the purposes of this subpart.

Defined in this Act: CFC, income, income interest, interest, New Zealand, New Zealand banking group, non-resident, reporting bank, source in New Zealand, taxpayer

Compare: 2004 No 35 s FG 1

Section FE 1(1)(a): amended, on 21 December 2010, by section 64(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FE 1(1)(a)(i): substituted (with effect on 30 June 2009), on 6 October 2009, by section 206(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 1 list of defined terms **CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 206(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 1 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 1 list of defined terms **income derived from New Zealand**: repealed, on 21 December 2010, by section 64(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FE 1 list of defined terms **income interest**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 206(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 1 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 64(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

FE 2 When this subpart applies

Persons to whom interest apportionment rules may apply

(1) The interest apportionment rules in sections FE 6 and FE 7 may apply to the following persons if, at a time in an income year, they are:
(a) a non-resident who is not a company:

(b) a non-resident company unless the company is 1 in which—

(i) a person resident in New Zealand has a direct ownership interest of 50% or more; and

(ii) no non-resident has a direct ownership interest of 50% or more, when added to any direct ownership interests of all persons associated with them:

(c) a company that is resident in New Zealand if a non-resident has—

(i) an ownership interest in the company of 50% or more:

(ii) control of the company by any other means:

(d) the trustee of a non-complying trust settled by a non-resident if the value of the settlements made by them, including the value of all settlements made by a person associated with them, are 50% or more of the value of the settlements made on the trust:

(e) a company that is resident in New Zealand and has an income interest in a CFC:

(f) a company that is resident in New Zealand and has—

(i) an ownership interest in a company described in paragraph (e) of 50% or more:

(ii) control of a company described in paragraph (e) by any other means:

(g) a natural person, or a trustee of a trust settled by a New Zealand resident, if the natural person or trustee is resident in New Zealand and has—

(i) an income interest in a CFC:

(ii) an ownership interest in a company described in paragraph (e) or (f) of 50% or more:

(iii) control of a company described in paragraph (e) or (f) by any other means.

Ownership interests

(2) Ownership interests in a company are determined under sections FE 38 to FE 41.

Treatment of foreign companies

(3) For the purposes of this section, a company resident in New Zealand is treated as being a non-resident company if it is

treated under a double tax agreement as not being resident in New Zealand.

Associated persons

(4) For the purposes of subsection (1)(b)(ii), a non-resident who does not have a direct or an indirect ownership interest in a company and a relative resident in New Zealand are not associated persons in relation to the company.

Defined in this Act: associated person, CFC, company, income interest, income year, interest, New Zealand, non-complying trust, non-resident, non-resident company, relative, resident in New Zealand, settlement, trustee

Compare: 2004 No 35 s FG 2(1), (6), (8)

Section FE 2(1)(d): amended (with effect on 30 June 2009), on 6 October 2009, by section 207(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 2(1)(e): added (with effect on 30 June 2009), on 6 October 2009, by section 207(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 2(1)(f): added (with effect on 30 June 2009), on 6 October 2009, by section 207(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 2(1)(g): added (with effect on 30 June 2009), on 6 October 2009, by section 207(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 2 list of defined terms **CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 207(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 2 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 2 list of defined terms **income interest**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 207(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 3 Interest apportionment for individuals

Natural persons and trustees: inbound, not described in section FE 2(1)(g)

(1) This subpart applies to a natural person or trustee not described in section FE 2(1)(g) with the following modifications:

(a) the New Zealand group of the natural person or trustee is made up of the natural person or trustee and all associated persons who—

(i) are resident in New Zealand; or

(ii) are carrying on business in New Zealand through a fixed establishment in New Zealand; or

(iii) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:

(b) the worldwide group of the trustee is made up of the trustee and—

(i) the trustee's New Zealand group; and

(ii) all non-residents who are associated with the trustee or a member of the trustee's New Zealand group:

(c) in the calculation of the amount of the natural person's total assets, private and domestic assets are excluded.

Natural persons and trustees: outbound, described in section FE 2(1)(g)

(2) This subpart applies to a natural person or trustee described in section FE 2(1)(g) with the following modifications:

(a) the New Zealand group of the natural person or trustee is made up of the natural person or trustee and all associated persons who are not excess debt outbound companies and are not included in a New Zealand group of an excess debt outbound company, and who—

(i) are resident in New Zealand; or

(ii) are carrying on business in New Zealand through a fixed establishment in New Zealand; or

(iii) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:

(b) the worldwide group of the trustee is made up of the trustee and—

(i) the trustee's New Zealand group; and

(ii) all CFCs in which the trustee or a member of the trustee's New Zealand group has an income interest:

(c) in the calculation of the amount of the natural person's total assets, private and domestic assets are excluded.

Defined in this Act: amount, associated person, business, CFC, double tax agreement, fixed establishment, generally accepted accounting practice, group of companies, income interest, natural person, New Zealand, resident in New Zealand, source in New Zealand, total group assets, total group debt, trustee

Section FE 3: substituted (with effect on 30 June 2009), on 6 October 2009, by section 208(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 4 Some definitions

In this subpart,—

excess debt entity for an income year is a person who—

(a) meets the requirements of section FE 2 in the income year; and

(b) is not, at any time in the income year, a reporting bank for a New Zealand banking group, or part of a New Zealand banking group; and

(c) is not a natural person other than a person acting as a trustee

excess debt outbound company for an income year is an excess debt entity that meets the requirements of section FE 2(1)(e) or (f), and none of the requirements of section FE 2(1)(a) to (d)

natural person for an income year is a natural person who—

(a) meets the requirements of section FE 2 in the income year; and

(b) is a person who is not acting as a trustee

reporting bank for a New Zealand banking group is a person who—

(a) meets the requirements of section FE 2; and

(b) is the person determined under section FE 37.

Defined in this Act: excess debt entity, income year, natural person, New Zealand, New Zealand banking group, reporting bank, trustee

Section FE 4 **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 209(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 4 **reporting bank**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 209(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 4 list of defined terms **registered bank**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 209(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Interest apportionment rules

FE 5 Thresholds for application of interest apportionment rules

Threshold for excess debt entity

(1) An excess debt entity must apportion its interest expenditure for an income year under section FE 6 if,—

(a) the excess debt entity is not a trustee and not an excess debt outbound company, or is a trustee who is not described in section FE 2(1)(g), and—

(i) the debt percentage of its New Zealand group for the income year is more than 60%; and

(ii) for a company or a trustee, the debt percentage of its New Zealand group for the income year is more than 110% of the debt percentage of the worldwide group; or

(b) the excess debt entity is an excess debt outbound company, or is a trustee who is described in section FE 2(1)(g), and—

(i) the debt percentage of its New Zealand group for the income year is more than 75%; and

(ii) for a company or a trustee, the debt percentage of its New Zealand group for the income year is more than 110% of the debt percentage of the worldwide group.

Exceptions for excess debt outbound companies

(1B) Despite subsection (1), an excess debt outbound company and a natural person or trustee who is described in section FE 2(1)(g) do not have to apportion interest expenditure for an income year under section FE 6 if, for the income year,—

(a) the ratio of the total group assets measured under section FE 16 for its New Zealand group to the total group assets measured under section FE 18 for its worldwide group is 90% or greater:

(b) its New Zealand group—

(i) has a total amount of deductions for interest allowed under sections DB 6 to DB 8 (which relate to deductions for interest) to the group, less the total deductions allowed in relation to inter-

est payable intra-group, that is not greater than $250,000; and

(ii) does not include an entity with an income interest in a CFC, and the CFC derives rent from land in the country or territory in which the CFC is resident.

Natural persons' worldwide group total assets

(1C) For the purposes of subsection (1B)(a), the total group assets of a natural person's worldwide group under section FE 18 are measured on the basis that the natural person is an excess debt entity that has a worldwide group made up of—

(a) the natural person; and

(b) the natural person's New Zealand group; and

(c) all CFCs in which the natural person or a member of the natural person's New Zealand group has an income interest.

Threshold for reporting bank

(2) A reporting bank must apportion its interest expenditure for an income year under section FE 7 if—

(a) the New Zealand net equity of its New Zealand banking group for a tax year is less than its equity threshold; and

(b) its group funding debt for the corresponding tax year is more than zero.

Threshold for natural person

(3) A natural person must apportion their interest expenditure for an income year under section FE 6 if,—

(a) they are not described in section FE 2(1)(g), and the debt percentage of their New Zealand group for the income year is more than 60%; or

(b) they are described in section FE 2(1)(g), and the debt percentage of their New Zealand group for the income year is more than 75%.

Debt percentages

(4) The debt percentage of a New Zealand group is calculated under sections FE 14 to FE 16. The debt percentage of a worldwide group is calculated under sections FE 17 and FE 18.

Equity threshold, net equity, group funding debt

(5) The calculations that a reporting bank must make for the purposes of section FE 7 are set out as follows:

(a) for the banking group's equity threshold, *see* section FE 19:

(b) for the banking group's New Zealand net equity, *see* section FE 21:

(c) for the banking group's funding debt, *see* section FE 23.

Defined in this Act: CFC, company, excess debt entity, excess debt outbound company, group funding debt, income interest, income year, interest, natural person, New Zealand, New Zealand banking group, New Zealand net equity, reporting bank, tax year, total group assets, trustee

Compare: 2004 No 35 s FG 3

Section FE 5(1): substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 87(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section FE 5(1B) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5(1B): inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5(1C) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5(1C): inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5(3): substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 87(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section FE 5 list of defined terms **CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5 list of defined terms **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5 list of defined terms **income interest**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 5 list of defined terms **total group assets**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 210(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 6 Apportionment of interest by excess debt entity

Who this section applies to

(1) This section applies to an excess debt entity or a natural person if section FE 5 requires the entity or person to apportion their interest expenditure for an income year under this section. A natural person is treated as an excess debt entity for the purposes of this section other than in the item **threshold amount**.

Formula

(2) The excess debt entity is treated under section CH 9 (Interest apportionment: excess debt entity) as deriving in the income year an amount of income calculated for the income year using the formula—

$$\text{(total deduction + FRD – adjust)} \times \frac{\text{total debt – concession}}{\text{total debt}} \times \frac{\text{group debt percentage – threshold amount}}{\text{group debt percentage}}.$$

Items in formula

(3) In the formula,—

(a) **total deduction** is the whole amount of the excess debt entity's deduction for interest allowed under any of sections DB 6 to DB 8 (which relate to deductions for interest expenditure) less—

(i) the total amount allowed in relation to interest payable to a company that is a member of the entity's New Zealand group under sections FE 3 and FE 28, but this does not include an amount referred to in subparagraph (ii); and

(ii) the total amount allowed in relation to interest payable under a financial arrangement excluded from the total group debt of its New Zealand group under section FE 15:

(ab) **FRD** is the total amount of dividends paid by the excess debt entity in relation to fixed-rate foreign equity or fixed-rate shares—

(i) issued by the entity; and

(ii) held by a person resident in New Zealand who is not a company that is a member of the entity's New Zealand group:

(ac) **adjust** is—

(i) zero, if the excess debt entity is not an excess debt outbound company or a natural person or trustee described in section FE 2(1)(g); or

(ii) the amount (the **group finance cost**) that is the total amount for the New Zealand group found by calculating for each member of the New Zealand group the total amount (the **member finance cost**) of the items total deduction and FRD for the member, if the group finance cost is $1,000,000 or less and subparagraph (i) does not apply; or

(iii) the amount found by multiplying the amount by which $2,000,000 exceeds the group finance cost by the ratio obtained by dividing the member finance cost for the excess debt entity by the group finance cost, if the group finance cost is more than $1,000,000 and less than $2,000,000 and subparagraph (i) does not apply; or

(iv) zero, if the group finance cost is $2,000,000 or more and subparagraph (i) does not apply:

(b) **total debt** is the total amount of the debt of the excess debt entity's New Zealand group for the income year as calculated under section FE 15, before allowing for a reduction under section FE 13:

(c) **concession** is any reduction allowed under section FE 13 in the total group debt of the excess debt entity's New Zealand group for the income year, averaged when section FE 8(1)(a) or (b) applies:

(d) **group debt percentage** is the debt percentage of the excess debt entity's New Zealand group for the income year:

(e) **threshold amount** is, as applicable,—

(i) if the excess debt entity is not a trustee and not an excess debt outbound company, or is a trustee who is not described in section FE 2(1)(g), the greater of 60% and 110% of the debt percentage of their worldwide group:

(ii) if the person is a natural person who is not described in section FE 2(1)(g), 60%:

(iii) if the excess debt entity is an excess debt outbound company, or is a trustee who is described in section FE 2(1)(g), the greater of 75% and 110% of the debt percentage of their worldwide group:

(iv) if the person is a natural person who is described in section FE 2(1)(g), 75%.

Alternative calculation

(4) If a company that is in the same wholly-owned group of companies as the excess debt entity has a deduction for interest under any of sections DB 6 to DB 8, the company may choose to be treated as deriving the income that the excess debt entity would otherwise, under subsection (2), be treated as deriving for the income year. The amount of income is not calculated using the formula in subsection (2) but is limited as set out in subsection (5).

Limitation on election amount

(5) The amount of income for which the company may make the election under subsection (4) must not be more than the total amount of deductions that the company has for interest for the income year, having taken into account any other income that the company chooses to treat itself as deriving under subsection (4).

Defined in this Act: amount, company, deduction, excess debt entity, excess debt outbound company, financial arrangement, fixed-rate foreign equity, fixed-rate share, income, income year, interest, natural person, New Zealand, pay, total group debt, trustee, wholly owned group of companies

Compare: 2004 No 35 s FG 8

Section FE 6(1) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 211(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 211(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6(2) formula: amended (with effect on 30 June 2009), on 6 October 2009, by section 211(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6(3)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 211(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6(3)(a)(i): amended (with effect on 1 April 2008), on 29 August 2011, by section 45(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(3)(ab): inserted (with effect on 30 June 2009), on 6 October 2009, by section 211(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6(3)(ac): inserted (with effect on 30 June 2009), on 6 October 2009, by section 211(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6(3)(ac)(ii): substituted (with effect on 23 November 2010), on 29 August 2011, by section 45(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(3)(ac)(iii): substituted (with effect on 23 November 2010), on 29 August 2011, by section 45(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(3)(ac)(iv): substituted (with effect on 23 November 2010), on 29 August 2011, by section 45(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(3)(e): substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 88(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section FE 6(4) heading: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 45(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(4): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 45(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(5) heading: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 45(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6(5): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 45(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 6 list of defined terms **excess debt outbound company**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 88(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section FE 6 list of defined terms **fixed-rate foreign equity**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 211(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6 list of defined terms **fixed-rate share**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 211(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 6 list of defined terms **wholly owned group of companies**: added (with effect on 1 April 2008), on 29 August 2011 by section 45(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

FE 7 Apportionment of interest by reporting bank

When this section applies

(1) This section applies to a reporting bank if, at the relevant measurement date referred to in section FE 8(3),—

(a) the New Zealand net equity of its New Zealand banking group for an income year is less than its equity threshold under section FE 19; and

(b) its group funding debt for the corresponding tax year is more than zero.

Income

(2) The reporting bank is treated as deriving an amount of income under section CH 10 (Interest apportionment: reporting bank) calculated using the formula—

$$\text{amount of threshold} \times \frac{\text{interest expenditure}}{\text{group funding debt}} \times \frac{\text{days in period}}{\text{days in year}}.$$

Definition of items in formula

(3) In the formula,—

(a) **amount below threshold** is the amount by which the New Zealand net equity for the New Zealand banking group is less than the equity threshold under section FE 19:

(b) **interest expenditure** is the financial value for the New Zealand banking group of interest expenditure measured under generally accepted accounting practice that is incurred—

(i) by a member of the New Zealand banking group in the income year; and

(ii) other than in relation to a share that contributes to the item **total interest** in the formula in section FE 23, or is a deduction referred to in the definition of the item **interest deductions** in that section:

(c) **days in period** is the number of days in the relevant measurement period:

(d) **group funding debt** is the group funding debt for the New Zealand banking group for the corresponding tax year:

(e) **days in year** is the number of days in the income year.

Apportionment of income to part-years

(4) If an amount of income described in subsection (2) must be apportioned under this Act to a part of an income year, the amount of income for a measurement period is attributed to the part of the income year in which the measurement period falls.

Defined in this Act: amount, deduction, financial value, generally accepted accounting practice, group funding debt, income, income year, interest, measurement period, New Zealand, New Zealand banking group, New Zealand net equity, reporting bank, share, tax year

Compare: 2004 No 35 s FG 8B

FE 8 Measurement dates

Daily, 3-monthly, or annual basis for excess debt entity

(1) An excess debt entity must measure the amount of total group debt and total group assets of its New Zealand group for an income year using 1 of the following methods:

(a) the average amount at the end of each day of the income year; or

(b) the average amount at the end of each 3-month period in the income year; or

(c) the amount at the end of the income year.

Different balance dates

(2) For the purposes of subsection (1), if the members of the entity's New Zealand group do not have the same balance date, the alternatives in subsection (1) apply as if the entity has the same balance date as that of the New Zealand parent.

Daily, monthly, or quarterly for reporting bank

(3) A reporting bank must measure both the equity threshold and the net equity of its New Zealand banking group for an income year on 1 of the following dates:

(a) each day of the income year; or

(b) the last day of each calendar month of the income year; or

(c) if the reporting bank does not choose either paragraph (a) or (b), the last day of each quarter of an income year.

Change in identity of reporting bank

(4) If the identity of the reporting bank changes, the first measurement date for the new reporting bank is the day after the last measurement date of the former reporting bank.

Defined in this Act: amount, excess debt entity, income year, New Zealand, New Zealand banking group, quarter, reporting bank, total group assets, total group debt

Compare: 2004 No 35 ss FG 4(5), (6), FG 8E

FE 9 Elections

Return of income

(1) An election or choice under this subpart is made by providing a return of income for the relevant income year.

Measurement date

(2) A choice of measurement date under section FE 8 may be changed after a notice of assessment for an income year is received from the Commissioner.

Control threshold, enlarged New Zealand group

(3) A choice of control threshold under section FE 27, or an election to include certain other companies in a New Zealand group under section FE 30 by a person other than an excess debt entity is made by providing notice to the Commissioner with the return of income for the relevant income year.

Defined in this Act: assessment, Commissioner, company, excess debt entity, income year, New Zealand, notice, return of income

Compare: 2004 No 35 s FG 10

Section FE 9 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 10 Currency

Calculations

(1) In this subpart, the following values must be calculated in New Zealand currency:

(a) an amount of total group debt and an amount of total group assets of a New Zealand group or of a worldwide group:

(b) a financial arrangement or risk-weighted exposure.

Currency conversions for excess debt entity

(2) If the value referred to in subsection (1) is denominated in a foreign currency, an excess debt entity must convert the value to New Zealand currency at—

(a) the close of trading spot exchange rate for the foreign currency on the relevant measurement date under section FE 8; or

(b) the forward exchange rate that applies on the first day of the income year for the relevant measurement date under section FE 8.

Currency conversions for reporting bank

(3) If the value referred to in subsection (1) is denominated in a foreign currency, a reporting bank must convert the value to New Zealand currency at the close of trading spot exchange rate for the foreign currency on the relevant measurement date under section FE 8.

Defined in this Act: amount, close of trading spot exchange rate, excess debt entity, financial arrangement, income year, New Zealand, reporting bank, total group assets, total group debt

Compare: 2004 No 35 ss FG 4(7), FG 5(6), FG 7, FG 8I

FE 11 Temporary increases or decreases in value

A temporary increase or decrease in a value applying in this subpart must be excluded from a calculation made under this subpart if—

(a) the increase or decrease has, or would have, a purpose or effect of defeating the intent and application of this subpart; or

(b) the change is produced by an arrangement that has an effect of defeating the intent and application of this subpart.

Defined in this Act: arrangement

Compare: 2004 No 35 ss FG 4(8), FG 5(7), FG 8J

Calculations

FE 12 Calculation of debt percentages

Requirement for New Zealand group

(1) An excess debt entity must calculate the debt percentage of its New Zealand group under the rules set out in sections FE 14 to FE 16. A natural person or an excess debt entity must calculate their debt percentage under the rules set out in sections FE 13 to FE 16 and FE 18.

Requirement for worldwide group

(2) If the debt percentage of the New Zealand group is, as applicable, more than 60% as described in section FE 5(1)(a), or more than 75% as described in section FE 5(1)(b), then the entity must calculate the debt percentage of their worldwide group under the rules set out in sections FE 17 and FE 18.

Debt percentage of group

(3) A debt percentage of a group is found by dividing the amount of total group debt by the amount of total group assets of the group for an income year or accounting year, as applicable. The amounts are calculated on a consolidated basis. Total group debt and total group assets for an income year or accounting year are defined in—

(a) sections FE 15 and FE 16 for a New Zealand group; and

(b) section FE 18 for a worldwide group.

Membership of company's New Zealand group

(4) For an excess debt entity that is a company, the New Zealand group is made up of all companies, traced tier by tier, that are identified as within the control threshold of the New Zealand parent, *see*section FE 27. Section FE 25 provides the process for determining who is a member of a group based on the identification of a New Zealand parent and the establishment of the control threshold.

Membership of company's worldwide group

(5) For an excess debt entity that is a company, the worldwide group is made up of all companies included as members of the worldwide group under—

(a) sections FE 31 and FE 32, for an excess debt entity that is not an excess debt outbound company:

(b) sections FE 31B to FE 32, for an excess debt outbound company.

Natural persons: membership of New Zealand groups

(6) For a natural person, the membership of the New Zealand group is determined as described in section FE 3(1) and (2), as applicable.

Trustees: membership of New Zealand and worldwide groups

(7) For a trustee, the memberships of the New Zealand group and the worldwide group are determined as described in section FE 3(1) and (2), as applicable.

Defined in this Act: accounting year, amount, company, excess debt entity, excess debt outbound company, income year, natural person, New Zealand, non-resident, total group assets, total group debt, trustee, ultimate parent

Compare: 2004 No 35 ss FG 3, FG 4(1), FG 5(1)

Section FE 12(1): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 46(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section FE 12(1): amended (with effect on 30 June 2009), on 6 October 2009, by section 212(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(2): amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 89(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section FE 12(2): amended (with effect on 30 June 2009), on 6 October 2009, by section 212(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(5) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 212(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(5): substituted (with effect on 30 June 2009), on 6 October 2009, by section 212(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(6) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 212(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(6): substituted (with effect on 30 June 2009), on 6 October 2009, by section 212(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(7) heading: added (with effect on 30 June 2009), on 6 October 2009, by section 212(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12(7): added (with effect on 30 June 2009), on 6 October 2009, by section 212(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 12 list of defined terms **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 212(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 13 Financial arrangements entered into with persons outside group

When this section applies

(1) This section applies when a natural person, a member of a natural person's New Zealand group, an excess debt entity, or a member of an entity's New Zealand group or worldwide group, enters into a financial arrangement with another person (**person A**) as described in this section and the financial arrangement—

(a) provides funds to person A; and

(b) would otherwise be included in the calculation of the debt percentage of the natural person, excess debt entity, New Zealand group, or worldwide group.

Reduction

(2) In the calculation of the debt percentage of the New Zealand group and a worldwide group, the amount of total group debt and total group assets is reduced by the outstanding balance of the financial arrangement.

Debt percentage of New Zealand group

(3) In the calculation of the debt percentage of a New Zealand group, the reduction applies if the consideration for the financial arrangement is at arm's length, and person A is 1 of the following:

(a) a non-resident who is not carrying on business through a fixed establishment in New Zealand and who—

(i) does not derive income that has a source in New Zealand:

(ii) does derive income that has a source in New Zealand and, for all of that income, relief from New Zealand tax under a double tax agreement is available; or

(b) a person who is not associated with the excess debt entity; or

(c) a person who is associated with the excess debt entity but—

(i) is not a member of the New Zealand group; and

(ii) is a person to whom this subpart may apply under section FE 2.

Debt percentage of worldwide group

(4) In the calculation of the debt percentage of a worldwide group, the reduction applies if person A is not associated with the excess debt entity.

Defined in this Act: amount, associated person, business, double tax agreement, excess debt entity, financial arrangement, fixed establishment, natural person, New Zealand, non-resident, source in New Zealand, total group assets, total group debt

Compare: 2004 No 35 s FG 6

Section FE 13(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 213(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 13(2): amended (with effect on 30 June 2009), on 6 October 2009, by section 213(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 13(3)(a): substituted (with effect on 30 June 2009), on 6 October 2009, by section 213(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 13 list of defined terms **double tax agreement**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 213(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 13 list of defined terms **source in New Zealand**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 213(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Debt percentage of New Zealand group

FE 14 Consolidation of debts and assets

Company calculation

(1) For an excess debt entity that is a company, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by con-

solidating the debts and assets of the members of the entity's New Zealand group.

Natural persons' and trustees' calculation

(2) For a natural person and an excess debt entity that is a trustee, the debt percentage of a New Zealand group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets for the group.

When member not resident

(3) If a member of a New Zealand group is not resident in New Zealand, the assets and debts of the member are included in a consolidation only to the extent to which the assets and debts are for the group member to—

(a) carry on business in New Zealand through a fixed establishment in New Zealand:

(b) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.

Treatment of specified leases and particular interest expenditure

(4) In this subpart, in the determination of total group debt and total group assets and the calculation of an amount for which a deduction is denied,—

(a) a specified lease under section FZ 2 (Effect of specified lease on lessor and lessee) is treated as a financial arrangement that provides funds to the issuer; and

(b) expenditure incurred by the lessee under a specified lease for which a deduction is allowed under section BD 2 (Deductions) is treated as an amount of interest to which any of sections DB 6 to DB 8 (which relate to deductions for interest expenditure) applies; and

(c) interest that is allowed as a deduction under either of the following sections is treated as an amount of interest to which any of sections DB 6 to DB 8 applies, if not already allowed under those sections:

(i) section DP 1(1)(b) (Expenditure of forestry business):

(ii) section DV 10(1)(a) or (b) (Building societies).

Defined in this Act: amount, associated person, business, company, deduction, double tax agreement, excess debt entity, financial arrangement, fixed establishment, generally accepted accounting practice, interest, issuer, lessee, New Zealand, resident in New Zealand, source in New Zealand, specified lease, total group assets, total group debt, trustee

Compare: 2004 No 35 ss FG 4(9), (15), (17), FG 9

Section FE 14(2) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 214(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 14(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 214(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 14(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 214(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 14(3): substituted (with effect on 30 June 2009), on 6 October 2009, by section 214(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 14 list of defined terms **double tax agreement**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 214(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 14 list of defined terms **source in New Zealand**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 214(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 15 Total group debt

Meaning

(1) In this subpart, for a New Zealand group, **total group debt** means the sum of the outstanding balances of—

(a) financial arrangements entered into by a natural person, or an excess debt entity, or another member of the New Zealand group, if the financial arrangement—

(i) provides funds to the natural person, the entity, or another member of the group; and

(ii) gives rise to an amount for which the natural person, the entity, or another member of the group, would have a deduction:

(b) fixed-rate foreign equity or fixed-rate shares that are—

(i) issued by the entity or another member of the New Zealand group; and

(ii) held by a person resident in New Zealand:

(c) stapled debt securities—

(i) issued by the entity or another member of the New Zealand group; and

(ii) held by a person resident in New Zealand; and

(iii) stapled to shares other than shares of a company that is a proportional-stapling company.

Exchange rate fluctuations

(2) Subsection (1)(a)(ii) does not include a deduction for an amount that arises only from movement in currency exchange rates.

Section 90A Tax Administration Act 1994

(3) For a determination on whether a financial arrangement provides funds, *see*section 90A of the Tax Administration Act 1994.

Defined in this Act: amount, deduction, excess debt entity, financial arrangement, fixed-rate foreign equity, natural person, New Zealand, proportional-stapling company, resident in New Zealand, stapled, stapled debt security

Compare: 2004 No 35 s FG 4(2)

Section FE 15(1) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 215(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 215(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15(1)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 215(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15(2) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 215(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 215(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15 list of defined terms **fixed-rate foreign equity**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 215(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15 list of defined terms **proportional-stapling company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 215(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15 list of defined terms **resident in New Zealand**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 215(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15 list of defined terms **stapled**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 215(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 15 list of defined terms **stapled debt security**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 215(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 16 Total group assets

Meaning

(1) In this subpart, for a New Zealand group, **total group assets** for an income year means the total assets of a natural person, or an excess debt entity, or another member of the New Zealand group, measured under the following paragraphs, as applicable or as the person or entity chooses:

(a) the value of the assets shown in the financial statements of the entity's New Zealand group; or

(b) the net current value of the assets; or

(c) market value, for trading stock that is valued at market value in calculating the person or entity's income tax liability for the income year, or that of a member of the group; or

(d) adjusted tax value of a personal property lease asset at the start of the income year, in the case of a specified lease or a finance lease that is not recognised as an asset under generally accepted accounting practice; or

(e) if allowed under generally accepted accounting practice, a combination of the financial statement values and net current values.

CFC investments excluded

(1B) If the excess debt entity or another member of the New Zealand group has an investment in a CFC in which the entity or member has an income interest, the value of the total group assets calculated and measured under this section does not include the value of the investment, except—

(a) to the extent to which—

(i) the value of the investment represents the outstanding balances of financial arrangements to which section FE 13 applies:

(ii) the CFC derives income with a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable:

(b) that the value of the total group assets is treated as being $1 if the value would otherwise be zero as a result of this subsection.

When member not resident

(1C) If the excess debt entity or another member of a New Zealand group is not resident in New Zealand, the assets of the entity or member are included in the calculation and measurement of total group assets under this section only to the extent to which the assets are for the entity or member to—

(a) carry on business in New Zealand through a fixed establishment in New Zealand:

(b) derive income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable.

Generally accepted accounting practice

(2) The amount of total group assets must be calculated under generally accepted accounting practice, with the exception of the values referred to in subsection (1)(c) or (d).

Defined in this Act: adjusted tax value, amount, CFC, double tax agreement, excess debt entity, finance lease, generally accepted accounting practice, income interest, income tax liability, income year, lease, market value, natural person, New Zealand, personal property lease asset, source in New Zealand, specified lease trading stock

Compare: 2004 No 35 s FG 4(3), (4)

Section FE 16(1B) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16(1B): inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16(1C) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16(1C): inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16 list of defined terms **CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16 list of defined terms **double tax agreement**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16 list of defined terms **income interest**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 16 list of defined terms **source in New Zealand**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 216(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Debt percentage of worldwide group

FE 17 Consolidation of debts and assets

For an excess debt entity that is a company, the debt percentage of a worldwide group is calculated under generally accepted accounting practice for the consolidation of companies for the purposes of eliminating intra-group balances by consolidating the debts and assets of the members of the entity's worldwide group using—

(a) a financial standard used in the country in which the entity's ultimate non-resident parent company resides, as described in section FE 18(1)(a), if applicable; or

(b) generally accepted accounting practice.

Defined in this Act: company, excess debt entity, generally accepted accounting practice, non-resident company, ultimate parent

Compare: 2004 No 35 s FG 5(2), (10)

FE 18 Measurement of debts and assets of worldwide group

Standards applying

(1) The amount of total group debt and the amount of total group assets of the worldwide group of an excess debt entity is calculated—

(a) using a standard that is equivalent to generally accepted accounting practice for consistent and non-distorting financial reporting; and

(b) in accordance with the financial reporting standards of the country where the worldwide group's consolidated financial accounts are prepared.

Date of measurement

(2) The amount of total group debt and the amount of total group assets of the worldwide group of an excess debt entity for an income year are measured using—

(a) the average amount at the end of each day of the income year; or

(b) the average amount at the end of each 3-month period in the income year; or

(c) the amount as at the worldwide group's balance date that immediately precedes the income year.

Measurement of amounts

(3) Despite subsection (1), an excess debt entity must measure the amount of total group debt by applying section FE 15 as if it referred to a deduction that would be allowed if the entity, or another group member, were resident in New Zealand.

Commissioner's estimate

(4) If an excess debt entity is unable to calculate the debt percentage of their worldwide group for an income year, they may ask the Commissioner to estimate the percentage under this subpart. The estimate is then treated as the percentage applying for the purposes of this subpart.

Default percentage

(5) The debt percentage of the worldwide group of an excess debt entity is treated as,—

(a) 54.5454%, if the excess debt entity is not a trustee and not an excess debt outbound company, or is a trustee who is not described in section FE 2(1)(g), and—

(i) the entity is unable to calculate the percentage and does not ask the Commissioner to make an estimate under subsection (4):

(ii) the Commissioner cannot reasonably estimate the debt percentage under subsection (4):

(iii) no member of the entity's worldwide group, other than the entity, is not resident in New Zealand; or

(b) 68.1818%, if the excess debt entity is an excess debt outbound company, or is a trustee who is described in section FE 2(1)(g), and—

(i) the entity is unable to calculate the percentage and does not ask the Commissioner to make an estimate under subsection (4):

(ii) the Commissioner cannot reasonably estimate the debt percentage under subsection (4):

(iii) no member of the entity's worldwide group, other than the entity, is not resident in New Zealand.

Defined in this Act: amount, Commissioner, deduction, excess debt entity, generally accepted accounting practice, income year, resident in New Zealand, total group assets, total group debt

Compare: 2004 No 35 s FG 5(2)–(5), (12), (13)

Section FE 18(1): amended (with effect on 30 June 2009), on 6 October 2009, by section 217(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 18(2) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 217(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 18(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 217(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 18(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 217(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 18(3): substituted (with effect on 30 June 2009), on 6 October 2009, by section 217(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 18(4): amended (with effect on 30 June 2009), on 6 October 2009, by section 217(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 18(5): substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 90(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section FE 18 list of defined terms **natural person**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 217(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

New Zealand banking group

FE 19 Banking group's equity threshold

Requirement for New Zealand banking group: formula

(1) A reporting bank must calculate the equity threshold of its New Zealand banking group for a tax year using the formula—

0.04 × (risk-weighted exposures − deductions from equity value).

Definition of items in formula

(2) In the formula,—

(a) **risk-weighted exposures** is the sum of the following values:

(i) for an asset included in a balance sheet, the regulatory value of the asset:

(ii) for an exposure not included in a balance sheet, the regulatory value of the exposure:

(iii) for an amount of goodwill that is not taken into account in adjustment 4: intangible assets in determining the New Zealand net equity of the group under section FE 21, the financial value of the goodwill:

(b) **deductions from equity value** is the total amount of the regulatory values of adjustments 1 to 10 referred to in section FE 21.

Assets of fixed establishments

(3) For the purposes of this section, the assets of a fixed establishment include those treated as assets of the fixed establishment under generally accepted accounting practice.

Defined in this Act: amount, financial value, fixed establishment, generally accepted accounting practice, New Zealand banking group, New Zealand net equity, regulatory value, reporting bank, tax year

Compare: 2004 No 35 s FG 8H

FE 20 Financial value and regulatory value

Financial value

(1) In sections FE 19, and FE 21 to FE 23, the **financial value** of an item for a New Zealand banking group at a time is the amount recorded for the item in the group's financial statements that—

(a) relate to the time; and

(b) are prepared for external reporting purposes; and

(c) are consistent with generally accepted accounting practice for the consolidation of a group of companies for the purposes of eliminating intra-group balances.

Regulatory value

(2) In section FE 19, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item for the purposes of the Capital Adequacy Framework issued by the Reserve Bank of New Zealand acting in the prudential supervision of registered banks under the Reserve Bank of New Zealand Act 1989.

Defined in this Act: amount, financial value, generally accepted accounting practice, group of companies, issue, New Zealand, New Zealand banking group, registered bank, regulatory value

Compare: 2004 No 35 s FG 8F

FE 21 Banking group's New Zealand net equity

Formula

(1) A reporting bank must calculate the New Zealand net equity of its New Zealand banking group for an income year using the formula—

equity value – adjustments 1 to 11.

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (14).

Equity value

(3) **Equity value** is the total financial value of—

(a) the shareholders' equity for the group; and

(b) the branch equity relating to fixed establishments of the group; and

(c) any shares issued by a member of the group whose value is not included under paragraph (a) or (b); and

(d) any financial arrangement that is a loan or provision of funds—

(i) that is not taken into account in calculating the group's funding debt for the tax year corresponding to the income year; and

(ii) that is made by a non-resident who is not a member of the New Zealand banking group or associated with a member of the group; and

(iii) that is made to a member of the group; and

(iv) that does not give rise to interest expenditure other than as a result of a fluctuation in the value of a currency of a country relative to the value of a currency of another country; and

(v) whose value is not included under paragraph (a) or (b); and

(vi) that does not relate to a supply of goods or services; and

(e) an instrument specified by the Governor-General by Order in Council under section FE 24 as included in equity value, but excluding an instrument specified under that section as not being an item of equity value.

Fixed-rate shares

(4) **Adjustment 1** is the financial value of fixed-rate foreign equities or fixed-rate shares that are—

(a) issued by a member of the group on or after 1 January 2005, or before that date if the measurement period starts on or after 1 January 2010; and

(b) owned by a person resident in New Zealand; and

(c) included in equity value under subsection (3).

Stapled debt securities

(4B) **Adjustment 1A** is the financial value of stapled debt securities that are—

(a) owned by a person resident in New Zealand; and

(b) included in equity value under subsection (3); and

(c) stapled to shares other than shares of a company that is a proportional-stapling company.

Tax debts

(5) **Adjustment 2** is the financial value of a tax debt that is a financial arrangement—

(a) included in equity value under subsection (3)(a) to (c); and

(b) in relation to which a member of the group is allowed a deduction for the corresponding tax year for interest

to which any of sections DB 6 to DB 8 (which relate to interest expenditure) applies.

Policyholder liabilities and retained profits

(6) **Adjustment 3** is the financial value of unvested policyholder benefit liabilities and policyholder retained profits included in equity value under subsection (3).

Intangible assets

(7) **Adjustment 4** is the financial value of intangible assets, but does not include the value of—

(a) the goodwill of a business that is not a banking, financing, leasing, or life insurance business—

(i) acquired from a person who, at the time of acquisition, is not associated with a member of the group; or

(ii) relating to an entity that is acquired from a person who is not associated with a member of the group:

(b) a film or film right:

(c) property that is depreciable property or is expected to become depreciable property.

Capital gains

(8) **Adjustment 5** is the total amount of capital gain arising for the 2004–05 income year or a later income year from a transfer of an intangible asset between a member of the group and a person who is associated with a member of the group.

Asset revaluation reserves

(9) **Adjustment 6** is the financial value of revaluation reserves included in equity value under subsection (3).

Future tax benefits

(10) **Adjustment 7** is the financial value of net future tax benefits included in equity value under subsection (3) that arise from—

(a) a tax loss for the tax year corresponding to the income year referred to in subsection (1):

(b) a loss balance carried forward from an earlier tax year:

(c) a timing or temporary difference to the extent to which the item giving rise to the difference would contribute to the amount of a tax loss for the tax year corresponding to

the income year referred to in subsection (1) if allowed as a deduction.

Prudential deductions

(11) **Adjustment 8** is the financial value of a credit enhancement or advance that is, for the purposes of the Capital Adequacy Framework described in section FE 20(2),—

(a) a credit enhancement that a member of the group provides to—

(i) an associated funds management and securitisation scheme of a non-member:

(ii) an affiliated insurance group that is a non-member when the credit has not been expensed:

(b) an advance by a member of the group of a capital nature to a connected person who is a non-member.

Offshore assets

(12) **Adjustment 9** is the financial value of shares in a non-resident company that—

(a) are held by—

(i) a member or potential member of the group; or

(ii) a company resident in New Zealand in which a member or potential member of the group holds a direct voting interest of 10% or more and that, in the income year, pays to the member or potential member a dividend to which a conduit tax relief (CTR) credit is attached; and

(b) are not interests in a foreign investment fund (FIF) for which the FIF income or FIF loss is calculated using the comparative value method, the deemed rate of return method, the fair dividend rate method, or the cost method; and

(c) are not shares in a grey list company that—

(i) are listed on the official list of a recognised exchange; and

(ii) are revenue account property; and

(iii) would not be a sufficient interest in the company if the class of shares were the only class of share issued by the company.

Cross holdings

(13) **Adjustment 10** is the financial value of—

(a) interests included in equity value under subsection (3) held by a person who—

(i) is not a member of the group because of an exclusion under section FE 35; and

(ii) is resident in New Zealand or holds the interest through a fixed establishment in New Zealand:

(b) shares in or loans (other than on an arm's length basis) to a person who is not a member of the group because of an exclusion under section FE 35.

Notional offshore investments

(14) **Adjustment 11** is the amount of notional offshore investment for the group for the income year under section FE 22.

Components of adjustment items counted once

(15) For the purposes of this section, if a component of an item described in adjustments 1 to 10 is a component of 1 or more other adjustment items, the value of the component is counted once only at its highest value.

Defined in this Act: amount, associated person, business, company, comparative value method, cost method, CTR credit, deduction, deemed rate of return method, depreciable property, direct voting interest, dividend, fair dividend rate method, FIF, FIF income, FIF loss, film, film right, financial arrangement, financial value, fixed establishment, fixed-rate share, grey list company, group funding debt, income year, interest, loan, loss balance, measurement period, New Zealand, New Zealand banking group, New Zealand net equity, non-resident, non-resident company, notional offshore investment amount, pay, proportional-stapling company, recognised exchange, reporting bank, resident in New Zealand, revenue account property, share, shareholder, stapled, stapled debt security, tax, tax loss

Compare: 2004 No 35 s FG 8G(1)–(3)

Section FE 21(3)(d)(ii): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 218(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(3)(d)(ii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 218(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(4): amended (with effect on 30 June 2009), on 6 October 2009, by section 218(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(4B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 218(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(4B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 218(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(7)(a)(i): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 218(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(7)(a)(i): substituted (with effect on 1 April 2008), on 6 October 2009, by section 218(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(7)(a)(ii): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 218(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(7)(a)(ii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 218(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(8): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 218(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21(8): substituted (with effect on 1 April 2008), on 6 October 2009, by section 218(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21 list of defined terms **proportional-stapling company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 218(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21 list of defined terms **stapled**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 218(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 21 list of defined terms **stapled debt security**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 218(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 22 Notional offshore investment

When this section applies

(1) This section applies for the purposes of section FE 21(14) to determine an amount of notional offshore investment for a New Zealand banking group for an income year.

Formula

(2) The amount of notional offshore investment is calculated using the formula—

$$\frac{\text{(foreign tax credits – threshold)} \times 12}{\text{tax rate} \times \text{interest rate of return} \times \text{mont}}$$

Definition of items in formula

(3) In the formula,—

(a) **foreign tax credits** is the total amount of foreign tax credits for the tax year corresponding to the income year claimed as a credit against the income tax liability for the tax year of a member of the group or a person excluded from the group under section FE 35 that does not arise from—

(i) attributed CFC income or from FIF income; or

(ii) income derived before 1 July 2005.

(b) **threshold** is—

(i) the amount set by the Governor-General by Order in Council as the threshold amount for the purposes of this subsection; or

(ii) $416,667 multiplied by the number of months beginning on or after 1 July 2005 in the income year that includes that date, if no threshold is set under subparagraph (i):

(iii) $5,000,000 if no threshold amount is set under subparagraph (i) or (ii):

(c) **tax rate** is the rate of tax for companies set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year corresponding to the income year referred to in subsection (1):

(d) **interest rate of return** is—

(i) the percentage amount set by the Governor-General by Order in Council as the interest rate of return for the purposes of this subsection; or

(ii) 7%, if no interest rate of return is set under subparagraph (i):

(e) **months** is the number of months beginning on or after 1 July 2005 in the corresponding income year.

Defined in this Act: amount, attributed CFC income, corresponding income year, FIF income, income, income tax liability, income year, interest, New Zealand banking group, notional offshore investment amount, tax year

Compare: 2004 No 35 s FG 8G(4)

Section FE 22(3)(c): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

FE 23 Banking group's funding debt

Formula

(1) A reporting bank must calculate the funding debt of its New Zealand banking group for a tax year using the formula—

$$\frac{\text{total interest} + \text{interest deductions}}{\text{days in quarter.}} - \text{sh}$$

Definition of items in formula

(2) In the formula,—

(a) **total interest** is the financial value of the total interest-bearing debt for the group, measured on the last day of a quarter in the reporting bank's corresponding income year:

(b) **interest deductions** is the financial value not included in paragraph (a) of a financial arrangement in relation to which the group has a deduction for interest to which any of sections DB 6 to DB 8 (which relate to interest expenditure) applies, other than as a consequence of a fluctuation in the value of a currency of a country relative to the value of a currency of another country:

(c) **shares** is the financial value of shares included in paragraph (a), measured on the last day of a quarter in the reporting bank's corresponding income year:

(d) **days in quarter** is the number of days in a quarter in the reporting bank's corresponding income year.

Defined in this Act: corresponding income year, deduction, financial arrangement, financial value, interest, New Zealand banking group, quarter, reporting bank, share, tax year

Compare: 2004 No 35 s FG 8B(3)

FE 24 Regulations

When this section applies

(1) This section applies for the purposes of sections FE 21 and FE 22.

Specifications

(2) The Governor-General may, from time to time, by Order in Council—

(a) specify a type of instrument that is included in equity value under section FE 21(3):

(b) specify a type of instrument that is not included in equity value under section FE 21(3):

(c) set, replace, or repeal a figure for a threshold amount for a value of an instrument, or aggregate value of a type of instrument, held by a person or group of persons for the purposes of a specification under paragraph (a) or (b):

(d) amend or delete a specification under paragraphs (a) to (c):

(e) set, replace, or repeal a figure for the threshold amount for the purposes of the definition of **threshold** in section FE 22(3)(b)(i):

(f) set, replace, or repeal a figure for the definition of **interest rate of return** in section FE 22(3)(d)(i).

Application or effective date

(3) An Order in Council under subsection (2) may—

(a) come into effect on or after 1 July 2005:

(b) apply for measurement periods and quarters that—

(i) are in the 2005–06 income year or a later income year; and

(ii) commence on or after 1 July 2005.

Defined in this Act: amount, group of persons, income year, interest, measurement period, quarter

Compare: 2004 No 35 s FG 8G(5), (6)

Determining membership of groups

New Zealand group

FE 25 New Zealand group for excess debt entity that is a company

Steps to determine membership

(1) The following steps are used to determine the membership of the New Zealand group of an excess debt entity that is a company:

(a) identifying the New Zealand parent, *see* section FE 26:

(b) establishing the companies under the parent's control, *see* section FE 27:

(c) identifying the members of the New Zealand group, *see* sections FE 28 and FE 29:

(d) if a non-resident has ownership interests in 2 or more New Zealand groups, establishing whether the groups may be combined into a single New Zealand group, *see* section FE 30.

Entity as company

(2) Sections FE 26 to FE 30 apply only to an excess debt entity that is company. However, section FE 30 does not apply to an excess debt outbound company.

Defined in this Act: company, excess debt entity, excess debt outbound company, New Zealand, non-resident

Compare: 2004 No 35 s FG 4(10), (11)

Section FE 25(2): amended (with effect on 30 June 2009), on 6 October 2009, by section 219(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 25 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 25 list of defined terms **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 219(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 26 Identifying New Zealand parent

Identifying resident company

(1) The New Zealand parent of an excess debt entity is the entity identified in whichever is applicable of subsections (2) to (6).

Entity as parent

(2) The excess debt entity is treated as the New Zealand parent if—

(a) the entity is not resident in New Zealand; or

(b) the entity is resident in New Zealand, and—

(i) a non-resident has a direct ownership interest in the entity of 50% or more, as determined under section FE 39; and

(ii) no single non-resident who is carrying on business in New Zealand through a fixed establishment in New Zealand or who derives income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable has an ownership interest in the entity of 50% or more; or

(c) the entity is an excess debt outbound company and no single company resident in New Zealand has an ownership interest in the entity of 50% or more.

Top tier New Zealand resident company if not excess debt outbound company

(3) If subsection (2) does not apply, and the excess debt entity is not an excess debt outbound company, the entity's New Zealand parent is the company (**company A**) that meets all the following requirements:

(a) company A is either—

(i) resident in New Zealand; or

(ii) not resident in New Zealand but carrying on business in New Zealand through a fixed establishment in New Zealand; or

(iii) not resident in New Zealand but deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and

(b) company A has an ownership interest in the entity; and

(c) a non-resident has a direct ownership interest in company A; and

(d) if company A is resident in New Zealand, a non-resident who has an ownership interest in the entity of 50% or

more, also has an ownership interest in company A of 50% or more; and

(e) no company that meets the requirements of paragraphs (a) to (d) has a direct ownership interest in company A.

When parent controlled by non-resident

(4) Despite subsection (3), if the interest apportionment rule in section FE 6 applies to the excess debt entity only through the application of section FE 2(1)(c)(ii), the entity's New Zealand parent is the company (**company B**) that meets all the following requirements:

(a) company B is either—

(i) resident in New Zealand; or

(ii) not resident in New Zealand but carrying on business in New Zealand through a fixed establishment in New Zealand; or

(iii) not resident in New Zealand but deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and

(b) company B has an ownership interest in the entity; and

(c) if company B is resident in New Zealand, a non-resident who has control of the entity by any means, has control of company B by any means; and

(d) no company that meets the requirements of paragraphs (a) to (c) has a direct ownership interest in company B.

Top tier New Zealand resident company for excess debt outbound company

(4B) If subsection (2) does not apply, and the excess debt entity is an excess debt outbound company, the entity's New Zealand parent is the company (**company C**) that meets all the following requirements:

(a) company C—

(i) is resident in New Zealand; and

(ii) has an ownership interest of 50% or more in the entity; and

(b) no company that meets the requirements of paragraph (a)(i) and (ii) has a direct ownership interest in company C.

Tie-breaker

(5) If more than 1 company is identified as New Zealand parent under subsection (3) or (4), the New Zealand parent is the company that has the highest value in ownership interests calculated by multiplying—

(a) the total direct ownership interests in company A or company B of non-residents who also have ownership interests in the entity of 50% or more:

(b) the ownership interests of company A or company B in the entity.

Entity as parent

(6) If subsection (2) does not apply, and no company meets the requirements of subsection (3), (4), or (4B), the excess debt entity is treated as the New Zealand parent.

Determining ownership interests in subsections (3) and (4)

(7) In subsections (3) to (4B), ownership interests are determined under sections FE 38 to FE 41, but for the purpose of identifying a New Zealand parent, the ownership interests of an associated person are ignored.

Defined in this Act: associated person, business, company, double tax agreement, excess debt entity, excess debt outbound company, fixed establishment, interest, New Zealand, non-resident, non-resident company, resident in New Zealand, source in New Zealand

Compare: 2004 No 35 s FG 4(10)

Section FE 26(2)(b)(ii): substituted (with effect on 30 June 2009), on 6 October 2009, by section 220(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(2)(b)(ii): amended (with effect on 30 June 2009), on 6 October 2009, by section 220(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(2)(c): added (with effect on 30 June 2009), on 6 October 2009, by section 220(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 220(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(3): amended (with effect on 30 June 2009), on 6 October 2009, by section 220(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(3)(a)(ii): amended (with effect on 30 June 2009), on 6 October 2009, by section 220(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(3)(a)(iii): added (with effect on 30 June 2009), on 6 October 2009, by section 220(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(4)(a)(ii): amended (with effect on 30 June 2009), on 6 October 2009, by section 220(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(4)(a)(iii): added (with effect on 30 June 2009), on 6 October 2009, by section 220(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(4B) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 220(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(4B): inserted (with effect on 30 June 2009), on 6 October 2009, by section 220(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(6): substituted (with effect on 30 June 2009), on 6 October 2009, by section 220(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26(7): substituted (with effect on 30 June 2009), on 6 October 2009, by section 220(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26 list of defined terms **double tax agreement**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 220(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26 list of defined terms **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 220(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 26 list of defined terms **source in New Zealand**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 220(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 27 Establishing companies under parent's control

Choosing threshold

(1) A control threshold that the New Zealand parent of an excess debt entity chooses under this section must apply consistently to all companies that are members of the group.

Percentages

(2) The New Zealand parent of an excess debt entity may choose as the relevant control threshold a percentage that is either—

(a) more than 50%; or
(b) 66% or more.

Threshold over 50%

(3) For a control threshold that is more than 50%, the company or companies treated as controlled by the New Zealand parent are those in which direct ownership interests of more than 50% are held collectively by either or both—
(a) the New Zealand parent; and
(b) any other company included in the New Zealand group.

Threshold of 66% or more

(4) For a control threshold of 66% or more, the companies treated as controlled by the New Zealand parent are those in which direct ownership interests of 66% or more are held collectively by any combination of—
(a) the New Zealand parent; and
(b) a non-resident if—
(i) they have ownership interests of 50% or more in both the entity and the New Zealand parent; and
(ii) a company included in the New Zealand group as a result of the control percentage would have been included in the group under section FE 28 through the application of the control test in subsection (3), had the control percentage in that subsection been chosen; and
(c) any other company or companies that are included in the New Zealand group under section FE 28 through the application of any of these paragraphs.

Default threshold of 66%

(5) If the New Zealand parent does not choose a control threshold under subsection (3) or (4), the control threshold applying to the New Zealand group is 66% or more.

Application to other companies of New Zealand parent

(6) The control threshold applying for an income year in relation to the entity and its New Zealand parent applies to any company of the New Zealand parent.

Defined in this Act: company, excess debt entity, income year, New Zealand, non-resident

Compare: 2004 No 35 s FG 4(12)–(14B)

Section FE 27 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 28 Identifying members of New Zealand group

New Zealand parent's group

(1) A New Zealand group is made up of an excess debt entity, the entity's New Zealand parent, and a company—

- (a) that is—
  - (i) resident in New Zealand:
  - (ii) carrying on a business in New Zealand through a fixed establishment in New Zealand:
  - (iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and
- (b) that is identified under section FE 27 as being under the control of the New Zealand parent; and
- (c) that is not a member of the New Zealand banking group of a registered bank.

Special rule for some entity's group

(2) Despite subsection (1), if the excess debt entity is not an excess debt outbound company and is not a company identified under section FE 27 as being under the control of the New Zealand parent because the threshold is not met, the New Zealand group is made up of the entity and a company—

- (a) that is—
  - (i) resident in New Zealand:
  - (ii) carrying on a business in New Zealand through a fixed establishment in New Zealand:
  - (iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and
- (b) that is a company that—
  - (i) would be identified under section FE 27 as being under the control of the entity if the entity were treated as the New Zealand parent; or
  - (ii) if the entity is identified under section FE 27 as being under the control of another company (**company A**), would be identified under section

FE 27 as under the control of company A if company A were included in the New Zealand group and treated as the New Zealand parent; or

(iii) would be identified under section FE 27 as under the control of a company (**company B**) included in the entity's New Zealand group under subparagraph (ii), if company B were treated as the New Zealand parent; or

(iv) is not a member of the New Zealand banking group of a registered bank.

Another special rule for some other entity's group

(3) Despite subsection (1), if the excess debt entity is an excess debt outbound company and is not a company identified under section FE 27 as being under the control of the New Zealand parent because the threshold is not met, the entity is included in the New Zealand group for the New Zealand parent if—

(a) the entity is a company that meets the requirements of subsection (1)(a) and (c); and

(b) a member of the New Zealand group has a 50% or more ownership interest in the entity.

Defined in this Act: business, company, double tax agreement, excess debt entity, excess debt outbound company, fixed establishment, New Zealand, New Zealand banking group, registered bank, resident in New Zealand, source in New Zealand

Section FE 28: substituted (with effect on 30 June 2009), on 6 October 2009, by section 221(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 28 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 29 Combining New Zealand groups owned by natural persons and trustees

When this section applies

(1) This section applies when a natural person or trustee described in section FE 2(1)(g) has—

(a) a 50% or more ownership interest in a member of a New Zealand group (**group 1**) having a member that is an excess debt outbound company; and

(b) a 50% or more ownership interest in a member of a different New Zealand group (**group 2**) having a member that is an excess debt outbound company.

Groups combine

(2) Group 1 and group 2 combine into 1 New Zealand group.

Defined in this Act: excess debt outbound company, New Zealand

Section FE 29: substituted (with effect on 30 June 2009), on 6 October 2009, by section 222(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 30 Ownership interests in companies outside New Zealand group

When this section applies

(1) This section applies when—

(a) a New Zealand group is in existence; and

(b) a particular excess debt entity (**company A**) that is not an excess debt outbound company is outside the group; and

(c) company A is—

(i) resident in New Zealand:

(ii) carrying on business in New Zealand through a fixed establishment in New Zealand:

(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and

(d) a single non-resident has ownership interests of 50% or more in both—

(i) the New Zealand group; and

(ii) company A.

Consistency in group membership

(2) The New Zealand parent of company A may choose to include the company in the New Zealand group if every company to be included in the enlarged group that is a New Zealand parent in the group makes the same election in relation to all other companies that are not in a New Zealand group with that parent before this section applies.

When company A cannot be part of group

(3) Despite subsection (2), company A cannot be part of the New Zealand group if—

(a) another company (**company B**) that is outside the group has a direct ownership in company A; and

(b) company B is—

(i) resident in New Zealand:

(ii) carrying on business in New Zealand through a fixed establishment in New Zealand:

(iii) deriving income that has a source in New Zealand and for which relief from New Zealand tax under a double tax agreement is unavailable; and

(c) either—

(i) a New Zealand parent in the group, after the application of subsection (2), has control of company B under section FE 27(3); or

(ii) the single non-resident has ownership interests of 50% or more in company B.

Defined in this Act: business, company, double tax agreement, excess debt entity, excess debt outbound company, fixed establishment, New Zealand, non-resident, resident in New Zealand, source in New Zealand

Compare: 2004 No 35 s FG 4(14D)

Section FE 30(1)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 223(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 30(1)(c): substituted (with effect on 30 June 2009), on 6 October 2009, by section 223(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 30(3)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 223(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 30 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 30 list of defined terms **double tax agreement**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 223(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 30 list of defined terms **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 223(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 30 list of defined terms **source in New Zealand**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 223(3) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Worldwide group

FE 31 Worldwide group for corporate excess debt entity if not excess debt outbound company

Members of worldwide group

(1) For an income year, for an excess debt entity that is a company and is not an excess debt outbound company, a worldwide group is made up of—

- (a) the entity; and
- (b) the entity's New Zealand group for the income year; and
- (c) the entity's worldwide GAAP group, as described in subsection (2); and
- (d) the entity's ultimate non-resident parent, as described in subsection (3); and
- (e) the ultimate non-resident parent's worldwide GAAP group, as described in subsection (4); and
- (f) any non-resident that—
  - (i) is not a company; and
  - (ii) has ownership interests in the entity of 50% or more; and
- (g) any person associated with the non-resident referred to in paragraph (f).

Worldwide GAAP group

(2) An excess debt entity's worldwide GAAP group is made up of all non-residents who are required to be included with the entity in the consolidated financial statements under, as the entity chooses,—

- (a) generally accepted accounting practice; or
- (b) an equivalent standard for consistent and non-distorting financial reporting that is—
  - (i) set in the country where the ultimate non-resident parent of the parent, as described in subsection (3), resides; or
  - (ii) applied when preparing the consolidated financial statements of the international group of which the entity is part.

Ultimate non-resident parent

(3) An excess debt entity's ultimate non-resident parent is the company that meets the following requirements:

(a) the company has ownership interests in the entity of 50% or more; and

(b) the company is not excluded from the entity's worldwide group under section FE 32; and

(c) no other company has both—

(i) an ownership interest in the entity of 50% or more:

(ii) an ownership interest in the company referred to in paragraphs (a) and (b).

Ultimate non-resident parent's worldwide GAAP group

(4) The ultimate non-resident parent's worldwide GAAP group is made up of—

(a) the ultimate non-resident parent; and

(b) any non-resident who is required to be included with the ultimate non-resident parent in consolidated group accounts under, as the non-resident parent chooses,—

(i) the standard referred to in subsection (2)(b)(i), if applicable; or

(ii) generally accepted accounting practice.

Measuring ownership interests

(5) In subsection (3), ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: associated person, company, excess debt entity, excess debt outbound company, generally accepted accounting practice, income year, New Zealand, non-resident, ultimate parent

Compare: 2004 No 35 s FG 5(8)

Section FE 31 heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 224(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 31(1): amended (with effect on 30 June 2009), on 6 October 2009, by section 224(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 31(1)(a): substituted (with effect on 30 June 2009), on 6 October 2009, by section 224(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 31 list of defined terms **excess debt outbound company**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 224(3) of the

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 31B Worldwide group for excess debt outbound companies

Members of worldwide group

(1) For an income year, a worldwide group for an excess debt outbound company is made up of—

(a) the company; and

(b) the company's New Zealand group for the income year; and

(c) the company's worldwide GAAP group, as described in subsection (2).

Worldwide GAAP group

(2) An excess debt outbound company's worldwide GAAP group is made up of all non-residents who are required to be included with the company in consolidated financial statements under generally accepted accounting practice.

Defined in this Act: excess debt outbound company, generally accepted accounting practice, income year, non-resident

Section FE 31B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 225(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 31C CFCs in worldwide group for natural persons or trustees described in section FE 2(1)(g)

When this section applies

(1) This section applies when a natural person or trustee described in section FE 2(1)(g) has—

(a) a 50% or more ownership interest in an excess debt outbound company that is a member of a worldwide group (**worldwide group A**); and

(b) an income interest in a CFC that is not part of the worldwide group A.

Transfer

(2) The CFC is part of the worldwide group A.

Ownership interests

(3) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: CFC, excess debt outbound company, income interest, New Zealand, non-resident

Section FE 31C: inserted (with effect on 30 June 2009), on 6 October 2009, by section 225(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 32 Joint venture parties

What this section applies to

(1) This section applies to a company (the **joint venture company**) in a worldwide group under section FE 31 or FE 31B if—

(a) a person (the **excluded joint venturer**) holds an ownership interest equal to 50% in the joint venture company; and

(b) 1 other person (the **included joint venturer**) in the worldwide group holds an ownership interest equal to 50% in the joint venture company; and

(c) but for the application of this section, the worldwide group includes every person who holds both an ownership interest equal to 50% in the joint venture company and—

(i) who has an ownership interest in the included joint venturer; or

(ii) in whom the included joint venture company has an ownership interest.

Exclusion of excluded joint venturer

(2) The joint venture company may choose to exclude the excluded joint venturer from its worldwide group for an income year, despite sections FE 31 and FE 31B.

Ownership interests

(3) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: company, excess debt entity, income year

Section FE 32: substituted (with effect on 30 June 2009), on 6 October 2009, by section 226(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

New Zealand banking group

FE 33 New Zealand banking group

The following steps are used to determine the membership of a New Zealand banking group:

(a) identifying the ultimate parent of a registered bank, *see*section FE 34:

(b) determining whether a person may be excluded from a banking group, *see*section FE 35:

(c) identifying a person and a fixed establishment as a member of a banking group, *see*section FE 36.

Defined in this Act: fixed establishment, New Zealand banking group, registered bank, ultimate parent

FE 34 Identifying ultimate parent

Identifying company

(1) The ultimate parent is the company identified in subsection (2) or (3), as applicable.

Registered bank's parent

(2) An ultimate parent of a registered bank is a company—

(a) that has an ownership interest in the registered bank of 50% or more; and

(b) in which no other company that has an ownership interest in the registered bank of 50% or more has an ownership interest.

Fixed establishment's parent

(3) The ultimate parent of a registered bank's fixed establishment in New Zealand is the registered bank.

Ownership interests

(4) For the purposes of this section, ownership interests are determined under sections FE 38 to FE 41.

Defined in this Act: company, fixed establishment, New Zealand, registered bank, ultimate parent

Compare: 2004 No 35 s FG 8C(9), (10)

FE 35 Persons who may be excluded from banking groups

Reporting bank's exclusions

(1) A reporting bank may determine the members of its New Zealand banking group by excluding from the group a person or fixed establishment described in subsections (2) to (5).

Life insurance providers

(2) A reporting bank may choose to exclude from its New Zealand banking group a person or a fixed establishment whose main activity is providing life insurance.

Entity owning life insurer or banker

(3) A reporting bank may choose to exclude from its New Zealand banking group a person resident in New Zealand—

(a) who has a voting interest of 100% in a person excluded under subsection (2); and

(b) whose main activity is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing.

Resident group company with other activities

(4) A reporting bank may choose to exclude from its New Zealand banking group a person resident in New Zealand—

(a) who is required under generally accepted accounting practice to be included in consolidated group accounts with a person or fixed establishment excluded under subsection (2) or (3); and

(b) whose main activity is not banking, financing, or leasing, or the ownership or control of an entity whose main activity is banking, financing, or leasing.

Fixed establishment with other activities

(5) A reporting bank may choose to exclude from its New Zealand banking group a fixed establishment of a non-resident if—

(a) the non-resident has a voting interest of 100% in a person excluded under subsection (2); and

(b) the fixed establishment has a main activity of financing the person excluded under subsection (2); and

(c) the main activity of the fixed establishment is not banking, financing, or leasing, or the ownership or control of

an entity whose main activity is banking, financing, or leasing.

Defined in this Act: company, fixed establishment, generally accepted accounting practice, life insurance, New Zealand banking group, non-resident, reporting bank, resident in New Zealand, voting interest

Compare: 2004 No 35 s FG 8C(8)

Section FE 35 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 36 Identifying members of New Zealand banking group

Entities included in group

(1) The New Zealand banking group of a registered bank includes the entities described in subsection (2), and may also include the entities described in subsections (3) to (6) if the conditions set out in those subsections are met.

Registered bank or fixed establishment

(2) The banking group includes—

(a) the registered bank, if resident in New Zealand:

(b) the registered bank's fixed establishment, if the registered bank is not resident in New Zealand.

Resident person in group with registered bank

(3) A resident person is included in the banking group if—

(a) the person is part of the same group of companies as the registered bank:

(b) the following conditions under generally accepted accounting practice are met:

(i) for a resident registered bank with no non-resident ultimate parent, the consolidated group accounts include both the person and the registered bank, or would include both but for relevant materiality thresholds; or

(ii) for a non-resident registered bank with no non-resident ultimate parent, the consolidated group accounts would include the person and the registered bank if the bank were resident in New Zealand and the relevant materiality thresholds were met.

Resident in group with non-resident ultimate parent

(4) A resident is included in the banking group if—

(a) the person is part of the same group of companies as a non-resident ultimate parent:

(b) under generally accepted accounting practice, the consolidated group accounts would include the person and the ultimate parent if the ultimate parent were resident in New Zealand and the relevant materiality thresholds were met.

Fixed establishment in group with registered bank

(5) A fixed establishment in New Zealand of a non-resident is included in the banking group separately from the non-resident if—

(a) the fixed establishment is part of the same group of companies as a non-resident registered bank with no non-resident ultimate parent:

(b) under generally accepted accounting practice, the consolidated group accounts would include the fixed establishment and the registered bank if the registered bank were resident in New Zealand and the relevant materiality thresholds were met.

Fixed establishment in group with non-resident ultimate parent

(6) A fixed establishment in New Zealand of a non-resident is included in the banking group separately from the non-resident if—

(a) the fixed establishment is part of the same group of companies as a non-resident ultimate parent:

(b) under generally accepted accounting practice, the consolidated group accounts would include the fixed establishment and the ultimate parent if the ultimate parent were resident in New Zealand and the relevant materiality thresholds were met.

Defined in this Act: fixed establishment, generally accepted accounting practice, group of companies, New Zealand, New Zealand banking group, non-resident, registered bank, resident in New Zealand, ultimate parent

Compare: 2004 No 35 s FG 8C(1), (2), (4)–(7)

Section FE 36(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 227(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 36(4)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 227(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 36(5)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 227(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FE 36(6)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 227(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 37 Reporting bank for New Zealand banking group

When subsection (2) applies

(1) Subsection (2) applies on a day when a New Zealand banking group has either—

(a) a single registered bank, or

(b) no registered bank but a fixed establishment of a single registered bank.

Registered bank

(2) The reporting bank for the day is the registered bank.

When subsection (4) applies

(3) Subsection (4) applies on a day when a New Zealand banking group has either—

(a) more than 1 registered bank; or

(b) no registered bank but fixed establishments of more than 1 registered bank.

Notice or Commissioner's appointment

(4) The reporting bank is—

(a) the registered bank that first notifies the Commissioner of an election to be the reporting bank, if the Commissioner receives the notice within 6 months after the end of the income year in which the day occurs; or

(b) if paragraph (a) does not apply, the registered bank chosen by the Commissioner.

Defined in this Act: Commissioner, fixed establishment, income year, New Zealand banking group, notice, registered bank, reporting bank

Compare: 2004 No 35 s FG 8D

Measuring ownership interests in companies

FE 38 Measuring ownership interests in companies

For the purposes of this subpart, a person's ownership interest in a company is the total of the following percentages:

(a) any direct ownership interests they hold in the company; and

(b) any direct ownership interests held in the company by an associated person; and

(c) any indirect ownership interests they hold in the company; and

(d) any indirect ownership interests held in the company by an associated person.

Defined in this Act: associated person, company

Compare: 2004 No 35 s FG 2(2)

FE 39 Direct ownership interests

A person's direct ownership interest in a company referred to in section FE 38 is equal to the highest percentage of shares or rights the person holds in the categories listed in section EX 5(1) (Direct control interests), applying the subsection as if the company were a foreign company.

Defined in this Act: company, foreign company, share

Compare: 2004 No 35 s FG 2(3)

Section FE 39 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FE 40 Tiered ownership interests

When this section applies

(1) This section applies when a person has a direct ownership interest in a company (**company A**), and that company has an ownership interest in another company (**company B**).

When ownership interest less than 50%

(2) If the person's direct ownership interest in company A is less than 50%, they are treated as holding an indirect ownership interest in company B. The interest is calculated by multiplying the percentage that is the person's direct ownership interest in company A by the percentage that is company A's ownership in company B.

When ownership interest more than 50%

(3) If the person's direct ownership interest in company A is equal to or more than 50%, they are treated as holding an indirect ownership interest in company B that is equal to company A's ownership interest in company B.

Defined in this Act: company

Compare: 2004 No 35 s FG 2(4)

FE 41 Treatment of associated persons' interests

Aggregating ownership interests

(1) For the purposes of section FE 39, a person's direct ownership interests include the direct ownership interests of a person associated with them. But if an aggregation of ownership interests results in the same percentage shares or rights in a company being counted more than once, the person's ownership interest in the company must be adjusted to the extent necessary to avoid multiple counting.

Relative resident in New Zealand

(2) For the purposes of sections FE 38 to FE 40, a non-resident who does not have a direct or an indirect ownership interest in a company and a relative resident in New Zealand are not associated persons in relation to the company.

Defined in this Act: associated person, company, New Zealand, non-resident, relative, resident in New Zealand, share

Compare: 2004 No 35 s FG 2(4)–(6)

Subpart FF—Interest apportionment for conduit investment

[Repealed]

Subpart FF: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provisions

[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 1 What this subpart does

[Repealed]

Section FF 1: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 2 When interest apportionment rule applies

[Repealed]

Section FF 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 3 Steps required to determine treatment of excessive interest expenditure

[Repealed]

Section FF 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Interest apportionment rule
[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 4 Threshold for application of interest apportionment rule

[Repealed]

Section FF 4: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FF 4(1)(a) (as it read immediately before repeal on 6 October 2009 and applying for the 2008–09 and later income years): amended (with effect on 1 April 2008), on 21 December 2010, by section 65(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

FF 5 Determination of excess amount of interest expenditure of group

[Repealed]

Compare: 2004 No 35 s FH 5

Section FF 5: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 6 Conduit tax relief

[Repealed]

Section FF 6: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FF 6(3)(d): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

FF 7 Surplus to foreign dividends

[Repealed]

Section FF 7: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FF 7(4)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Membership and debt percentages of foreign groups

[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 8 Identifying members of foreign groups

[Repealed]

Section FF 8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 9 Calculating debt percentage of New Zealand foreign groups

[Repealed]

Section FF 9: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 10 Calculating debt percentage of consolidated foreign groups

[Repealed]

Section FF 10: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FF 11 Changes in foreign group membership

[Repealed]

Section FF 11: repealed (with effect on 30 June 2009), on 6 October 2009, by section 228(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart FL—Emigration of resident companies

FL 1 What this subpart does

When this subpart applies

(1) This subpart applies when a company that is a New Zealand resident (the **emigrating company**) stops being a New Zealand resident.

Tax effects

(2) For tax purposes, the effects on an emigrating company and its shareholders, when an emigrating company becomes non-resident reflect the effects that would have resulted if,—

(a) immediately before the time of emigration,—

(i) the emigrating company disposed of its property at market value; and

(ii) the emigrating company went into liquidation; and

(iii) the amount available for distribution on liquidation were distributed as dividends to shareholders of the emigrating company to the extent to which the amount is more than the available subscribed capital and any capital gain of the company; and

(b) at the time of emigration, the emigrating company were reformed as a foreign company with—

(i) the same ownership and business activities as those of the emigrating company immediately before the time of emigration; and

(ii) the property of the emigrating company immediately before the time of emigration, acquired at its market value at that time.

Defined in this Act: amount, available subscribed capital, business, company, dividend, emigrating company, foreign company, liquidation, market value, New Zealand resident, non-resident, shareholder, tax, time of emigration

Compare: 2004 No 35 s FCB 1

FL 2 Treatment of emigrating companies and their shareholders

When this section applies

(1) This section applies immediately before the time of emigration of an emigrating company.

Treatment of company

(2) The company is treated as—

(a) disposing of its property to a person, and reacquiring the property from the person, for consideration equal to the market value of the property at the time; and

(b) making a distribution in money as a dividend to its shareholders of an amount that would be available for distribution at the time if the company were treated as going into liquidation.

Treatment of shareholder

(3) Each shareholder of the company is treated as being paid a distribution in money as a dividend of the amount the shareholder would be entitled to at the time if the company were treated as going into liquidation.

Defined in this Act: amount, dividend, emigrating company, liquidation, market value, pay, shareholder, time of emigration

Compare: 2004 No 35 ss FCB 2, FCB 3

Subpart FM—Consolidated groups of companies

Introductory provisions

FM 1 What this subpart applies to

This subpart applies to eligible companies that are part of a wholly-owned group of companies that choose to form a consolidated group of companies.

Defined in this Act: company, consolidated group, wholly-owned group

Compare: 2004 No 35 s FD 1

FM 2 Consolidation rules

Purpose

(1) The consolidation rules are intended to ensure that, unless a provision of this Act expressly provides otherwise or the context requires another result, this Act applies to companies that are part of a consolidated group as if they were a single company, including its treatment for the following purposes:

(a) to determine whether a tax credit may be used to satisfy the income tax liability of a consolidated group for a tax year:

(b) when a provision sets a limit or provides a threshold, and its application depends on whether or not something is more or less than the limit or threshold.

Meaning

(2) The **consolidation rules** means the following:

(a) this subpart:

(b) section GB 38 (When sections GB 35 to GB 37 apply to consolidated groups):

(c) subpart ID (Use of tax losses by consolidated groups):

(d) sections LK 8 to LK 11 (which relate to tax credits of consolidated group companies):

(e) subpart OP (Memorandum accounts of consolidated groups):

(f) section RC 28 (Provisional tax rules and consolidated groups):

(g) section 74 of the Tax Administration Act 1994.

Defined in this Act: company, consolidated group, consolidation rules, income tax liability, tax credit, tax year

Compare: 2004 No 35 ss FD 1, OB 1 **consolidation rules**

Section FM 2(2)(g): substituted (with effect on 30 June 2009), on 6 October 2009, by section 229(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FM 3 Liability of consolidated groups and group companies

Taxable income of consolidated group

(1) For the purposes of calculating the income tax liability for a tax year of a consolidated group under subpart BC (Calculating and satisfying income tax liabilities), the taxable income of a consolidated group for a tax year is the sum of the amounts calculated under subsection (2) for each company in the consolidated group for all or part of the corresponding income year.

Calculation for each company in consolidated group

(2) Each company that is part of a consolidated group for all or part of an income year must calculate the amount that would be its taxable income under subpart BC, as modified by this section and sections FM 4 to FM 13, for all or part of the income year in which the company is part of the consolidated group.

Returns and assessment by consolidated group

(3) The nominated company of a consolidated group must—

(a) provide a single return of income for a tax year for the companies in the consolidated group in the corresponding income year under section 33 of the Tax Administration Act 1994; and

(b) make an assessment under section 92 of the Tax Administration Act 1994 of the amount of income tax payable by the consolidated group.

No separate returns or assessment (with exception)

(4) A group company cannot make a separate assessment or return for the tax year unless it is, for part of the corresponding income year, not part of the consolidated group.

Joint and several liability

(5) Each company that is part of a consolidated group is jointly and severally liable for the amount of income tax assessed for the consolidated group in relation to its taxable income.

Individual liability

(6) The joint and several liability of each company that is part of a consolidated group is substituted for their individual income tax liability, but only to the extent—

(a) of the income tax liability of the consolidated group for the period of the income year in which the company is in the consolidated group; and

(b) to which section FM 37 does not apply.

Withholding and payment obligations of companies

(7) Each company that is part of a consolidated group is liable to comply with its obligations under the PAYE rules, the FBT rules, the ESCT rules, the RWT rules, and the NRWT rules.

Defined in this Act: amount, assessment, company, consolidated group, corresponding income year, ESCT rules, FBT rules, income tax, income tax liability, income year, nominated company, NRWT rules, pay, PAYE rules, return of income, RWT rules, tax year, taxable income

Compare: 2004 No 35 ss HB 1(1), HB 2(1), NB 1

FM 4 Limiting joint and several liability of group companies

When this section applies

(1) This section applies before the nominated company of a consolidated group makes an assessment for the consolidated group for a tax year.

Named companies bearing liability

(2) Despite section FM 3(5), the nominated company may ask the Commissioner for approval for 1 or more named companies in the consolidated group to bear the consolidated group's income tax liability for the tax year.

Approval by Commissioner

(3) The Commissioner must approve a request under subsection (2) unless limiting the liability to the named companies will significantly prejudice the recovery, or likely recovery, of the income tax liability of the consolidated group for the tax year.

Liability limited to named companies

(4) For a tax year to which an approval referred to in subsection (3) relates,—

(a) only a named company is liable for the income tax liability of the consolidated group, and if more than 1 company is named, the liability is joint and several:

(b) section RC 28 (Provisional tax rules and consolidated groups) does not apply to impose on a company other than a named company joint and several liability for provisional tax payable by the consolidated group.

When named companies do not meet obligations

(5) Despite subsection (4), the joint and several liability of a group company other than a named company is not extinguished to the extent to which—

(a) a named company does not meet their income tax liability under this section; and

(b) the Commissioner determines that the income tax liability of the consolidated group that is attributable to the taxable income of a company other than a named company is to be recovered from the other company.

Defined in this Act: assessment, Commissioner, company, consolidated group, income tax liability, nominated company, pay, provisional tax, tax year, taxable income

Compare: 2004 No 35 s HB 1(3)–(5)

FM 5 Liability when company leaves consolidated group

Company leaving consolidated group

(1) In an income year in which a company leaves a consolidated group, the company's liability under section FM 3(5) is removed if all the following paragraphs apply:

(a) if the assessment is made after the later of—

(i) the date on which the company is treated as leaving the consolidated group; or

(ii) the date of the event that caused the company to be treated as leaving the consolidated group; and

(b) the amount assessed is more than an earlier assessment of the consolidated group for the income year; and

(c) the Commissioner considers that the removal of the liability will not significantly prejudice the recovery, or

likely recovery, of the amount of income tax assessed for the income year.

Notifying company and consolidated group

(2) For the purposes of subsection (1)(c), the Commissioner must notify the company and the consolidated group if the discretion has been exercised.

Defined in this Act: amount, assessment, Commissioner, company, consolidated group, income tax, income year, notify

Compare: 2004 No 35 s HB 1(2)

FM 6 Some general rules for treatment of consolidated groups

References to income, tax losses, tax payable, and credits

(1) For the purposes of the consolidation rules, the following amounts are determined on the basis of a single assessment:

(a) income, assessable income, net income, or taxable income of a consolidated group:

(b) a tax loss component, a tax loss, a loss balance, an attributed CFC net loss, or a FIF net loss of a consolidated group:

(c) tax payable by a consolidated group:

(d) a tax credit available to a consolidated group.

Shares

(2) For the purposes of applying the consolidation rules to particular provisions in this Act, the shares or options over shares of a consolidated group are treated as comprising all the shares or options over shares of the companies in the consolidated group at the relevant time.

Dividends

(3) A dividend that 1 company that is part of a consolidated group pays to another group company continues to be taken into account for the purposes of—

(a) the imputation rules:

(b) *[Repealed]*

(c) sections FM 8(3)(c), FM 27 to FM 30, GB 38, GB 40, and OP 3 to OP 50 (which relate to dividends and consolidated groups):

(d) subpart OE (Branch equivalent tax accounts (BETA)):

(e) section 74 of the Tax Administration Act 1994.

International tax rules

(4) The international tax rules apply, modified as necessary, as if the consolidated group were a single company.

Balance of imputation credit account

(5) Sections OA 3 (General rules for maintaining memorandum accounts) and YA 2(7) (Meaning of income tax varied) apply for the purposes of section GB 38, subpart OP, and section 74 of the Tax Administration Act 1994 as if the references to the imputation rules were references to sections OP 3 to OP 50.

Defined in this Act: amount, assessable income, assessment, attributed CFC net loss, company, consolidated group, consolidation rules, dividend, FIF net loss, imputation credit account, imputation rules, income, income tax, international tax rules, loss balance, net income, pay, share, tax, tax credit, tax loss, tax loss component, taxable income

Compare: 2004 No 35 ss FD 2, FD 11

Section FM 6(3)(b): repealed (with effect on 30 June 2009), on 6 October 2009, by section 230(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6(3)(c): substituted (with effect on 30 June 2009), on 6 October 2009, by section 230(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6(3)(e): substituted (with effect on 30 June 2009), on 6 October 2009, by section 230(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6(5) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 230(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6(5): substituted (with effect on 30 June 2009), on 6 October 2009, by section 230(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 230(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6 list of defined terms **FDP account**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 230(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 6 list of defined terms **FDP rules**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 230(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculating taxable income for consolidated group returns

Accounting generally

FM 7 Treatment of amounts derived or expenditure incurred

Sections FM 8 to FM 30 set out the treatment of certain amounts derived or expenditure incurred while a company is part of a consolidated group. The treatment applies to the part of a company's income year when the company is in the consolidated group.

Defined in this Act: amount, company, consolidated group, income year

Compare: 2004 No 35 s HB 2(1)

FM 8 Transactions between group companies: income

When this section applies

(1) This section applies when a company that is part of a consolidated group derives an amount of income from a transaction or arrangement with another company in the same consolidated group, and the amount would not be income if the consolidated group were 1 company.

Excluded income

(2) The amount is excluded income of the company under section CX 60 (Intra-group transactions).

Exclusion of certain amounts

(3) Despite subsection (2), this section does not apply to—

- (a) an amount arising from the disposal of the company's trading stock; or
- (b) an amount arising under section EW 31 (Base price adjustment formula) from—
  - (i) the disposal of a financial arrangement to which the financial arrangements rules apply; or
  - (ii) the remission of a financial arrangement to which the financial arrangements rules apply, if the parties were not group companies for the whole term of the arrangement; or
- (c) a dividend under section CD 4(1) (Transfers of value generally) between group companies arising from the release of an obligation to repay money lent before the

companies are treated under FM 35 as part of the consolidated group.

Defined in this Act: amount, arrangement, company, consolidated group, dividend, excluded income, financial arrangement, financial arrangements rules, income, money lent, pay trading stock

Compare: 2004 No 35 s HB 2(1)(a)

FM 9 Amounts that are company's income

When this section applies

(1) This section applies when a company that is part of a consolidated group derives an amount that would not be income of the company in the absence of this section, but would be income of the consolidated group if it were 1 company either—

(a) because of a purpose for which an item of property was acquired; or

(b) because a connection exists between the amount and the carrying on of a business by another consolidated group company; or

(c) for some other reason.

Income

(2) The amount is income of the company under section CV 2 (Consolidated groups: income of company in group).

Defined in this Act: amount, business, company, consolidated group, income

Compare: 2004 No 35 s HB 2(1)(e)

FM 10 Expenditure: intra-group transactions

When this section applies

(1) This section applies when—

(a) a company incurs expenditure or loss, or has an amount of depreciation loss, in a tax year or part of a tax year in which it is part of a consolidated group; and

(b) the company incurs the expenditure or loss through a payment or disposal to, or a transaction or arrangement with, another consolidated group company.

No deduction (with exception)

(2) If a deduction would not be allowed for the expenditure or loss if the consolidated group were 1 company, the company is denied a deduction under section DV 16 (Consolidated groups:

intra-group transactions) unless the exceptions in section DV 16(2)(a) or (b) apply.

Defined in this Act: amount, arrangement, company, consolidated group, deduction, depreciation loss, loss, tax year

Compare: 2004 No 35 s HB 2(1)(b)

FM 11 Expenditure: nexus with income derivation

When this section applies

(1) This section applies when a company incurs expenditure or loss or has an amount of depreciation loss in a tax year or part of a tax year in which it is part of a consolidated group that—

(a) is not expenditure or loss to which section FM 10 applies; and

(b) would not be allowed as a deduction to the company in the absence of this section.

Deduction

(2) The company is allowed a deduction for the amount under section DV 17 (Consolidated groups: expenditure or loss incurred by group companies) if the consolidated group would be allowed a deduction for the amount, treating the group as if it were 1 company, because of a connection between—

(a) the incurring of the expenditure or loss or amount of depreciation loss; and

(b) the deriving of assessable or excluded income, or the carrying on of a business by another company in the consolidated group.

Defined in this Act: amount, assessable income, business, company, consolidated group, deduction, depreciation loss, excluded income loss, tax year

Compare: 2004 No 35 s HB 2(1)(c)

FM 12 Expenditure when deduction would be denied to consolidated group

When this section applies

(1) This section applies when a company incurs expenditure or loss or an amount of depreciation loss in a tax year or part of a tax year in which it is part of a consolidated group that—

(a) is not expenditure or loss to which section FM 10 applies; and

(b) would be allowed as a deduction to that company in the absence of this section.

No deduction (with exception)

(2) The company is denied a deduction for an amount under section DV 17 (Consolidated groups: expenditure or loss incurred by group companies) if the deduction would be denied to the consolidated group, treating the group as if it were 1 company, except to the extent to which the expenditure or loss or amount of depreciation loss is interest on money that the company has borrowed from a person that is not part of the consolidated group, and the company—

(a) is allowed a deduction under section DB 7 (Interest: most companies need no nexus with income) or DB 8 (Interest: money borrowed to acquire shares in group companies):

(b) would be allowed a deduction under section DB 7 or DB 8 because the company is treated as having used the money borrowed, to the extent of the actual acquisition cost, to acquire certain shares when, through interposed intra-group borrowings, the money borrowed was in fact used by another group company in acquiring the shares.

Defined in this Act: amount, company, consolidated group, deduction, depreciation loss, interest, loss, share, tax year

Compare: 2004 No 35 s HB 2(1)(d)

Section FM 12(2): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 52(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

FM 13 Capital expenditure

When this section applies

(1) This section applies when a company that is part of a consolidated group incurs expenditure or loss that would, treating the consolidated group as if it were 1 company, be taken into account in determining the cost of property but would not otherwise be taken into account in the absence of this section.

Amount taken into account

(2) The expenditure or loss is taken into account in determining the cost of property of companies in the consolidated group.

Defined in this Act: company, consolidated group, loss

Compare: 2004 No 35 s HB 2(2)

FM 14 Part-year financial statements

When this section applies

(1) This section applies in an income year when—

(a) a company joins or leaves a consolidated group during the income year; or

(b) a consolidated group is formed or ends its existence during the income year.

Who must provide statements

(2) The following returns of income for the tax year must include part-year financial statements under sections FM 38(5) and FM 40(4):

(a) by the company when the financial statements relate to a period in which the company is not in the consolidated group:

(b) by the consolidated group when the financial statements relate to a period in which the company is in the consolidated group:

(c) by another consolidated group when the financial statements relate to a period in which the company is in another consolidated group.

Detailed statements

(3) The part-year financial statements must determine, as applicable, the annual gross income, annual total deductions, income tax liability, or tax loss of the company in a fair and reasonable way. For this purpose the relevant part of the income year is treated as a complete income year.

Defined in this Act: annual gross income, annual total deduction, company, consolidated group, income tax liability, income year, return of income, tax loss, tax year

Compare: 2004 No 35 s FD 9

Accounting for particular property

FM 15 Amortising property and revenue account property

When this section applies

(1) This section applies—

(a) when property is transferred from a company (**company A**) to another company (**company B**) and both companies are in the same consolidated group at the time the transfer takes place, and the property transferred is—

(i) amortising property; or

(ii) revenue account property, but not trading stock or a financial arrangement to which the financial arrangements rules apply; and

(b) to determine the income and deductions on a later disposal of property, or in relation to the depreciation or amortisation of the acquisition cost of the property under this Act.

Acquisition by company B

(2) Company B is treated as acquiring the property on the date it was acquired by company A for the amount set out in subsections (3) to (5).

Whole pool

(3) When the property forms the whole of a pool of property that is depreciated by company A under sections EE 20 to EE 24 (which relate to depreciation loss calculated under the pool method), the amount in subsection (2) is the adjusted tax value of the pool immediately before the property is transferred to company B.

Part pool

(4) When the property forms only part of a pool of property that is depreciated by company A under sections EE 20 to EE 24, the amount in subsection (2) is the lesser of—

(a) the market value of the property transferred to company B; and

(b) the adjusted tax value of the whole of the pool immediately before the property is transferred to company B.

Not pool property

(5) If subsections (3) and (4) do not apply, the amount in subsection (2) is the sum of the following amounts of expenditure

incurred by company A before the property is transferred to company B for which no deduction has been allowed other than by the depreciation or amortisation of the acquisition cost of the property under section EE 1, EZ 7, or EZ 8 (which relate to depreciation), or another amortisation provision of this Act:

(a) the original purchase price of the property:

(b) expenditure incurred—

(i) in purchasing or improving the property; or

(ii) in securing or improving company A's legal rights to the property.

When subsection (7) applies

(6) Subsection (7) applies—

(a) for the purposes of sections EE 46 to EE 52 (which relate to disposals and depreciation recovery income); and

(b) to property referred to in subsection (1)(b) other than pooled property; and

(c) in relation to an amount of depreciation loss or amortisation of acquisition cost up to the time the property is transferred from company A to company B.

Pre-transfer deductions for depreciation loss and amortisation

(7) Company B is treated as allowed the pre-transfer deductions that company A is allowed for amounts of depreciation loss under section EZ 7 or EZ 8, or for an amount of expenditure or loss under another amortisation provision of this Act.

Defined in this Act: acquire, adjusted tax value, amortising property, amount, company, consolidated group, deduction, depreciation loss, financial arrangement, financial arrangements rules, income, market value, other amortisation provision, pool, revenue account property trading stock

Compare: 2004 No 35 s FD 10(1), (2)

FM 16 Land or business: certain farming or forestry expenditure

When this section applies

(1) This section applies in an income year when 2 companies (**company A** and **company B**) are in the same consolidated group for the whole of the income year, and —

(a) company A transfers land to company B, and company B holds the land for the remainder of the income year; or

(b) company A stops carrying on a business, and company B carries on the business for the remainder of the income year.

Deductions for certain farming and forestry expenditure

(2) Company A is allowed a deduction under sections DO 4 to DO 6, and DO 12 (which relate to farming and aquaculture expenditure), or DP 3 (Improvements to forestry land) after the transfer or cessation of the business as if the transfer or cessation did not occur.

Defined in this Act: business, company, consolidated group, deduction, income year, land

Compare: 2004 No 35 s FD 10(3)

FM 17 Trading stock

When this section applies

(1) This section applies in an income year in which a company (**company A**) transfers identifiable trading stock to another company (**company B**) when—

(a) company A and company B are in the same consolidated group at the time of the transfer; and

(b) company A and company B choose to value the trading stock under subpart EB (Valuation of trading stock (including dealer's livestock)) or at the cost to company A, as applicable; and

(c) the nominated company of the consolidated group notifies the Commissioner within the time for providing the consolidated group's return of income, or a later time if the Commissioner agrees.

Trading stock held at start of income year

(2) If company A held the trading stock at the start of the income year, the consideration for the transfer is the value of the trading stock at the start of the income year determined under subpart EB.

Trading stock acquired

(3) If subsection (2) does not apply, the consideration for the transfer is the cost of the trading stock to company A.

Defined in this Act: Commissioner, company, consolidated group, income year, nominated company, notify, return of income trading stock

Compare: 2004 No 35 s FD 10(5)

FM 18 Financial arrangements: transfer from company A to company B

When this section applies

(1) This section applies in an income year in which a company (**company A**) transfers a financial arrangement to which the financial arrangements rules apply to another company (**company B**) when—

(a) company A and company B are in the same consolidated group for the whole of the income year; and

(b) the method of calculating income and expenditure from the financial arrangement does not change after the transfer, and the consolidated group's return of income is made on that basis; and

(c) neither company A nor company B is entitled to use under sections IA 4 and IA 5 (which relate to the use of loss balances by companies) a loss balance carried forward unless subpart ID (Use of tax losses by consolidated groups) applies.

Treatment of companies

(2) In the year of transfer and in later income years,—

(a) company A is treated as if it had never been a party to the financial arrangement, and section EW 31 (Base price adjustment formula) does not apply:

(b) company B is treated as if it had taken all the actions that company A undertook before the transfer in entering into the financial arrangement, incurring expenditure and deriving income, and providing its return of income in relation to the financial arrangement.

Relationship with sections EW 38 and GB 21

(3) This section overrides sections EW 38 (Consideration when disposal for no, or inadequate, consideration) and GB 21

(Dealing that defeats intention of financial arrangements rules).

Defined in this Act: company, consolidated group, financial arrangement, financial arrangements rules, income, income year, loss balance, return of income

Compare: 2004 No 35 s FD 10(4), (4A)

FM 19 Financial arrangements: transfer for fair and reasonable consideration

When this section applies

(1) This section applies in an income year in which a company (**company A**) transfers a financial arrangement to another company (**company B**) when—

(a) company A and company B are in the same consolidated group at the time of the transfer; and

(b) section FM 18 does not apply to the transfer; and

(c) the method of calculating income and expenditure from the financial arrangement does not change after the transfer, and the consolidated group's return is made on this basis.

Consideration for transfer

(2) In calculating the base price adjustment, company A's consideration for the transfer is a fair and reasonable amount of the income that would have been derived, or the expenditure that would have been incurred, by company A in the year of transfer if the transfer had not taken place.

Relationship with sections EW 38 and GB 21

(3) This section overrides sections EW 38 (Consideration when disposal for no, or inadequate, consideration) and GB 21 (Dealing that defeats intention of financial arrangements rules).

Defined in this Act: amount, company, consolidated group, financial arrangement, income, income year, return of income

Compare: 2004 No 35 s FD 10(4), (4B)

FM 20 Financial arrangements: transfer at market value

When this section applies

(1) This section applies in an income year in which a company (**company A**) transfers a financial arrangement to another company (**company B**) when—

(a) company A and company B are in the same consolidated group at the time of the transfer; and

(b) neither section FM 18 nor FM 19 applies to the transfer.

Consideration for transfer

(2) The consideration for the transfer is the market value of the financial arrangement on the date of the transfer.

Relationship with sections EW 38 and GB 21

(3) This section overrides sections EW 38 (Consideration when disposal for no, or inadequate, consideration) and GB 21 (Dealing that defeats intention of financial arrangements rules).

Defined in this Act: company, consolidated group, financial arrangement, income year

Compare: 2004 No 35 s FD 10(4), (4C)

FM 21 Property transfers when companies leave consolidated groups

When this section applies

(1) This section applies to the extent to which a transfer of property has not previously been taken into account in the calculation of a consolidated group's taxable income under sections FM 8 to FM 13, or FM 15 to FM 20 and FM 23 when—

(a) a company leaves a consolidated group, but not through liquidation; and

(b) the company holds property that has at any time been transferred between companies in the same consolidated group; and

(c) sections FM 15, or FM 17 to FM 20 applied to the transfer of the property.

Disposal and acquisition at market value

(2) The company is treated as disposing of the property immediately before it leaves the consolidated group to a person not

associated with it, and reacquiring it at that time at its market value.

Market value at time of transfer

(3) If the item of property is part of or is absorbed into some other property, or its market value cannot be separately identified, the company is treated as disposing of and reacquiring the property at its market value at the time of the transfer under the relevant provision referred to in subsection (1)(c). If the property is transferred more than once, the time of disposal and reacquisition is the date of the latest transfer at which its market value can be determined.

Defined in this Act: associated person, company, consolidated group, liquidation, market value, taxable income

Compare: 2004 No 35 s FD 10(6), (7)

FM 22 Arrangements to avoid consolidation rules

When this section applies

(1) This section applies when—

(a) a company joins a consolidated group and at the time holds property that it later transfers to another group company; and

(b) sections FM 15 or FM 17 to FM 20 would otherwise apply to the transfer of the property; and

(c) after the transfer the company leaves the consolidated group, whether by liquidation or otherwise.

Arrangement to defeat consolidation rules

(2) If, in undertaking the activities, it could reasonably be concluded that the company was involved in an arrangement that had a purpose or effect of defeating the intent and application of the consolidation rules, the relevant provision does not apply to the transfer.

Defined in this Act: arrangement, company, consolidated group, consolidation rules, liquidation

Compare: 2004 No 35 s FD 10(9)

FM 23 Arrangements for disposal of shares

When this section applies

(1) This section applies when—

(a) 2 companies (**company A** and **company B**) are in the same consolidated group; and

(b) the value of company A's net assets have been reduced as a result of a dividend, distribution, payment, arrangement, or transaction between company A and company B at the time the dividend is paid or the distribution, payment, arrangement, or transaction is made; and

(c) another company (**company C**) disposes of shares in company A for consideration that is less than the amount that would have been received in an arm's length transaction had the reduction in the value of company A's net assets not occurred; and

(d) if the disposal were by way of sale, the consideration from the sale would be included in company C's income, other than income taken into account under section FM 3.

Arm's length transaction on disposal of shares

(2) The disposal is treated as if it were a sale at arm's length.

Income

(3) The amount that would have been received in an arm's length transaction is income of company C under section CV 3 (Consolidated groups: arrangement for disposal of shares).

Timing

(4) The time at which the consideration for the sale at arm's length is determined is before the reduction in the value of company A's net assets.

Relationship with sections FM 8 and FM 11

(5) Subsection (2) does not apply to an amount of income taken into account under section FM 8 or FM 11.

Defined in this Act: amount, arrangement, company, consolidated group, dividend, income, pay, share

Compare: 2004 No 35 s FD 10(8)

Treatment of foreign dividends [Repealed]

Heading: repealed (with effect on 1 April 2009), on 6 October 2009, pursuant to section 231(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FM 24 General treatment of foreign dividends

[Repealed]

Section FM 24: repealed (with effect on 1 April 2009), on 6 October 2009, by section 231(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FM 25 Reduction in payments for foreign dividends

[Repealed]

Section FM 25: repealed (with effect on 1 April 2009), on 6 October 2009, by section 231(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FM 26 Using tax losses to pay FDP

[Repealed]

Section FM 26: repealed (with effect on 1 April 2009), on 6 October 2009, by section 231(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 26(3)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

FM 27 Refunds of FDP

When this section applies

(1) This section applies when a company becomes entitled in a tax year to a refund of a FDP paid by it to the Commissioner in an earlier tax year in relation to a foreign dividend received when the company was part of a consolidated group.

Maximum amount of refund

(2) The refund must not be more than the amount set out in the following paragraphs, as applicable:

(a) if the consolidated group has an FDP account at the time the entitlement arises, a credit balance in the group's FDP account at the end of the tax year that is before the tax year in which the entitlement arises; or

(b) if the consolidated group does not have an FDP account at the time the entitlement arises, a credit balance in the group's imputation credit account at the end of the tax year that is before the tax year in which the entitlement arises.

Treatment of excess

(3) If subsection (2) does not apply to some or all of the payment because it is more than the applicable credit balance, the amount in excess is credited to FDP payable by the company for a tax year in which it is part of the consolidated group.

Earlier refunds of payments

(4) The credit balance referred to in subsection (3) is treated as reduced by an earlier refund of FDP that is made in the tax year to the company or to another company in the same consolidated group at the time the dividend is paid or for the income year in which the refund is made.

Refunds of income tax

(5) Subsection (4) also applies in relation to a refund of income tax that is, under sections RM 13 to RM 17 (which relate to limit on refunds) no more than the credit balance described in subsection (2).

Relationship with section RM 18

(6) This section overrides section RM 18 (Limits on refunds related to foreign dividends). However, section RM 18 does not limit a refund of FDP to a company that is part of a consolidated group at the time the dividend is paid to the extent to which this section would not have limited the refund.

Defined in this Act: amount, Commissioner, company, consolidated group, FDP, FDP account, foreign dividend, imputation credit account, income tax, pay, tax year

Compare: 2004 No 35 s NH 5(5), (6), (8)

FM 28 Refund when consolidated group has loss

When this section applies

(1) This section applies when—

(a) a company has paid FDP to the Commissioner in an income year and, at the time the dividend was paid, the company was part of a consolidated group; and

(b) the group has a tax loss component for the tax year that corresponds to the income year that may be used under section IA 3 and subpart ID (which relate to the treatment of tax losses); and

(c) the nominated company of the consolidated group has filed its return of income under section FM 3(3).

Applying for refund

(2) The company may apply to the Commissioner for a refund of the payment. The maximum refund is the smallest of the following amounts:

(a) the amount of the payment paid in the income year:

(b) the amount of the tax loss component multiplied by the rate set out in subsection (4)(b):

(c) the credit balance of the group's FDP account at the end of the tax year just ended.

Tax loss component reduced

(3) The amount of the tax loss component is reduced by an amount calculated using the formula—

$$\frac{\text{amount of refund}}{\text{tax rate}}.$$

Definition of items in formula

(4) In the formula,—

(a) **amount of refund** is the amount of the refund paid to the company:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year that corresponds to the income year.

Relationship with section RM 21

(5) This section overrides section RM 21 (Refunds when loss balances used to reduce net income).

Defined in this Act: amount, Commissioner, company, consolidated group, FDP, FDP account, foreign dividend, income tax, income year, nominated company, pay, return of income, tax loss component, tax year

Compare: 2004 No 35 s NH 5(7)

Section FM 28(4)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

FM 29 Treatment of credit balance in consolidated group's FDP account

When this section applies

(1) This section applies when a consolidated group has a credit balance in its FDP account at the end of a tax year.

Credit and debit

(2) The nominated company of the consolidated group may choose that some or all of the credit balance becomes—

(a) a credit in the imputation credit account of the group, or of the imputation group to which the consolidated group companies belong; and

(b) a debit in the FDP account of the consolidated group.

How election made

(3) The company makes the election by recording the debit in the consolidated group's FDP account.

Defined in this Act: consolidated group, FDP account, imputation credit account, imputation group, nominated company, tax year

Compare: 2004 No 35 s NH 6(6)

FM 30 Application of certain provisions to consolidated groups

When subsections (2) and (3) apply

(1) Subsections (2) and (3) apply when a consolidated group has a policyholder credit account and an FDP account.

Credit and debit balances

(2) The nominated company of the consolidated group may choose to have some or all of a credit balance in the FDP account credited to its policyholder credit account by recording the credit and corresponding debit in its accounts.

Section OC 20: life insurance credit balance

(3) Section OC 20 (FDPA transfer to policyholder credit account) applies in relation to a consolidated group, modified as necessary, as if—

(a) a reference to a company were a reference to the consolidated group:

(b) a reference to a provision of this Act applying to a company were a reference to the equivalent of sections OA 2 to OA 4, OA 7, OA 8, OC 2, OC 21, OC 23(4), OC 28(7), OC 34(3), OP 1, OP 2, and OP 51 to OP 77 (which relate to FDP accounts) applying to a consolidated group.

Section OC 27: FDP credits

(4) Section OC 27 (FDP credits attached to dividends) applies in relation to a consolidated group as if the reference to an

FDPA company includes a reference to a company if, at the time a foreign dividend is paid to it, the company is part of a consolidated group that maintains an FDP account.

Sections OC 30 to OC 32, and others: liability for payments and penalties

(5) Sections OA 2(5) and OC 30 to OC 32 (which relate to further FDP), and 103, 104, 139B, 140C, 140D, and 181 of the Tax Administration Act 1994 apply, modified as necessary in relation to a consolidated group and its FDP account as if—

(a) the group were a single company:

(b) a reference to a provision of this Act were a reference to the equivalent provision applying to a consolidated group:

(c) a reference to a liability of a company for further FDP, FDP penalty tax, and a late payment penalty were a reference to the joint and several liability for the payment, tax, or penalty of each company that is part of the group at the time the payment, tax or penalty becomes payable.

Section RA 19: amalgamations

(6) Section RA 19 (Refunds of excess amounts or when amounts mistakenly paid) applies, modified as necessary, from the time of amalgamation when a consolidated group ends its existence on a resident's restricted amalgamation that involves all companies in the consolidated group, whether or not with a company outside the consolidated group, in relation to tax paid by the consolidated group as if it and the amalgamated company were a single company.

Sections 30 and 68 of Tax Administration Act 1994: FDP accounts

(7) Sections 30 and 68 of the Tax Administration Act 1994 apply, modified as necessary, in relation to a consolidated group as if a reference to an FDPA company were a reference to a company that is part of a consolidated group that maintains an FDP account.

Defined in this Act: amalgamated company, amalgamation, company, consolidated group, FDP account, FDP penalty tax, FDPA company, foreign dividend,

further FDP, nominated company, pay, policyholder credit account, resident's restricted amalgamation, tax

Compare: 2004 No 35 ss NH 4(9), NH 6(1), (2), (5), (7)

Membership of consolidated groups

Eligibility and restrictions

FM 31 Eligibility rules

When company eligible

(1) A company is eligible to form, join, and continue as part of a consolidated group at a particular time if, at the time,—

(a) it is resident in New Zealand; and

(b) it is not a foreign company; and

(c) it is not a company that derives only exempt income, except exempt income under sections CW 9 to CW 11 (which relate to income from equity); and

(d) it is incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment; and

(e) it is not, by the law of another country or territory, liable to income tax in that country or territory through domicile, residence, or place of incorporation; and

(f) when subsection (2) or (4) applies, it meets the relevant conditions; and

(g) subsections (5) and (6) do not apply to it.

Restriction when company of certain type

(2) Despite subsection (1), if a company that is part of a consolidated group is 1 of the following types of company, all companies in the consolidated group at the time must be the same type as that company:

(a) a qualifying company:

(b) a mining company.

Grandparented consolidated companies

(3) The requirements of subsection (1)(d) and (e) do not apply to determine whether a grandparented consolidated company—

(a) is eligible to form or join a consolidated group:

(b) continues as part of the consolidated group.

Non-standard balance date

(4) Despite subsection (1), if a company that is part of a consolidated group has a non-standard balance date, all companies in the consolidated group at the time must have the same non-standard balance date.

LAQCs

(5) A company is not eligible to be part of a consolidated group if it is an LAQC.

Anti-avoidance measure

(6) A company is not eligible to be part of a consolidated group if, for a purpose of enabling a company to be part of a consolidated group so as to defeat the intent and application of the consolidation rules, the company's shares—

(a) are subject to an arrangement, or to a series of related or connected arrangements; or

(b) have rights attaching to them extinguished or altered directly or indirectly by any means.

Defined in this Act: arrangement, business, company, consolidated group, consolidation rules, exempt income, fixed establishment, foreign company, grandparented consolidated company, income, income tax, LAQC, mining company, New Zealand, non-standard balance date, qualifying company, resident in New Zealand, share

Compare: 2004 No 35 ss FD 3(b)-(e), OB 1 **eligible company**

Section FM 31(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 232(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 31(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 232(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FM 31 list of defined terms **income tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 232(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FM 32 Restriction on membership of consolidated groups

A company is not eligible to be in more than 1 consolidated group at a particular time. If circumstances arise in which a company would, apart from this section, be treated at a particular time as in more than 1 consolidated group, then—

(a) the company is treated as in the consolidated group of which it was first part; or

(b) if the company is in 2 or more consolidated groups simultaneously, the Commissioner may specify its consolidated group, having regard to all the circumstances of the case.

Defined in this Act: Commissioner, company, consolidated group

Compare: 2004 No 35 s FD 5

FM 33 When membership is reduced

A consolidated group continues to exist if the number of group companies is reduced to 1 company, but if the consolidated group has no company at any time, the consolidated group no longer exists.

Defined in this Act: company, consolidated group

Compare: 2004 No 35 s FD 8(9)

Nominated companies

FM 34 Nominated companies

Group company at the time

(1) The nominated company of a consolidated group at any time must be in the consolidated group at the time.

Agent

(2) For the purposes of this Act and the Tax Administration Act 1994, a nominated company of a consolidated group is, at a time, the agent of the consolidated group and of each company that is in the consolidated group at the time.

Changing nominated company

(3) A nominated company may notify the Commissioner that it is, at a particular date, no longer to continue as the agent for the consolidated group, and that another company is to become the nominated company for the consolidated group.

When notice takes effect

(4) A notice referred to in subsection (3) takes effect—

(a) on the date the Commissioner receives the notice; or

(b) on a later date set out in the notice.

Replacing nominated company

(5) If the nominated company of a consolidated group is liquidated, the other companies in the consolidated group may choose a replacement. The replacement company—

(a) becomes the nominated company of the consolidated group from the date of liquidation; and

(b) must notify the Commissioner of its selection as nominated company within 20 working days after the date of liquidation, or a longer period if the Commissioner agrees.

Defined in this Act: agent, Commissioner, company, consolidated group, liquidation, nominated company, notice, notify, working day

Compare: 2004 No 35 ss FD 6, FD 8(5) proviso

Forming, joining, or leaving consolidated groups

FM 35 Forming consolidated group

Election

(1) Two or more companies may choose to form a consolidated group of companies if the companies are, at the time,—

(a) a wholly-owned group of companies; and

(b) eligible under section FM 31.

Notifying Commissioner

(2) The Commissioner must be notified of an election under subsection (1). For the purposes of section FM 3(5), the notice must state that each company that is part of the consolidated group acknowledges their joint and several liability for the amount of income tax assessed for the consolidated group.

Nominated company

(3) A notice under subsection (2) must nominate 1 of the companies in the consolidated group as its agent. The company is called the **nominated company**.

Defined in this Act: agent, amount, assessment, Commissioner, company, consolidated group, income tax, nominated company, notice, notify, wholly-owned group

Compare: 2004 No 35 ss FD 3(a), FD 4(1), (2)

FM 36 Joining existing consolidated group

When this section applies

(1) This section applies when 2 or more companies have formed a consolidated group and the consolidated group has not ended its existence.

Eligible for and entitled to membership

(2) If a company is eligible under section FM 31 and entitled to join the consolidated group, it may choose to join the consolidated group by notifying the Commissioner.

Joint and several liability

(3) The company providing the notification referred to in subsection (2) must agree in the notice to be jointly and severally liable under section FM 3(5) for income tax payable by the consolidated group.

Defined in this Act: Commissioner, company, consolidated group, income tax, notice, notify, pay

Compare: 2004 No 35 s FD 7(1), (2)

FM 37 Leaving consolidated group

A company leaves a consolidated group if—

(a) it chooses to leave the consolidated group and notifies the Commissioner of its election, *see*section FM 39; or

(b) it no longer meets the eligibility criteria set out in section FM 31, *see*section FM 40; or

(c) when it is not a nominated company, it is no longer entitled to be in the same consolidated group as the nominated company, *see*section FM 40; or

(d) it is part of a consolidated group that no longer has a nominated company, *see*section FM 41.

Defined in this Act: Commissioner, company, consolidated group, nominated company, notify

Compare: 2004 No 35 s FD 8(1)

When membership starts and stops

FM 38 Notice requirements on forming or joining consolidated group

When this section applies

(1) This section applies when—

(a) 2 or more companies choose to form a consolidated group under section FM 35; or

(b) a company chooses to join an existing consolidated group under section FM 36.

Condition

(2) Despite subsection (1), this section applies only if a company forming or joining a consolidated group remains entitled to be in the consolidated group either at the start of the relevant income year or for the notice period, as applicable.

Setting out income year in notice

(3) For a notice given to the Commissioner within the notice period in an income year, the company may provide that the election applies for the income year. The company is treated as in the consolidated group from the start of the income year.

When notice does not specify income year

(4) If the notice referred to in subsection (3) does not specify an income year, the company is treated as in the consolidated group from the start of the income year following that in which the Commissioner receives the notice.

Setting out entitlement date in notice

(5) Despite subsections (3) and (4), if a company becomes eligible to join a consolidated group during an income year, and the notice is given to the Commissioner within the notice period, the company may provide that the election applies from the date they first became entitled to make an election. The company is treated as in the consolidated group from that date, and part-year financial statements under section FM 14 are required.

Notice period

(6) In this section, **notice period** means 1 of the following:

(a) 63 working days after the start of an income year; or

(b) if the company joining, or the companies forming, the consolidated group in the income year are incorporated or formed in the same income year, 63 working days after the latest incorporation or formation; or

(c) if the company or companies become entitled to make an election during an income year, 63 working days from the date they first became entitled; or

(d) an extended period if the Commissioner agrees that the notice could not reasonably have been provided within the 63-day period.

Anti-avoidance measure

(7) Subsection (5) does not apply if it would be reasonable to conclude that an arrangement has been entered into for a purpose of enabling the company to meet the requirements of the subsection so as to defeat the intent and application of the consolidation rules.

Defined in this Act: arrangement, Commissioner, company, consolidated group, consolidation rules, income year, notice, notice period, working day

Compare: 2004 No 35 ss FD 4(3)–(8), FD 7(3)–(8)

FM 39 Choosing to leave consolidated group

When this section applies

(1) This section applies when a company chooses to leave a consolidated group and notifies the Commissioner of its election.

Deferring leaving date

(2) When the company notifies the Commissioner of its election, it may defer the date on which it leaves the consolidated group to the first day of the next income year. However, unless subsections (3) and (4) apply, if the company does not defer the leaving date, it is treated as no longer in the consolidated group from the start of the income year in which the Commissioner receives the notice.

First income year: deferral

(3) Despite subsection (2), if a company leaves a consolidated group in the same income year in which it joins the group, and defers the leaving date in the notice, it is treated as leaving the consolidated group from the start of the income year after the income year in which the Commissioner receives the notice. Sections FM 40 and FM 41 override this subsection.

First income year: no deferral

(4) Despite subsection (2), if a company leaves a consolidated group in the same income year in which it joins the consolidated group, and does not defer the leaving date in the notice,

it is treated as leaving the consolidated group on the date it joined the group.

Defined in this Act: Commissioner, company, consolidated group, income year, notice, notify

Compare: 2004 No 35 s FD 8(2)

Section FM 39(3): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

FM 40 Losing eligibility or entitlement to be part of consolidated group

When this section applies

(1) This section applies when a company is no longer eligible to be part of a consolidated group or, if it is not the nominated company, when it is no longer entitled to be in the same consolidated group as the nominated company.

Effective date

(2) Unless subsections (3) or (4) apply, the company is treated as leaving the consolidated group from the start of the income year in which the relevant event occurs, making it no longer—

(a) eligible to be part of the consolidated group; or

(b) if it is not the nominated company, entitled to be in the same consolidated group as the nominated company.

First income year

(3) Despite subsection (2), if a company becomes no longer eligible or entitled to be in the consolidated group in the same income year in which it joined the group, the company is treated as leaving the consolidated group on the day it joined the group.

Notifying date

(4) Despite subsections (2) and (3), the company may notify the Commissioner that it is leaving the consolidated group from the date on which its eligibility or its entitlement ended. For the notice to be effective, the company must—

(a) provide the notice within 20 working days after the date on which the company's eligibility or entitlement ended, although the Commissioner may agree to extend this period if it is reasonable to do so in the circumstances; and

(b) provide part-year financial statements under section FM 14.

Anti-avoidance measure

(5) A notice under this section is not valid if it is made in connection with an arrangement entered into for a purpose of enabling the company to leave a consolidated group so as to defeat the intent and application of the consolidation rules. When this subsection applies, the company is treated as leaving the consolidated group on the date on which its eligibility or entitlement ended.

Defined in this Act: arrangement, Commissioner, company, consolidated group, consolidation rules, income year, nominated company, notice, notify, working day

Compare: 2004 No 35 s FD 8(3), (4), (6), (7)

FM 41 No nominated company

If, during an income year, no nominated company exists for a consolidated group and no company that is part of the consolidated group is notified as a replacement under section FM 34(3), all companies in the consolidated group are treated as having left the consolidated group with effect from the start of the income year. Section FM 34(5) overrides this section.

Defined in this Act: company, consolidated group, income year, nominated company, notify

Compare: 2004 No 35 s FD 8(5)

FM 42 When company liquidated

If a company is no longer part of a consolidated group because it has been liquidated,—

(a) the company is not treated as leaving the consolidated group from the start of the income year of the liquidation under sections FM 39 and FM 40:

(b) part-year financial statements are not required under section FM 40(4)(b).

Defined in this Act: company, consolidated group, income year, liquidation

Compare: 2004 No 35 s FD 8(8)

Subpart FN—Imputation groups of companies

FN 1 When this subpart applies

This subpart applies when 2 or more companies that are part of a wholly-owned group of companies form an imputation group to enable a company in the imputation group to pay an imputed dividend when another company in the imputation group has a credit for New Zealand tax paid.

Defined in this Act: company, dividend, imputation group, New Zealand tax, pay, wholly-owned group of companies

FN 2 Imputation rules

The **imputation rules** means the following:

(a) this subpart:

(b) section CD 15 (Tax credits linked to dividends):

(c) sections GB 34 to GB 37 (which relate to tax avoidance and imputation):

(d) subparts LE and LF, and sections LO 1 to LO 3 (which relate to tax credits):

(e) subpart OB (Imputation credit accounts (ICA)):

(f) sections OP 1 to OP 50 (which relate to imputation credits and consolidated groups):

(g) subpart OZ (Terminating provisions):

(h) sections RM 13 to RM 17, RM 32, and RZ 6 (which relate to limits on refunds):

(i) section YA 2(7)(b) (Meaning of income tax varied):

(j) sections 29, 64, 67, 69, 70, 78D, 97, 101, 139B, 140B, 140D(1) and (2), and 180 of the Tax Administration Act 1994.

Defined in this Act: imputation rules

Compare: 2004 No 35 s OB 1 **imputation rules**

Section FN 2(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 233 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FN 3 Liabilities of companies in imputation group

A company that is part of an imputation group is jointly and severally liable for further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising

from the operation of the imputation credit account of the imputation group.

Defined in this Act: company, further income tax, imputation credit account, imputation group

Compare: 2004 No 35 s FDA 4

FN 4 Eligibility rules

When company eligible

(1) A company is eligible to be part of an imputation group at a particular time if, at the time,—

(a) it is resident in New Zealand or resident in Australia; and

(b) it is part of the same wholly-owned group of companies; and

(c) it is not treated under a double tax agreement as resident in a country other than New Zealand or Australia, as applicable, for the purposes of taxation in the relevant country; and

(d) it is required to maintain an imputation credit account under section OB 1 (General rules for companies with imputation credit accounts), or chooses to maintain an account under OB 2 (Australian companies with imputation credit accounts); and

(e) if it is a company that is part of a consolidated group, it meets the criteria set out in subsection (2); and

(f) if it is a qualifying company or a mining company, it meets the condition set out in subsection (3); and

(g) subsections (4) and (5) do not apply to it.

Consolidated group companies

(2) A company that is part of a consolidated group is eligible to be part of an imputation group at a particular time if, at the time,—

(a) all companies in the consolidated group meet the criteria set out in subsection (1) and are part of the imputation group; and

(b) for an imputation group that includes or will include companies from more than 1 consolidated group, the companies in the consolidated groups are part of a single wholly-owned group of companies from the earliest

date on which a credit arose and remains uncancelled in the imputation credit account of a consolidated group or an imputation group, all of whose members are, or would be, in the imputation group.

Restriction when company of certain type

(3) Despite subsections (1) and (2), if a company that is part of an imputation group is 1 of the following types of company, all companies in the imputation group at the time must be the same type as that company:

(a) a qualifying company; or

(b) a mining company.

LAQCs

(4) A company is not eligible to be part of an imputation group if it is an LAQC.

Anti-avoidance measure

(5) A company is not eligible to be part of an imputation group if, for a purpose of enabling a company to be part of an imputation group so as to defeat the intent and application of the imputation rules, the company's shares—

(a) are subject to an arrangement or to a series of related or connected arrangements; or

(b) have rights attaching to them extinguished or altered, either directly or indirectly, by any means.

Defined in this Act: arrangement, company, consolidated group, double tax agreement, imputation credit account, imputation group, imputation rules, LAQC, mining company, New Zealand, qualifying company, resident in Australia, resident in New Zealand, wholly-owned group

Compare: 2004 No 35 s FDA 1

FN 5 Imputation groups with reduced numbers

An imputation group continues to exist if the number of group companies is reduced to 1 company, but if an imputation group has no company at any time, the imputation group no longer exists.

Defined in this Act: company, imputation group

Compare: 2004 No 35 s FDA 3(2), (4)

FN 6 Nominated companies

Group company at the time

(1) The nominated company of an imputation group at any time must be part of the imputation group at the time.

Trans-Tasman imputation groups

(2) For a trans-Tasman imputation group, the nominated company—

(a) must not be an Australian imputation credit account (ICA) company:

(b) is the nominated company for the resident imputation subgroup associated with the trans-Tasman imputation group.

Agent

(3) For the purposes of the imputation rules, a nominated company is, at a time, the agent of the imputation group and of each company that is part of the imputation group at the time.

Changing nominated company

(4) A nominated company may notify the Commissioner that it is, at a particular date, no longer to continue as the agent for the imputation group, and that another company is to become the nominated company.

When notice takes effect

(5) A notice under subsection (4) has effect 30 days after the date on which the Commissioner receives it.

Replacing nominated company

(6) If a nominated company of an imputation group is liquidated, the other companies in the imputation group may choose a replacement. The replacement company—

(a) becomes the nominated company from the date of the liquidation, on complying with paragraph (b); and

(b) must notify the Commissioner of its selection as nominated company within 30 days after the date of the liquidation, or by a later date if the Commissioner agrees.

Defined in this Act: agent, Australian ICA company, Commissioner, company, imputation group, liquidation, nominated company, notice, notify, resident imputation subgroup, trans-Tasman imputation group

Compare: 2004 No 35 ss FDA 5, FDA 6(6)

FN 7 Forming imputation groups

Election

(1) Two or more companies may choose to form an imputation group of companies if the companies are, at the time,—

(a) a wholly-owned group of companies; and

(b) eligible under section FN 4.

Notifying Commissioner

(2) The Commissioner must be notified of an election under subsection (1).

Nominated company

(3) A notice under subsection (2) must nominate 1 of the companies in the imputation group as its agent for the purposes of the imputation rules. In this subpart, the company is called the **nominated company**.

Consolidated group companies

(4) A nominated company of a consolidated group may notify the Commissioner that, having met the eligibility criteria in section FN 4, all the group companies have chosen—

(a) to form an imputation group with eligible companies that are not part of the consolidated group; or

(b) to join an existing imputation group.

Effective date

(5) A notice under subsection (1) or (4) has effect from the start of the tax year in which the Commissioner receives the notice.

Defined in this Act: agent, Commissioner, company, consolidated group, imputation group, imputation rules, nominated company, notice, notify, tax year, wholly-owned group

Compare: 2004 No 35 s FDA 2

FN 8 Trans-Tasman imputation groups and resident imputation subgroups

Trans-Tasman imputation group

(1) If at least 1 company in an imputation group is an Australian ICA company, and at least 1 company in the imputation group is not an Australian ICA company, the imputation group is a trans-Tasman imputation group.

Resident imputation subgroup

(2) A company in a trans-Tasman imputation group that is not an Australian ICA company is treated as a resident imputation subgroup of the trans-Tasman imputation group and is associated with that group.

Single company

(3) A resident imputation subgroup continues while a company in the trans-Tasman imputation group that is not an Australian ICA company remains in existence.

Defined in this Act: Australian ICA company, Commissioner, company, imputation group, notify, resident imputation subgroup, trans-Tasman imputation group

Compare: 2004 No 35 ss FDA 3(1), (3), OB 1 **resident imputation subgroup**, **trans-Tasman imputation group**

Section FN 8(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 234(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FN 8(3) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 234(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FN 8(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 234(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FN 9 Joining existing imputation group

Generally

(1) A company that is eligible under section FN 4(1) may join an imputation group by notifying the Commissioner.

Consolidated groups

(2) If the companies that are part of a consolidated group are eligible under section FN 4(2), the nominated company of the consolidated group may notify the Commissioner that all the companies in the consolidated group are to join an imputation group.

Joint and several liability

(3) The companies referred to in subsections (1) and (2) must agree in the notice to be jointly and severally liable under section FN 3 for any further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 arising

from the operation of the imputation credit account of the imputation group.

Effective date

(4) A notice under subsection (1) has effect from the start of the tax year in which the Commissioner receives the notice.

Defined in this Act: Commissioner, company, consolidated group, further income tax, imputation credit account, imputation group, nominated company, notice, notify, tax year

Compare: 2004 No 35 ss FDA 2(1)–(3), (5), FDA 4

Section FN 9(2): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

FN 10 When membership of imputation group ends

A company stops being part of an imputation group if—

(a) the company chooses to leave the imputation group and notifies the Commissioner, *see* section FN 11; or

(b) the company no longer meets the eligibility criteria set out in section FN 4, *see* section FN 12; or

(c) the company is not a nominated company and is no longer entitled to be part of the same imputation group as the nominated company, *see* section FN 12; or

(d) the company is in an imputation group that no longer has a nominated company, *see* section FN 13.

Defined in this Act: Commissioner, company, imputation group, nominated company, notify

Compare: 2004 No 35 s FDA 6(1)

FN 11 Company choosing to leave imputation group

When this section applies

(1) This section applies when a company chooses to leave an imputation group and notifies the Commissioner of its election.

Effective date

(2) When the company notifies the Commissioner of its election, it may set out in the notice a date from which it is no longer to be treated as part of the imputation group. However, unless subsection (3) applies, if the company does not set out a date in the notice, it is treated as no longer part of the imputation

group from the start of the tax year in which the Commissioner receives the notice.

First tax year

(3) Despite subsection (2), if a company leaves an imputation group in the same tax year in which it joined the imputation group, it is treated as leaving the imputation group on the date when it became part of the imputation group, and not from the start of the tax year.

Defined in this Act: Commissioner, company, imputation group, notice, notify, tax year

Compare: 2004 No 35 s FDA 6(2)

FN 12 Company no longer eligible or entitled to membership

When this section applies

(1) This section applies when a company is no longer eligible to be part of an imputation group or, if it is not the nominated company, when it is no longer entitled to be part of the same imputation group as the nominated company.

Effective date

(2) Unless subsections (3) or (4) apply, the company is treated as no longer part of the imputation group from the start of the tax year in which the relevant event occurs, making it no longer—

(a) eligible to be part of the imputation group; or

(b) if it is not the nominated company, entitled to be part of the same imputation group as the nominated company.

Notifying date

(3) Despite subsection (2), the company may notify the Commissioner that it is no longer to be treated as part of the imputation group from the date on which its eligibility or its entitlement ended. The company must provide the notice within 30 days after the date on which the company's eligibility or entitlement ended, although the Commissioner may agree to extend this period if it is reasonable to do so in the circumstances.

First tax year

(4) Despite subsections (2) and (3), if a company leaves an imputation group in the same tax year in which it became part of the imputation group, the company is treated as leaving the group

on the date when it became part of the imputation group, and not at the start of the tax year.

Anti-avoidance measure

(5) A notice under this section is not valid if it is made in connection with an arrangement entered into for a purpose of enabling the company to leave an imputation group so as to defeat the intent and application of the imputation rules. When this subsection applies, the company is treated as leaving the imputation group on the date on which its eligibility or entitlement ended.

Defined in this Act: arrangement, Commissioner, company, imputation group, imputation rules, nominated company, notice, notify, tax year

Compare: 2004 No 35 s FDA 6(3), (4), (7), (8)

FN 13 Imputation group with no nominated company

If, during a tax year, no nominated company exists for an imputation group and no replacement is made under section FN 6(6), all companies in the imputation group are treated as having left the imputation group with effect from the start of the tax year.

Defined in this Act: company, imputation group, nominated company, tax year

Compare: 2004 No 35 s FDA 6(5)

FN 14 Effect of liquidation of company

If a company is no longer part of an imputation group because it is liquidated, sections FN 11 and FN 12 do not apply to treat the company as leaving the imputation group from the start of the income year in which the liquidation occurred.

Defined in this Act: company, imputation group, income year, liquidation

Compare: 2004 No 35 s FDA 6(9)

Subpart FO—Amalgamation of companies

Introductory provisions

FO 1 What this subpart does

This subpart sets out the rules that provide for some tax consequences when companies amalgamate. In general, the rules

provide roll-over relief when a resident's restricted amalgamation occurs.

Defined in this Act: amalgamation, company, resident's restricted amalgamation, tax

Compare: 2004 No 35 s FE 1(1)(a), (b)

FO 2 Amalgamation rules

The **amalgamation rules** means the following:

(a) this subpart:

(b) sections CD 35, CD 43(23) and (24), and CD 44(8) (which relate to the treatment of dividends):

(c) sections DB 8(3) to (5), DV 14 and DV 15 (which relate to the treatment of deductions when an amalgamating company ends its existence on a resident's restricted amalgamation):

(d) sections IA 9, IE 2 to IE 5, and IQ 1 (which relate to tax losses):

(e) sections LK 12 to LK 15 (which relate to tax credits):

(f) sections OA 9, OB 24, OB 53 (which relate to memorandum accounts):

(g) sections RA 20, RC 33, RD 46, and RD 49 (which relate to tax payments):

(h) sections 75 and 76 of the Tax Administration Act 1994.

Defined in this Act: amalgamation rules

Compare: 2004 No 35 s FE 1(2)

FO 3 Resident's restricted amalgamations

What is a resident's restricted amalgamation?

(1) In the amalgamation rules, an amalgamation is a **resident's restricted amalgamation** if, at the time of the amalgamation, each of the amalgamating companies and the amalgamated company—

(a) is resident in New Zealand; and

(b) is not treated under, and for the purposes of, a double tax agreement as resident in another country; and

(c) is not a company that derives only exempt income, except income exempt under sections CW 9 to CW 11 (which relate to income from equity); and

(d) if the amalgamated company is a qualifying company, it meets the condition in subsection (2); and

(e) if the amalgamated company is a loss-attributing qualifying company (LAQC), it meets the condition in subsection (3).

Qualifying companies

(2) If the amalgamated company is a qualifying company immediately after the amalgamation, each of the amalgamating companies must be a qualifying company at the time of the amalgamation.

LAQCs

(3) If the amalgamated company is an LAQC immediately after the amalgamation, each of the amalgamating companies must be an LAQC at the time of the amalgamation.

Companies deriving exempt income

(4) For the purposes of subsection (1)(c), a company that derives only exempt income includes a local authority that is not a council-controlled organisation.

Companies opting out

(5) Even if they meet the requirements of subsection (1), the companies may choose that the amalgamation will not be treated as a resident's restricted amalgamation by notifying the Commissioner in the way set out in section 75 of the Tax Administration Act 1994.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amalgamation rules, Commissioner, company, council-controlled organisation, double tax agreement, exempt income, LAQC, local authority, New Zealand, notify, qualifying company, resident in New Zealand, resident's restricted amalgamation

Compare: 2004 No 35 s OB 1 **qualifying amalgamation**

FO 4 Rights and obligations of amalgamated companies

When this section applies

(1) This section applies when an amalgamating company ends its existence on amalgamation.

Amalgamated company assuming rights, obligations, and liabilities

(2) For the tax year corresponding to the income year of amalgamation and all earlier tax years, the amalgamated company, under section 209G of the Companies Act 1955 or section 225 of the Companies Act 1993, or under this section in the case of an amalgamation of building societies,—

(a) must comply with the obligations of the amalgamating company under the Inland Revenue Acts; and

(b) must meet the liabilities of the amalgamating company under the Inland Revenue Acts; and

(c) is entitled to the rights, powers, and privileges of the amalgamating company under the Inland Revenue Acts.

Relationship with Companies Act 1993

(3) The amalgamation rules apply despite anything to the contrary in section 225(d) of the Companies Act 1993.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amalgamation rules, income year, Inland Revenue Acts, tax year

Compare: 2004 No 35 ss FE 1(1)(c), FE 8

Section FO 4(2): amended (with effect on 30 September 2010), on 29 August 2011, by section 47 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

FO 5 Amalgamations and remitted liabilities

Sections CG 2 (Remitted amounts) and DB 47 (Payments for remitted amounts) do not apply merely because an amalgamated company succeeds to a liability of an amalgamating company on an amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount

Compare: 2004 No 35 s FE 9

Treatment of shares, income, expenditure, and bad debts

FO 6 Cancellation of shares

If an amalgamating company (**company A**) holds shares in another amalgamating company (**company B**), and the shares are cancelled on the amalgamation, company A is treated as having disposed of the shares in company B immediately be-

fore the amalgamation for an amount equal to the cost of the shares to company A.

Defined in this Act: amalgamating company, amalgamation, cancellation, share

Compare: 2004 No 35 s FE 2

FO 7 Income derived after amalgamation

When this section applies

(1) This section applies when an amalgamating company ends its existence on amalgamation, and an amount is derived by the amalgamated company after the amalgamation as a result of something that the amalgamating company did or did not do.

Income of amalgamated company

(2) The amount is income of the amalgamated company under section CV 4 (Amalgamated companies: amount derived after amalgamation) if it would have been income of the amalgamating company but for the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, income

Compare: 2004 No 35 s FE 4(b)

FO 8 Bad debts and expenditure or loss on resident's restricted amalgamation

When this section applies

(1) This section applies when an amalgamating company ends its existence on a resident's restricted amalgamation, and the amalgamated company at any time—

(a) writes off as bad the amount of a debt that it acquires from the amalgamating company at the time of the amalgamation; or

(b) incurs an amount of expenditure or loss, including an amount of depreciation loss, as a result of something that the amalgamating company did or did not do.

Deduction of amalgamated company

(2) The amalgamated company is allowed a deduction under section DV 15(2) (Amalgamated companies: property passing on resident's restricted amalgamation) for the amount if—

(a) the amalgamating company would have been allowed the deduction but for the amalgamation; and

(b) the amalgamated company is not otherwise allowed the deduction.

Defined in this Act: amalgamated company, amalgamating company, amount, deduction, depreciation loss, loss, resident's restricted amalgamation

Compare: 2004 No 35 s FE 3

FO 9 Unexpired portion of prepaid expenditure

If an amalgamating company ends its existence on amalgamation, the unexpired portion under section EA 3 (Prepayments) of an amount of expenditure of the amalgamating company for the income year of amalgamation is treated as the amalgamated company's unexpired amount of the expenditure.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, income year, prepaid expenditure

Compare: 2004 No 35 s FE 4(a)

Property passing to amalgamated company on amalgamation

FO 10 When property passes on resident's restricted amalgamation

When this section applies

(1) This section applies when property belonging to an amalgamating company becomes the property of the amalgamated company on a resident's restricted amalgamation.

What this section does not apply to

(2) Despite subsection (1), this section—

(a) does not apply to property that is a financial arrangement, *see*sections FO 12 to FO 15:

(b) is subject to the rules for—

(i) amortising property in section FO 16:

(ii) land in section FO 17.

Property passing

(3) The amalgamating company is treated as having disposed of the property immediately before the amalgamation. The passing of ownership is treated as a disposal of the property by the amalgamating company and an acquisition of the property by the amalgamated company.

Timing and consideration

(4) Unless subsections (5) or (6) apply, the amalgamated company is treated as having acquired the property on the date on which the amalgamating company acquired it for an amount that is the sum of—

(a) the price paid for the property; and

(b) any expenditure incurred in buying or improving the property; and

(c) any expenditure incurred in securing or improving the amalgamating company's legal rights to the property.

Trading stock

(5) If the property is trading stock for both the amalgamating company and the amalgamated company, the consideration for the disposal and acquisition is taken as the value of the trading stock to the amalgamating company determined under subpart EB (Valuation of trading stock (including dealer's livestock)) at the time of the amalgamation.

Revenue account property

(6) If the property is revenue account property of the amalgamating company but not revenue account property of the amalgamated company, the consideration for the disposal and acquisition is taken as the market value of the property at the time of the amalgamation. But this subsection does not apply to land that is revenue account property merely because of the 10-year rule in sections CB 9 to CB 11 and CB 14 (which relate to the disposal of land), in which case section FO 17(3) may apply.

Depreciation loss

(7) An amalgamating company is allowed a deduction under section DV 15(3) (Amalgamated companies: property passing on resident's restricted amalgamation) for an amount of depreciation loss for property transferred to the amalgamated company for the period beginning on the first day of the income year of amalgamation and ending on the day before the date of the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amortising property, amount, deduction, financial arrangement, income year, land, market value, resident's restricted amalgamation, revenue account property trading stock

Compare: 2004 No 35 ss FE 6(1)–(3B), FE 6A

FO 11 When property passes on amalgamation other than resident's restricted amalgamation

Disposal and acquisition

(1) If property belonging to an amalgamating company becomes the property of the amalgamated company on an amalgamation that is not a resident's restricted amalgamation,—

(a) the amalgamating company is treated as having disposed of the property for an amount equal to the market value of the property at the time of the amalgamation; and

(b) the amalgamated company is treated as having acquired the property at that market value.

Relationship with section EE 41

(2) Section EE 41 (Transfer of depreciable property on certain amalgamations on or after 14 May 2002) overrides this section for the purposes of determining the cost of an item to an amalgamated company, unless the context requires otherwise.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, market value, resident's restricted amalgamation

Compare: 2004 No 35 s FE 5

FO 12 Financial arrangements: resident's restricted amalgamation, companies in wholly-owned group

When this section applies

(1) This section applies, despite sections EW 42 and GB 21 (which relate to non-market transfers of financial arrangements) in an income year in which the obligations that an amalgamating company has under a financial arrangement pass to the amalgamated company on a resident's restricted amalgamation when,—

(a) the financial arrangements rules apply to the financial arrangement; and

(b) for the whole of the income year before the amalgamation, the amalgamating company and the amalgamated company were part of the same wholly-owned group of companies; and

(c) the method of calculating income and expenditure from the financial arrangement does not change after the amalgamation, and the amalgamated company's return

of income for the corresponding tax year is made on this basis; and

(d) sections IA 3 to IA 6 and subpart ID (which relate to tax losses of companies and consolidated groups) do not apply to allow the amalgamating company to carry a loss balance forward from an earlier tax year for use in the tax year corresponding to the income year unless section IE 2 (Treatment of tax losses by amalgamating company) applies when the tax losses are those of the consolidated group.

Amalgamated company's election

(2) The amalgamated company may choose to apply subsections (3) and (4) in their return of income for the corresponding tax year.

Treatment of amalgamating company

(3) The amalgamating company is treated as if it had never been party to the financial arrangement. Section EW 31 (Base price adjustment formula) does not apply, in relation to the transfer of the financial arrangement or the obligations under it.

Treatment of amalgamated company

(4) The amalgamated company is treated as if it had taken the place of the amalgamating company in relation to the financial arrangement in terms of—

(a) the date the company entered into the arrangement; and

(b) the consideration paid; and

(c) the income derived; and

(d) the expenditure incurred; and

(e) the returns of income provided.

Defined in this Act: amalgamated company, amalgamating company, consideration, consolidated group, corresponding income year, financial arrangement, financial arrangements rules, income, income year, loss balance, resident's restricted amalgamation, return of income, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 ss FE 6(5), (6), FE 7(1)(a), (2)

FO 13 Financial arrangements: resident's restricted amalgamation, calculation method unchanged

When this section applies

(1) This section applies, despite sections EW 42 and GB 21 (which relate to non-market transfers of financial arrangements) in an income year in which the obligations that an amalgamating company has under a financial arrangement pass to the amalgamated company on a resident's restricted amalgamation when—

(a) the method of calculating income and expenditure from the financial arrangement does not change after the amalgamation; and

(b) section FO 12 does not apply.

Calculating base price adjustment

(2) The amalgamating company is treated as having disposed of the financial arrangement. In calculating the base price adjustment, the consideration is the amount that would fairly and reasonably represent the income or expenditure that the amalgamating company would have derived or would have incurred in the income year if the amalgamation had not taken place.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, consideration, dispose, financial arrangement, income, income year, resident's restricted amalgamation

Compare: 2004 No 35 ss FE 6(5), (7), FE 7(1)(b), (3)

FO 14 Financial arrangements: resident's restricted amalgamation, other cases

When this section applies

(1) This section applies in an income year in which a financial arrangement belonging to an amalgamating company passes to the amalgamated company on a resident's restricted amalgamation when sections FO 12 and FO 13 do not apply.

Market value

(2) The amalgamating company is treated as having disposed of the financial arrangement. The consideration for the disposal

is the market value of the financial arrangement on the date the amalgamated company acquires it.

Defined in this Act: amalgamated company, amalgamating company, consideration, financial arrangement, income year, market value, resident's restricted amalgamation

Compare: 2004 No 35 ss FE 6(5), (8), FE 7(1)(b), (4)

FO 15 Financial arrangements: amalgamation other than resident's restricted amalgamation

When this section applies

(1) This section applies when an obligation that an amalgamating company has in relation to a financial arrangement passes to the amalgamated company on an amalgamation that is not a resident's restricted amalgamation.

Market value for amalgamating company

(2) The amalgamating company is treated as having disposed of the financial arrangement or relieved itself of the obligations immediately before the amalgamation. The consideration for the disposal is the market price for assuming the obligations at the time of the amalgamation.

Market value for amalgamated company

(3) The amalgamated company is treated as having acquired the financial arrangement or assumed the obligations immediately after the amalgamation. The consideration for the acquisition is the market value of the property at the time of the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, consideration, financial arrangement, market value, resident's restricted amalgamation

Compare: 2004 No 35 s FE 5

FO 16 Amortising property

When this section applies

(1) This section applies in an income year in which amortising property belonging to an amalgamating company passes to the amalgamated company on a resident's restricted amalgamation. The passing of ownership is treated as a disposal of the property by the amalgamating company and an acquisition by the amalgamated company.

Treatment of amalgamating company

(1B) The amalgamating company is treated as neither deriving income nor having a deduction under sections EE 24 to EE 53 (which relate to disposals of depreciable property) as a result of the deemed disposal.

Value: all pool property

(2) If the amortising property forms the whole of a pool of property of the amalgamating company that is depreciated under sections EE 20 to EE 24 (which relate to depreciation under the pool method), the consideration for the disposal and acquisition is taken as the adjusted tax value of the pool immediately before the amalgamation.

Value: part pool property

(3) If the amortising property forms part of a pool of property of the amalgamating company that is depreciated under sections EE 20 to EE 24, the consideration for the disposal and acquisition is taken as the lesser of—

(a) the market value of the property; or

(b) the adjusted tax value of the pool immediately before the amalgamation.

Deductions for depreciation loss

(4) If the amortising property is other than pool property of the amalgamating company, the amalgamated company is treated as having been allowed the deduction that the amalgamating company would have had for an amount of depreciation loss, or a deduction under any other amortisation provision of this Act, relating to the property.

Defined in this Act: acquire, adjusted tax value, amalgamated company, amalgamating company, amortising property, amount, deduction, depreciation loss, dispose, income year, market value, other amortisation provision, pool, resident's restricted amalgamation

Compare: 2004 No 35 s FE 6(1), (4)

Section FO 16(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 235(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section FO 16(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 235(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FO 17 Land

When this section applies

(1) This section applies when land belonging to an amalgamating company passes to the amalgamated company on a resident's restricted amalgamation.

Disposal at market value

(2) If the land is not revenue account property of the amalgamating company, but the disposal of the land would give rise to income for the amalgamated company under any of sections CB 6 to CB 14 (which relate to the disposal of land), the amalgamating company is treated as having disposed of the land to the amalgamated company at the market value of the land at the date of the amalgamation.

Disposal of land within 10-year period

(3) If the land is, or may be, revenue account property of the amalgamating company because of the 10-year rule in any of sections CB 9 to CB 11 and CB 14, and the amalgamated company disposes of the land within the 10-year period after the amalgamating company acquired it, an amount derived from the disposal is income of the amalgamated company under whichever is applicable of sections CB 6 to CB 14.

Defined in this Act: amalgamated company, amalgamating company, amount, income, land, resident's restricted amalgamation, revenue account property

Compare: 2004 No 35 s FE 6(3A), (3B)

Treatment of financial arrangements between amalgamating companies

FO 18 When amalgamating companies are parties to financial arrangement

When this section applies

(1) This section applies when amalgamating companies are parties to a financial arrangement that exists on the date of the amalgamation of the companies.

Financial arrangement discharged

(2) The financial arrangement is, for the purposes of section EW 31 (Base price adjustment formula), treated as having been discharged immediately before the amalgamation. The consideration for the discharge is as follows:

(a) on a resident's restricted amalgamation,—

(i) if the amalgamating company is solvent, the consideration is the accrued balance for the financial arrangement:

(ii) if the amalgamating company is insolvent but is likely to be able to meet its obligations under the financial arrangement, the consideration is the accrued balance for the financial arrangement:

(iii) if the amalgamating company is insolvent and is unlikely to be able to meet its obligations under the financial arrangement, the consideration is the market value of the financial arrangement on the date of the amalgamation:

(b) on an amalgamation other than a resident's restricted amalgamation, the consideration is the market value of the financial arrangement on the date of the amalgamation.

When subsection (4) applies

(3) Subsection (4) applies when an amalgamating company that is the borrower under the financial arrangement—

(a) is solvent; or

(b) is insolvent but is likely to be able to meet its obligations under the financial arrangement.

No remission

(4) The other party to the financial arrangement is not regarded as remitting an amount in excess of the consideration treated as paid for the discharge under subsection (2)(a)(i) or (ii) or (b), as applicable, merely by virtue of the discharge.

When subsection (6) applies

(5) Subsection (6) applies when an amalgamating company that is the borrower under the financial arrangement is insolvent and is unlikely to meet its financial obligations under the financial arrangement.

Market value treated as paid

(6) For the purposes of section EW 31, the financial arrangement is treated as discharged immediately before the amalgamation and the market value of the financial arrangement is treated as

being paid by the amalgamating company to the other party to the financial arrangement.

Amount remitted

(7) For the purposes of subsection (6), the other party to the financial arrangement is treated as having remitted an amount equal to the excess over market value of the outstanding accrued balance for the financial arrangement, *see* section FO 20.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, company, consideration, financial arrangement, market value, pay, resident's restricted amalgamation

Compare: 2004 No 35 s FE 10(1)–(5), (6)(c)

Section FO 18(2) heading: substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(2): substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(3) heading: substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(3): substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(4) heading: substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(4): substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(5) heading: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(5): inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(6) heading: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(6): inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(7) heading: added (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18(7): added (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section FO 18 list of defined terms **pay**: inserted (with effect on 1 April 2008), on 21 December 2010, by section 66(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

FO 19 Calculation of outstanding accrued balance: consideration for discharge

Formula

(1) In section FO 18(2)(a), the outstanding accrued balance is calculated using the formula—

consideration + prior expenditure + expenditure accrued in year − income accrued in year − consideration paid.

Definition of items in formula

(2) In the formula,—

(a) **consideration** is the consideration paid to the amalgamating company under the financial arrangement:

(b) **prior expenditure** is the expenditure that the amalgamating company incurs less the income that it derives from the financial arrangement calculated under either a spreading method or EW 53 (Adjustment required) in all income years other than the current income year from the time the financial arrangement was entered into:

(c) **expenditure accrued in year** is the expenditure that the amalgamating company accrues from the financial arrangement for the period from the first day of the income year in which the amalgamation occurs to the date of the amalgamation, calculated either—

(i) if the amalgamating company was party to the financial arrangement in an earlier income year, using the spreading method it used to calculate income and expenditure under the financial arrangement in the income year; or

(ii) using a spreading method that the amalgamating company chooses, if the method could have been used if the income year had ended immediately before the amalgamation:

(d) **income accrued in year** is the income that the amalgamating company accrues from the financial arrangement for the period described in paragraph (c) and calculated as described in that paragraph:

(e) **consideration paid** is the consideration that the amalgamating company pays for the financial arrangement before the date of the amalgamation.

Defined in this Act: amalgamating company, amalgamation, consideration, financial arrangement, income, income year, pay, spreading method

Compare: 2004 No 35 s FE 10(6)(a)

FO 20 Calculation of outstanding accrued balance: amounts remitted

Formula

(1) In section FO 18(3), the outstanding accrued balance is calculated using the formula—

consideration + prior income + income accrued in year − expenditure accrued in year − consideration paid.

Definition of items in formula

(2) In the formula,—

(a) **consideration** is the consideration paid by the party under the financial arrangement:

(b) **prior income** is the income that the party derives less the expenditure that it incurs under the financial arrangement calculated under either a spreading method or section EW 53 (Adjustment required) in all income years other than the current income year from the time the financial arrangement was entered into:

(c) **income accrued in year** is the income that the party accrues from the financial arrangement for the period from the first day of the income year in which the amalgamation occurs to the date of the amalgamation, calculated either—

(i) using the spreading method used to calculate income and expenditure under the financial arrangement in the income year, if the party was a party to the financial arrangement in an earlier income year; or

(ii) using a spreading method that the party chooses, if the method could have been used if the income year had ended immediately before the amalgamation:

(d) **expenditure accrued in year** is the expenditure that the party accrues under the financial arrangement for the period described in paragraph (c) and calculated as described in that paragraph:

(e) **consideration paid** is the consideration paid to the party under the financial arrangement before the date of the amalgamation.

Defined in this Act: amalgamation, consideration, financial arrangement, income, income year, spreading method

Compare: 2004 No 35 s FE 10(6)(b)

Subpart FZ—Terminating provisions

Debentures

FZ 1 Treatment of interest payable under debentures issued before certain date

When this section applies

(1) This section applies for the purposes of section FA 2 (Recharacterisation of certain debentures).

Profit-related debentures

(2) A debenture issued before 8pm New Zealand standard time on 23 October 1986 is a profit-related debenture if the rate of interest may be determined by reference to the dividend payable by the company issuing the debenture or in any other manner.

Fixed rates of interest

(3) Section FA 2(2) applies to a profit-related debenture issued before 8pm New Zealand standard time on 23 October 1986.

Defined in this Act: company, debentures, dividend, interest, pay, profit-related debenture

Compare: 2004 No 35 s FC 1

Section FZ 1(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 236 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Leases

FZ 2 Effect of specified lease on lessor and lessee

Lease treated as sale

(1) The leasing of a personal property lease asset under a specified lease is treated as a sale of the asset, made at the start of the term of the lease, by the lessor to the lessee. The lessee is treated as having incurred, through the sale, capital expenditure of an amount equal to the cost price of the asset.

Loan applied to finance acquisition of asset

(2) A lessor under a specified lease is treated as having advanced to the lessee a loan of an amount equal to the cost price of the personal property lease asset. The lessee is treated as having applied the loan in the financing of the acquisition of the asset.

No deduction

(3) A lessor under a specified lease is denied a deduction under section DZ 14(2) (Deductions under specified leases) for an amount of depreciation loss for the personal property lease asset.

Asset sold to lessor

(4) At the end of the term of a specified lease, if the personal property lease asset is not acquired by the lessee under the terms of the lease or in the exercise of an option under the lease, the asset is treated as sold at the end of the term of the lease to the lessor for—

(a) an amount equal to the guaranteed residual value, if any, set out for the asset in the lease; or

(b) if no guaranteed residual value is set out in the lease, no consideration.

Treatment when lease terminated

(5) If a specified lease is terminated before the term of the lease ends, whether by cancellation, surrender, or otherwise,—

(a) the personal property lease asset relating to the lease is treated as sold on the date of the termination to the lessor by the lessee at a price equal to the amount by which the amount of the outstanding balance, at the time of termination, of a loan advance by the lessor to the lessee is more than the amount or the sum of the amounts payable by the lessee to the lessor in consideration for the re-

lease by the lessor of the lessee from the obligations of the lessee under the lease:

(b) despite paragraph (a), if, in relation to the amount of the outstanding balance and the amount or the sum of the amounts payable by the lessee to the lessor, no excess arises, the asset is treated as having been sold for no consideration:

(c) if the value of the consideration payable by the lessee to the lessor in relation to the termination is more than the amount of the outstanding balance, at the time of termination, of a loan advanced by the lessor to the lessee, an amount equal to the amount of the excess is treated as income derived by the lessor in the income year in which the lease is terminated.

Subsequent sale, assignment, or lease

(6) If, on or after the end of the term of a specified lease, the personal property lease asset relating to the lease is sold, assigned, or leased under a specified lease by the lessor to another person, and the value of the consideration on the sale, assignment, or lease—

(a) is more than the amount determined for the first specified lease under subsection (4), the amount determined is increased by a further amount that is equal to the part, if any, of the excess paid by the lessor to the lessee:

(b) is less than the amount determined for the first specified lease under subsection (4)(a), and the lessee is required to make a further payment to the lessor equal to the difference between the guaranteed residual value for the lease value, and the value of the consideration, the amount determined is reduced by the amount of the further payment.

Consideration more than amount determined under subsection (4)

(7) Despite subsection (6), if the value of the consideration on the sale, assignment, or lease is more than the amount determined under subsection (4), the part, if any, of the excess that is not paid to the lessee is treated as income under section CZ 20 (Disposal of personal property lease asset under specified lease).

Associated persons

(8) If the lessee under a specified lease, or another person who is associated with the lessee, at any time acquires the personal property lease asset, and disposes of the asset, and the value of the consideration for the disposal is more than the value of the consideration for which the lessee or other person acquired it, an amount equal to the excess is income under section CZ 20.

Meaning of outstanding balance

(9) In this section, and in section FZ 3, **outstanding balance** means the amount calculated using the formula—

(loans advanced + interest payable) – instalments.

Definition of items in formula

(10) In the formula,—

(a) **loans advanced** is the total amount of all loans advanced under the lease by the lessor for the period—

(i) starting on the date that the lease started; and

(ii) ending on the date immediately before the start of the instalment period:

(b) **interest payable** is the total amount of interest payable for each loan for the period—

(i) starting on the date that the lease started; and

(ii) ending on the date immediately before the start of the instalment period:

(c) **instalments** is the total amount of all instalments paid by the lessee in the period—

(i) starting on the date that the lease started; and

(ii) ending on the date immediately before the start of the instalment period.

Defined in this Act: amount, associated person, cost price, deduction, depreciation loss, guaranteed residual value, income, income year, instalment, lessee, lessor, loan, outstanding balance, pay, personal property lease asset, specified lease, term of the lease

Compare: 2004 No 35 s FC 6(2)–(8)

FZ 3 Income of lessor under specified lease

Interest

(1) The income of a lessor derived under a specified lease is treated as interest.

Treatment of amount derived

(2) The amount of interest derived under subsection (1) is treated as—

(a) during the term of the lease, derived during the initial period and each instalment period, an amount that is calculated either,—

(i) on the outstanding balance for the initial period, and each instalment period, at such a rate and in such a manner that the aggregate of all of the amounts so calculated is equal to the amount first mentioned in paragraph (b); or

(ii) for the initial period and each instalment period, under such other method commonly applied in commercial usage as, having regard to the term of the lease and to the frequency of the personal property lease payments, results in the allocation to that initial period and to each instalment period of an amount that is fair and reasonable and results in the sum of all amounts so allocated being equal to the amount first mentioned in paragraph (b):

(b) in relation to the term of the lease, an amount that is equal to the sum of the personal property lease payments under the specified lease and the amount of the guaranteed residual value, if any, under the specified lease, reduced by the cost price of the personal property lease asset.

Calculation for income year

(3) The interest derived by a lessor is, for an income year, treated as an amount equal to the sum of the amounts calculated under subsection (2)(a) as calculated for the initial period, if any, and each instalment period that ends in the income year.

Some definitions

(4) In this section,—

initial period means the period—

(a) starting on the date of the start of a lease; and

(b) ending just before the start of the instalment period that follows the start of the lease

instalment period means the period—

(a) starting on the day on which an instalment is payable; and

(b) ending with the day just before the day on which the next instalment is payable.

Defined in this Act: amount, guaranteed residual value, income, income year, initial period, instalment, instalment period, interest, lessor, outstanding balance, pay, personal property lease asset, personal property lease payment, specified lease, term of the lease

Compare: 2004 No 35 s FC 7

FZ 4 Deductions under specified leases

A lessee under a specified lease is denied a deduction for expenditure incurred by them under the lease except to the extent described in section DZ 14(3) (Deductions under specified leases).

Defined in this Act: deduction, lessee, specified lease

Compare: 2004 No 35 s FC 8

Relationship property

FZ 5 Commercial bills

When this section applies

(1) This section applies for the purposes of section CZ 6 (Commercial bills before 31 July 1986) when a commercial bill is transferred under a settlement of relationship property.

Transfer at cost

(2) The transfer is treated as a disposal by the transferor and an acquisition by the transferee for an amount that equals the cost of the bill to the transferor.

Defined in this Act: amount, commercial bill, settlement of relationship property

Compare: 2004 No 35 s FF 5

Estate property

FZ 6 Transitional valuation rule for estate property

What this section applies to

(1) This section applies to property transferred under section FC 1(1)(a) (What this subpart does) either on a person's death or

on a distribution by an executor, administrator, or trustee of an estate, if—

(a) the death or distribution occurred before 1 October 2005; and

(b) in the tax year in which the property passes, all beneficiaries of the deceased person are resident in New Zealand, and no income of a beneficiary is exempt income under section CW 43 (Charitable bequests).

Market value or value under settlement of relationship property

(2) The valuation of the transferred property for tax purposes for the corresponding income year in which the death or distribution occurred is measured as a transfer occurring immediately before the death of the person, or at the date of distribution, as applicable, at—

(a) market value; or

(b) a value under subpart FB (Transfers of relationship property) for property of the type; or

(c) a value under subsection (4).

Returns of income

(3) For the purposes of providing a return of income for the deceased person, beneficiary, and estate, a value determined under subsection (2) is treated as correct.

Requirements of other provisions

(4) Despite subsection (3), if this Act, the Income Tax Act 2004, or Income Tax Act 1994, requires the use of a market value for an item of property, that value must be used in the return of income.

Defined in this Act: corresponding income year, exempt income, income, market value, New Zealand, property, resident in New Zealand, return of income, tax year, trustee

Compare: 2004 No 35 ss FI 9, FI 10

Part G
Avoidance and non-market transactions

Subpart GA—Avoidance: general

GA 1 Commissioner's power to adjust

When this section applies

(1) This section applies if an arrangement is void under section BG 1 (Tax avoidance).

Commissioner's general power

(2) The Commissioner may adjust the taxable income of a person affected by the arrangement in a way the Commissioner thinks appropriate, in order to counteract a tax advantage obtained by the person from or under the arrangement.

Commissioner's specific power over tax credits

(3) The Commissioner may—

(a) disallow some or all of a tax credit of a person affected by the arrangement; or

(b) allow another person to benefit from some or all of the tax credit.

Commissioner's identification of hypothetical situation

(4) When applying subsections (2) and (3), the Commissioner may have regard to 1 or more of the amounts listed in subsection (5) which, in the Commissioner's opinion, had the arrangement not occurred, the person—

(a) would have had; or

(b) would in all likelihood have had; or

(c) might be expected to have had.

Reconstructed amounts

(5) The amounts referred to in subsection (4) are—

(a) an amount of income of the person:

(b) an amount of deduction of the person:

(c) an amount of tax loss of the person:

(d) an amount of tax credit of the person.

No double counting

(6) When applying subsection (2), if the Commissioner includes an amount of income or deduction in calculating the taxable income of the person, it must not be included in calculating the taxable income of another person.

Meaning of tax credit

(7) In this section, **tax credit** means a reduction in the tax a person must pay because of—

(a) a credit allowed for a payment by the person of an amount of tax or of another item; or

(b) another type of benefit.

Defined in this Act: amount, arrangement, Commissioner, deduction, tax, tax credit, tax loss, taxable income

Compare: 2004 No 35 s GB 1(1)–(2C)

GA 2 Commissioner's power to adjust: fringe benefit tax

When this section applies

(1) This section applies if—

(a) an arrangement is void under section BG 1 (Tax avoidance); and

(b) the arrangement involves altering the incidence of fringe benefit tax (FBT).

Commissioner's power in relation to excluded income

(2) The Commissioner may adjust the excluded income under section CX 3 (Excluded income) of a person affected by the arrangement in a way the Commissioner thinks appropriate, in order to counteract a tax advantage obtained by the person from or under the arrangement.

Commissioner's identification of hypothetical situation

(3) When applying subsection (2), the Commissioner may have regard to 1 or more of the amounts listed in subsection (4) which, in the Commissioner's opinion, had the arrangement not occurred, the person—

(a) would have had; or

(b) would in all likelihood have had; or

(c) might be expected to have had.

Reconstructed amounts

(4) The amounts referred to in subsection (3) are—

(a) an amount of excluded income of the person:

(b) an amount of excluded income of the person, if the person had been allowed the benefit of an amount of excluded income derived by another person as a result of the arrangement.

No double counting

(5) If the Commissioner includes an amount of excluded income in calculating the taxable income of the person, it must not be included in calculating the taxable income of another person.

Defined in this Act: amount, arrangement, Commissioner, excluded income, FBT, fringe benefit tax, taxable income

Compare: 2004 No 35 s GC 17B

Subpart GB—Avoidance: specific

Arrangements involving dividend stripping

GB 1 Arrangements involving dividend stripping

When this section applies

(1) This section applies when—

(a) a person disposes of shares in a company in an income year; and

(b) the disposal is part of a tax avoidance arrangement; and

(c) some or all of the consideration that the person derives from the disposal is in substitution for a dividend in an income year.

When amount substitutes for dividend

(2) An amount derived by the person is in substitution for a dividend if it is equivalent to or substitutes for a dividend that, but for the arrangement, the person—

(a) would have derived; or

(b) would in all likelihood have derived; or

(c) might be expected to have derived.

Substitute treated as dividend

(3) The amount derived in substitution for a dividend is treated as a dividend derived by the person in the income year in which the disposal occurs.

Defined in this Act: arrangement, company, dispose, dividend, income year, tax avoidance arrangement

Compare: 2004 No 35 s GB 1(3)

Arrangements involving transfer pricing

GB 2 Arrangements involving transfer pricing

When this section applies

(1) This section applies in relation to a person if an arrangement has a purpose or effect of defeating the intent and application of—

(a) section GC 7 (Excess amount payable by person):

(b) section GC 8 (Insufficient amount receivable by person):

(c) section GC 9 (Compensating arrangement: person paying less than arm's length amount):

(d) section GC 10 (Compensating arrangement: person receiving more than arm's length amount).

Possible examples

(2) Without limiting the generality of subsection (1), the following collateral arrangements may result in that purpose or effect:

(a) a collateral arrangement with an associated person who is a non-resident:

(b) a market-sharing arrangement:

(c) an arrangement not to enter a market:

(d) a back-to-back supply arrangement:

(e) an income-sharing arrangement.

Application of sections GC 7 to GC 10

(3) Section GC 7, GC 8, GC 9, or GC 10, as applicable, applies to require the substitution of an arm's length amount of consideration, despite section GC 6(2) and (3) (Purpose of rules and nature of arrangements).

Defined in this Act: arrangement, associated person, non-resident

Compare: 2004 No 35 s GC 1

Arrangements involving tax losses

GB 3 Arrangements for carrying forward loss balances: companies

When this section applies

(1) This section applies when—

(a) a share in a company (the **loss company**) or another company has been subject to an arrangement, includ-

ing an arrangement directly or indirectly altering rights attached to the shares; and

(b) the arrangement allows the loss company to meet the requirements of section IA 5 (Restrictions on companies' loss balances carried forward); and

(c) a purpose of the arrangement is to defeat the intent and application of sections IA 5 and IP 3 (Continuity breach: tax loss components of companies carried forward).

Company treated as not meeting requirements

(2) The loss company is treated as not meeting the requirements of section IA 5 in relation to the share.

Defined in this Act: arrangement, company, loss balance, share

Compare: 2004 No 35 s GC 2

GB 4 Arrangements for grouping tax losses: companies

When this section applies

(1) This section applies when—

(a) a share in a company (the **offset company**) or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the shares; and

(b) the arrangement allows the offset company to meet the requirements of subparts IC and IP, and section IZ 7 (which relate to the use of tax losses by group companies), as applicable; and

(c) a purpose of the arrangement is to defeat the intent and application of those provisions.

Company treated as not meeting requirements

(2) The offset company is treated as not meeting the requirements of subparts IC and IP and section IZ 7, as applicable, in relation to the share.

Defined in this Act: arrangement, company, share, tax loss

Compare: 2004 No 35 s GC 4

Arrangements to defeat continuity provisions

GB 5 Arrangements involving trust beneficiaries

When this section applies

(1) This section applies when—

(a) a share in a company or option over a share in a company is held by a trustee; and

(b) a change occurs in the beneficiaries of the trust; and

(c) a purpose or effect of the change is to defeat the intent and application of a continuity provision.

Trustee treated as disposing of share or option

(2) The trustee is treated as having disposed of the share or option to an unrelated person at the time of the change in beneficiaries, and as having reacquired it immediately afterwards.

Limited application of subsection (2)

(3) Subsection (2) applies only for the purposes of the application of the rules in sections YC 2 (Voting interests) and YC 3 (Market value interests) in the case of the continuity provisions.

Defined in this Act: company, continuity provisions, dispose, option, share, trustee

Compare: 2004 No 35 s GC 3

Arrangements involving qualifying companies

GB 6 Arrangements involving qualifying companies

When this section applies

(1) This section applies when—

(a) a share in a company has been subject to an arrangement at a time; and

(b) the arrangement allows the company or another company (the **relevant company**) to be a qualifying company at the time; and

(c) a purpose of the arrangement is to defeat the intent and application of subpart HA (Qualifying companies (QC) and loss-attributing qualifying companies (LAQC)).

Company treated as not qualifying company

(2) The relevant company is treated as not being a qualifying company at that time.

Defined in this Act: arrangement, company, qualifying company, share

Compare: 2004 No 35 s GC 5

Arrangements involving controlled foreign companies

GB 7 Arrangements involving CFC control interests

When this section applies

(1) This section applies when—

(a) 2 or more persons who are New Zealand residents enter into an arrangement; and

(b) under the arrangement, a control interest in a foreign company is held by another person; and

(c) a purpose of the arrangement is to prevent the foreign company being a controlled foreign company (CFC).

Interest treated as held by residents

(2) The control interest is treated as being held by the New Zealand residents in equal proportions, for the purposes of determining whether the company is a CFC.

Defined in this Act: arrangement, CFC, control interest, foreign company, New Zealand resident

Compare: 2004 No 35 s GC 7

GB 8 Arrangements involving attributed repatriation from CFCs

When this section applies

(1) This section applies when—

(a) a CFC enters into a loan, security, or other type of arrangement (the **CFC arrangement**) with another person; and

(b) the CFC arrangement does not directly result in a person having an attributed repatriation from the CFC; and

(c) the CFC arrangement has the purpose or effect of allowing a person (the **investor**) to enter into a loan or other arrangement (the **investor arrangement**); and

(d) the investor arrangement would, if it had been made by the CFC, have resulted in a person having some attributed repatriation from the CFC; and

(e) the purpose or effect of the arrangement is to defeat the intent and application of section CD 45 (When does a person have attributed repatriation from a controlled foreign company?).

Investor arrangement treated as made by CFC

(2) For the purposes of applying section CD 45, the investor arrangement is treated as having been made by the CFC and not the investor.

Defined in this Act: arrangement, attributed repatriation, CFC

Compare: 2004 No 35 s GC 8

GB 9 Temporary disposals of direct control or income interests

When this section applies

(1) This section applies when,—

(a) before the end of a quarter, a person (the **disposer**), directly or indirectly disposes of a direct control interest or direct income interest in a foreign company (the **disposal**); and

(b) the disposal is not to a New Zealand resident who, immediately after the disposal, has an income interest of 10% or more in the foreign company from which attributed CFC income or attributed repatriation is derived; and

(c) within 183 days after the disposal, the disposer directly or indirectly acquires a direct control interest or direct income interest in the foreign company (the **reacquisition**); and

(d) the disposal has the effect of reducing attributed CFC income or attributed repatriation of—

(i) the disposer; or

(ii) an associated person of the disposer; or

(iii) if the disposer is a CFC, a person holding an income interest in the disposer; and

(e) the disposal and reacquisition are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

Treatment of disposal

(2) The disposal is treated as not having occurred, when the person's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the reacquisition reverses the disposal.

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(1), (4), (7)

GB 10 Temporary acquisitions of direct control or income interests

When this section applies

(1) This section applies when,—

(a) before the end of a quarter, a person (the **acquirer**), directly or indirectly acquires a direct control interest or direct income interest in a foreign company (the **acquisition**); and

(b) the acquisition is not from a New Zealand resident who, immediately before the acquisition, has an income interest of 10% or more in the foreign company from which an attributed CFC loss is incurred; and

(c) within 183 days after the acquisition, the acquirer directly or indirectly disposes of a direct control interest or direct income interest in the foreign company (the **disposal**); and

(d) the acquisition has the effect of increasing an attributed CFC loss of—

(i) the acquirer; or

(ii) an associated person of the acquirer; or

(iii) if the acquirer is a CFC, a person holding an income interest in the acquirer; and

(e) the acquisition and disposal are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

Treatment of acquisition

(2) The acquisition is treated as not having occurred, when the person's control interest or income interest in the foreign com-

pany at the end of the quarter is calculated, to the extent to which the disposal reverses the acquisition.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(1), (4), (7)

GB 11 Temporary increases in totals for control interest categories

When this section applies

(1) This section applies when,—

(a) before the end of a quarter, an increase occurs in the total of direct control interests in a foreign company in any of the control interest categories (the **total increase**); and

(b) the total increase results in a person (the **interest holder**) having a reduced income interest or control interest in a foreign company (the **interest reduction**); and

(c) within 365 days after the total increase, a reduction occurs in the total for the control interest category (the **total reduction**); and

(d) the interest reduction has the effect of reducing attributed CFC income or attributed repatriation of—

(i) the interest holder; or

(ii) an associated person of the interest holder; or

(iii) if the interest holder is a CFC, another person holding an income interest in the interest holder; and

(e) the total increase and total reduction are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

Treatment of interest reduction

(2) The interest reduction is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the

extent to which the total reduction reverses the interest reduction.

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, control interest category, direct control interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(2), (7)

GB 12 Temporary reductions in totals for control interest categories

When this section applies

(1) This section applies when,—

(a) before the end of a quarter, a reduction in the total of direct control interests in a foreign company occurs in a control interest category (the **total reduction**); and

(b) the total reduction results in a person (the **interest holder**) having an increased income interest or control interest in a foreign company (the **interest increase**); and

(c) within 365 days after the total reduction, an increase occurs in the total for the control interest category (the **total increase**); and

(d) the interest increase has the effect of increasing an attributed CFC loss of—

(i) the interest holder; or

(ii) an associated person of the interest holder; or

(iii) another person holding an income interest in the interest holder, if the interest holder is a CFC; and

(e) the total reduction and total increase are part of an arrangement which has an effect of defeating the intent and application of the international tax rules.

Treatment of interest increase

(2) The interest increase is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total increase reverses the interest increase.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, control interest category, direct control interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(2), (7)

GB 13 When combination of changes reduces income

When this section applies

(1) This section applies when—

(a) before the end of a quarter, either—

(i) a person directly or indirectly disposes of a direct control interest or direct income interest in a foreign company (the **disposal**); or

(ii) an increase occurs in the total of direct control interests in a foreign company in any of the control interest categories (the **total increase**); and

(b) in the case of the disposal, the disposal is not to a New Zealand resident who, immediately after the disposal, has an income interest of 10% or more in the foreign company from which they derive attributed CFC income or attributed repatriation; and

(c) in the case of the disposal, within 365 days after the disposal, a reduction occurs in the total of direct control interests in the foreign company in any of the control interest categories (the **total reduction**); and

(d) in the case of the total increase, within 365 days after the total increase, a person directly or indirectly acquires a direct control interest or direct income interest in the foreign company (the **reacquisition**); and

(e) the disposal or total increase has the effect of reducing attributed CFC income or attributed repatriation of—

(i) the person (the **interest holder**); or

(ii) an associated person of the interest holder; or

(iii) if the interest holder is a CFC, a person holding an income interest in the interest holder; and

(f) the disposal and total reduction or total increase and reacquisition are part of an arrangement that has an effect of defeating the intent and application of the international tax rules.

Treatment of disposal or total increase

(2) The disposal or total increase is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total reduction or reacquisition has the effect of reversing the effect of the disposal or total increase

on the level of the interest holder's control interest or income interest.

Defined in this Act: arrangement, associated person, attributed CFC income, attributed repatriation, CFC, control interest, control interest category, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(3), (4), (7)

GB 14 When combination of changes increases loss

When this section applies

(1) This section applies when,—

(a) before the end of a quarter, either—

(i) a person directly or indirectly acquires a direct control interest or direct income interest in a foreign company (the **acquisition**); or

(ii) a decrease occurs in the total of direct control interests in a foreign company in any of the control interest categories (the **total decrease**); and

(b) in the case of the acquisition, the acquisition is not from a New Zealand resident who, immediately before the acquisition, has an income interest of 10% or more in the foreign company from which they have an attributed CFC loss; and

(c) in the case of the acquisition, within 365 days after the acquisition, an increase occurs in the total of direct control interests in the foreign company in any of the control interest categories (the **total increase**); and

(d) in the case of the total reduction, within 365 days after the total reduction, a person directly or indirectly disposes of a direct control interest or direct income interest in the foreign company (the **disposal**); and

(e) the acquisition or total reduction has the effect of reducing an attributed CFC loss of—

(i) the person (the **interest holder**); or

(ii) an associated person of the interest holder; or

(iii) if the interest holder is a CFC, a person holding an income interest in the interest holder; and

(f) the acquisition and total increase or total reduction and disposal are part of an arrangement that has an effect of

defeating the intent and application of the international tax rules.

Treatment of acquisition or total reduction

(2) The acquisition or total reduction is treated as not having occurred, when the interest holder's control interest or income interest in the foreign company at the end of the quarter is calculated, to the extent to which the total increase or disposal has the effect of reversing the effect of the acquisition or total reduction on the level of the interest holder's control interest or income interest.

Defined in this Act: arrangement, associated person, attributed CFC loss, CFC, control interest, control interest category, direct control interest, direct income interest, foreign company, income interest, international tax rules, quarter

Compare: 2004 No 35 s GC 9(3), (4), (7)

GB 15 CFC income or loss: arrangements related to quarterly measurement

When this section applies

(1) This section applies when—

(a) an income interest in a CFC is transferred by a person to an associated person; and

(b) the associated persons make an arrangement for making or not making an election under section EX 26(3) (Use of quarterly measurement); and

(c) the arrangement has an effect of defeating the intent and application of the international tax rules.

Treatment of election

(2) The Commissioner may treat the election as having been made or not made, as applicable, to the extent appropriate to prevent the effect of the arrangement.

Defined in this Act: arrangement, associated person, CFC, Commissioner, income interest, international tax rules

Compare: 2004 No 35 s GC 10

GB 15B Supplies affecting default test for non-attributing active CFC

When this section applies

(1) This section applies when a CFC makes a supply—

(a) to a person who would not meet the requirements of section EX 21D(1)(a) to (c) (Non-attributing active CFC: default test) for the person to be a member of a test group, under that section, with the CFC; and

(b) with the purpose of increasing the amount given by the denominator in the formula in section EX 21D(4) for the CFC.

Income from supply included in gross adjustment

(2) The income from the supply is included in the item gross adjustments in section EX 21D(9)(d).

Defined in this Act: CFC

Section GB 15B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 237(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GB 15C Arrangements related to accounting test for non-attributing active CFC

When this section applies

(1) This section applies when a person (the **party**) enters an arrangement having a purpose, that is more than incidental, of enabling a CFC to meet the requirements of section EX 21E (Non-attributing active CFC: test based on accounting standard) when the CFC would not meet the requirements of section EX 21D (Non-attributing active CFC: default test) to be a non-attributing active CFC.

CFC not non-attributing active CFC

(2) The CFC is not a non-attributing active CFC.

Person not non-attributing active CFC if type of financial arrangement involved

(3) A party who is a CFC associated with the CFC is not a non-attributing active CFC if—

(a) the arrangement involves a financial arrangement producing a foreign exchange loss for the CFC; and

(b) the foreign exchange loss decreases for the CFC the amount of the numerator in the formula in section EX 21E(5).

Defined in this Act: arrangement, associated, CFC, financial arrangement, loss, non-attributing active CFC

Section GB 15C: inserted (with effect on 30 June 2009), on 6 October 2009, by section 237(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Arrangements involving foreign investment funds

GB 16 FIF income or loss: arrangements for measurement day concessions

When this section applies

(1) This section applies when—

(a) an attributing interest in a foreign investment fund (FIF) is transferred by a person to an associated person; and

(b) the associated persons make an arrangement for making or not making—

(i) an election under section EX 26(3) (Use of quarterly measurement); or

(ii) an election under section EX 49(6) (Accounting profits method); or

(iii) a combination of those elections; and

(c) the arrangement has an effect of defeating the intent and application of the international tax rules.

Treatment of election

(2) The Commissioner may treat an election as having been made or not made, as applicable, to the extent appropriate to prevent the effect of the arrangement.

Defined in this Act: arrangement, associated person, attributing interest, FIF, Commissioner, international tax rules

Compare: 2004 No 35 s GC 10

Arrangements involving film rights

GB 17 Excessive amounts for film rights or production expenditure

When this section applies

(1) This section applies when—

(a) a person (the **buyer**) is allowed a deduction under—

(i) section DS 1 (Acquiring film rights) for expenditure incurred in acquiring a film right; or

(ii) section DS 2 (Film production expenditure) for expenditure incurred in acquiring goods or services in relation to a film; and

(b) the Commissioner considers that the buyer and the person from whom the film right, goods, or services were acquired (the **seller**) were not dealing with each other at arm's length; and

(c) the amount of expenditure incurred by the buyer is more than the market value of the film right, goods, or services at the time they were acquired.

Deduction reduced to market value

(2) The deduction is reduced to an amount equal to the market value.

Application to shares in film rights

(3) If the buyer acquires only a share in a film right, this section applies only to the part of the total market value of the film right that is attributable to that share.

Defined in this Act: Commissioner, deduction, film production expenditure, film right

Compare: 2004 No 35 ss GC 11A, GD 12

Section GB 17(1)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

GB 18 Arrangements to acquire film rights or incur production expenditure

When this section applies

(1) This section applies if the Commissioner considers that 2 persons have made arrangements so that any of the following sections applies more favourably in relation to a person in an income year than would have applied without the arrangements:

(a) section DS 1 (Acquiring film rights):

(b) section DS 2 (Film production expenditure):

(c) section EJ 4 (Expenditure incurred in acquiring film rights in feature films):

(d) section EJ 5 (Expenditure incurred in acquiring film rights in films other than feature films):

(e) section EJ 7 (Film production expenditure for New Zealand films):

(f) section EJ 8 (Film production expenditure for films other than New Zealand films).

Deduction reduced

(2) The deduction allowed to the person under section DS 1 or DS 2 is reduced to the amount that the Commissioner considers would have been allowed had the arrangements not occurred.

Allocation

(3) The deduction allocated under section EJ 4, EJ 5, EJ 7, or EJ 8 is allocated to the income year to which the Commissioner considers it would have been allocated had the arrangements not occurred.

Defined in this Act: arrangement, Commissioner, deduction, film production expenditure, film right, income year

Compare: 2004 No 35 ss GC 11B, GD 12B

GB 19 When film production expenditure payments delayed or contingent

When this section applies

(1) This section applies when—

(a) a person (the **payer**) is liable to pay any of the costs of goods or services applied in producing a film:

(b) either—

(i) the payment of the costs is deferred under an agreement between the provider of the goods or services and another person, and the period of deferral is excessive; or

(ii) the payment is contingent.

Costs incurred when paid

(2) For the purposes of sections DS 2, EJ 7, and EJ 8 (which relate to film production expenditure), the payer is treated as incurring the costs at the time of payment.

Defined in this Act: film, film production expenditure

Compare: 2004 No 35 s GD 12A

Arrangements involving petroleum mining

GB 20 Arrangements involving petroleum mining

When this section applies

(1) This section applies if the requirements of both of the following paragraphs are met:

(a) an arrangement includes—

(i) a disposal of a petroleum mining asset; or

(ii) the incurring of petroleum exploration expenditure; or

(iii) a farm-out arrangement:

(b) the arrangement has a purpose or effect of tax avoidance.

Applying section GA 1

(2) The Commissioner may apply section GA 1 (Commissioner's power to adjust) to adjust the taxable income of a person affected by the arrangement so as to counteract a tax advantage obtained by the person.

Examples

(3) Without limiting the generality of subsection (1), arrangements having the effect of tax avoidance include the arrangements described in subsections (4) to (8).

Person acquiring asset relieved or compensated

(4) An arrangement has the effect of tax avoidance if it involves the disposal of a petroleum mining asset and it is probable that, at the time the arrangement is entered into, the person acquiring the petroleum mining asset—

(a) will, through a related arrangement, not have to suffer some or all of the expenditure of acquiring the petroleum mining asset; or

(b) will be effectively compensated in some way for some or all of the expenditure.

Person incurring expenditure relieved or compensated

(5) An arrangement has the effect of tax avoidance if it involves the incurring of petroleum exploration expenditure and it is probable that, at the time the arrangement is entered into, the person who is to incur the petroleum exploration expenditure—

(a) will, through a related arrangement, not have to suffer some or all of the petroleum exploration expenditure; or

(b) will be effectively compensated in some way for some or all of the petroleum exploration expenditure.

Farm-in party relieved or compensated

(6) An arrangement has the effect of tax avoidance if it involves a farm-out arrangement and it is probable that, at the time the arrangement is entered into,—

(a) the farm-in party will, through a related arrangement, not have to suffer some or all of the farm-in expenditure attributable to the proportionate interest acquired by the farm-in party under the farm-out arrangement; or

(b) the farm-in party or an associated person will be effectively compensated in some way for some or all of the farm-in expenditure.

Disposal of asset to associated person for over-value

(7) An arrangement has the effect of tax avoidance if it involves a petroleum miner disposing of a petroleum mining asset to an associated person for a purpose of ensuring that the associated person has a greater deduction than would have been allowed if the asset had been disposed of for its market value.

Farm-out arrangement with associated person for overvalue

(8) An arrangement has the effect of tax avoidance if it involves a petroleum miner entering into a farm-out arrangement with an associated person for a purpose of ensuring that the associated person has a greater deduction than would have been allowed if the farm-out arrangement had been entered into on substantially the same terms as those on which it would have been entered into with a person who is not associated.

Miners operating offshore

(9) This section applies, with the necessary modifications, to a petroleum miner who undertakes petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or CFC; and

(b) substantially the same as the petroleum mining activities governed by this Act.

Treatment of partners

(10) For the purposes of this section, a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their income interest in the partnership.

Disposal of part of asset

(11) For the purposes of this section, references to the disposal of an asset apply equally to the disposal of part of an asset.

Defined in this Act: arrangement, associated person, CFC, deduction, dispose, farm-in expenditure, farm-out arrangement, New Zealand, petroleum exploration expenditure, petroleum miner, petroleum mining asset, petroleum permit, tax avoidance, taxable income

Compare: 2004 No 35 s GC 12

Arrangements involving financial arrangements

GB 21 Dealing that defeats intention of financial arrangements rules

When this section applies

(1) This section applies if the Commissioner considers that the parties to a financial arrangement were dealing with each other in a way that defeats the intention of the financial arrangements rules at the time the financial arrangement was—

(a) entered into or otherwise acquired; or

(b) varied; or

(c) disposed of.

Alteration of consideration

(2) The Commissioner may treat the relevant transaction as having occurred for the consideration that parties dealing at arm's length would have agreed on.

Defined in this Act: Commissioner, financial arrangement, financial arrangements rules

Compare: 2004 No 35 s GD 11

Arrangements involving trust beneficiary income

GB 22 Arrangements involving trust beneficiary income

When this section applies

(1) This section applies when—

(a) an arrangement involves a trustee transferring property, or providing services or other benefits, to a person other than a beneficiary of the trust; and

(b) the arrangement has the effect of defeating the intent and application of sections HC 17 to HC 23 (which relate to the income of beneficiaries) in relation to the beneficiary; and

(c) the trust is not a Maori authority.

Application of sections HC 17 to HC 23

(2) The beneficiary is treated, for the purposes of sections HC 17 to HC 23, as receiving the property or enjoying the services or benefits.

Defined in this Act: arrangement, Maori authority, trustee

Compare: 2004 No 35 s GC 14

Excessive remuneration

GB 23 Excessive remuneration to relatives

When this section applies: first case

(1) This section applies when—

(a) a person carries on a business or undertaking; and

(b) the person employs or engages a relative or, in a case in which the person is a company but not a close company, a relative of a director or shareholder of the company, to perform services for the business or undertaking; and

(c) the Commissioner considers that the income payable to the relative for the services is excessive; and

(d) the exemption in section GB 24 does not apply.

When this section applies: second case

(2) This section also applies when—

(a) a person carries on a business in partnership or has an effective look-through interest for a look-through company; and

(b) the partnership or look-through company employs or engages a relative of the person or, in a case in which the person is a company, a relative of a director or shareholder in the company, to perform services for the business; and

(c) the Commissioner considers that the income payable to the relative for the services is excessive; and

(d) the exemption in section GB 24 does not apply.

When this section applies: third case

(3) This section also applies when—

(a) a person carries on a business in partnership; and

(b) another partner in the partnership is—

(i) a relative of the person; or

(ii) if the person is a company, a relative of a director or shareholder in the company; or

(iii) a company in which a relative of the person is a director or shareholder; and

(c) the Commissioner considers that the other partner's share of partnership profit or losses is excessive; and

(d) the exemption in section GB 24 does not apply.

Allocation of income or losses

(4) For the purposes of this Act, the Commissioner may allocate the income or losses of the business or undertaking among the parties to the contract or partnership as the Commissioner considers reasonable, without taking into account an amount provided to the relative or other partner.

Treatment of amount allocated

(5) An amount the Commissioner allocates to 1 person is treated as not belonging to another person.

Matters for Commissioner's consideration

(6) The Commissioner may take into account each of the following matters when applying this section:

(a) the nature and extent of the services rendered by the relative:

(b) the value of the contributions made by the respective partners, by way of services, capital, or otherwise:

(c) any other relevant matters.

Treatment of amount allocated back to company

(7) If an amount provided by a company to a relative of a director or shareholder for services is allocated to the company under

subsection (4), it is treated as a dividend paid by the company and derived by the relative.

Defined in this Act: close company, company, director, dividend, effective look-through interest, income, look-through company, relative, shareholder

Compare: 2004 No 35 s GD 3(1), (2)

Section GB 23(2)(a): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 67(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section GB 23(2)(b): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 67(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section GB 23 list of defined terms **effective look-through interest**: inserted, on 1 April 2011, by section 67(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section GB 23 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 67(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

GB 24 Exemption for genuine contracts

When section GB 23 does not apply

(1) Section GB 23 does not apply if the relevant contract of employment, engagement, or partnership is a genuine contract.

When contracts genuine

(2) A contract is treated as a genuine contract if—

- (a) the contract is in writing; and
- (b) the contract is signed by all the parties to it; and
- (c) in the case of a contract of employment or engagement, each person employed or engaged under the contract is 20 years or older on the date of signing the contract; and
- (d) in the case of a contract of partnership, each partner is 20 years or older on the date of signing the contract; and
- (e) the contract is binding for at least 3 years, except for the reasons set out in sections 36 and 38 of the Partnership Act 1908; and
- (f) in the case of a contract of employment or engagement, each person employed or engaged has real control over their income under the contract; and
- (g) in the case of a contract of partnership, each partner has—
  - (i) real control over their share of profits under the contract; and

(ii) real liability for their share of losses under the contract; and

(h) no part of the income or share of profits derived by the relative, or company of which the relative is a shareholder or director, is a gift for the purposes of the Estate and Gift Duties Act 1968.

Defined in this Act: director, income, loss, shareholder, year

Compare: 2004 No 35 s GD 3(4), (5)

GB 25 Close company remuneration to shareholders, directors, or relatives

When this section applies

(1) This section applies when—

(a) a close company provides remuneration for services to a person (the **service provider**) who is—

(i) a shareholder or director of the company; or

(ii) a relative of a shareholder or director of the company; and

(b) the Commissioner considers that the amount provided is excessive; and

(c) the exemption in subsection (3) does not apply.

Excess treated as dividend

(2) For the purposes of this Act, the excess is treated as a dividend paid by the company and derived by the service provider.

Exemption: residents working full-time

(3) This section does not apply when—

(a) the service provider is an adult employed substantially full-time in the business of the company; and

(b) the service provider participates in the management or administration of the company; and

(c) the amount provided to the service provider was not influenced by their relationship with a shareholder or director; and

(d) the service provider is a New Zealand resident.

Defined in this Act: close company, Commissioner, company, director, dividend, New Zealand resident, shareholder

Compare: 2004 No 35 s GD 5

Section GB 25(3)(b): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 53(1) of

the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

GB 25B Excessive effective look-through interests

When this section applies

(1) This section applies to the extent to which, for an income year,—

(a) a person (an **owner**) has an effective look-through interest for a look-through company (the **LTC**); and

(b) for the LTC, 2 or more owners are relatives, 1 of whom is under 20 years old (the **relevant relative**); and

(c) the Commissioner considers that the income arising from the application of section HB 1 (Look-through companies are transparent) for the relevant relative is excessive.

Reallocation of effective look-through interests

(2) Despite section HB 1, the effective look-through interests for the person are the interests that the Commissioner considers reasonable for the income year or part of the income year, as applicable, without taking into account an amount provided to the relevant relative.

Matters for Commissioner's consideration

(3) The Commissioner may take into account each of the following matters when applying this section:

(a) the nature and extent of services rendered by the relevant relative:

(b) the value of the contributions made by the respective owners, by way of services, capital, or otherwise:

(c) any other relevant matters.

Defined in this Act: effective look-through interest, income year, look-through company, relative

Section GB 25B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 68(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Arrangements involving repatriation of commercial bills

GB 26 Arrangements involving repatriation of commercial bills

When this section applies

(1) This section applies when—

(a) a commercial bill has been issued by—

(i) a New Zealand resident who does not use the money lent in a business carried on through a fixed establishment outside New Zealand; or

(ii) a non-resident who uses the money lent in a business carried on through a fixed establishment in New Zealand; and

(b) a non-resident who holds the bill transfers it to another person (the **New Zealand transferee**); and

(c) the non-resident did not become a party to the bill for the purpose of carrying on a business through a fixed establishment in New Zealand; and

(d) the New Zealand transferee is either—

(i) a New Zealand resident; or

(ii) a non-resident who becomes a party to the commercial bill for the purpose of carrying on a business through a fixed establishment in New Zealand; and

(e) the transfer of the bill has the purpose of avoiding non-resident withholding tax (NRWT) or the approved issuer levy.

Income

(2) If the New Zealand transferee redeems the commercial bill, the redemption payment is income of the New Zealand transferee.

New Zealand transferee treated as redeeming bill

(3) For the purposes of this section, the New Zealand transferee is treated as redeeming the bill on the scheduled redemption date even if it is not redeemed.

Defined in this Act: approved issuer, commercial bill, fixed establishment, income, money lent, New Zealand resident, non-resident, NRWT, redemption payment

Compare: 2004 No 35 s GC 14A

Attribution rule for income from personal services

GB 27 Attribution rule for income from personal services

Application of section GB 29

(1) An amount of income in an income year of a person (the **associated entity**) is attributed to another person (the **working person**) under section GB 29 for the working person's corresponding tax year if,—

(a) during the income year, a third person (the **buyer**) purchases services from the associated entity, and the services are personally performed by the working person; and

(b) the working person is associated with the associated entity; and

(c) the threshold test in subsection (2) is met; and

(d) none of the exemptions in subsection (3) applies.

Threshold for application of attribution rule

(2) The attribution occurs only if—

(a) 80% or more of the associated entity's total income from personal services during the income year is derived from the sale of services to the buyer, a person associated with the buyer, or a combination of them; and

(b) 80% or more of the associated entity's income from personal services during the income year is derived through services personally performed by the working person, a relative of the working person, or a combination of them; and

(c) the working person's net income for the income year, assuming section GB 29 applies in relation to the associated entity and working person, is more than $70,000; and

(d) substantial business assets are not a necessary part of the business structure that is used to derive the total income referred to in paragraph (a).

Exemptions

(3) The attribution does not occur—

(a) if both the associated entity and the working person are non-residents at all times during the associated entity's income year:

(b) if the associated entity is a natural person and is neither a partner of a partnership nor a trustee of a trust:

(c) to the extent to which the services personally performed by the working person are essential support for a product supplied by the associated entity:

(d) if the total amount to be attributed to the working person, for the associated entity and the income year, is less than $5,000, unless this paragraph applies to prevent income being attributed to the working person for the income year in relation to another associated entity:

(e) if the associated entity is a CFC and the amount—

(i) is an attributable CFC amount for the CFC under section EX 20B(3)(h) (Attributable CFC amount):

(ii) gives rise to attributed CFC income under section CQ 2(2B) (When attributed CFC income arises) or attributed CFC loss under section DN 2(2) (When attributed CFC loss arises).

Treatment of certain dividends

(4) If a company that is required to attribute an amount to the working person under this section pays a dividend, sections HA 14 to HA 19 (which relate to qualifying companies) are treated as applying to the company and the dividend if the company—

(a) has no net income for the tax year in which it pays the dividend other than income attributed under this section, ignoring interest income that is incidental to the company's business; and

(b) is not a qualifying company; and

(c) chooses to have the dividend treated as if it were paid by a qualifying company.

Cancellation of notional imputation credits

(5) For the purposes of subsection (4), to the extent to which the dividend paid by the company would have had an imputation credit attached that arose under section OB 16 (ICA attribution for personal services) in the absence of the election made

under subsection (4)(c), the credit is treated as cancelled immediately before it would have been attached under sections HA 14 to HA 19 (which relate to dividends paid by qualifying companies).

Defined in this Act: amount, associated person, attributable CFC amount, attributed CFC income, attributed CFC loss, business, CFC, company, dividend, imputation credit, income, income year, net income, non-resident, pay, qualifying company, relative, tax year, trustee

Compare: 2004 No 35 ss GC 14B, GC 14E, GC 14EB

Section GB 27(2)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 238(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27(3)(d): amended (with effect on 30 June 2009), on 6 October 2009, by section 238(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27(3)(e): added (with effect on 30 June 2009), on 6 October 2009, by section 238(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27(4) heading: added, on 1 April 2008, by section 407(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27(4): added, on 1 April 2008, by section 407(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27(5) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 41(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section GB 27(5): added (with effect on 1 April 2008), on 7 December 2009, by section 41(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section GB 27 list of defined terms **amount**: inserted, on 1 April 2008, by section 407(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27 list of defined terms **attributable CFC amount**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 238(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27 list of defined terms **attributed CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 238(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27 list of defined terms **attributed CFC loss**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 238(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27 list of defined terms **business**: inserted, on 1 April 2008, by section 407(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27 list of defined terms **CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 238(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 27 list of defined terms **company**: inserted, on 1 April 2008, by section 407(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27 list of defined terms **dividend**: inserted, on 1 April 2008, by section 407(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27 list of defined terms **imputation credit**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section GB 27 list of defined terms **pay**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section GB 27 list of defined terms **qualifying company**: inserted, on 1 April 2008, by section 407(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section GB 27 compare note: amended, on 1 April 2008, by section 407(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

GB 28 Interpretation of terms used in section GB 27

When this section applies

(1) This section applies for the purposes of section GB 27.

Associated persons

(2) A person is treated as being associated with another person if they are associated at the time the services are personally performed by the working person.

Non-associated buyers

(3) For the purposes of section GB 27(2)(a), a buyer is not treated as being associated with another buyer if either—

(a) both buyers are public authorities; or

(b) the working person cannot be reasonably expected to know that a particular buyer is associated with another buyer, other than by making a specific enquiry.

Relatives

(4) For the purposes of section GB 27(2)(b), a person is a relative of the working person only if the person is a relative at the beginning of the relevant income year of the working person.

Fringe benefits included

(5) For the purposes of section GB 27(2)(c), the working person's annual gross income includes the taxable value of a fringe benefit, as determined under sections RD 25 to RD 63 (which relate to fringe benefit tax), provided or granted by a person associated with the working person.

Meaning of substantial business assets

(6) **Substantial business assets** means depreciable property that—

(a) at the end of the associated entity's corresponding income year, has a total cost of more than either—

(i) $75,000; or

(ii) 25% or more of the associated entity's total income from services for the income year; and

(b) is not for private use.

Assets subject to finance lease, hire purchase agreement, or specified lease

(7) For the purposes of subsection (6)(a), the cost of depreciable property includes—

(a) the consideration provided to the lessee in the case of property subject to a finance lease or a hire purchase agreement, including expenditure or loss incurred by the lessee in preparing and installing the finance lease asset for use, unless the lessee is allowed a deduction for the expenditure or loss, other than a deduction for an amount of depreciation loss:

(b) the cost price, in the case of property subject to a specified lease.

Private use of assets

(8) Subsection (6)(b) does not apply to depreciable property if 20% or less of the property's use is for private use.

Calculation of private proportion of use

(9) For the purposes of subsection (8), the percentage of a property's use for private purposes for an income year is calculated according to—

(a) the proportion that the number of days for which fringe benefit tax is payable by the associated entity in relation to the property bears to the total number of days in the

income year in which the property is owned by or is subject to a finance lease, hire purchase agreement, or specified lease, involving the associated entity, if the property is subject to the FBT rules:

(b) the proportion that the expenditure incurred in relation to the property, for which a deduction is denied to the associated entity, bears to all expenditure incurred by the associated entity in relation to the property in the income year, if the property is not subject to the FBT rules.

Defined in this Act: annual gross income, associated person, consideration, cost price, deduction, depreciable property, FBT rules, finance lease, fringe benefit, fringe benefit tax, hire purchase agreement, income, income year, public authority, relative, specified lease, substantial business asset

Compare: 2004 No 35 s GC 14C

Section GB 28(2): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 239(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 28(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 239(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 28 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 28 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 28 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GB 29 Attribution rule: calculation

Amount attributed

(1) A working person is treated as deriving income in an income year equal to the least of the following amounts:

(a) the associated entity's net income for the corresponding tax year, calculated as if their only income were derived from personal services:

(b) the associated entity's net income for the corresponding tax year:

(c) if and to the extent to which the associated entity is a company or a trust that has a loss balance to be carried

forward under section IA 4 (Using loss balances carried forward to tax year) arising from a business or a trading activity of selling personal services, the associated entity's net income for the corresponding tax year after subtracting the loss balance carried forward from an earlier corresponding tax year.

Calculation for trustee or partnership

(2) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1),—

(a) if the associated entity is a trustee of a trust, the trustees are treated as not having made a distribution of beneficiary income out of the year's income:

(b) if the associated entity is a partnership, the associated entity is treated as a taxpayer and section HG 2 (Partnerships are transparent) does not apply:

(c) if the associated entity is a look-through company, the associated entity is treated as a taxpayer and section HB 1 (Look-through companies are transparent) does not apply.

Salary paid or fringe benefits treated as deductions

(3) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1),—

(a) the associated entity is allowed a deduction for employment income paid to the working person during the income year:

(b) the associated entity is allowed a deduction for the taxable value of a fringe benefit provided or granted by the associated entity to the working person during the income year, and for the fringe benefit tax payable on the fringe benefit.

Reduction of attributable income for distributions

(4) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1), the amount of net income of the associated entity for the corresponding tax year is reduced by—

(a) in the case of a trustee of a trust, the amount of beneficiary income derived by the working person from the trust in the income year:

(b) in the case of a partnership, the share of profits allocated by the partnership to the working person:

(c) in the case of a company, a dividend paid—

(i) by the associated entity to the working person during the income year or before the end of 6 months after the end of the income year; and

(ii) from income derived in the income year.

Attribution reduced by market value of administrative services

(5) If the associated entity is a partnership that receives administrative services from another person related to their income from personal services and has not paid for the administrative services, the amount to be attributed to the working person is reduced by the market value of the administrative services provided by the other person.

Reduction of beneficiary income when rule results in trust having tax loss

(6) If the associated entity is a trustee and the amount attributable would cause the associated entity to have a tax loss for the corresponding tax year, for the purposes of this Act,—

(a) beneficiary income from the trust for the income year must be reduced to the extent to which the associated entity's taxable income for the corresponding tax year is zero; and

(b) the reduction in beneficiary income must be divided among the beneficiaries other than the working person—

(i) according to proportions determined by the trust's trustees:

(ii) if the trustees do not make the determination, according to the proportion that each beneficiary's beneficiary income bears to the total beneficiary income from the trust for the income year.

Attribution to more than 1 working person

(7) If the amount attributable is to be attributed to more than 1 working person, the share attributed to each working person must reflect the respective value of the services personally performed by each working person.

Defined in this Act: beneficiary income, company, deduction, dividend, fringe benefit, fringe benefit tax, income, income year, look-through company, net income, taxpayer, tax loss, tax year, trustee

Compare: 2004 No 35 s GC 14D

Section GB 29(2)(b): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 69(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section GB 29(2)(b): amended, on 1 April 2008, by section 16(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section GB 29(2)(c): added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 69(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section GB 29 list of defined terms **look-through company**: inserted, on 1 April 2011, by section 69(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Arrangements involving restrictive covenants

GB 30 Arrangements to avoid taxation of restrictive covenant payments

When this section applies

(1) This section applies if a person enters into an arrangement that has an effect of avoiding section CE 9 (Restrictive covenants).

Treatment as restrictive covenant payment

(2) The Commissioner may treat—

(a) an amount provided under the arrangement as an amount to which section CE 9(2) applies; and

(b) a person affected by the arrangement as the person who gave the undertaking referred to in section CE 9(1).

Example

(3) An example of an arrangement that may be subject to this section is an arrangement that involves a collateral arrangement to dispose of property.

Defined in this Act: arrangement, Commissioner

Compare: 2004 No 35 s GC 14F

Arrangements involving fringe benefit tax

GB 31 FBT arrangements: general

When this section applies

(1) This section applies when—

(a) 2 or more persons enter into an arrangement; and

(b) a purpose or effect of the arrangement is to defeat the intent and application of any of the FBT rules; and

(c) the purpose or effect is not merely incidental.

FBT rules treated as applying

(2) For the purposes of the FBT rules, the Commissioner may treat—

(a) a party to the arrangement (the **provider**) as the employer of a person (the **recipient**) of whom the Commissioner notifies the provider:

(b) the recipient as the employee of the provider:

(c) a benefit as being provided by the provider to the recipient through the employment of the recipient.

Actual or likely benefit

(3) The Commissioner may apply subsection (2)(c) only in the case of a benefit that,—

(a) is in fact provided by the provider to the recipient; or

(b) had the arrangement not occurred, the recipient—

(i) would have obtained; or

(ii) would in all likelihood have obtained; or

(iii) might be expected to have obtained.

Arrangements to reduce motor vehicle costs

(4) Schedule 5, clause 4(c) (Fringe benefit values for motor vehicles) may apply to treat the cost of a motor vehicle as equal to its market value.

Defined in this Act: arrangement, Commissioner, employee, employer, employment, FBT rules

Compare: 2004 No 35 ss GC 16(b), GC 17

GB 32 Benefits provided to employee's associates

When this section applies

(1) This section applies when—

(a) a benefit is provided to a person who is associated with an employee of an employer; and

(b) the benefit would be a fringe benefit if provided to the employee; and

(c) the benefit is provided either by the employer or by another person under an arrangement with the employer for providing the benefit; and

(d) the exemption in subsection (2) does not apply.

Exemption for shareholder-employees and corporate associates

(2) Subsection (3) does not apply when—

(a) the benefit is provided by an employer that is a company; and

(b) the employee is a shareholder in the company; and

(c) the person associated with the employee is a company; and

(d) the benefit is not provided under an arrangement that has a purpose of providing the benefit either—

(i) in place of employment income; or

(ii) free from fringe benefit tax.

Benefit treated as provided to employee

(3) For the purposes of the FBT rules, the benefit is treated as provided by the employer to the employee.

Application of section CX 18

(4) Section CX 18 (Benefits provided to associates of both employees and shareholders) applies to determine when a benefit provided to an associate of both an employee and a shareholder is treated as a fringe benefit and not a dividend.

Defined in this Act: arrangement, associated person, company, dividend, employee, employer, employment income, FBT rules, fringe benefit, fringe benefit tax

Compare: 2004 No 35 s GC 15(1)–(3)

Arrangements involving depreciation loss

GB 33 Arrangements involving depreciation loss

When this section applies

(1) This section applies when—

(a) an asset of a person has been subject to an arrangement; and

(b) the arrangement allows the person or another person to have a deduction for an amount of depreciation loss; and

(c) a purpose of the arrangement is to defeat the intent and application of this Act.

No deduction

(2) The relevant person is denied the deduction.

Defined in this Act: arrangement, Commissioner, deduction, depreciation loss

Compare: 2004 No 35 s GC 6

Arrangements involving imputation rules

GB 34 ICA arrangements for carrying amounts forward

When this section applies

(1) This section applies when—

(a) a share in an imputation credit account (ICA) company or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the share; and

(b) the arrangement allows the ICA company to meet the requirements of section OB 41 (ICA debit for loss of shareholder continuity); and

(c) a purpose of the arrangement is to defeat the intent and application of section OB 41.

Company treated as not meeting requirements

(2) The ICA company is treated as not meeting the requirements in relation to the share.

Defined in this Act: arrangement, company, imputation credit account, share

Compare: 2004 No 35 s GC 21

GB 35 Imputation arrangements to obtain tax advantage

When section GB 36 applies

(1) Section GB 36 applies if an arrangement to obtain a tax advantage arises as described in either subsection (2) or (3).

Share disposal or issue arrangements

(2) An arrangement is an arrangement to obtain a tax advantage if—

(a) the arrangement is for the disposal or issue of shares; and

(b) a party to the arrangement might reasonably have expected that a dividend would be paid in relation to the shares with an imputation credit or foreign dividend payment (FDP) credit attached; and

(c) a party might reasonably have expected that a party will, or will not, be able to obtain a tax advantage from the credit; and

(d) a purpose of the arrangement is that a party will obtain a tax advantage; and

(e) the purpose is not a merely incidental one.

Dividend or credit streaming arrangements

(3) An arrangement is an arrangement to obtain a tax advantage if—

(a) the arrangement relates to 1 or more distributions by a company, including bonus issues, during 1 or more tax years; and

(b) under the arrangement, the company streams—

(i) the payment of dividends; or

(ii) the attachment of imputation credits; or

(iii) the attachment of FDP credits; or

(iv) the attachment of both imputation credits and FDP credits; and

(c) the streaming will give a higher credit value to a person who will obtain a tax advantage from the higher credit value than to a person who will not or may reasonably be expected to obtain a lesser benefit.

Meaning of higher credit value

(4) For the purposes of subsection (3)(c), a dividend has a **higher credit value** than another dividend if any of the following applies:

(a) the dividend has an attached imputation credit and the other dividend does not:

(b) the imputation ratio of the dividend is higher than that of the other dividend:

(c) the dividend has an attached FDP credit and the other dividend does not:

(d) the FDP ratio of the dividend is higher than that of the other dividend:

(e) the dividend has attached both an imputation credit and an FDP credit and the other dividend does not have both types of credit attached:

(f) the combined imputation ratio and FDP ratio of the dividend is higher than that of the other dividend.

Defined in this Act: arrangement, combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, higher credit value, imputation credit, imputation ratio, share, tax advantage

Compare: 2004 No 35 s GC 22(1), (2)

GB 36 Reconstruction of imputation arrangements to obtain tax advantage

Reconstruction of either type of arrangement

(1) In the case of a share disposal or issue arrangement described in section GB 35(2), or a streaming arrangement described in section GB 35(3), if the Commissioner decides this subsection should apply, the following paragraphs apply:

(a) a person who would get a tax credit advantage from the arrangement is denied it:

(b) a company that would get an account advantage from the arrangement has a debit to its imputation credit account or FDP account, as applicable, in the tax year in which the arrangement began.

Reconstruction of streaming arrangement

(2) In the case of a streaming arrangement described in section GB 35(3) in which the company is the only party, or if the Commissioner decides this subsection should apply, the company has a debit to its imputation credit account or FDP account, as applicable, in the tax year in which the arrangement began. Subsection (1) does not apply to the extent to which this subsection applies to the arrangement.

Amount of adjustment

(3) The amount of the credit or refund denied under subsection (1)(a) and the debit arising under subsection (1)(b) or (2) is in each case the amount of the imputation credit or FDP credit that the Commissioner determines is subject to the arrangement.

Commissioner's powers of determination

(4) The Commissioner may make determinations for the purposes of this section under section 90AF of the Tax Administration Act 1994.

Some definitions

(5) In this section and section 90AF of the Tax Administration Act 1994,—

account advantage means—

(a) a credit arising to an imputation credit account under sections OB 4 to OB 29 (which relate to credits arising to imputation credit accounts); or

(b) a credit arising to an FDP account under sections OC 6 to OC 12 (which relate to credits arising to FDP accounts)

tax credit advantage means—

(a) a tax credit allowed under section LE 1 (Tax credits for imputation credits); or

(b) a tax credit allowed under section LF 1 (Tax credits for FDP credits); or

(c) a refund of FDP obtained under section LF 8 (Credits for persons who are non-resident or who receive exempt income).

Defined in this Act: account advantage, arrangement, Commissioner, company, FDP account, FDP credit, imputation credit, imputation credit account, notice, tax credit advantage, tax year

Compare: 2004 No 35 s GC 22(4), (5), (9)

GB 37 Arrangements for payment of dividend by other companies

When this section applies

(1) This section applies when—

(a) an arrangement is entered into in relation to a company (the **first company**) and a shareholder in the first company; and

(b) the arrangement has a purpose of allowing a dividend to be paid by another company to any of the following parties (the **payee**):

(i) the shareholder:

(ii) if the shareholder is a trustee in relation to the shareholding, a beneficiary of the trust:
(iii) an associated person of the shareholder:
(iv) an associated person of a beneficiary of the trust.

Direct or indirect payments

(2) The arrangement may include—
(a) the payee acquiring shares in the other company:
(b) a form of indirect payment of a dividend from the other company.

Dividend treated as paid by first company

(3) For the purposes of the imputation rules, the dividend is treated as if it were paid by the first company.

No imputation credit

(4) Any imputation credit attached to the dividend paid by the other company—
(a) is not included in the amount of the dividend derived by the payee; and
(b) is not treated as an imputation credit for the purposes of section LE 1 (Tax credits for imputation credits); and
(c) is a debit under section OB 30 (ICA payment of dividend) of the first company.

Defined in this Act: arrangement, associated person, company, dividend, imputation credit, imputation credit account, share, shareholder, trustee

Compare: 2004 No 35 s GC 23

GB 38 When sections GB 35 to GB 37 apply to consolidated groups

Tax advantage arrangements

(1) Sections GB 35 and GB 36 apply, with the necessary modifications, in a case that involves accounts of a consolidated group as if—
(a) the consolidated group were a single company; and
(b) references to provisions of this Act were references to the equivalent provisions applicable to the equivalent accounts.

Arrangement for dividend from another company

(2) If a company is treated by section GB 37(3) as having paid a dividend, and is at the time of payment a member of a con-

solidated group, section GB 37 applies as if the reference to section OB 30 (ICA payment of dividend) were a reference to section OP 28 (Consolidated ICA payment of dividend).

Defined in this Act: company, consolidated group, dividend

Compare: 2004 No 35 s GC 24

Arrangements involving foreign dividends

GB 39 FDP arrangements: general

[Repealed]

Section GB 39: repealed (with effect on 30 June 2009), on 6 October 2009, by section 240(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GB 40 BETA arrangements for carrying amounts forward

When this section applies

(1) This section applies when—

(a) a share in a branch equivalent tax account (BETA) company or another company has been subject to an arrangement, including an arrangement directly or indirectly altering rights attached to the shares; and

(b) the arrangement allows the BETA company to meet the requirements of section OE 10 or OE 15 (which relate to credits and debits arising to branch equivalent tax accounts); and

(c) a purpose of the arrangement is to defeat the intent and application of section OE 10 or OE 15.

Company treated as not meeting requirements

(2) The BETA company is treated as not meeting the requirements of the relevant provision in relation to the share.

Defined in this Act: arrangement, BETA company, company, share

Compare: 2004 No 35 s GC 26

GB 41 FDPA arrangements for carrying amounts forward

When this section applies

(1) This section applies when—

(a) a share in a foreign dividend payment account (FDPA) company or another company has been subject to an ar-

rangement, including an arrangement directly or indirectly altering rights attached to the share; and

(b) the arrangement allows the FDPA company to meet the requirements of section OC 24 (FDPA debit for loss of shareholder continuity); and

(c) a purpose of the arrangement is to defeat the intent and application of section OC 24.

Company treated as not meeting requirements

(2) The FDPA company is treated as not meeting the requirements of section OC 24 in relation to the share.

Defined in this Act: arrangement, FDPA company, share

Compare: 2004 No 35 s GC 27

Arrangements involving Maori authority credits

GB 42 Maori authority credit arrangements to obtain tax advantage

When section GB 43 applies

(1) Section GB 43 applies if an arrangement to obtain a tax advantage arises as described in either subsection (2) or (3).

Arrangements for share disposal or issue

(2) An arrangement is an arrangement to obtain a tax advantage if—

(a) the arrangement is for the disposal or issue of a share in a Maori authority that is a company; and

(b) a party to the arrangement might reasonably have expected that a taxable Maori authority distribution would be paid in relation to the share with a Maori authority credit attached; and

(c) a party might reasonably have expected that a party will or will not be able to obtain a tax advantage from the credit; and

(d) a purpose of the arrangement is that a party will obtain a tax advantage; and

(e) the purpose is not a merely incidental one.

Distribution or credit streaming arrangements

(3) An arrangement is an arrangement to obtain a tax advantage if—

(a) the arrangement is in relation to 1 or more taxable Maori authority distributions by a Maori authority during 1 or more tax years; and

(b) under the arrangement, the Maori authority streams—

(i) the distributions; or

(ii) the attachment of Maori authority credits; and

(c) the streaming will give a higher credit value to a member who will obtain a tax advantage from the higher credit value than to a member who will not or may reasonably be expected to obtain a lesser benefit.

Meaning of higher credit value

(4) A taxable Maori authority distribution has a **higher credit value** than another distribution if either of the following applies:

(a) the distribution has a Maori authority credit and the other distribution does not:

(b) the Maori authority credit ratio under section OK 19(2) (Maori authority credits attached to distributions) of the distribution is higher than that of the other distribution.

Defined in this Act: arrangement, Maori authority, Maori authority credit, member, share, tax advantage, taxable Maori authority distribution

Compare: 2004 No 35 s GC 27A(1)–(3)

GB 43 Reconstruction of Maori authority credit arrangements to obtain tax advantage

Reconstruction of either type of arrangement

(1) In the case of an arrangement for a share disposal or issue as described in section GB 42(2) or a streaming arrangement as described in section GB 42(3), if the Commissioner decides this subsection should apply, the following paragraphs apply:

(a) a member who would get a tax credit advantage from the arrangement is denied it:

(b) a Maori authority that would get both a tax credit advantage and an account advantage from the arrangement has a debit to its Maori authority credit account in the tax year in which the arrangement began.

Reconstruction of streaming arrangement

(2) In the case of a streaming arrangement as described in section GB 42(3) in which the Maori authority is the only party,

or if the Commissioner decides this subsection should apply, the Maori authority has a debit to its Maori authority credit account in the tax year in which the arrangement began. Subsection (1) does not apply to the extent to which this subsection applies to the arrangement.

Amount of adjustment

(3) The amount of the credit denied under subsection (1)(a) and the debit arising under subsection (1)(b) or (2) is in each case the amount of the Maori authority credit that the Commissioner determines is subject to the arrangement.

Commissioner's powers of determination

(4) The Commissioner may make determinations for the purposes of this section under section 90AG of the Tax Administration Act 1994.

Some definitions

(5) In this section and section 90AG of the Tax Administration Act 1994,—

account advantage means a credit arising to a Maori authority credit account under sections OK 2 to OK 9 (which relate to credits arising to Maori authority credit accounts)

tax credit advantage means a tax credit allowed under section LO 1 (Tax credits for Maori authority credits).

Defined in this Act: account advantage, arrangement, Commissioner, Maori authority, Maori authority credit, Maori authority credit account, member, notice, tax credit advantage, tax year

Compare: 2004 No 35 s GC 27A (5), (6), (10)

Arrangements involving tax credits for families

Heading: substituted, on 1 April 2008, by section 408(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

GB 44 Arrangements involving tax credits for families

When this section applies

(1) This section applies if both of the following paragraphs are met:

(a) a person (the **claimant**) enters into an arrangement with another person:

(b) a purpose of the arrangement is that subparts MA to MF and MZ (which relate to tax credits for families) has a more favourable effect for the claimant than would otherwise have occurred.

Credit reduced

(2) The claimant's tax credit under subparts MA to MF and MZ is reduced to the amount that the Commissioner considers would have arisen had the arrangement not occurred.

Defined in this Act: arrangement, Commissioner

Compare: 2004 No 35 s GC 28

Section GB 44 heading: amended, on 1 April 2008, by section 408(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Arrangements involving money not at risk

GB 45 Arrangements involving money not at risk

Application of section GB 46

(1) Section GB 46 can apply to an arrangement when—

(a) a person sells or issues, or promotes the selling or issuing of, the arrangement, whether or not for remuneration; and

(b) a person (the **participant**) who is a party to the arrangement or affected by it, considered together with their affected associates, has for an assessment period a total amount of deductions from the arrangement that is more than their total amount of assessable income from the arrangement, having regard to the rules in subsection (2); and

(c) as part of or for the purposes of the arrangement, the participant or an affected associate borrows a limited-recourse amount under a limited-recourse loan; and

(d) on the relevant balance date, the total of the limited-recourse amounts of the limited-recourse loans of the participant and affected associates is more than half of the total cost of their arrangement property on the relevant balance date; and

(e) on the relevant balance date, the total cost of their arrangement property is more than 142.85% of the total

cost of the part of the property that is acceptable property.

Certain deductions or income disregarded

(2) For the purposes of subsection (1)(b), the following amounts are disregarded:

(a) a deduction under section GB 46:

(b) a tax loss component of a loss-attributing qualifying company (LAQC) to the extent to which it is attributed to shareholders under section HA 20 (Attribution of tax losses):

(c) an amount of income under section GB 46.

Some definitions

(3) In this section,—

acceptable property is—

(a) land:

(b) buildings:

(c) plant:

(d) machinery:

(e) shares in a listed company that in total represent a direct voting interest of 10% or less in the listed company:

(f) a share and an option that are acquired or created with an intention that the share or option will produce income that is employment income of a participant under section CE 1(1)(d) (Amounts derived in connection with employment):

(g) a share in a foreign company, if the proceeds of a disposal of the share would not be assessable income of the holder other than under the FIF rules

arrangement property means property held as part of the arrangement by the participant and affected associates

assessment period is any of—

(a) the earliest income year (the **first income year**) in which an interest in the arrangement was acquired by the participant or an affected associate of the participant:

(b) the first income year and the next income year:

(c) the first income year and the next 2 income years

relevant balance date means the balance date, or the latest balance date, of the participant and affected associates that ends the assessment period.

Defined in this Act: acceptable property, affected associate, arrangement, arrangement property, assessable income, assessment period, deduction, direct voting interest, dispose, employment income, FIF rules, foreign company, income, income year, LAQC, limited-recourse amount, limited-recourse loan, relevant balance date, share, shareholder, tax loss component

Compare: 2004 No 35 s GC 29 (1)

Section GB 45(3) **acceptable property**: amended (with effect on 1 April 2008), on 6 October 2009, by section 241 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GB 46 Deferral of surplus deductions from arrangements

When this section applies

(1) This section applies when—

(a) an arrangement of the type described in section GB 45 is made; and

(b) a person (the **participant**) is a party to the arrangement or affected by it; and

(c) the participant is not an LAQC; and

(d) the participant has, for an income year, a total amount of deductions from the arrangement that is more than their total amount of assessable income from the arrangement, having regard to the rules in subsection (6); and

(e) the participant considered together with their affected associates, excluding an LAQC that has a tax loss from the arrangement for the income year, has for the income year a total amount of deductions from the arrangement that is more than their total amount of assessable income from the arrangement, having regard to the rules in subsection (6); and

(f) on the balance date, or the latest balance date, of the participant and affected associates for the income year, the arrangement involves a limited-recourse loan in relation to which the participant or an affected associate of the participant is a borrower.

Income for participant

(2) The participant is treated as deriving in the income year an amount of assessable income calculated using the formula—

$$\frac{\text{participant's excess deductions}}{\text{total individual excess deductions}} \times \text{total ineligible amount}$$

Definition of items in formula

(3) In the formula,—

(a) **participant's excess deductions** is the amount of excess deductions of the participant for the income year described in subsection (1)(d):

(b) **total individual excess deductions** is the amount, for the income year, by which the total deductions from the arrangement are more than the total assessable income from the arrangement, having regard to the rules in subsection (6), for the group that consists of—

(i) the participant; and

(ii) each affected associate of the participant who is not an LAQC and who has, for the income year, a total amount of deductions from the arrangement that is more than their total assessable income from the arrangement, having regard to the rules in subsection (6):

(c) **total ineligible amount** is the lesser of—

(i) the total individual excess deductions for the group and the income year as described in subsection (1)(e); and

(ii) the total limited-recourse amount that, on the balance date or the latest balance date of the participant and the affected associates, the participant and the affected associates have an undischarged obligation to repay as part of or for the purposes of the arrangement.

Matching deduction in following year

(4) A participant who has an amount of assessable income for an income year under subsection (2) has a deduction of an equal amount for the following income year.

Obligation to repay limited-recourse amount not discharged

(5) For the purposes of subsections (1) and (3)(c)(ii), an obligation to repay a limited recourse amount is not discharged by a transaction to the extent to which the transaction—

(a) involves, as part of the arrangement, the use of—

(i) a put or call option that is not a contract for the sale for future delivery of goods at market value:

(ii) a contract of insurance or guarantee; and

(b) does not give rise to assessable income for the person who is the borrower of the limited-recourse amount under the limited-recourse loan.

Some deductions included, some income excluded

(6) For the purposes of subsections (1)(d) and (e) and (3)(b),—

(a) a deduction of a person includes—

(i) a deduction under subsection (4); and

(ii) a deduction under section HA 20 (Attribution of tax losses); and

(b) income of a person excludes an amount of income arising under subsection (2).

Defined in this Act: arrangement, assessable income, associated person, deduction, income year, LAQC, limited-recourse amount, limited-recourse loan, tax loss

Compare: 2004 No 35 s GC 31

GB 47 Calculation rules for sections GB 45 and GB 46

Consolidation of assessable income and deductions, and cost of property

(1) The deductions and assessable income from an arrangement for each person in a group of persons, and the cost of property that is held by each person in the group as part of the arrangement, are calculated on a basis of consolidation for the elimination of intra-group balances in accordance with generally accepted accounting practice.

Calculation of assessable income and deductions, and cost of property

(2) The deductions and assessable income from an arrangement for each person in a group of persons, and the cost of property that is held by each person in the group as part of the arrangement, are calculated using the proportionate method in accord-

ance with generally accepted accounting practice for partnerships, if the group is any of—

(a) persons who are a partnership and the partners in a partnership:

(b) a joint venture and the partners in the joint venture:

(c) an LAQC and the shareholders in the LAQC.

Defined in this Act: arrangement, assessable income, deduction, generally accepted accounting practice, LAQC, shareholder

Compare: 2004 No 35 s GC 29(2), (3)

GB 48 Defined terms for sections GB 45 and GB 46

Affected associate

(1) For an arrangement, a person is an **affected associate** of another person if each person is a party to the arrangement or is affected by the arrangement, and—

(a) 1 person is an LAQC and the other person is a shareholder in the LAQC; or

(b) the persons are associated persons.

Limited-recourse amount

(2) A **limited-recourse amount**, for a limited-recourse loan, means the total for the limited-recourse loan of the amounts for which the obligations of a borrower are affected in a way that is described in subsection (3)(c).

Limited-recourse loan

(3) A **limited recourse loan** means a financial arrangement that meets each of the following requirements:

(a) it is not an excepted financial arrangement:

(b) it involves the provision of money by a person (the **lender**) to another person (the **borrower**):

(c) it has 1 or more of the following effects, or an effect which is substantially similar:

(i) relieving the borrower from the obligation to repay all or some of the money, whether the relief is contingent or not:

(ii) requiring the borrower to make no repayment for a period of 10 or more years from the date on which the loan is made, other than repayments for the purpose of defeating the intent and application of section GB 46:

(iii) providing that the repayment of the money is in substance secured solely against assets that are employed in the arrangement:

(d) if the lender is not an associated person of the borrower, the lender provides the money on terms that are not arm's length and the lender is either—

(i) not a person who regularly provides money to persons on arm's length terms under arrangements that do not meet the requirements of paragraphs (a) to (c); or

(ii) a person who is neither a New Zealand resident nor carrying on business in New Zealand through a fixed establishment in New Zealand:

(e) if the lender is an associated person of the borrower, the lender obtains the money under an arrangement that meets the requirements of paragraphs (a) to (c).

Defined in this Act: affected associate, arrangement, associated person, excepted financial arrangement, financial arrangement, fixed establishment, LAQC, limited-recourse amount, limited-recourse loan, listed company, money, resident in New Zealand

Compare: 2004 No 35 s GC 30

Section GB 48(1)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 242(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 48(1)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 242(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 48(3)(d): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 242(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 48(3)(e): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 242(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 48 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 48 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GB 48 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Arrangements involving returning share transfers

GB 49 Arrangements involving returning share transfers

When this section applies

(1) This section applies when—

(a) a person enters into an arrangement; and

(b) an effect of the arrangement means that a requirement of the definition of **returning share transfer** is not met; and

(c) the effect of the arrangement is to defeat the intent and application of this Act.

Arrangement treated as returning share transfer

(2) The Commissioner may treat—

(a) the arrangement as a returning share transfer; and

(b) a person affected by the arrangement as a share user or a share supplier, under the returning share transfer.

Defined in this Act: arrangement, Commissioner, returning share transfer, share supplier, share user

Compare: 2004 No 35 s GC 14G

Arrangements involving partners

Heading: added, on 1 April 2008, by section 17(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

GB 50 Arrangements involving partners

When this section applies

(1) This section applies when—

(a) a partner of a partnership enters into an arrangement; and

(b) the arrangement involves an amount of consideration (the **arrangement amount of consideration**) that is not a market value amount of consideration; and

(c) the arrangement has a purpose or effect of defeating the intent and application of subpart HG (Joint venturers, partners, and partnerships).

Market value amount substituted

(2) A market value amount of consideration is substituted for the arrangement amount of consideration.

Defined in this Act: amount, arrangement, partner, partnership

Section GB 50: added, on 1 April 2008, by section 17(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Subpart GC—Market value substituted

Disposals of trading stock or similar property

GC 1 Disposals of trading stock at below market value

When this section applies

(1) This section applies when a person disposes of trading stock for—

(a) no consideration:

(b) an amount that is less than the market value of the trading stock at the time of disposal.

Market value consideration

(2) The person is treated as deriving an amount equal to the market value of the trading stock at the time of disposal.

Market value expenditure

(3) If the person disposes of the trading stock to another person, an amount equal to the market value of the trading stock at the time of disposal is treated as expenditure incurred by the other person in acquiring the trading stock.

Shares in trading stock

(4) In this section, **trading stock** includes an interest in trading stock.

Exclusions

(5) This section does not apply to a disposal of trading stock—

(a) under a relationship agreement:

(b) by the person to another person who is not associated with them, for use by the other person in a farming, agricultural, or fishing business that is affected by a self-assessed adverse event:

(c) under a share-lending arrangement, by a share user to a share supplier or by a share supplier to a share user.

Defined in this Act: amount, associated person, , business, relationship agreement, self-assessed adverse event, share, share-lending arrangement, share supplier, share user trading stock

Compare: 2004 No 35 s GD 1(1), (3), (4)

Section GC 1(4)(c): amended (with effect on 26 September 2008), on 6 October 2009, by section 243(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 1(4)(d): added (with effect on 26 September 2008), on 6 October 2009, by section 243(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 1 list of defined terms **emissions unit**: inserted (with effect on 26 September 2008), on 6 October 2009, by section 243(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 1 list of defined terms **qualifying event**: repealed (with effect on 26 September 2008), on 6 October 2009, by section 243(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 1 list of defined terms **surrender**: inserted (with effect on 26 September 2008), on 6 October 2009, by section 243(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 1: substituted (with effect on 1 April 2008), on 7 September 2010, by section 54(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

GC 2 Disposals of timber rights or standing timber

When section GC 1 applies

(1) Section GC 1 applies to each of the following disposals as if it were a disposal of trading stock—

(a) a grant of a right to take timber, other than in favour of the grantor:

(b) a disposal of standing timber as part of the disposal of the land on which it stands, other than a disposal subject to a right in favour of the seller to take timber.

Exclusion

(2) Subsection (1) does not apply to a disposal of land with standing timber if the disposal is within 1 of the exclusions in section CB 25(2) (Disposal of land with standing timber).

Limitation

(3) Section GC 1(4) does not apply if the disposal is of land with standing timber subject to a right to take timber.

Defined in this Act: timber trading stock

Compare: 2004 No 35 s GD 1(2), (3A)

Section GC 2(3): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 55(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

GC 3 Disposals by life insurers

Section GC 1 applies to a life insurer that disposes of any property, other than a financial arrangement, in the course of their business of life insurance, as if the property were trading stock.

Defined in this Act: financial arrangement, life insurance, life insurer, property trading stock

Compare: 2004 No 35 s GD 7

GC 3B Disposals of emissions units

When section GC 1 applies

(1) Section GC 1 applies to a disposal of an emissions unit as if the emissions unit were trading stock.

Exclusions

(2) Section GC 1 does not apply to a disposal of an emissions unit if the disposal is—

- (a) the surrender of the unit under the Climate Change Response Act 2002:
- (b) the transfer of the unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949:
- (c) the transfer of a forest land emissions unit—
  - (i) from the person (the **transferor**) who receives the unit from the Crown; and
  - (ii) to a person (the **transferee**) as a party to a forestry rights agreement as defined in the Forestry Rights Registration Act 1983; and
  - (iii) as required by a provision of the forestry rights agreement relating to the allocation of income or

emissions units between the transferor and the transferee.

Defined in this Act: disposal emissions unit trading stock

Section GC 3B: inserted (with effect on 26 September 2008), on 7 September 2010 (applying for the 2008-09 and later income years), by section 56(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

GC 4 Disposals and acquisitions of FIF attributing interests

When subsection (2) applies

(1) Subsection (2) applies if—

(a) a person disposes of an attributing interest in a foreign investment fund (FIF); and

(b) they calculate their FIF income or loss from the interest for the period ending with the disposal using the comparative value method, deemed rate of return method, the fair dividend rate method, or the cost method; and

(c) the consideration, if any, for the disposal is below the market value of the interest at the time.

Disposal treated as at market value

(2) The person is treated as having disposed of the interest for an amount equal to its market value at the time.

When subsection (4) applies

(3) Subsection (4) applies if—

(a) a person acquires an attributing interest in a FIF; and

(b) they calculate their FIF income or loss from the interest for the period after the acquisition using the comparative value method, deemed rate of return method, the fair dividend rate method, or the cost method; and

(c) the consideration, if any, for the acquisition is not equal to the market value of the interest at the time.

Acquisition treated as at market value

(4) The person is treated as having acquired the interest for an amount equal to its market value at the time.

Defined in this Act: attributing interest, comparative value method, cost method, deemed rate of return method, fair dividend rate method, FIF, FIF income, FIF loss

Compare: 2004 No 35 s GD 14

GC 4B Disposals of ETS units at below market value

[Repealed]

Section GC 4B: repealed (with effect on 26 September 2008), on 6 October 2009, by section 244 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 4B: inserted, on 26 September 2008, by section 75 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Leases

GC 5 Leases for inadequate rent

When this section applies

(1) This section applies in relation to leases of real and personal property if and to the extent to which—

- (a) a property is leased; and
- (b) the lease is 1 of the types referred to in subsection (2); and
- (c) the lessee uses the property in deriving income; and
- (d) no rent is payable, or the Commissioner considers that the rent is less than adequate.

Types of leases

(2) The following types of leases are subject to this section:

- (a) a lease by a company:
- (b) a lease by a person to a relative or a related company:
- (c) a lease by 2 or more persons to a relative or a related company of any of those persons:
- (d) a lease by a partnership to a relative of a partner or a related company of the partnership.

Lease treated as having adequate rent

(3) The lessee is treated as paying, and the lessor is treated as deriving as income, an adequate rent determined by the Commissioner.

Timing

(4) The adequate rent is treated as—

- (a) paid on the rent payment dates set out in the lease, if any; and
- (b) paid on a daily basis on each day of the lease term, if there are no rent payment dates; and

(c) income derived by the lessor on the date on which it is treated as being paid; and

(d) accruing on a daily basis.

Some definitions

(5) In this section,—

lease means a tenancy of any duration, including a sublease or bailment

related company means a company that is associated with—

(a) in the case of a single lessor, the lessor, 1 or more relatives of the lessor, or a combination of them:

(b) in the case of multiple lessors, including a partnership, any of the lessors, 1 or more relatives of any of the lessors, or a combination of them

rent includes a premium or other consideration for the lease.

Defined in this Act: Commissioner, company, income, lease, related company, relative, rent

Compare: 2004 No 35 s GD 10

Section GC 5(1): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 48(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section GC 5(5) **related company**: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 245(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Transfer pricing arrangements

GC 6 Purpose of rules and nature of arrangements

Purpose of rules

(1) The purpose of this section and sections GC 7 to GC 14 is to substitute an arm's length consideration in the calculation of a person's net income if the person's net income is reduced by the terms of a cross-border arrangement with an associated person for the acquisition or supply of goods, services, or anything else.

What is a transfer pricing arrangement?

(2) An arrangement is a **transfer pricing arrangement** if—

(a) the arrangement involves the supply and acquisition of goods, services, money, other intangible property, or anything else; and

(b) the supplier and acquirer are associated persons; and

(c) the arrangement is a cross-border arrangement under subsection (3).

When arrangement is cross-border arrangement

(3) An arrangement is a cross-border arrangement if the requirements of any of the following paragraphs is met:

(a) the supplier and acquirer are a New Zealand resident and non-resident, unless the requirements of both of the following subparagraphs are met:

(i) the non-resident enters into the arrangement for the purposes of a business carried on by the non-resident in New Zealand through a fixed establishment in New Zealand:

(ii) the New Zealand resident has not entered into the arrangement for the purposes of a business carried on by the New Zealand resident outside New Zealand:

(b) the supplier and acquirer are 2 New Zealand residents and either or both enter into the arrangement for the purposes of a business carried on by the person outside New Zealand:

(c) the supplier and acquirer are 2 non-residents, unless each enters into the arrangement for the purposes of a business carried on by the person in New Zealand through a fixed establishment in New Zealand.

Application of sections

(4) Section GC 7, GC 8, GC 9, or GC 10 can apply to an arrangement under section GB 2 (Arrangements involving transfer pricing).

Defined in this Act: acquisition, arrangement, associated person, fixed establishment, net income, New Zealand, New Zealand resident, non-resident, supply, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(1), (2)

GC 7 Excess amount payable by person

If the amount of consideration payable by a person (the **taxpayer**) under a transfer pricing arrangement is more than an arm's length amount, an amount equal to the arm's length amount is treated as the amount payable by the taxpayer for

the purposes of the calculation of their income tax liability for a tax year.

Defined in this Act: amount, arrangement, income tax liability, tax year, taxpayer, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(3)

GC 8 Insufficient amount receivable by person

Amount receivable

(1) If the amount of consideration receivable by a person (the **taxpayer**) under a transfer pricing arrangement is less than an arm's length amount, an amount equal to the arm's length amount is treated as the amount receivable by the taxpayer for each of the following purposes:

- (a) the calculation of their income tax liability for a tax year:
- (b) *[Repealed]*
- (c) the determination of the obligation of another person to withhold under Part R (General collection rules) from the amount.

Non-resident's exemption: deduction to payer

(2) This section does not apply when—

- (a) the taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a business carried on in New Zealand through a fixed establishment in New Zealand; and
- (b) the amount receivable is a deduction of the other party or, in the case of an interest-free loan, would be a deduction but for the application of subpart FE (Interest apportionment on thin capitalisation) if an arm's length amount of interest were substituted; and
- (c) the amount receivable is interest, royalties, or an insurance premium to which section YD 8 (Apportionment of premiums derived by non-resident general insurers) applies.

Non-resident's exemption: fixed-rate share dividend

(3) This section does not apply if both of the following requirements are met:

- (a) the taxpayer is neither resident in New Zealand nor entering into the arrangement for the purposes of a busi-

ness carried on in New Zealand through a fixed establishment in New Zealand:

(b) the amount is a dividend receivable on a fixed-rate share.

Defined in this Act: amount, arrangement, deduction, dividend, fixed establishment, fixed-rate share, income tax liability, interest, resident in New Zealand, royalty, tax year, taxpayer, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(4), (5)

Section GC 8(1)(b): repealed (with effect on 30 June 2009), on 6 October 2009, by section 246(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GC 9 Compensating arrangement: person paying less than arm's length amount

When this section applies

(1) This section applies when—

(a) a person (the **taxpayer**) is a party to a transfer pricing arrangement with another person; and

(b) an adjustment is made for an income year under either—

(i) section GC 7 to an amount payable by the taxpayer under the transfer pricing arrangement; or

(ii) section GC 8 to an amount receivable by the taxpayer under the transfer pricing arrangement; and

(c) an amount of consideration payable by the taxpayer in the same income year, or in the preceding or next income year, for an acquisition (the **compensating acquisition arrangement**) from the same person is less than an arm's length amount; and

(d) either—

(i) the transfer pricing arrangement involves goods, services, money, other intangible property, or anything else of the same type as that acquired in the compensating acquisition arrangement; or

(ii) the amount of consideration actually payable or receivable in the transfer pricing arrangement is set having regard to the amount of consideration payable under the compensating acquisition arrangement.

Paying arm's length amount

(2) For the purposes of calculating the taxpayer's income tax liability, the amount paid by them in the compensating acquisition arrangement is treated for the corresponding tax year as an amount equal to the arm's length amount determined under section GC 13.

Defined in this Act: acquisition, amount, arrangement, income tax liability, tax year, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(10)

GC 10 Compensating arrangement: person receiving more than arm's length amount

When this section applies

(1) This section applies when—

(a) a person (the **taxpayer**) is a party to a transfer pricing arrangement with another person; and

(b) an adjustment is made for a tax year under either—

(i) section GC 7 to an amount payable by the taxpayer under the transfer pricing arrangement; or

(ii) section GC 8 to an amount receivable by the taxpayer under the transfer pricing arrangement:

(c) an amount of consideration receivable by the taxpayer in the same tax year, or the preceding or next tax year, for a supply (the **compensating supply arrangement**) to the same person is more than an arm's length amount:

(d) either—

(i) the transfer pricing arrangement involves goods, services, money, other intangible property, or anything else of the same type as that acquired in the compensating supply arrangement; or

(ii) the amount of consideration actually payable or receivable in the transfer pricing arrangement is set having regard to the amount of consideration receivable under the compensating supply arrangement.

Receiving arm's length amount

(2) The amount received by the taxpayer in the compensating supply arrangement is treated as being an amount equal to the

arm's length amount determined under section GC 13, for each of the following purposes:

(a) the calculation of their income tax liability for a tax year:

(b) *[Repealed]*

(c) the determination of the obligation of another person to withhold under Part R (General collection rules) from the amount.

Defined in this Act: amount, arrangement, income tax liability, supply, tax year, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(10)

Section GC 10(2)(b): repealed (with effect on 30 June 2009), on 6 October 2009, by section 247(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GC 11 Requests for matching treatment

When this section applies

(1) This section applies when—

(a) an arm's length amount of consideration is substituted under section GC 7 or GC 8 in relation to a transfer pricing arrangement entered into by a person (the **taxpayer**); and

(b) the other party to the arrangement or, if the other party is a controlled foreign company (CFC), a person with an income interest in the CFC, applies to the Commissioner in writing within 6 months after an assessment is made for the taxpayer which reflects the substitution; and

(c) the Commissioner considers it is fair and reasonable to apply subsection (2), having regard to an adjustment made under a double tax agreement or any other matter; and

(d) the Commissioner has notified the other party.

Substitution applying for other party

(2) The substitution applies for the purposes of the application of this Act to the other party—

(a) excluding the determination of the extent to which the other party has derived or been paid a dividend; and

(b) including, when the other party is a CFC, the calculation of net attributable CFC income or net attributable CFC loss in relation to the other party, and the resultant calculation of the attributed CFC income or an attributed CFC loss or attributed CFC net loss of a person.

Defined in this Act: amount, arrangement, assessment, attributed CFC income, attributed CFC loss, attributed CFC net loss, CFC, Commissioner, dividend, double tax agreement, income interest, net attributable CFC income, net attributable CFC loss, taxpayer, transfer pricing arrangement

Compare: 2004 No 35 s GD 13(11)

Section GC 11(2)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 248(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 11 list of defined terms **branch equivalent income**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 248(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 11 list of defined terms **branch equivalent loss**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 248(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 11 list of defined terms **net attributable CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 248(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section GC 11 list of defined terms **net attributable CFC loss**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 248(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GC 12 Effect on person's withholding obligations

An adjustment under any of sections GC 7 to GC 10 has no effect on an obligation of the taxpayer to withhold under Part R (General collection rules) in relation to the amount other than to the extent to which section GC 11(2) applies.

Defined in this Act: amount

Section GC 12: substituted (with effect on 30 June 2009), on 6 October 2009, by section 249(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GC 13 Calculation of arm's length amounts

Use of most reliable measure

(1) An arm's length amount of consideration must be determined by applying whichever 1 or a combination of the methods listed in subsection (2) produces the most reliable measure of the amount that completely independent parties would have agreed upon after real and fully adequate bargaining.

Five available methods

(2) The arm's length amount of consideration must be calculated under any 1 or a combination of—

(a) the comparable uncontrolled price method:

(b) the resale price method:

(c) the cost plus method:

(d) the profit split method:

(e) the comparable profits methods.

Criteria for choice and application of method

(3) The choice and application of a method or methods must be made having regard to each of the following factors:

(a) the degree of comparability between the uncontrolled transactions used for comparison and the controlled transactions of the taxpayer:

(b) the completeness and accuracy of the data relied on:

(c) the reliability of all assumptions:

(d) the sensitivity of a result to possible deficiencies in the data and assumptions.

Initial determination by the taxpayer

(4) The arm's length amount of consideration is determined by the taxpayer under subsections (1) to (3), and the amount determined is the arm's length amount for the purposes of sections GC 7 to GC 11, unless either—

(a) the Commissioner can demonstrate that another amount is a more reliable measure of the arm's length amount; or

(b) the taxpayer has not co-operated with the Commissioner in the Commissioner's administration of sections GC 6 to GC 14 in relation to the taxpayer, and the non-co-operation has materially affected the Commissioner in that administration.

Commissioner's determination

(5) If subsection (4)(a) or (b) applies, the Commissioner determines the amount under subsections (1) to (3) for the purposes of sections GC 7 to GC 11.

Defined in this Act: amount, Commissioner

Compare: 2004 No 35 s GD 13(6)–(9)

GC 14 Definitions for sections GC 6 to GC 13

In sections GC 6 to GC 13,—

acquisition—

(a) includes obtaining the availability of anything; but

(b) does not include the mere receipt or retention by a company of consideration for the issue of a share, unless the share is a fixed-rate share

amount includes zero

supply—

(a) includes making anything available; but

(b) does not include the mere payment, and subsequent continuing making available, by a person to a company of consideration for the issue of a share, unless the share is a fixed-rate share.

Defined in this Act: acquisition, amount, company, fixed-rate share, share, supply

Compare: 2004 No 35 s GD 13(13)

Subpart GZ—Terminating provisions

GZ 1 Limitation on section GB 20: petroleum mining arrangements

Section GB 20 (Arrangements involving petroleum mining) does not apply to an arrangement if—

(a) the petroleum mining asset was disposed of before 1 July 1992:

(b) the petroleum exploration expenditure was incurred before 1 July 1992:

(c) the farm-out arrangement was entered into before 16 December 1991.

Defined in this Act: arrangement, dispose, farm-out arrangement, petroleum mining asset, petroleum mining expenditure

Compare: 2004 No 35 s GD 12(1)

GZ 2 Arrangements involving cancellation of conduit tax relief credits

What this section applies to

(1) This section applies to a company with a CTRA that enters an arrangement if—

(a) the arrangement involves transactions—

(i) undertaken between 4 December 2007 and the beginning of the first affected income year; and

(ii) giving rise to CTR credits in the CTRA; and

(b) a purpose of the arrangement is to produce for a New Zealand resident, other than the company with the CTRA or a CTR holding company for that company, a benefit—

(i) under a taxation law; and

(ii) relating to the CTR credits.

Income tax liability

(2) The company's income tax liability for the income year of the arrangement is increased by the amount of CTR credits referred to in subsection (1)(a)(ii).

Defined in this Act: amount, arrangement, company, CTR credit, CTR holding company, CTRA, income year, New Zealand resident, taxation law

Section GZ 2: added (with effect on 30 June 2009), on 6 October 2009, by section 250(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

GZ 3 Donations of trading stock for relief of Canterbury earthquakes

Section GC 1 (Disposals of trading stock at below market value) does not apply to the disposal of trading stock by a person to a person who is not an associated person—

(a) for the purpose of relief from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and

(b) in the period beginning on 4 September 2010 and ending on 31 March 2012.

Defined in this Act: associated person, trading stock

Section GZ 3: added (with effect on 4 September 2010), on 24 May 2011, by section 5 of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Part H
Taxation of certain entities

Subpart HA—Qualifying companies (QC) and loss-attributing qualifying companies (LAQC)

Introductory provisions

HA 1 What this subpart does

Distributing profits and attributing tax losses

(1) The rules in this subpart allow a company to choose, for taxation purposes,—

(a) to have a distribution of profits to shareholders imputed or, to the extent not imputed, distributed as exempt income; and

(b) *[Repealed]*

Requirements for qualifying companies

(2) A qualifying company must meet the requirements of sections HA 5 to HA 9, and must maintain the conditions set out in section HA 4.

Requirements for loss-attributing qualifying companies

(3) A loss-attributing qualifying company must be a qualifying company, and must meet the shareholding requirements of section HA 10.

Income year or part-year

(4) In this subpart, a reference to an income year includes a reference to part of an income year.

Elections required

(5) For a company to be a qualifying company or a loss-attributing qualifying company, all the directors of the company, and every shareholder in the company with legal capacity, must sign an election referred to in section HA 5. An exception applies for a minority shareholder in the situation described in section HA 29.

Shareholder's personal liability

(6) A shareholder who makes an election referred to in subsection (5) must agree to take personal liability to the extent described in section HA 8.

Defined in this Act: company, director, exempt income, income year, loss-attributing qualifying company, pay, qualifying company, share, shareholder, tax, tax loss

Compare: 2004 No 35 ss HG 1(c), (d), HG 3(1), HG 4(1), HG 14

Section HA 1(1)(a): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 57(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 1(1)(b): repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 70(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 1 list of defined terms **exempt income**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 57(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HA 2 Meaning of qualifying company

In this Act, a **qualifying company** means a company other than a unit trust that, for the whole of an income year, meets the requirements of sections HA 5 to HA 9.

Defined in this Act: company, income year, qualifying company, unit trust

Compare: 2004 No 35 s OB 3(1)

HA 3 Meaning of loss-attributing qualifying company

[Repealed]

Section HA 3: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 71(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 4 Conditions applying

Becoming and continuing as qualifying company

(1) The requirements of sections HA 5 to HA 9 are preconditions of, and ongoing conditions for, qualifying companies and LAQCs. For a company to become and to continue as a qualifying company, the requirements of those sections must be met.

Losing status

(2) Sections HA 11 and HA 12 apply in relation to a failure to maintain the requirements and avoidance arrangements.

Avoidance

(3) Section GB 6 (Arrangements involving qualifying companies) may apply to treat a company as not being a qualifying company.

Defined in this Act: arrangement, company, LAQC, qualifying company

Compare: 2004 No 35 ss HG 7, HG 14(d)

Qualifying company status

HA 5 Elections to become qualifying company

Making elections

(1) A company that meets the requirements of sections HA 6 to HA 9 may be a qualifying company or an LAQC only if all the directors of the company and every shareholder in the company with legal capacity, choose, before the start of the grandparenting income year, that the company is to become a qualifying company. Every director and every shareholder with legal capacity must sign a notice of election and give it to the Commissioner.

Extension of time in some cases

(1B) An election is treated as made before the start of the grandparenting income year for the purposes of subsection (1), if the relevant persons choose before the end of the time allowed by section 37 of the Tax Administration Act 1994 for providing a return for the company's first income year, and—

(a) that income year is—

(i) the grandparenting income year; and

(ii) nominated under section HA 30(3); and

(b) the company has not previously been required to provide a return of income.

Elections remaining in effect

(2) The elections referred to in subsection (1) must remain in effect and must not have been revoked before the end of the relevant income year.

Director at time

(3) For the purposes of an election, a person is considered a director of a company if they hold the office at the time the notice is provided.

Elections

(4) The elections referred to in this section are dealt with in sections HA 28 to HA 39.

Meaning of grandparenting income year

(5) In this section, **grandparenting income year** means the income year before the first income year that starts on or after 1 April 2011.

Defined in this Act: Commissioner, company, director, grandparenting income year, income year, LAQC, notice, qualifying company, shareholder

Compare: 2004 No 35 ss HG 3(1), HG 4(1), HG 14(a), (b), OB 3(1)(f)

Section HA 5(1): amended (with effect on 1 April 2010), on 21 December 2010 (applying for income years beginning on or after 1 April 2010), by section 72(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 5(1B) heading: inserted (with effect on 1 April 2010), on 21 December 2010 (applying for income years beginning on or after 1 April 2010), by section 72(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 5(1B): inserted (with effect on 1 April 2010), on 21 December 2010 (applying for income years beginning on or after 1 April 2010), by section 72(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 5(5) heading: added (with effect on 1 April 2010), on 21 December 2010 (applying for income years beginning on or after 1 April 2010), by section 72(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 5(5): added (with effect on 1 April 2010), on 21 December 2010 (applying for income years beginning on or after 1 April 2010), by section 72(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 5 list of defined terms **grandparenting income year**: inserted (with effect on 1 April 2010), on 21 December 2010, by section 72(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 6 Corporate requirements

Requirements

(1) A qualifying company must, in an income year,—

(a) have 5 or fewer shareholders who meet the requirements of section HA 7; or

(b) be a flat-owning company.

Exclusions

(2) A company is not eligible to be a qualifying company if, at any time in an income year, it is—

(a) a company that is not resident in New Zealand; or

(b) a company that is resident in New Zealand but is treated under and for the purposes of a double tax agreement, as not resident in New Zealand; or

(c) no longer a qualifying company under section HA 11B(1) because its status as an LAQC has ended.

Defined in this Act: company, double tax agreement, flat-owning company, income year, LAQC, qualifying company, resident in New Zealand, shareholder

Compare: 2004 No 35 ss HG 1(a), (b), OB 1 **foreign company**, OB 3(1)(a), (b), (g)

Section HA 6(2)(c): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 58(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HA 7 Shareholding requirements

Natural persons, certain trustees, and qualifying companies

(1) A shareholder in a qualifying company must be 1 of the following:

(a) a natural person other than a trustee; or

(b) a trustee of a trust, but only if subsection (2) applies in relation to dividends derived by the trustee; or

(c) another qualifying company.

Dividends derived by trustees

(2) For the purposes of subsection (1)(b), all dividends that the trustee of a trust derives from a qualifying company in an income year must be beneficiary income of 1 or more persons who are not trustees or companies other than qualifying companies. However, this subsection does not apply to non-cash dividends other than taxable bonus issues.

Special shareholding rules

(3) When the shares in a qualifying company that has 5 or fewer shareholders are held by relatives, other companies, and trustees, the following special rules apply:

(a) if a shareholder in a qualifying company is connected within the first degree of relationship to another shareholder in the company by either blood relationship, mar-

riage, civil union or de facto relationship, or adoption, they are treated as a single shareholder, and this treatment continues while they remain a shareholder in the company despite any later death or dissolution:

(b) shares in a qualifying company that are held by another company are treated as held by the shareholders in that other company:

(c) if a shareholder in a qualifying company is a trustee, the shareholders are counted, without the trustee, as the larger of the following:

(i) the group who signed the election as shareholder; or

(ii) the group who derived beneficiary income from dividends from the qualifying company in the period between the first day of the 1991–92 income year and the time of counting.

Shareholder continuity requirements

(4) For the application of shareholder continuity requirements to the memorandum accounts of qualifying companies, *see* section OA 8(3B) (Shareholder continuity requirements).

Defined in this Act: beneficiary income, company, dividend, income year, memorandum account, non-cash dividend, qualifying company, relative, share, shareholder, taxable bonus issue, trustee

Compare: 2004 No 35 s OB 3(1)(c), (3)

Section HA 7(4) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 251(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 7(4): added (with effect on 1 April 2008), on 6 October 2009, by section 251(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 7 list of defined terms **memorandum account**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 251(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 7B Grandparenting requirement

A qualifying company must have been a qualifying company at the end of the income year before the first income year that starts on or after 1 April 2011.

Defined in this Act: income year, , qualifying company

Section HA 7B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 73(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 8 Shareholders' personal liability

Agreement required for election

(1) A person making an election as shareholder as described in section HA 5 must agree for each income year in which the election is in effect, to take personal liability on the basis of their effective interest in the company—

(a) for their share of the company's income tax liability for the income year; and

(b) if the company has made an election as shareholder in another company, for any income tax payable in relation to that other company for the income year.

Trustee shareholders

(2) A person making an election as trustee under section HA 28 must agree to take personal liability under subsection (1), modified as follows:

(a) the trustee together with 1 or more beneficiaries who have legal capacity must make the election; and

(b) the personal liability as trustee is limited to the extent of the net assets of the trust; and

(c) if the election is made for a majority shareholding under section HA 29, the personal liability includes the effective interests of the minority shareholding.

Majority shareholders

(3) One or more persons whose effective interests in a company at a particular time add up to 50% or more, may make an election under section HA 29, agreeing to take personal liability described in subsection (1) in relation to the effective interests in the company of the minority shareholding.

Beneficiaries

(4) In subsection (1), the person includes a beneficiary who makes an election under section HA 28 or a person who assumes liability on their behalf.

Nature of liability

(5) In sections HA 13 to HA 27, when more than 1 person agrees to take personal liability as described in subsection (3) for a percentage of an income tax liability or for income tax payable in an income year, the liability is joint and several.

Defined in this Act: company, effective interest, income tax, income tax liability, income year, pay, shareholder, trustee

Compare: 2004 No 35 s HG 4(1)–(3)

HA 8B No CFC income interests or FIF direct income interests of 10% or more

A qualifying company must not have—

(a) income interests in a CFC:

(b) attributing interests in a FIF that are a direct income interest of 10% or more.

Defined in this Act: attributing interest, CFC, direct income interest, FIF, income interest, qualifying company

Section HA 8B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 252(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 9 Limit on foreign non-dividend income

Dollar limit

(1) The foreign non-dividend income of a qualifying company in an income year must be no more than $10,000 after subtracting the lesser of—

(a) any income under section CC 3 (Financial arrangements); or

(b) 10% of the gross income of the company for the income year.

Change in threshold

(2) The Governor-General may make an Order in Council increasing the sum set out in subsection (1). The order may apply—

(a) from the start of the income year in which it is made; or

(b) to amounts of income derived after the date on which the order is made.

Defined in this Act: amount, foreign non-dividend income, gross, income, income year, qualifying company

Compare: 2004 No 35 s OB 3(1)(d), (4)

Section HA 9(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 253(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 10 Nature of LAQC shares

[Repealed]

Section HA 10: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 11 When requirements no longer met: qualifying companies

When this section applies

(1) This section applies when, through changed circumstances, a qualifying company no longer meets the requirements of sections HA 5 to HA 9.

Status at end

(2) The company's status as a qualifying company is ended, whether or not it is, or could be, known at the time the circumstances arise that the company no longer meets the requirements.

Qualifying companies

(3) The company's status as a qualifying company is treated as ended from the start of the income year in which the change of circumstances occurs. Subsection (6) overrides this subsection.

LAQCs

[Repealed]

(4) *[Repealed]*

Distribution of dividends

(5) Despite subsection (1), a company's status as a qualifying company is not ended merely because it does not comply with section HA 7(2) when—

(a) all dividends that can, under general law, be distributed by the trustee are beneficiary income of a beneficiary other than—

(i) a trustee beneficiary; or

(ii) a beneficiary that is a company other than a qualifying company; and

(b) some of the dividends derived by the trustee from the qualifying company have vested or have been distributed as beneficiary income of a beneficiary other than—

(i) a trustee beneficiary; or

(ii) a beneficiary that is a company other than a qualifying company.

Deferring date

(6) On an application by a qualifying company, the Commissioner may defer the date on which the company's status ends to the start of a later income year if—

(a) the company did not know, and could not reasonably be expected to have known, at the time the circumstances arose that it no longer met the requirements; and

(b) in the circumstances, it would be an unduly harsh or inappropriate outcome.

Examples for subsection (6)(a)

(7) Examples of the circumstances that may apply for the purposes of subsection (6)(a) are a reasonable expectation or belief that—

(a) the company would continue to meet the requirements through an extension under section HA 34, HA 35, or HA 37; or

(b) an amount of foreign non-dividend income that the company derives would not breach the threshold in section HA 9; or

(c) the dividends referred to in section HA 7(2) would be distributed as beneficiary income.

Examples for subsection (6)(b)

(8) Examples of the circumstances that may apply for the purposes of subsection (6)(b) are—

(a) the length of time between the start of the income year and the date of the change in circumstances:

(b) the length of time between the date of the change in circumstances and the date when the company knew, or could reasonably be expected to have known, that the requirements were not met:

(c) the kinds of transactions that the company made during the periods of time described in paragraphs (a) and (b).

Defined in this Act: amount, beneficiary income, Commissioner, company, dividend, foreign non-dividend income, income year, LAQC, qualifying company, trustee

Compare: 2004 No 35 ss HG 7, HG 18, OB 3(3A)

Section HA 11 heading: substituted (with effect on 1 April 2008), on 7 September 2010, by section 59(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 11(4) heading: repealed (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), pursuant to section 59(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 11(4): repealed (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 59(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 11(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 254(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 11B When requirements no longer met: LAQCs

When status lost

(1) If a company is an LAQC in an income year, but does not meet the requirements of sections HA 1(3) and HA 5 to HA 10 for the next income year, its status as a qualifying company is treated as ended from the start of that next income year.

Regaining status

(2) The company may become a qualifying company again if it subsequently meets the requirements set out in sections HA 5 to HA 9.

Defined in this Act: company, income year, LAQC, qualifying company

Section HA 11B: inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 60(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HA 12 Avoidance arrangements

When this section applies

(1) This section applies in an income year in which a company is an LAQC.

Failure to meet requirements

(2) If a share in the company is or has been part of an arrangement whose purpose is to defeat the intent and application of the rules in this subpart, the company is no longer eligible to be an LAQC.

Series of arrangements, and 1 among other purposes

(3) In subsection (2), the arrangement referred to—

(a) includes a series of related or connected arrangements; and

(b) may have more than 1 purpose, and it is sufficient that 1 purpose among those other purposes has the effect described.

Defined in this Act: arrangement, company, income year, LAQC, share

Compare: 2004 No 35 s HG 14(d)

Treatment of profits, dividends, and tax losses

HA 13 Qualifying companies' distributions

A distribution that is a transfer of value to a shareholder of a qualifying company must be treated in the way set out in sections HA 14 to HA 18.

Defined in this Act: qualifying company, shareholder, transfer of value

Compare: 2004 No 35 s HG 1(c)

HA 14 Dividends paid by qualifying companies

When this section applies

(1) This section applies when a qualifying company pays a dividend to a person resident in New Zealand.

General treatment

(2) The dividend is exempt income of the person under section CW 15 (Dividends paid by qualifying companies) to the extent to which it is more than a fully imputed distribution.

When shareholder has non-standard balance date

(3) If the person has a non-standard balance date and the dividend is derived after the end of the tax year but before their balance date, the dividend is allocated to the day after the balance date.

No resident passive income

(4) The dividend does not constitute resident passive income.

Defined in this Act: dividend, exempt income, fully imputed, non-standard balance date, pay, qualifying company, resident in New Zealand, resident passive income, shareholder, tax year

Compare: 2004 No 35 ss HG 9(1), HG 13(1)

Section HA 14(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 255(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 14 list of defined terms **fully imputed**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 255(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 15 Fully imputed distributions

When this section applies

(1) This section applies when a qualifying company with an imputation credit account or foreign dividend payment (FDP) account pays a dividend. However, this section does not apply to a non-cash dividend other than a taxable bonus issue.

Calculating amount of fully imputed distribution

(2) The amount of a fully imputed distribution is calculated using the formula—

$$\frac{\text{attached imputation credit + attached FDP credi}}{\text{tax rate.}}$$

Definition of items in formula

(3) In the formula in subsection (2), —

(a) **attached imputation credit** is the amount determined under subsection (4), and the amount is zero if no imputation credit is attached:

(b) **attached FDP credit** is the amount determined under subsection (5), and the amount is zero if no FDP credit is attached:

(c) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) at the time the shareholder derives the dividend, modified as applicable by section OZ 14 (Dividends from qualifying companies).

ICA companies

(4) A qualifying company that is an imputation credit account (ICA) company is treated as having attached an imputation credit to the dividend. The amount of the imputation credit is the lesser of—

(a) the maximum imputation credit that may be attached to the dividend under section OA 18 (Calculation of maximum permitted ratios) modified as applicable by section OZ 14; and

(b) an amount calculated using the formula in subsection (6).

FDPA companies

(5) A qualifying company that is a foreign dividend payment account (FDPA) company is treated as having attached a FDP credit to the dividend. The amount of the FDP credit is the lesser of—

(a) the maximum FDP credit that may be attached to the dividend under section OA 18, taking into account any imputation credit attached to the dividend under subsection (4) modified as applicable by section OZ 14; and

(b) an amount calculated using the formula in subsection (6).

Formula

(6) The formula referred to in subsections (4) and (5) is—

$$\frac{\text{attached credits} \times \text{amount of dividend}}{\text{amount paid before credits attached.}}$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **attached credits** is the balance in the company's imputation credit account or FDP account, as applicable, on the last day of the tax year in which the dividend is paid before a debit is made for any imputation credits or FDP credits, as applicable, that are attached:

(b) **amount of the dividend** is the amount before any imputation credits or FDP credits, as applicable, are attached:

(c) **amount paid before credits attached** is the total amount of dividends, excluding non-cash dividends

other than taxable bonus issues, paid by the company during the tax year before any imputation credits or FDP credits, as applicable, are attached.

Relationship with imputation rules and FDP rules

(8) An imputation credit or an FDP credit may not be attached to a dividend by a qualifying company except under this section.

Relationship with sections HA 14 and HA 16

(9) If part of the dividend is exempt income under sections HA 14 and HA 16, an imputation credit or FDP credit is treated as attached to the part that is not exempt income.

Defined in this Act: amount, dividend, exempt income, FDP, FDP account, FDP credit, FDP rules, FDPA company, ICA company, imputation credit, imputation credit account, imputation rules, income tax, income year, non-cash dividend, pay, qualifying company, resident in New Zealand, shareholder, taxable bonus issue, tax year

Compare: 2004 No 35 s HG 13(1)–(4)

Section HA 15(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 256(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 15(3)(c): amended, on 1 April 2008, by section 409(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section HA 15(3)(c): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section HA 15(4)(a): amended, on 1 April 2008, by section 409(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section HA 15(5)(a): amended, on 1 April 2008, by section 409(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section HA 15(9) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 256(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 15(9): substituted (with effect on 1 April 2008), on 6 October 2009, by section 256(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 16 Dividends paid by qualifying companies to trustee shareholders

When this section applies

(1) This section applies when a dividend referred to in section HA 14(2) is derived by a trustee to the extent to which the dividend is exempt income of the trustee under section CW 15(1) (Dividends paid by qualifying companies).

Exempt income

(2) To the extent to which the dividend is also beneficiary income of a beneficiary resident in New Zealand, the dividend is exempt income of the beneficiary under section CW 15(2).

Defined in this Act: dividend, exempt income, resident in New Zealand, trustee

Compare: 2004 No 35 s HG 13(1)(a)(i), (1A)

Section HA 16: substituted (with effect on 1 April 2008), on 6 October 2009, by section 257(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 17 Dividends derived by qualifying companies

What this section applies to

(1) This section applies to a dividend—

(a) that a company derives after it becomes a qualifying company; and

(b) to which section CW 10 (Dividend within New Zealand wholly-owned group) or CW 11 (Dividend of conduit tax relief holding company) applies.

Dividend not exempt income

(2) The dividend is not exempt income under sections CW 10 and CW 11, except to the extent to which section CW 9 (Dividend derived by company from overseas) applies to it.

Defined in this Act: company, dividend, exempt income, qualifying company

Compare: 2004 No 35 ss HG 10(a), HG 13(1)(aa)

HA 18 Treatment of dividends when qualifying company status ends

When this section applies

(1) This section applies when a company's status as a qualifying company ends under section HA 11(1).

Dividends distributed in tax year

(2) Section HA 15 applies to a dividend distributed in the period of a tax year from the first day to the day before the date on which the status ends. References in that section to a tax year should be read as references to that period of the year.

Group companies: imputation credit accounts

(3) On the day before the date on which the status ends, the company's imputation credit account is debited under section OB

41 (ICA debit for loss of shareholder continuity) by the lesser of—

(a) the balance of the credit account on that day after any credits are attached under section HA 15; and

(b) the largest debit to the credit account that would have arisen before that day if section OB 41 had applied.

Group companies: FDP account

(4) On the day before the date on which the status ends, the company's FDP account is debited under section OC 24 (FDPA debit for loss of shareholder continuity) by the lesser of—

(a) the balance of the credit account on that day after any credits are attached under section HA 15; and

(b) the largest debit to the credit account that would have arisen before that day if section OC 24 had applied.

Defined in this Act: company, dividend, FDP account, imputation credit account, qualifying company, tax year

Compare: 2004 No 35 s HG 13(6)

HA 19 Credit accounts and dividend statements

When this section applies

(1) This section applies when a qualifying company pays a dividend that is treated either as a fully imputed distribution under section HA 15 or as exempt income under sections HA 14 and HA 16.

Credit accounts

(2) For the purposes of sections OB 30 to OB 59 (which relate to imputation debits) and OC 13 to OC 26 (which relate to FDP debits), if an imputation credit or an FDP credit is attached to the dividend, the amount of the credit is debited to the company's imputation credit account or FDP account, as applicable. The debit arises on the day the company pays the dividend.

Dividend statements

(3) For all dividends, whether or not credits have been attached, the company must complete the following statements detailing the extent to which the dividends are assessable income or exempt income:

(a) a company dividend statement under section 67(1) of the Tax Administration Act 1994; and

(b) a shareholder dividend statement under section 29 of that Act.

Date for completing statements

(4) The company must complete the statements in subsection (3) by 31 May after the end of the tax year in which the dividends were paid.

Non-cash dividends

(5) In addition to the information required in a shareholder dividend statement, if a shareholder asks the company to include in the statement the amount of a non-cash dividend that the company has paid them in the tax year, the company must provide the information.

Defined in this Act: amount, assessable income, company dividend statement, dividend, exempt income, FDP account, FDP credit, fully imputed, imputation credit, imputation credit account, non-cash dividend, pay, qualifying company, shareholder, shareholder dividend statement, tax year

Compare: 2004 No 35 s HG 13(5)

Section HA 19(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 258(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 19 list of defined terms **fully imputed**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 258(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 20 Attribution of tax losses

[Repealed]

Section HA 20: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 21 Loss balances not carried forward

In an income year in which a company that is not a qualifying company becomes a qualifying company, subparts IA (General rules for tax losses) and IQ (Attributed controlled foreign company net losses and foreign investment fund net losses) do

not apply to carry forward a loss balance of the company to the income year or to later income years.

Defined in this Act: company, income year, loss balance, qualifying company

Compare: 2004 No 35 s HG 11(3)

Section HA 21: amended (with effect on 1 April 2008), on 7 December 2009, by section 42 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

HA 22 Group companies using tax losses

When this section applies

(1) This section applies if a qualifying company is in the same group of companies as a company with a tax loss (**company A**).

When tax losses available

(2) The amount of company A's tax loss is available to the qualifying company to use under section IA 3(2) (Using tax losses in tax year) only if—

(a) company A is also a qualifying company; and

(b) the requirements of section IC 5 (Company B using company A's tax loss) are met.

Defined in this Act: amount, company, group of companies, qualifying company, tax loss

Compare: 2004 No 35 s HG 10(b)

HA 23 Treatment of tax losses on amalgamation

If a company that is not a qualifying company amalgamates with a qualifying company and ends its existence on the amalgamation, subpart IA (General rules for tax losses) does not apply to carry forward the amalgamating company's loss balance from earlier income years either to the income year of the amalgamation or to later income years.

Defined in this Act: amalgamating company, amalgamation, company, income year, loss balance, qualifying company, tax loss

Compare: 2004 No 35 s HG 11(3A)

Special tax matters for loss-attributing qualifying companies
[Repealed]

Heading: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 24 Treatment of tax losses other than certain foreign losses

[Repealed]

Section HA 24: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 24(5) heading: substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 61(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24(5): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 61(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24(5B) heading: inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 61(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24(5B): inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 61(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24(5C) heading: inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 61(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24(5C): inserted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 61(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24 list of defined terms **company**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 61(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24 list of defined terms **qualifying company**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 61(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HA 24 list of defined terms **tax loss component**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 61(2) of the Taxation (Annual

Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HA 25 Treatment of certain foreign losses

[Repealed]

Section HA 25: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 26 Attribution when balance dates differ

[Repealed]

Section HA 26: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HA 26(2): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 62(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HA 27 Attribution when loss results in reduction in value of shares

[Repealed]

Section HA 27: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 74(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Elections: qualifying companies

HA 28 Elections by trustee shareholders

If a shareholder referred to in section HA 5 is acting as trustee, they must make an election together with—

(a) 1 or more beneficiaries of the trust who are natural persons with legal capacity; or

(b) if no beneficiary has legal capacity, a natural person, who may also be the trustee, who assumes liability on behalf of beneficiaries.

Defined in this Act: shareholder, trustee

Compare: 2004 No 35 s HG 4(2)(a)

HA 29 Elections by majority shareholders

When this section applies

(1) This section applies when 1 or more shareholders (the **majority**) in a company have, at the time of making an election, effective interests in the company of 50% or more, and the effective interest of 1 or more other shareholders (the **minority**) is less than 50%.

Majority assuming minority's liability

(2) The majority may sign a notice of election advising the Commissioner that the company is to become a qualifying company. The notice has effect only if the majority agree to an extension of their personal liability under section HA 8(3).

Minority treated as making election

(3) The minority is treated as having made an election under section HA 5 in relation to their shareholding in the company at the time the election is made.

Election additional

(4) An election under this section may be made in addition to any other election a shareholder may make or have made under section HA 5.

Defined in this Act: Commissioner, company, effective interest, notice, qualifying company, shareholder

Compare: 2004 No 35 s HG 4(3)

HA 30 When elections take effect

When election takes effect

(1) In a notice of election made under section HA 5, an income year later than the year of notice may be nominated as the year in which the election is to take effect and, if so, the election takes effect at the start of that income year. If no income year is nominated in the notice, the election takes effect at the start of the income year after the year of notice.

Shareholder's election after company becomes qualifying company

(2) If a shareholder makes an election when the company is already a qualifying company, the election takes effect when the Commissioner receives it.

Company's first income year

(3) Despite subsection (1), if the company has not previously been required to provide a return of income, the first income year of the company may be nominated as the year in which the election is to take effect, subject to section HA 5(1B). The Commissioner must be advised of this decision in the notice of election to be received within the time allowed by section 37 of the Tax Administration Act 1994 for providing a return for the company's first income year.

Election in effect until revoked

(4) An election remains in effect until revoked.

Defined in this Act: Commissioner, company, income year, notice, qualifying company, return of income, shareholder

Compare: 2004 No 35 ss HG 3(2), (3), HG 4(4)

Section HA 30(3): amended (with effect on 1 April 2010), on 21 December 2010 (applying for income years beginning on or after 1 April 2010), by section 75(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 31 Revocation of directors' elections

Revoking election

(1) An election by directors under section HA 5 may be revoked only by a resolution of the board of directors. The board must advise the Commissioner of the resolution by providing a notice of revocation.

When revocation takes effect

(2) The revocation of an election takes effect at the start of the income year that the board nominates in the notice of revocation. If the board has not nominated an income year, the revocation takes effect at the start of the income year in which the notice of revocation is provided.

Defined in this Act: Commissioner, director, income year, notice

Compare: 2004 No 35 s HG 3(4), (5)

HA 32 Revocation of shareholders' elections: by notice

Notice

(1) A person who, as a shareholder in a company, has made an election under section HA 5, may revoke it by notifying both the company and the Commissioner.

When revocation takes effect

(2) In the notice, the person may nominate an income year later than the year of notice as the income year in which revocation takes effect, and the revocation takes effect at the start of that income year. If no income year is nominated, it takes effect at the start of the income year in which the Commissioner receives the notice.

Measuring effective interests

(3) For measuring the effective interest in the company, as defined in section HA 43 and measured under section HA 44, of the person revoking the election, the revocation takes effect—

(a) when both the company and the Commissioner have received the notice; or

(b) on a later date nominated in the notice.

Periods of grace and Commissioner's power to defer

(4) Sections HA 11(6) and HA 34 to HA 37 override this section.

Defined in this Act: Commissioner, company, effective interest, income year, notice, notify, shareholder

Compare: 2004 No 35 s HG 5(1)

HA 33 Revocation of shareholders' elections: by event

Event

(1) An election by a person as shareholder under section HA 5 is revoked if an event described in the following paragraphs occurs:

(a) the person dies:

(b) the person disposes of all of their shares, unless they dispose of them to an existing shareholder in the company for whom an election exists:

(c) if sections HA 28 and HA 29 apply, a beneficiary acquires legal capacity:

(d) if section HA 29 applies,—

(i) the effective interests of a minority shareholder increase to 50% or more; or

(ii) the total effective interests of the majority shareholder or shareholders fall below 50%:

(e) for an election made jointly by 2 or more persons, 1 person revokes the election or is treated as having revoked the election.

When revocation by event takes effect

(2) The revocation of an election under this section takes effect at the start of the income year in which the event occurred.

Periods of grace and Commissioner's power to defer

(3) Sections HA 11(6) and HA 34 to HA 37 override this section.

Defined in this Act: Commissioner, company, effective interest, income year, share, shareholder

Compare: 2004 No 35 s HG 5(2)

HA 33B Transitional rules for look-through companies, partnerships, and sole traderships

LTC election

(1) All elections by shareholders under section HA 5 are revoked if, for the company and the relevant shareholders, a LTC election has been received by the Commissioner under section HB 13(3)(c) and (4) (LTC elections) for the first or second income year that starts on or after 1 April 2011.

When revocation takes effect

(2) The revocation of the elections under subsection (1) takes effect at the beginning of the relevant income year.

Notice of intention

(3) All elections by shareholders under section HA 5 are revoked if, for the company and the relevant shareholders, a notice of intention has been received by the Commissioner for the first or second income year that starts on or after 1 April 2011 under section HZ 4B(7)(a) or HZ 4D(4)(a) (which relate to transitions to partnerships and sole traderships).

When revocation takes effect

(4) The revocation of the elections under subsection (3) takes effect at the beginning of the relevant income year.

Defined in this Act: Commissioner, , company, , income year, , shareholder

Section HA 33B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 76(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 34 Period of grace following death of shareholder

12-month period

(1) Despite section HA 33(1)(a), a company's status as a qualifying company does not end because a shareholder or another person has died if, within 12 months of the death of the person, the company meets the requirements of sections HA 5 to HA 9.

Extension of time

(2) The Commissioner may extend the 12-month period referred to in subsection (1) on the application of the company, the personal representative of the deceased person, or a person who is entitled as a shareholder to make an election under HA 5.

Defined in this Act: Commissioner, company, qualifying company, shareholder

Compare: 2004 No 35 s HG 6(1)

HA 35 Period of grace following revocation of election

When this section applies

(1) This section applies when a company has been a qualifying company but no longer meets the requirement of section HA 5 through revocation of a shareholder's election under section HA 32 or HA 33. But this section does not apply when—

(a) the revocation is brought about by the death of a person; or

(b) a joint election is revoked.

Revocation by notice

(2) When section HA 32 applies, the company's status as a qualifying company does not end if, within 63 days of the date on which the company received the notice of revocation, a person other than the shareholder who revoked the election makes an election relating to the whole of the relevant shareholding.

Revocation by event

(3) When section HA 33 applies, the company's status as a qualifying company does not end if, within 63 days of the date when the event that gave rise to the revocation occurred, an election relating to the whole of the relevant shareholding is made or is in effect.

Extension of time

(4) In subsections (2) and (3), the Commissioner may extend the 63-day period on the application of the company or a person who is entitled to make an election under section HA 5.

Defined in this Act: Commissioner, company, notice, qualifying company, shareholder

Compare: 2004 No 35 s HG 6(2)(a), (b)

HA 36 Period of grace following revocation of joint election

When this section applies

(1) This section applies when a company has been a qualifying company, but an election that shareholders have made jointly has been revoked through an event described in section HA 33.

Cause of revocation

(2) The company's status as a qualifying company does not end if, within the relevant period in section HA 34(1) or HA 35(2) and (3), an election relating to the whole of the relevant shareholding is made.

Defined in this Act: company, qualifying company, shareholder

Compare: 2004 No 35 s HG 6(2)(c)

HA 37 Period of grace for new shareholder

When this section applies

(1) This section applies when a company has been a qualifying company but fails to meet the requirement of section HA 5 when—

(a) a person other than an existing shareholder acquires shares in the company; or

(b) an existing shareholder acquires legal capacity.

Period for making election

(2) The company's status as a qualifying company does not end if, within 63 days of the date on which either the shares were acquired or the shareholder acquired legal capacity, an election relating to the whole of the relevant shareholding is made.

Extension of time

(3) The Commissioner may extend the 63-day period in subsection (2) on the application of the company, the new share-

holder, the existing shareholder, or a person who is entitled to make an election as shareholder under section HA 5.

Defined in this Act: Commissioner, company, qualifying company, share, shareholder

Compare: 2004 No 35 s HG 6(3)

Elections: loss-attributing qualifying companies [Repealed]

Heading: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 77(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 38 Elections by directors and shareholders required

[Repealed]

Section 38: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 77(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HA 39 Revocation of elections

[Repealed]

Section 39: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 77(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Qualifying company election tax

HA 40 Liability for qualifying company election tax

Payment of tax

(1) A company that becomes a qualifying company must pay a qualifying company election tax in relation to the change in status, of an amount calculated under section HA 41. The date for payment is set out in section HA 42.

Payment on amalgamation

(2) If a company that is not a qualifying company amalgamates with a qualifying company and ends its existence on the amalgamation, the amalgamated company must pay a qualifying company election tax under subsection (1).

Defined in this Act: amalgamated company, amalgamation, amount, company, pay, qualifying company, qualifying company election tax

Compare: 2004 No 35 s HG 11(1), (1A)

HA 41 Calculating qualifying company election tax

Formula

(1) The amount of qualifying company election tax that a company must pay under section HA 40 is calculated using the formula—

$$\left(\text{dividends} + \text{balances} - \text{assessable income} - \frac{\text{balances}}{\text{tax rate}} \right) \times \text{tax rate}.$$

Definition of items in formula

(2) The items in the formula are defined in subsections (3) to (6).

Dividends

(3) **Dividends** is the sum of the amounts that would be dividends if the company—

(a) disposed of all its property, other than cash, to an unrelated person at market value for cash; and

(b) met all its liabilities at market value, excluding income tax payable through disposing of the property or meeting the liabilities; and

(c) was liquidated, with the amount of cash remaining being distributed to its shareholders without imputation credits or FDP credits attached.

Balances

(4) **Balances** is the sum of the following amounts:

(a) the balance in the company's imputation credit account:

(b) the balance in the company's FDP account:

(c) an amount of income tax payable for an earlier income year but not paid before the relevant date, less refunds due for the earlier income year but paid after the relevant date.

(d) *[Repealed]*

Assessable income

(5) **Assessable income** is the total assessable income that the company would derive by taking the actions described in subsection (3)(a) and (b) less the amount of any deduction that the company would have for taking those actions.

Tax rate

(6) **Tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT,

RWT, and attributed fringe benefits) for the relevant income year of the company.

Relevant date

(7) In subsections (3) to (5), the relevant date for measuring items in the formula is the date just before the company became a qualifying company or, as applicable, at the time the company ended its existence.

Income tax and refund

(8) For the purposes of subsection (4)(c),—

(a) income tax payable is income tax that would, when paid, give rise to a credit in the company's imputation credit account under sections OB 4 to OB 29 (which relate to imputation credits):

(b) a refund of income tax due is the amount that would, when paid, give rise to a debit to the company's imputation credit account under section OB 30 to OB 59 (which relate to imputation debits):

(c) if the company pays income tax with a purpose or intention of reducing the amount of election tax, the amount of credit in the imputation credit account is reduced by the amount of the credit arising from the company's action, unless that purpose is merely incidental.

Defined in this Act: amount, assessable income, company, deduction, dividend, FDP account, FDP credit, imputation credit, imputation credit account, income tax, income year, liquidation, pay, qualifying company, qualifying company election tax, shareholder

Compare: 2004 No 35 s HG 11(1B), (2), (4)

Section HA 41(4)(c): amended (with effect on 30 June 2009), on 6 October 2009, by section 259(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 41(4)(d): repealed (with effect on 30 June 2009), on 6 October 2009, by section 259(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 41(6): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section HA 41(8)(c): substituted (with effect on 30 June 2009), on 6 October 2009, by section 259(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HA 41 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 259(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HA 42 Paying qualifying company election tax

A company must pay a qualifying company election tax under section HA 40 to the Commissioner no later than the company's terminal tax date for the tax year corresponding to the income year in which the company chooses to become a qualifying company.

Defined in this Act: Commissioner, company, income year, pay, qualifying company, qualifying company election tax, terminal tax date

Compare: 2004 No 35 s HG 12

Effective interests in qualifying companies

HA 43 Meaning of effective interest

What this section does

(1) This section defines an **effective interest** in a company, which is the measure of a person's liability under section HA 8.

Effective interest

(2) **Effective interest** for a person and a company, at a particular time or for an income year, means—

(a) the person's voting interest in the company at the time or for the income year, unless paragraph (b) applies:

(b) if there is a market value circumstance for the company at the time or at some time during the income year, the average of—

(i) the person's voting interest in the company at the time or for the income year; and

(ii) the person's market value interest in the company at the time or for the income year.

Defined in this Act: company, effective interest, income year, market value circumstance, market value interest, voting interest

Compare: 2004 No 35 s OB 1 **effective interest**

HA 44 Measuring effective interests

Subpart YC

(1) A person's voting interest and market value interest in a company is measured under subpart YC (Measurement of company control and ownership). If the person is a company, the voting interest and market value interest are measured at a particular time or for an income year under those sections as if—

(a) the person were not a company; and

(b) sections YC 4 and YC 6 (which relate to corporate shareholders and certain excluded securities) did not apply.

If interests vary during income year

(2) If a person's voting interest or market value interest varies during an income year, the measure of their effective interest is the weighted average of their voting interest or market value interest, as applicable, for the income year.

If election made during income year

(3) If a shareholder makes an election under section HA 5 after the start of the income year, their voting interest and market value interest is measured from the earliest day in the income year when they became a shareholder in the company, even if the day is earlier than the date of the election.

Shareholders' interests after revocation

(4) A person who revokes an election under section HA 32 or HA 33 is treated as having no voting interest and no market value interest for the period of the income year after the revocation takes effect unless they make a later election for the same income year. In this subsection, the person is a trustee when an election is made under section HA 28 by a person other than the trustee.

When majority shareholders' liabilities excluded

(5) If a majority shareholder has made an election and agreed under sections HA 8 and HA 29 to take personal liability to the extent of a minority shareholder's effective interest in the company, any effective interest for which the minority shareholder has agreed to be personally liable under section HA 8 is excluded in measuring the majority shareholder's effective interest.

Minority shareholder's liability after revocation

(6) If a majority shareholder's election is revoked under section HA 32(1) or HA 33(1)(d), the effective interest of the minority shareholder for which the majority shareholder is liable is

treated as zero for the part of the income year that follows the day on which the revocation takes effect.

Defined in this Act: company, effective interest, income year, market value interest, shareholder, trustee, voting interest

Compare: 2004 No 35 s HG 2

Subpart HB—Look-through companies

Subpart HB: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 1 Look-through companies are transparent

When this section applies

(1) This section applies for the purposes of this Act, other than the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, and the RSCT rules, for a person in their capacity of owner of an effective look-through interest for a look-through company (the **LTC**), for an income year, if—

(a) for the LTC, an LTC election described in section HB 13(1) and (2) has been received by the Commissioner under section HB 13(3) and (4) for the income year; and

(b) the LTC meets the requirements in the definition of **look-through company** at all times in the income year; and

(c) the election has not been revoked for the income year by an owner of a look-through interest for the LTC by notice received by the Commissioner before the start of the income year.

When this section applies: Commissioner's discretion as to revocation

(2) A revocation notice that is received by the Commissioner after the start of the income year is treated as received before the start of the income year if the Commissioner decides that exceptional circumstances are the sole cause of the lateness.

When this section applies: revocation ignored

(3) An owner's revocation notice for the income year is ignored for the purposes of this section and section HB 13(4)(a) if the owner stops having a look-through interest in the LTC and the new owner reverses the revocation notice before the start of the income year by notice to the Commissioner.

Look-through for effective look-through interest

(4) For a person, unless the context requires otherwise,—

(a) the person is treated as carrying on an activity carried on by the LTC, and having a status, intention, and purpose of the LTC, and the LTC is treated as not carrying on the activity or having the status, intention, or purpose:

(b) the person is treated as holding property that the LTC holds, in proportion to the person's effective look-through interest, and the LTC is treated as not holding the property:

(c) the person is treated as being party to an arrangement to which the LTC is a party, in proportion to the person's effective look-through interest, and the LTC is treated as not being a party to the arrangement:

(d) the person is treated as doing a thing and being entitled to a thing that the LTC does or is entitled to, in proportion to the person's effective look-through interest, and the LTC is treated as not doing the thing or being entitled to the thing.

Effective look-through interest

(5) For the purposes of this section, **effective look-through interest** means for a person and an LTC, treating the LTC as a company for the purposes of this subsection,—

(a) a person's average daily look-through interest for the company for the income year, if there is no market value circumstance for the LTC and paragraph (b) does not apply:

(b) a person's look-through interest for the relevant time of look-through under subsection (4), if there is no market value circumstance for the LTC, and—

(i) the assessable income of the LTC, ignoring this subpart, is or will be $3,000,000 or more in a 12-month period including the relevant time of

look-through, and the Commissioner has notified the LTC that look-through interests for the relevant time of look-through under subsection (4) must be used under this section:

(ii) all persons with look-through interests have agreed to use their look-through interests for the relevant time of look-through:

(c) if there is a market value circumstance for the LTC and paragraph (d) does not apply, the average of the following 2 amounts:

(i) a person's average daily look-through interest for the income year:

(ii) a person's average daily market value interest for the income year:

(d) if there is a market value circumstance for the LTC, and the assessable income and notification requirements described in paragraph (b)(i) are met, the average of the following 2 amounts:

(i) a person's look-through interest for the time of look-through under subsection (4):

(ii) a person's market value interest for the time of look-through under subsection (4).

Defined in this Act: arrangement, assessable income, Commissioner, company, effective look-through interest, ESCT rules, FBT rules, income year, look-through company, look-through interest, market value circumstance, market value interest, NRWT rules, PAYE rules, RSCT rules, RWT rules

Section HB 1: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 2 Previous income and expenditure or loss

Despite a person who has an effective look-through interest for a look-through company (the **LTC**) not having an interest at the relevant time, the person may be treated as deriving income or incurring an expenditure or loss which the LTC derived or incurred ignoring section HB 1, or would have derived or incurred ignoring section HB 1 if it had not ceased to exist. This section does not allow 2 deductions for 1 expenditure or loss,

and may apply to income derived before the LTC becomes a look-through company.

Defined in this Act: effective look-through interest, income, income year, look-through company

Section HB 2: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 3 Loss balances extinguished

Despite sections HB 1 and HB 2, a loss balance under Part I (Treatment of tax losses) is cancelled if the loss balance arose in relation to an income year when a company was not a look-through company, or when a company that amalgamates with a look-through company was not a look-through company.

Defined in this Act: amalgamation, company, income year, look-through company, loss balance

Section HB 3: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 4 General provisions relating to disposals

Relationship between disposal under this section, disposal safe harbours, and subpart FB

(1) This section overrides sections HB 5 to HB 9. This section does not apply, and sections HB 5 to HB 9 do not apply, for disposals of owners' interests under transactions to which subpart FB (Transfers of relationship property) applies or is treated as applying.

Election for specified livestock disposed of to new owner

(2) Section HB 10 applies for an entering owner if the entering owner furnishes a return of income that applies the section.

Permanent cessation

(3) A person is treated as disposing of all of their owner's interests for a look-through company to a single third party for a payment equal to the interests' market value, if the look-through company ceases to exist as an entity through liquidation, court order, or otherwise.

Capital reduction

(4) A person is treated as disposing of all of their owner's interests for a look-through company to a single third party for a payment equal to the interests' market value to the extent to which an owner's capital is reduced by a cancellation or a buy-back by the look-through company that is not pro rata for all owners.

Receipt upon permanent cessation

(5) Anything received by an owner in relation to permanent cessation or capital reduction, as described in subsection (3) or (4), is ignored.

Cessation due to revocation or otherwise

(6) A person is treated as disposing of all of their owner's interests for a look-through company to a single third party for a payment equal to the interests' market value, if the look-through company ceases to be a look-through company because of a revocation or otherwise, but excluding cessation as described in subsection (3). The company is treated as acquiring all of the person's interests immediately after the cessation, from the third party, for a payment equal to the interests' market value, and for the purposes of section CB 15 (Transactions between associated persons), the person disposing of, and the company acquiring, the interests are treated as associated persons.

Defined in this Act: associated person, dispose, look-through company, owner's interests, pay, return of income

Section HB 4: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 5 Disposal of owner's interests

When this section applies

(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner's interests (the **current interests**) for a look-through company, if the amount calculated using the formula is less than zero—

disposal payment + previous payments − (gross tax value − liabilities) − $50,000.

Definition of items in formula

(2) In the formula,—

(a) **disposal payment** is the total amount of consideration paid or payable to the exiting owner for the current interests:

(b) **previous payments** is the total amount of consideration paid or payable to the exiting owner for other disposals of some or all of their owner's interests (the **other interests**) that have occurred in the year before the disposal of the current interests:

(c) **gross tax value** is the total of—

(i) the value under this Act of the current interests and other interests at the time the relevant interest is disposed of, to the extent to which the interests are revenue account property or depreciable property or financial arrangements:

(ii) the market value of the current interests and other interests at the time the relevant interest is disposed of, to the extent to which the interests are not revenue account property or depreciable property or financial arrangements:

(d) **liabilities** is the amount of liabilities under generally accepted accounting practice at the time the relevant interest is disposed of, calculated by reference to the exiting owner's ownership share for the relevant interest.

Exiting owner: excluded payment

(3) The disposal payment described in subsection (2)(a) is excluded income of the exiting owner.

Exiting owner: no deduction

(4) The exiting owner is denied a deduction in relation to the current interests for the income year in which the disposal of the interests occurs and later income years to the extent to which the entering owner is allowed a deduction because of subsection (6).

Entering owner: no deduction

(5) An entering owner is denied a deduction for the disposal payment described in subsection (2)(a).

Entering owner: stepping in

(6) For the purposes of calculating the income and deductions of an entering owner for the part of the income year after the

disposal of the interests occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had originally acquired and held the current interests, not the exiting owner. However, this subsection does not apply to a deduction carried forward under section HB 12.

Relationship with section HB 4

(7) Section HB 4 overrides this section.

Defined in this Act: deduction, depreciable property, dispose, entering owner, excluded income, financial arrangement, income tax liability, look-through company, owner's interests, pay, return of income, revenue account property, year

Section HB 6: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 6 Disposal of trading stock

When this section applies

(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner's interests for a look-through company, to the extent to which those interests include trading stock that is not livestock, and, for the income year of disposal, the total turnover of the look-through company, ignoring section HB 1, is $3,000,000 or less.

Exiting owner: excluded payment

(2) The amount of consideration paid or payable to the exiting owner for the trading stock is excluded income of the exiting owner.

Exiting owner: no deduction

(3) The exiting owner is denied a deduction in relation to the trading stock for the income year in which the disposal of the trading stock occurs and later income years, to the extent to which the entering owner is allowed a deduction because of subsection (5).

Entering owner: no deduction

(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the trading stock.

Entering owner: stepping in

(5) For the purposes of calculating the income tax liability of an entering owner, the entering owner is treated as if they had acquired and held the trading stock, not the exiting owner.

Relationship with section HB 4

(6) Section HB 4 overrides this section.

Defined in this Act: deduction, dispose, entering owner, excluded income, income tax liability, income year, look-through company, owner's interests, pay, trading stock, turnover

Section HB 6: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 7 Disposal of depreciable property

When this section applies

(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner's interests for a look-through company, to the extent to which those interests include an item of depreciable property that is not depreciable intangible property, and the total cost of the item when it was first acquired by the look-through company (whether or not it was at that time a look-through company) is $200,000 or less.

Exiting owner: excluded payment

(2) The amount of consideration paid or payable to the exiting owner for the depreciable property is excluded income of the exiting owner.

Exiting owner: no deduction

(3) The exiting owner is denied a deduction in relation to the depreciable property for the income year in which the disposal of the depreciable property occurs and later income years, to the extent to which the entering owner is allowed a deduction because of subsection (5).

Entering owner: no deduction

(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the depreciable property.

Entering owner: stepping in

(5) For the purposes of calculating the income tax liability of an entering owner for the part of the income year after the disposal of the depreciable property occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had originally acquired and held the depreciable property, not the exiting owner.

Relationship with section HB 4

(6) Section HB 4 overrides this section.

Defined in this Act: acquire, amount, deduction, depreciable intangible property, depreciable property, dispose, entering owner, excluded income, income tax liability, income year, look-through company, owner's interests, pay

Section HB 7: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 8 Disposal of financial arrangements and certain excepted financial arrangements

When this section applies

(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner's interests for a look-through company, to the extent to which those interests include a financial arrangement or an excepted financial arrangement described in section EW 5(10) (What is an excepted financial arrangement?) and, ignoring section HB 1,—

(a) the purpose for which the financial arrangement or excepted financial arrangement was entered into was necessary and incidental to the business of the look-through company; and

(b) the owners do not derive income from a business of holding financial arrangements.

Exiting owner: excluded payment

(2) The amount of consideration paid or payable to the exiting owner for the relevant financial arrangement or excepted financial arrangement is excluded income of the exiting owner. The exiting owner is, for the relevant financial arrangement, a party that is not required to calculate a base price adjustment, despite section EW 29 (When calculation of base price adjustment required).

Exiting owner: no deduction

(3) The exiting owner is denied a deduction in relation to the relevant financial arrangement or excepted financial arrangement for the income year in which the disposal of the financial arrangement or excepted financial arrangement occurs and later income years.

Entering owner: no deduction

(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the relevant financial arrangement or excepted financial arrangement.

Entering owner: stepping in

(5) For the purposes of calculating the income tax liability of an entering owner for the part of the income year after the disposal of the relevant financial arrangement or excepted financial arrangement occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had acquired and held the financial arrangement or excepted financial arrangement, not the exiting owner.

Relationship with section HB 4

(6) Section HB 4 overrides this section.

Defined in this Act: business, deduction, dispose, entering owner, excepted financial arrangement, excluded income, financial arrangement, income tax liability, income year, look-through company, owner's interests, pay

Section HB 8: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 9 Disposal of short-term agreements for sale and purchase

When this section applies

(1) This section applies when a person (the **exiting owner**) disposes of some or all of their owner's interests for a look-through company, to the extent to which those interests include a short-term agreement for sale and purchase.

Exiting owner: excluded payment

(2) The amount of consideration paid or payable to the exiting owner for the short-term agreement for sale and purchase is excluded income of the exiting owner.

Exiting owner: no deduction

(3) The exiting owner is denied a deduction in relation to the short-term agreement for sale and purchase, to the extent to which the entering owner is allowed a deduction because of subsection (5).

Entering owner: no deduction

(4) The entering owner is denied a deduction for the amount of consideration paid or payable to the exiting owner for the short-term agreement for sale and purchase.

Entering owner: stepping in

(5) For the purposes of calculating the income tax liability of an entering owner for the part of the income year after the disposal of the short-term agreement for sale and purchase occurs and later income years (the **post-disposal periods**), the entering owner is treated for the post-disposal periods as if they had originally acquired and held the short-term agreement for sale and purchase, not the exiting owner.

Relationship with section HB 4

(6) Section HB 4 overrides this section.

Defined in this Act: deduction, dispose, entering owner, excluded income, income tax liability, income year, look-through company, owner's interests, pay, short-term agreement for sale and purchase

Section HB 9: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 10 Disposal of livestock

When this section applies

(1) This section applies when a person disposes of some or all of their owner's interests to an entering owner and section HB 4(2) applies, to the extent to which those interests include specified livestock and that specified livestock includes female breeding livestock and, for the income year, the owners use—

(a) the national standard cost scheme for specified livestock, described in section EC 22 (National standard cost scheme); or

(b) the cost price method for specified livestock, described in section EC 25 (Cost price, replacement price, or market value).

Entering owner's cost base

(2) Section EC 26B (Entering partners' cost base) may apply to the entering owner for the purposes of determining the value of the specified livestock at the end of an income year for the purposes of section EC 2 (Valuation of livestock), treating the entering owner as an entering partner and making other necessary modifications to section EC 26B to give effect to the purpose of this section (for example, references in section EC 26B to "partners" should be modified to references to "owners" and references to "section HG 10" should be modified to references to "section HB 10").

Defined in this Act: amount, cost price, dispose, entering owner, entering partner, income year, look-through company, national standard cost scheme, owner's interests, specified livestock

Section HB 10: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 11 Limitation on deductions by persons with interests in look-through companies

When this section applies

(1) This section applies for a look-through company (the **LTC**) and an income year when, but for this section, a deduction by virtue of section HB 1 or HB 12(2) or (3) would be allowed to a person who has an effective look-through interest for the LTC.

No deduction

(2) The person is denied the deduction for an income year to the extent to which their look-through company deduction for the income year is greater than the amount (the **owner's basis**) calculated using the formula in subsection (3) at the end of the income year.

Owner's basis

(3) For the purposes of subsection (2), the amount that is the owner's basis is calculated using the following formula:

investments − distributions + income − deductions − disallowed amount.

Definition of items in formula

(4) The items in the formula are defined in subsections (5) to (9).

Investments

(5) **Investments** is the total of—

(a) the market value of a person's shares in the LTC at the time that the person purchases or subscribes for them:

(b) amounts that the LTC is debtor for in relation to the person, including a loan to the LTC and a credit balance in a current account:

(c) the secured amounts, if not accounted for under paragraph (b).

Distributions

(6) **Distributions** is the market value of distributions to the person from the LTC, including loans made to the person from the LTC and payments to which section DC 3B (Payments to working owners) does not apply.

Income

(7) **Income** is the total of—

(a) income that the person has by virtue of section HB 1 in the income year and previous income years, excluding dividends paid by a FIF for which the person has FIF income to the extent to which those dividends are equal to or less than the person's FIF income for the relevant income year:

(b) capital gain amounts under section CD 44(7)(a) (Available capital distribution amount) that the person would have by virtue of section HB 1 in the income year and previous income years, if the person were treated as a company for the purposes of section CD 44(7)(a), unless the gain is accounted for under paragraph (a):

(c) assessable income that the person has in previous income years from goods and services they contributed to the LTC, if the income is not accounted for under subsection (5) or paragraph (a) or (b) of this subsection.

Deductions

(8) **Deductions** is the total of—

(a) expenditure or loss in previous income years, to the extent to which the expenditure or loss is incurred by virtue of section HB 1 in the person deriving income by virtue of section HB 1, excluding any deductions denied in those previous years under this section:

(b) capital loss amounts under section CD 44(9) that the person would have by virtue of section HB 1 in the income year and previous income years, if the person is treated as a company for the purposes of section CD 44(9), unless the loss is accounted for under paragraph (a):

(c) deductions that the person is allowed in previous income years in relation to assessable income described in subsection (7)(c), if the deduction is not accounted for under subsection (6) or paragraph (a) or (b) of this subsection.

Disallowed amount

(9) **Disallowed amount** is the amount of investments, as defined in subsection (5), made by the person within 60 days of the end of the income year, if those investments are or will be distributed or reduced within 60 days of the end of the income year, but an amount of investment made by the person within 60 days of the end of the income year is not a disallowed amount if the total amount distributed or reduced within 60 days of the end of the income year is $10,000 or less.

Exclusion

(10) This section does not deny a person (the **exiting person**) a deduction that is equal to or less than the amount of net income that the exiting person has for the amount paid or payable to the exiting person for the disposal of their owner's interests, ignoring other transactions.

Relationship with subject matter

(11) This section is modified by section HZ 4C (Qualifying companies: transition into look-through companies).

Some definitions

(12) In this section,—

look-through company deduction means, for the person and the income year, the amount of the deductions that the person

would be allowed if they were treated as having only income and deductions arising from the application of this subpart

secured amounts means, for the person, the lesser of—

(a) the amount of the look-through company's debt ignoring section HB 1 (the **debt**) that the person or an associated person secures by a guarantee or indemnity:

(b) the amount that results from dividing the amount described in paragraph (a) by the number of persons who secure by guarantee or indemnity on similar terms to the 1 described in paragraph (a), excluding the look-through company:

(c) the amount that is the market value of property against which the guarantee or indemnity described in paragraph (a) may be enforced, treating the person's owner's interests as having a market value of zero:

(d) the proportion of the amount described in paragraph (c) that is attributable to the person in the case of a number of persons securing the debt by guarantee or indemnity on similar terms to the 1 described in paragraph (a), excluding the look-through company.

Defined in this Act: amount, assessable income, associated person, company, deduction, dispose, dividend, effective look-through interest, FIF, FIF income, income, income year, loan, look-through company, look-through company deduction, loss, net income, net loss, owner's interests, pay, secured amounts, share

Section HB 11: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 12 Limitation on deductions by owners of look-through companies: carry-forward

When this section applies

(1) This section applies when, for an income year, a person is denied a deduction under section HB 11.

Carry-forward: conditional on continued existence of look-through company and holding of effective look-through interest

(2) The person is allowed a deduction, for an amount for which the person is denied a deduction under section HB 11, for the

income year (the **later year**) after the income year for which it is denied under section HB 11, unless—

(a) the look-through company ceases to be a look-through company in the later year:

(b) the person ceases to have an effective look-through interest in the later year.

Carry-forward: resumption

(3) If a person would have been allowed a deduction for an amount but for the application of subsection (2)(a) or (b) for the later year, they are allowed a deduction for the amount for the first income year after the later year in which either they resume an effective look-through interest for the look-through company, or the relevant company resumes being a look-through company. However, the amount of that deduction is reduced by the total amount allowed as a deduction under subsections (4) and (5).

Exception for deductions against continuing company dividends

(4) Despite subsection (2), the person is allowed a deduction for the later year for an amount (the **protected amount**) for which they would have been allowed a deduction but for the application of subsection (2)(a) or (b) for the later year to the extent to which the protected amount is equal to or lesser than the dividends received by the person from the company for the later year.

Further deductions against continuing company dividends

(5) For an income year after the later year, an amount equal to the protected amount reduced by the total of deductions allowed in income years before the income year under subsection (4) and this subsection, is allowed as a deduction for the person to the extent to which the amount is equal to or less than the dividends received by the person from the company for the income year.

Relationship with subject matter

(6) A deduction allowed under this section, other than under subsection (4) or (5), is subject to section HB 11, to the extent

to which that section applies to the deduction and the relevant person.

Defined in this Act: amount, deduction, dividend, effective look-through interest, income year, look-through company

Section HB 12: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HB 13 LTC elections

LTC elections

(1) For the purposes of section HB 1, an LTC election (the **election**) is a notice that—

- (a) is signed and dated by a director of the company that becomes a look-through company (the **LTC**) or other agent with appropriate authority; and
- (b) is in the form prescribed by the Commissioner; and
- (c) specifies an income year beginning on or after 1 April 2011 for which it may first operate; and
- (d) has attached to it notices—
  - (i) signed and dated by all persons who, on the date of signing the election, own look-through interests in the LTC; and
  - (ii) evidence unanimous agreement of the owners in choosing to apply section HB 1.

Legal incapacities

(2) If a person owns a look-through interest in the LTC, and either they are under 18 years old with a guardian or a contract they enter into could be unenforceable, cancelled, void, or voidable due to any legal incapacity other than age, the notice requirement in subsection (1)(d) is modified so as to require a guardian, person with power of attorney, or other legal representative to sign and date the written notice, instead of the person.

Time of receipt of LTC elections

(3) For the purposes of section HB 1, the election—

- (a) must be received by the Commissioner before the start of the income year specified in the election; or

(b) in the case of a company that has not previously been required to file a return of income for a year before the income year specified in the election, must be received by the Commissioner before the last day for filing the return of income required by section 42B of the Tax Administration Act 1994 for the year specified in the election; or

(c) in the case of a company that was a qualifying company that first becomes a look-through company for the first or second income year that starts on or after 1 April 2011, must be received by the Commissioner within 6 months of the start of the relevant transitional income year described in section HZ 4C(1) (Qualifying companies: transition into look-through companies).

Income year for which LTC elections are treated as received

(4) For the purposes of section HB 1, the election is treated as received for the first relevant income year described in subsection (3) and for each income year after that one, except it is treated as not received by the Commissioner for an income year (the **income year**) and subsequent income years if—

(a) the election has been revoked for the income year under section HB 1:

(b) the LTC does not meet the requirements in the definition of **look-through company** at all times in the income year:

(c) the income year is 1 of the 2 income years straight after an income year for which either the LTC ceases to be a look-through company or the relevant election for the LTC is revoked.

Commissioner's discretion as to LTC elections

(5) An election that is late or does not have each person signing and dating as required by subsections (1)(b) and (2) is treated as an election that has been received by the Commissioner for the income year under subsection (3) but subject to subsection (4), if all relevant persons sign and date it during the income year it may first operate, and the Commissioner decides

that exceptional circumstances are the sole cause of the lateness or failure to sign and date.

Defined in this Act: Commissioner, company, director, income year, look-through company, look-through interest, notice, qualifying company, return of income

Section HB 13: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011, and for the purposes of the Commissioner receiving LTC elections, on and after 21 December 2010), by section 78(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Subpart HC—Trusts

Introductory provisions

HC 1 What this subpart does

What this subpart does

(1) This subpart, together with the trust rules,—

(a) provides for the taxation of distributions from trusts, for this purpose defining—

(i) beneficiary income:

(ii) a taxable distribution:

(b) provides for the taxation of trustee income:

(c) classifies trusts into the following 3 categories for the purposes of determining the treatment of distributions that are not beneficiary income:

(i) complying trusts:

(ii) foreign trusts:

(iii) non-complying trusts:

(d) determines who is a settlor, and sets out their income tax liability:

(e) sets out the treatment of trusts settled by persons becoming resident in New Zealand.

Excluded: certain funds and distributions

(2) The trust rules do not apply to—

(a) a unit trust:

(b) a group investment fund to the extent to which it is treated as a company under this Act:

(c) a Maori authority:

(d) a distribution under section HZ 1 (Distributions from trusts of pre-1989 tax reserves).

Disclosure requirements: non-resident trustees

(3) Section 59 of the Tax Administration Act 1994 requires the disclosure of a settlement on a trust with a non-resident trustee.

Avoidance arrangements

(4) Section GB 22 (Arrangements involving trust beneficiary income) may apply to treat a beneficiary as receiving property, or enjoying services or benefits, in fact received, or enjoyed, by another person.

Superannuation funds entering trust rules

(5) A superannuation scheme that is treated as a company because it is a unit trust and then becomes a superannuation fund is treated as—

(a) liquidated under section CD 12 (Superannuation schemes entering trust rules) immediately before the date on which it becomes a superannuation fund; and

(b) no longer a company.

Defined in this Act: arrangement, beneficiary income, company, complying trust, distribution, foreign trust, group investment fund, income tax liability, liquidation, Maori authority, non-complying trust, non-resident, resident in New Zealand, settlement, settlor, superannuation fund, superannuation scheme, taxable distribution, trust rules, trustee, trustee income, unit trust

Compare: 2004 No 35 ss GC 14, HH 1(8), (9), HH 3(6), HH 4(8), Income Tax Amendment Act 1988 (No 5) s 9

HC 2 Obligations of joint trustees for calculating income and providing returns

What this section applies to

(1) This section applies for the purposes of the obligations imposed by section BB 2 (Main obligations) on 2 or more persons who derive income jointly as trustees of a trust.

Single person

(2) The trustees of the trust are treated in that capacity as if they were a notional single person, and are jointly and severally liable to satisfy the income tax liability of the notional single person. They must—

(a) calculate the trust's taxable income for a tax year; and

(b) for that tax year, provide a joint return of income for the trust under section 42(1)(a) of the Tax Administration Act 1994.

Defined in this Act: income, income tax liability, return of income, tax year, taxable income, trustee

Compare: 2004 No 35 s HD 1(1)(a)

HC 3 Multiple settlements

For the purposes of this subpart, if a settlement is made on a trust and further settlements are made on the same terms, a trustee of the trust may treat all the settlements as 1 trust.

Defined in this Act: settlement, trustee

Compare: 2004 No 35 s HH 1A

HC 4 Corpus of trust

Meaning

(1) In the trust rules, **corpus** means an amount that is equal to the market value of a settlement of property on the trust measured at the date of the settlement. Subsection (2) overrides this subsection.

Settlements excluded from corpus

(2) Corpus does not include an amount equal to the market value of the property settlements described in subsections (3) to (5).

Settlements on other trusts

(3) A property settlement by a trustee of another trust is excluded from corpus to the extent to which, if the property were distributed to a beneficiary of the other trust, and the beneficiary was resident in New Zealand, the distribution would be beneficiary income or a taxable distribution to that beneficiary.

Deductions

(4) A property settlement for which the settlor is allowed a deduction is excluded from corpus.

Income or dividend

(5) A property settlement is excluded from corpus if, but for the fact of the settlement,—

(a) it would be income of the settlor; or

(b) *[Repealed]*

(c) it would fall under paragraph (a) if the settlor were resident in New Zealand at the time of the settlement.

Defined in this Act: amount, beneficiary income, corpus, deduction, distribution, dividend, income, resident in New Zealand, settlement, settlor, taxable distribution, trust rules, trustee

Compare: 2004 No 35 s OB 1 **corpus**

Section HC 4(5)(b): repealed (with effect on 30 June 2009), on 6 October 2009, by section 260(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 4(5)(c): substituted (with effect on 30 June 2009), on 6 October 2009, by section 260(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 4 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 260(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Trust income

HC 5 Amounts derived by trustees

Either beneficiary or trustee income

(1) An amount of income derived in an income year by a trustee of a trust is either—

(a) beneficiary income under section HC 6; or

(b) trustee income under section HC 7.

Statutory amounts treated as derived

(2) For the purposes of subsection (1) and sections HC 6 and HC 7, if the trustee is treated as having an amount of income in the income year under a provision in this Act and the amount is not derived under ordinary concepts, then the amount is treated as derived in the income year.

Defined in this Act: amount, beneficiary income, income, income year, trustee, trustee income

Compare: 2004 No 35 s OB 1 **beneficiary income**, **trustee income**

HC 6 Beneficiary income

Meaning

(1) An amount of income derived in an income year by a trustee of a trust is **beneficiary income** to the extent to which—

(a) it vests absolutely in interest in a beneficiary of the trust in the income year; or

(b) it is paid to a beneficiary of the trust in the income year or by the date after the end of the income year referred to in subsection (1B).

Date by which income must be allocated

(1B) The date referred to in subsection (1)(b) is the later of the following:

(a) a date that falls within 6 months of the end of the income year; or

(b) the earlier of—

(i) the date on which the trustee files the return of income for the income year; or

(ii) the date by which the trustee must file a return for the income year under section 37 of the Tax Administration Act 1994.

Exclusions

(2) Beneficiary income does not include—

(a) an amount of income derived by a trustee of a trust in an income year in which the trust is a superannuation fund; or

(b) an amount of income derived by a trustee that is income to which sections CC 3(2) (Financial arrangements) and EW 50 (Income when debt forgiven to trustee) apply.

Deriving beneficiary income in same year

(3) When an amount derived by a trustee in an income year is also beneficiary income, the beneficiary is treated as having derived the income in the same tax year as that corresponding to the trustee's income year.

Deriving beneficiary income in same year as trustee [Repealed]

(4) *[Repealed]*

Defined in this Act: amount, beneficiary income, income, income year, pay, return of income, superannuation fund, tax year, trustee

Compare: 2004 No 35 ss OB 1 **beneficiary income**, OF 2 (3)

Section HC 6(1)(b): substituted (with effect on 1 April 2009), on 7 December 2009, by section 43(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6(1B) heading: inserted (with effect on 1 April 2009), on 7 December 2009, by section 43(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6(1B): inserted (with effect on 1 April 2009), on 7 December 2009, by section 43(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6(3) heading: substituted (with effect on 1 April 2009), on 7 December 2009, by section 43(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6(3): substituted (with effect on 1 April 2009), on 7 December 2009, by section 43(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6(4) heading: repealed (with effect on 1 April 2009), on 7 December 2009, by section 43(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6(4): repealed (with effect on 1 April 2009), on 7 December 2009, by section 43(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6 list of defined terms **non-standard income year**: repealed (with effect on 1 April 2009), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 6 list of defined terms **return of income**: inserted (with effect on 1 April 2009), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

HC 7 Trustee income

Meaning

(1) To the extent to which it is not beneficiary income, an amount of income derived by a trustee of a trust is **trustee income**.

Minors' beneficiary income

(2) An amount of beneficiary income to which section HC 35 applies that is derived in an income year by a person who is a minor is treated as if it were trustee income for the purposes of—

(a) determining the tax rate that applies; and

(b) paying the tax; and

(c) providing returns of income.

Exclusions from corpus

(3) The amount that is the market value of a property settlement referred to in section HC 4(3) to (5) is treated as trustee income of the trustee of the recipient trust derived in the income year of settlement.

Defined in this Act: amount, beneficiary income, corpus, income, income year, minor, pay, return of income, settlement, trustee, trustee income

Compare: 2004 No 35 ss HH 1(7), HH 3A(1)(a), OB 1 **trustee income**

Section HC 7(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 261(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HC 8 Amounts received after person's death

When this section applies

(1) This section applies when a trustee of an estate of a deceased person receives an amount in an income year that is not income that the person derived during their lifetime, but would have been included in the person's income had they been alive when it was received.

Income

(2) The amount is treated under section CV 12 (Trustees: amounts received after person's death) as income derived by the trustee in the income year.

Defined in this Act: amount, income, income year, trustee

Compare: 2004 No 35 s HH 8

Classification of trusts

HC 9 Classifying trusts

A trust is classified at the time it makes a distribution as—

(a) a complying trust under section HC 10:

(b) a foreign trust under section HC 11:

(c) a non-complying trust under section HC 12.

Defined in this Act: complying trust, distribution, foreign trust, non-complying trust

HC 10 Complying trusts

Requirements for complying trusts

(1) A trust is a **complying trust** in relation to a distribution if—

(a) the following requirements are met for the life of the trust up to the time of distribution:

(i) no trustee income derived includes an amount of non-resident passive income, or non-residents' foreign-sourced income, or exempt income under section CW 54 (Foreign-sourced amounts derived by trustees); and

(ii) the tax obligations relating to the trustee's income tax liability have been satisfied for every tax year; or

(b) it is a superannuation fund.

Foreign trust choosing to become complying trust

(2) A foreign trust may become a complying trust to the extent set out in section HC 30 by—

(a) an election being made under section HC 30(2)—

(i) before the time of distribution; and

(ii) within 12 months of the date on which the settlor referred to in section HC 30(1) becomes resident in New Zealand; and

(b) the requirements of subsection (1)(a) are met for trustee income derived after the election date.

Life of trust

(3) The life of the trust referred to in subsection (1)(a) includes every income year from the start of the income year in which a settlement was first made on the trust up to the time of the distribution.

Complying trusts: meeting requirements

(4) For the purposes of subsection (1)(a),—

(a) section HC 29(6) does not apply in determining whether the requirements are met:

(b) the requirements may be met by a person who has made an election under section HC 33.

Defined in this Act: amount, complying trust, distribution, exempt income, foreign-sourced amount, foreign trust, income tax liability, income year, non-resident passive income, non-residents' foreign-sourced income, resident in New Zealand, settlement, settlor, superannuation fund, tax year, trustee, trustee income

Compare: 2004 No 35 ss HH 2(2), HH 4(5) proviso, OB 1 **foreign trust**, **qualifying trust**

HC 11 Foreign trusts

A trust is a **foreign trust** in relation to a distribution if no settlor is resident in New Zealand at any time in the period that—

(a) starts on the later of 17 December 1987 and the date on which a settlement was first made on the trust; and

(b) ends on the date of distribution.

Defined in this Act: distribution, foreign trust, resident in New Zealand, settlement, settlor

Compare: 2004 No 35 s OB 1 **foreign trust**

HC 12 Non-complying trusts

A trust is a **non-complying trust** in relation to a distribution if it is neither a complying trust nor a foreign trust.

Defined in this Act: complying trust, distribution, foreign trust, non-complying trust

Compare: 2004 No 35 s OB 1 **non-qualifying trust**

HC 13 Charitable trusts

In the trust rules, a trust is a **charitable trust** in an income year if—

(a) all income derived or accumulated by the trustee in that or in any earlier income year is held for charitable purposes; and

(b) any income derived by the trustee in the income year is exempt income under either section CW 41(1) (Charities: non-business income) or CW 42(1) (Charities: business income).

Defined in this Act: charitable purpose, charitable trust, exempt income, income, income year, trust rules, trustee

Compare: 2004 No 35 s HH 1(5), (6)

Distributions from trusts

HC 14 Distributions from trusts

Transfers of value

(1) A trustee makes a **distribution** when the trustee transfers value to a person because the person is a beneficiary of the trust.

Transfers to other trusts included

(2) Despite subsection (1), a settlement for the benefit of a beneficiary is treated as a transfer of value only—

(a) if the amount or the property being settled would have been beneficiary income of, or a taxable distribution to, a beneficiary, had it been distributed at the time to a beneficiary resident in New Zealand; or

(b) when sections EW 50 or EZ 39 (which relate to forgiveness of debt) applies, if the property being settled is an amount forgiven and treated as paid as described in section EW 44(1) or (2) (Consideration when debt forgiven for natural love and affection) or EZ 39(1).

When distribution made

(3) A distribution is made when what is transferred—

(a) vests absolutely in interest in the person; or

(b) is paid to the person.

Manner of distribution

(4) A distribution may be made directly or indirectly, or by 1 transaction or a number of transactions, whether related, connected, or otherwise.

Nil value of beneficiary relationship

(5) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value.

Defined in this Act: amount, beneficiary income, distribution, pay, resident in New Zealand, settlement, taxable distribution, transfer of value, trustee

Compare: 2004 No 35 s OB 1 **distribution**

HC 15 Taxable distributions from non-complying and foreign trusts

When subsection (2) applies

(1) Subsection (2) applies for a trust that is a non-complying trust at the time a distribution to a beneficiary is made.

Taxable distributions: non-complying trusts

(2) The distribution is a **taxable distribution** to the extent to which it is not a distribution of—

(a) beneficiary income; or

(b) a part of the corpus of the trust; or

(c) a payment or a transaction that represents a distribution of the corpus of the trust.

When subsection (4) applies

(3) Subsection (4) applies for a trust that is a foreign trust at the time a distribution to a beneficiary is made.

Taxable distributions: foreign trusts

(4) The distribution is a **taxable distribution** to the extent to which it is not a distribution of—

(a) beneficiary income; or

(b) a part of the corpus of the trust; or

(c) a profit from the realisation of a capital asset or another capital gain; or

(d) a payment or a transaction that represents a distribution of either the corpus of the trust referred to in paragraph (b) or a capital gain referred to in paragraph (c).

Determining amount of gain

(5) For the purposes of subsection (4)(c),—

(a) the profit does not include—

(i) a gain that must be taken into account for the purposes of determining an income tax liability; or

(ii) a capital gain derived by the trustee through a transaction or series of transactions between the trustee and a person associated with them:

(b) the amount of the profit is determined after subtracting any capital loss that the trustee incurs in the income year in which the amount was derived.

Amounts not subject to ordering rule

(6) To the extent to which a distribution is made from a trust that is not a complying trust by disposing of property at less than market value or providing services to a beneficiary at less than market value, the distribution is a taxable distribution and is not subject to the ordering rule in section HC 16.

Inadequate records

(7) If the records of a trust that is not a complying trust do not allow an accurate determination of the elements of a distribution under section HC 16, the distribution is a taxable distribution.

Defined in this Act: amount, associated person, beneficiary income, complying trust, corpus, distribution, foreign trust, income tax liability, income year, non-complying trust, pay, superannuation fund, taxable distribution, trustee

Compare: 2004 No 35 ss HH 6(2)(c), (3), OB 1 **taxable distribution**

Section HC 15(5)(a)(ii): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 262(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 15(5)(a)(ii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 262(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 15 list of defined terms **1973 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 15 list of defined terms **1988 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 15 list of defined terms **1990 version provisions**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HC 16 Ordering rule for distributions from non-complying and foreign trusts

When this section applies

(1) This section applies for the purposes of the trust rules when a trustee of a non-complying trust or a foreign trust makes a distribution in an income year to a beneficiary. Subsections (6) and (7) override this subsection.

Order of elements of distribution

(2) The distribution is treated as consisting of the following elements in the following order:

- (a) first, an amount of income that the trustee derives in the income year:
- (b) second, an amount of income, other than beneficiary income, that the trustee has derived in an earlier income year:
- (c) third, an amount that the trustee derives in the income year from the realisation of a capital asset of the trust or another capital gain:
- (d) fourth, an amount that the trustee has derived in an earlier income year from the realisation of a capital asset of the trust or another capital gain:
- (e) last, the corpus of the trust.

Order and elements

(3) In subsection (2),—

- (a) an amount must not be treated as included in the distribution if the amount has been treated under this section

as being included in an earlier or contemporaneous distribution from the trust:

(b) the paragraphs are applied in order, and the next paragraph applies only to the extent to which the amount of the distribution is more than the cumulative amounts described in that paragraph and the preceding paragraphs.

Deductions and capital losses subtracted

(4) For the purposes of subsection (2),—

(a) in paragraphs (a) and (b), the amount of income is determined after subtracting the amount of a deduction that is taken into account in the income year in the calculation of net or taxable income for the corresponding tax year:

(b) in paragraphs (c) and (d), the amount is determined after subtracting the amount of a capital loss that the trustee incurs in the income year.

Transactions that are not genuine

(5) In the determination of the elements of a distribution to a beneficiary (**beneficiary A**), no amount of income or capital gain derived by the trustee of the trust is treated as distributed to another beneficiary of the trust (**beneficiary B**) if the effect is that some or all of the distribution to beneficiary A would be treated as not being a taxable distribution, unless the distribution to beneficiary B meets all the following requirements:

(a) it is a genuine transaction entered into and carried out in good faith; and

(b) it places the amount beyond the possession and control of the trustee in their capacity as trustee; and

(c) it does not itself constitute a settlement.

Exclusions: terms of trust

(6) This section does not apply to the following distributions which are instead treated as consisting of the amount that reflects the terms of the trust or the terms of the exercise of the trustee's discretion:

(a) a distribution by the trustee of a complying trust which is treated as exempt income under section CW 53 (Distributions from complying trusts), unless an election to pay income tax on trustee income has been made for the

purposes of section HZ 2 (Trusts that may become complying trusts); or

(b) a distribution from a non-discretionary trust—

(i) created by will or codicil, or by an order of court varying or modifying the provisions of a will or codicil; or

(ii) created on an intestacy or partial intestacy; or

(iii) on which no settlement has been made after 17 December 1987; or

(c) a distribution from a trust other than a non-complying trust that is settled by a natural person who makes an election under section HC 30(2).

Exclusions: taxable distributions

(7) This section does not apply to a distribution described in section HC 15(6).

Meaning of non-discretionary trust

(8) In this section, a **non-discretionary trust** is a trust in relation to which the trustee has no discretion as to the source, nature, and amount of distributions to beneficiaries, including but not limited to the classification of trust property as capital or income.

Defined in this Act: amount, beneficiary income, complying trust, corpus, deduction, distribution, exempt income, foreign trust, income, income tax, income year, net income, New Zealand resident, non-complying trust, non-discretionary trust, settlement, tax year, taxable distribution, taxable income, trust rules, trustee, trustee income

Compare: 2004 No 35 s HH 6(1), (2), (4)

Tax treatment of amounts that beneficiaries derive from trusts

HC 17 Amounts derived as beneficiary income

Non-minor beneficiaries

(1) An amount that a person derives in an income year as beneficiary income is income of the person under section CV 13(a) (Amounts derived from trusts), except to the extent to which it is beneficiary income to which section HC 35 applies.

Minor beneficiaries

(2) Subsection (1) does not apply to beneficiary income derived by a minor. The beneficiary income is excluded income of

the minor, and treated as trustee income under sections CX 58 (Amounts derived by minors from trusts) and HC 35.

Defined in this Act: amount, beneficiary income, excluded income, income year, minor, trustee income

Compare: 2004 No 35 ss HH 3(1), HH 3A(1)(b)

HC 18 Taxable distributions from foreign trusts

An amount that a person derives in an income year as a taxable distribution from a foreign trust is income of the person under section CV 13(b) (Amounts derived from trusts).

Defined in this Act: amount, foreign trust, income, income year, taxable distribution

Compare: 2004 No 35 s HH 3(1)

HC 19 Taxable distributions from non-complying trusts

Excluded income

(1) An amount that a person derives in an income year as a taxable distribution from a non-complying trust is excluded income of the person under section CX 59 (Taxable distributions from non-complying trusts).

Relationship with other provisions

(2) Despite subsection (1), section BF 1(b) (Other obligations) applies to impose income tax on the amount of the taxable distribution. Section HC 22 may apply to reduce the amount of the taxable distribution, and section HC 34 sets the rate of tax for the purposes of section BF 1(b).

Defined in this Act: amount, excluded income, income tax, income year, non-complying trust, taxable distribution

Compare: 2004 No 35 s HH 3(1), (4)

HC 20 Distributions from complying trusts

An amount that a person derives in an income year is exempt income of the person under section CW 53 (Distributions from complying trusts) if—

(a) the amount is a distribution from a complying trust other than a community trust; and

(b) the amount is not beneficiary income.

Defined in this Act: amount, beneficiary income, community trust, complying trust, distribution, exempt income, income year

Compare: 2004 No 35 s HH 3(5)

HC 21 Distributions from community trusts

What this section applies to

(1) This section applies when a community trust distributes an amount other than beneficiary income to a person.

Exclusion

(2) Subsection (1) does not apply to the extent to which the amount represents—

(a) income derived by the trustee in or before the 2003–04 income year:

(b) corpus of the trust:

(c) a capital gain of the trust:

(d) a distribution, settlement, or dividend made or paid to the trust in the 2004–05 or 2005–06 income year on the winding up of a trust or company, if—

(i) the community trust provided the corpus of the trust and the trust would have been run for charitable purposes but for the distribution, settlement, or dividend:

(ii) the company is wholly-owned by the community trust and would have been established and run exclusively for charitable purposes but for the distribution, settlement, or dividend.

Income

(3) Despite sections HC 15 and HC 20, the amount is income of the person under section CV 14 (Distributions from community trusts).

Defined in this Act: amount, beneficiary income, charitable purpose, community trust, company, corpus, distribution, dividend, income, income year, pay, settlement, trustee, trustee income

Compare: 2004 No 35 s HH 3(5A)

Section HC 21(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 263(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HC 22 Use of tax losses to reduce taxable distributions from non-complying trusts

When this section applies

(1) This section applies in an income year when a person—

(a) has, for the corresponding tax year, a tax loss component or loss balance to which sections IA 2 to IA 10 (which relate to the use of tax losses) apply; and

(b) derives a taxable distribution from a non-complying trust to which section HC 19 applies.

Reducing taxable distribution

(2) The person may reduce the amount of the taxable distribution by an amount calculated using the formula—

$$\frac{\text{tax loss} \times \text{tax rate}}{\text{distribution rate}}.$$

Definition of items in formula

(3) In the formula,—

(a) **tax loss** is the amount of a tax loss component or loss balance that the person chooses to use:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 3 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(c) **distribution rate** is the basic rate of income tax set out in schedule 1, part A, clause 4.

Loss no longer available

(4) If a person takes an amount of a tax loss or a loss balance into account under this section, the amount cannot be subtracted from their net income for the corresponding tax year for the purposes of section IA 2(2) (Tax losses).

Defined in this Act: amount, income tax, income year, loss balance, net income, non-complying trust, tax loss, tax loss component, tax year, taxable distribution

Compare: 2004 No 35 s HH 3(4)

Section HC 22(3)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

HC 23 Temporary absences of beneficiaries

When this section applies

(1) This section applies when—

(a) a person who is a beneficiary of a trust and who is resident in New Zealand stops being resident; and

(b) within a period of 5 years from the date of the end of their residence, they become resident in New Zealand again.

Income derived during the period

(2) The person is treated as deriving income under section CV 15 (Amounts derived from trusts while person absent from New Zealand) to the extent to which they would have been treated as deriving an amount of beneficiary income or a taxable distribution from a foreign trust or a non-complying trust if they had remained in New Zealand for the period of their absence.

Allocation

(3) The amount is treated as derived on the day on which the person becomes resident in New Zealand again.

Defined in this Act: amount, beneficiary income, foreign trust, income, non-complying trust, resident in New Zealand, taxable distribution

Compare: 2004 No 35 s HH 3(3)

Tax treatment of trustee income

HC 24 Trustees' obligations

Liability as individual for trustee income

(1) A trustee must satisfy the income tax liability for their taxable income as if they were an individual beneficially entitled to the trustee income.

No tax credits, cash basis treatment

(2) In determining the income tax liability, the trustee is not entitled to—

(a) have a tax credit under subparts LC and LD (which relate to tax credits for natural persons and for certain gifts):

(b) be a cash basis person, unless section EW 60 (Trustee of deceased's estate) applies.

Beneficiary income of minors

(3) Section HC 35 applies to treat beneficiary income derived by a minor as if it were trustee income.

Calculating trustees' deductions

(4) Section DV 9(2) (Trusts) applies for the purposes of calculating a trustee's deductions.

Superannuation funds

(5) Sections CX 40, and DV 1 to DV 4 (which relate to superannuation funds) override this section.

Defined in this Act: beneficiary income, cash basis person, deduction, income tax liability, minor, tax credit, taxable income, trustee, trustee income

Compare: 2004 No 35 ss DV 9(2), HH 4(1), (2)

Section HC 24(2)(a): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 63(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HC 25 Foreign-sourced amounts: non-resident trustees

When this section applies

(1) This section applies when a non-resident trustee derives in an income year a foreign-sourced amount that would be assessable income if derived by a person resident in New Zealand.

Trustee income

(2) Despite section BD 1(4)(a), (b), and (5)(c) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income), the amount is assessable income of the trustee if, at any time in the income year,—

(a) a settlor of the trust is a New Zealand resident who is not a transitional resident; or

(b) the trust is a superannuation fund; or

(c) the trust is a testamentary trust or an inter vivos trust, of which—

(i) a trustee is resident in New Zealand; and

(ii) a settlor died resident in New Zealand (whether or not they died in the income year).

First exception

(3) Subsection (2) does not apply if—

(a) the trustee is resident outside New Zealand at all times in the income year; and

(b) no settlement has been made on the trust after 17 December 1987 and, if an election has been made under

section HZ 2 (Trusts that may become complying trusts), the election has not been made by the trustee.

Second exception

(4) Subsection (2) does not apply if—

(a) the trustee is resident outside New Zealand at all times in the income year; and

(b) when a settlement has been made on the trust after 17 December 1987, it was made only by a settlor who is not resident in New Zealand—

(i) at the date of the settlement; and

(ii) at any time between 17 December 1987 and the date of settlement.

Extent to which subsections (3) and (4) apply

(5) Subsections (3) and (4) do not—

(a) affect a settlor's income tax liability under the trust rules:

(b) apply to determine whether the tax obligations in relation to the trustee's income tax liability are met for the purposes of section HC 10(1)(a)(ii) and meeting the requirements for a complying trust.

Treatment of non-resident trustee in other provisions

(6) For the purpose only of calculating the taxable income of a trustee referred to in subsection (2), and not otherwise, the trustee is treated as resident in New Zealand for the purposes of—

(a) sections EW 9 and EW 11 (which relate to financial arrangements):

(b) section LJ 2 (Tax credits for foreign income tax):

(c) section OE 1 (General rules for companies and other persons with branch equivalent tax accounts):

(d) the international tax rules.

Defined in this Act: amount, assessable income, complying trust, foreign-sourced amount, income, income tax liability, income year, international tax rules, New Zealand, New Zealand resident, non-resident, resident in New Zealand, settlement, settlor, superannuation fund, taxable income, transitional resident, trust rules, trustee

Compare: 2004 No 35 s HH 4(3), (3A), (6) provisos

HC 26 Foreign-sourced amounts: resident trustees

Exempt income

(1) A foreign-sourced amount that a New Zealand resident trustee derives in an income year is exempt income under section CW 54 (Foreign-sourced amounts derived by trustees) if—

(a) no settlor of the trust is at any time in the income year a New Zealand resident who is not a transitional resident; and

(b) the trust is not—

(i) a superannuation fund; or

(ii) a testamentary trust or an inter vivos trust of which a settlor died resident in New Zealand (whether or not they died in the income year).

When subsection (3) applies

(2) Subsection (3) applies for an income year to a resident foreign trustee of a foreign trust to which sections 22(2)(fb) and (m), and 59B of the Tax Administration Act 1994 applies.

When knowledge offence committed

(3) Subsection (1) does not apply if the trustee—

(a) is not a qualifying resident foreign trustee for the income year; and

(b) is convicted of an offence under section 143A of the Tax Administration Act 1994; and

(c) has committed the offence in connection with information relating to the income year.

Exception

(4) Subsection (3) does not apply to an offence under section 143A(1)(b) of that Act if the information is supplied to the Commissioner after the conviction is entered.

Defined in this Act: Commissioner, exempt income, foreign-sourced amount, foreign trust, income year, New Zealand resident, qualifying resident foreign trustee, resident foreign trustee, settlor, superannuation fund, transitional resident, trustee

Compare: 2004 No 35 s HH 4(3B), (3BB), (3BC)

Section HC 26(4): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Settlors and their liabilities

HC 27 Who is a settlor?

When this section applies

(1) This section applies for the purposes of—

- (a) the trust rules; and
- (b) the consolidation rules; and
- (c) section CW 59 (New Zealand companies operating in Niue); and
- (cb) section MB 7 (Family scheme income of settlor of trust); and
- (d) section YA 1 (Definitions), the definition of **settlement**; and
- (e) subpart YB (Associated persons and nominees) as modified by section YB 10 (Who is a settlor?).

Meaning of settlor

(2) A **settlor** of a trust is a person who, at any time,—

- (a) transfers value—
  - (i) to the trust; or
  - (ii) for the benefit of the trust; or
  - (iii) on terms of the trust:
- (b) provides financial assistance to the trust or for the benefit of the trust with an obligation to pay on demand, and the right to demand is not exercised or is deferred:
- (c) is treated as a settlor under section HC 28.

Trusts for retirement benefits for employees

(3) Despite subsection (2), a person resident in New Zealand who makes a settlement on a trust as an employer for the benefit of 1 or more employees is not a settlor of the trust if the following circumstances apply:

- (a) the trust is established or created mainly to provide retirement benefits to natural persons; and
- (b) the trust is neither a foreign superannuation scheme nor a superannuation fund.

Employee share purchase agreements

(3B) Despite subsection (2), an employer is not a settlor for the purposes of the trust rules in relation to a payment made by them to the trustee of an employee share purchase agreement if—

(a) some or all of the payment is used by the trustee to acquire shares under the terms of the employee share purchase agreement; and

(b) an amount that is less than or equal to the payment used by the trustee would be income of an employee under section CE 1(d).

Indirect settlement

(4) A person may make the transfer or provision in subsection (2) directly or indirectly, or by 1 transaction or a number of transactions, whether connected or otherwise.

Nil value of beneficiary relationship

(5) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value.

Defined in this Act: amount, assessable income, Commissioner, consolidation rules, employee, employer, foreign superannuation scheme, income, pay, resident in New Zealand, settlor, share, share purchase agreement, superannuation fund, transfer of value, trust rules, trustee

Compare: 2004 No 35 ss HH 1(10), OB 1 **settlor**

Section HC 27(1)(cb): inserted, on 1 April 2011, by section 79 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HC 27(1)(e): substituted, on 1 April 2010, by section 264(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 27(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 264(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 27(3B) heading: inserted (with effect on 1 April 2008), on 7 December 2009, by section 44(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27(3B): inserted (with effect on 1 April 2008), on 7 December 2009, by section 44(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **amount**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **assessable income**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **Commissioner**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **income**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **share**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **share purchase agreement**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HC 27 list of defined terms **trustee**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

HC 28 Activities treated as those of settlor

When this section applies

(1) This section applies for the purposes of the trust rules to describe certain activities of a person that result in the person being treated as a settlor.

Avoidance

(2) A person is treated as a settlor if, in relation to a trust,—

(a) they act, refrain from acting, or enter into a transaction or a series of transactions; and

(b) what is done or not done has the effect of defeating the intent and application of the trust rules.

Shareholders in controlled foreign companies

(3) A person is treated as a settlor of a trust if a controlled foreign company (CFC) settles an amount on a trust, and the person has a control interest of 10% or more in the CFC.

Shareholders in companies

(4) A person is treated as a settlor of a trust if—

(a) a company settles an amount on the trust; and

(b) the company would have been a CFC at the date of settlement if it had been a foreign company at the time; and

(c) the person would be treated as having a control interest of 10% or more in the company, if the company had been a foreign company.

Second trusts

(5) A person is treated as a settlor of a trust (the **sub-trust**) if—

(a) they are a settlor of a trust (the **head-trust**); and

(b) a trustee of the head-trust settles an amount on the sub-trust, or makes a distribution to, or on terms of the sub-trust.

Control over trustee or settlor

(6) A person is treated as a settlor of a trust if—

(a) they acquire, directly or indirectly, rights or powers in relation to a trustee or a settlor of the trust; and

(b) the acquisition has the purpose or effect of enabling them to require the trustee to treat them, or a nominee, as a beneficiary of the trust.

Defined in this Act: amount, business, CFC, company, control interest, distribution, foreign company, nominee, settlement, settlor, shareholder, trust rules, trustee

Compare: 2004 No 35 ss HH 1(1)–(4), (8), (10), OB 1 **settlor**

HC 29 Settlors' liability to income tax

When this section applies

(1) This section applies to a person who makes a settlement to or for the benefit of a trust after 17 December 1987, and the settlor is resident in New Zealand in an income year. It applies whether or not they settled property on the trust on or before that date. Subsections (3) and (4) override this subsection.

Liable as agent

(2) If a trustee of the trust derives trustee income in the income year, the settlor is liable as agent of the trustee for income tax payable by the trustee. For a trust with more than 1 settlor, the liability is joint and several. However, this subsection does not apply to income tax that the trustee is liable for as agent under section HC 32.

Exclusion: resident trustee

(3) This section does not apply if the trust has a resident trustee for the full income year or, if the first settlement on the terms of the trust is made during the income year, from the day on which the settlement is made to the end of the income year.

Exclusion: trust types

(4) This section does not apply to the settlor of—

(a) a charitable trust; or

(b) a superannuation fund; or

(c) a trust to the extent to which trustee income is derived from the settlor's remitting an amount under a financial arrangement to which section EW 31 or EZ 38 (which relate to base price adjustments) applies.

Exclusion: settlor not resident at time of settlement

(5) This section does not apply if the settlor is a natural person who, unless they make an election under section HC 33,—

(a) is not resident in New Zealand at the time of any settlement on the trust; and

(b) had not after 17 December 1987 previously been resident in New Zealand.

Exclusion: other settlor more appropriately liable

(6) This section does not apply to the extent to which the settlor establishes, through full disclosure to the Commissioner of the settlements made, that another person who has settled property on the trust should be liable, having regard to the respective settlements made.

Limited effect of disclosure

(7) Subsection (6) does not apply to determine whether the tax obligations in relation to the trustee's income tax liability are met for the purposes of section HC 10(1)(a)(ii) and meeting the requirements for a complying trust.

Defined in this Act: agent, amount, charitable trust, Commissioner, complying trust, financial arrangement, income tax, income tax liability, income year, pay, resident in New Zealand, settlement, settlor, superannuation fund, trustee, trustee income

Compare: 2004 No 35 s HH 4(4), (5)

Treatment of transition situations

HC 30 Treatment of foreign trusts when settlor becomes resident

What this section applies to

(1) This section applies for the purposes of section HC 15 and the definition of **taxable distribution** when—

(a) a settlor of a trust is a natural person who on a day (the **transition date**)—

(i) becomes resident in New Zealand and is not a transitional resident:

(ii) stops being a transitional resident and continues to be a New Zealand resident; and

(b) the trust would be a foreign trust in relation to a distribution if a distribution were made immediately before the settlor became resident.

Choosing to satisfy tax liability

(2) A settlor, trustee, or beneficiary of the trust may choose to satisfy the income tax liability of the trustee under section HC 33. They must make the election by the election expiry date.

Tax consequences of making election

(3) If an election under subsection (2) is made, the trust is treated as follows:

(a) as a foreign trust to the extent to which the distribution consists of an amount derived by the trustee before the date of the election:

(b) as a complying trust to the extent to which the distribution consists of an amount derived by the trustee on or after the date on which the election is made, if the requirements of section HC 10(1)(a) are met for the trustee income derived after the date of the election:

(c) as a non-complying trust if the election is made but the requirements of section HC 10(1)(a) are not met, for any distribution not within paragraph (a).

Tax consequences when no election made

(4) If an election under subsection (2) is not made, the trust is treated as follows:

(a) as a foreign trust to the extent to which the distribution consists of an amount derived by the trustee before the date of the election:

(b) as a non-complying trust to the extent to which a distribution consists of an amount derived by the trustee on or after the election expiry date.

Election expiry date

(5) In this section, the **election expiry date** is the day that is the first anniversary of the transition date.

Calculating income derived before election or election expiry date

(6) For the purposes of subsections (3) and (4), the amount derived in the part of the income year before the person makes the election, or before the election expiry date, as applicable, is at the option of the person either—

(a) the amount actually derived in the part year; or

(b) an amount calculated using the formula—

$$\text{amount derived in income year of election} \times \frac{\text{days before election date or election expiry date}}{365.}$$

Defined in this Act: amount, complying trust, distribution, election expiry date, foreign trust, income tax liability, income year, non-complying trust, resident in New Zealand, settlor, taxable distribution, transitional resident, trustee

Compare: 2004 No 35 s HH 2

Valuation of property, trading stock, and financial arrangements

HC 31 When existing trusts come into tax base

When this section applies

(1) This section applies if, through a change in circumstances, an amount derived by a trustee of a trust on a day in an income year is assessable income when it would not have been assessable income had it been derived before that day. Examples of a change in circumstances are—

(a) a non-resident settlor becomes resident in New Zealand, *see* section HC 30:

(b) a charitable trust loses its charitable status, *see* section HC 13.

Person able to make choice

(2) The choice given in subsections (3) and (4) is to be made by the person who is liable to satisfy the income tax liability of the trustee.

Establishing cost of trust property

(3) For the purposes of this Act, the cost of premises, plant, equipment, and trading stock of the trust at the date of the change in circumstances is either—

(a) the historical cost of the property or trading stock less accumulated depreciation loss, or other value, no higher than market value, that the trustee used at that date for income tax purposes in a country or territory in which the trustee is liable to pay income tax on trustee income; or

(b) the value that would be used at that date under this Act, calculated as if the trustee income derived by the trustee had always been assessable income.

Consideration for financial arrangements

(4) For the purposes of this Act, the consideration for a financial arrangement of the trust at the date of the change in circumstances is either—

(a) the market value of the financial arrangement on that date; or

(b) the value calculated using the formula—

consideration paid to person + expenditure – consideration paid by person – income.

Definition of items in formula

(5) In the formula,—

(a) **consideration paid to person** is the consideration that is paid to the person before the date:

(b) **expenditure** is the expenditure that would have been incurred under the financial arrangements rules before the date:

(c) **consideration paid by person** is the consideration that is paid by the person before the date:

(d) **income** is the income that would have been derived under the financial arrangements rules before the date.

Non-resident passive income

(6) For the purposes of subsections (1) and (3)(b), assessable income does not include an amount derived only as non-resident passive income.

Defined in this Act: amount, assessable income, business, charitable trust, consideration, depreciation loss, financial arrangement, financial arrangements rules, income, income tax, income tax liability, income year, non-resident, non-resident passive income, pay, resident in New Zealand, settlor, trading stock trustee, trustee income

Compare: 2004 No 35 s HH 5

Section HC 31(1)(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HC 31(1)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Rate and payment of income tax

HC 32 Liability of trustee as agent

When this section applies

(1) This section applies in an income year when a beneficiary of a trust derives an amount of beneficiary income or a taxable distribution.

Exclusion

(2) Subsection (1) does not apply to a person who derives an amount from a community trust.

Agency

(3) In their capacity as agent, the trustee must satisfy the income tax liability of the beneficiary for their beneficiary income and taxable distributions derived.

Relationship to other provisions

(4) Section HD 4(b) (Treatment of principals) overrides this section.

Defined in this Act: agent, amount, beneficiary income, community trust, income tax liability, income year, taxable distribution, trustee

Compare: 2004 No 35 ss HH 3(2), HK 3(1A)

Section HC 32(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 265(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HC 33 Choosing to satisfy income tax liability of trustee

Election to satisfy tax liability

(1) A person who is a trustee, settlor, or beneficiary of a trust may choose to satisfy the income tax liability of the trustee of the trust.

Liability of person making election

(2) The person making the election is liable for the income tax payable by the trustee, other than income tax that the trustee is liable for as agent.

Application of election

(3) The election under subsection (1) may apply either for an income year or from the date on which it is made. It then applies for all following income years.

Time of providing election

(4) The person must notify the Commissioner of an election under subsection (1) within the time allowed for filing a return of income for the income year. If section HC 30 applies, they must give notification by the election expiry date.

Defined in this Act: agent, Commissioner, election expiry date, income tax, income tax liability, income year, notify, pay, return of income, settlor, trustee

Compare: 2004 No 35 s HH 4(7)

HC 34 Taxable distributions from non-complying trusts

Rate of tax

(1) Income tax is imposed on a taxable distribution derived by a person in an income year from a non-complying trust under section BF 1(b) (Other obligations) at the basic rate set out in schedule 1, part A, clause 4 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Due date

(2) The income tax is payable on the person's payment date for terminal tax under section RA 13 (Payment dates for terminal tax) for the corresponding tax year.

Defined in this Act: income tax, income year, non-complying trust, pay, taxable distribution, terminal tax

Compare: 2004 No 35 s HH 3(4)

Section HC 34(1): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

HC 35 Beneficiary income of minors

When this section applies

(1) This section applies when a person who is a minor derives an amount of beneficiary income from a trust in an income year. Subsection (4) and sections HC 36 and HC 37 override this subsection.

Treatment of amount derived

(2) The amount is—

(a) excluded income of the minor under section CX 58 (Amounts derived by minors from trusts):

(b) treated as trustee income for the purposes of determining the rate of tax that applies, who pays the relevant tax, and who provides the return of income.

Meaning of minor

(3) For the purposes of this section, and sections HC 36, HC 37, LE 4, and LF 2 (which relate to the treatment of tax credits of beneficiary minors), a **minor** is a natural person resident in New Zealand who is under 16 years of age on the trust's balance date for the income year.

Exclusions

(4) This section does not apply—

(a) if the total amount of beneficiary income that the minor derives from the trust in the income year is $1,000 or less; or

(b) to beneficiary income derived—

(i) from a trust settled in the way described in section HC 36:

(ii) from a testamentary trust described in section HC 37:

(iii) from a Maori authority:

(iv) directly from a group investment fund:

(v) by a person for whom a child disability allowance is paid under the Social Security Act 1964.

Relationship with other provisions

(5) This section overrides sections HC 5, HC 18 to HC 20, HC 22, HC 23, and HC 32.

Defined in this Act: amount, beneficiary income, excluded income, group investment fund, income year, Maori authority, minor, pay, resident in New Zealand, return of income, settlement, trustee, trustee income

Compare: 2004 No 35 ss HH 3A–HH 3C, HH 3E, HH 3F(2), (2A)

Section HC 35(4)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 266(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HC 36 Trusts and minor beneficiary rule

Trusts excluded from application of minor beneficiary rule

(1) Section HC 35(2) does not apply to an amount of beneficiary income derived by a minor if all settlements on the trust were made by—

(a) a person who is neither a relative or a guardian of the minor, nor a person associated with a relative or a guardian; or

(b) a person who is a relative, guardian, or a person associated with a relative or guardian, if—

(i) the settlor is acting as agent of the minor and has received the property from a person other than a relative, guardian, or their associate:

(ii) the settlor is required by a court order to pay damages or compensation to the minor:

(iii) the minor is a protected person, as defined in section 2 of the Domestic Violence Act 1995, in relation to a protection order, and the settlement, whether made jointly with another person or not, is made before the protection order is made or during the time the order is in force.

When some settlements do not meet requirements

(2) Subsection (3) applies when more than 1 settlement is made on a trust, and 1 or more but not all settlements meet the requirements of subsection (1) or section HC 37(1).

Small additional settlements permitted

(3) Section HC 35(2) does not apply to an amount of beneficiary income derived by a minor if the only settlements that do not meet the requirements are made through—

(a) the disposal for less than market value of property whose total value is no more than $5,000 at the end of the trust's income year, valuing each settlement at the date of settlement; or

(b) providing financial assistance for less than market value in the form of a loan whose total value is no more than $1,000 on any day in the trust's income year.

Exclusion if significant services provided to trust

(4) Subsection (3) does not apply if services are provided to the trust by a relative, guardian, or associated person, unless those services are incidental to the operation of the trust. Examples of incidental services are bookkeeping, accounting, or trustee services.

Some definitions

(5) In this section,—

associated person or **person associated** does not include a person associated only under sections YB 4 and YB 5 (which relate to relatives who are treated as associated persons)

financial assistance may include assistance through a loan, guarantee, security, or in another way, and financial assistance is treated as having been provided to, or for the benefit of, a trust for less than market value if—

(a) the assistance is provided at below market rates; or

(b) an amount payable for the assistance is payable on demand and the right to demand is not exercised or is deferred

guardian has the meaning set out in section 15 of the Care of Children Act 2004, and persons are connected by guardianship if 1 is the guardian of the other, but guardian does not include a guardian appointed under—

(a) section 110(1)(a) to (d) of the Children, Young Persons, and their Families Act 1989; or

(b) section 31 of the Care of Children Act 2004; or

(c) section 53 of the Public Trust Office Act 1957 by a court order; or

(d) section 7(4) of the Adoption Act 1955

relative means a person referred to in paragraph (a) of the definition of **relative** in section YA 1 (Definitions) extended to include being in a marriage, civil union, or de facto relationship with a person connected to the other through adoption, as described in paragraph (a)(iv), or guardianship.

Defined in this Act: agent, amount, associated person, beneficiary income, financial assistance, guardian, income year, loan, minor, pay, relative, settlement, settlor

Compare: 2004 No 35 ss HH 3C(1)(a)–(d), (2), (3), HH 3D, HH 3F(1), (2A)–(4)

Section HC 36(5) **associated person** or **person associated**: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 267(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HC 36(5) **relative**: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 267(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HC 37 Testamentary trusts and minor beneficiary rule

Testamentary trusts not subject to minor beneficiary rule

(1) Section HC 35(2) does not apply to an amount of beneficiary income derived by a minor if all the settlements on the trust were made under a will, codicil, intestacy, or court variation and—

(a) the minor is alive within 12 months of the date of the settlor's death; or

(b) the minor has a brother, sister, half-brother, or half-sister alive within 12 months of the date of the settlor's death.

Small additional settlements permitted

(2) Section HC 36(3) may apply to extend the application of this exemption.

Defined in this Act: amount, beneficiary income, minor, settlement, settlor

Compare: 2004 No 35 s HH 3C(1)(e)

Subpart HD—Agents

Introductory provisions

HD 1 What this subpart does

When this subpart applies

(1) This subpart sets out the circumstances in which a person is treated for the purposes of this Act and the Tax Administration Act 1994 as an agent of another person in relation to the tax obligations of that other person.

Provisions relating to agents

(2) The following provisions in other subparts of this Act set up certain agency relationships for income tax purposes, or provide certain tax consequences and requirements of an agency relationship:

(a) section EY 49(5) (Non-resident life insurer becoming resident):
(b) sections FM 34(2) (Nominated companies):
(c) sections FN 6(3) (Nominated companies):
(d) section HA 8 (Shareholders' personal liability):
(e) section HC 29(3) (Settlors' liability to income tax):
(f) section HC 32 (Liability of trustee as agent):
(g) section LB 2 (Tax credits for provisional tax payments):
(h) section RA 9 (Treatment of amounts withheld as received):
(i) sections RE 4, RE 5, and RE 7 to RE 9 (which relate to requirements for agents or trustees to pay RWT):
(j) section RE 22 (When payment treated as non-resident passive income):
(k) section RF 4 (Non-resident passive income received by agents and others):
(l) section YA 1 (Definitions), the definition of **offered or entered into in New Zealand**.

Defined in this Act: agent, income tax, offered or entered into in New Zealand, tax

Compare: 2004 No 35 s HK 1(1)

HD 2 Joint liability of principal and agent for tax obligations

A principal and an agent are jointly and severally liable for the tax obligations relating to the agency, and the Commissioner may issue an assessment for the same tax to both an agent and their principal. The liability of 1 remains despite an assessment of the other.

Defined in this Act: agent, assessment, Commissioner, tax

Compare: 2004 No 35 ss HK 3(2), HK 7(1)

HD 3 Agents' duties and liabilities

When this section applies

(1) This section applies for the purposes of sections HD 8 to HD 27 in relation to all income derived by a principal through a business carried on in New Zealand by an agent.

Assessments, returns, and payment of tax

(2) The agent must—

(a) make the assessments that their principal is required to make; and

(b) provide all returns required of their principal under the Tax Administration Act 1994; and

(c) satisfy their principal's income tax liability.

Joint and several liability

(3) If 2 or more persons are liable as agents in relation to the same tax, the liability is joint and several.

Agent as separate person

(4) The agent is treated in that capacity as a separate person, and may claim in relation to the agency income only those tax credits or exemptions to which the principal is entitled.

Defined in this Act: agent, assessment, business, income, income tax liability, New Zealand, return of income, tax, tax credit

Compare: 2004 No 35 ss HK 1, HK 3(3), HK 7(1)

HD 4 Treatment of principals

Despite section HD 3,—

(a) a principal remains liable for their tax obligations, and is not released from them merely through the existence of the agency; and

(b) if the Commissioner agrees, the principal and the agent may decide that the principal is to undertake the duties set out in section HD 3(2).

Defined in this Act: agent, Commissioner, tax

Compare: 2004 No 35 s HK 3(1), (1A)

HD 5 Matters between principals and agents

Assessment as authority

(1) The Commissioner's assessment is, as between principal and agent, sufficient authority for the payment of tax by the agent.

Recovering payment

(2) On paying tax, an agent is entitled to be reimbursed by the principal, and may—

(a) recover the amount from the principal; or

(b) subtract the amount from money held by the agent that belongs or is payable to the principal.

Retaining funds

(3) For the purposes of paying tax in relation to which an agent is or may become liable, the agent may retain from money that belongs or is payable to the principal an amount that is reasonably sufficient to pay the tax. This subsection applies at a time in an income year in which the tax is due or in a later income year.

Hardship

(4) The Commissioner may set a new due date for an agent to pay a tax liability if—

(a) the agent—

(i) is unable to pay the tax liability out of money that the agent holds that belongs to the principal; and

(ii) has not paid away an amount after being assessed in relation to the agency; and

(b) the enforcement of payment would cause hardship to the agent.

Defined in this Act: agent, amount, assessment, Commissioner, income year, pay, tax

Compare: 2004 No 35 ss HK 4–HK 6, HK 7(2)

HD 6 When relationship effectively that of principal and agent

If a person who is carrying on business in New Zealand is sufficiently under the control of another person in business, whether in New Zealand or elsewhere, so that the relationship between them is effectively that of principal and agent, the Commissioner may treat the first business as the principal's business carried on by the agent on behalf of the principal.

Defined in this Act: agent, business, Commissioner, New Zealand

Compare: 2004 No 35 s HK 8

Section HD 6 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HD 7 Rate and amount of tax

The rate of tax used to calculate an agent's income tax liability is determined by reference to the taxable income of the principal. The amount of income tax payable is the amount deter-

mined by the amount of agency income as a proportion of the taxable income of the principal.

Defined in this Act: agent, amount, income tax, income tax liability, pay, taxable income

Compare: 2004 No 35 s HK 2

Particular cases

HD 8 Circumstances giving rise to agency

For the purposes of this Act and the Tax Administration Act 1994, a person is treated as an agent in relation to the income of another person to the extent described in the circumstances set out in sections HD 9 to HD 15.

Defined in this Act: agent, income

HD 9 Guardians

A person (**person A**) is treated as an agent of another person (**person B**) if, as guardian, manager, or otherwise, person A receives, controls, or disposes of income that person B derives while under a legal disability.

Defined in this Act: agent, income

Compare: 2004 No 35 s HK 9

HD 10 Mortgagees in possession

A person (**person A**) is treated as an agent of another person (**person B**) if, as mortgagee in possession of land or other property, person A derives income from the land or property on behalf or for the benefit of person B as mortgagor.

Defined in this Act: agent, income, land

Compare: 2004 No 35 s HK 10

HD 11 Nominated companies

Consolidated groups

(1) A nominated company is treated under section FM 34(2) (Nominated companies) as the agent of a consolidated group, and of each company that is at the time a member of that group.

Imputation groups

(2) A nominated company is treated under section FN 6(3) (Nominated companies) as the agent of an imputation group, and of each company that is at the time a member of that group.

Defined in this Act: agent, company, consolidated group, imputation group, nominated company

Compare: 2004 No 35 ss FD 6(1), FDA 5(3)

HD 12 Trusts

Beneficiary income and taxable distributions

(1) If a beneficiary of a trust, other than a beneficiary of a community trust, derives an amount of beneficiary income or taxable distribution in a tax year, the trustee of the trust is treated under section HC 32 (Liability of trustee as agent) as the agent of the beneficiary.

Settlors

(2) If a trustee of a trust, other than a charitable trust, derives trustee income in a tax year, and a settlor of the trust is resident in New Zealand in the tax year, the settlor is treated under section HC 29 (Settlors' liability to income tax) as the agent of the trustee for income tax payable by the trustee (but not for income tax that the trustee is liable for as agent).

Defined in this Act: agent, amount, beneficiary income, charitable trust, community trust, income tax, pay, resident in New Zealand, settlor, tax year, taxable distribution, trustee, trustee income

Compare: 2004 No 35 ss HH 3(2), HH 3A(2), HH 4(4)

HD 13 Unit trusts

A trustee of a unit trust is treated as an agent of the unit trust in relation to income derived by the unit trust.

Defined in this Act: agent, income, trustee, unit trust

Compare: 2004 No 35 s HE 1

HD 14 Companies issuing debentures

Agency

(1) A company is treated as an agent of a person if—

(a) the company has issued a debenture; and

(b) the person, as a debenture holder, derives income from the debenture.

Excluded debentures

(2) Subsection (1) does not apply to a debenture if—

(a) it is a profit-related debenture or substituting debenture to which section FA 2 (Recharacterisation of certain debentures) applies or a stapled debt security to which section FA 2B (Stapled debt securities) applies; or

(b) it is issued to a New Zealand resident, and the company provides the Commissioner with a certified list containing particulars of the debentures, the name and details of each person to whom a debenture has been issued, and details of the interest payments before an assessment is made in a tax year of the debenture holder.

Liability of persons named

(3) A person named as a debenture holder in the list referred to in subsection (2)(b) is liable for income tax on income derived from the debenture. Subsection (4) overrides this subsection.

Continuing liability until notification

(4) Despite section BB 2 (Main obligations), if a debenture holder disposes of a debenture, they remain liable for income tax unless they notify the Commissioner of the disposal before an assessment is made in a tax year that takes into account the income derived from the debentures. On notification, the subsequent holder is liable in relation to the debentures, and the liability of the transferor is ended.

Recovery of tax paid

(5) If a person who formerly held a debenture pays income tax on taxable income that takes into account income derived by a subsequent holder, the income tax is treated as paid on behalf of the subsequent holder to the extent of the liability of the subsequent holder, and the person may recover that amount from them.

Matters not taken into account

(6) For the purposes of subsection (1), it does not matter whether the debenture is charged on the company's property, nor whether a debenture holder is an absentee.

Defined in this Act: absentee, agent, assessment, Commissioner, company, debenture, debenture holder, income, income tax, interest, New Zealand resi-

dent, notify, pay, profit-related debenture, stapled debt security, tax, tax year, taxable income

Compare: 2004 No 35 ss HK 12, HK 13

Section HD 14(2)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 268(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HD 14 list of defined terms **stapled debt security**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 268(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HD 15 Asset stripping of companies

When this section applies

(1) This section applies when—

(a) an arrangement has been entered into in relation to a company; and

(b) an effect of the arrangement is that the company cannot meet a tax liability (the **tax obligation**) whether existing at the time of the arrangement or arising after that time, for—

(i) income tax:

(ii) a civil penalty, as defined in section 3(1) of the Tax Administration Act 1994:

(iii) an amount payable under Part 7 of that Act; and

(c) it is reasonable to conclude that—

(i) a purpose of the arrangement is to have the effect described in paragraph (b); and

(ii) if a director of the company at the time of the arrangement made reasonable inquiries, they could have anticipated at the time that the income tax liability would, or would likely, be required to be met.

When this section does not apply

(2) This section does not apply to an arrangement if—

(a) the Commissioner is a party to the arrangement:

(b) the tax obligation is no more than an amount of income tax that arises as a direct result of the performance of the arrangement, and that obligation has been met:

(c) at the time of the arrangement, the company was under statutory management under the Reserve Bank of New

Zealand Act 1989 or the Corporations (Investigation and Management) Act 1989.

Director's liability

(3) All persons who are directors of the company at the time the arrangement is entered into are treated as agents of the company in relation to the tax obligation, and the liability is joint and several. But a director has no liability if—

(a) they do not derive a benefit from the arrangement, and at the first reasonable opportunity after becoming aware of the arrangement, or the aspects of the arrangement that cause this section to apply to it, they record formally their dissent in relation to the arrangement with the company and with the Commissioner; or

(b) they were not at the relevant time involved in the executive management of the company and had no knowledge of the arrangement, or the aspects of the arrangement that cause this section to apply to it.

Shareholder's liability

(4) A person who is a controlling shareholder or an interested shareholder at the time of the arrangement is treated as an agent of the company in relation to the tax obligation other than penalties and interest but, despite section HD 3(2), the liability is limited to the greater of—

(a) the market value of the person's direct and indirect shareholding in the company at the time of the arrangement; and

(b) the value of the benefit that the person derives from the arrangement.

Shareholder's liability for penalties and interest

(5) A person who is a controlling shareholder or an interested shareholder at the time of the arrangement is treated as an agent of the company in relation to penalties and interest in proportion to their liability for the tax obligation under subsection (4).

Company liquidations

(6) In order to give effect to this section, if a company has been liquidated, the Commissioner may at any time after the liquidation make an assessment of a company for an income tax li-

ability of the company as if it had not been liquidated. The time bar applies, but this subsection overrides other provisions in this Act and the Tax Administration Act 1994.

Agents for purposes of notification or objection procedures

(7) In making an assessment under subsection (6), the Commissioner must nominate 1 or more persons as having the tax obligation set out in the assessment. The nominated person or persons are treated as agents of the company in relation to any notification or objection procedure concerning the assessment.

When liability does not arise

(8) No liability arises under this section for a tax year in relation to which—

(a) a company has provided returns within the time allowed by section 37 of the Tax Administration Act 1994 for providing returns for the tax year in which the company is liquidated; and

(b) the Commissioner has not issued a notice of assessment of the company for the tax year before the end of 4 years following the end of the tax year in which the company is liquidated.

Some definitions

(9) In this section,—

controlling shareholder, for a company, means—

(a) a person whose voting interest or market value interest in the company at the time of the arrangement, together with any interests of an associated person, is 50% or more; and

(b) if the person or associated person is a company, the voting interest or market value interest of the person or associated person is calculated as if they were not a company and as if sections YC 4 (Look-through rule for corporate shareholders) and YC 6 (Disregarding certain securities) did not apply

director means,—

(a) a person who occupies the position of director, whether or not the position has that title:

(b) for an entity that is treated as a company under this Act, a person who acts in the same or similar way as a dir-

ector would if the entity were a company incorporated in New Zealand under the Companies Act 1993

interested shareholder means a person who, at the time the arrangement is entered into, has a voting interest or market value interest in the company, calculated in either case if the person is a company as if the person were not a company, and because of the size of the benefit that the person derives from the arrangement, it is reasonable to conclude that the person is a party to the arrangement

penalties and interest means a civil penalty or amount payable under Part 7 of the Tax Administration Act 1994 that is part of the tax obligation.

Defined in this Act: agent, amount, arrangement, assessment, associated person, Commissioner, company, controlling shareholder, director, income tax, income tax liability, interested shareholder, liquidation, market value, market value interest, New Zealand, notice, notify, penalties and interest, return of income, tax, tax year, time bar, voting interest

Compare: 2004 No 35 s HK 11

HD 16 Non-resident general insurers

When this section applies

(1) This section applies when an insurer derives income under section CR 3 (Income of non-resident general insurer) to determine who is liable to provide a return of income and pay income tax on the income.

Insurer

(2) To the extent to which the insurer provides the return and pays the income tax, no other person described in this section is liable to do so.

Person acting on insurer's behalf

(3) To the extent to which a person on behalf of the insurer, including a broker or other agent who pays a premium on behalf of another person, provides the return and pays the income tax, no agent described in any of subsections (4) to (6) is liable to do so.

Agent paying premium or providing funds

(4) The person liable in the first place as an agent is—

(a) a person, including a broker or agent, who pays the premium to the insurer or to some other person not carrying

on a business in New Zealand through a fixed establishment in New Zealand; or

(b) a person described in subsection (7)(b).

Person paying premium

(5) The person liable in the second place as agent is a person who pays the premium, whether or not through a broker or agent.

Insured person

(6) The person liable in the third place as agent is the insured person.

Bank or building society

(7) If a premium is paid by a registered bank, as defined in section 2 of the Reserve Bank of New Zealand Act 1989, or a building society on behalf of a person to the insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand,—

(a) the bank or building society is not an agent of the insurer; and

(b) the person who provides the bank or building society with the funds from which the premium is paid is an agent of the insurer.

Defined in this Act: agent, building society, business, fixed establishment, income, income tax, insured person, insurer, New Zealand, pay, premium, registered bank, return of income

Compare: 2004 No 35 s FC 16

HD 17 Agent paying premiums to residents of Switzerland

When this section applies

(1) This section applies when—

(a) an insurer derives income under section CR 3 (Income of non-resident general insurer); and

(b) an agent of the insurer under section HD 16 pays the premium to an insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand; and

(c) the insurer or other person is treated as being resident in Switzerland for the purposes of a double tax agreement between the government of New Zealand and the government of Switzerland.

Disclosure

(2) The agent must disclose details of the payment of the premium to the Commissioner in the manner, if any, required by the Commissioner.

Defined in this Act: agent, business, Commissioner, double tax agreement, fixed establishment, income, insurer, New Zealand, pay, premium

Compare: 2004 No 35 s FC 17

Absentees

HD 18 Agency in relation to absentees generally

What sections HD 19 to HD 25 do

(1) Sections HD 19 to HD 25 apply for the purposes of this Act to treat a person as an agent in relation to the income of an absentee when certain conditions are met and to the extent set out in the circumstances described in those sections. The person must meet the tax obligations set out in section HD 3 in relation to the income to which the agency applies.

Meaning of absentee

(2) In this subpart, **absentee** means—

(a) a natural person who is for the time being out of New Zealand:

(b) a foreign company, unless it has a fixed and permanent place of business in New Zealand at which it carries on business in its own name:

(c) a foreign company when the Commissioner declares that it is an absentee for the purposes of this Act by giving notice to the company, or its agent or representative in New Zealand.

Defined in this Act: absentee, agent, business, Commissioner, company, foreign company, income, New Zealand, notice, tax

Compare: 2004 No 35 ss HK 1, HK 16, OB 1 **absentee**

HD 19 Persons receiving absentees' income

A person is treated as an agent if they receive, control, or dispose of income derived by a principal who is an absentee.

Defined in this Act: absentee, agent, income

Compare: 2004 No 35 s HK 20

Section HD 19 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HD 20 Persons carrying on business for absentees

A person is treated as an agent if they carry on in New Zealand a business for an absentee, whether or not the income is received by the agent.

Defined in this Act: absentee, agent, business, income, New Zealand

Section HD 20: substituted, on 1 April 2008, by section 18(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HD 20B General partners and partners carrying on with or managing business involving absentees

Who this section applies to

(1) This section applies to a person who—

(a) in New Zealand carries on a business in a partnership that is not a limited partnership:

(b) is a general partner of a limited partnership that carries on a business in New Zealand ignoring section HG 2 (Partnerships are transparent).

Person treated as agent

(2) If the person carries on the business with an absentee or, as a general partner, is responsible for the management of a limited partnership in which a limited partner is an absentee, the person is treated as the agent of the relevant absentee in relation to the absentee's partnership share of the partnership's income under section HG 2.

Defined in this Act: absentee, agent, business, general partner, income, limited partner, limited partnership, New Zealand, partnership, partnership share

Section HD 20B: inserted, on 1 April 2008, by section 18(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HD 20B(1) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HD 20B(2) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HD 21 Companies

Paying dividends

(1) A company incorporated in New Zealand is an agent of an absentee to whom it pays or credits dividends as a shareholder, or as a holder of a debenture to which section FA 2 (Recharacterisation of certain debentures) applies.

Relationship with NRWT rules

(2) section RF 2(3) and (4) (Non-resident passive income) overrides this section.

Defined in this Act: absentee, agent, company, debenture, debenture holder, dividend, New Zealand, NRWT rules, pay, shareholder

Compare: 2004 No 35 s HK 21

HD 22 Banking companies

Receiving deposit in course of business activities

(1) A person, including a banking or other company, or a local authority or public authority, is treated as an agent if in the course of their business activities, they receive or hold money as a deposit and pay interest to an absentee on the money deposited by the absentee.

Threshold

(2) This section applies only if the interest paid on the deposit is more than $100.

Relationship with NRWT rules

(3) section RF 2(3) and (4) (Non-resident passive income) overrides this section.

Defined in this Act: absentee, agent, banking company, business, company, interest, local authority, NRWT rules, pay, public authority

Compare: 2004 No 35 s HK 23

HD 23 Trustees of group investment funds

A person is treated as an agent if they are a trustee of a group investment fund and an absentee is an investor to whom a dividend is paid.

Defined in this Act: absentee, agent, dividend, group investment fund, pay, trustee

Compare: 2004 No 35 s HK 22

HD 24 Shipping businesses

A person is treated as an agent if they are the master of a ship owned by or under charter to an absentee who carries on a business carrying goods or passengers.

Defined in this Act: absentee, agent, business

Compare: 2004 No 35 s HK 18(1)

HD 25 Persons remitting amounts outside New Zealand

Absentee landlords, mortgagors, or creditors

(1) A person is treated as an agent if they are a tenant, mortgagor, or other person who remits an amount from New Zealand to an absentee who is their landlord, mortgagee, or creditor, when the amount is income derived by the absentee. But this subsection applies only after the Commissioner has notified the person that they are accountable as the absentee's agent.

When fund outside New Zealand

(2) If the amount referred to in subsection (1) is paid by or on account of a person resident in New Zealand from a fund outside New Zealand, it is treated as an amount to which this section applies.

Defined in this Act: absentee, agent, amount, Commissioner, income, New Zealand, notify, pay, resident in New Zealand

Compare: 2004 No 35 s HK 19

Non-residents

HD 26 Agency in relation to non-residents generally

What sections HD 27 and HD 28 do

(1) sections HD 27 and HD 28 apply for the purposes of this Act to treat a person as an agent in relation to the income of a non-resident taxpayer when certain conditions are met. The person must meet the tax obligations set out in section HD 3 in relation to the income to which the agency applies.

Meaning of non-resident taxpayer

(2) In sections HD 27 and HD 28, a **non-resident taxpayer** means a person who—

(a) is liable for income tax on employment income derived in New Zealand; and

(b) has no fixed and permanent place to live in New Zealand.

Defined in this Act: agent, employment income, income, income tax, New Zealand, non-resident, non-resident taxpayer, tax

Compare: 2004 No 35 s HK 24(1), (4)

HD 27 Employers

Employment of non-resident persons

(1) An employer who employs a non-resident person with an income tax liability is treated as an agent in relation to the employment income derived in New Zealand by the non-resident person. If the person does not meet their income tax liability, the employer must withhold the amount of income tax payable from their employment income and pay it to the Commissioner on the person's behalf.

Employment by non-resident traders

(2) A non-resident trader who employs a person in New Zealand is treated as an agent in relation to the person's employment income. If the trader has an agent in New Zealand, the agent must meet the trader's obligations under section HD 3.

Defined in this Act: agent, amount, Commissioner, employer, employment income, income tax, income tax liability, New Zealand, non-resident, non-resident trader, pay

Compare: 2004 No 35 ss HK 24(2), HK 25

HD 28 Government pensions and payments under superannuation schemes

If a non-resident person who has an income tax liability derives a pension or annuity from the government of New Zealand or under an unregistered superannuation scheme established in New Zealand, the income tax payable must be withheld from 1 or more instalments of the pension or annuity and paid to the Commissioner on the person's behalf.

Defined in this Act: Commissioner, income tax, income tax liability, New Zealand, non-resident, pay, superannuation scheme

Compare: 2004 No 35 s HK 24(3)

HD 29 Persons buying goods from overseas

Who this section applies to

(1) This section applies, in relation to a purchase of goods, to—

(a) a person in New Zealand (**person A**); and

(b) person A's principal who is resident in a country or territory outside New Zealand, and not resident in New Zealand (**person B**).

Treatment of persons buying goods

(2) If person A is instrumental in arranging the purchase of goods from person B, and the goods are either in New Zealand or are to be imported into New Zealand under the contract of purchase, person A and person B and the income are treated as follows:

(a) person B is treated as carrying on a business in New Zealand; and

(b) person A is treated as person B's agent in relation to the income derived from the business; and

(c) the income from the business is treated as having a source in New Zealand.

Exemption

(3) Person A is not liable as agent for the payment of income tax if the Commissioner is satisfied that in corresponding circumstances in a country or territory outside New Zealand, person B, if resident in New Zealand, would not be liable for income tax in that country or territory.

Defined in this Act: agent, business, Commissioner, income, income tax, New Zealand, pay, resident in New Zealand, source in New Zealand

Compare: 2004 No 35 s HK 26

Section HD 29(2)(c): amended, on 21 December 2010, by section 80(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section HD 29 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 80(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section HD 29 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 80(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Subpart HE—Mutual associations

HE 1 Income and deductions of mutual associations

Income and allocation

(1) The treatment of amounts derived by mutual associations and from mutual associations is dealt with in—

(a) section CB 33 (Amounts derived by mutual associations); and

(b) section CB 34 (Amounts derived by members from mutual associations).

Deductions and allocation

(2) The treatment of association rebates that a mutual association pays to a member is dealt with in section DV 19 (Association rebates).

Defined in this Act: amount, association, association rebate, member

HE 2 Classes of mutual transaction

When mutual transactions arise

(1) In this subpart, and sections CB 33, CB 34, and DV 19 (which relate to income and deductions relating to mutual transactions), a mutual transaction arises when an association—

(a) enters into a transaction with members of the association, or a transaction with members of the association and other persons; and

(b) the association takes the transaction into account in an income year in determining its net income or net loss under section BC 4 (Net income and net loss).

Types of transaction

(2) For the purposes of subsection (1), a transaction between an association and its member includes 1 or more of the following:

(a) the borrowing by the association of money from 1 or more members, to the extent to which the money is applied as a loan to a member:

(b) the lending by the association of money to 1 or more members:

(c) for an association that is a statutory producer board other than a body that derives only exempt income—

(i) a levy paid by 1 or more members:

(ii) a produce transaction.

Defined in this Act: association, exempt income, income year, levy, loan, member, mutual transaction, net income, net loss, pay, produce transactions, statutory producer board

Compare: 2004 No 35 s HF 1(8)

HE 3 Association rebates

Meaning

(1) In this subpart, and in sections CB 34 and DV 19 (which relate to income and deductions relating to mutual transactions), an **association rebate** means a payment by an association to a member that is made—

(a) through a distribution of profits of the association:

(b) not later than 6 months after the end of the accounting year of the association in relation to which the payment is made.

Exclusion

(2) An association rebate does not include—

(a) a cash distribution in relation to which the association has made an election under section OB 73(1) or OB 78(1) (which relate to imputation credits of statutory producer boards or co-operative companies); or

(b) a distribution described in section CD 26 (Capital distributions on liquidation or emigration) or CD 33 (Payments corresponding to notional distributions of producer boards and co-operative companies).

Defined in this Act: accounting year, association, association rebate, member, pay

Compare: 2004 No 35 s HF 1(9) **rebate**

HE 4 Apportionment when transactions with members and non-members

When this section applies

(1) This section applies when an association takes into account transactions with both members and non-members.

Apportioning expenditure or loss

(2) In determining its net income or net loss for an income year under section BC 4 (Net income and net loss), the association must apportion the expenditure or loss that it incurs in the

income year between those transactions with members, and those with persons who are not members.

Defined in this Act: association, income year, loss, member, net income, net loss

Compare: 2004 No 35 s HF 1(4)

HE 5 Association rebates paid by shares or credit

When this section applies

(1) This section applies when an association that enters into mutual transactions with members pays an association rebate to 1 or more members through—

(a) issuing fully or partly paid-up shares in the association; or

(b) providing credit for all or part of an amount unpaid on shares in the association.

Not bonus issue

(2) The amount, or the relevant part of it, is not treated as a bonus issue.

Defined in this Act: amount, association, association rebate, bonus issue, member, mutual transaction, pay, share

Compare: 2004 No 35 s HF 1(7)

Subpart HF—Maori authorities

Introductory provisions

HF 1 Maori authorities and the Maori authority rules

Who is a Maori authority?

(1) A Maori authority is a person eligible under section HF 2 who has made an election under section HF 11.

Maori authority rules

(2) The **Maori authority rules** means the following:

(a) this subpart:

(b) sections GB 42 and GB 43 (which relate to Maori authority credit arrangements to obtain a tax advantage):

(c) sections LA 4, LA 6, LO 1, LO 4, and LO 5 (which relate to Maori authority credits):

(d) subpart OK (Maori authority credit accounts (MACA)):

(e) section RM 22 to RM 27 (which relate to limits on refunds of tax in relation to Maori authorities):

(f) schedule 1, part A, clause 6 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(g) sections 31, 57, 68B, 69B, 70B, 97B, 140CB, 140DB, and 181B of the Tax Administration Act 1994.

Defined in this Act: Maori authority, Maori authority rules

Compare: 2004 No 35 s OB 1 **Maori authority**, **Maori authority rules**

Section HF 1(2)(f): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

HF 2 Who is eligible to be a Maori authority?

What this section does

(1) This section sets out the persons eligible to choose under section HF 11 to become a Maori authority.

Companies

(2) The following are eligible to make an election:

(a) a company established by an order made under Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993):

(b) a company that owns land that is subject to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993):

(c) a company that is—

(i) established by a mandated iwi organisation to be an asset-holding company, as contemplated by section 12(1)(d) of the Maori Fisheries Act 2004:

(ii) recognised by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under section 13(1) of the Maori Fisheries Act 2004:

(d) a company that,—

(i) on behalf of Maori claimants, receives and manages assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and

(ii) is contemplated by the deed of settlement of the claim as performing the functions described in subparagraph (i).

Trusts

(3) The following are eligible to make an election:

(a) the trustees of a trust established by an order made under Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993):

(b) the trustees of a trust who own land that is subject to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993):

(c) the trustees of a trust that is recognised by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under section 13(1) of the Maori Fisheries Act 2004:

(d) the trustees of trusts that are established by Te Ohu Kai Moana Trustee Limited as a mandated iwi organisation under sections 79 and 92 of the Maori Fisheries Act 2004:

(e) the trustees of a trust who,—

(i) on behalf of Maori claimants, receive and manage assets that are transferred by the Crown as part of the settlement of a claim under the Treaty of Waitangi; and

(ii) are contemplated by the deed of settlement of the claim as performing the functions described in subparagraph (i).

Maori Trustee

(4) The Maori Trustee in the Maori Trustee's capacity as an agent for an owner of land that is subject to Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993) is eligible to make an election.

Maori Trust Board

(5) A Maori Trust Board, as defined in section 2 of the Maori Trust Boards Act 1955, is eligible to make an election.

Crown Forestry Rental Trust

(6) The Crown Forestry Rental Trust, established by deed in accordance with section 34 of the Crown Forest Assets Act 1989, is eligible to make an election.

Te Ohu Kai Moana Trustee Limited

(7) Te Ohu Kai Moana Trustee Limited, established under section 33 of the Maori Fisheries Act 2004, is eligible to make an election.

Aotearoa Fisheries Limited

(8) Aotearoa Fisheries Limited, established under section 60 of the Maori Fisheries Act 2004, is eligible to make an election.

Defined in this Act: agent, company, Maori authority, trustee

Compare: 2004 No 35 s HI 2

HF 3 Applying provisions to Maori authorities

Relationship with provisions generally

(1) A provision in the Maori authority rules overrides any other provision in this Act that may apply to a Maori authority unless a provision specifically provides otherwise.

Relationship with company rules

(2) A Maori authority must not—

(a) amalgamate with a company that is not a Maori authority; or

(b) be part of a consolidated group that includes a company that is not a Maori authority; or

(c) be a co-operative company if a shareholder is not a Maori authority.

Treatment of tax losses

(3) Under section IA 6 (Restrictions on companies grouping tax losses) and subpart IC (Grouping tax losses),—

(a) a Maori authority may subtract from its net income some or all of a tax loss component or loss balance only of another Maori authority:

(b) a Maori authority may use some or all of its tax loss component or loss balance in relation to the net income only of another person who is a Maori authority.

Defined in this Act: amalgamation, company, consolidated group, co-operative company, loss balance, Maori authority, Maori authority rules, net income, shareholder, tax loss component

Compare: 2004 No 35 s HI 1

Maori authority distributions

HF 4 What constitutes a Maori authority distribution?

Transfer of value

(1) A transfer of value from a Maori authority to a person is a Maori authority distribution if the cause of the transfer is the membership of the person in the Maori authority.

Distributions

(2) A Maori authority distribution includes an amount advanced to a member by a Maori authority, to the extent to which the advance is not a genuine investment by the authority entered into but in effect a distribution of an amount that falls within sections BD 1(1) and CA 1(2) (which relate to amounts that are income).

Taxable bonus issues

(3) A taxable bonus issue made by a Maori authority to a member is a taxable Maori authority distribution.

Exclusion: services

(4) A Maori authority distribution does not include the provision of services to a person by a Maori authority.

Distributions with credits attached

(5) A Maori authority distribution includes the amount of a Maori authority credit attached to it.

Dividends

(6) A Maori authority distribution that, but for this subsection, would be a dividend for a member, is treated as not being a dividend except for the purposes of section CW 10 (Dividend within New Zealand wholly-owned group).

Value of distribution by reference to market values

(7) For the purposes of this section, if the transfer of value is—

(a) the disposal of property to a member without consideration, or for a consideration that is less than the market value of the property, the value of the Maori authority distribution is the amount by which the market value of the property is more than the consideration; and

(b) the acquisition of property from a member for a consideration that is more than the market value of the property, the value of the Maori authority distribution is the

amount by which the market value is less than the consideration.

Defined in this Act: amount, dividend, Maori authority, Maori authority credit, member, taxable bonus issue, taxable Maori authority distribution, transfer of value

Compare: 2004 No 35 ss HI 4(1), (2), HI 5(4), HI 7

HF 5 Notional distributions of co-operative companies

A Maori authority that is a co-operative company may make a notional distribution to a member under section OB 79 (Co-operative companies attaching imputation credits to notional distributions) as if a Maori authority credit were an imputation credit.

Defined in this Act: co-operative company, imputation credit, Maori authority, Maori authority credit, member

Compare: 2004 No 35 s HI 4(3)

HF 6 Tax treatment of Maori authority distributions

A Maori authority distribution to a member is—

(a) income of the member under section CV 11 (Maori authorities), if the amount is—
  (i) a taxable Maori authority distribution; or
  (ii) a notional distribution:
(b) exempt income of the member under section CW 55 (Maori authority distributions), if paragraph (a) does not apply.

Defined in this Act: amount, exempt income, income, Maori authority, member, taxable Maori authority distribution

Compare: 2004 No 35 s HI 5(1)

HF 7 Taxable Maori authority distributions

A Maori authority distribution is a **taxable Maori authority distribution** if the source is income of the Maori authority that is—

(a) derived by the Maori authority in the 2004–05 income year or a later income year; and
(b) not exempt income of the Maori authority; and
(c) not a cash distribution made to a member in relation to a notional distribution for which the Maori authority has

made an election under section OB 82 (When and how co-operative company makes election).

Defined in this Act: exempt income, income, income year, Maori authority, member, taxable Maori authority distribution

Compare: 2004 No 35 s HI 5(2), (3)

HF 8 Proportional allocation

If a Maori authority distribution consists of a taxable Maori authority distribution and another amount, the Maori authority must allocate an equal proportion of each type of distribution to every member to whom the distribution is made.

Defined in this Act: amount, Maori authority, member, taxable Maori authority distribution

Compare: 2004 No 35 s HI 6

Changing status

Table HI—Consequences of change in entity status for purposes of Maori authority rules

Row	Entity	Changing to	Consequences
1	Company	Maori authority	The company stops being an ICA company, and the rules relating to the ending of ICA company status apply Retained earnings, accumulated profits, and capital reserves are treated as an amount from which a distribution that is not a taxable Maori authority distribution may be made

Table HI—*continued*

2	Trust	Maori authority	Trustee income is treated as an amount from which a distribution that is not a taxable Maori authority distribution may be made	
3	Maori authority	Company that is not a Maori authority	The Maori authority may transfer a credit balance in the Maori authority credit account to the company's imputation credit account, and s**ection OK 18** applies to a debit balance in the Maori authority credit account Taxable income derived by the Maori authority in the 2003-04 or an earlier tax year is available subscribed capital	
Row	**Entity**	**Changing to**	**Reverting to**	**Consequences**
5	Maori authority	Company that is not a Maori authority	Maori authority	Market value calculations are required under **section HF 10.** The company must apply row 1

Table HI—*continued*

6	Maori authority	Trust that is not a Maori authority	Maori authority	Market value calculations are required under **section HF 10**. The company must apply row 2

How to use this table

Read columns from left to right according to the row that fits the situation.

HF 9 Treatment of companies and trusts that choose to apply this subpart

Company becoming Maori authority

(1) If a company becomes a Maori authority in a tax year, the company must apply table H1, row 1.

Trust becoming Maori authority

(2) If a trust becomes a Maori authority in a tax year, the trustee must apply table H1, row 2.

Maori authority becoming company

(3) If a Maori authority is a company that stops being a Maori authority in a tax year, it must apply table H1, row 3.

Maori authority becoming trust

(4) If a Maori authority is a trust that stops being a Maori authority in a tax year, the trustee must apply table H1, row 4.

Defined in this Act: company, Maori authority, tax year, trustee

Compare: 2004 No 35 s HI 8

HF 10 Market value calculations

When this section applies

(1) This section applies to property of a company or a trust when the company or the trustees of the trust, having stopped being a Maori authority, reverts to being a Maori authority.

Treatment

(2) The company or the trustees, as applicable, are treated as—

(a) disposing of the company's property, or the trust's property, immediately before becoming a Maori authority for a consideration that is the market value of the property on the date of disposal; and

(b) acquiring the property of the Maori authority for a consideration that is the market value of the property on the date of disposal referred to in paragraph (a).

Market value for both

(3) In subsection (2), the market value of the property is the market value for both the company, or the trustees, as applicable, and the Maori authority.

Depreciation

(4) Despite sections EE 55 to EE 60, and EZ 22 (which relate to depreciation), the cost to a Maori authority of property to which this section applies is the lesser of—

(a) the market value of the property on the date it was acquired; and

(b) the original cost of the property to the company or the trust.

Defined in this Act: company, Maori authority, trustee

Compare: 2004 No 35 s HI 9

HF 11 Choosing to become Maori authority

Notice

(1) A person who is eligible under section HF 2 may choose to become a Maori authority by notifying the Commissioner.

Acceptance notified

(2) Having received a notice under subsection (1), the Commissioner must notify the person of the acceptance of the election.

The Commissioner must provide an acceptance date in the notice.

When election takes effect

(3) The election takes effect on the first day of—

(a) the income year in which the person's notice is given; or

(b) the next income year, if the person nominates that date in the notice.

When election no longer effective

(4) An election under this section stops having effect if the person—

(a) notifies the Commissioner that the election is cancelled, and the election no longer has effect from the date set out in the notice:

(b) stops being a Maori authority.

Defined in this Act: Commissioner, income year, Maori authority, notice, notify

Compare: 2004 No 35 s HI 3

Subpart HG—Joint venturers, partners, and partnerships

Subpart HG: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Joint venturers

Heading: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HG 1 Joint venturers

When this section applies

(1) This section applies when 2 or more people derive income jointly or have deductions jointly, and they are not partners in the same partnership.

Separate shares

(2) Each person must calculate their net income for a tax year taking into account their share of the joint income and deductions.

Exclusion

(3) This section does not apply to the income derived by and the deductions of an airport operator from activities that are activities undertaken as an airport operator.

Defined in this Act: airport operator, deduction, income, net income, partner, partnership, tax year

Section HG 1: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Partners and partnerships

Heading: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HG 2 Partnerships are transparent

Look-through in accordance with share

(1) For the purposes of a partner's liabilities and obligations under this Act in their capacity of partner of a partnership, unless the context requires otherwise,—

(a) the partner is treated as carrying on an activity carried on by the partnership, and having a status, intention, and purpose of the partnership, and the partnership is treated as not carrying on the activity or having the status, intention, or purpose:

(b) the partner is treated as holding property that a partnership holds, in proportion to the partner's partnership share, and the partnership is treated as not holding the property:

(c) the partner is treated as being party to an arrangement to which the partnership is a party, in proportion to the partner's partnership share, and the partnership is treated as not being a party to the arrangement:

(d) the partner is treated as doing a thing and being entitled to a thing that the partnership does or is entitled to, in proportion to the partner's partnership share, and the partnership is treated as not doing the thing or being entitled to the thing.

No streaming

(2) Despite subsection (1), for a partner in their capacity of partner of a partnership, the amount of income, tax credit, rebate, gain,

expenditure, or loss that they have from a particular source, or of a particular nature, is calculated by multiplying the total income, tax credit, rebate, gain, expenditure, or loss of the partners of the partnership from the particular source or of the particular nature by the partner's partnership share in the partnership's income.

Expenditure or loss previously incurred

(3) A partner of a partnership may be treated as incurring an expenditure or loss which the partnership incurs ignoring this section, despite the partner not being a partner at the time the expenditure or loss is incurred. This subsection does not allow 2 deductions for 1 expenditure or loss.

Excluded amounts

(4) Subsection (2) does not apply to the following amounts:

(a) expenditure or loss that relates to a person entering a partnership by acquiring partner's interests disposed of by another partner, to the extent to which sections HG 5 to HG 10 do not apply to the partner's interests:

(b) supplementary dividends, to the extent to which subpart LP (Tax credits for supplementary dividends) applies:

(c) CTR additional dividends, to the extent to which subpart LQ (Tax credits of conduit tax relief companies) applies:

(d) imputation credits, to the extent to which section LE 6 (Partners in partnerships) applies:

(e) FDP credits, to the extent to which section LF 4 (Partners in partnerships) applies.

Defined in this Act: arrangement, CTR additional dividend, FDP credit, imputation credit, income, partner, partnership, partnership share, rebate supplementary dividend, tax credit

Section HG 2: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HG 3 General provisions relating to disposals

Relationship between disposal upon dissolution and disposal safe harbours

(1) Section HG 4 overrides sections HG 5 to HG 10.

Election out of disposal safe harbours for small partnerships

(2) Sections HG 5 to HG 9 do not apply for the partners of a small partnership if the entering partner, the exiting partner, and the partnership, furnish returns of income that ignore the sections.

Election in for specified livestock disposed of to entering partner

(3) Section HG 10 applies for an entering partner if the entering partner furnishes a return of income that applies the section.

Section HG 3: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 3(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 269(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 3(3) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 269(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 3(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 269(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HG 4 Disposal upon final dissolution

When this section applies

(1) This section applies when a partnership is finally dissolved by agreement of the partners, court order, or otherwise, and the partnership's business ignoring section HG 2 will not continue to be carried on in partnership.

Disposal and re-acquisition

(2) A partner of the partnership is treated as disposing of all of their partner's interests in the partnership, immediately before the dissolution, to a single third party for a payment equal to the interests' market value. The partner is treated as re-acquiring all of their partner's interests immediately after the dissolution, from the third party for a payment equal to the interests' market value.

Receipt upon dissolution

(3) Anything received by a partner in relation to the final dissolution of the partnership is ignored.

Exclusion: actual disposal to third party

(4) This section does not apply to the extent to which a partner of the partnership disposes of their partner's interests in the partnership to persons who are not associated with them. For the purposes of testing association, the partners' partnership capacity is ignored.

Exclusion: partnerships of persons in marriage, civil union, or de facto relationships

(5) This section does not apply if—

(a) immediately before the dissolution, there are only 2 partners of the partnership and they are married to each other, in a civil union together, or in a de facto relationship together; and

(b) the dissolution is caused by death of a partner, or the dissolution relates to the settlement of relationship property; and

(c) on dissolution, all partner's interests of 1 person are transferred, ignoring any intervening transfer to an executor or administrator, to the other person; and

(d) the transfers of those partner's interests are subject to provisions in subpart FB or FC (which relate to transfers of relationship property and gifts), and those provisions treat the transfers as disposals for amounts that are not the interests' market values.

Relationship with subject matter

(6) This section overrides sections HG 5 to HG 10.

Defined in this Act: amount, associated person, dispose, partner, partner's interests, partnership, settlement of relationship property

Section HG 4: substituted (with effect on 1 April 2008), on 6 October 2009, by section 270(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 4: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HG 5 Disposal of partner's interests

When this section applies

(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner's interests (the **current**

interests) in a partnership, if the amount calculated using the following formula is less than zero:

disposal payment + previous payments − (gross tax value − liabilities) − $50,000.

Definition of items in formula

(2) In the formula,—

(a) **disposal payment** is the total amount of consideration paid or payable to the exiting partner for the current interests:

(b) **previous payments** is the total amount of consideration paid or payable to the exiting partner for other disposals of some or all of their partner's interests (the **other interests**) that have occurred in the year before the disposal of the current interests:

(c) **gross tax value** is the total of—

(i) the value under this Act of the current interests and other interests at the time the relevant interest is disposed of, to the extent to which the interests are revenue account property or depreciable property, or financial arrangments:

(ii) the market value of the current interests and other interests at the time the relevant interest is disposed of, to the extent to which the interests are not revenue account property or depreciable property or financial arrangements:

(d) **liabilities** is the amount of liabilities under generally accepted accounting practice at the time the relevant interest is disposed of, calculated by reference to the exiting partner's partnership share for the relevant interest.

Exiting partner: excluded payment

(3) The disposal payment described in subsection (2)(a) is excluded income of the exiting partner.

Exiting partner: no deduction

(4) The exiting partner is denied any deduction in relation to the current interests for the income year in which the disposal of the interests occurs and later income years to the extent to which the entering partner is allowed a deduction because of subsection (6).

Entering partner: no deduction

(5) An entering partner is denied any deduction for the disposal payment described in subsection (2)(a).

Entering partner: stepping in

(6) For the purposes of calculating the income and deductions of an entering partner for the part of the income year after the disposal of the interests occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had originally acquired and held the current interests, not the exiting partner. However, this subsection does not apply to a deduction carried forward under section HG 12.

Exclusion by election

(7) This section does not apply for the partners of a small partnership if section HG 3(2) applies.

Relationship with section HG 4

(8) Section HG 4 overrides this section.

Defined in this Act: deduction, depreciable property, dispose, entering partner, excluded income, financial arrangement, income tax liability, partner, partner's interests, partnership, partnership share, return of income, revenue account property, year

Section HG 5: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 5(2)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 271(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 5(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 271(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 5 list of defined terms **depreciable property**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 271(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 5 list of defined terms **financial arrangement**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 271(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 5 list of defined terms **revenue account property**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 271(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HG 6 Disposal of trading stock

When this section applies

(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner's interests in a partnership, to the extent to which those interests include trading stock that is not livestock, and, for the income year of disposal, the total turnover of the partnership, ignoring section HG 2, is $3,000,000 or less.

Exiting partner: excluded payment

(2) The amount of consideration paid or payable to the exiting partner for the trading stock is excluded income of the exiting partner.

Exiting partner: no deduction

(3) The exiting partner is denied any deduction in relation to the trading stock for the income year in which the disposal of the trading stock occurs and later income years, to the extent to which the entering partner is allowed a deduction because of subsection (5).

Entering partner: no deduction

(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the trading stock.

Entering partner: stepping in

(5) For the purposes of calculating the income tax liability of an entering partner, the entering partner is treated as if they had acquired and held the trading stock, not the exiting partner.

Exclusion by election

(6) This section does not apply for the partners of a small partnership if section HG 3(2) applies.

Relationship with section HG 4

(7) Section HG 4 overrides this section.

Defined in this Act: deduction, dispose, entering partner, excluded income, income tax liability, partner, partner's interests, partnership, small partnership, trading stock, turnover

Section HG 6: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 6(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 272(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HG 7 Disposal of depreciable property

When this section applies

(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner's interests in a partnership, to the extent to which those interests include an item of depreciable property that is not depreciable intangible property, and the total cost of the item when it was first acquired by the partners of the partnership is $200,000 or less.

Exiting partner: excluded payment

(2) The amount of consideration paid or payable to the exiting partner for the depreciable property is excluded income of the exiting partner.

Exiting partner: no deduction

(3) The exiting partner is denied any deduction in relation to the depreciable property for the income year in which the disposal of the depreciable property occurs and later income years, to the extent to which the entering partner is allowed a deduction because of subsection (5).

Entering partner: no deduction

(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the depreciable property.

Entering partner: stepping in

(5) For the purposes of calculating the income tax liability of an entering partner for the part of the income year after the disposal of the depreciable property occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had originally acquired and held the depreciable property, not the exiting partner.

Exclusion by election

(6) This section does not apply for the partners of a small partnership if section HG 3(2) applies.

Relationship with section HG 4

(7) Section HG 4 overrides this section.

Defined in this Act: deduction, depreciable intangible property, depreciable property, dispose, entering partner, excluded income, income tax liability, partner, partner's interests, partnership, small partnership

Section HG 7: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 7(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 273(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HG 8 Disposal of financial arrangements and certain excepted financial arrangements

When this section applies

(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner's interests in a partnership, to the extent to which those interests include a financial arrangement or an excepted financial arrangement described in section EW 5(10) (What is an excepted financial arrangement?) and, ignoring section HG 2—

(a) the purpose for which the financial arrangement or excepted financial arrangement was entered into was necessary and incidental to the business of the partnership; and

(b) the partnership does not derive income from a business of holding financial arrangements.

Exiting partner: excluded payment

(2) The amount of consideration paid or payable to the exiting partner for the relevant financial arrangement or excepted financial arrangement is excluded income of the exiting partner. The exiting partner is, for the relevant financial arrangement, a party that is not required to calculate a base price adjustment, despite section EW 29 (When calculation of base price adjustment required).

Exiting partner: no deduction

(3) The exiting partner is denied any deduction in relation to the relevant financial arrangement or excepted financial arrangement for the income year in which the disposal of the finan-

cial arrangement or excepted financial arrangement occurs and later income years.

Entering partner: no deduction

(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the relevant financial arrangement or excepted financial arrangement.

Entering partner: stepping in

(5) For the purposes of calculating the income tax liability of an entering partner for the part of the income year after the disposal of the relevant financial arrangement or excepted financial arrangement occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had acquired and held the financial arrangement or excepted financial arrangement, not the exiting partner.

Exclusion by election

(6) This section does not apply for the partners of a small partnership if section HG 3(2) applies.

Relationship with section HG 4

(7) Section HG 4 overrides this section.

Defined in this Act: deduction, disposal entering partner, excepted financial arrangement, excluded income, financial arrangement, income tax liability, partner, partner's interests, partnership, small partnership

Section HG 8: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 8(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 274(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HG 9 Disposal of short-term agreements for sale and purchase

When this section applies

(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner's interests in a partnership, to the extent to which those interests include a short-term agreement for sale and purchase.

Exiting partner: excluded payment

(2) The amount of consideration paid or payable to the exiting partner for the short-term agreement for sale and purchase is excluded income of the exiting partner.

Exiting partner: no deduction

(3) The exiting partner is denied any deduction in relation to the short-term agreement for sale and purchase, to the extent to which the entering partner is allowed a deduction because of subsection (5).

Entering partner: no deduction

(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the short-term agreement for sale and purchase.

Entering partner: stepping in

(5) For the purposes of calculating the income tax liability of an entering partner for the part of the income year after the disposal of the short-term agreement for sale and purchase occurs and later income years (the **post-disposal periods**), the entering partner is treated for the post-disposal periods as if they had originally acquired and held the short-term agreement for sale and purchase, not the exiting partner.

Exclusion by election

(6) This section does not apply for the partners of a small partnership if section HG 3(2) applies.

Relationship with section HG 4

(7) Section HG 4 overrides this section.

Defined in this Act: deduction, disposal entering partner, excluded income, income tax liability, partner, partner's interests, partnership, short-term agreement for sale and purchase, small partnership

Section HG 9: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 9 heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 275(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 275(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 275(1)(c) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 275(1)(d) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 275(1)(e) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 275(1)(f) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 275(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9 list of defined terms **short-term agreement for sale and purchase**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 275(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 9 list of defined terms **short-term agreement for the sale and purchase of property or services**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 275(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HG 10 Disposal of livestock

When this section applies

(1) This section applies when a person disposes of some or all of their partner's interests to an entering partner and section HG 3(3) applies, to the extent to which those interests include specified livestock and that specified livestock includes female breeding livestock and, for the income year, the partners use—

(a) the national standard cost scheme for specified livestock, described in section EC 22 (National standard cost scheme); or

(b) the cost price method for specified livestock, described in EC 25 (Cost price, replacement price, or market value).

Entering partner's cost base

(2) Section EC 26B (Entering partners' cost base) may apply to the entering partner for the purposes of determining the value of the specified livestock at the end of an income year for the purposes of section EC 2 (Valuation of livestock).

Defined in this Act: amount, cost price, dispose, income year, national standard cost scheme, partner, partner's interest, specified livestock

Section HG 10: substituted (with effect on 1 April 2009), on 6 October 2009, by section 276(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 10: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HG 11 Limitation on deductions by partners in limited partnerships

When this section applies

(1) This section applies for a limited partnership and an income year when, but for this section, a deduction by virtue of section HG 2 or HG 12 is allowed to—

(a) a limited partner of the limited partnership:

(b) a general partner of the partnership who—

(i) was a limited partner of the limited partnership within 60 days of the last day of the income year; and

(ii) is or will be a limited partner of the limited partnership within 60 days after the last day of the income year.

No deduction

(2) The partner is denied the deduction for an income year to the extent to which their limited partnership deduction for the income year is greater than the amount (the **partner's basis**) calculated using the formula in subsection (3) on the last day of the income year.

Partner's basis

(3) For the purposes of subsection (2), the amount that is the partner's basis is calculated using the following formula:

investments − distributions + income − deductions − disallowed amount.

Definition of items in formula

(4) The items in the formula are defined in subsections (5) to (9).

Investments

(5) **Investments** is the total of—

(a) the market value of capital contributions made by the partner to the limited partnership at the time the relevant contribution is contributed or agreed to be contributed by them:

(b) the amount paid by the partner for the assignment of capital contributions to them:

(c) the secured amounts.

Distributions

(6) **Distributions** is the total of—

(a) the market value of distributions to the partner from the limited partnership:

(b) the amount paid to the partner for the assignment of capital contributions by them.

Income

(7) **Income** is the total of—

(a) income that the partner has by virtue of section HG 2 in the income year and previous income years, excluding dividends paid by a FIF for which the partner has FIF income to the extent to which those dividends are equal to or less than the partner's FIF income for the relevant income year:

(b) capital gain amounts under section CD 44(7)(a) (Available capital distribution amount) that the partner would have by virtue of section HG 2 in the income year and previous income years, if the partner were treated as a company for the purposes of section CD 44(7)(a), unless the gain is accounted for under paragraph (a):

(c) assessable income that the partner has in previous income years from goods and services they contributed to the limited partnership, if the income is not accounted for under subsection (5) or paragraph (a) or (b) of this subsection.

Deductions

(8) **Deductions** is the total of—

(a) expenditure or loss in previous income years, to the extent to which the expenditure or loss is incurred by virtue of section HG 2 in the partner deriving income by virtue of section HG 2, excluding any deductions denied in those previous years under this section:

(b) capital loss amounts under section CD 44(9) that the partner would have by virtue of section HG 2 in the income year and previous income years, if the partner

is treated as a company for the purposes of section CD 44(9), unless the loss is accounted for under paragraph (a):

(c) deductions that the partner is allowed in previous income year in relation to assessable income described in subsection (7)(c), if the deduction is not accounted for under subsection (6) or paragraphs (a) or (b) of this section.

Disallowed amounts

(9) **Disallowed amount** is the amount of investments, as defined in subsection (5), made by the partner within 60 days of the last day of the income year, if those investments are or will be distributed or reduced within 60 days after the last day of the income year.

Exclusion

(10) This section does not deny a partner (the **exiting partner**) a deduction that is equal to or less than the amount of net income that the exiting partner has for the amount paid or payable to the exiting partner for the disposal of their partner's interests, ignoring other transactions.

Relationship with subject matter

(11) This section is modified by sections HZ 3, HZ 4, and HZ 4B (which relate to transitions to limited partnerships).

Some definitions

(12) In this section,—

capital contribution includes a capital contribution for the purposes of the Limited Partnerships Act 2008

limited partnership deduction means, for the partner and the income year, the amount of any deductions that the partner would be allowed if the partner is treated as having no income or deductions other than those that arise by virtue of sections HG 2 and HG 12

partner's associate means, for a partner, a person who is not a partner of the relevant limited partnership, and who is—

(a) a relative of the partner:

(b) a company in the same wholly-owned group as the partner

secured amounts means, for the partner, the lesser of—

(a) the amount of the limited partnership's debt ignoring section HG 2 (the **debt**) that the partner or the partner's associate secures by a guarantee or indemnity:

(b) the amount that results from dividing the amount described in paragraph (a) by the number of partners who are jointly and severally liable for the debt:

(c) the amount that is the market value of property against which the guarantee or indemnity may be enforced, treating the partner's interests as having a market value of zero:

(d) the proportion of the amount described in paragraph (c) that is attributable to the partner in the case of the partners being jointly and severally liable for the debt.

Defined in this Act: amount, capital contribution, deduction, dividends, entering partner, FIF, FIF income, income, income year, limited partnership deduction, net income, net loss, partner, partner's associate, partnership

Section HG 11: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 11(8)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 277 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HG 11(11): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 81(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HG 12 Limitation on deductions by partners in limited partnerships: carry-forward

When this section applies

(1) This section applies when, for an income year, a partner is denied a deduction under section HG 11.

Carry-forward

(2) The partner is allowed a deduction, for an amount for which the partner is denied a deduction under section HG 11, for the income year (the **later income year**) after the one for which it is denied under section HG 11, unless—

(a) the limited partnership ceases to be a limited partnership in the later year:

(b) the partner ceases to be a partner in the later year

Carry-forward: resumption

(2B) If a person would have been allowed a deduction but for the application of subsection (2)(b) for the later year, they are allowed a deduction for the amount for the first income year after the later year in which they resume being a partner in the limited partnership.

Relationship with subject matter

(3) The deduction allowed under this section is subject to section HG 11, to the extent to which that section applies to the deduction and the relevant partner.

Defined in this Act: amount, deduction, income year, limited partner

Section HG 12: inserted, on 1 April 2008, by section 19(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section HG 12(2): amended (with effect on 1 April 2008), on 21 December 2010, by section 82(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HG 12(2B) heading: inserted (with effect on 1 April 2008), on 21 December 2010, by section 82(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HG 12(2B): inserted (with effect on 1 April 2008), on 21 December 2010, by section 82(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Subpart HL—Portfolio investment entities

[Repealed]

Subpart HL: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provisions

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 1 Intended effect on portfolio tax rate entities and investors

[Repealed]

Section HL 1: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 2 Scheme of subpart

[Repealed]

Section HL 2: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Eligibility requirements: portfolio investment entities and foreign investment vehicles
[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 3 Eligibility requirements for entities

[Repealed]

Section HL 3: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 4 Effect of failure to meet eligibility requirements for entities

[Repealed]

Section HL 4(2) heading (as it read immediately before repeal on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 64(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 4(2) (as it read immediately before repeal on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 64(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 4(3) heading (as it read immediately before repeal on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 64(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 4(3) (as it read immediately before repeal on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 64(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 4: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 5 Foreign investment vehicles

[Repealed]

Section HL 5: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 5B Meaning of investor and portfolio investor class

[Repealed]

Section HL 5B: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 5C Income interest requirement

[Repealed]

Section HL 5C: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 6 Investor membership requirement

[Repealed]

Section HL 6: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 7 Investor return adjustment requirement: portfolio tax rate entity

[Repealed]

Section HL 7: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 8 Imputation credit distribution requirement: portfolio listed company

[Repealed]

Section HL 8: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 9 Investor interest size requirement

[Repealed]

Section HL 9(2) (as it read immediately before repeal on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 65(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 9(3) (as it read immediately before repeal on 1 April 2010 and applying for the 2008-09 and later income years): amended (with effect on 1 April 2008), on 21 December 2010, by section 83(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HL 9: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 10 Further eligibility requirements relating to investments

[Repealed]

Section HL 10: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Becoming and ceasing to be portfolio investment entity

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 11 Election to become portfolio investment entity and cancellation of election

[Repealed]

Section HL 11: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 12 Unlisted company choosing to become portfolio listed company

[Repealed]

Section HL 12: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 13 Becoming portfolio investment entity

[Repealed]

Section HL 13: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 14 Tax consequences from transition

[Repealed]

Section HL 14: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 15 Ceasing to be portfolio investment entity

[Repealed]

Section HL 15: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Periods relevant to calculation of portfolio entity tax liability

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 16 Portfolio allocation period and portfolio calculation period

[Repealed]

Section HL 16: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Allocation of income in some cases

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 17 Treatment of income from interest when entitlement conditional or lacking

[Repealed]

Section HL 17: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 18 Certain new investors treated as part of existing portfolio investor class

[Repealed]

Section HL 18: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculating portfolio entity tax liability
[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 19 Portfolio class net income and portfolio class net loss for portfolio allocation period

[Repealed]

Section HL 19: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 19B Treatment of certain provisions made by portfolio tax rate entity

When this section applies

(1) This section applies for the purposes of section HL 19 when—

(a) a portfolio tax rate entity—

(i) is likely to have future income:

(ii) makes a provision for future expenditure or loss; and

(b) the amount—

(i) is reflected in the entity's valuation of portfolio investor interests; or

(ii) if subparagraph (i) does not apply, is shown in its financial statements.

Future amounts

(2) For the purposes of determining an amount for a portfolio allocation period under section HL 19(3), a portfolio tax rate entity may take account of an amount of future income or future expenditure or loss that is—

(a) for future income, an amount that, when derived, would be class assessable income under section HL 19(4)(a):

(b) for future expenditure or loss,—

(i) an expense likely to be incurred by the entity in the tax year in which the portfolio allocation period falls, or within 93 days after the end of the tax year; and

(ii) an amount that, when incurred, would be a class deduction under section HL 19(4)(b).

Reasonable estimation

(3) For the purposes of subsection (2), the entity must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—

(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and

(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

Credit impairment provisions

(4) A portfolio tax rate entity may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in subsection (2)(b)(i) does not apply in relation to a credit impairment provision.

Defined in this Act: amount, deduction, income, NZIAS 39, portfolio allocation period, portfolio investor interest, portfolio tax rate entity, tax year

Section HL 19B: inserted (with effect on 1 April 2008), on 21 December 2010, by section 84(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HL 20 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period

[Repealed]

Section HL 20: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 21 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period

[Repealed]

Section HL 21: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Payment by portfolio tax rate entity of tax for tax year

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 22 Payments of tax by portfolio tax rate entity making no election

[Repealed]

Section HL 22: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 23 Payments of tax by portfolio tax rate entity choosing to pay provisional tax

[Repealed]

Section HL 23: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 24 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves

[Repealed]

Section HL 24: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 25 Optional payments of tax by portfolio tax rate entities

[Repealed]

Section HL 25: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Results for investors

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 26 Portfolio investor allocated income and portfolio investor allocated loss

[Repealed]

Section HL 26: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 27 Treatment of portfolio investor allocated loss for zero-rated portfolio investors and investors with portfolio investor exit period

[Repealed]

Section HL 27: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Tax credits for entity

[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 28 Treatment of portfolio investor allocated loss for other investors

[Repealed]

Section HL 28: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 29 Credits received by portfolio tax rate entity or portfolio investor proxy

[Repealed]

Section HL 29: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Treatment of losses for entity
[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 30 Portfolio entity formation loss

[Repealed]

Section HL 30: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 31 Portfolio class taxable income and portfolio class taxable loss for tax year

[Repealed]

Section HL 31: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 32 Treatment of portfolio class taxable loss and portfolio class land loss for tax year

[Repealed]

Section HL 32(3)(a)(i) (as it read immediately before repeal on 1 April 2010, relating to the period between 1 October 2007 to 31 March 2010): substituted (with effect on 1 October 2007), on 7 September 2010 (applying for the 2008–09 and later income years), by section 66(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 32(4) heading (as it read immediately before repeal on 1 April 2010, relating to the period between 1 October 2007 to 31 March 2010): added (with effect on 1 October 2007), on 7 September 2010 (applying for the 2008–09 and later income years), by section 66(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 32(4) (as it read immediately before repeal on 1 April 2010, relating to the period between 1 October 2007 to 31 March 2010): added (with effect on 1 October 2007), on 7 September 2010 (applying for the 2008–09 and

later income years), by section 66(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 32(4) list of defined terms **non-resident** (as it read immediately before repeal on 1 April 2010, relating to the period between 1 October 2007 to 31 March 2010): added (with effect on 1 October 2007), on 7 September 2010, by section 66(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 32(4) list of defined terms **resident in New Zealand** (as it read immediately before repeal on 1 April 2010, relating to the period between 1 October 2007 to 31 March 2010): added (with effect on 1 October 2007), on 7 September 2010, by section 66(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 32(4) list of defined terms **voting interest** (as it read immediately before repeal on 1 April 2010, relating to the period between 1 October 2007 to 31 March 2010): added (with effect on 1 October 2007), on 7 September 2010, by section 66(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HL 32: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Portfolio investor proxies
[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HL 33 Portfolio investor proxies
[Repealed]

Section HL 33: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart HM—Portfolio investment entities

Subpart HM: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provisions

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 1 Outline of subpart and relationship with other Parts

Subpart HM

(1) This subpart sets out—

(a) the entry and exit rules for portfolio investment entities, *see* sections HM 7 to HM 30:

(b) who an investor is, and what an investor class is, *see* sections HM 4 and HM 5:

(c) what a multi-rate PIE must do in relation to its investors and its investments, *see* sections HM 31 to HM 63:

(d) the treatment of losses by PIEs, *see* sections HM 64 to HM 70:

(e) how an entity makes an election to become a PIE, and the consequences of making the election, *see* sections HM 71 to HM 76.

Relationship with Parts C and D

(2) The following sections apply to portfolio investment entities:

(a) section CB 26 (Disposal of certain shares by portfolio investment entities):

(b) section CP 1 (Attributed income of investors in multi-rate PIEs):

(c) section CX 55 (Proceeds from disposal of investment shares):

(d) section CX 56 (Attributed income of certain investors in multi-rate PIEs):

(e) section CX 56B (Distributions to investors in multi-rate PIEs):

(f) section CX 56C (Distributions to investors by listed PIEs):

(g) section CX 57 (Credits for investment fees):

(h) section DB 53 (Attributed PIE losses of certain investors):

(i) section DB 54 (Treatment of credits for investment fees):

(ib) section DB 54B (Expenditure incurred by foreign investment PIEs):

(j) sections DV 2, DV 4, and DV 5 (which relate to transfers of expenditure to a master superannuation fund that is a PIE).

Outline of provisions related to particular PIEs

(2B) Certain PIEs either have special rules related to their activities or are affected by some particular rules. These are set out below:

(a) for a listed PIE, *see* the following:

(i) section CX 56C (Distributions to investors by listed PIEs):

(ii) section EZ 63 (Disposal and acquisition upon entry):

(iii) section HM 2(3), which relates to listed PIEs becoming multi-rate PIEs:

(iv) section HM 18, which describes how an unlisted company becomes a listed PIE:

(v) section HM 19, which relates to distributions of listed PIEs:

(vi) section HM 21(4), for a transitional provision for investors in listed PIEs:

(vii) section HM 28, for the consequences when a listed PIE does not meet a distributional requirement:

(viii) sections MB 1(5) and MB 11, which relate to family scheme income:

(b) for a life fund PIE, *see* the following:

(i) section CX 55 (Proceeds from disposal of investment shares):

(ii) section DR 1(2) (Policyholder base allowable deduction of life insurer):

(iii) section EY 1(2) (What this subpart does):

(iv) section EY 2(6) (Policyholder base):

(v) section HM 4, which is about who can be an investor:

(vi) section HM 10, which excludes entities other than life fund PIEs carrying on a business of life insurance:

(vii) section HM 17, for an additional entry rule for PIEs other than life fund PIEs:

(viii) section HM 19, for an additional entry rule for listed PIEs other than life fund PIEs:

(ix) section HM 26, for an exit rule for entities other than life fund PIEs starting a life insurance business:

(x) section OB 35B (ICA debit for transfer from tax pooling account for policyholder base liability):

(xi) section OP 33B (Consolidated ICA debit for transfer from tax pooling account for policyholder base liability):

(c) for a foreign investment PIE, *see* the following:

(i) section CX 56 (Attributed income of certain investors in multi-rate PIEs):

(ii) section CX 56B (Distributions to investors in multi-rate PIEs):

(iii) section DB 54B (Expenditure incurred by foreign investment PIEs):

(iv) section HM 6B, for the optional look-through treatment of income derived from other PIEs:

(v) section HM 19B, for the particular requirements for foreign investment zero-rate PIEs:

(vi) section HM 19C, for the particular requirements for foreign investment variable-rate PIEs:

(vii) section HM 35C, which is about the determination of the income tax liability of a foreign investment PIE and the calculation of attributed PIE income for a notified foreign investor:

(viii) sections HM 41(4) and HM 44(1B), for restrictions on the calculation method available to foreign investment PIEs:

(ix) section HM 44B, for an additional calculation method for foreign investment PIEs:

(x) section HM 47, which is about the calculation of the tax liability or tax credit of a foreign investment PIE:

(xi) sections HM 55C to HM 55H, for the special requirements for foreign investment PIEs and their investors:

(xii) section HM 71B, for the election mechanism for foreign investment PIEs:

(xiii) schedule 6, tables 1 and 1B, for the prescribed tax rates for certain non-resident investors in foreign investment PIEs and the rates applying to certain sources of income attributed to investors:

(xiv) section 28D of the Tax Administration Act 1994, for the information required from notified foreign investors.

Relationship with subpart LS

(3) Subpart LS (Tax credits for multi-rate PIEs and investors) contains the rules relating to the amount and use of a tax credit arising under this subpart.

Defined in this Act: amount, investor, investor class, multi-rate PIE, PIE, portfolio investment entity, tax credit

Compare: 2007 No 97 ss HL 1, HL 2

Section HM 1: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 1(2)(ib): inserted, on 29 August 2011, by section 51(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 1(2B) heading: inserted, on 29 August 2011, by section 51(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 1(2B): inserted, on 29 August 2011, by section 51(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 2 What is a portfolio investment entity?

Meaning

(1) A portfolio investment entity (a **PIE**) is a company or fund that—

(a) makes investments on behalf of 1 or more investors in the entity or in an investor class of the entity; and

(b) meets and maintains the requirements for PIE status; and

(c) chooses to become a PIE by notifying the Commissioner.

PIE types

(2) An entity that chooses to become a PIE must be 1 of the following types of entity:

(a) a multi-rate PIE:

(b) a listed PIE:

(c) a benefit fund PIE:

(d) a life fund PIE:

(e) a foreign investment PIE that is either a foreign investment zero-rate PIE or a foreign investment variable-rate PIE.

Listed PIEs becoming multi-rate PIEs

(3) Despite subsection (2), an entity that chooses to become a listed PIE may choose to become a multi-rate PIE if it meets the requirements of the entry rules set out in sections HM 7 to HM 30.

Foreign investment PIEs

(4) The provisions of the PIE rules as they relate to multi-rate PIEs apply in the same manner to foreign investment PIEs, unless a provision expressly states otherwise.

Defined in this Act: benefit fund PIE, Commissioner, company, foreign investment PIE, foreign investment variable-rate PIE, foreign investment zero-rate PIE, investor, investor class, life fund PIE, listed PIE, multi-rate PIE, notify, PIE, portfolio investment entity

Compare: 2007 No 97 s YA 1 "portfolio investment entity"

Section HM 2: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 2(2)(d): amended, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 52(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 2(2)(e): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 52(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 2(4) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 52(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 2(4): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 52(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 2 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 52(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 2 list of defined terms **foreign investment variable-rate PIE**: inserted, on 29 August 2011, by section 52(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 2 list of defined terms **foreign investment zero-rate PIE**: inserted, on 29 August 2011, by section 52(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 3 Foreign PIE equivalents

A **foreign PIE equivalent** means an entity that—

(a) is not resident in New Zealand; and

(b) is—

(i) a company:

(ii) a superannuation scheme:

(iii) the trustee of a trust that would be a unit trust if it had more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust; and

(c) meets the requirements relating to investment types, income sources, and maximum shareholding in investments in sections HM 11 to HM 13; and

(d) has investors that would qualify as an investor class under section HM 14 taking into account the limitations under sections HM 21(1) and HM 22; and

(e) if it has investors who are resident in New Zealand, those investors meet the requirements relating to investor interests in section HM 15 taking into account the limitations under sections HM 21(2) to (4) and HM 22.

Defined in this Act: company, investor, investor class, investor interest, resident in New Zealand, superannuation scheme, trustee, unit trust

Compare: 2007 No 97 s HL 5(1)

Section HM 3: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 3(e): substituted (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 85(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 4 Who is an investor?

An **investor** in a PIE or foreign PIE equivalent means—

(a) for an entity that is a company, a shareholder in a company:

(b) for a life fund PIE, a person whose benefits under the relevant life insurance policy are directly linked to the value of investments held in the PIE:

(c) for an entity that is not a company or a life fund PIE, a person who is entitled to a proportion of the funds available for distribution by the entity—

(i) under the rules of the entity or terms of the trust under which the entity is established; and

(ii) as if the entity were a company and the person were a shareholder in the company.

Defined in this Act: company, foreign PIE equivalent, investor, life fund PIE, life insurance policy, PIE, share, shareholder

Compare: 2007 No 97 s HL 5B(1)

Section HM 4: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 5 What is an investor class?

Meaning of investor class

(1) An **investor class** of an entity means a group of 1 or more investors in the entity that meet the requirements of subsections (2) to (4).

Entitlement to distributions

(2) Each investor in the group must have an entitlement to a distribution by the entity of proceeds from the entity's investments that means the requirements of subsections (3) and (4) are met.

Same investments

(3) The investments must be the same for all investors in the group.

Similar proportionate entitlement

(4) Each investor's interest in the investment as a proportion of the value of their entitlement must not differ from the average value for the group and the investment by 2.5% or more unless—

(a) the investment is an arrangement under which the PIE is assured of receiving sufficient proceeds from the investments to repay each investor in the group an amount contributed to it; and:

(b) the excess in any difference between the proportion for the investor and the average value for the group arises

from differences between the notified investor rates of those investors in the group.

Defined in this Act: arrangement, investor, investor class, notified investor rate, pay

Compare: 2007 No 97 s HL 5B(2), (3)

Section HM 5: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 5(4)(a): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 86(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 5(4)(b): amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 53(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 5 list of defined terms **investor interest**: repealed (with effect on 1 April 2010), on 21 December 2010, by section 86(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 5 list of defined terms **notified investor rate**: inserted (with effect on 1 April 2010), on 29 August 2011, by section 53(2)(a) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 5 list of defined terms **notified tax rate**: repealed (with effect on 1 April 2010), on 29 August 2011, by section 53(2)(b) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 6 Intended effects for multi-rate PIEs and investors

Intended effects for entity

(1) The intended effects for an entity that is using funds supplied by investors to make investments of certain types and that meets the requirements for multi-rate PIE status are that—

(a) in relation to proceeds of the investments that are attributed to investors who are natural persons or certain trustees, the PIE has a tax liability—

(i) calculated using a tax rate for each investor; and

(ii) resembling the total tax liability the group of investors would have if the investors were to make the investments separately:

(ab) in relation to proceeds of the investments that are attributable to notified foreign investors in a foreign investment PIE, the PIE has a tax liability—

(i) calculated using a tax rate that is appropriate having regard to the income source and investment type; and

(ii) resembling the tax liability of the investor if they were to make the investment directly:

(b) the PIE has no tax liability on proceeds of the investments that are attributed to other investors:

(c) the PIE allocates to each investor amounts resembling the amounts that the investor would receive, after allowing for the tax paid by the PIE if making the investment separately.

Intended effects for investors

(2) The intended effects for an investor in the multi-rate PIE are that—

(a) the investor has no tax liability on income arising from proceeds for which the PIE has a tax liability, unless—

(i) the investor has given the PIE a rate that is lower than the correct rate:

(ii) the investor has been treated by a foreign investment PIE as a notified foreign investor for a period in which they do not in fact meet the requirements of section HM 55D for notified foreign investor status:

(b) the investor is liable for tax on any assessable income arising from proceeds for which the PIE has no tax liability:

(c) the investor receives on the investment in the PIE an economic return that the investor would receive after payment of tax liabilities if personally making investments similar to those made by the PIE in which they have an investor interest.

Defined in this Act: amount, assessable income, foreign investment PIE, investor, investor interest, multi-rate PIE, notified foreign investor, pay, PIE, tax, trustee

Compare: 2007 No 97 s HL 1(2)(a)

Section HM 6: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 6(1)(a): amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 54(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 6(1)(ab): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified

foreign investor in the PIE), by section 54(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 6(2)(a): substituted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 54(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 6(2)(b): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 87(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 6 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 54(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 6 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 54(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 6B Optional look-through rules for PIEs

When this section applies

(1) This section applies when—

(a) a PIE (a **retail PIE**) derives an amount of attributed PIE income from another PIE (a **wholesale PIE**); and

(b) the retail PIE has sufficient information about the income derived by the wholesale PIE to enable it to account for the amount and to discharge its tax obligations in relation to the amount.

Look-through treatment

(2) The retail PIE may choose to apply a look-through approach to the amount, treating the amount as if it were not received by the wholesale PIE but derived directly from the person who paid the amount to the wholesale PIE.

Foreign investment PIEs

(3) When a retail PIE that is a foreign investment variable-rate PIE derives an amount allowable under section HM 55G from a wholesale PIE that meets the requirements of section HM 19B(1), the retail PIE may treat the amount as a foreign-sourced amount.

Defined in this Act: amount, attributed PIE income, foreign investment variable-rate PIE, foreign investment zero-rate PIE, foreign-sourced amount, income, pay, PIE

Section HM 6B: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified for-

eign investor in the PIE), by section 55(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Entry rules

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 7 Requirements

For an entity to be a PIE, it must—

(a) meet the requirements of the entry rules in sections HM 8 to HM 10, HM 17, HM 18, and HM 20, as applicable; and

(b) be 1 of the types of entity referred to in section HM 2(2); and

(c) choose under section HM 71 or HM 71B to become a PIE; and

(d) maintain the requirements of the rules in sections HM 8 to HM 20, as applicable; and

(e) not lose PIE status under the exit rules in sections HM 24 to HM 30.

Defined in this Act: PIE

Compare: 2007 No 97 ss HL 2(2), HL 15(1), (2)

Section HM 7: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 7(c): amended, on 29 August 2011, by section 56 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Requirements

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 8 Residence in New Zealand

Requirements

(1) The entity must be—

(a) resident in New Zealand; and

(b) not treated under a double tax agreement as not resident in New Zealand.

Foreign investment zero-rate PIEs

(2) Section HM 19B(2) modifies this section.

Defined in this Act: double tax agreement, resident in New Zealand

Compare: 2007 No 97 s HL 3(10)

Section HM 8: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 8(1) heading: inserted, on 29 August 2011, by section 57(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 8(2) heading: added, on 29 August 2011, by section 57(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 8(2): added, on 29 August 2011, by section 57(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 9 Collective schemes

The entity must be—

(a) a company:

(b) a superannuation scheme:

(c) the trustee of a trust that would be a unit trust if there were more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust:

(d) a separate identifiable fund forming part of a life insurer that holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund:

(e) the trustees of a group investment fund in relation to income derived by them to the extent to which the income is not treated as income derived by a company under paragraph (a).

Defined in this Act: company, life insurance policy, life insurer, superannuation scheme, trustee, unit trust

Section HM 9: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 9(d): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 88(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 9(e): added (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 88(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 10 Exclusion: life insurance business

The entity must not carry on a business of life insurance unless it is a life fund PIE.

Defined in this Act: life fund PIE, life insurance

Compare: 2007 No 97 s HL 3(9)

Section HM 10: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 11 Investment types

Types

(1) The entity's investments, to the extent of 90% or more by value of its assets, must be—

(a) an interest in land:

(b) a financial arrangement:

(c) an excepted financial arrangement:

(d) a right or option in relation to property listed in paragraphs (a) to (c).

Foreign investment zero-rate PIEs

(2) Section HM 19B(2) overrides this section.

Foreign investment variable-rate PIEs

(3) Section HM 19C(1) overrides subsection (1)(a).

Defined in this Act: excepted financial arrangement, financial arrangement, land

Compare: 2007 No 97 s HL 10(1)

Section HM 11: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 11(1) heading: inserted, on 29 August 2011, by section 58(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 11(2) heading: added, on 29 August 2011, by section 58(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 11(2): added, on 29 August 2011, by section 58(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 11(3) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 58(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 11(3): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 58(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 12 Income types

Nature of income

(1) Income derived by the entity, to the extent of 90% or more, must—

(a) be derived from property referred to in section HM 11; and

(b) consist of the following:

(i) a dividend:

(ii) a replacement payment:

(iii) an amount of income treated under subpart EW (Financial arrangements rules) as derived by the entity:

(iv) an amount of income derived from a lease of land, but this subparagraph does not apply if the lessee under the lease is associated with the entity receiving the amount:

(v) an amount derived from the disposal of property referred to in section HM 11:

(vi) FIF income:

(vii) attributed PIE income:

(viii) a distribution from a superannuation fund:

(ix) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 40 (Superannuation fund deriving amount from life insurance policy).

Foreign investment zero-rate PIEs

(2) Section HM 19B(2) overrides this section.

Foreign investment variable-rate PIEs

(3) Section HM 19C(2) overrides subsection (1)(a) and (b)(v).

Defined in this Act: amount, associated person, attributed PIE income, dividend, FIF income, income, land, lessee, replacement payment, superannuation fund

Compare: 2007 No 97 s HL 10(2)

Section HM 12: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 12 heading: amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 59(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(1) heading: inserted, on 29 August 2011, by section 59(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(1)(b)(viii): amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 59(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(1)(b)(ix): added (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 59(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(2) heading: added, on 29 August 2011, by section 59(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(2): added, on 29 August 2011, by section 59(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(3) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 59(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 12(3): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 59(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 13 Maximum shareholdings in investments

When this section applies

(1) This section applies when an entity has an investment consisting of shares in a company other than shares in—

(a) a PIE, or an entity that qualifies for PIE status:

(b) a foreign PIE equivalent:

(c) a land investment company.

Voting interests: companies other than unit trusts

(2) The investment must carry voting interests in the company of no more than 20%. This subsection does not apply to a unit trust. Subsection (5) overrides this subsection.

Investments in unit trusts

(3) For an investment in a unit trust, the investment must have a market value no more than 20% of the market value of all interests in the unit trust. Subsection (5) overrides this subsection.

Class requirements

(4) For each investment and each investor class of the entity, the percentage thresholds set out in subsections (2) and (3) apply to the investment by the class in the same way as they apply

to the investment by the entity. Subsection (5) overrides this subsection.

Exception for limited non-complying investments

(5) Despite subsections (2) to (4), the 20% cap in those subsections can be exceeded if the total market value of all investments where the cap is exceeded is not more than 10% of the market value of the total investments of the entity or investor class.

Certain investments of foreign investment PIEs

(6) Despite the exclusion in subsection (1)(a) and (c), if a foreign investment variable-rate PIE has an investment in a land investment company resident in New Zealand or in an entity that qualifies for PIE status, the investment must—

(a) carry voting interests in the company or entity, as applicable, of no more than 20%; or

(b) have a market value of no more than 20% of all interests in the entity, if the entity is a unit trust.

Exceeding threshold

(7) Section HM 55H(4) and (5) apply in the case of a breach of subsection (6).

Defined in this Act: company, foreign investment PIE, foreign PIE equivalent, investor class, land investment company, market value, PIE, resident in New Zealand, share, unit trust, voting interest

Compare: 2007 No 97 s HL 10(3)–(5)

Section HM 13: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 13(6) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 60(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 13(6): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 60(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 13(7) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 60(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 13(7): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified for-

eign investor in the PIE), by section 60(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 13 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 60(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 13 list of defined terms **resident in New Zealand**: inserted, on 29 August 2011, by section 60(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 14 Minimum number of investors

Requirement for entities other than listed companies

(1) If the entity is not a company listed on a recognised exchange in New Zealand, each investor class must include 20 or more persons.

Requirements for listed PIEs

(2) For listed PIEs, if the entity is a company listed on a recognised exchange in New Zealand, it must have only 1 investor class of which each investor is a member. Each investor interest must be a share traded on the exchange. This subsection applies equally to an unlisted PIE that meets the requirements of section HM 18.

Exceptions

(3) Sections HM 21(1) and HM 22 override subsection (1).

Defined in this Act: company, investor, investor class, investor interest, listed company, listed PIE, New Zealand, recognised exchange, share

Compare: 2007 No 97 s HL 6(1A), (1), (2), (4)

Section HM 14: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 14(2) heading: substituted, on 29 August 2011, by section 61(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 14(2): amended, on 29 August 2011, by section 61(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 14(3): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 46(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

HM 15 Maximum investor interests

Requirement for investors' interests

(1) An investor in an investor class must not hold more than 20% of the total investor interests in the class.

Exceptions

(2) Sections HM 21(2) to (4) and HM 22 override this section.

Defined in this Act: investor, investor class, investor interest

Compare: 2007 No 97 s HL 9(1), (6)

Section HM 15: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 15 heading: amended (with effect on 1 April 2010), on 21 December 2010, by section 89(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 15(1): amended (with effect on 1 April 2010), on 21 December 2010, by section 89(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 15(2): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 47(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 15 list of defined terms **investor interest**: inserted (with effect on 1 April 2010), on 21 December 2010, by section 89(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 16 Associates combined

For the purposes of sections HM 14 and HM 15, if a person is associated with an investor, the person and the investor are treated as 1 person, but only if both the person and the investor hold an investor interest of 5% or more. Section HM 21(5) overrides this section.

Defined in this Act: associated person, investor, investor interest

Compare: 2007 No 97 s HL 9(6)

Section HM 16: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 17 Same rights to all investment proceeds

What this section does

(1) This section is an additional entry rule for a PIE that is not a life fund PIE.

Same rights in relation to proceeds of investments

(2) All investor interests in the entity that give rights in relation to proceeds from a portfolio investment must give the same rights in relation to all types of proceeds from the investment.

Category B income excluded

(3) This section does not apply if the proceeds are category B income.

Defined in this Act: category B income, investor interest, life fund PIE, PIE, portfolio investment

Compare: 2007 No 97 s HL 5C

Section HM 17: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 18 Requirements for listed PIEs: unlisted companies

Choosing to become listed PIE

(1) A company that is not listed on a recognised exchange in New Zealand may choose under section HM 71 to become a listed PIE if it—

- (a) has 100 shareholders or more; and
- (b) has resolved to become a company listed on a recognised exchange in New Zealand if it were to obtain the required consents; and
- (c) has applied to the Securities Commission or the FMA for an exemption to disclose in a prospectus its intention to become a listed company; and
- (d) satisfies the Commissioner that the company would apply to become a listed company if it were to obtain the required consents.

Two-year period

(2) If the company is not listed within 2 years of the election, it loses PIE status from the last day of that period.

Extension of period for listing

(3) Despite subsection (2), a company does not lose PIE status at the end of the 2-year period if—

- (a) the company has met the requirements of subsection (1)(b) and (c) before 2 July 2009; and
- (b) a period of 4 years from the date on which the election takes effect has not expired.

Further extension granted by Commissioner

(4) Despite subsections (2) and (3), the Commissioner may grant a further extension of time if it is reasonable in the circumstances.

Defined in this Act: Commissioner, company, listed company, listed PIE, New Zealand, PIE, recognised exchange, shareholder

Compare: 2007 No 97 s HL 12

Section HM 18: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 18(1)(c): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section HM 18(3) heading: added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 48(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 18(3): added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 48(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 18(4) heading: added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 48(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 18(4): added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 48(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

HM 19 Requirements for listed PIEs: fully crediting distributions

What this section does

(1) This section is an additional rule for an entity that is a listed PIE other than a life fund PIE.

Fully crediting distributions

(2) When a listed PIE distributes an amount to an investor in an investor class, the distribution must be fully credited as described in section CD 43(26) (Available subscribed capital (ASC) amount) to the extent permitted by the imputation credits or FDP credits that the directors of the company determine are available.

Relationship with section CX 56C

(3) For the treatment of imputation credits when a shareholder chooses to include the distribution as income in their return

of income, *see* section CX 56C(2) (Distributions to investors by listed PIEs).

Defined in this Act: amount, company, director, FDP credit, imputation credit, income, investor, investor class, life fund PIE, listed PIE, return of income, shareholder

Compare: 2007 No 97 s HL 8

Section HM 19: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 19B Modified rules for foreign investment zero-rate PIEs

Income

(1) Despite section HM 12, the income derived by a foreign investment zero-rate PIE must consist of no amount other than—

(a) a foreign-sourced amount:

(b) an amount allowable under section HM 55G, as measured under section HM 55H.

Residence

(2) A foreign investment zero-rate PIE is resident in New Zealand for the purposes of section HM 8 if it—

(a) is a unit trust to which the Unit Trusts Act 1960 applies; and

(b) has a trustee who is resident in New Zealand.

Defined in this Act: amount, foreign investment zero-rate PIE, foreign- sourced amount, income, resident in New Zealand, trustee, unit trust

Section HM 19B: inserted, on 29 August 2011, by section 62 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 19C Modified rules for foreign investment variable-rate PIEs

Investment types

(1) Despite section HM 11(a) and (d), no investment of a foreign investment variable-rate PIE may include an interest in land in New Zealand or a right or option in relation to land in New Zealand.

Income sources

(2) Despite section HM 12(a) and (b)(v), the income derived by a foreign investment variable-rate PIE must not include an amount derived from—

(a) an interest in land in New Zealand:

(b) the disposal of an interest in land in New Zealand.

Defined in this Act: amount, foreign investment variable-rate PIE, interest, land, New Zealand

Section HM 19C: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 63(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 20 Re-entering as PIE: 5-year rule

If an entity loses PIE status through the application of sections HM 24 to HM 29, it cannot choose to become a PIE again until 5 years have passed from the date of loss of status to the date on which a new election takes effect.

Defined in this Act: PIE

Compare: 2007 No 97 s HL 3(11)

Section HM 20: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Exceptions

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 21 Exceptions for certain investors

Investor classes

(1) The rule for a minimum number of investors in section HM 14(1) does not apply if—

(a) an investor class of the entity includes at least 1 investor listed in schedule 29, part A (Portfolio investment entities: listed investors):

(b) the only income that the investor derives is exempt income under section CW 41 or CW 42 (which relate to charities).

Certain investors

(2) The rule for maximum investor interests in section HM 15(1) does not apply if the investor is—

(a) listed in schedule 29, part A or B:

(b) a person whose only income is exempt income under section CW 41 or CW 42.

Certain investors in listed PIEs

[Repealed]

(3) *[Repealed]*

Transitional provision for investors in listed PIEs

(4) Section HM 15 does not apply in the case of an investor in a listed PIE, other than an investor listed in schedule 29, parts A and B, that holds more than 20% but less than 40% of the total interests in the investor class and held more than 20% and less than 40% of the total interests at all times from 17 May 2006 to the relevant time.

Not combined associates

(5) Section HM 16 does not apply if either the associated person or the investor is an investor listed in schedule 29, parts A and B.

Defined in this Act: associated person, exempt income, income, investor, investor class, listed PIE, PIE

Compare: 2007 No 97 ss HL 6(4), HL 9

Section HM 21: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 21(1): substituted, on 29 August 2011, by section 64(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 21(2) heading: amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 90(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 21(2): substituted, on 29 August 2011, by section 64(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 21(3) heading: repealed (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), pursuant to section 90(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 21(3): repealed (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 90(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 21 list of defined terms **exempt income**: inserted, on 29 August 2011, by section 64(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 21 list of defined terms **income**: inserted, on 29 August 2011, by section 64(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 22 Exceptions for certain funds

Public unit trust

(1) Sections HM 14(1) and HM 15 do not apply to an investor class of an entity if, treating the class as a unit trust, it would meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**.

Certain superannuation funds

(2) Sections HM 14(1) and HM 15 do not apply in the case of an investor class of an entity that is a fund, trust, or class listed in schedule 29, part B (Portfolio investment entities: listed investors).

Defined in this Act: investor class, PIE, public unit trust, unit trust

Compare: 2007 No 97 ss HL 6(3), HL 9(2)

Section HM 22: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 22(1): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 91(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 23 Exceptions for foreign PIE equivalents

Investor classes and investors' interests

(1) If an investor in a PIE is a foreign PIE equivalent,—

(a) the requirement for investor classes under section HM 14(1) is treated as met:

(b) no limitation on investor interests under section HM 15 applies in the case of that investor.

Shareholding in investments

(2) If a PIE holds an investment in a foreign PIE equivalent, no maximum limit on shareholding in investments under section HM 13 applies to that investment.

Defined in this Act: foreign PIE equivalent, investor, investor class, investor interest, PIE

Compare: 2004 No 35 ss HL 9(4), HL 10(4)

Section HM 23: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 23(1)(b): amended (with effect on 1 April 2010), on 21 December 2010, by section 92 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Exit rules

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 24 Ending of New Zealand residence

An entity loses PIE status immediately if it is no longer resident in New Zealand.

Defined in this Act: PIE, resident in New Zealand

Compare: 2007 No 97 s HL 4(1)

Section HM 24: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 25 When entity no longer meets investment or investor requirements

Effect

(1) An entity loses PIE status if,—

(a) on the last day of a quarter (the **first quarter**),—

(i) the entity no longer meets a requirement of sections HM 11 to HM 13; or

(ii) an investor class of the entity no longer meets a requirement of sections HM 13 to HM 15; and

(b) the failure to meet the requirements—

(i) is significant and is within the control of the entity:

(ii) is not remedied by the last day of the next quarter (the **second quarter**).

Date of loss of status

(2) The date of loss of PIE status is—

(a) when subsection (1)(b)(i) applies, the first day of the second quarter:

(b) when subsection (1)(b)(i) does not apply, the first day of the third quarter.

Transitional quarters disregarded

(3) Subsection (1) does not apply if—

(a) the start of the first quarter would be within 6 months plus 1 day of the date on which the entity becomes a PIE, or the investor class is formed; or

(b) the first quarter ends within 3 months before an announcement by the entity to its investors that it, or the relevant investor class, is winding up within 12 months of the announcement.

Defined in this Act: investor class, PIE, quarter

Compare: 2007 No 97 s HL 4(2)

Section HM 25: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 25(2)(a): amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 65(1)(a) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 25(2)(b): amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 65(1)(b) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 25(3)(b): amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 67(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HM 26 Starting life insurance business

An entity that is not a life fund PIE loses PIE status immediately if it starts to carry on the business of life insurance.

Defined in this Act: business, life fund PIE, life insurance, PIE

Compare: 2004 No 35 s HL 4(1)

Section HM 26: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 27 When multi-rate PIE no longer meets investor interest adjustment requirements

A multi-rate PIE loses PIE status immediately if it fails to meet a requirement of section HM 48.

Defined in this Act: investor interest, multi-rate PIE, PIE

Compare: 2004 No 35 s HL 4(1)

Section HM 27: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 28 When listed PIE no longer meets crediting requirement

A listed PIE loses PIE status immediately if it fails to meet the requirements of section HM 19.

Defined in this Act: listed PIE, PIE

Compare: 2004 No 35 s HL 4(1)

Section HM 28: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 29 Choosing to cancel status

An entity loses PIE status if it chooses to cancel PIE status by notifying the Commissioner under section 31B of the Tax Administration Act 1994. Section HM 72(3) applies to determine the date the election takes effect.

Defined in this Act: Commissioner, notify, PIE

Section HM 29: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 30 When foreign PIE equivalent no longer meets requirements

Commencing New Zealand residence

(1) A foreign PIE equivalent loses its status immediately if it becomes resident in New Zealand.

Continued failure

(2) A foreign PIE equivalent loses its status if it no longer meets the requirements set out in section HM 3(b) to (e) at the end of 2 consecutive quarters. The loss of status takes effect from the first day of the third quarter.

Defined in this Act: foreign PIE equivalent, quarter, resident in New Zealand

Compare: 2007 No 97 s HL 5(2)

Section HM 30: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Rules for multi-rate PIEs

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provisions

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 31 Rules for multi-rate PIEs

Rules

(1) A multi-rate PIE must—

(a) attribute income arising from the proceeds of an investment to an investor, and pay tax on the income based on the investor's tax rates, *see* sections HM 34 to HM 40:

(b) calculate and pay its tax liability, choosing certain periods to do this, *see* sections HM 41 to HM 47:

(c) adjust investor interests of investors in the entity or distributions from the entity to reflect an amount of tax paid, *see* section HM 48:

(d) use tax credits received to satisfy the entity's tax liability, in some cases providing any surplus credits to certain investors by making an adjustment described in paragraph (c), *see* sections HM 49 to HM 55.

Foreign investment PIEs

(1B) For the provisions relating to the treatment of notified foreign investors in foreign investment PIEs, *see* sections HM 2(4), HM 33, HM 35C, HM 44B, HM 47(2B), (4), and (6), HM 51, HM 53, HM 55C to HM 55H, HM 60, HM 61(2), HM 64(4), and HM 65(5).

Further provisions related to payment options, tax rates, and exit periods

(2) For the provisions relating to the options available to a multi-rate PIE for calculating and paying its tax liability, prescribed and notified investor rates for investors, and exit levels and periods, *see* sections HM 56 to HM 63.

Further provisions relating to use of losses

(3) For the provisions relating to the use of losses by multi-rate PIEs, *see* sections HM 64 to HM 70.

Defined in this Act: exit level, exit period, foreign investment PIE, investor, investor interest, multi-rate PIE, notified foreign investor, notified investor rate, pay, prescribed investor rate, tax, tax credit

Section HM 31: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 31(1)(a): amended, on 29 August 2011, by section 66(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 31(1)(c): amended (with effect on 1 April 2010), on 21 December 2010, by section 93 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 31(1B) heading: inserted, on 29 August 2011, by section 66(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 31(1B): inserted, on 29 August 2011, by section 66(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 31 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 66(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 31 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 66(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 32 Rules for and treatment of investors in multi-rate PIEs

Tax rates

(1) An investor in a multi-rate PIE must notify the PIE of a tax rate applying to their investment income or have a default rate apply, *see* sections HM 56 to HM 61.

Attributed income

(2) An amount of income attributed by a multi-rate PIE to an investor in the PIE is—

(a) income of the investor under section CP 1 (Attributed income of investors in multi-rate PIEs):

(b) for certain investors, excluded income of the investor under section CX 56 (Attributed income of certain investors in multi-rate PIEs).

Notified foreign investors

(3) An investor in a foreign investment PIE who notifies the PIE under section HM 55D(2) of their wish to become a notified foreign investor meets the requirements of subsection (1).

Defined in this Act: amount, excluded income, foreign investment PIE, income, investor, multi-rate PIE, notified foreign investor, notify

Section HM 32: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 32(3) heading: added, on 29 August 2011, by section 67(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 32(3): added, on 29 August 2011, by section 67(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 32 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 67(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 32 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 67(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 33 Proxies for PIE investors

Proxies

(1) An entity may become a proxy for an investor in a multi-rate PIE for an attribution period if the entity—

(a) holds an investor interest for the investor; and

(b) notifies the PIE that it holds the interest as proxy.

Role

(2) The proxy must perform the duties set out in subsection (3) in relation to amounts attributed to them for the period as holder of the interest as if—

(a) the proxy were a multi-rate PIE; and

(b) the investor interest were an interest of the investor in the income of the proxy; and

(bb) for a foreign investment PIE and a notified foreign investor, the investor were a notified foreign investor in the proxy; and

(c) the amounts attributed and distributions received by the proxy were amounts of the proxy to which the investor is entitled as holder of the interest.

Duties

(3) The proxy's duties are to—

(a) attribute amounts to the investor for the period; and

(b) distribute amounts and credits to the investor for the period; and

(c) pay income tax on the investment income for the period; and

(d) adjust the investor interest of the investor or distributions to the investor under section HM 48; and

(db) for a foreign investment PIE, collect information required from the notified foreign investors and act generally on behalf of the PIE in relation to its notified foreign investors; and

(e) provide returns as required under section 57B of the Tax Administration Act 1994 to the Commissioner and any other information required by the Commissioner; and

(f) provide the investor with a notice under section 31C of that Act; and

(g) provide the PIE with information about the investor and investor interest that may be relevant to any eligibility requirements of the PIE.

Defined in this Act: amount, attribution period, Commissioner, foreign investment PIE, income, income tax, investor, investor interest, multi-rate PIE, notified foreign investor, notify, PIE

Section HM 33: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 33(2)(bb): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 68(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 33(3)(db): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 68(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 33 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 68(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 33 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 68(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Attributing income to investors

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 34 Attribution periods

A multi-rate PIE must use 1 of the following periods for attributing an amount for a tax year to an investor and an investor class:

(a) for an entity that uses the quarterly calculation option under section HM 43, but chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, or a quarter; or

(b) for an entity that chooses under section HM 44 to pay provisional tax and chooses the attribution period by notifying the Commissioner before the start of the tax year or on choosing to become a PIE, a day, a month, a quarter, or an income year; or

(c) for an entity that does not make a choice under paragraphs (a) and (b), a day.

Defined in this Act: amount, attribution period, Commissioner, investor, investor class, multi-rate PIE, PIE, provisional tax, tax year

Compare: 2007 No 97 s HL 16(2)

Section HM 34: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 35 Determining net amounts and taxable amounts

What this section applies to

(1) This section applies for the purposes of a calculation under section HM 36(2).

Net amounts

(2) The net amount for an investor class of a multi-rate PIE for an attribution period is calculated using the formula—

assessable income – deductions.

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **assessable income** is the total amount of the PIE's assessable income attributed to the class for the attribution period in the manner referred to in subsection (8), including any tax credits received for the income:

(b) **deductions** is the total amount of the PIE's expenditure or loss for which the PIE is allowed a deduction that is—

(i) incurred by the PIE in deriving the assessable income referred to in paragraph (a); and

(ii) attributed to the class for the attribution period.

Net income or net loss

(4) If the result of the formula is positive, the amount is net income of the class for the period. If the result of the formula is negative, the amount is a net loss of the class for the period.

Taxable amounts

(5) The taxable amount for an investor class of a multi-rate PIE for an attribution period is calculated using the formula—

net income – net loss – other loss used.

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **net income** is the amount of the PIE's net income referred to in subsection (4):

(b) **net loss** is the amount of the PIE's net loss referred to in subsection (4):

(c) **other loss used** is the lesser of the following amounts:

(i) the total amount for the class of formation loss that is attributable for the attribution period under sections HM 66 to HM 70 and any amount of land loss under section HM 65 that has not been used for an earlier period:

(ii) the total amount of net income referred to in paragraph (a).

Taxable income or tax loss

(7) If the result of the formula is positive, the amount is taxable income of the class for the period. If the result of the formula is negative, the amount is a tax loss of the class for the period.

Use of valuations or financial statements

(8) Income and deductions of the multi-rate PIE are allocated to investors and investor classes for attribution periods as—

(a) reflected in the PIE's valuation of investor interests, if the PIE makes these valuations:

(b) shown in the PIE's financial statements, if the PIE does not makes the valuations referred to in paragraph (a).

Defined in this Act: amount, assessable income, attribution period, deduction, formation loss, income, investor class, investor interest, land loss, multi-rate PIE, net income, net loss, PIE, tax loss, taxable income

Compare: 2007 No 97 ss EG 3, HL 19, HL 20

Section HM 35: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 35(3)(a): substituted (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 94(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 35(8)(a): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 94(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 35B Treatment of certain provisions made by multi-rate PIEs

When this section applies

(1) This section applies for the purposes of section HM 35 when—

(a) a multi-rate PIE—

(i) is likely to have future income:

(ii) makes a provision for future expenditure or loss; and

(b) the amount—

(i) is reflected in the PIE's valuation of portfolio investor interests; or

(ii) if subparagraph (i) does not apply, is shown in its financial statements.

Future amounts

(2) For the purposes of determining a net amount under section HM 35(2) for an attribution period, a multi-rate PIE may take account of an amount of future income or future expenditure or loss that is—

(a) for future income, an amount that, when derived, would be assessable income under section HM 35(3)(a):

(b) for future expenditure or loss,—

(i) an expense likely to be incurred by the PIE in the tax year in which the attribution period falls, or within 93 days after the end of the tax year; and

(ii) an amount that, when incurred, would be a deduction under section HM 35(3)(b).

Reasonable estimation

(3) For the purposes of subsection (2), the PIE must make a reasonable estimate of the amount and must be able to demonstrate, if required, the reasonableness of the estimation by—

(a) explaining why and when the income is likely to be derived or the expense is likely to be incurred, as applicable; and

(b) providing the calculation method and actual calculations used to determine the amount, with details showing why the method is appropriate.

Credit impairment provisions

(4) A multi-rate PIE may take account of a credit impairment provision under this section but only if the provision is counted as a credit impairment provision under NZIAS 39. However, the time limit set out in subsection (2)(b)(i) does not apply in relation to a credit impairment provision.

Defined in this Act: amount, attribution period, deduction, income, investor interest, multi-rate PIE, NZIAS 39, tax year

Section 35B: inserted (with effect on 1 April 2010), on 21 December 2010, by section 95(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 35C Determining amounts for notified foreign investors

When this section applies

(1) This section applies for the purposes of sections HM 35 to HM 47 when a foreign investment PIE determines its income tax liability and calculates an amount of attributed PIE income for a notified foreign investor in the PIE.

Single class of investors

(2) For the purposes of the calculations, the PIE must treat its notified foreign investors as a single notional investor class.

Taxable amounts

(3) In section HM 35(5), in relation to an investor class that is made up of notified foreign investors, the taxable amount for an attribution period is equal to the assessable income of the

PIE for the period for each particular income source and investment type of income of the class.

Attributed amounts

(4) For the purposes of section HM 36, in the calculation of an amount attributed to a notified foreign investor,—

(a) the item **loss** in the formula in subsection (2) is treated as zero:

(b) the item **expenses** in the formula in subsection (2) is treated as zero:

(c) the item **credits for fees** in the formula in subsection (2) is treated as zero:

(d) if the result given by the formula is negative, the result is treated as zero.

Defined in this Act: amount, assessable income, attributed PIE income, attribution period, foreign investment PIE, income tax liability, investor class, notified foreign investor taxable amount

Section HM 35C: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 69(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 36 Calculating amounts attributed to investors

Calculating amount

(1) The amount of attributed PIE income or attributed PIE loss for an income year for an investor in a multi-rate PIE is the total of the amounts calculated using the formula in subsection (2) for—

(a) each attribution period in the income year; and

(b) each day in the attribution period; and

(c) each investor class to which the investor belongs on the day.

Formula

(2) The formula is—

$$\frac{\text{percentage} \times (\text{income} - \text{loss})}{\text{days in period}} - (\text{expenses} - \text{credits for fees}).$$

Definition of items in formula

(3) In the formula,—

(a) **percentage** is the percentage of the investor's entitlement to a distribution by the PIE to the investor class:

(b) **income** is the amount of taxable income determined under section HM 35(5) and (7) for the period:

(c) **loss** is the amount of tax loss determined under section HM 35(5) and (7) for the period:

(d) **days in period** is the number of days in the period:

(e) **expenses** is the total amount for the day in the period of—

(i) fees for management or administration services paid from or charged to the account of the investor as a member of the investor class when the services are ongoing for the investor class:

(ii) expenditure of the investor as a member of the investor class and transferred under subpart DV (Expenditure specific to certain entities) to the PIE:

(f) **credits for fees** is the amount of the credit for the fee paid or credited by the PIE to the account of the investor as a member of the investor class on the day in the period.

Treatment of attributed loss for PIEs paying provisional tax

(4) Despite subsection (3), an investor in a multi-rate PIE that chooses under section HM 44 to pay provisional tax has no attributed PIE loss.

When derived or incurred

(5) The investor is treated as deriving the attributed PIE income or incurring the attributed PIE loss in the income year of the investor in which the end of the PIE's income year falls.

Defined in this Act: amount, attributed PIE income, attributed PIE loss, attribution period, income, income year, investor, investor class, multi-rate PIE, pay, PIE, provisional tax, tax loss, taxable income

Compare: 2007 No 97 s HL 26

Section HM 36: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 36(1): amended, on 29 August 2011, by section 70(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 36(3)(e)(i): substituted, on 29 August 2011, by section 70(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 36 list of defined terms **pay**: inserted, on 29 August 2011, by section 70(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 37 When income cannot be attributed

When this section applies

(1) This section applies when a multi-rate PIE has income or property in which no investor has an interest, or income or property in which no person has a conditional entitlement under section HM 38.

Sole investor

(2) The PIE is treated as the sole investor in an investor class having an interest in the income or property.

Relationship with section CS 1

(3) For the purposes of subsection (1), income derived under section CS 1 (Withdrawals) by a multi-rate PIE that is a superannuation fund is treated as income in which no investor has an investor interest.

Defined in this Act: income, investor, investor class, multi-rate PIE

Compare: 2007 No 97 s HL 17(1)

Section HM 37: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 37(3) heading: repealed, on 1 April 2011, pursuant to section 68(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 37(3): repealed, on 1 April 2011, by section 68(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 37(3) heading: added, on 1 April 2011, by section 96(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 37(3): added, on 1 April 2011, by section 96(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 37 list of defined terms **investor interest**: repealed, on 1 April 2011, by section 68(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HM 38 When superannuation fund investor has conditional entitlement

When this section applies

(1) This section applies for the purposes of section HM 37 in relation to an attribution period when a person has a conditional entitlement to an investor interest in a multi-rate PIE that is a superannuation fund that meets the requirements of subsection (4) in income or property of the PIE.

Attribution

(2) The investor interest is treated as held by the person for the attribution period.

When conditional entitlement exists

(3) A person is treated as having a conditional entitlement to an investor interest if—

- (a) the investor interest is bought by or for the person's employer; and
- (b) the person and the employer have agreed that the person will have an unconditional entitlement to the interest before the end of a vesting period that is no longer than 5 years; and
- (c) the agreement exists before the attribution period; and
- (d) the vesting period ends after the attribution period.

Modifications to certain vesting periods

(4) For the purposes of subsection (3)(b),—

- (a) for a PIE that exists on 17 May 2006, a vesting period longer than 5 years is allowed but the vesting period must not be longer than the longest vesting period allowed by the PIE at that date for an interest created on that date:
- (b) for a PIE that does not exist on 17 May 2006, but the investor interest has been transferred to it by a superannuation scheme in existence on that date without significant change to the interest, a vesting period of any length is allowed.

Defined in this Act: attribution period, employer, income, investor interest, multi-rate PIE, PIE, superannuation fund, superannuation scheme

Compare: 2007 No 97 s HL 17(2)

Section HM 38: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 39 New investors in existing investor classes

When this section applies

(1) This section applies when a person is a new investor in an existing investor class of a multi-rate PIE but, at the time of investing, the PIE holds insufficient investments for the person to qualify as an investor in the class.

Person treated as investor

(2) The PIE may treat the person as an investor in the class if the PIE acquires sufficient investments as described in section HM 11 as soon after the investor's acquisition of the interests as is practicable.

Defined in this Act: investor, investor class, multi-rate PIE, PIE

Compare: 2007 No 97 s HL 18

Section HM 39: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 40 Deductions for attributed PIE losses for zero-rated and exiting investors

When this section applies

(1) This section applies to an investor in a multi-rate PIE when—

(a) an amount of attributed PIE loss is attributed under section HM 36 to the investor for an attribution period in a tax year; and

(b) either—

(i) the investor is a zero-rated investor; or

(ii) the PIE calculates its tax liability using the quarterly calculation option under section HM 43 and the amount is attributed to an exiting investor to whom section HM 61 applies.

Deduction

(2) In the investor's income year in which the end of the PIE's income year falls, the investor is allowed a deduction under section DB 53 (Attributed PIE losses of certain investors). The

amount of the deduction is equal to the amount attributed for the income year or exit period.

Defined in this Act: amount, attributed PIE loss, attribution period, deduction, exit period, income year, investor, multi-rate PIE, PIE, tax year, zero-rated investor

Compare: 2007 No 97 s HL 27

Section HM 40: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculating and paying tax liability

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 41 Options for calculation and payment of tax

Available options

(1) The options available to a multi-rate PIE for calculating and paying its income tax liability are—

(a) the payment of tax calculated under the exit calculation option, *see* section HM 42; or

(b) the payment of tax calculated under the quarterly calculation option, *see* section HM 43; or

(c) the payment of provisional tax and terminal tax calculated on an income-year basis, *see* section HM 44.

Default option

(2) The PIE must use the default option under subsection (1)(b) unless it chooses an option under subsection (1)(a) or (c) by notifying the Commissioner.

Income tax liability

(3) The income tax liability of the PIE for the tax year is equal to the total amount calculated under the relevant method for periods in the tax year or, in the case of the provisional tax calculation option under section HM 44, for the PIE's income year corresponding to the tax year.

Foreign investment PIEs

(4) Despite subsection (1)(c), a multi-rate PIE that chooses under section HM 71B to become a foreign investment PIE must not

use the provisional tax calculation option in section HM 44 to calculate its income tax liability.

Defined in this Act: amount, Commissioner, income tax liability, income year, multi-rate PIE, notify, pay, PIE, provisional tax, tax year, terminal tax

Compare: 2007 No 97 ss HL 16(3), HL 22–HL 24

Section HM 41: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 41(4) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 72(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 41(4): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 72(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 42 Exit calculation option

When this section applies

(1) This section applies when a multi-rate PIE chooses for a tax year to calculate its income tax liability for exiting investors and remaining investors. The PIE must notify the Commissioner under section 31B of the Tax Administration Act 1994 of this election.

Calculation for exiting investors

(2) For an investor whose interest has reached the exit level during the tax year, the PIE must calculate its income tax liability under section HM 47 for the investor and the relevant exit period. The exit level and exit periods are determined under sections HM 62 and HM 63.

Calculations for investors for non-exit periods

(3) For investors and periods in the income year other than exit periods, the PIE must calculate its income tax liability under section HM 47 for the relevant period.

Payment to Commissioner

(4) The PIE must pay to the Commissioner—

(a) the amount of income tax liability for an exiting investor for the exit period—

(i) within 1 month after the end of the month of withdrawal; or

(ii) if the month of withdrawal is November, by the following 15 January; and

(b) the rest of the PIE's income tax liability for the tax year within 1 month after the end of the tax year for remaining investors in the PIE at the end of the tax year, after allowing for any payment under paragraph (a) or any voluntary payment under section HM 45.

Provisional tax rules

(5) The PIE is not required to pay provisional tax under subpart RC (Provisional tax) for the tax year.

Defined in this Act: amount, Commissioner, exit level, exit period, income tax liability, income year, investor, multi-rate PIE, pay, PIE, provisional tax, tax year

Compare: 2007 No 97 s HL 24(1)–(4)

Section HM 42: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 42B Part-year tax calculations for PIEs under the exit calculation option for the 2010–11 tax year

When this section applies

(1) This section applies to a PIE for the 2010–11 tax year if section HM 42 applies to the PIE for that year and the PIE chooses to apply this section by filing a return under section 57B(5) or (7) of the Tax Administration Act 1994 in accordance with this section.

Part-year tax calculations: description

(2) For calculating their income tax liability for the 2010–11 tax year, the PIE treats references to an income year or a tax year as if they are references to 2 separate tax years and corresponding income years within that tax year, divided by 1 October 2010 (*for example*: an amount of income attributed to a date before 1 October 2010 is included in the first part-year and taxed using the notified investor rate advised before 1 October 2010. A notified investor rate advised on or after 1 October 2010 is applied only to the amount of income attributed to the second part-year).

Part-year tax calculations: effect

(3) The part-year calculations may give rise to income and deductions for the income year and they do create part-year tax return obligations, except that the requirement for returns under section 57B(7)(a) of the Tax Administration Act 1994 and for notice in relation to investors or proxies under section 31C(4) of that Act can be met by sending returns or notices on a full-year or part-year basis. The 2 part-year calculations create 2 income tax liabilities for 2 part-years.

Foreign tax credits: special rule

(4) Despite subsections (2) and (3), tax credits under subpart LJ (Tax credits for foreign income tax) may be used in accordance with section HM 51 in either part-year, if they are attributable to the first part-year.

Defined in this Act: deduction, income, income tax liability, income year, notified investor rate, PIE, tax credit, tax year

Section HM 42B: inserted, on 1 October 2010, by section 69 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HM 43 Quarterly calculation option

Quarterly calculation

(1) A multi-rate PIE that does not choose to calculate and pay its income tax liability under the exit calculation or provisional tax calculation options, must calculate its tax liability for each quarter of the tax year using the formula set out in section HM 47. The notice requirements are set out in section 31B of the Tax Administration Act 1994.

Quarterly payment

(2) The PIE must pay to the Commissioner the amount of its income tax liability for the quarter within 1 month of the end of the quarter.

Exiting investors: zero-rated

(3) If the investor interest of an investor in the PIE has reached the exit level, they are treated under section HM 61 as a zero-rated investor for the exit period which includes a grace period of 5 working days after the end of the quarter. This subsection does not apply if the PIE voluntarily chooses to pay an amount under section HM 45.

Exiting investors: remaining value to Commissioner

(4) If the investor interest of an investor at the end of an exit period is more than zero, the PIE must pay an amount equal to the value of the interest to the Commissioner at the same time as the payment referred to in subsection (2).

Provisional tax rules

(5) The PIE is not required to pay provisional tax under subpart RC (Provisional tax) for the tax year.

Defined in this Act: amount, Commissioner, exit level, exit period, income tax liability, investor interest, multi-rate PIE, notice, pay, PIE, provisional tax, quarter, tax year, working day, zero-rated investor

Compare: 2007 No 97 s HL 22

Section HM 43: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 43(3): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 97(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 43(4): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 97(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 44 Provisional tax calculation option

When this section applies

(1) This section applies when a multi-rate PIE chooses to calculate its income tax liability on an income year basis and pay provisional tax by notifying the Commissioner before the start of the income year or when choosing to become a PIE. Notification regarding the type of PIE and attribution period is made under section 31B of the Tax Administration Act 1994.

When this section does not apply

(1B) Despite subsection (1), a multi-rate PIE that chooses under section HM 71B to become a foreign investment PIE must not apply this section to calculate and pay its income tax liability.

Application of subparts RB and RC

(2) The PIE must calculate its tax liability for the income year corresponding to the tax year under section HM 47 and pay provisional tax for the tax year as required by subpart RC (Provisional tax) and terminal tax for the tax year as required by subpart RB (Terminal tax).

Treatment of losses

(3) If the calculation of the liability results in a negative amount, the loss must be carried forward to a later tax year, and section HM 64 does not apply.

Defined in this Act: foreign investment PIE, income tax liability, income year, multi-rate PIE, notify, pay, PIE, provisional tax, tax year

Compare: 2007 No 97 s HL 23(1), (2)

Section HM 44: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 44(1B) heading: inserted, on 29 August 2011, by section 73(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 44(1B): inserted, on 29 August 2011, by section 73(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 44 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 73(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 44B NRWT calculation option

When this section applies

(1) This section applies when—

(a) a foreign investment PIE—

(i) derives a dividend that is not fully imputed from a company resident in New Zealand; and

(ii) pays an amount that represents some or all of the amount of the dividend to a notified foreign investor in the PIE by the date on which the PIE is required to pay its income tax liability under section HM 42 or HM 43, as applicable; and

(b) the PIE chooses to calculate and pay the tax liability in relation to the amount under subpart RF (Withholding tax on non-resident passive income).

Excluding amount from calculation

(2) In determining the net amount for notified foreign investors under sections HM 35 and HM 36, to the extent to which the amount represents an unimputed portion of the dividend, the amount is not included in—

(a) the item **assessable income** in section HM 35(3):

(b) the item **income** in section HM 36(3).

Non-resident passive income

(3) The NRWT rules apply to the amount paid to the extent to which the amount represents an unimputed portion of the dividend.

Relationship with section CX 56B

(4) Despite section CX 56B (Distributions to investors in multi-rate PIEs), the amount is not excluded income of the notified foreign investor.

Defined in this Act: amount, company, dividend, excluded income, foreign investment PIE, imputation credit, income tax liability, multi-rate PIE, non-resident passive income, notified foreign investor, NRWT rules, pay, resident in New Zealand

Section HM 44B: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 74(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 45 Voluntary payments

When this section applies

(1) This section applies when a multi-rate PIE pays an amount of tax under section HM 42 or HM 43.

Voluntary payment

(2) The PIE may pay an amount of income tax to the Commissioner that represents an amount of its tax liability for the investor as a member of an investor class for the tax year.

Time of payment

(3) The payment must be made—

(a) within 1 month after, as applicable,—

(i) for calculation and payment of tax under the quarterly calculation option, the end of the quarter; or

(ii) for the calculation and payment of tax under the exit calculation option, the month in which the tax liability for the investor referred to in subsection (2) is calculated; or

(b) if the month is November, by the following 15 January.

Defined in this Act: amount, Commissioner, income tax, investor, investor class, investor interest, multi-rate PIE, pay, PIE, quarter, tax year

Compare: 2007 No 97 s HL 25

Section HM 45: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 45(1): amended, on 29 August 2011, by section 75(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 45(3)(a)(ii): amended, on 29 August 2011, by section 75(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 45 list of defined terms **tax year**: added, on 29 August 2011, by section 75(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 46 Calculation process

To calculate its tax liability, a multi-rate PIE must—

(a) determine the net amount for each investor class of the PIE:

(b) determine the taxable amount for each investor class of the PIE:

(c) calculate its tax liability for each investor in an investor class for each day of an attribution period.

Defined in this Act: amount, attribution period, investor, investor class, multi-rate PIE, PIE

Compare: 2007 No 97 ss HL 19, HL 20

Section HM 46: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 47 Calculation of tax liability or tax credit of multi-rate PIEs

What this section does

(1) This section quantifies the amount of the tax liability or tax credit of a multi-rate PIE for a calculation period.

Calculating amount

(2) The amount of the PIE's tax liability or tax credit is the sum of the amounts calculated using the formula in subsection (3) for—

(a) each investor class in which the investor has an investor interest:

(b) each investor in an investor class:

(c) each attribution period in the calculation period:

(d) each day in an attribution period.

Notified foreign investors

(2B) For the purposes of subsection (2), for a notified foreign investor in a foreign investment PIE, the amount of the PIE's tax liability for each investor is the sum of the amounts calculated using the formula in subsection (3) for the amount attributed to the investor for each particular income source and investment type.

Formula

(3) The formula is—

rate × amount.

Definition of items in formula

(4) In the formula,—

(a) **rate** is—

(i) the tax rate under section HM 58 or HM 60, as applicable, that relates to the investor for each day for the period; or

(ib) the tax rates applying under schedule 6, table 1B (Prescribed rates: PIE investments and retirement scheme contributions) for an amount attributed to a notified foreign investor in relation to each income source and investment type; or

(ii) 28%, if the PIE is treated as the sole investor under section HM 37:

(b) **amount** is the amount calculated under sections HM 36(1) and (2) and HM 37, as applicable, for the investor.

Result of formula: tax liability or tax credit

(5) If the result of the formula in subsection (3) is positive, the amount is the PIE's tax liability for the calculation period. If the result is negative, the amount is a tax credit of the PIE under section LS 1 (Tax credits for multi-rate PIEs), *see* section HM 55. However, a tax credit does not arise under section LS 1 for a multi-rate PIE that chooses to use the provisional tax calculation option.

Negative result and foreign investment PIEs

(6) If the result of the formula in subsection (3) is negative and the multi-rate PIE has chosen under section HM 71B to become

a foreign investment PIE, no tax credit arises in relation to an amount attributed to an investor in the PIE who is, at the time of attribution, a notified foreign investor.

Defined in this Act: amount, attribution period, calculation period, foreign investment PIE, investor, investor class, investor interest, multi-rate PIE, notified foreign investor, PIE, tax credit

Compare: 2007 No 97 ss EG 3, HL 21

Section HM 47: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 47(2)(a): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 98(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 47(2B) heading: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 76(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 47(2B): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 76(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 47(4)(a)(i): amended, on 1 October 2010, by section 6(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 47(4)(a)(ib): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 76(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 47(4)(a)(ii): amended, on 1 October 2010, by section 6(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 47(6) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 76(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 47(6): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 76(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 47 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 76(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 47 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 76(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Adjusting investors' interests

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 48 Adjustments to investor interests or to distributions

Adjustment

(1) When a multi-rate PIE pays a tax liability or receives a tax credit under section LS 1 (Tax credits for multi-rate PIEs) in relation to an investor, it must make an adjustment to the investor interest of the investor to reflect the rate applying under section HM 60 or HM 61. The PIE may choose to adjust—

(a) the investor interest of the investor in an investor class; or

(b) the amount of a distribution paid to the investor; or

(c) the amount of a payment required from the investor to satisfy the PIE's tax liability.

Investor's choice

(2) The PIE may offer the choice made under subsection (1) to the investor.

Date of adjustment

(3) An adjustment under subsection (1)(a) must be made—

(a) for the quarterly calculation option, within 2 months of the end of the quarter; or

(b) for the exit calculation option, within 2 months of the end of the tax year; or

(c) for the provisional tax calculation option, within 3 months of the end of the income year.

Extending time limits

(4) On application by a multi-rate PIE, the Commissioner may extend a time limit imposed under subsection (3) if it is reasonable in the circumstances.

Defined in this Act: amount, income year, investor, investor interest, multi-rate PIE, pay, PIE, prescribed investor rate, provisional tax, quarter, tax year

Compare: 2007 No 97 s HL 7

Section HM 48: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 48 heading: amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 99(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 48(1): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 99(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 48(1)(a): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 99(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Using tax credits

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 49 Tax credits: when sections HM 50 to HM 55 apply

When sections apply

(1) Sections HM 50 to HM 55 apply in relation to the tax credits of a multi-rate PIE or proxy for an investor in a multi-rate PIE that has not chosen to calculate its income tax liability under section HM 44 using the provisional tax calculation option.

Limitation

(2) The entity must not, other than under sections HM 51 to HM 55,—

(a) use the tax credit to reduce the liability of the entity for income tax or to obtain a refund of income tax:

(b) attach the tax credit to a distribution or transfer the tax credit to another person.

Relationship with Part L

(3) Sections HM 51 to HM 55 override Part L (Tax credits and other credits) other than subpart LS (Tax credits for multi-rate PIEs and investors).

Defined in this Act: income tax, income tax liability, investor, multi-rate PIE, provisional tax, tax credit

Compare: 2007 No 97 s HL 29(1), (2)

Section HM 49: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 50 Attributing credits to investors

When this section applies

(1) This section applies when a multi-rate PIE has—

(a) a credit for tax paid or withheld under subpart LB (Tax credits for payments, deductions, and family income):

(b) an imputation credit under subpart LE (Tax credits for imputation credits):

(c) a credit for tax paid in a foreign country or territory under subpart LJ (Tax credits for foreign income tax).

Attributing amount to investor

(2) The amount of the credit attributable to an investor in an investor class of the PIE for an attribution period is calculated using the formula in subsection (3). The amount attributed to the investor is the total of the amounts calculated for each investment of the PIE and each day in the attribution period.

Calculation of amount

(3) The formula is—

$$\frac{\text{credit} \times \text{class's percentage} \times \text{investor's percentage}}{\text{days in period.}}$$

Definition of items in formula

(4) In the formula,—

(a) **credit** is the amount of the credit the PIE has in relation to the investment that gives rise to the credit:

(b) **class's percentage** is the percentage of the proceeds from the investment to which the investor class is entitled, including related tax credits:

(c) **investor's percentage** is the percentage to which the investor is entitled of a distribution by the PIE to the investor class:

(d) **days in period** is the number of days in the attribution period.

Defined in this Act: amount, attribution period, imputation credit, investor, investor class, multi-rate PIE, pay, PIE, tax credit

Compare: 2007 No 97 ss HL 29(3)–(5), YA 1 "portfolio class fraction", "portfolio investor interest fraction"

Section HM 50: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 51 Use of foreign tax credits by PIEs

When this section applies

(1) This section applies when a multi-rate PIE has a tax credit under subpart LJ (Tax credits for foreign income tax) that is attributable in a tax year to an investor other than—

(a) a zero-rated investor:

(b) an exiting investor who is treated under section HM 61 as zero-rated:

(c) a notified foreign investor in a foreign investment PIE.

Using tax credit to satisfy income tax liability

(2) The multi-rate PIE may use the tax credit under section LS 1 (Tax credits for multi-rate PIEs) to satisfy its income tax liability for the tax year in relation to the investor. The amount of the credit is determined under subsection (3).

Amount

(3) The total amount of the credits able to be used is the lesser of—

(a) the total amount of credits attributed to the investor as a member of any investor class for the calculation period together with any amount attributed to the investor in an earlier calculation period that remains unused:

(b) the amount of the PIE's tax liability in relation to the investor as a member of any investor class for the calculation period or an earlier calculation period, and not met by any credit allocated to the earlier period.

Use under exit calculation option

(4) For a multi-rate PIE that calculates its tax liability for a tax year using the exit calculation option under section HM 42, the amount may be used for calculation periods earlier or later in the tax year, and in relation to different classes for the same investor.

Use under quarterly option

(5) For a multi-rate PIE that calculates its tax liability for a tax year using the quarterly calculation option under section HM 43, the amount may be used only for the relevant calcu-

lation period and later periods in the tax year, and in relation to different classes for the same investor.

Defined in this Act: amount, calculation period, foreign investment PIE, income tax liability, investor, investor class, multi-rate PIE, notified foreign investor, PIE, quarter, tax credit, tax year, zero-rated investor

Compare: 2007 No 97 s HL 29(10)–(12)

Section HM 51: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 51(1)(b): amended, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 77(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 51(1)(c): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 77(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 51 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 77(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 51 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 77(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 52 Use of foreign tax credits by zero-rated and certain exiting investors

When this section applies

(1) This section applies when a multi-rate PIE has a tax credit under subpart LJ (Tax credits for foreign income tax) that is attributable in a tax year to an investor who is—

(a) a zero-rated investor:

(b) an exiting investor who is treated under section HM 61 as zero-rated.

Using tax credit to satisfy income tax liability

(2) The investor may use the tax credit under section LS 3 or LS 4 (which relate to the use of tax credits) to satisfy their income tax liability for the tax year. The amount of the credit is determined under subsection (3) or (4).

Amount

(3) The total amount of the credits able to be used is the lesser of—

(a) the total amount of the attributed foreign tax credits for the tax year or exit period, as applicable:

(b) the amount calculated by multiplying the attributed PIE income of the investor from the PIE for the tax year or exit period, as applicable by,—

(i) for an exiting investor described in subsection (1)(b), the notified investor rate in relation to the investor that the PIE would have used had the period not been an exit period; or

(ii) for a zero-rated investor, their basic tax rate set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year.

Amount for PIEs or proxies

(4) Despite subsection (3), the amount of the credit is the attributed amount if the investor is—

(a) a multi-rate PIE; or

(b) a proxy for an investor in a multi-rate PIE.

Defined in this Act: amount, attributed PIE income, attribution period, exit period, foreign tax, income tax liability, investor, multi-rate PIE, notified investor rate, notify, PIE, tax credit, tax year, zero-rated investor

Compare: 2007 No 97 s HL 29(7), (8)

Section HM 52: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 52(3)(b): amended, on 1 October 2010, by section 7(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 52(3)(b)(i): amended, on 1 October 2010, by section 7(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

HM 53 Use of tax credits other than foreign tax credits by PIEs

When this section applies

(1) This section applies when a multi-rate PIE has—

(a) a tax credit under Part L (Tax credits and other credits) other than a tax credit under subpart LJ (Tax credits for foreign income tax); and

(b) the credit is attributable in a tax year to an investor in an investor class other than—

(i) a zero-rated investor:

(ii) an exiting investor who is treated under section HM 61 as zero-rated:

(iii) a notified foreign investor in a foreign investment PIE, in relation to a credit that is an imputation credit.

Using tax credit to satisfy income tax liability

(2) The PIE may use the tax credit under section LS 1 (Tax credits for multi-rate PIEs) to satisfy its income tax liability for the tax year in relation to the investor as a member of the class or of another investor class. A tax credit under this section is used only after the use of any credit under section HM 51.

Amount

(3) The amount of the tax credit is the amount attributed.

Defined in this Act: amount, foreign investment PIE, income tax liability, investor, investor class, imputation credit, multi-rate PIE, notified foreign investor, tax credit, tax year, zero-rated investor

Compare: 2007 No 97 s HL 29(13)

Section HM 53: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 53(1)(b)(ii): amended, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 78(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 53(1)(b)(iii): inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 78(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 53(2): amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 70(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 53 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 78(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 53 list of defined terms **imputation credit**: inserted, on 29 August 2011, by section 78(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 53 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 78(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 54 Use of tax credits other than foreign tax credits by investors

When this section applies

(1) This section applies when a multi-rate PIE has a tax credit under Part L (Tax credits and other credits) other than a tax credit under subpart LJ (Tax credits for foreign income tax), that is attributable in a tax year to an investor who is—

(a) a zero-rated investor:

(b) an exiting investor who is treated under section HM 61 as zero-rated.

Using tax credit to satisfy income tax liability

(2) The investor may use the tax credit under section LS 3 or LS 4 (which relate to the use of tax credits) to satisfy their income tax liability for the tax year.

Amount

(3) The amount of the tax credit is the amount attributed.

Defined in this Act: amount, income tax liability, investor, multi-rate PIE, tax credit, tax year, zero-rated investor

Compare: 2007 No 97 s HL 29(7)(b)

Section HM 54: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 55 Tax credits for losses

A multi-rate PIE that has a negative amount arising under section HM 47(5) and has not chosen to calculate its tax liability using the provisional tax calculation option under section HM 44 has a tax credit for a tax year under section LS 1 (Tax credits for multi-rate PIEs).

Defined in this Act: amount, multi-rate PIE, provisional tax, tax credit, tax year

Compare: 2007 No 97 s HL 28

Section HM 55: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Special rules for foreign investment PIEs

Heading: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 55C Modified source rules

Business in New Zealand

(1) Despite section YD 4(2) (Classes of income treated as having New Zealand source), income attributed to a notified foreign investor by a foreign investment PIE is not treated as having a source in New Zealand merely because the business of the PIE is carried on in New Zealand.

Contracts made or performed in New Zealand

(2) Despite section YD 4(3), income attributed to a notified foreign investor by a foreign investment PIE is not treated as having a source in New Zealand merely because the income is derived from a contract made or performed in New Zealand but only to the extent to which the income relates to the PIE's investments outside New Zealand.

Defined in this Act: business, foreign investment PIE, income, New Zealand, notified foreign investor

Section HM 55C: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 55D Requirements for investors in foreign investment PIEs

What this section does

(1) This section applies to determine the treatment of a non-resident person who is an investor in a multi-rate PIE that chooses under section HM 71B to become a foreign investment PIE. This section overrides section HM 32(1).

Notification

(2) If the person meets the requirements of subsections (3) and (4), they may notify the PIE that they wish to be treated as a notified foreign investor.

Status requirements

(3) The person must not be—

- (a) resident in New Zealand; or
- (b) a CFC; or
- (c) a FIF for which the item **income interest** in section EX 50(4) (Attributable FIF income method), for a person who is a New Zealand resident and the FIF, is 10% or more; or

(d) a non-resident trustee of a trust that is not a foreign trust.

Information requirements

(4) The person must provide the PIE with the information set out in section 28D(1) of the Tax Administration Act 1994.

Non-residents' rates

(5) If the person does not meet the requirements of subsections (3) and (4), the PIE must treat them as a non-resident person to whom schedule 6, table 1, row 2 (Prescribed rates: PIE investments and retirement scheme contributions) applies.

PIE relying on notification

(6) Despite subsection (5), the PIE may rely on the notification given by a person and treat them as a notified foreign investor in the following circumstances:

(a) the person notifies the PIE that they wish to be treated as a notified foreign investor, but they have misrepresented their eligibility for notified foreign investor status:

(b) the person is a notified foreign investor but becomes resident in New Zealand and does not advise the PIE of the change in status:

(c) the person has notified the PIE that they are a notified foreign investor but do not in fact meet the requirements for that status.

When status may be disregarded

(7) The Commissioner may advise a PIE to disregard notification by an investor under subsection (2) if the Commissioner considers on reasonable grounds that the person does not meet or no longer meets the requirements of subsections (3) and (4). As soon as reasonably practicable after receiving the advice, the PIE must treat the investor as a non-resident person described in subsection (5).

Cancelling status

(8) A notified foreign investor who wishes to have their notified foreign investor status cancelled, must notify the PIE. The status may be cancelled at any time.

Transitional residents

(9) Despite subsection (3)(a), a transitional resident who is an investor in a foreign investment zero-rate PIE may choose the prescribed investor rate set out in schedule 6, table 1, row 10.

Defined in this Act: CFC, Commissioner, excluded income, FIF, foreign investment PIE, foreign trust, income interest, multi-rate PIE, non-resident, notified foreign investor, notify, resident in New Zealand, transitional resident, trustee

Section HM 55D: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 55E Changes in status of investors in foreign investment PIEs

When this section applies

(1) This section applies when—

(a) a person who is a notified foreign investor in a foreign investment PIE—

(i) becomes resident in New Zealand in a tax year; or

(ii) cancels their notified foreign investor status in a tax year under section HM 55D(8):

(b) a person who is an investor in a foreign investment PIE and who is resident in New Zealand becomes non-resident in a tax year and chooses under section HM 55D(2) to have notified foreign investor status.

Time for changing treatment

(2) The PIE must change the treatment of the person as soon as reasonably practicable. But, at the latest, the change must be made from the start of the following tax year.

Defined in this Act: foreign investment PIE, non-resident, notified foreign investor, resident in New Zealand, tax year

Section HM 55E: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 55F Treatment of income attributed to notified foreign investors

What this section does

(1) This section applies for a foreign investment PIE for the purposes of the calculations that must be made under sections HM 36 and HM 47 in relation to the income attributed to a notified foreign investor in the PIE or the income tax liability of the PIE.

Foreign investment zero-rate PIEs

(2) A foreign investment zero-rate PIE must apply a prescribed investor rate of 0% under schedule 6, table 1, row 9 (Prescribed rates: PIE investments and retirement scheme contributions) to all amounts attributed to the investor.

Foreign investment variable-rate PIEs

(3) A foreign investment variable-rate PIE must, for all amounts attributed to the investor,—

(a) identify the income source of each amount; and

(b) identify the investment type of each amount that is not a foreign-sourced amount; and

(c) apply the relevant prescribed investor rate set out in schedule 6, table 1B to the amount.

Defined in this Act: amount, foreign investment PIE, foreign investment variable rate PIE, foreign investment zero-rate PIE, income, income tax liability, notified foreign investor, prescribed investor rate

Section HM 55F: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 55G Allowable amounts and thresholds for income with New Zealand source

For the purposes of sections HM 19B and HM 55H, and schedule 6 (Prescribed rates: PIE investments and retirement scheme contributions) and for a foreign investment zero-rate PIE, the allowable amounts of income that have a source in New Zealand and the thresholds applying to the amounts are—

(a) interest income from financial arrangements with no term or a term of 90 days or less, for which the total value of the financial arrangements must not be more

than 5% of the total value of the PIE's investments, determined without reference to an amount described in paragraph (c):

(b) a dividend paid by a company resident in New Zealand, if the total value of all the shares held by the PIE in companies resident in New Zealand is not more than 1% of the total value of the PIE's investments:

(c) income from a derivative instrument or other non-interest bearing financial arrangement that is related to the PIE's foreign investments:

(d) attributed PIE income from a foreign investment zero-rate PIE or a PIE that meets the requirements of section HM 19B(1).

Defined in this Act: amount, attributed PIE income, company, dividend, financial arrangement, foreign investment zero-rate PIE, foreign-sourced amount, income, interest, multi-rate PIE, New Zealand, resident in New Zealand

Section HM 55G: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 55H Treatment when certain requirements for foreign investment PIEs not met

Income sources

(1) A foreign investment zero-rate PIE that derives an amount of income other than a foreign-sourced amount or an amount allowable under section HM 55G is treated from the date on which the income is derived as a foreign investment variable-rate PIE.

When thresholds exceeded: PIE applying zero rates

(2) Subsection (3) applies for an income year and a foreign investment zero-rate PIE when—

(a) on the last day of a quarter (the **first quarter**), a threshold set out in section HM 55G(a) and (b) for allowable amounts of income is exceeded; and

(b) the failure is not remedied by the last day of the next quarter (the **second quarter**).

Variable rates

(3) The PIE is treated from the first day of the third quarter as a foreign investment variable-rate PIE, and must apply to each

amount of income the variable investor rates under schedule 6, table 1B for all income sources and investment types.

When requirements not met: PIE applying variable rates

(4) Subsection (5) applies for an income year and a foreign investment variable-rate PIE when—

(a) on the last day of the first quarter, the PIE does not meet the requirements of—

(i) section HM 13(6):

(ii) section HM 19C:

(iii) section HM 55F(3):

(b) the failure is not remedied by the last day of the second quarter.

Multi-rate PIE

(5) The PIE is treated from the first day of the third quarter as a multi-rate PIE that is not a foreign investment PIE.

Transitional rule

(6) For the purposes of subsections (1) and (3), if a breach occurs and is not remedied before 1 April 2012, the PIE is treated as a multi-rate PIE that is not a foreign investment PIE.

Defined in this Act: amount, foreign investment PIE, foreign investment variable rate PIE, foreign investment zero-rate PIE, income, income year, multi-rate PIE, quarter

Section HM 55H: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 79(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Prescribed and notified rates for investors in multi-rate PIEs

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 56 Prescribed investor rates: schedular rates

Rates set out in schedule

(1) The prescribed investor rate of an investor in a multi-rate PIE is determined under schedule 6, tables 1 and 1B (Prescribed rates: PIE investments and retirement scheme contributions).

When amount not included in taxable income

(2) In the determination of a person's prescribed investor rate under subsection (1), the person's taxable income does not include an amount that—

(a) arises because their notified investor rate is lower than their prescribed investor rate; and

(b) is treated as taxable income because section CX 56 (Attributed income of certain investors in multi-rate PIEs) does not apply.

Defined in this Act: amount, investor, multi-rate PIE, notified investor rate, prescribed investor rate, taxable income

Section HM 56: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 49(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 56: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 56(1) heading: inserted (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 80(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 56(1): amended, on 29 August 2011, by section 80(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 56(2) heading: added (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 80(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 56(2): added (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 80(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 56 list of defined terms **amount**: inserted (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 80(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 56 list of defined terms **notified investor rate**: inserted (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 80(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 56 list of defined terms **taxable income**: added (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 80(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 57 Prescribed investor rates for certain investors: 0%

An investor (a **zero-rated investor**) in a multi-rate PIE has a prescribed investor rate of 0% if they are resident in New Zealand and are—

(a) a company:

(b) an organisation or trust with income that is exempt income under section CW 41 or CW 42 (which relate to charities):

(c) a proxy acting under section HM 33:

(d) an exiting investor referred to in section HM 61:

(e) a PIE or superannuation fund, other than a trustee who chooses a rate under schedule 6, table 1, row 3 or 5 (Prescribed rates: PIE investments and retirement scheme contributions):

(f) a person who derives income as a trustee and does not choose a rate under schedule 6, table 1, row 3, 5, or 7.

Defined in this Act: company, exempt income, investor, multi-rate PIE, PIE, prescribed investor rate, resident in New Zealand, superannuation fund, trustee

Section HM 57: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 49(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 57: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 58 Transition of rate for certain investors

When this section applies

(1) This section applies to a multi-rate PIE in relation to a person who is an investor in the PIE, and the person has, on 30 September 2010, a notified investor rate of 12.5%, 19.5%, 21%, or 30%.

Rate applying on and after 1 October 2010

(2) On and after 1 October 2010, the person's notified investor rate is—

(a) 10.5%, if it was 12.5% on 30 September 2010:

(b) 17.5%, if it was 19.5% or 21% on 30 September 2010:

(c) 28%, if it was 30% on 30 September 2010.

Exception: new notified rate

(3) Subsection (2) does not apply if the person advises the PIE of a different notified investor rate.

Defined in this Act: multi-rate PIE, notified investor rate, notify

Section HM 58: substituted, on 1 October 2010, by section 8 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 58(1): amended, on 1 October 2010, by section 71(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 58(2)(b): amended, on 1 October 2010, by section 71(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 58: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 49(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 58: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 59 Prescribed investor rates for certain investors: 0%

[Repealed]

Section HM 59: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 49(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 59: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 60 Notified investor rates

Notifying PIE

(1) Despite sections HM 56 to HM 58, an investor other than a notified foreign investor who has provided their tax file number to a multi-rate PIE may notify the PIE of the investor rate to be applied for a period (the **notified investor rate**). Section 28B of the Tax Administration Act 1994 sets out the requirements for the notice.

Time of notification

(2) The investor must give notice before the end of the relevant period.

Application of rate

(3) For an investor for an income year, a multi-rate PIE must apply the most recent notified investor rate to every day in the period. However, for the 2010–11 income year, the most recent notified investor rate on or after 1 October 2010 is applied only to every day on or after 1 October 2010. For a day before 1 October 2010, the multi-rate PIE may apply a notified investor rate corresponding to the most recent notified investor rate, ignoring the Taxation (Budget Measures) Act 2010 (*for example*: a notified investor rate of 12.5% may be applied before 1 October 2010, if the most recent notified investor rate on or after 1 October 2010 is 10.5%).

Exception

(3B) Subsection (3) does not apply if the PIE has made a voluntary payment of tax under section HM 45 that is intended to satisfy its income tax liability for the period in relation to the investor unless the rate last notified applies to the voluntary payment.

When chosen rate lower than rate in sections HM 56 to HM 58

(4) If an investor advises a notified investor rate that is lower than their prescribed investor rate that would apply under sections HM 56 to HM 58, income attributed to them by the PIE is not excluded income of the investor under section CX 56 (Attributed income of certain investors in multi-rate PIEs).

When rate disregarded

(5) The Commissioner may notify a PIE to disregard an investor's notified investor rate if the Commissioner considers the rate is incorrect. The notification must include a rate for the investor that the Commissioner considers appropriate.

When no rate notified

(6) If an investor does not advise a multi-rate PIE of their notified investor rate, the rate applying for a period is 28%.

Defined in this Act: Commissioner, excluded income, income, investor, multi-rate PIE, notified foreign investor, notify, notified investor rate, pay, PIE, prescribed investor rate, tax file number

Compare: 2007 No 97 s YA 1 "portfolio investor rate", "prescribed investor rate"

Section HM 60: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 60 heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(1): amended, on 29 August 2011, by section 82(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 60(1): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(2)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(1): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(2)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(3) heading: substituted, on 1 October 2010, by section 9(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 60(3): substituted, on 1 October 2010, by section 9(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 60(3): amended, on 1 October 2010, by section 72(1)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 60(3): amended, on 1 October 2010, by section 72(1)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 60(3B) heading: inserted, on 1 October 2010, by section 72(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 60(3B): inserted, on 1 October 2010, by section 72(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 60(4) heading: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(3)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(4): amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 72(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 60(4): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(3)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(4): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(3)(c) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(5): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(4) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60(6): amended, on 1 October 2010, by section 9(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section HM 60(6): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 50(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 60 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 82(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 61 Certain exiting investors zero-rated

When tax rate zero

(1) Despite section HM 60, the tax rate applying to an investor for a quarter is 0% if—

(a) the investor interest of the investor in a multi-rate PIE reaches the exit level or the investor has an exit period in a quarter in which they are attributed income from the PIE; and

(b) the PIE calculates and pays tax using the quarterly calculation option under section HM 43; and

(c) the PIE does not choose to make voluntary payments under section HM 45.

Notified foreign investors

(2) This section does not apply if the exiting investor is a notified foreign investor in a foreign investment PIE.

Defined in this Act: foreign investment PIE, income, investor, multi-rate PIE, notified foreign investor, pay, PIE, quarter

Compare: 2007 No 97 s YA 1 "portfolio investor rate", "prescribed investor rate"

Section HM 61: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 61: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 51(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 61(1) heading: inserted, on 29 August 2011, by section 83(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 61(1)(a): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 100(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HM 61(2) heading: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 83(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 61(2): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 83(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 61 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 83(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 61 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 83(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Exit levels and periods

HM 62 Exit levels for investors

An investor in a multi-rate PIE is treated as reaching the exit level when the PIE's tax liability for the investor is equal to, or more than, the value of the investor interest of the investor in the PIE at the end of the exit period (the **exit level**).

Defined in this Act: exit level, investor, investor interest, multi-rate PIE, PIE

Section HM 62: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 62: amended (with effect on 1 April 2010) on 21 December 2010 (applying for the 2010–11 and later income years), by section 101(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HM 63 Exit periods

When this section applies

(1) This section applies when an investor in a multi-rate PIE reaches the exit level during a tax year.

Exit period: exit calculation

(2) For a PIE that calculates its tax liability using the exit calculation option under section HM 42, the investor's exit period—

(a) begins with the day that is the later of the start of the tax year and the day on which the investor last became an investor; and

(b) ends on the day in the tax year when the exit level is reached.

Exit period: quarterly calculation

(3) For a PIE that calculates its tax liability using the quarterly calculation option under section HM 43, the investor's exit

period is the quarter in which the exit level is reached plus a grace period of 5 working days after the end of the quarter.

Voluntary payments of tax

(4) Subsection (3) does not apply if the PIE voluntarily pays tax under section HM 45.

Defined in this Act: exit level, investor, multi-rate PIE, pay, PIE, quarter, tax year, working day

Compare: 2007 No 97 s YA 1 "portfolio investor exit period"

Section HM 63: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Treatment of losses by PIEs

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Losses of certain multi-rate PIEs

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 64 Use of investor classes' losses

When this section applies

(1) This section applies when an investor class of a PIE that calculates and pays tax using the exit calculation or quarterly calculation options under section HM 42 and HM 43 has a tax loss under section HM 35(7) for a calculation period. But this section does not apply to a land loss as defined in section HM 65(3).

Amount not carried forward

(2) The amount is not included in a loss balance carried forward under Part I (Losses) to a later calculation period.

Tax credits

(3) To the extent to which the amount relates to an investor other than a zero-rated investor, the PIE has a tax credit under section LS 1 (Tax credits for multi-rate PIEs). The amount of the credit is calculated under section HM 47(5).

Foreign investment PIEs

(4) This section does not apply in relation to an investor who is a notified foreign investor in a foreign investment PIE.

Defined in this Act: amount, calculation period, foreign investment PIE, investor class, land loss, loss balance, notified foreign investor, pay, PIE, tax credit, zero-rated investor

Compare: 2007 No 97 s HL 32(1)

Section HM 64: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 64(4) heading: added, on 29 August 2011, by section 84(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 64(4): added, on 29 August 2011, by section 84(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 64 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 84(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 64 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 84(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 65 Use of land losses of investor classes

When this section applies

(1) This section applies when an investor class of a multi-rate PIE that calculates and pays tax using the exit calculation option or the quarterly calculation option under section HM 42 or HM 43 has a land loss for a calculation period.

Amount carried forward

(2) The amount of land loss may be included in a loss balance carried forward under Part I (Losses) to a later calculation period and used under section HM 35(5) to reduce an amount of taxable income from the class.

Meaning of land loss

(3) For the purposes of this section, a **land loss** means a tax loss under section HM 35(7) of an investor class of a PIE for a calculation period if, at the end of the period, the class has, through the investor interests of the members of the class, an entitlement to the distribution of the proceeds of the PIE's investments that—

(a) are an investment of the type listed in subsection (4); and

(b) have a value that is more than 50% of the market value of all the PIE's investments in which the class has the entitlement.

Investment types

(4) For the purposes of subsection (3)(a), the investment must be—

(a) an investment in land:

(b) an investment in a land investment company that is resident in New Zealand:

(c) an investment in a non-resident land investment company in which the investor class has a voting interest of more than 20%.

Foreign investment PIEs

(5) This section does not apply in relation to an investor who is a notified foreign investor in a foreign investment PIE.

Defined in this Act: amount, calculation period, foreign investment PIE, investor class, investor interest, land, land investment company, land loss, loss balance, market value, multi-rate PIE, non-resident, notified foreign investor, pay, PIE, quarter, resident in New Zealand, share, tax loss, taxable income, voting interest

Compare: 2007 No 97 s HL 32(2), (3)

Section HM 65: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 65(3)(a): substituted (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 73(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 65(4) heading: added (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 73(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 65(4): added (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 73(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 65(5) heading: added, on 29 August 2011, by section 85(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 65(5): added, on 29 August 2011, by section 85(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 65 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 85(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 65 list of defined terms **non-resident**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 73(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 65 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 85(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 65 list of defined terms **resident in New Zealand**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 73(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HM 65 list of defined terms **voting interest**: added (with effect on 1 April 2010), on 7 September 2010, by section 73(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Formation losses

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 66 Formation losses carried forward to tax year

What this section applies to

(1) This section applies to an entity that becomes a PIE, other than a multi-rate PIE that calculates and pays tax using the exit calculation or quarterly calculation option under section HM 42 or HM 43, when the entity has a formation loss.

Amount carried forward

(2) The amount of formation loss may be included in a loss balance carried forward under Part I (Losses) to a tax year in which the entity is a PIE.

Defined in this Act: amount, formation loss, loss balance, multi-rate PIE, pay, PIE, quarter, tax, tax year

Compare: 2007 No 97 s HL 30(1), (2)

Section HM 66: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 67 Formation losses carried forward to first quarter

When this section applies

(1) This section applies when an entity becomes a multi-rate PIE that—

(a) calculates and pays tax using the exit calculation or quarterly calculation option under section HM 42 or HM 43; and

(b) has a formation loss.

Amount carried forward

(2) The amount of formation loss may be carried forward under Part I (Losses) to the quarter in which the entity becomes a PIE.

Defined in this Act: amount, formation loss, multi-rate PIE, pay, PIE, quarter

Compare: 2007 No 97 s HL 30(1)

Section HM 67: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 68 When formation losses carried forward are less than 5% of formation investment value

If the total amount of formation loss carried forward under section HM 67 is less than 5% of the total market value of the PIE's investments at the time it becomes a PIE, it may allocate to an attribution period the amount not already allocated, when calculating under section HM 35(5) the taxable amount of an investor class for the attribution period.

Defined in this Act: amount, attribution period, formation loss, investor class, market value, PIE taxable amount

Compare: 2007 No 97 s HL 30(3)

Section HM 68: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 69 When formation losses carried forward are 5% or more of formation investment value: 3-year spread

What this section applies to

(1) This section applies to spread the formation loss over the period of 3 years from the date the entity becomes a PIE when the amount of formation loss carried forward under section HM 67 is 5% or more of the total market value of the PIE's investments at the time it becomes a PIE.

Amount

(2) The maximum amount of formation loss that the PIE may allocate to an attribution period, when calculating under section HM 35(5) the taxable amount of an investor class for the attribution period, is the amount calculated using the formula—

$$\text{initial loss} \times \frac{\text{days}}{1095.}$$

Definition of items in formula

(3) In the formula,—

(a) **initial loss** is the amount of formation loss:

(b) **days** is the number of days in the attribution period.

Unused formation losses

(4) For the purposes of the calculation of the amount in subsection (2), the formation loss includes any unused formation loss that was allocated to an earlier attribution period.

Treatment after 3-year period

(5) After the end of the period of 3 years referred to in subsection (1), any residual formation loss may be allocated to an attribution period when a calculation is made under section HM 35(5) of the taxable amount for an investor class.

Defined in this Act: amount, attribution period, formation loss, investor class, market value, PIE, tax year taxable amount

Compare: 2007 No 97 s HL 30(4), (5)

Section HM 69: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 69(5): substituted (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 74(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HM 70 Maximum amount of formation losses allocated by multi-rate PIEs to investor classes

Maximum amount for allocation

(1) Despite sections HM 68 and HM 69, the maximum amount of formation loss that may be allocated, when calculating under section HM 35(5) the taxable amount of an investor class for an attribution period, is calculated using the formula—

$$\text{class net income} - \frac{\text{credits}}{\text{rate}}.$$

Definition of items in formula

(2) In the formula,—

(a) **class net income** is the amount of the net income of the investor class for the period under section HM 35(4):

(b) **credits** is the total amount attributed to the investor class for the period of—

(i) imputation credits:

(ii) Maori authority credits:

(iii) RWT credits:

(iv) FDP credits:

(c) **rate** is the basic rate for companies set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Defined in this Act: amount, attribution period, company, FDP credit, formation loss, imputation credit, investor class, Maori authority credit, net income, RWT

Compare: 2007 No 97 s HL 30(6), (7)

Section HM 70: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Elections and consequences

Heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 71 Choosing to become PIE

An entity that, at the time of election, meets the requirements of the entry rules in sections HM 8 to HM 10, HM 17, HM 18, and HM 20, except to the extent to which the relevant requirement is said not to be applicable to the entity, may choose to become a PIE by notifying the Commissioner under section 31B of the Tax Administration Act 1994.

Defined in this Act: Commissioner, notify, PIE

Compare: 2007 No 97 s HL 11(1), (3)

Section HM 71: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 71B Choosing to become foreign investment PIE

What this section applies to

(1) This section applies to an entity that—

(a) is, or is eligible to become, a multi-rate PIE; and

(b) has, or intends to have, investors who are not resident in New Zealand; and

(c) does not calculate its income tax liability using the provisional tax calculation option in section HM 44.

Foreign investment zero-rate PIEs

(2) The entity may choose to become a foreign investment zero-rate PIE if it meets the requirements of section HM 19B.

Foreign investment variable-rate PIEs

(3) An entity may choose to become a foreign investment variable-rate PIE if it meets the requirements of section HM 19C.

Election to become foreign investment PIE

(4) The entity makes the election by advising the Commissioner. If the entity is not an existing multi-rate PIE, the entity must

notify the Commissioner under section 31B of the Tax Administration Act 1994.

Defined in this Act: Commissioner, foreign investment PIE, foreign investment variable-rate PIE, foreign investment zero-rate PIE, income tax liability, multi-rate PIE, notify, resident in New Zealand

Section HM 71B: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 86(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 72 When elections take effect

Notice of election

(1) An election under section HM 71 or HM 71B to become a PIE or a foreign investment PIE, as applicable takes effect on the latest of the following dates:

(a) the date the entity is formed:

(b) the date set out in the notice:

(c) 30 days before the Commissioner receives the notice.

When entity does not meet basic requirements

(2) Despite subsection (1), an entity's election to become a PIE does not take effect if, in the period ending 12 months after the date on which the election would be effective,—

(a) the entity cancels the election:

(b) an event or situation arises that means the entity would lose PIE status under any of sections HM 24 to HM 28 because the requirements of sections HM 11 to HM 16 were not met in each quarter of the 12-month period.

Notice of cancellation

(3) An election under section HM 29 to cancel PIE status takes effect on the latest of the following dates:

(a) the date the entity became a PIE:

(b) the date set out in the notice:

(c) the date on which the Commissioner receives the notice.

Defined in this Act: Commissioner, foreign investment PIE, notice, PIE

Compare: 2007 No 97 ss HL 11(2), (2B), (4), HL 13(1), (4), HL 15(2)

Section HM 72: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HM 72(1): amended, on 29 August 2011, by section 87(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HM 72(2)(b): substituted, on 1 April 2010 (applying for income years beginning on or after 1 April 2010), by section 52(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section HM 72 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 87(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HM 73 Transition: provisional tax

When this section applies

(1) This section applies when an entity chooses to become a PIE in an income year and has an increased liability for provisional tax for the income year because of the election.

Penalties and interest

(2) The entity is not liable to pay any penalty or interest for which it would otherwise be liable for an inaccuracy arising from the increased liability in—

(a) an estimate of provisional tax made before the election:

(b) a payment of provisional tax due before the end of the 2-month period that starts when the election takes effect.

Tax liability

(3) An entity that becomes a PIE in a tax year and is liable to pay an amount of income tax because of the disposal and reacquisition referred to in section HM 75 may satisfy the tax liability by paying the Commissioner at least—

(a) one third of the liability in the tax year; and

(b) one half of the balance remaining after a payment under paragraph (a) in the tax year after that in which the entity became a PIE; and

(c) the balance owing after the payments under paragraphs (a) and (b) in the second tax year after that in which the entity became a PIE.

Defined in this Act: amount , Commissioner, income tax, income year, pay, PIE, provisional tax, tax year

Compare: 2007 No 97 s HL 14

Section HM 73: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 74 Transition: entities with non-standard income years

When this section applies

(1) This section applies when—

(a) an entity with a non-standard income year chooses to become a PIE; and

(b) the entity calculates and pays its tax liability using the exit calculation or quarterly calculation option under section HM 42 or HM 43.

Consequential changes in balance date

(2) Section 39 of the Tax Administration Act 1994 applies as if—

(a) the day before that on which the election takes effect were the original balance date of the entity; and

(b) the next 31 March after the election takes effect were a new balance date approved by the Commissioner for the entity.

Defined in this Act: Commissioner, non-standard income year, pay, PIE, quarter

Compare: 2007 No 97 s HL 13(2)

Section HM 74: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 75 Transition: treatment of shares held in certain companies

When subsection (2) applies

(1) Subsection (2) applies when—

(a) an entity chooses to become a PIE; and

(b) before the election takes effect—

(i) the entity holds a share in relation to which the proceeds of disposal would be excluded income under section CX 55(3)(a) and (b) (Proceeds from disposal of investment shares) once the entity becomes a PIE:

(ii) the entity is a share supplier in a returning share transfer in relation to that type of share; and

(c) the share is in a company that is not a PIE and does not become a PIE within 6 months from the date on which the entity became a PIE.

Disposal and reacquisition

(2) The entity is treated as—

(a) disposing of the share to another person; and

(b) receiving consideration of an amount that equals the market value of the share at the time; and

(c) reacquiring the share from the other person for the same consideration.

Timing

(3) The disposal and reacquisition is treated as occurring on the day before that on which the election takes effect.

When subsection (5) applies

(4) Subsection (5) applies when an entity—

(a) loses PIE status under any of sections HM 24 to HM 28 or chooses to cancel PIE status under section HM 29; and

(b) holds a share in relation to which the proceeds of disposal would be excluded income under section CX 55(3)(a) and (b) while the entity is a PIE.

Disposal and reacquisition

(5) The entity is treated as—

(a) disposing of the share to another person; and

(b) receiving consideration of an amount that equals the market value of the share at the time; and

(c) reacquiring the share from the other person for the same consideration.

Timing

(6) The disposal and reacquisition is treated as occurring on the day before PIE status is lost.

Defined in this Act: amount, company, exempt income, market value, PIE, returning share transfer, share, shareholder

Compare: 2007 No 97 ss HL 13(3), HL 15(3)

Section HM 75: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HM 76 Transition: FDPA companies

When an FDPA company becomes a PIE during a tax year, the balance of the company's FDP account at the end of the tax year for the purposes of section RM 21(2)(c) (Refunds when

loss balances used to reduce net income) is equal to the balance of the FDP account immediately before the company becomes a PIE.

Defined in this Act: FDP account, FDPA company, PIE, tax year

Compare: 2007 No 97 s HL 13(3B)

Section HM 76: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 292(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart HR—Other entities

Partnerships and joint ventures [Repealed]

Heading: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HR 1 Partnerships and joint ventures

[Repealed]

Section HR 1: repealed, on 1 April 2008, by section 20(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Funds

HR 2 Group investment funds

Separate returns

(1) The trustee of a group investment fund must provide for a tax year under section 33 of the Tax Administration Act 1994, separate returns of its category A income and its category B income.

Designated group investment fund, category B income: application of trust rules

(2) If the trustee of a group investment fund derives an amount that is income derived from investments and funds of a designated group investment fund or category B income, the amount is treated as income derived by the trustee and the trust rules apply.

Category A income: application of company rules

(3) If the trustee of a group investment fund derives from the investments and funds of the group investment fund an amount

that is category A income, the amount is treated as income of a notional company.

Defined in this Act: amount, category A income, category B income, designated group investment fund, group investment fund, income, return of income, tax year, trust, trust rules, trustee

Compare: 2004 No 35 s HE 2(1), (1A)

HR 3 Definitions for section HR 2: group investment funds

Category A income

(1) **Category A income**, for a group investment fund other than a designated group investment fund in an income year, means the amount of income derived from the investments and funds of the group investment fund that is calculated using the formula—

$$\frac{\text{last day value} - \text{designated source investments} - \text{pre–1983 investments}}{\text{last day value}} \times \text{income}$$

Definitions for items in formula

(2) In the formula,—

(a) **last day value** is the current value of all investments and funds of the group investment fund on the last day of the income year:

(b) **designated source investments** is the current value of the designated source investments in the group investment fund on the last day of the income year:

(c) **pre-1983 investments** is the current value of the pre-1983 investments in the group investment fund on the last day of the income year:

(d) **income** is the total income derived from all investments and funds of the group investment fund in the income year.

Category B income

(3) **Category B income**, for a group investment fund other than a designated group investment fund, means the income derived from investments and funds of the group investment fund that is not category A income for the income year.

Current value

(4) **Current value**, for a group investment fund and a day in an income year, means the capital value, as defined by the Trustee Companies Act 1967 or the Public Trust Act 2001, of the investments and funds of the group investment fund that is—

(a) either—

(i) last determined before the day under section 31 of the Trustee Companies Act 1967 or section 66 of the Public Trust Act 2001; or

(ii) determined on the day, if that day is the day on which the capital value is determined; and

(b) for the purposes of the definition of **designated source investments** in subsection (7), and **pre-1983 investments** in subsection (8), determined as if those investments and funds comprised all the investments and funds in the group investment fund at the time.

Designated sources

(5) **Designated sources**, for a group investment fund, means a trust, other than the trust under which the fund is established, whose trustee is a trustee of the group investment fund, that—

(a) is created—

(i) by will or codicil, or by order of court varying or modifying the provisions of a will or codicil; or

(ii) on intestacy, including a partial intestacy, or by an order of court varying or modifying, in relation to an estate, the application of the law relating to the distribution of intestate estates; or

(iii) by an order of court; or

(iv) by an enactment; or

(v) to administer funds that are compensation or other money arising from the death of, or injury to, a person; or

(vi) to vary the terms of a will or codicil or, in relation to an estate, to vary the application of the law relating to the distribution of intestate estates, in either case for the sole purpose of effecting a settlement out of court of an application made, or proposed to be made, under the Family Protection Act 1955 or a claim, or a pro-

posed claim, to be made under the Law Reform (Testamentary Promises) Act 1949, if the terms are mainly the same as those likely to have been ordered by the court:

(b) is not carried on for the private benefit of an individual whose funds are applied entirely or mainly for benevolent, philanthropic, cultural, or public purposes in New Zealand.

Designated group investment fund

(6) **Designated group investment fund** means a group investment fund whose investments and funds are invested wholly—

(a) in investments authorised under section 4(1)(a) to (j) of the Trustee Act 1956, which is interpreted as if the Trustee Amendment Act 1988 had not been enacted, and are not investments authorised solely by the instrument creating the trust under which the fund is established; or

(b) in, and for the purposes of, the carrying on of a forestry business on land in New Zealand, to the extent to which the investments and funds are invested in the land that the fund owned or otherwise held on 22 June 1983 for the purposes of the forestry business.

Designated source investments

(7) **Designated source investments**, for a group investment fund at any time, means investments and funds from designated sources invested at the time in the group investment fund.

Pre-1983 investments

(8) **Pre-1983 investments**, for a group investment fund at any time, means investments and funds that were invested in the group investment fund at 22 June 1983, other than designated source investments, as if those investments and funds had continued to be invested at the time, including—

(a) money deposited between 15 June and 23 June 1983 with the trustee of the group investment fund for investment in the fund; and

(b) money deposited between 22 June and 16 July 1983 with the trustee of the group investment fund for invest-

ment in the fund, which, on or before 22 June 1983, was subject to a binding commitment to deposit that money.

Defined in this Act: amount, business, category A income, category B income, Commissioner, current value, designated group investment fund, designated source investments, designated sources, group investment fund, income, income year, New Zealand, pre-1983 investments, trustee

Compare: 2004 No 35 ss HE 2(2), (3), OB 1 **category A income**, **category B income**, **current value**, **designated group investment fund**, **group investment fund**

HR 4 Government Superannuation Fund

The Government Superannuation Fund Authority is treated for income tax purposes as if the Government Superannuation Fund were a superannuation scheme that is a trust and the Authority the trustee of that scheme.

Defined in this Act: income tax, Government Superannuation Fund, superannuation scheme, trust, trustee

Compare: 2004 No 35 s HJ 1

HR 4B Crown activities through New Zealand Superannuation Fund

Amounts of income derived and expenditure incurred by the Crown in relation to the activities of its New Zealand Superannuation Fund are determined using the rules in this Act that apply to companies. This treatment applies to determine—

(a) how the amounts derived and incurred are quantified and timed:

(b) whether income is treated as exempt income or excluded income:

(c) any other matter concerning an activity of the Fund.

Defined in this Act: amount, company, excluded income, exempt income, income, tax

Section HR 4B: inserted (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 88(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Airport operators

HR 5 Airport operators: general

When this section applies

(1) This section and sections HR 6 and HR 7 apply to determine for this Act certain aspects of the treatment of an airport operator that is a joint venture between the Crown and a local authority.

Company

(2) The airport operator is treated as a company.

Shares in company

(3) Each joint venturer is treated as holding shares in the company in proportion to their share of the profits of the joint venture, as determined under the joint venture agreement (after allowing for adjustments for earlier income years).

Separate from joint ventures

(4) The airport operator is treated as a person separate from—

(a) the Crown; and

(b) each airport authority; and

(c) each other person.

Neither public nor local authority

(5) The airport operator is treated as neither a public authority nor a local authority.

Not subject to mutual association rules

(6) The airport operator is not treated as a mutual association for the purposes of subpart HE (Mutual associations).

Interest-bearing funding

(7) Subsection (8) applies to the extent to which—

(a) a joint venturer provides funds for the airport operator's activities; and

(b) the joint venturers expressly agree that the funds are to be provided for the airport operator's activities; and

(c) the funds are provided for consideration in the nature of interest payable by the airport operator.

Funding

(8) The funds are treated as money borrowed by the airport operator and the consideration is treated as interest.

Defined in this Act: airport authority, airport operator, airport operator's activities, association, company, interest, local authority, public authority, share

Compare: 2004 No 35 s OC 1(2)

HR 6 Airport operator's assets

Ownership of airport assets

(1) An airport operator is treated as owning each of its airport assets.

Time of acquisition

(2) An airport operator is treated as having acquired an asset at the time—

(a) it acquired it other than by way of purchase:

(b) it agreed to use it:

(c) it started to have the power to use it.

Cost of acquisition

(3) An airport operator is treated as having incurred, in acquiring an asset, its market value at the time of acquisition.

Ceasing to be airport asset

(4) If an asset ceases to be an airport asset of the airport operator, other than on sale, the airport operator is treated as having sold it, at the time, for a price equal to its market value at the time.

Disputes concerning value or timing

(5) Subsection (6) applies if a question arises concerning—

(a) the market value of an asset:

(b) the cost of an airport asset:

(c) the time at which an airport operator acquired, agreed to use, or started to have the power to use an asset.

Resolved by agreement or Commissioner

(6) The question must be resolved by agreement between the airport operator and the Commissioner or, failing agreement, by the Commissioner.

Meaning of airport asset

(7) In this section, for an airport operator, **airport asset** means—

(a) an asset that, under the joint venture agreement and for the purposes of the airport operator's activities, the airport authority—
  (i) acquires:
  (ii) agrees to use:
  (iii) is given the power to use:
(b) an asset owned by a person for the purposes of a depreciation sinking fund for an airport asset:
(c) an asset owned by a person for the purposes of a loan redemption sinking fund for a loan on which the interest payments are a charge against the joint venture income of the airport operator:
(d) an asset acquired by the airport operator using funds that are, or by exchanging property that is, acquired in carrying on the airport operator's activities and not allocated or distributed to the joint venturers.

Exclusion

(8) Subsection (7)(a) does not apply to an asset that—
(a) the airport operator has—
  (i) disposed of:
  (ii) ceased to agree to use:
  (iii) ceased to have the power to use:
(b) the airport operator has acquired, agreed to use or acquired the power to use under a lease, unless the lease is a specified lease or a finance lease.

Defined in this Act: acquire, airport asset, airport authority, airport operator, airport operator's activities, Commissioner, finance lease, interest, loan, specified lease

Compare: 2004 No 35 s OC 1(2)–(6)

HR 7 Meaning of airport operator's activities

Meaning of airport operator's activities

(1) In sections HR 5 and HR 6, **airport operator's activities** means the following activities undertaken for the purposes of the airport operator's joint venture agreement concerning the airport, including the airport's approaches, buildings and equipment:
(a) its establishment:
(b) its improvement:

(c) its maintenance:
(d) its operation:
(e) its management.

Meaning of airport

(2) In this section, **airport** has the meaning given in section 2 of the Airport Authorities Act 1966.

Defined in this Act: airport, airport operator, airport operator's activities

Compare: 2004 No 35 s OC 1(6)

Transitional residents

HR 8 Transitional residents

Provisions under which transitional resident treated as non-resident

(1) When a foreign-sourced amount is derived by a transitional resident, the following provisions apply to produce a result for income tax purposes that is the same as if the transitional resident were non-resident:

(a) sections CD 45, CE 2, CQ 2, CQ 5, and CW 27 (which relate to income):
(b) sections DN 2 and DN 6 (which relate to deductions):
(c) sections EW 5, EW 37, EW 41, EX 16, EX 41, and EX 64 (which relate to the financial arrangements rules and to the CFC and FIF rules):
(d) sections HC 25, HC 26, and HC 30 (which relate to the trust rules):
(e) sections MC 5, MC 10, MD 7, and MF 5 (which relate to tax credits):
(f) sections RE 2, RE 5 and RF 12 (which relate to the RWT and NRWT rules):
(g) section YD 1 (Residence of natural persons):
(h) section 41 of the Tax Administration Act 1994.

Meaning of transitional resident

(2) A person is a **transitional resident** if—

(a) they are resident in New Zealand through acquiring a permanent place of abode as described in section YD 1(2) or through the 183-day rule set out in section YD 1(3); and

(b) for a continuous period (the **non-residence period**) of at least 10 years immediately before they meet the requirements of section YD 1(2) or (3), ignoring the rule in section YD 1(4), (Residence of natural persons) for becoming resident in New Zealand, they—

(i) did not meet the requirements of that section:

(ii) were not resident in New Zealand; and

(c) they were not a transitional resident before the non-residence period; and

(d) they have not ceased to be a transitional resident after the end of the non-residence period.

Natural persons

(3) A natural person who meets the requirements of subsection (2) and does not make an election under subsection (4) is a transitional resident for a period—

(a) beginning from the first day of the residence required by subsection (2)(a); and

(b) ending on the day that is the earlier of—

(i) the day before the person stops being a New Zealand resident:

(ii) the last day of the 48th month after the month in which they meet the requirements of section YD 1(2) or (3), ignoring the rule in section YD 1(4),.

Choosing not to be transitional resident

(4) A person who would otherwise be a transitional resident in an income year may choose by notice to the Commissioner or by notice under subsection (5) not to be a transitional resident for a period—

(a) beginning on or after the start of the income year; and

(b) ending immediately before the person stops meeting the requirements of subsection (2).

Applying for tax credits

(5) An application under section 41 of the Tax Administration Act 1994 by a person who is eligible to be a transitional resident for a tax credit under subparts MA to MF and MZ (which relate to tax credits for families) for an income year is treated for the period of the application as—

(a) a notice of election under subsection (4) by the person if they have not made one; and

(b) a notice of election under subsection (4) by a spouse, civil union partner, or de facto partner of the person.

Election irrevocable

(6) An election under subsection (4) is irrevocable.

Notice of election

(7) A notice under subsection (4) to stop being a transitional resident must be received by the Commissioner by—

(a) the time within which the person's return of income must be filed under section 37 of the Tax Administration Act 1994; or

(b) if the person or their tax agent applies for it, a further time allowed by the Commissioner.

Defined in this Act: foreign-sourced amount, New Zealand resident, non-resident, notice, resident in New Zealand, tax credit, transitional resident

Compare: 2004 No 35 ss FC 22—FC 24

Section HR 8(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 293(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 293(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(2)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 293(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(2)(b): amended (with effect on 1 April 2008), on 7 September 2010, by section 75(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 8(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 293(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(3)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 293(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(3)(b)(ii): amended (with effect on 1 April 2008), on 7 September 2010, by section 75(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 8(3)(b)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 293(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 293(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 293(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 8(7): added (with effect on 1 April 2008), on 6 October 2009, by section 293(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Financial institution special purpose vehicles

Heading: added (with effect on 1 April 2008), on 6 October 2009, by section 294(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Heading: amended (with effect on 1 June 2010), on 7 September 2010, by section 76 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HR 9 Financial institution special purpose vehicles are transparent

For the purposes of the liabilities and obligations under an Inland Revenue Act of a financial institution described in the definition of **financial institution special purpose vehicle**, paragraph (b), and the relevant financial institution special purpose vehicle,—

(a) the financial institution is treated as carrying on an activity carried on by the financial institution special purpose vehicle, and having a status, intention, and purpose of the financial institution special purpose vehicle, and the financial institution special purpose vehicle is treated as not carrying on that activity or having that status, intention, or purpose:

(b) the financial institution is treated as holding property that the financial institution special purpose vehicle holds, and the financial institution special purpose vehicle is treated as not holding that property:

(c) the financial institution is treated as being party to any arrangement to which the financial institution special purpose vehicle is a party, and the financial institution special purpose vehicle is treated as not being that party to that arrangement:

(d) the financial institution is treated as doing a thing and being entitled to a thing that the financial institution special purpose vehicle does or is entitled to, and the financial institution special purpose vehicle is treated as not doing that thing or being entitled to that thing.

Defined in this Act: arrangement, financial institution, financial institution special purpose vehicle, Inland Revenue Acts

Section HR 9: added (with effect on 1 April 2008), on 6 October 2009, by section 294(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 9 heading: amended (with effect on 1 June 2010), on 7 September 2010, by section 77(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9: amended (with effect on 1 June 2010), on 7 September 2010, by section 77(2)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9: amended (with effect on 1 June 2010), on 7 September 2010, by section 77(2)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9: amended (with effect on 1 June 2010), on 7 September 2010, by section 77(2)(c) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(a): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(a): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(b): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(b): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(c): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(c): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(d): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9(d): amended (with effect on 1 June 2010), on 7 September 2010, by section 77(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9 list of defined terms **financial institution**: inserted (with effect on 1 June 2010), on 7 September 2010, by section 77(4)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9 list of defined terms **financial institution special purpose vehicle**: inserted (with effect on 1 June 2010), on 7 September 2010, by section 77(4)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9 list of defined terms **registered bank**: repealed (with effect on 1 June 2010), on 7 September 2010, by section 77(4)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9 list of defined terms **RMBS special purpose vehicle**: repealed (with effect on 1 June 2010), on 7 September 2010, by section 77(4)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HR 9B Bankruptcy-remote property during application of section HR 9

Despite section HR 9, property that a financial institution holds because of the application of section HR 9 cannot be attached, charged, disposed of, or otherwise used in the payment of its tax debt, except to the extent to which—

(a) the tax debt—

(i) does not relate to income tax or provisional tax; and

(ii) would have been the relevant financial institution special purpose vehicle's tax debt in the absence of section HR 9:

(b) the property could have been attached, charged, disposed of, or otherwise used in payment of the tax debt in the absence of section HR 9.

Defined in this Act: dispose, financial institution, financial institution special purpose vehicle, income tax, provisional tax, tax

Section HR 9B: inserted (with effect on 1 June 2010), on 7 September 2010, by section 78 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 9B: amended, on 21 December 2010, by section 102(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section HR 9B(a): amended, on 21 December 2010, by section 102(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section HR 9B(b): amended, on 21 December 2010, by section 102(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

HR 10 What happens when vehicle stops being financial institution special purpose vehicle?

Property transferred and parties reconstituted

(1) When a company or a trustee of a trust (the **vehicle**) stops being an financial institution special purpose vehicle for any reason, other than on unwind, the following apply:

(a) the relevant financial institution is treated as disposing of its property (the **property**) that has been subject to section HR 9(b) in relation to the vehicle immediately before the vehicle stops being an financial institution special purpose vehicle:

(b) the vehicle is treated as acquiring the property immediately after the vehicle stops being an financial institution special purpose vehicle:

(c) the relevant financial institution is treated as not being a party to an arrangement (the **arrangement**) that it was treated as being a party to under section HR 9(c) in relation to the vehicle immediately before the vehicle stops being an financial institution special purpose vehicle:

(d) the vehicle is treated as being a party to the arrangement immediately after the vehicle stops being an financial institution special purpose vehicle.

Property transferred: market value

(2) The disposition of property in subsection (1)(a) and the acquisition of property in subsection (1)(b) are treated as occurring with a single third party for a payments equal to the property's market value.

Parties reconstituted: consideration

(3) At the time the financial institution or the vehicle becomes a party to an arrangement under subsection (1)(c) or (d), the market value, at that time, of consideration that has been paid, or is or will be payable, to or by the financial institution or vehicle (as applicable) for or under the arrangement, ignoring section HR 9(c), is treated as consideration that has been paid, or is or will be payable, to or by the financial institution or vehicle for or under the arrangement.

Definition

(4) In this section, **unwind** means a process, ignoring section HR 9, by which—

(a) guarantees and residential mortgage backed securities, as the case may be, described in the definition of **financial institution special purpose vehicle**, paragraph (d) are cancelled; and

(b) interests described in the definition of **financial institution special purpose vehicle**, paragraph (b) are transferred to the financial institution; and

(c) the vehicle is terminated, by liquidation or otherwise.

Defined in this Act: arrangement, company, consideration, dispose, financial institution, financial institution special purpose vehicle, liquidation, residential mortgage backed securities, trustee, unwind

Section HR 10: added (with effect on 1 April 2008), on 6 October 2009, by section 294(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HR 10 heading: amended (with effect on 1 June 2010), on 7 September 2010, by section 79(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1)(a): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1)(a): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(c) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1)(b): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(c) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1)(c): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1)(c): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(c) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(1)(d): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(2)(c) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(3): amended (with effect on 1 June 2010), on 7 September 2010, by section 79(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10(4): substituted (with effect on 1 June 2010), on 7 September 2010, by section 79(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10 list of defined terms **financial institution**: inserted (with effect on 1 June 2010), on 7 September 2010, by section 79(5)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10 list of defined terms **financial institution special purpose vehicle**: inserted (with effect on 1 June 2010), on 7 September 2010, by section 79(5)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10 list of defined terms **registered bank**: repealed (with effect on 1 June 2010), on 7 September 2010, by section 79(5)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section HR 10 list of defined terms **RMBS special purpose vehicle**: repealed (with effect on 1 June 2010), on 7 September 2010, by section 79(5)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart HZ—Terminating provisions

HZ 1 Distributions from trusts of pre-1989 tax reserves

When this section applies

(1) This section applies if, and to the extent to which, a distribution is received from a trust that is not a unit trust, a group investment fund, or a superannuation scheme, when the distribution—

(a) consists of an amount of income or a capital gain derived by the trustee in the 1987–88 or earlier tax year; and

(b) is not also beneficiary income to which an entitlement exists in the tax year.

Treatment of distribution

(2) The distribution is not income, and the provisions of this Act and the Tax Administration Act 1994 that correspond to the provisions of the Income Tax Act 1976, the Income Tax Act 1994, the Income Tax Act 2004, and the Income Tax Amendment Act (No 5) 1988 specified in the proviso to section 9 of the Act last referred to, do not apply.

Defined in this Act: beneficiary income, distribution, group investment fund, income, superannuation scheme, tax year, trustee, trustee income, unit trust

Compare: 2004 No 35 s HZ 1

HZ 2 Trusts that may become complying trusts

When this section applies

(1) This section applies in relation to a settlement made on a trust on or before 17 December 1987, whether or not further settlements have been made on the trust after that date, when a settlor, trustee, or beneficiary of the trust chose under section 228(7) of the Income Tax Act 1976 on or before 31 May 1989 to pay income tax on trustee income derived in the 1988–89 tax year and later tax years.

Trustee income derived in earlier tax years

(2) Trustee income having a source outside New Zealand, or having a source in New Zealand only as non-resident passive income in relation to which the income tax obligations have been satisfied, in the 1987–88 tax year and earlier tax years when no trustee was resident in New Zealand is treated as liable to income tax, other than only as non-resident passive income.

Trustee's obligations

(3) The trustee's obligations in relation to their income tax liability on the trustee income are treated as having been satisfied.

Defined in this Act: complying trust, income tax, income tax liability, New Zealand, non-resident passive income, pay, resident in New Zealand, settlement, source in New Zealand, settlor, tax year, trustee, trustee income

Compare: 2004 No 35 s HZ 2

Section HZ 2(2): amended, on 21 December 2010, by section 103(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HZ 2 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 103(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HZ 2 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 103(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HZ 3 Special partnerships: transition into limited partnerships and limited partnerships deduction rules

When this section applies

(1) This section applies when a special partnership under Part 2 of the Partnership Act 1908—

(a) is in existence on 1 April 2008; and

(b) is terminated and a limited partnership registered under the Limited Partnerships Act 2008 (the new **limited partnership**) succeeds to that special partnership.

No disposal: same partnership

(2) No partners' interests are disposed of merely because of the termination and succession described in subsection (1)(b). The partners of the special partnership are treated as the same partners of the new limited partnership.

Initial basis

(3) For the purposes of applying sections HG 11 and HG 12 (which relate to limited partnerships deduction rules) to the partners of the new limited partnership, all of the partners must choose one of the 2 following methods for calculating their partner's basis under section HG 11(3):

(a) they may choose to use the market value or the accounting book value of the amounts described in section HG 11(3), as at the day the calculation is first performed, namely the last day of the first income year in which they are subject to sections HG 11 and HG 12; or

(b) they may choose to apply section HG 11(3) as if the special partnership had always been a limited partnership and all relevant rules relating to limited partnerships had always existed (applying those rules with any necessary modifications).

Initial basis not less than zero

(4) If the application of sections HG 11 and HG 12, as modified by this section, calculates a partner's basis as less than zero, then the partner's basis is treated as being zero.

Defined in this Act: disposal limited partnership, partner, partner's interests, partnership

Section HZ 3: added, on 1 April 2008, by section 21(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HZ 4 Overseas limited partnerships: transition into limited partnerships deduction rules

When this section applies

(1) This section applies when a limited partnership described in paragraphs (a) and (b) of the definition of **limited part-**

nership (the **overseas limited partnership**) existed before 1 April 2008, and a partner of that partnership (a **relevant partner**) is a member of the partnership on 1 April 2008 and is subject to sections HG 11 and HG 12 (which relate to limited partnerships deduction rules) on or after 1 April 2008.

Initial basis

(2) For the purposes of applying sections HG 11 and HG 12 to the relevant partners of the overseas limited partnership, all relevant partners must choose one of the 2 following methods for calculating their partner's basis under section HG 11:

(a) they may choose to use the market value or the accounting book value of the amounts described in section HG 11, as at the day the calculation is first performed, namely the last day of the first income year in which they are subject to sections HG 11 and HG 12; or

(b) they may choose to apply section HG 11 as if the overseas limited partnership had always been a limited partnership and all relevant rules relating to limited partnerships had always existed (applying those rules with any necessary modifications).

Initial basis not less than zero

(3) If the application of sections HG 11 and HG 12, as modified by this section, calculates a partner's basis as less than zero, then the partner's basis is treated as being zero.

Defined in this Act: limited partnership, partner, partnership

Section HZ 4: added, on 1 April 2008, by section 21(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

HZ 4B Qualifying companies: transition into partnership

When this section applies

(1) This section applies when a QCP transitional process is carried out for a qualifying company or companies for the first or second income year that starts on or after 1 April 2011, whichever is relevant (the **transitional income year**).

QCP transitional process: retrospective rule

(2) From the first day of the transitional income year to the first day of existence for the partnership that effectively replaces the qualifying company or companies under a QCP transitional

process, the partnership is treated as existing and having the assets and liabilities of the qualifying company or companies, and associated rights and obligations, for that period. On and after the first day of the transitional year, the existence of the qualifying company or companies is ignored for the purposes of the Inland Revenue Acts except to the extent necessary to give effect to this section.

Taxation continuity

(3) The moving to the partnership of the assets, liabilities, and associated rights and obligations, under a QCP transitional process is treated for the purposes of the Inland Revenue Acts as a unique form of transference for such assets, liabilities, rights, and obligations, with the following effects:

(a) the moving to the partnership of the assets, liabilities, and associated legal rights and obligations, is treated as not being a transfer of such assets, liabilities, rights, and obligations:

(b) the qualifying company or companies has, before the first day of the transitional income year, the relevant tax position in relation to the assets and liabilities, and associated rights and obligations (the **historical tax positions**):

(c) the partnership is treated as stepping into the place of the qualifying company or companies, and as having, on and after the first day of the transitional income year,—

(i) the qualifying company's or companies' historical tax positions; and

(ii) the tax position in relation to the assets and liabilities, and associated rights and obligations, that it would have if it had always had the historical tax positions:

(d) the qualifying company has no tax position in relation to the assets and liabilities, and associated rights and obligations, on and after the first day of the transitional income year:

(e) all memorandum account balances and other tax accounting amounts for the qualifying company before the first day of the transitional income year are ignored and have no effect on and after that day (for example, the

qualifying company has no effective ASC on and after the first day of the transitional income year).

Transparency

(4) Subsections (2) and (3) are applied immediately before section HG 2 (Partnerships are transparent) applies.

Initial basis

(5) For the purposes of applying sections HG 11 and HG 12 (which relate to limited partnership deduction rules) to the partners of a limited partnership described in subsection (2), all of the partners must choose 1 of the 2 following methods for calculating their partner's basis under section HG 11(3):

(a) they may choose to use the market value or the accounting book value of the amounts described in section HG 11(3), as at the end of the income year before the transitional income year; or

(b) they may choose to apply section HG 11(3) as if the qualifying company had always been a limited partnership and all relevant rules relating to limited partnerships had always existed, applying those rules with any necessary modifications.

Initial basis not less than zero

(6) If the application of sections HG 11 and HG 12, as modified by this section, calculates a partner's basis as less than zero, then the partner's basis is treated as being zero.

Meaning of QCP transitional process

(7) **QCP transitional process** means a process, for which all outcomes are achieved in an income year (the **transitional income year**), by which a company or companies that are all qualifying companies at the end of the income year before the transitional income year transform into a partnership. The process must have the following outcomes:

(a) the Commissioner receives a notice from the qualifying company or companies before the day that is 6 months after the start of the transitional income year, stating an intention to revoke the company's or companies' qualifying company status and to complete the QCP transitional process relating to the partnership for the transitional income year; and

(b) the partners, or in the case of a limited partnership, the partners other than a company that is a general partner, are the same persons who, at the end of the income year before the transitional income year, were the shareholders of the qualifying company or companies, ignoring any person who dies in the transitional year; and

(c) all assets and liabilities, and associated rights and obligations, of the qualifying companies are moved to the partnership, excluding those that are inappropriate for a partnership; and

(d) each partner must have the same net position in the partnership as to relevant assets and liabilities, and associated rights and obligations, as would arise on the winding up of the qualifying company or companies at the end of the income year before the transitional income year, treating any person who dies in the transitional year as still being a partner.

Defined in this Act: ASC, Commissioner, company, income year, Inland Revenue Acts, limited partnership, memorandum account, partner, partnership, QCP transitional process, qualifying company, tax position, transfer

Section HZ 4B: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 104(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HZ 4C Qualifying companies: transition into look-through companies

When this section applies

(1) This section applies when a qualifying company first becomes a look-through company for the first or second income year, whichever is relevant, that starts on or after 1 April 2011 (the **transitional year**).

Initial basis

(2) For the purposes of applying sections HB 11 and HB 12 (which relate to look-through company deduction rules) to a person with an effective look-through interest for the look-through company, all of the persons who hold owner's interests must choose 1 of the 2 following methods for calculating their basis under section HB 11(3):

(a) they may choose to use the market value or the accounting book value of the amounts described in sec-

tion HB 11(3), as at the end of the income year before the transitional income year; or

(b) they may choose to apply section HB 11(3) as if the qualifying company had always been a look-through company and all relevant rules relating to look-through companies had always existed, applying those rules with any necessary modifications.

Initial basis not less than zero

(3) If the application of sections HB 11 and HB 12, as modified by this section, calculates an owner's basis as less than zero, then the owner's basis is treated as being zero.

Continuity of elections and methods

(4) The look-through company steps into the place of the qualifying company in relation to Inland Revenue Act elections and methods relating to the qualifying company.

Effect of elections and methods

(5) After subsection (4) applies, section HB 1 (Look-through companies are transparent) applies, so that the elections and methods are those of an owner of an effective look-through interest for the look-through company.

Defined in this Act: effective look-through interest, income year, Inland Revenue Acts, look-through company, owner's interests, qualifying company

Section HZ 4C: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 104(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section HZ 4C(4) heading: added (with effect on 1 April 2011), on 29 August 2011 (applying for income years beginning on or after 1 April 2011), by section 89(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HZ 4C(4): added (with effect on 1 April 2011), on 29 August 2011 (applying for income years beginning on or after 1 April 2011), by section 89(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HZ 4C(5) heading: added (with effect on 1 April 2011), on 29 August 2011 (applying for income years beginning on or after 1 April 2011), by section 89(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HZ 4C(5): added (with effect on 1 April 2011), on 29 August 2011 (applying for income years beginning on or after 1 April 2011), by section 89(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section HZ 4C list of defined terms **Inland Revenue Acts**: inserted (with effect on 1 April 2011), on 29 August 2011 (applying for income years beginning on or after 1 April 2011), by section 89(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

HZ 4D Qualifying companies: transition into sole traderships

When this section applies

(1) This section applies when a QCST transitional process is carried out for a qualifying company for the first or second income year, whichever is relevant, that starts on or after 1 April 2011 (the **transitional income year**).

QCST transitional process: retrospective rule

(2) From the first day of the transitional income year to the first day of existence for the sole tradership that effectively replaces the qualifying company under a QCST transitional process, the sole tradership is treated as existing and having the assets and liabilities of the qualifying company, and associated rights and obligations, for that period. On and after the first day of the transitional year, the existence of the qualifying company is ignored for the purposes of the Inland Revenue Acts except to the extent necessary to give effect to this section.

Taxation continuity

(3) The moving to the sole tradership of the assets, liabilities, and associated rights and obligations, under a QCST transitional process is treated for the purposes of the Inland Revenue Acts as a unique form of transference for such assets, liabilities, rights, and obligations, with the following effects:

(a) the moving to the sole tradership of the assets, liabilities, and associated rights and obligations, is treated as not being a transfer of such assets, liabilities, rights, and obligations:

(b) the qualifying company has, before the first day of the transitional income year, the tax position in relation to the assets and liabilities, and associated rights and obligations (the **historical tax position**):

(c) the sole tradership is treated as stepping into the place of the qualifying company, and as having, on and after the first day of the transitional income year,—

(i) the qualifying company's historical tax position; and

(ii) the tax position in relation to the assets and liabilities, and associated rights and obligations, that it would have if it had always had the historical tax position:

(d) the qualifying company has no tax position in relation to the assets and liabilities, and associated rights and obligations, on and after the first day of the transitional income year:

(e) all memorandum account balances and other tax accounting amounts for the qualifying company before the first day of the transitional income year are ignored and have no effect on and after that day (for example, the qualifying company has no effective ASC on and after the first day of the transitional income year).

Meaning of QCST transitional process

(4) **QCST transitional process** means a process, for which all outcomes are achieved in an income year (the **transitional income year**), by which a company that is a qualifying company at the end of the income year before the transitional income year is transformed into a sole tradership. The process must have the following outcomes:

(a) the Commissioner receives a notice from the qualifying company before the day that is 6 months after the start of the transitional income year, stating an intention to revoke the company's qualifying company status and to complete the QCST transitional process relating to the sole tradership for the transitional income year; and

(b) the sole tradership is the same natural person who, at the end of the income year before the transitional income year, is the sole shareholder of the qualifying company; and

(c) all assets and liabilities, and associated rights and obligations, of the qualifying company are moved to the sole tradership, excluding those that are inappropriate for a sole tradership.

Defined in this Act: ASC, Commissioner, company, income year, Inland Revenue Acts, memorandum account, notice, QCST transitional process, qualifying company, tax position, transfer

Section HZ 4D: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 104(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

HZ 5 Transitional provisions for PIE rules

Intention of new law

(1) The PIE rules are the provisions of the Income Tax Act 2007 relating to portfolio investment entities in rewritten form, and are intended to have the same effect as the relevant corresponding provisions of the Income Tax Act 2007. Subsection (3) overrides this subsection.

Using old law as interpretation guide

(2) Unless subsection (3) applies, in circumstances where the meaning of a PIE rule (the **new law**) is unclear or gives rise to absurdity—

(a) the wording of the provisions of the Income Tax Act 2007 relating to portfolio investment entities that correspond to and are replaced by the PIE rules (the **old law**) must be used to determine the correct meaning of the new law; and

(b) it can be assumed that a corresponding old law provision exists for each new law provision.

Limits to subsections (1) and (2)

(3) Subsections (1) and (2) do not apply in the case of—

(a) a PIE rule that repeals an old law and replaces it with a new law:

(b) a PIE rule that is amended after the commencement of section 292(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, with effect from the date on which the amendment comes into force.

Defined in this Act: PIE rules, portfolio investment entity

Section HZ 5: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 295(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section HZ 5(3)(b): amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 80(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

HZ 6 Saving of binding rules relating to portfolio investment entities

When, and extent to which, this section applies

(1) This section applies when, and to the extent to which,—

(a) before the commencement of this Act,—

(i) an applicant has applied for a private ruling, a product ruling, or a status ruling, on an arrangement that is entered into, or that the applicant seriously contemplates will be entered into, before the commencement of this Act:

(ii) a public ruling is issued; and

(b) the binding ruling is about a provision of the Income Tax Act 2007 relating to portfolio investment entities (the **old law**) that corresponds to and is replaced by the PIE rules; and

(c) the PIE rules corresponding to the old law (the **new law**) come into force on 1 April 2010; and

(d) the binding ruling—

(i) continues to exist at the commencement of this Act:

(ii) is made after the commencement of this Act in relation to an old law before 1 April 2010:

(iii) is made in relation to an old law provision of the Income Tax Act 2004 to which section ZA 4 (Saving of binding rulings) of the Income Tax Act 2007 applies, that continues to exist at the commencement of this Act; and

(e) in the absence of this section, the commencement of this Act would mean that the binding ruling would cease to apply because of section 91G of the Tax Administration Act 1994.

Ruling about new law

(2) The binding ruling is treated as if it were made about the new law, so that the effect of the ruling at the commencement of this Act is the same as its effect before the commencement.

No confirmation rulings

(3) To the extent to which a binding ruling continued by subsection (2) exists and applies to an arrangement, or to a person

and an arrangement, the Commissioner must not make a binding ruling on how—

(a) the new law applies to the arrangement or to the person and the arrangement; or

(b) this subsection applies to the arrangement or to the person and the arrangement.

Defined in this Act: arrangement, binding ruling, Commissioner, PIE rules, portfolio investment entity

Section HZ 6: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 295(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

HZ 7 Saving of binding rulings relating to settlements on trusts

When, and extent to which, this section applies

(1) This section applies when, and to the extent to which,—

(a) before the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009—

(i) an applicant has applied for a binding ruling on an arrangement that is entered into, or that the applicant seriously contemplates will be entered into, before the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009:

(ii) a binding ruling is issued; and

(b) the binding ruling is about a provision of the Income Tax Act 2004 on the question of whether an amount is a settlement on a trust; and

(c) the binding ruling—

(i) is made before or after the commencement of this Act and continues to exist at the commencement of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009; and

(ii) is made in relation to a provision of the Income Tax Act 2004 to which section ZA 4 (Saving of binding rulings) of this Act would have applied but for the intended change listed in schedule 51 (Identified changes in legislation) for section HC 27(2) (Who is a settlor?); and

(d) in the absence of this section, the commencement of the Taxation (Consequential Rate Alignment and Remedial

Matters) Act 2009 would mean that the binding ruling would cease to apply because of section 91G of the Tax Administration Act 1994.

Ruling about new law

(2) The binding ruling continues to exist despite the intended change referred to in subsection (1)(c)(ii) from the commencement of this Act to the date on which the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 receives the Royal assent.

No confirmation rulings

(3) To the extent to which a binding ruling continued by subsection (2) exists and applies to an arrangement, or to a person and an arrangement, the Commissioner must not make a binding ruling in the period that starts on the date of the commencement of this Act and ends on the date on which the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 receives the Royal assent on how—

(a) the new law applies to the arrangement or to the person and the arrangement; or

(b) this subsection applies to the arrangement or to the person and the arrangement.

Defined in this Act: arrangement, binding ruling, Commissioner, settlement

Section HZ 7: added (with effect on 1 April 2008), on 7 December 2009, by section 53 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Part I
Treatment of tax losses

Subpart IA—General rules for tax losses

IA 1 What this subpart does

This subpart—

(a) defines the relationship between the core provisions of this Act, the provisions of this Part, and other provisions in this Act that allow a person with a tax loss to use the amount of the loss; and

(b) establishes the general rules for using a tax loss.

Defined in this Act: amount, tax loss

Compare: 2004 No 35 s IE 1(1)(a)

IA 2 Tax losses

What is a tax loss?

(1) A person's tax loss for a tax year is found by adding together the amounts referred to in subsections (2) to (4).

Loss balances carried forward

(2) If the person has a loss balance carried forward under section IA 3(4) to the tax year, the amount is included in their tax loss for the tax year to the extent to which it is not subtracted under section IA 4(1)(a) from their net income for the tax year.

Net losses

(3) If the person has a net loss under section BC 4 (Net income and net loss) for the tax year, the amount is a tax loss component included in their tax loss for the tax year.

Additional amounts

(4) If the person is described in 1 or more of the following paragraphs and has the amount described in the paragraph, the amount is included as a tax loss component in their tax loss for the tax year:

(a) a member fund that incurs excess expenditure:
  (i) the amount that is included in the tax loss under section DV 5(4)(b) (Investment funds: transfer of expenditure to master funds); and
  (ii) the amount that the fund chooses under section DV 7(2) (Carry forward of expenditure) to treat as an amount added to the tax loss under this section:

(b) a person whose imputation credits are included in their annual gross income for the tax year: the amount of converted imputation credits arising under section LE 2 (Use of remaining credits by companies and trustees) for the tax year:

(c) a person who has an unallocated deduction for the payment of a supplementary dividend in the corresponding income year: the amount referred to in section LP 10(3) (Limitation on deductions) for the tax year:

(d) a company (**company A**) if an Australian ICA company has chosen under section OB 69(5) (Further income tax paid satisfying liability for income tax) to have

a payment converted into a tax loss component of company A: the amount calculated under section OB 69(7) for the tax year:

(e) a person who has an unused attributed controlled foreign company (CFC) net loss for the tax year: the amount referred to in section IQ 2(3) (Ring-fencing cap on attributed CFC net losses) for the tax year:

(f) a person who has an unused foreign investment fund (FIF) net loss for the tax year: the amount referred to in section IQ 3(3) (Ring-fencing cap on FIF net losses) for the tax year:

(g) a person with a specified activity net loss for the tax year: the amount referred to in section IZ 1(1) (Use of specified activity net losses) for the tax year.

Ring-fenced amounts

(5) This section, and sections IA 3 and IA 4, do not apply to the amounts referred to in section IA 7, which are subject to particular rules in other Parts or subparts that limit the way in which a person may use them.

Exclusion: net losses from schedular income
[Repealed]

(6) *[Repealed]*

Meaning of tax loss component

(7) For the purposes of this subpart, a **tax loss component**, for a tax year,—

(a) means an amount included in a tax loss for the tax year under subsection (3) or (4):

(b) includes—

(i) an unused amount of a net loss or an amount treated as a net loss or as an available net loss of a person arising before the 2008–09 tax year which the person was entitled to have carried forward under section IE 1 (Net losses may be offset against future net income) of the Income Tax Act 2004 to that tax year:

(ii) an amount included in a company's loss balance at the end of the tax year to which sections IZ 4 to IZ 6 (which relate to tax losses for tax years

before 1992) apply, or other amounts in relation to which modified continuity rules apply.

Defined in this Act: amount, annual gross income, attributed CFC net loss, Australian ICA company, company, deduction, FIF net loss, imputation credit, income, loss balance, net income, net loss, pay, specified activity net loss, supplementary dividend, tax loss, tax loss component, tax year, trustee

Compare: 2004 No 35 ss BC 4(4), DV 5(4)(b), DV 7(2), IE 1(1), (3)(a), IE 2(1), IE 3(5), IE 4(6), LB 2(3), (3A), LE 4(5), ME 9(5B)

Section IA 2(2): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(1)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(2): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(1)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(b): substituted (with effect on 1 April 2008), on 7 December 2009, by section 54(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(c): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(d): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(4) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(e): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(f): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(f): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(6) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(4)(g): amended (with effect on 1 April 2008), on 7 December 2009, by section 54(7) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(6) heading: repealed (with effect on 1 April 2008), on 7 December 2009, pursuant to section 54(8) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(6): repealed (with effect on 1 April 2008), on 7 December 2009, by section 54(8) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2(7): substituted (with effect on 1 April 2008), on 7 December 2009, by section 54(9) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2 list of defined terms **corresponding income year**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2 list of defined terms **schedular income**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2 list of defined terms **schedular income tax liability**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 2 list of defined terms **trustee**: added (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IA 3 Using tax losses in tax year

Paying shortfall penalties

(1) A person who has a tax loss for a tax year may use some or all of the amount of the tax loss under section IW 1 (Shortfall penalties) to pay a shortfall penalty.

Companies using tax losses

(2) A company that has a tax loss for a tax year may—

(a) make the amount available to another company under section IC 5 (Company B using company A's tax loss) to subtract from the other company's net income for the tax year; or

(b) use the amount under section RG 6 (Using loss balances) to satisfy a liability for a foreign dividend payment (FDP) payable in the corresponding income year; or

(c) use the amount under sections FM 26 to FM 28, or RM 21, (which relate to FDP) to obtain a refund of an overpayment of FDP made in the corresponding income year.

Taxable distributions

(3) The amount of a tax loss for a tax year of a beneficiary of a non-complying trust may be used under section HC 22 (Use of tax losses to reduce taxable distributions from non-complying trusts) to adjust the amount of a taxable distribution derived in the corresponding income year.

Remaining loss balances carried forward

(4) If a person has a balance of tax loss remaining for a tax year after the uses described in this section, the balance is carried forward to the next tax year as a loss balance.

Relationship with other provisions in this subpart

(5) Sections IA 5, IA 8, and IA 10 override this section.

Defined in this Act: amount, company, corresponding income year, FDP, foreign dividend, loss balance, net income, non-complying trust, pay, shortfall penalty, tax loss, tax year, taxable distribution

Compare: 2004 No 35 ss BC 4(4), HH 3(4), IE 1(1), (2), IG 10, NH 3(2), NH 4(5), (6), NH 5(6), (7)

Section IA 3(5) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 55(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 3(5): amended (with effect on 1 April 2008), on 7 December 2009, by section 55(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IA 4 Using loss balances carried forward to tax year

Priority uses

(1) A person's loss balance carried forward under section IA 3(4) to a tax year, must—

(a) first, be subtracted from their net income, so far as it extends, for the tax year; and

(b) secondly, to the extent of a remaining loss balance carried forward under section IA 2(2), be included in their tax loss for the tax year.

Relationship with other provisions in this subpart

(2) Sections IA 5 and IA 8 to IA 10 override this section.

Defined in this Act: company, loss balance, net income, tax loss, tax year

Compare: 2004 No 35 s IE 1(2)

Section IA 4(1)(b): amended (with effect on 1 April 2008), on 7 December 2009, by section 56(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 4(2) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 56(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 4(2): substituted (with effect on 1 April 2008), on 7 December 2009, by section 56(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IA 5 Restrictions on companies' loss balances carried forward

General statement

(1) A company's tax loss component is carried forward in a loss balance only if the minimum continuity requirements of sub-

sections (2) and (3) are met. The tax loss component includes an unused tax loss component carried forward from an earlier income year.

Continuity of voting interests

(2) A tax loss component is carried forward in a loss balance under section IA 3(4) only if a group of persons holds for the continuity period minimum voting interests in the company that add up to at least 49%.

Continuity of market value interests

(3) If a market value circumstance exists for the company at any time during the continuity period, the group of persons must also hold for the continuity period, minimum market value interests in the company that add up to at least 49%.

Breach of continuity of ownership in period

(4) If a tax loss component cannot be carried forward because the requirements of subsections (2) and (3) are not met, the company may apply section IP 3 (Continuity breach: tax loss components of companies carried forward) to determine whether some or all of the tax loss component is carried forward in a loss balance.

Avoidance arrangements

(5) Section GB 3 (Arrangements for carrying forward loss balances: companies) may apply to treat a company as not meeting the requirements of subsection (2) or (3).

Some definitions

(6) In this section,—

continuity period means the period of time from the start of the income year that corresponds to the tax year in which a tax loss component is included in the tax loss to the end of the income year that corresponds to the tax year in which the company uses the tax loss component

minimum market value interest, for a person and a continuity period, means the lowest market value interest they have in the company during the continuity period

minimum voting interest, for a person and a continuity period, means the lowest voting interest they have in the company during the continuity period.

Defined in this Act: company, continuity period, corresponding income year, group of persons, income year, loss balance, market value circumstance, market value interest, minimum market value interest, minimum voting interest, tax loss component, tax year, voting interest

Compare: 2004 No 35 s IF 1(1)

Section IA 5(1): substituted (with effect on 1 April 2008), on 7 December 2009, by section 57(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 5(4): substituted (with effect on 1 April 2008), on 7 December 2009, by section 57(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 5(6) **minimum market value interest**: amended (with effect on 1 April 2008), on 7 December 2009, by section 57(3)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 5(6) **minimum voting interest**: amended (with effect on 1 April 2008), on 7 December 2009, by section 57(3)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IA 6 Restrictions on companies grouping tax losses

Groups of companies

(1) A company that is part of a group of companies may use under section IA 3(2) a tax loss under subpart IC (Grouping tax losses) only if it meets the requirements of section IC 5 (Company B using company A's tax loss).

Consolidated groups

(2) Subpart ID (Use of tax losses by consolidated groups) applies to the grouping of tax losses by a consolidated group of companies.

Avoidance arrangements

(3) Section GB 4 (Arrangements for grouping tax losses: companies) may apply to treat a company as not meeting the requirements referred to in subsection (1).

Defined in this Act: company, consolidated group, group of companies, tax loss

Compare: 2004 No 35 ss IG 1(1), GC 4

Section IA 6(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 58(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IA 7 Restrictions relating to ring-fenced tax losses

Non-application of sections IA 2 to IA 4

(1) Sections IA 2 to IA 4 (the **general rules**) do not apply to an amount referred to in subsections (2) to (8).

Treatment as tax loss component

(1B) For the purposes of the application of sections IA 5, IA 6, IA 9, and IA 10, a ring-fenced tax loss under this section is treated as if it were a tax loss component.

Tax losses of LAQCs

(2) The general rules do not apply in relation to a loss-attributing qualifying company (LAQC) to an amount that would have been a loss balance carried forward under section IA 3(4) if section HA 21 (Loss balances not carried forward) did not exist. The provisions that deal generally with these losses are sections HA 24 to HA 27. But this subsection does not apply to a pre-LAQC loss balance dealt with under section HA 24(5) to (5C) (Treatment of tax losses other than certain foreign losses).

Policyholder net losses

[Repealed]

(3) *[Repealed]*

Investment funds' excess expenditure

(4) The general rules do not apply to excess expenditure of an investment fund under sections DV 5 and DV 7 (which relate to investment funds) except for—

(a) the amount under section DV 5(4)(a) that the fund must treat as a tax loss component under section IA 2(4)(a)(i); and

(b) the amount under section DV 7(2) that the fund chooses to treat as a tax loss component under section IA 2(4)(a)(ii).

Attributed CFC net losses

(5) The general rules do not apply to an attributed CFC net loss except a surplus under section IQ 2(3) (Ring-fencing cap on attributed CFC net losses). The provisions that deal with this net loss, other than the surplus amount, are sections IQ 2, IQ 4, and IQ 6 to IQ 9 (which relate to foreign losses).

FIF net losses

(6) The general rules do not apply to a FIF net loss except a surplus amount under section IQ 3(3) (Ring-fencing cap on FIF net losses). The provisions that deal with this net loss are sections IQ 3, IQ 5, and IQ 6 to IQ 9.

Mining net losses

(7) The general rules do not apply to a net loss of a mining company, a resident mining operator, or a non-resident mining operator to the extent to which the net loss relates to a mining permit area. The provisions that deal with these net losses are sections IS 1 to IS 4 and IS 6 (which relate to mining companies' tax losses).

Petroleum net losses

(8) The general rules do not apply to a petroleum mining company's net loss to the extent to which the net loss relates to a permit area. The provisions that deal with this net loss are sections IS 5, IZ 2, and IZ 3 (which relate to petroleum mining companies' use of loss balances).

Amounts remitted

(9) The general rules do not apply to an amount that an associated person has remitted as a condition of a new start grant under section CX 48 (Amounts remitted as condition of new start grant) or EW 46 (Consideration when debtor released as condition of new start grant).

Net losses of multi-rate PIEs

(10) The general rules do not apply to a multi-rate PIE's net loss when the PIE does not calculate and pay tax using the provisional tax calculation option under section HM 44 (Provisional tax calculation option).

Defined in this Act: amount, associated person, attributed CFC net loss, FIF net loss, LAQC, loss-attributing qualifying company, loss balance, mining company, mining permit area, multi-rate PIE, net loss, new start grant, non-resident mining operator, pay, permit area, petroleum mining company, PIE, provisional tax, ring-fenced tax loss, resident mining operator, tax, tax loss component

Compare: 2004 No 35 ss DV 5(4)(b), DV 7(2), EY 42(10), HG 16, IE 1(2BB), (2C), IE 3(5), IE 4(6), IG 4(4), IG 5(4), IG 7(2), (3), IH 1, IH 2(1), IH 3–IH 5, II 1(1), (2)

Section IA 7(1B) heading: inserted (with effect on 1 April 2008), on 7 December 2009, by section 59(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 7(1B): inserted (with effect on 1 April 2008), on 7 December 2009, by section 59(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 7(2): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 81(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IA 7(2): substituted (with effect on 1 April 2008), on 7 December 2009, by section 59(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 7(3) heading: repealed, on 1 July 2010, pursuant to section 296(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7(3): repealed, on 1 July 2010, by section 296(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 296(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7(6): amended (with effect on 1 April 2008), on 7 December 2009, by section 59(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 7(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 296(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7(10) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 296(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7(10): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 296(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **life insurer**: repealed, on 1 July 2010, by section 296(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **loss balance**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IA 7 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 296(6)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **PIE**: inserted, on 1 April 2010, by section 296(6)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **policyholder net loss**: repealed, on 1 July 2010, by section 296(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 296(6)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **provisional tax**: inserted, on 1 April 2010, by section 296(6)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 7 list of defined terms **ring-fenced tax loss**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IA 8 Restrictions relating to schedular income

Certain schedular income

(1) For the purposes of section BC 7 (Income tax liability of person with schedular income), a person must not take a tax loss into account in calculating a schedular income tax liability for a tax year for income described in the following paragraphs of the definition of **schedular income**:

(aa) paragraph (a), which relates to life insurers' schedular policyholder base income; or

(a) *[Repealed]*

(b) paragraph (f), for non-resident passive income described in section RB 3 (Schedular income tax liability for filing taxpayers for non-resident passive income); or

(c) paragraph (g), which relates to non-resident shippers; or

(d) paragraph (h), which relates to non-resident film renters; or

(e) paragraph (i), which relates to non-resident general insurers.

Grouping tax losses

(2) For the purposes of subsection (1), a company that is part of a group of companies must not take a tax loss of another company in the same group into account under section IC 5 or ID 2 (which relate to companies' use of tax losses) in calculating a schedular income tax liability for the tax year.

Relationship with sections IA 3 to IA 7

(3) This section overrides sections IA 3 to IA 7.

Defined in this Act: company, general insurance, group of companies, income, insurer, non-resident, non-resident entertainer, non-resident passive income,

schedular income, schedular income tax liability, schedular policyholder base income, tax loss, tax year

Compare: 2004 No 35 s ID 1(1)

Section IA 8(1)(aa): inserted, on 1 July 2010, by section 297(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 8(1)(a): repealed (with effect on 1 April 2008), on 6 October 2009, by section 297(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IA 8 list of defined terms **schedular policyholder base income**: inserted, on 1 July 2010, by section 297(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

IA 9 Ordering rules

Tax loss components

(1) Tax loss components that are included in a tax loss must be used in the order in which they arose.

Ring-fenced tax losses

(2) Ring-fenced tax losses must be used in the order in which they arose.

Losses in same tax year: consolidated groups and amalgamated companies

(3) For a consolidated group or on the amalgamation of companies, tax loss components that the consolidated group or the companies have for the same tax year must be used in the order decided, as applicable, by the consolidated group or the amalgamated company, who must also notify the Commissioner of the decision. Without notification, the amounts must be used on a pro rata basis.

Defined in this Act: amalgamated company, amalgamation, amount, Commissioner, company, consolidated group, notify, ring-fenced tax loss, tax loss, tax loss component, tax year

Compare: 2004 No 35 ss IE 1(3)(b), IF 5, IG 6(5)

IA 10 Amended assessments

When this section applies

(1) This section applies if, in a tax year, the Commissioner amends under section 113 of the Tax Administration Act 1994 a person's assessment for an earlier tax year, and the amendment

adjusts the amount of a tax loss component or a ring-fenced tax loss for the earlier tax year.

Reduced losses

(2) If the amount is reduced in the adjustment, the person must reduce their loss balance or ring-fenced tax loss for the earlier tax year by the amount of the adjustment. If the loss balance or ring-fenced tax loss has been used in earlier tax years, they must similarly apply the reduction to the use of the loss balance or ring-fenced tax loss.

Increased losses

(3) If the amount is increased in the adjustment, the person must add an amount to their loss balance or ring-fenced tax loss for the earlier tax year.

Defined in this Act: amount, assessment, Commissioner, loss balance, ring-fenced tax loss, tax loss component, tax year

Subpart IC—Grouping tax losses

Introductory provisions

IC 1 Company A making tax loss available to company B

When this subpart applies

(1) This subpart applies if 1 company that is part of a group of companies (**company A**) has a tax loss for a tax year that it makes available to another group company (**company B**) to subtract from its net income for the tax year.

Requirements for grouping tax losses

(2) The amount of a tax loss that company A has for a tax year may be made available to company B to subtract from its net income for the tax year only if—

(a) the threshold levels in section IC 2 are met; and

(b) the companies meet all the requirements of section IC 5.

Losing continuity or commonality in tax year

(3) If company A or company B fail to meet 1 or both of the threshold levels referred to in subsection (2)(a), a tax loss may not be grouped unless section IP 4 or IP 5 (which relate to the grouping of part-year losses) applies.

References to years

(4) In this subpart, a reference to a tax year of a company includes a reference to a non-standard accounting year of the company that corresponds with the tax year.

Relationship with sections IA 3 and IA 4

(5) This section overrides sections IA 3 and IA 4 (which relate to the general use of tax losses).

Defined in this Act: amount, company, group of companies, net income, non-standard accounting year, tax loss, tax year

Compare: 2004 No 35 ss IG 1(1), (3), IG 2(1), (2)(c), (e)

IC 2 Threshold levels for grouping tax losses in tax year

Company A: continuity of ownership

(1) Company A may group a tax loss in a tax year under section IC 5 only if the requirements of section IA 5 (Restrictions on companies' loss balances carried forward) are met.

Company A and company B: common ownership

(2) In addition to meeting the requirements referred to in subsection (1), company A and company B must have the required common ownership under section IC 3 for the period referred to in section IC 6.

Part years: relationship with subpart IP

(3) Subpart IP (Meeting requirements for part-years) applies in a tax year that is part of the commonality period if the following requirements are met for the relevant part-year:

(a) continuity of ownership in company A for the purposes of subsection (1); and

(b) common ownership of company A and company B for the purposes of subsection (2).

Defined in this Act: commonality period, company, tax loss, tax year

Compare: 2004 No 35 ss IG 1(1), (3), IG 2(1), (2)(c), (e)

IC 3 Common ownership: group of companies

Meaning

(1) A **group of companies** means 2 or more companies, none of which is a multi-rate PIE or a listed PIE, in relation to which a group of persons holds—

(a) common voting interests that add up to at least 66%; and

(b) if a market value circumstance exists for a company that is part of a group of companies, common market value interests that add up to at least 66%.

Part of group at time or for period

(2) A company is treated as part of a group of companies at a particular time or for a particular period if the minimum common interests referred to in subsection (1) exist at the relevant time or are kept for the whole of the relevant period. But it is not necessary that the group of persons holding the interests stays the same for the whole of the relevant period.

When multi-rate PIEs included in group

(2B) In relation to 2 or more companies of which 1 is a multi-rate PIE, the companies are treated as a group of companies at a particular time or for a particular period if—

(a) the PIE owns 100% of the voting interests in the other companies; and

(b) the other companies in the group are—

(i) multi-rate PIEs:

(ii) land investment companies:

(iii) subsidiary companies that meet the requirements of section HM 7(a) and (d) (Requirements):

(iv) foreign PIE equivalents.

When listed PIEs included in group

(2C) In relation to 2 or more companies of which 1 is a listed PIE, the companies are treated as a group of companies at a particular time or for a particular period if the PIE owns 100% of the voting interests in the other companies.

When foreign investment PIEs included in group

(2D) For the purposes of subsection (2B)(b), a multi-rate PIE that chooses under section HM 71B (Choosing to become foreign investment PIE) to become a foreign investment PIE, must not be part of a group of companies that includes a land investment company.

Measuring common voting interests

(3) In subsection (1)(a), a person's common voting interest in the relevant companies at a particular time is the percentage of their voting interests under section YC 2 (Voting interests) in each of the companies at the time.

Measuring common market value interests

(4) In subsection (1)(b), a person's common market value interest in the relevant companies at a particular time is the percentage of their market value interests under section YC 3 (Market value interests) in each of the companies at the time.

Common interest percentages

(5) For the purposes of this section, in measuring a person's common voting interest or common market value interest in 2 or more companies at a particular time,—

(a) for percentages that are the same in relation to each company, the person's percentage interest at the time:

(b) for percentages that differ as between the companies, the lowest percentage interest in each company at the time.

Defined in this Act: common market value interest, common voting interest, company, foreign investment PIE, foreign PIE equivalent, group of companies, group of persons, listed PIE, land investment company, market value circumstance, market value interest, multi-rate PIE, voting interest

Compare: 2004 No 35 s IG 1(2), (5)

Section IC 3(1): amended, on 29 August 2011, by section 90(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3(2B) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 298(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IC 3(2B) heading: inserted, on 1 April 2008, by section 432(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section IC 3(2B): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 298(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IC 3(2B): inserted, on 1 April 2008, by section 432(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section IC 3(2B)(b): substituted, on 29 August 2011, by section 90(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3(2C) heading: inserted, on 29 August 2011, by section 90(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3(2C): inserted, on 29 August 2011, by section 90(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3(2D) heading: inserted, on 29 August 2011, by section 90(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3(2D): inserted, on 29 August 2011, by section 90(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3(3) heading: substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 82(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 3(3): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 82(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 3(4) heading: substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 82(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 3(4): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 82(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 3(5) heading: added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 82(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 3(5): added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 82(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 3 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 90(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3 list of defined terms **foreign PIE equivalent**: inserted, on 29 August 2011, by section 90(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3 list of defined terms **land investment company**: inserted, on 1 April 2010, by section 298(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IC 3 list of defined terms **listed PIE**: inserted, on 29 August 2011, by section 90(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IC 3 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 298(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IC 3 list of defined terms **portfolio land company**: repealed, on 1 April 2010, by section 298(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IC 3 list of defined terms **portfolio land company**: inserted, on 1 April 2008, by section 432(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section IC 3 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 298(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

IC 4 Common ownership: wholly-owned groups of companies

Interests held

(1) A **wholly-owned group of companies** means 2 or more companies in relation to which a group of persons holds, for the relevant period,—

(a) common voting interests that add up to 100%; and

(b) if a market value circumstance exists for a company that is part of a group of companies, common market value interests that add up to 100%.

Employees' share purchase schemes

(2) In subsection (1), company shares held by the trustee of, or by employees or former employees of the company as a consequence of the operation of, a share purchase scheme are disregarded to the extent to which they represent voting interests in the company that add up to no more than 3%, or, as applicable, market value interests in the company that add up to no more than 3%.

Defined in this Act: common market value interest, common voting interest, company, employee, group of companies, group of persons, market value circumstance, market value interest, share, share purchase scheme, trustee, voting interest, wholly-owned group of companies

Compare: 2004 No 35 s IG 1(3)

Requirements and methods

IC 5 Company B using company A's tax loss

Requirements

(1) Company A may make a tax loss available to company B to subtract from its net income under section IA 3(2) (Using tax losses in tax year) only if—

(a) company A and company B have minimum common ownership for the relevant period as set out in sections IC 2(2) and IC 6; and

(b) company A meets the residence requirements of section IC 7; and

(c) company A has the required continuity of ownership under section IC 2(1) and, if it applies, section IC 10(2)(a); and

(d) the amount falls within the limits set by section IC 8(1) and (2); and

(e) the payment and notification requirements of section IC 9 are met.

Method: election or subvention payment

(2) Having met all the requirements set out in subsection (1), company A may—

(a) choose to make a tax loss that it has in a tax year available to company B to use in the tax year, notifying the Commissioner as described in section IC 9; or

(b) agree with company B that company B should bear the amount of company A's tax loss, or take a share in it, in return for a payment by company B to company A by the date set out in section IC 9; or

(c) apply both paragraphs (a) and (b) in relation to the tax loss.

Amounts used in tax year

(3) Company B must subtract the amount of the tax loss referred to in subsection (2)(a) or the payment referred to in subsection (2)(b), as applicable, from its net income for the tax year in relation to which company A makes the amount available or receives the payment.

When decisions made

(4) If company A chooses to make the amount available to company B under subsection (2)(a), the decision is irrevocable.

Nature of payment

(5) To the extent to which an amount of tax loss is subtracted from net income, a payment from company B to company A under subsection (2)(b) is not a dividend.

Part-year tax losses

(6) Sections IP 4 and IP 5 (which relate to losses in part-years) modify this section for part-year calculations.

Tax years before 1981–82 and between 1981–82 and 1991–92

(7) section IZ 7 (Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92) modifies the requirements of—

(a) subsection (1)(a) for a tax loss component that arises in tax years between 1981–82 and 1991–92; and

(b) subsection (1)(b) for a tax loss component that arises in tax years before the 1991–92 tax year; and

(c) subsection (1)(a) for a tax loss component that arises in tax years before the 1981–82 tax year.

Defined in this Act: amount, Commissioner, company, dividend, net income, notify, pay, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IG 2(2)

IC 6 Common ownership for period

Commonality period

(1) For the purposes of section IC 2(2), common ownership under section IC 3 must exist from the start of the income year in which company A has a tax loss component that is included in the tax loss to the end of the income year in which company B subtracts the amount of the tax loss component from its net income. In this Part, this length of time is called the **commonality period**.

Multiple net losses

(2) The requirement set out in subsection (1) applies to net losses as they arise in an income year on an individual basis.

When companies have different balance dates

(3) If the balance dates of company A and company B are different, section IC 10(2)(b) applies to extend the commonality period.

Relationship with section IZ 7

(4) section IZ 7(1) and (2) (Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92) overrides subsections (1) and (2).

Defined in this Act: commonality period, company, income year, net income, tax loss, tax loss component

Compare: 2004 No 35 ss IG 1(1), (2), IG 2(2)(c), (4)(d)(ii), (5)(c)(ii)

IC 7 Residence of company A

Incorporation or carrying on business

(1) Company A, for the commonality period, must be either—

(a) incorporated in New Zealand; or

(b) carrying on a business in New Zealand through a fixed establishment in New Zealand.

Residence in New Zealand

(2) In addition to meeting the requirements of subsection (1), company A, for the commonality period, must not be a company resident in New Zealand that is—

(a) treated under a double tax agreement, and for the purposes of the agreement, as not resident in New Zealand; or

(b) liable by the law of another country or territory to income tax in that country or territory through domicile, residence, or place of incorporation.

Relationship with section IZ 7

(3) Section IZ 7(4) (Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92) overrides this section.

Defined in this Act: business, commonality period, company, double tax agreement, fixed establishment, income tax, New Zealand, resident in New Zealand

Compare: 2004 No 35 s IG 2(2)(d), (11)

IC 8 Limitations on amounts used

Limit on amounts

(1) A tax loss made available, or a payment made, under section IC 5(2) must be no more than the amount that would be company B's net income for the tax year in which it subtracts the amount of the tax loss.

Limit for payments

(2) An amount that company B agrees to pay company A under section IC 5(2)(b) must be no more than the amount of company A's tax loss.

No accounting for amount by companies

(3) Company A and company B must ignore this section in calculating their net incomes, but for the purposes of grouping tax losses, company B's net income is found after taking into account—

(a) first, its own losses; and

(b) secondly, a tax loss made available to company B by another company.

Defined in this Act: amount, company, loss, net income, pay, tax loss, tax year

Compare: 2004 No 35 s IG 2(2)(f), (g)

IC 9 Date for payment and notice to Commissioner

Last date for payment

(1) A payment under section IC 5(2)(b) must be made no later than the extended return date, or by a later date if the Commissioner allows.

Date and method for notifying Commissioner

(2) Company A must notify the Commissioner of an election or payment under section IC 5(2) by the extended return date or, if applicable, the later date allowed by the Commissioner. The notification may be made in the company's annual return of income.

Extended return date

(3) In subsections (1) and (2), **extended return date** means the 31 March that, for company A and the tax year in which the amount of the tax loss is subtracted, is the latest date to which the time for providing the return of income may be extended under section 37(5) of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, company, extended return date, notify, pay, return of income, tax loss, tax year

Compare: 2004 No 35 s IG 2(2)(g), (3)

IC 10 When companies have different balance dates

When this section applies

(1) This section applies in a tax year when company A and company B do not have the same balance date.

Extensions for continuity and common ownership

(2) If company B's income year ends after the last day of company A's income year, for section IC 5 to apply to a tax loss in a corresponding tax year,—

(a) continuity of ownership in company A under section IC 2(1) must extend to the end of company B's income year; and

(b) common ownership of company A and company B under section IC 3 or IC 4 must extend to the end of company B's income year.

Part-year tax losses

(3) This section applies for part-year calculations through section IP 2(2) (Group companies' common span).

Defined in this Act: company, income year, tax loss, tax year

Compare: 2004 No 35 s IG 2(2)(c), (e)

IC 11 Reduction of amounts used by companies

When this section applies

(1) This section applies in a tax year if—

(a) company A has a tax loss for the tax year that is made available to, and subtracted by, more than 1 company that is part of the group of companies; and

(b) the Commissioner determines under section 113 of the Tax Administration Act 1994 that the actual total tax loss for the tax year is less than the sum of the amounts subtracted by the companies in the group, and notifies company A.

Reduced amounts

(2) The relevant companies must reduce the amounts they subtracted either in the way company A allocates under subsection (3) or, if no allocation is made, proportionately under subsection (4).

Company A's allocation

(3) Company A may choose how the amount by which the total must be reduced is allocated between or among the companies. But if company A allocates an amount to a company that is no longer part of the group at the time of the allocation, and the amount is more than a proportionate amount, the allocation is disregarded. Subsection (6) sets out the notice requirements for this subsection.

Proportionate amounts

(4) If company A does not allocate the amounts by which the total must be reduced, the amounts subtracted by the group companies are reduced in the same proportion as that by which the total amount was reduced in determining the actual total tax loss.

Subvention payments

(5) If the reduction results in a payment under section IC 5(2)(b) being treated as a dividend, the dividend is reduced to the extent to which the payment is repaid by company A within the notification period referred to in subsection (6).

Notifying Commissioner

(6) For the purposes of subsections (3) and (5), company A must notify the Commissioner of the allocation within 6 months after the date on which the Commissioner notifies company A that the reduction is required. However, the Commissioner may agree to extend this notification period.

Defined in this Act: amount, Commissioner, company, dividend, group of companies, notify, tax loss, tax year

Compare: 2004 No 35 s IG 2(7)

IC 12 Bad debts or decline in value of shares

When this section applies

(1) This section applies to companies that are part of a group of companies in a tax year when—

(a) a company (**company C**) in the group has in the tax year a deduction—

(i) under section DB 31 (Bad debts) for a loan to another company in the group:

(ii) for a decline in the value of shares in another company in the group; and

(b) a company (**company A**) in the group, other than company C, has a tax loss for the tax year that includes a tax loss component arising from a deduction—

(i) for expenditure funded by the loan referred to in paragraph (a)(i) or by the issue to company A of the shares referred to in paragraph (a)(ii); and

(ii) taken into account in calculating company A's tax loss for the 1993–94 tax year or a later tax year.

Limitation on loss grouping

(2) The amount of company A's tax loss cannot be made available to another company in the group to use except to the extent to which the amount of the tax loss is more than the total amount of the deductions referred to in subsection (1)(a). To that extent, company A may choose to make the excess amount avail-

able to a group company to use under section IA 3(2) and IA 5 (which relate to using and carrying forward tax losses) if the requirements for grouping tax losses are met.

Determining decline in value of shares

(3) For the purposes of this section, shares are treated as declining in value if,—

(a) on the disposal of the shares, the amount for which they were disposed of is less than the deduction for the cost of the shares; or

(b) when the shares have not been disposed of, their value as calculated under subpart EB (Valuation of trading stock (including dealer's livestock)) or otherwise declines.

Defined in this Act: amount, company, deduction, group of companies, loan, loss balance, pay, share, tax loss, tax year

Compare: 2004 No 35 s IG 2(6)

Section IC 12(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 83(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 12(2) heading: substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 83(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 12(2): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 83(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section IC 12 list of defined terms **loan**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 83(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

IC 13 Variation of requirements for development companies in Niue

When this section applies

(1) This section applies in relation to the required common ownership of group companies set out in sections IC 2(2), IC 3, and IC 5(1)(a) for the purposes of providing relief to company A for losses incurred in connection with development work in Niue.

Order in Council

(2) The Governor-General may make an Order in Council varying the threshold in section IC 3(1)(a) and (b) applying to company A if satisfied that the company—

(a) is carrying on a business or enterprise that—

(i) has been or is carried on wholly or mainly for the development of Niue:

(ii) has been or is important to the development of Niue; and

(b) has incurred expenditure wholly or mainly in deriving income from Niue or in the course of carrying on a business or enterprise in Niue for the purpose of deriving income.

Named company

(3) For the purposes of subsection (2), company A must be a company named in the order.

Application of order

(4) The order may specify a period or periods to which it applies. If no period is specified, the order applies to the whole commonality period.

Defined in this Act: business, commonality period, company, group of companies, income

Section IC 13: added (with effect on 1 April 2008), on 6 October 2009, by section 299 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart ID—Use of tax losses by consolidated groups

ID 1 Treatment of tax losses by consolidated groups

Consolidated group's net losses

(1) A tax loss of a consolidated group of companies is treated as the consolidated group's tax loss, not the tax loss of a company that is part of the consolidated group. Subparts IA and IC (which relate to the general use and grouping of tax losses), as modified by this subpart, apply as if the consolidated group were 1 company.

Ring-fenced tax losses

(2) Nothing in this subpart applies to a consolidated group whose companies are mining companies.

Defined in this Act: company, consolidated group, mining company, tax loss

Compare: 2004 No 35 s IG 6(1A)–(3)

ID 2 Pre-consolidation losses: general treatment

When this section applies

(1) This section applies in a tax year when a company that meets the requirements of section IA 5 (Restrictions on companies' loss balances carried forward) and is part of a consolidated group has a pre-consolidation loss balance carried forward to the tax year.

First use

(2) The first use of the loss balance must be to make the amount of the loss balance available to the consolidated group to subtract from its net income, so far as it extends, for the tax year.

Second use

(3) If, after subsection (2) is applied, some of the loss balance remains, the company may choose to do 1 or more of the following:

(a) subtract the remaining amount from its net income for the tax year:

(b) make the remaining amount available to another consolidated group to subtract from its net income for the tax year:

(c) make the remaining amount available under section IC 5 (Company B using company A's tax loss).

Third use

(4) If, after subsections (2) and (3) are applied, a loss balance remains, the remaining amount is carried forward to the next tax year.

Relationship with sections IA 3, IA 4, IC 5, and provisions in this subpart

(5) This section overrides sections IA 3, IA 4, and IC 5 (which relate to the general use and grouping of tax losses). Sections ID 3 to ID 5 override this section.

Defined in this Act: amount, company, consolidated group, net income, loss balance, tax year

Compare: 2004 No 35 s IG 6(4), (6), (7)

ID 3 Pre-consolidation losses: use by group companies

When this section applies

(1) This section applies in a tax year when—

(a) a company (**company A**) that is part of a consolidated group has a loss balance to which section ID 2 applies; and

(b) company A, in the continuity period relating to a tax loss component included in the loss balance, does not have the required common ownership under section IC 3 (Common ownership: group of companies) with 1 or more companies in the consolidated group.

Limit on amount available

(2) The amount made available under section ID 2(2) to the consolidated group is limited as follows:

(a) if all the companies, including company A, in the consolidated group meet the requirements of section IC 6(1) (Common ownership for period): the amount available is limited to the amount of the loss balance to the extent of the net income of the consolidated group for the tax year:

(b) if some of the companies in the consolidated group meet the requirements of section IC 6(1): the amount available is limited to the total of—

(i) the amount that company A could subtract from its net income for the tax year if it were not in the tax year part of a consolidated group; and

(ii) the amount that could be made available under section IC 5 (Company B using company A's tax loss) to the other group companies in the tax year, ignoring the consolidation of the companies and

presuming all steps required under section IC 5 were taken in order for the section to apply.

Relationship with section FM 3

(3) In subsection (2), the calculation of the consolidated group's net income must be made in accordance with section FM 3 (Liability of consolidated groups and group companies).

Relationship with section ID 2

(4) This section overrides section ID 2.

Defined in this Act: amount, company, consolidated group, continuity period, group of companies, loss balance, net income, tax loss component, tax year

Compare: 2004 No 35 s IG 6(6)

Section ID 3(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 300(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ID 3 list of defined terms **tax loss component**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 300(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

ID 4 Pre-consolidation losses on entry: part-year rule

When this section applies

(1) This section applies if a company that is part of a consolidated group has a loss balance to which section ID 2 applies in a tax year when the company joins the consolidated group.

Limit on amount available

(2) The amount of the loss balance to be made available to the consolidated group under section ID 2(2) is the lesser of the amount the company establishes in financial statements under subsection (3), or the amount calculated using the formula in subsection (4), but in either case, it must not be more than the limit set out in section ID 3(2).

Financial statements

(3) The company may establish the amount to be made available by providing the Commissioner, at the time of providing the consolidated group's return of income, with adequate financial statements that—

(a) relate to the part of the tax year when the company was part of the consolidated group; and

(b) disclose the amount that would be the net income attributable to the part of the tax year when the company was part of the consolidated group, determined on a fair and reasonable basis of attribution.

Formula

(4) The amount that may be made available under section ID 2(2) and referred to in subsection (2) is calculated using the formula—

unused amount − (part-year net income + part-year net loss).

Definition of items in formula

(5) In the formula,—

(a) **unused amount** is the loss balance carried forward from an earlier tax year or years that would be subtracted from the consolidated group's net income for the tax year in the absence of ID 3 or this section:

(b) **part-year net income** is the company's net income for the part of the tax year before the company joins the consolidated group:

(c) **part-year net loss** is the amount of a pre-consolidation tax loss that must be subtracted under section ID 2 from the net income of another consolidated group of which the company was part in the tax year before joining the consolidated group referred to in subsection (1).

Relationship with section ID 2

(6) This section overrides section ID 2.

Defined in this Act: amount, Commissioner, company, consolidated group, loss balance, net income, return of income, tax loss, tax year

Compare: 2004 No 35 s IG 6(7)

ID 5 Pre-consolidation losses on exit: part-year rule

When this section applies

(1) This section applies if a company that is part of a consolidated group has a loss balance to which section ID 2 applies in a tax year when the company leaves the consolidated group.

Limit on amount available

(2) In addition to the amount available under section IP 3(3) (Continuity breach: tax loss components of companies carried forward) but subject to the limit in section ID 3(2), the amount of

the company's loss balance that is carried forward to the tax year must be no more than the consolidated group's net income for the relevant part of the tax year. For part-year calculations, *see*subpart IP (Meeting requirements for part-years).

Financial statements

(3) The consolidated group must provide the Commissioner with adequate financial statements that disclose the amount that would be the consolidated group's net income for the relevant part of the tax year, determined on a fair and reasonable basis of attribution. The statements must be filed with the consolidated group's return of income for the tax year.

Continuity requirements

(4) For the purposes of this section, the company must meet the threshold level set out in section IC 2(1) (Threshold levels for grouping tax losses in tax year) for the relevant part of the tax year.

Relationship with section ID 2

(5) This section overrides section ID 2.

Defined in this Act: amount, Commissioner, company, consolidated group, loss balance, net income, return of income, tax year

Compare: 2004 No 35 s IG 6(8)

Subpart IE—Treatment of tax losses on amalgamation of companies

IE 1 When this subpart applies

This subpart applies if, in an amalgamation,—

(a) either the amalgamating company or the amalgamated company has, before the date of the amalgamation, a tax loss component or ring-fenced tax loss:

(b) a company that is part of a group of companies has a tax loss for the tax year of amalgamation that may be made available to the amalgamated company to subtract from its net income for the tax year.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, group of companies, net income, ring-fenced tax loss, tax loss, tax loss component, tax year

Compare: 2004 No 35 ss IF 4–IF 6

IE 2 Treatment of tax losses by amalgamating company

When this section applies

(1) This section applies if an amalgamating company that meets the requirements of section IA 5 (Restrictions on companies' loss balances carried forward) ends its existence on a resident's restricted amalgamation, and has a tax loss for a tax year that—

(a) has not, before the date of amalgamation, been used by the company; and

(b) could be made available and subtracted from the amalgamated company's net income for the part of the tax year that ends with the date of amalgamation.

Attributing losses to amalgamated company

(2) If the amalgamated company meets the requirements of section IE 5, the tax loss is attributed to the amalgamated company. The amalgamated company may, after the date of amalgamation, subtract the amount of the tax loss from its net income for the tax year, or make it available to another company to subtract from its net income for the tax year.

Other amalgamating companies

(3) In subsection (1)(b), the amalgamated company includes a company that has amalgamated with the amalgamating company before or during the tax year in which the amount is used. The tax year referred to in that subsection means the tax year of the relevant company.

New companies

(4) Subsection (1)(b) does not apply if the amalgamated company is incorporated only on the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amount, company, net income, resident's restricted amalgamation, tax loss, tax year

Compare: 2004 No 35 s IF 4

IE 3 Treatment of tax losses by amalgamated company

When this section applies

(1) This section applies if an amalgamated company that meets the requirements of section IA 5 (Restrictions on companies' loss balances carried forward) has a loss balance carried forward to the tax year in which the amalgamation takes place, and the loss balance—

(a) has not, before the date of amalgamation, been used by the company; and

(b) could be made available under and subtracted by each amalgamating company from the net income attributable to the part of the relevant company's tax year that ends with the date of amalgamation.

Loss balances carried forward

(2) If the requirements of sections IA 5, IC 2, and IC 5 (which relate to the use and grouping of tax losses) are met, the amalgamated company's loss balance is carried forward to the tax year in which the amalgamation takes place or to a later tax year.

Attributed CFC net losses and FIF net losses

(3) For the purposes of subsection (1)(b), if the tax loss is an attributed controlled foreign company (CFC) net loss or a foreign investment fund (FIF) net loss, it may be made available only to a wholly-owned group of companies.

Relationship with sections IA 3 and IA 4

(4) This section overrides sections IA 3 and IA 4 (which relate to the general use of tax losses).

Defined in this Act: amalgamated company, amalgamating company, amalgamation, attributed CFC net loss, FIF net loss, loss balance, net income, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IF 6

IE 4 Group companies' treatment of tax losses on amalgamation

When this section applies

(1) This section applies on an amalgamation if a company that is part of a group of companies—

(a) meets the requirements of section IA 5 (Restrictions on companies' loss balances carried forward); and

(b) has a tax loss for part of a tax year before the date of amalgamation; and

(c) may use the tax loss under section IC 5, IQ 4, or IQ 5 (which relate to a company's use of another company's loss, including foreign losses).

Use by amalgamated company

(2) The amount of the tax loss may be subtracted from the net income of the amalgamated company for the tax year only if both the company and the amalgamated company, and each company that before or during the amalgamation amalgamated with the amalgamated company, meet the requirements of subparts IA, IC, and IQ (which relate to the general loss rules and certain foreign losses) that allow companies to group tax losses.

Defined in this Act: amalgamated company, amalgamation, amount, company, group of companies, net income, tax loss, tax year

Compare: 2004 No 35 s IG 9

IE 5 Applying the continuity provisions when companies amalgamate

The provisions of this Act apply as if the amalgamated company did not exist separately before amalgamation, and was instead the amalgamating companies with the same holders of shares and options over shares, each with the same number and class of shares and options over shares, as they held in the amalgamating company, to determine whether a tax loss or loss balance,—

(a) may be used or is carried forward under sections IA 3 and IA 4 (which relate to the general use of tax losses):

(b) may be subtracted from the net income of another company under section IC 5, IQ 4, or IQ 5 (which relate to a company's use of another company's loss, including foreign losses):

(c) in the case of a group company, may be subtracted from the net income of the amalgamated company under section IC 5, IQ 4, or IQ 5.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, company, loss balance, net income, share, tax loss

Compare: 2004 No 35 ss IF 4, IG 8, IG 9

Subpart IP—Meeting requirements for part-years

Introductory provisions

IP 1 When this subpart applies

Breaches of continuity and commonality

(1) This subpart applies if either or both the following breaches occur:

(a) when commonality of ownership required by section IC 5(1)(a) (Company B using company A's tax loss) is not met during a tax year (a **commonality breach**):

(b) when continuity of ownership required by section IA 5(1) (Restrictions on companies' loss balances carried forward) is broken during a tax year, or when a new or existing company joins a group of companies during a tax year (a **continuity breach**).

Relationship with subparts IA, IC, and ID: part-year calculations

(2) The general rules for the treatment of tax losses in subparts IA, IC, and ID (which relate to the general use and grouping of tax losses) apply, as modified or overridden by the provisions of this subpart, to—

(a) a part-year tax loss as if it were a tax loss for a tax year:

(b) part-year net income as if it were net income for a tax year:

(c) the common span as if the period of time were a tax year.

Defined in this Act: common span, net income, tax loss, tax year

Compare: 2004 No 35 s IG 2(4)(e), (f), (5)(e), (f)

Section IP 1(1)(a): substituted (with effect on 1 April 2009), on 6 October 2009, by section 301(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IP 1(1)(b): substituted (with effect on 1 April 2009), on 6 October 2009, by section 301(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

IP 2 Group companies' common span

Common span

(1) In this subpart, the corresponding parts of company A's income year and company B's income year when the require-

ments for commonality of ownership under section IC 5(1)(a) (Company B using company A's tax loss) are met is called the **common span**.

Common span when balance dates differ

(2) If the income years of company A and company B do not end on the same date, the common span is that part of company B's income year or income years in which the requirements for commonality are met. IC 10(2)(b) (When companies have different balance dates) may apply to extend the period.

Calculating group companies' tax losses

(3) For the purposes of this subpart and the grouping of tax losses, the amount of a tax loss component is found after taking into account any amount of the tax loss component subtracted from the net income of any group company.

Defined in this Act: amount, common span, company, income year, net income, tax loss, tax loss component

Compare: 2004 No 35 s IG 2(2)(e), (4)(c), (d), (5)(b), (c)

Tax loss components carried forward

IP 3 Continuity breach: tax loss components of companies carried forward

When this section applies

(1) This section applies for the purposes of section IA 4 (Using loss balances carried forward to tax year) if a breach occurs in the requirements for continuity of ownership of section IA 5 (Restrictions on companies' loss balances carried forward) that enable a tax loss component included in a company's loss balance to be carried forward to or from a tax year.

Tax loss components for earlier income years

(2) Despite the breach, a tax loss component arising in an earlier income year is carried forward to a tax year (**year A**) to the extent to which—

(a) the requirements for continuity of ownership would be met if the continuity period included only part of the income year of the company that corresponds to year A; and

(b) the company has net income for part of the corresponding income year; and

(c) the company provides the Commissioner with adequate financial statements under section IP 6 calculating the amount of the company's net income for the relevant part of the corresponding income year.

Limit on tax loss components carried forward to year A

(3) The total tax loss components carried forward under subsection (2) must be no more than the amount calculated under subsection (2)(b) and (c), although the amount may be increased if IP 5 applies.

Tax loss components of year of breach

(4) Despite the breach, a tax loss component is carried forward to the tax year (**year B**) from year A to the extent to which—

(a) the requirements for continuity of ownership would be met if the continuity period included only part of the income year that corresponds to year A; and

(b) the company provides the Commissioner with adequate financial statements under section IP 6 calculating the amount of the company's net loss for the part of year A.

Limit on tax loss components carried forward to year B

(5) The amount of the tax loss component carried forward under subsection (4) must be the least of—

(a) the part-year net loss calculated under subsection (4)(b):

(b) if the company has net income for year A, zero:

(c) if the company has a net loss for year A, the company's net loss for year A.

Defined in this Act: amount, Commissioner, company, continuity period, corresponding income year, income year, loss balance, net income, net loss, tax loss component, tax year

Compare: 2004 No 35 s IF 1(2), (3)

Grouping part-year tax losses

IP 4 Breach in income year in which tax loss component arises

When this section applies

(1) This section applies for the purposes of sections IA 6 and IC 5 (which relate to the use and grouping of tax losses) when company A has a tax loss component arising in an income year in which either the continuity or commonality requirements for grouping tax losses are breached.

Modified requirements

(2) The tax loss component is included in a tax loss that company A makes available under section IA 3(2) (Using tax losses in tax year) to company B only to the extent to which the following requirements, which modify those set out in section IC 5 (Company B using company A's tax loss), are met:

(a) the tax loss component arises in the common span; and

(ab) the amount of the tax loss component is no more than the net income that company B derives in the common span; and

(b) continuity of ownership in company A under section IC 2(1) (Threshold levels for grouping tax losses in tax year) applies from the beginning to the end of the common span; and

(c) company A and company B provide the Commissioner with adequate financial statements under section IP 6; and

(d) company A notifies the Commissioner of the treatment of the tax loss under section IP 7.

Determining amounts

(3) For the purposes of determining the amount of tax loss that company A and company B may use, sections IC 5 and IC 8 (which relate to the treatment of tax losses by companies) apply as if the common span were a corresponding income year.

Relationship with section IC 8

(4) Despite subsection (2)(ab), section IC 8 overrides this section in limiting the amount that may be used when the net income derived in the common span is more than the net income of company B for the income year.

Defined in this Act: amount, Commissioner, common span, company, corresponding income year, income year, net income, notify, tax loss, tax loss component

Compare: 2004 No 35 s IG 2(4)

Section IP 4(2)(ab): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 91(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IP 4(4) heading: added (with effect on 1 April 2008), on 29 August 2011, by section 91(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IP 4(4): added (with effect on 1 April 2008), on 29 August 2011, by section 91(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

IP 5 Breach in tax year in which loss balance is grouped

When this section applies

(1) This section applies for the purposes of sections IA 6 and IC 5 (which relate to the use and grouping of tax losses) when company A has a loss balance carried forward to a tax year in which either the continuity or commonality requirements for grouping tax losses are breached.

Modified requirements

(2) The loss balance is included in a tax loss that company A makes available under section IA 3(2) (Using tax losses in tax year) to company B only to the extent to which the following requirements, which modify those set out in section IC 5 (Company B using company A's tax loss), are met:

(a) the amount of company A's loss balance carried forward to the tax year in which the breach occurred is not more than the amount of—

(i) company B's net income for the common span, if no company in the group other than company B has net income for the common span of more than zero; or

(ii) the total of the amounts of net income for the common span of companies in the group; and

(b) continuity of ownership in company A under section IC 2(1) (Threshold levels for grouping tax losses in tax year) applies in the common span; and

(c) company B provides the Commissioner with adequate financial statements under section IP 6; and

(d) company A notifies the Commissioner of the treatment of the tax loss under section IP 7.

Determining amounts

(3) For the purposes of determining the amount of the loss balance that company A and company B may use, sections IC 5 and IC

8 (which relate to the treatment of tax losses by companies) apply as if the common span were a tax year.

Defined in this Act: amount, Commissioner, common span, company, loss balance, notify, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IG 2(2)(b)–(f), (5)

Section IP 5(2)(a): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 84(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Statements and notices

IP 6 Financial statements required

Financial statements required from company: section IP 3

(1) For the purposes of this subpart, a company must provide the Commissioner with adequate financial statements under section IP 3(2)(c) and (4)(b) relating to the continuity period.

Financial statements required from company A: section IP 4

(2) For the purposes of this subpart, company A must provide the Commissioner with adequate financial statements under section IP 4(2)(c) relating to the common span, calculating the amount of the tax loss component, determined on a fair and reasonable basis of attribution.

Financial statements required from company B: sections IP 4 and IP 5

(3) For the purposes of this subpart, company B must provide the Commissioner with adequate financial statements under sections IP 4(2)(c) and IP 5(2)(c) relating to the common span, calculating the amount of the net income in the common span, determined on a fair and reasonable basis of attribution.

Different balance dates

(4) For the purposes of subsections (2) and (3), if the balance dates of company A and company B differ, the common span is taken as the period of time in the tax year in which the tax loss or loss balance is used—

(a) that includes, but is not limited to, all or part of the tax year in which company A is in the same group of companies as company B; and

(b) in which company A and company B are at all times part of the same group of companies; and

(c) in which company A meets the continuity requirements of section IC 2(1) (Threshold levels for grouping tax losses in tax year).

Applying provisions to part-year periods

(5) In preparing the financial statements described in this section, the company must, to the extent possible, apply the provisions of this Act to the common span as if it were a tax year.

Defined in this Act: amount, Commissioner, common span, company, continuity period, group of companies, loss balance, net income, notify, tax loss, tax loss component, tax year

Compare: 2004 No 35 ss IF 1(2), (3), IG 2(4)(c), (d), (5)(c), (d), (10)

IP 7 Notices required

Notifying Commissioner

(1) In sections IP 4(2)(d) and IP 5(2)(d), company A must notify the Commissioner by its extended return date that it intends to treat a tax loss or loss balance in the way described in the relevant section.

Meaning of extended return date

(2) In subsection (1), **extended return date** has the meaning set out in section IC 9 (Date for payment and notice to Commissioner), and includes a later date allowed by the Commissioner.

Defined in this Act: Commissioner, company, extended return date, loss balance, notice, notify, pay, tax loss

Compare: 2004 No 35 s IG 2(4), (5)

Subpart IQ—Attributed controlled foreign company net losses and foreign investment fund net losses

IQ 1A When this subpart applies

This subpart applies when, for a country or territory and a tax year, a person has—

(a) an amount of attributed CFC net loss or FIF net loss—

(i) for the tax year:

(ii) carried forward from an earlier tax year:

(b) an amount of attributed CFC income or FIF income calculated under the branch equivalent method or attributed FIF income method and another person makes

available to the person an amount of attributed CFC net loss or FIF net loss.

Defined in this Act: attributed CFC net income attributed CFC net loss, attributed FIF income method branch equivalent method, company, FIF income, FIF net loss, group tax year

Section IQ 1A: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 92(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 1A(b): amended (with effect on 1 July 2011), on 29 August 2011, by section 92(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

IQ 1 General treatment

General statement

(1) For an amount of a person's attributed CFC net loss or FIF net loss to be carried forward to a tax year,—

(a) the person, if a company, must meet the requirements of section IA 5 (Restrictions on companies' loss balances carried forward); and

(b) the amount must be used in the order required by section IA 9 (Ordering rules); and

(c) the amount must be adjusted when required by section IA 10 (Amended assessments).

When net losses arise

(2) An attributed CFC net loss or a FIF net loss arises on the last day of the tax year in which the loss is attributed.

Treatment of net losses by consolidated groups

(3) If a consolidated group has an amount of attributed CFC net loss or FIF net loss, no part of the amount belongs to a company that is part of the consolidated group.

Treatment of net losses on amalgamation

(4) The treatment of tax losses, including amounts of attributed CFC net loss and FIF net loss, on the amalgamation of companies is dealt with under subpart IE (Treatment of tax losses on amalgamation of companies) and the provisions of this subpart do not apply.

Defined in this Act: amalgamation, amount, attributed CFC net loss, company, consolidated group, FIF net loss, tax loss, tax year

Compare: 2004 No 35 ss IE 3(1), IE 4(1), IF 3, IF 6, IG 4(1), IG 5(1), IG 7(1)

Section IQ 1(1): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 93(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

IQ 1B Losses carried forward to tax year

An attributed CFC net loss or a FIF net loss or both may be carried forward to a tax year. Section IA 5 (Restrictions on companies' loss balances carried forward) applies for the purposes of this subpart as if the net loss were a tax loss component.

Defined in this Act: attributed CFC net loss, FIF net loss, tax loss component, tax year

Section IQ 1B: inserted (with effect on 1 April 2008), on 7 December 2009, by section 61(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IQ 2 Ring-fencing cap on attributed CFC net losses

When this section applies

(1A) This section applies if a person, for a tax year and a country or territory (the **jurisdiction**),—

(a) derives an amount of attributed CFC income or FIF income calculated under the attributable FIF income method; and

(b) has an amount of attributed CFC net loss or FIF net loss—

(i) carried forward to the tax year:

(ii) made available under section IQ 4 to the person by another company in the same group.

Limit on amount

(1) The total amount of attributed CFC net loss and FIF net loss, relating to a CFC or FIF that is resident in the jurisdiction when the loss arises, that is subtracted from the person's net income for the tax year is—

(a) the total amount of attributed CFC income and FIF income, calculated under the attributable FIF income method or branch equivalent method, that the person derives in the tax year in relation to a CFC or FIF that is resident in the jurisdiction, if that amount is less than or equal to the amount referred to in paragraph (b); or

(b) the total amount of such attributed CFC net loss and FIF net loss, available under subsection (1B), (1C) or section IQ 3, that—

(i) the person carries forward to the tax year:

(ii) is made available in the tax year to the person by another company in the same group.

Losses from year after transition

(1B) If an amount of attributed CFC net loss or FIF net loss arises for a person in an income year for which section IQ 2B applies to the person, or is made available to the person by a company for which the loss arises in an income year for which section IQ 2B applies to the company, all of the attributed CFC net loss or FIF net loss is available for subtracting from the person's net income for the tax year.

Attributed CFC net losses from income year before transition

(1C) If an amount of attributed CFC net loss of a person, or made available to the person, relates to an income year before section IQ 2B applies to the person and is carried forward to a tax year in which section IQ 2B applies to the person,—

(a) the amount of the attributed CFC net loss available in the tax year for subtracting from the person's net income is equal to the equivalent CFC loss under section IQ 2B:

(b) the amount of the attributed CFC net loss is reduced by the converted BE loss under section IQ 2B.

Income only once

(2) In subsection (1), the person may take into account an amount of attributed CFC income or FIF income only to the extent to which they have not accounted for it in—

(a) calculating a deduction under sections DN 4 or DN 8 (which relate to ring-fencing caps); or

(b) establishing their entitlement to make available, under sections IC 5 (Company B using company A's tax loss) or IQ 4, an amount of attributed CFC net loss or FIF net loss carried forward; or

(c) applying subsection (1) in relation to another attributed CFC net loss or FIF net loss.

Treatment of excess

(3) If the person cannot use all of the maximum amount referred to in subsection (1) because there is insufficient net income, the surplus is no longer available to them as a CFC net loss, but becomes a tax loss component under section IA 2(4) (Tax losses).

Defined in this Act: amount, attributed CFC income, attributable FIF income attributed CFC net loss, branch equivalent method, CFC, company, deduction, FIF, FIF income, FIF net loss, income year, net income, tax loss component, tax year

Compare: 2004 No 35 s IE 3(2), (3), (5)

Section IQ 2(1A) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 94(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1A): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 94(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1A)(a): amended (with effect on 1 July 2011), on 29 August 2011 (applying for income years beginning on or after 1 July 2011), by section 94(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 94(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1)(a): substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 94(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1)(b): substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 94(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1B) heading: substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), pursuant to section 94(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1B): substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 94(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1C) heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 302(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 2(1C): inserted (with effect on 30 June 2009), on 6 October 2009, by section 302(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 2(1C): amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 94(6)(a) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1C)(a): amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 94(6)(b) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(1C)(b): amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 94(6)(c) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(2)(b): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 94(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(2)(c): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 94(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 302(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 2 list of defined terms **attributable FIF income**: inserted (with effect on 30 June 2009), on 29 August 2011, by section 94(9) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2 list of defined terms **company**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 94(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2 list of defined terms **FIF net loss**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 94(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2 list of defined terms **income year**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 94(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2 list of defined terms **tax loss**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IQ 2B Effect of attributed CFC net loss and FIF net loss from before first affected year

When this section applies

(1) This section applies when a person has an amount (the **available BE loss**) of attributed CFC net loss, or FIF net loss calculated using the branch equivalent method, that—

(a) relates to a tax year before the first tax year for which this section applies to the person; and

(b) relates to a CFC or FIF that is resident in a country (the **jurisdiction**) in which the loss arose; and

(c) is carried forward to a tax year (the **conversion year**) in which this section applies to the person or is made available to the person for the conversion year by another company in the same group.

What this section does

(2) In this section, subsection (3) gives the person an option that available BE loss for a jurisdiction not be carried forward and subsections (4) to (7) give, for whichever of the 4 possible alternative situations is relevant for the person,—

(a) the amount of the available BE loss (the **converted BE loss**) that is—

(i) treated as being converted into an amount referred to in paragraph (b) in the conversion year; and

(ii) is not available to the person to be carried forward as available BE loss for a later tax year:

(b) the amount (the **equivalent CFC loss**) of attributed CFC net loss or FIF net loss that, for the purposes of the rest of this subpart, is treated as arising on the last day of the conversion year.

Option: loss not carried forward

(3) A person may choose by giving a notice in a form and at a time acceptable to the Commissioner that the available BE loss for a jurisdiction not be carried forward under this section.

Person not resident group member: more jurisdictional BE income

(4) For a person who is not a resident group member and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person's jurisdictional attributed income for the conversion year,—

(a) the person's converted BE loss in the conversion year is the lesser of—

(i) the person's jurisdictional BE income for the conversion year:

(ii) the person's available BE loss for the conversion year:

(b) the person's equivalent CFC loss is the lesser of—

(i) the person's jurisdictional attributed income for the conversion year:

(ii) the amount calculated by dividing the person's available BE loss for the conversion year by the person's jurisdictional income ratio for the conversion year.

Person not resident group member: more jurisdictional attributed income

(5) For a person who is not a resident group member and has jurisdictional attributed income for the conversion year that is greater than or equal to zero and greater than or equal to the person's jurisdictional BE income for the conversion year,—

(a) the person's converted BE loss for the conversion year is the lesser of—

(i) the person's available BE loss for the conversion year:

(ii) the person's jurisdictional attributed income for the conversion year:

(b) the person's equivalent CFC loss is equal to the person's converted BE loss for the conversion year.

Resident group member: more jurisdictional BE income

(6) For a person who is a resident group member for a wholly-owned group of companies and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person's jurisdictional attributed income for the conversion year,—

(a) the person's converted BE loss for the conversion year is the lesser of—

(i) the person's available BE loss for the conversion year:

(ii) the greater of the person's jurisdictional BE income for the conversion year and the amount calculated by multiplying the group's jurisdictional income ratio for the conversion year by the person's jurisdictional attributed income for the conversion year:

(b) the person's equivalent CFC loss is the amount calculated by dividing the person's converted BE loss for the

conversion year by the group's jurisdictional income ratio for the conversion year.

Resident group member: more jurisdictional attributed income

(7) For a person who is a resident group member and has jurisdictional attributed income for the conversion year that is greater than or equal to zero and greater than or equal to the person's jurisdictional BE income for the conversion year,—

(a) the person's converted BE loss for the conversion year is the lesser of—

(i) the person's available BE loss for the conversion year:

(ii) the person's jurisdictional attributed income for the conversion year multiplied by the group's jurisdictional income ratio for the conversion year:

(b) the person's equivalent CFC loss is equal to the amount calculated by dividing the person's converted BE loss for the conversion year by the group's jurisdictional income ratio for the conversion year.

Election by person or group to fix jurisdictional income ratio

(8) A person or wholly-owned group may choose under this subsection by notice, in a form and at a time acceptable to the Commissioner, that the person or members of the group use a jurisdictional income ratio—

(a) equal to the average of the jurisdictional income ratios for the person or group, under paragraph (b) of the definition in subsection (9), for 2 consecutive tax years—

(i) beginning at or after the beginning of the 2010–11 tax year; and

(ii) in each of which the person or group has jurisdictional BE income; and

(b) for all tax years after the 2 tax years referred to in paragraph (a).

Some definitions

(9) For a person or wholly-owned group and a tax year for which the person or members of the wholly-owned group have an income interest in a CFC that is resident in a country or territory (the **jurisdiction**),—

jurisdictional attributed income means,—

(a) for a person and the tax year, the amount that is the greater of zero and the amount calculated by—

(i) finding, for each CFC resident in the jurisdiction, the attributed CFC income or loss of the person from the CFC for the tax year:

(ii) finding, for each FIF resident in the jurisdiction for which the person uses the branch equivalent method, the FIF income or loss of the person from the FIF for the tax year:

(iii) subtracting the total of loss amounts under subparagraphs (i) and (ii) from the total of income amounts under subparagraphs (i) and (ii):

(b) for a wholly-owned group and the tax year, the amount that is the greater of zero and the attributed CFC income or loss and FIF income or loss, treating losses as negative, of members of the group who are New Zealand residents from CFCs and FIFs that are resident in the jurisdiction for the tax year, consolidated for the purposes of the financial statements of the group

jurisdictional BE income means,—

(a) for a person and the tax year, the amount that is the greater of zero and the amount calculated by—

(i) multiplying, for each CFC resident in the jurisdiction, the person's income interest in the CFC for the tax year by the branch equivalent income or loss of the CFC for the tax year or, if the person chooses, by the amount given by subsection (10) for the CFC for the tax year:

(ii) finding, for each FIF resident in the jurisdiction for which the person uses the branch equivalent method, the FIF income or loss of the person from the FIF for the tax year:

(iii) subtracting the total of loss amounts under subparagraphs (i) and (ii) from the total of income amounts under subparagraphs (i) and (ii):

(b) for a wholly-owned group and the tax year, the amount that is the greater of zero and the amount calculated, treating losses as negative, by—

(i) multiplying, for each CFC resident in the jurisdiction, the income interest in the CFC of members of the group who are New Zealand residents for the tax year by the branch equivalent income or loss of the CFC for the tax year or, if the group chooses, by the amount given by subsection (10) for the CFC for the tax year:

(ii) consolidating the results for the purposes of the financial statements of the group

jurisdictional income ratio,—

(a) for a person that has not made an election under subsection (8), means the greater of 1 and the amount calculated by dividing the person's jurisdictional BE income for the tax year by the person's jurisdictional attributed income for the tax year:

(b) for a wholly-owned group that has not made an election under subsection (8) for the tax year, means the greater of 1 and the amount calculated by dividing the group's jurisdictional BE income for the tax year by the group's jurisdictional attributed income for the tax year:

(c) for a person or wholly-owned group that has made an election under subsection (8) for the tax year, means the amount given by subsection (8) for the person or group and the tax year

resident group member means a person who is a member of a wholly-owned group that has other New Zealand residents as members.

Option to determine jurisdictional BE income from accounts

(10) In determining the jurisdictional BE income of a person or wholly-owned group, the person or group may choose to use, instead of the branch equivalent income or loss of a CFC, the profit or loss of the CFC before taxation given by accounts—

(a) complying with generally accepted accounting practice in New Zealand or an equivalent standard for the consistent and undistorted reporting of net profits in the country in which the accounts are prepared; and

(b) audited by an accountant who is—

(i) a chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and

(ii) independent of the CFC and the person or wholly-owned group; and

(c) are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared.

Defined in this Act: attributed CFC income, attributed CFC loss, branch equivalent income, branch equivalent loss, CFC, company, FIF net loss, group of companies, income interest, jurisdictional attributed income, jurisdictional BE income, jurisdictional income ratio, New Zealand resident, resident group member, tax year, wholly-owned group, wholly-owned group of companies

Section IQ 2B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 303(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 2B heading: substituted (with effect on 30 June 2009), on 29 August 2011, by section 95(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2B(1)(c): substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 95(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2B(2)(b): amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 95(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2B list of defined terms **company**: inserted (with effect on 30 June 2009), on 29 August 2011, by section 95(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 2B list of defined terms **FIF net loss**: inserted (with effect on 30 June 2009), on 29 August 2011, by section 95(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

IQ 3 Ring-fencing cap on FIF net losses

Limit on amount: branch equivalent method

(1) If a person's FIF net loss is carried forward to a tax year (the **current tax year**) or FIF net loss is made available to the person in the current tax year,—

(a) FIF net loss relating to a tax year for which section IQ 2B applies to the person is available to be subtracted under section IQ 2 from the person's net income for the current tax year; and

(b) FIF net loss relating to a tax year for which section IQ 2B does not apply to the person—

(i) is available to be subtracted from the person's net income for the current tax year to the extent of the equivalent CFC loss under section IQ 2B; and

(ii) is reduced in the current tax year by the converted BE loss under section IQ 2B.

Relationship with section CQ 5

(2) Despite subsection (1) and section IQ 2, if the person's FIF net loss is carried forward to a tax year and section CQ 5(1)(d) or (e) (When FIF income arises) applies, they may subtract the amount from their net income for the tax year, but only to the extent to which the amount is no more than their assessable income from interests that would be interests in a FIF for the tax year in the absence of that section.

Treatment of excess

(3) If the person cannot use all of the amount that is available tax loss under section IQ 2(1) because there is insufficient net income, the surplus is no longer available to them as a FIF net loss, but becomes a tax loss component under section IA 2(4) (Tax losses).

Defined in this Act: amount, assessable income, attributed CFC income, branch equivalent method, CFC, deduction, FIF, FIF income, FIF net loss, net income, tax year

Compare: 2004 No 35 s IE 4(2)–(6)

Section IQ 3(1): substituted (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 96(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 3(2): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 96(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 3(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 304(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 3(3): added (with effect on 1 April 2008), on 6 October 2009, by section 304(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 3(3): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 96(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 3 list of defined terms **attributed CFC income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 304(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section IQ 3 list of defined terms **CFC**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 304(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

IQ 4 Group companies using attributed CFC net losses

What this section does

(1) This section supplements the general rules relating to the grouping of net losses when, for a tax year (the **current tax year**), a company (**company A**) that is part of a group of companies has an amount—

(a) of attributed CFC net loss for the current tax year or carried forward from an earlier tax year, or FIF net loss for the current tax year or carried forward from an earlier tax year; and

(b) remaining after section IQ 2 is applied for the current tax year and before any amount is made available to another company under this section.

Modifications to general rules for grouping net losses

(2) For determining whether company A may make available an amount of attributed CFC net loss or FIF net loss to another company (**company B**) in the group of companies, the general rules relating to the grouping of net losses are modified as follows:

(a) the group of companies must be a wholly-owned group of companies; and

(b) subpart IC (Grouping tax losses) and section GB 4 (Arrangements for grouping tax losses: companies) apply as if an amount of attributed CFC net loss or FIF net loss were a tax loss component; and

(c) subsection (3) overrides sections IC 5(1)(d) and IC 8 (which impose limits on the amount of transferred tax loss):

(d) section IA 3(2) (Using tax losses in tax year) and subpart IP (Meeting requirements for part-years) do not apply.

Ring-fencing cap rule modified

(3) The amount of attributed CFC net loss or FIF net loss that company A may make available to company B in the tax year is limited by the following:

(a) the total amount made available by company A to group companies must not exceed the amount referred to in subsection (1); and

(b) the resulting reduction in company B's net income in the tax year must not exceed the total amount that company B derives in the tax year of attributed CFC income from CFCs, or FIF income calculated under the attributable FIF income method from FIFs, resident in the country or territory (the **jurisdiction**) in which the loss arose, reduced by the total of the following:

(i) the total amount of the attributed CFC income or FIF income taken into account in calculating a deduction of company B under section DN 4 or DN 8 (which relate to ring-fencing caps on deductions):

(ii) the total amount of attributed CFC net loss or FIF net loss that company B derives in the tax year from CFCs or FIFs resident in the jurisdiction:

(iii) the total amount of attributed CFC net loss or FIF net loss, from CFCs or FIFs resident in the jurisdiction, that company B carries forward to the tax year and is available tax loss for company B:

(iv) the total amount of attributed CFC net loss or FIF net loss, from CFCs or FIFs resident in the jurisdiction, that is made available to company B for the tax year under this section by a company other than company A.

Defined in this Act: amount, attributed CFC income, attributed CFC net loss, available tax loss, branch equivalent method, CFC, company, deduction, FIF, FIF income, FIF net loss, group of companies, net income, net loss, tax loss component, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IG 4

Section IQ 4(1): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 97(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4(2) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to sec-

tion 97(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4(2): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 97(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4(3): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 97(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4(3)(b): amended (with effect on 1 July 2011), on 29 August 2011 (applying for income years beginning on or after 1 July 2011), by section 97(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4(3)(b)(iii): amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 97(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4 list of defined terms **available tax loss**: inserted (with effect on 30 June 2009), on 29 August 2011, by section 97(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4 list of defined terms **FIF net loss**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 97(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section IQ 4 list of defined terms **tax loss**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IQ 5 Group companies using FIF net losses

[Repealed]

Section IQ 5: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 98(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

IQ 6 Pre-consolidation losses: general treatment

When this section applies

(1) This section applies if a company that is part of a consolidated group has under section IQ 1B an attributed CFC net loss or FIF net loss carried forward to a tax year.

First use

(2) The first use of the amount must be by the company under subsection (3) or (4) in making the amount available to the consolidated group to subtract from its net income, so far as it extends, for the tax year.

CFC net losses

(3) If the amount is an attributed CFC net loss, it may be used only to the extent to which it is no more than the attributed CFC income that the consolidated group derives in the tax year from a CFC resident in the country in which the loss arose.

FIF net losses

(4) If the amount is a FIF net loss, it may be used only to the extent to which it is no more than the FIF income that the consolidated group derives in the tax year from a FIF resident in the country in which the loss arose.

Second use

(5) If, after applying subsection (2), some of the amount remains, the company may—

(a) subtract the remaining amount from its net income for the tax year; or

(b) make the remaining amount available to another consolidated group to subtract from its net income for the tax year under section IQ 4 or IQ 5; or

(c) make the remaining amount available under section IC 5 (Company B using company A's tax loss).

Defined in this Act: amount, attributed CFC income, attributed CFC net loss, CFC, company, consolidated group, FIF, FIF income, FIF net loss, net income, tax year

Compare: 2004 No 35 s IG 7(2)

Section IQ 6(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 65(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IQ 7 When group membership lacking in loss period

When this section applies

(1) This section applies if—

(a) a company that is part of a consolidated group has a ring-fenced tax loss consisting of either an attributed CFC net loss or FIF net loss, or both, that is carried forward to a tax year and must be used under section IQ 6; and

(b) the company was not part of the consolidated group in the earlier tax year in which the net loss arose; and

(c) the company and 1 or more of the companies in the consolidated group do not meet the requirements for common ownership of section IC 5(1)(a) (Company B using company A's tax loss) for the loss period.

Limit on amount

(2) The amount that may be subtracted from the net income of the consolidated group in the tax year under section ID 2(2) must be no more than the total of—

(a) the amount of ring-fenced tax loss referred to in subsection (1) that the company could use to reduce its net income in the tax year under IQ 2 or IQ 3 as applicable, if it were not in the tax year part of a consolidated group; and

(b) the amount of ring-fenced tax loss referred to in subsection (1) that the company could group with other companies in the group under section IQ 4 or IQ 5, as applicable, determining—

(i) the net income for each of the companies using the group's calculation of each company's net income; and

(ii) the maximum amount of tax loss to be made available, ignoring the consolidation of the companies and presuming all steps required under those sections were taken in order for them to apply.

Relationship with section FM 3

(3) In subsection (2), the amount of net income must be calculated in accordance with section FM 3 (Liability of consolidated groups and group companies).

Meaning of loss period

(4) In this section, the **loss period** means the tax year in which the ring-fenced tax loss arose and any tax years falling between that tax year and the tax year in which the amount is subtracted from net income.

Defined in this Act: amount, attributed CFC net loss, company, consolidated group, FIF net loss, loss period, net income, ring-fenced tax loss, tax loss, tax year

Compare: 2004 No 35 s IG 7(4)

Section IQ 7(1)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 66(1)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IQ 7(1)(b): amended (with effect on 1 April 2008), on 7 December 2009, by section 66(1)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IQ 7(2)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 66(2)(a)(i) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IQ 7(2)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 66(2)(a)(ii) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IQ 7(2)(b): amended (with effect on 1 April 2008), on 7 December 2009, by section 66(2)(b)(i) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IQ 7(2)(b): amended (with effect on 1 April 2008), on 7 December 2009, by section 66(2)(b)(ii) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IQ 8 When group membership lacking in tax year of use

When this section applies

(1) This section applies if a company joins a consolidated group in a tax year with a ring-fenced tax loss consisting of an attributed CFC net loss or FIF net loss, or both, carried forward to the tax year, which must be used in the tax year under section IQ 6.

Limit on amount

(2) The amount that may be subtracted from the net income of the consolidated group for the tax year under section ID 2(2) is the lesser of—

(a) the amount of ring-fenced tax loss referred to in section IQ 7(1) that the company could subtract from—

(i) the amount that would be the company's net income for the part of the tax year in which it was not part of a consolidated group; and

(ii) the net income for the tax year of another consolidated group of which the company was part before joining the present group; and

(b) the amount that would be the group's net income for the part of the tax year in which the company was part of the consolidated group, established by giving the Commissioner, at the time of providing the group's return of

income for the tax year, adequate financial statements that—

(i) relate to the part of the tax year when the company was part of the group; and

(ii) disclose the amount that would be the company's net income for the part of the tax year in which the company was part of the consolidated group, determined on a fair and reasonable basis of attribution.

Defined in this Act: amount, attributed CFC net loss, Commissioner, company, consolidated group, FIF net loss, net income, return of income, ring-fenced tax loss, tax year

Compare: 2004 No 35 s IG 7(5)

Section IQ 8(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 67(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IQ 8(2)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 67(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IQ 9 When attributed CFC net loss becomes FIF net loss

When this section applies

(1) This section applies if, in a tax year, a person has an attributed CFC net loss that, under section 38 of the Income Tax Amendment Act (No 2) 1993, becomes a FIF net loss.

Treatment of net losses

(2) The attributed CFC net loss is treated as a FIF net loss of the person with effect from the tax year, as if the CFC were a FIF.

Calculation methods

(3) For the purposes of subsection (2) and the calculation of the amount of the loss, the branch equivalent method is not used unless the person calculates their FIF income or net loss under the branch equivalent method in relation to the interest on the date of the transition from an attributed CFC net loss to a FIF net loss.

Defined in this Act: amount, attributed CFC net loss, branch equivalent method, CFC, FIF, FIF income, FIF net loss, tax year

Compare: 2004 No 35 s IE 3(4)

Subpart IS—Mining companies' and petroleum miners' tax losses

IS 1 General treatment of mining companies' net losses

Groups of companies

(1) In a tax year in which a company is a mining company, section IC 5 (Company B using company A's tax loss) does not apply, and the company is not included in a group of companies for the purposes of the section.

Consolidated groups

(2) A net mining loss of a mining company that is part of a consolidated group is dealt with under this subpart and not subpart ID (Use of tax losses by consolidated groups).

Meaning of net mining loss

(3) For the purposes of this subpart, a **net mining loss** means that part of a net loss of a mining company, a resident mining operator, or a non-resident mining operator that is described in section IA 7(7) (Restrictions relating to ring-fenced tax losses).

Defined in this Act: company, consolidated group, group of companies, mining company, net mining loss, tax year

Compare: 2004 No 35 ss IG 6(2), IH 4(2)

Section IS 1 heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 68(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 1(2): amended (with effect on 1 April 2008), on 7 December 2009, by section 68(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 1(3) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 68(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 1(3): added (with effect on 1 April 2008), on 7 December 2009, by section 68(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 1 list of defined terms **net mining loss**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 1 list of defined terms **tax loss**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IS 2 Treatment of net losses resulting from certain expenditure

When this section applies

(1) This section applies if a company that is a mining company, or a resident mining operator, or a non-resident mining operator—

(a) has a net mining loss for a tax year as a result of incurring mining exploration expenditure or mining development expenditure in a mining permit area; and

(b) has an amount of net mining loss carried forward to a later tax year.

Using loss balances

(2) The company may subtract the amount of the net mining loss from its net income for the later tax year, even though the continuity of ownership required under section IA 5 (Restrictions on companies' loss balances carried forward) is broken or is treated as absent under section GB 3 (Arrangements for carrying forward loss balances: companies), but only to the extent set out in subsection (3).

Limit on amount

(3) The amount subtracted under subsection (2) must be no more than the amount that would be the mining company's net income if its only assessable income for the later tax year were from the mining permit area.

Amounts carried forward

(4) If the company cannot use all the net mining loss in the later tax year, the amount is carried forward to later tax years and subsection (2) applies to the remaining balance.

Use against other income

(5) The company may subtract the amount of the net mining loss from its net income that is not attributable to the mining permit area but only after meeting for the whole of the continuity period the requirements set out in sections GB 3 (Arrangements for carrying forward loss balances: companies) and IA 5 (Restrictions on companies' loss balances carried forward). For the purposes of applying section IA 5, the net mining loss is treated as if it were a tax loss component.

Defined in this Act: amount, assessable income, company, mining company, mining development expenditure, mining exploration expenditure, mining per-

mit area, net income, net mining loss, non-resident mining operator, resident mining operator, tax loss component, tax year

Compare: 2004 No 35 ss IH 1(1), IH 5

Section IS 2 heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 69(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2(1)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 69(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2(1)(b): amended (with effect on 1 April 2008), on 7 December 2009, by section 69(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2(2): amended (with effect on 1 April 2008), on 7 December 2009, by section 69(4) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2(4): amended (with effect on 1 April 2008), on 7 December 2009, by section 69(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2(5) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 69(6) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2(5): added (with effect on 1 April 2008), on 7 December 2009, by section 69(6) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2 list of defined terms **loss balance**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2 list of defined terms **net mining loss**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2 list of defined terms **tax loss**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 2 list of defined terms **tax loss component**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IS 3 Holding companies' tax losses

When this section applies

(1) This section applies in a tax year if—

(a) a mining company has net income for the tax year after having subtracted an amount of any net mining loss that is carried forward; and

(b) the company and a holding company, which is not a mining company, would be included in a wholly-owned group of companies in the absence of section IS 1(1); and

(c) the holding company has a tax loss for the tax year that it cannot make available under section IC 5 (Company B using company A's tax loss) to another company that is part of the wholly-owned group.

Using tax losses

(2) The mining company may subtract some or all of the amount of the holding company's tax loss from its net income, so far as it extends, for the tax year.

Determining amounts

(3) The amount of the holding company's tax loss is found without taking into account a deduction that the holding company may have under section DU 12 (Amount written off by holding company) for an amount written off a loan from the holding company to the mining company.

Relationship with section IS 1

(4) This section overrides section IS 1(1).

Defined in this Act: amount, deduction, holding company, loan, mining company, net income, net mining loss, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IH 4(3)

Section IS 3(1)(a): amended (with effect on 1 April 2008), on 7 December 2009, by section 70(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 3 list of defined terms **loss balance**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section IS 3 list of defined terms **net mining loss**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IS 4 Adjustments in certain circumstances

When this section applies

(1) This section applies if, under section IS 3, the amount of a holding company's tax loss for a tax year is subtracted from a mining company's net income for the tax year instead of being carried forward to a later tax year.

Adjustments by Commissioner

(2) If the holding company applies for an adjustment and the Commissioner agrees, the Commissioner may adjust the returns of income of the mining company and the holding company to reflect what is fair in the circumstances. This subsection applies in the tax year in which the holding company has the tax loss referred to in subsection (1), and to any of the 8 tax years following that tax year.

Time for applying to Commissioner

(3) The holding company must apply within 8 tax years after the end of the tax year in which the holding company has the tax loss referred to in subsection (1) or, despite the time bar, by a later date if the Commissioner allows.

Defined in this Act: amount, Commissioner, holding company, mining company, net income, return of income, tax loss, tax year, time bar

Compare: 2004 No 35 s IH 4(3) proviso

IS 5 Petroleum miners' tax losses

When this section applies

(1) This section applies in a tax year in which a petroleum miner with a tax loss for the tax year—

(a) relinquishes a petroleum permit for which they have a deduction under section DT 7 (Exploratory well expenditure); or

(b) incurs expenditure on removal or restoration operations for which they have a deduction under section DT 16 (Removal or restoration operations).

Net losses reduced

(2) The petroleum miner's tax loss is reduced by the amount of the deduction, but only to the extent of the amount of the tax loss. For the reduction in their tax loss, the petroleum miner is allowed a deduction in an earlier tax year for an amount that is equal to the amount of the reduction. The deduction is allocated under section EJ 14 (Spreading deduction backwards).

Petroleum mining activities outside New Zealand

(3) This section applies to a petroleum miner who undertakes petroleum mining activities that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company (CFC); and

(b) substantially the same as the petroleum mining activities governed by this Act.

Using tax loss components

(4) A shareholder company may use a tax loss component referred to in section IZ 2(2) (Petroleum mining companies: treatment of payments from shareholders) but only in the way described in section IZ 2(3) to (6).

Defined in this Act: amount, CFC, deduction, New Zealand, petroleum miner, petroleum permit, relinquishment, removal or restoration operations, tax loss, tax year

Compare: 2004 No 35 ss IH 2(1), IH 3

Section IS 5(2): substituted (with effect on 1 April 2008), on 7 December 2009, by section 71(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

IS 6 When company stops being mining company

For the purposes of sections IS 1 to IS 5, if a mining company whose loss balance is carried forward to a tax year stops being a mining company at or before the end of the tax year, the company is nevertheless treated for the tax year as if it had continued as a mining company.

Defined in this Act: loss balance, mining company, tax year

Compare: 2004 No 35 ss IH 1, IH 4(1)(e)

Subpart IT—Cancellation of life insurer's losses

Subpart IT: substituted, on 1 July 2010, by section 307(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

IT 1 Cancellation of life insurer's policyholder net losses

What this section applies to

(1) This section applies to the amount of a life insurer's tax loss to be carried forward to the tax year corresponding to the income year that includes 1 July 2010 (the **tax year**), to the extent to which the amount (the **cancelled amount**) would be a ring-fenced tax loss for policyholder net losses under sec-

tion IA 7(3) (Restrictions relating to ring-fenced losses) if the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 were ignored.

Cancellation of life insurer's policyholder net losses

(2) The cancelled amount—

(a) is removed from the life insurer's available tax loss for the tax year, except as provided by section EY 5(2) (Part-year tax calculations) for the first part-year; and

(b) must not be subtracted from the life insurer's net income under section BC 5 (Taxable income) for the tax year, except as provided by section EY 5(2) for the first part-year; and

(c) is not a tax loss component on and after 1 July 2010; and

(d) is cancelled on and after 1 July 2010.

Defined in this Act: available tax loss, income year, life insurer, net income, policyholder net loss, ring-fenced tax loss, tax loss, tax loss component, tax year

Section IT 1: substituted, on 1 July 2010, by section 307(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

IT 2 Cancellation of life insurer's tax loss when allowed into policyholder base

What this section applies to

(1) This section applies to the amount of a life insurer's tax loss to be carried forward to a tax year corresponding to an income year that includes 1 July 2010 and later tax years.

Cancellation of life insurer's tax loss

(2) When the life insurer has for an income year a policyholder base allowable deduction as provided by section EZ 61 (Allowance for cancelled amount: spreading), an equal amount—

(a) is removed from the life insurer's available tax loss for the tax year corresponding to the income year; and

(b) must not be subtracted from the life insurer's net income under section BC 5 for the tax year; and

(c) is not a tax loss component; and

(d) is cancelled.

Defined in this Act: available tax loss, income year, life insurer, net income, policyholder base allowable deduction, tax loss, tax loss component, tax year

Section IT 2: added, on 1 July 2010, by section 307(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart IV—Treatment of certain supplementary dividends

IV 1 Supplementary dividend holding companies

When this section applies

(1) This section applies when a supplementary dividend holding company derives a supplementary dividend in a tax year.

Limit on amount

(2) If the company has a tax loss that is a tax loss component under section IA 2(4) (Tax losses), and is entitled to use the amount under section IA 3, IA 4, IC 5, IS 3, or IS 4 (which relate to a company's use of tax losses), the maximum amount that it may use must be no more than the amount calculated using the formula—

$$\text{net income} - \frac{\text{credits} + \text{supplementary divider}}{\text{tax rate.}}$$

Definition of items in formula

(3) In the formula,—

(a) **net income** is the company's net income for the tax year:

(b) **credits** is the total amount of non-refundable tax credits and convertible credits that the company has available under Part L (Tax credits and other credits) to use in reducing its income tax liability:

(c) **supplementary dividends** is the total amount of supplementary dividends that the company derives in the tax year:

(d) **tax rate** is the relevant basic tax rate applying in the tax year.

Calculating credits under Part L

(4) Subsection (2) does not affect the calculation under Part L of the non-refundable tax credits and convertible credits of a supplementary dividend holding company.

Defined in this Act: amount, basic tax rate, convertible credit, income tax liability, net income, non-refundable tax credit, supplementary dividend, supplementary dividend holding company, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IF 7

Subpart IW—Use of tax losses to pay shortfall penalties

IW 1 Shortfall penalties

When this section applies

(1) This section applies in a tax year when a person has a shortfall penalty for an income tax liability.

Persons choosing to use tax losses

(2) If the person has a tax loss for the tax year, they may use the amount of the tax loss to pay the penalty, notifying the Commissioner by the due date for payment of the penalty.

Wholly-owned groups choosing to use tax losses

(3) If a company that is part of a wholly-owned group of companies has a tax loss for a tax year, the wholly-owned group may use the amount of the tax loss to pay the penalty imposed on the company, notifying the Commissioner by the due date for the payment of the penalty.

Time of use

(4) The tax loss is used at the time of notification.

Lowest marginal tax rate and availability

(5) Each dollar of an amount of tax loss that is used under this section—

(a) is equal to 1 dollar multiplied by the rate of tax or lowest marginal rate of tax that would apply to the person in the return period to which the tax shortfall relates if the person had tax to pay:

(b) cannot, from the date the tax loss is used, be used or made available for use, or be carried forward to a later tax year.

Tax years and part-years

(6) In this section, a **tax year** includes a part of a tax year that may be taken into account under this Part for continuity or grouping purposes.

Defined in this Act: amount, Commissioner, company, income tax liability, notify, pay, shortfall penalty, tax, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 s IG 10

Subpart IZ—Terminating provisions

IZ 1 Use of specified activity net losses

Limit on amount

(1) A person's specified activity net loss that is carried forward to a tax year and subtracted from the person's net income for the tax year must be no more than the sum of the net income for the tax year from the conduct of the same specified activity that gave rise to the net loss and $10,000. If the person makes the net loss available to another person, the maximum amount that can be subtracted by the other person is $10,000.

When person conducts 2 or more specified activities

(2) For the purposes of subsection (1), if the specified activity net loss arises from the conduct of 2 or more specified activities—

(a) the amount subtracted from the net income for the tax year must be no more than the lesser of—

(i) the sum of the person's specified activity net income from each of the specified activities; and

(ii) $10,000; and

(b) the person may choose by notice which amounts of net income from the specified activities to subtract from their net income.

When 2 or more persons conduct specified activity

(3) If 2 or more persons conduct a specified activity, this section applies as if every reference to—

(a) a person were a reference to each person; and

(b) an amount of specified activity net loss attributable to the conduct of the specified activity were a reference to the amount of each person's share of the amount of any joint specified activity net loss for the tax year.

Income from personal exertion and hardship

(4) The Commissioner may determine that the limit under subsection (1) does not apply, and may increase the amount of specified activity net loss that may be subtracted from a person's net income under that subsection if—

(a) the person is engaged mainly in conducting a specified activity as their livelihood, and they derive income from personal exertion that—

(i) is derived as a result of the conduct of the specified activity but is not income from the specified activity; and

(ii) is made for the purpose of enabling the person to meet expenditure essential for the maintenance of either them and their dependants or for the continuation of the specified activity; and

(b) the person, in the opinion of the Commissioner would suffer hardship from the application of subsections (1) to (3).

Relationship with general loss rules

(5) Subparts IA, IC, ID, IE, and IP (which relate to the general use of tax losses) apply to a specified net loss except to the extent to which subsections (1) to (3) override them.

Established activities excluded

(6) This section does not apply to a specified activity net loss that relates to an established activity.

Related activities

(7) A specified activity is related to another specified activity, and is treated as part of the other specified activity, if—

(a) it is usually conducted in association with and is complementary to the other specified activity that an existing farmer is already conducting; or

(b) it is conducted on land that an existing farmer has owned or held under lease, licence, or other agreement for 5 years before the activity is started and—

(i) the existing farmer is carrying on the other specified activity immediately before the related activity is started; or

(ii) the existing farmer elects by notice in their return of income for the tax year in which they start the activity to have the activity treated as related; or

(iii) the Commissioner determines the activity is related.

Modification for specified activity

(8) If this section would have a more favourable effect if the following words in paragraph (c)(ii) of the definition of **specified activity** in section YA 1 (Definitions) were omitted, this section applies as if those words were omitted:

"not including crops for which the preparation of the land, the planting and cultivation of the tree or plant, and the harvesting of the crop are accomplished within 12 months".

When subsections (10) and (11) apply

(9) Subsections (10) and (11) apply for the purposes of the definition of **established activity** in subsection (12) when—

(a) land is transferred under a settlement of relationship property; and

(b) the transferor conducted a specified activity on the land as at 1 October 1982, and the conduct of the activity constituted their livelihood or sole source of income; and

(c) the transferee conducts the same specified activity on the land.

Treatment of transferee

(10) The transferee is treated as continuing the specified activity, and that activity is treated as constituting their livelihood and sole source of income.

Date of commencement

(11) For the purposes of subsection (7), if the transferor was an existing farmer immediately before the date of transfer, the transferee is treated as having acquired the land on the date it was acquired by the transferor. However, if the transferee starts to conduct the same kind of specified activity on the land that the transferor conducted immediately before the date of transfer, the transferee is not treated as having acquired the land on that date.

Some definitions

(12) In this section,—

conduct means carry on or engage in or hold an interest in a specified activity, whether or not jointly with another person

established activity, for a person who is an existing farmer, means a specified activity, except an activity within the meaning of paragraph (j) of the definition of **specified activity** in section YA 1, that the person conducted on 11 October 1982, if the Commissioner considers the conduct of the specified activity constituted the livelihood of the person and their principal source of income

existing farmer means a person to whom both the following apply

(a) the person conducts in an income year 1 or more of the specified activities described in paragraphs (a) to (i) of the definition of **specified activity**; and

(b) the person's livelihood and the person's sole or principal source of income is constituted, throughout the conduct of the specified activity or the specified activities in the income year, by the conduct of the specified activity or the specified activities

income from personal exertion means income of a kind referred to in sections CB 1 and CE 1 (which relate to amounts derived from business and in connection with employment), but does not include income from a business of renting, or lending money, or making financial investments

land,—

(a) includes a lease, or an interest under a lease, of a leased area as defined in the Marine Farming Act 1971; and

(b) includes a licence, or an interest under a licence, relating to a licensed area as defined in the Marine Farming Act 1971; and

(c) includes an improvement on or in relation to the leased area or the licensed area to which a lease or licence under the Marine Farming Act 1971 relates

related activity, for a specified activity conducted by a person in a tax year, means another specified activity that is treated

as a related activity under subsection (7), whether or not it is conducted on the same land as the specified activity

specified activity means—

(a) the business of animal husbandry, including bee-keeping, the breeding of horses other than bloodstock, and poultry-keeping:

(b) otherwise deriving income from livestock including bees, horses other than bloodstock, and poultry:

(c) the business of growing trees or plants—

(i) for sale as growing trees or plants; or

(ii) for the production of flowers; or

(iii) for the production of fruit other than grapes, seeds, vegetables, or other crops, not including crops for which the preparation of the land, the planting and cultivation of the tree or plant, and the harvesting of the crop are accomplished within 12 months:

(d) the business of viticulture:

(e) the business of freshwater fish farming:

(f) the business of mussel farming:

(g) the business of rock oyster farming:

(h) the business of scallop farming:

(i) the business of sea-case salmon farming:

(j) acquiring or holding of land with a view to deriving, from some or all of the land, rents or other revenues from a lease, licence, or other agreement relating to the land

specified activity net income means, for a specified activity conducted by a person in a tax year, the result of subtracting from the sum of the income of the person allocated to that activity and the tax year the sum of the deductions of the person allocated to that activity and the tax year, if that result is a positive amount

specified activity net loss means, for a specified activity conducted by a person in a tax year preceding the 1986–87 tax year in the case of an activity referred to in paragraphs (a) to (i) of the definition of **specified activity** in section YA 1, and the 1990–91 tax year in the case of an activity referred to in

paragraph (j) of that definition, a loss from that specified activity referred to in section 188A of the Income Tax Act 1976.

Defined in this Act: amount, business, Commissioner, conduct, deduction, established activity, existing farmer, income, income from personal exertion, land, net income, notice, related activity, return of income, settlement of relationship property, specified activity, specified activity net income, specified activity net loss, tax year

Compare: 2004 No 35 ss FF 18, IE 2

IZ 2 Petroleum mining companies: treatment of payments from shareholders

When this section applies

(1) This section applies if—

(a) a tax loss arises from the allowance to a petroleum mining company in the 1990–91 tax year, or earlier tax year, of a deduction or further deduction under sections 214B(6), (13)(b), (14)(b), and (18)(c) of the Income Tax Act 1976 (or under section DZ 6(4) or (9)(c) of the Income Tax Act 1994); and

(b) a payment has been made by a company, which is at the time of the payment a shareholder of the petroleum mining company, to the petroleum mining company an amount that was used for the purposes of petroleum development expenditure of the kind referred to in section DZ 6(4) for which the deduction or further deduction referred to in paragraph (a) is allowed.

Shareholder companies' tax loss components

(2) The shareholder company has a tax loss component equal to the amount that bears to the tax loss the same proportion as the payment bears to the petroleum development expenditure. However, the amount of the tax loss component must be no more than the total amount paid.

Elections by shareholder companies

(3) For the purposes of subsection (2), the shareholder company must make an election by notice under section 214B(22)(d) of the Income Tax Act 1976 or section DZ 6(12)(d) of the Income Tax Act 1994.

Treatment of tax losses

(4) The tax loss may not be carried forward and used except to the extent to which the amount of the tax loss is more than the total of all amounts deducted under subsection (2) in the tax year in which the tax loss arises.

Further deductions

(5) Despite subsection (4), if the tax loss arises from the allowance of a further deduction under the second proviso to section 214B(6) of the Income Tax Act 1976 or under section DZ 6(4) of the Income Tax Act 1994, the tax loss is treated as a tax loss arising in the tax year which in section DZ 6(4) is referred to as the year of cessation.

Relationship with section CV 1

(6) Section CV 1 (Group companies) does not apply to—

(a) a tax loss referred to in this section except to the extent to which it is more than the total of all amounts deducted under subsection (2) in the tax year in which the tax loss arises; or

(b) a tax loss for the 1978–79 or earlier tax year.

Defined in this Act: amount, company, deduction, group of companies, notice, petroleum development expenditure, petroleum mining company, shareholder, tax loss, tax year

Compare: 2004 No 35 s IH 2

IZ 3 Petroleum mining companies: use of loss balances

When this section applies

(1) This section applies when—

(a) some or all of a loss balance of a petroleum mining company for the 1990–91 tax year or earlier tax year arises from the allowance of—

(i) a deduction of an amount of petroleum exploration expenditure that the company incurs on or before 30 September 1990 in exploring or searching for petroleum in an area that is or is subsequently comprised in an existing privilege that was a mining licence or in 2 or more such areas; or

(ii) a deduction of an amount for petroleum development expenditure that the company incurs before 30 September 1990; and

(b) at the start of a tax year following the tax year in which the tax loss arose, a loss balance relating to the permit area remains after taking into account any deductions that the petroleum mining company, or another company, has for the expenditure or any amounts the company has subtracted from its net income for earlier tax years; and

(c) the petroleum mining company was immediately before the commencement of section 214B of the Income Tax Act 1976 a company to which section 216 of that Act applied.

Using loss balances

(2) Despite section IA 5 (Restrictions on companies' loss balances carried forward) or GB 3 (Arrangements for carrying forward loss balances: companies), the loss balance may be subtracted from the petroleum mining company's net income for the tax year referred to in subsection (1)(b) to the extent to which it is no more than the net income of the company for the tax year if the company's only source of assessable income were from the relevant permit area.

Loss balances carried forward

(3) If, after applying subsection (2), the company has a loss balance remaining, the amount is carried forward to the next tax year and subsection (2) applies in that tax year, and so on.

References in section

(4) For the purposes of this section,—

(a) a reference in this section to expenditure in exploring or searching for petroleum in an area that is or is subsequently comprised in an existing privilege that was a mining licence is taken as including a reference to expenditure in exploring or searching for petroleum in an area that is outside but continuous or geologically contiguous with the area, being exploring or searching that was included, whether originally or additionally, in the programme of exploring or searching as a consequence

of which application was made for the existing privilege:

(b) **permit area** means an area, and may include more than 1 area, of an existing privilege referred to paragraph (d) of the definition of **existing privilege** in section 106 of the Crown Minerals Act 1991.

Relationship with section IZ 2

(5) Section IZ 2 overrides this section.

Defined in this Act: amount, assessable income, company, deduction, existing privilege, loss balance, net income, permit area, petroleum development expenditure, petroleum exploration expenditure, petroleum mining company, tax loss, tax year

Compare: 2004 No 35 s IH 1(2)

IZ 4 Tax losses for tax years before 1977–78 tax year

A person's loss balance for a tax year before the 1977–78 tax year is carried forward and may be used under section IA 4 (Using loss balances carried forward to tax year) if the person would have been entitled to have the tax loss carried forward for the purpose of assessing income tax under section 137 of the Land and Income Tax Act 1954 if the Income Tax Act 1976, the Income Tax Act 1994, the Income Tax Act 2004, and this Act had not been passed.

Defined in this Act: assessment, loss balance, tax loss, tax year

Compare: 2004 No 35 s IF 1(5)

IZ 5 Companies' tax losses for tax years before 1991–92 tax year

Loss balances carried forward

(1) A company's loss balance for a tax year before the 1991–92 tax year may be used under section IA 4 (Using loss balances carried forward to tax year) if—

(a) the company would have been entitled to have some or all of the tax loss under section 188 of the Income Tax Act 1976 carried forward to a later tax year, if that section had continued to apply in the later tax year, as modified by section 188AA of that Act and as if the continuity percentage referred to in section 188(7) of that Act were always 40%; and

(b) for the period starting on the first day of the 1992–93 tax year and ending on the last day of the later tax year, a group of persons holds total minimum voting interests in the company that add up to at least 49%.

Market value circumstances and minimum interests

(2) For the purposes of subsection (1)(b),—

(a) if, during the period a market value circumstance exists for the company, the group of persons must also hold for the period total minimum market value interests in the company that add up to at least 49%:

(b) a minimum interest of any person in the company in the period is equal to the lowest interest that the person has in the period.

Defined in this Act: company, group of persons, loss balance, market value circumstance, minimum market value interest, minimum voting interest, tax loss, tax year

Compare: 2004 No 35 s IF 1(6)

IZ 6 Companies' tax losses for 1990–91 and 1991–92 tax years

When this section applies

(1) This section applies to a company that has a tax loss for the 1990–91 or 1991–92 tax year and section 188(7B) of the Income Tax Act 1976 would not have applied to prevent some or all of the tax loss being carried forward if regard were had to only part of the relevant tax year.

Part-year tax losses carried forward

(2) Section 188(7B) does not apply to prevent the part of the tax loss attributable to the relevant part-period being carried forward under section 188(2).

Financial statements

(3) For the purposes of subsection (2), the company must provide the Commissioner with adequate financial statements relating to the relevant part-period that disclose the amount that would be the tax loss for the relevant part of the tax year, on a fair and reasonable basis of attribution.

Application of subsection (7B)

(4) In subsection (1), the reference to subsection (7B) applies to the extent to which regard was required to be had to that part of

the period starting with 8.00pm New Zealand Standard Time on 30 July 1991 which falls within the tax year in which the tax loss component arises, and without prejudice to the application of that subsection to the extent to which it required regard to be had to later periods.

Defined in this Act: amount, Commissioner, company, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IF 2

IZ 7 Grouping tax losses for tax years before 1981–82 and between 1981–82 and 1991–92

Commonality period: between 1981–82 and 1991–92

(1) For the purposes of section IC 5(1)(a) (Company B using company A's tax loss), if company A has a tax loss in a tax year between the 1981–82 and 1991–92 tax years, company A and company B may group the tax loss in a tax year that is later than the tax year in which the tax loss component arises only if company B is in the same group of companies as company A in the earlier tax year.

Commonality period: before 1981–82

(2) For the purposes of section IC 5(1)(a), if company A has a tax loss in a tax year before the 1981–82 tax year, company A and company B may group the tax loss in a tax year that is later than the tax year in which the tax loss component arises only if company B is in the same group of companies as company A in the tax year in which the tax loss is used.

When companies have different balance dates

(3) For the purposes of subsections (1) and (2), the tax year is extended under section IC 10(2)(b) (When companies have different balance dates) if company B's balance date is later than company A's balance date.

Residence of company A

(4) For the purposes of section IC 5(1)(b), if company A's tax loss component arose in a tax year before the 1991–92 tax year, company A and company B may group the tax loss component in a tax year that is later than the tax year first referred to only if company A is, in both the earlier and the later tax year—

(a) incorporated in New Zealand, or carrying on a business in New Zealand through a fixed establishment in New Zealand; and

(b) resident in New Zealand, and not treated under a double tax agreement, and for the purposes of the agreement, as not resident in New Zealand, or liable by the law of another country or territory to income tax in that country or territory through domicile, residence, or place of incorporation.

Relationship with sections IC 5 and IC 6

(5) Subsections (1) and (2) override sections IC 5(1)(a) and IC 6 (which relate to grouping requirements) and subsection (4) overrides sections IC 5(1)(b) and IC 6.

Defined in this Act: balance date, business, company, double tax agreement, fixed establishment, group of companies, New Zealand, resident in New Zealand, tax loss, tax loss component, tax year

Compare: 2004 No 35 s IG 2(2)(c), (d)(ii)(B)

Part L
Tax credits and other credits

Subpart LA—General rules for tax credits

LA 1 What this Part does

This Part—

(a) identifies when a person's tax credit arises; and

(b) provides the rules that govern the use of a tax credit in satisfying an obligation under section BB 2 (Main obligations).

Defined in this Act: tax credit

LA 2 Satisfaction of income tax liability

A person must use their total tax credit for a tax year to satisfy their income tax liability for the tax year.

Defined in this Act: income tax liability, tax year, total tax credit

Compare: 2004 No 35 s BC 9

LA 3 When total tax credit less than or equal to income tax liability

Unsatisfied income tax liability

(1) If a person's total tax credit for a tax year is less than their income tax liability for the tax year, the person has an amount of unsatisfied income tax liability for the tax year.

Amount

(2) The amount of unsatisfied income tax liability is—

(a) equal to the difference between the person's total tax credit for the tax year and their income tax liability for the tax year:

(b) satisfied when the person pays their terminal tax for the tax year.

Defined in this Act: amount, income tax liability, tax year, terminal tax, total tax credit

Compare: 2004 No 35 s BC 9

LA 4 When total tax credit more than income tax liability

Satisfied income tax liability

(1) If a person's total tax credit for a tax year is greater than their income tax liability for the tax year, the person must use their total tax credit, including the credits listed in paragraphs (a) to (d), to satisfy their income tax liability by using—

(a) first, a non-refundable tax credit:

(b) second, a tax credit for a supplementary dividend:

(c) third, a tax credit for an imputation credit:

(d) fourth, a refundable tax credit.

Remaining tax credits

(2) A person who has satisfied their income tax liability under subsection (1) must deal with their remaining tax credits for the tax year under section LA 5.

Defined in this Act: imputation credit, income tax liability, non-refundable tax credit, refundable tax credit, supplementary dividend, tax credit, tax year, total tax credit

Compare: 2004 No 35 ss BC 8(2), BC 9(1), BC 10, KD 4(2), LD 3(3), LD 3A(4), LE 2(6)

LA 5 Treatment of remaining credits

What this section applies to

(1) This section applies to a remaining tax credit referred to in section LA 4(2).

Non-refundable credits

(2) A non-refundable tax credit is extinguished. However, this subsection does not apply to a tax credit for income tax and foreign income tax paid in relation to foreign attributed income used under section LK 4 (Use of remaining credits).

Credits for supplementary dividends

(3) A person uses a tax credit for a supplementary dividend by applying section LP 3 (Use of remaining credits).

Credits for imputation credits

(4) A person uses a tax credit for an imputation credit by applying section LE 2, LE 2B, or LE 3 (which relate to the use of remaining tax credits).

Refundable credits

(5) The Commissioner refunds a refundable tax credit by applying section LA 6, LA 7, or LA 8.

Defined in this Act: Commissioner, foreign attributed income, foreign income tax, imputation credit, income tax, non-refundable tax credit, refundable tax credit, supplementary dividend, tax credit

Compare: 2004 No 35 ss BC 9, BC 10

Section LA 5(4): amended (with effect on 1 July 2010), on 7 September 2010, by section 85 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

LA 6 Remaining refundable credits: PAYE, RWT, and certain other items

What this section applies to

(1) This section applies to a person's tax credit remaining for a tax year under section LA 5(5) if it is a tax credit under—

(a) section LB 1 (Tax credits for PAYE income payments):

(b) section LB 2 (Tax credits for provisional tax payments):

(c) section LB 3 (Tax credits for resident withholding tax):

(cb) section LB 6 (Tax credits for RSCT):

(d) subpart LF (Tax credits for foreign dividend payment (FDP) credits):

(db) subpart LH (Tax credits for expenditure on research and development), although modified by section LH 2(6) (Tax credits relating to expenditure on research and development):

(e) subpart LO (Tax credits for Maori authority credits):

(f) section LS 1 (Tax credits for multi-rate PIEs).

Use of credits

(2) The Commissioner must—

(a) first, use a tax credit to satisfy the person's income tax liability for a tax year that is before the tax year referred to in subsection (1):

(b) second, use a tax credit to satisfy the person's income tax liability for a tax year that is later than the tax year referred to in subsection (1), applying this paragraph to earlier tax years before later tax years:

(c) third, pay the person's provisional tax for a tax year that is later than the tax year referred to in subsection (1), applying this paragraph to earlier tax years before later tax years:

(d) fourth, treat a tax credit as tax paid in excess and as transferable under Part 10B of the Tax Administration Act 1994:

(e) fifth, refund a tax credit by applying sections RB 4, RM 2 to RM 8, and RM 10 (which relate to refunds and their use), as applicable, and the Tax Administration Act 1994.

Time bar

(3) The Commissioner may amend an assessment or a determination to give effect to this section despite the time bar.

Defined in this Act: assessment, Commissioner, income tax liability, PAYE, provisional tax, RWT, tax credit, tax year, time bar

Compare: 2004 No 35 ss LD 1, LD 3, LD 3A, LD 6–LD 8, LD 12(5), LH 1(6), MD 1

Section LA 6(1)(cb): inserted, on 1 April 2008, by section 433(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LA 6(1)(db): inserted, on 1 April 2008, by section 433(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LA 6(1)(e): amended (with effect on 1 April 2008), on 6 October 2009, by section 308(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 6(1)(f): added (with effect on 1 April 2008), on 6 October 2009, by section 308(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 6(1)(f): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 308(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 6 compare note: amended, on 1 April 2008, by section 433(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LA 7 Remaining refundable credits: tax credits under social policy schemes

What this section applies to

(1) This section applies to a person's tax credit remaining for a tax year under section LA 5(5), if it is a tax credit under—

(a) section LB 4 (Tax credits for families):

(b) section LD 1(5) (Tax credits for charitable and other public benefit gifts).

Use of credits

(2) The Commissioner must treat the person's tax credit as transferable under Part 10B of the Tax Administration Act 1994 or refundable under sections RB 4, RM 2 to RM 8, and RM 10 (which relate to refunds and their use), as applicable.

Defined in this Act: Commissioner, tax credit, tax year

Compare: 2004 No 35 ss BC 8(1), KD 4(2), MD 1

Section LA 7 heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 309(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 7 heading: substituted, on 1 April 2008, by section 434(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LA 7(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 309(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 7(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 309(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 7(1): amended, on 1 April 2008, by section 434(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LA 7 list of defined terms **family scheme income**: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

LA 8 Remaining refundable credits: non-resident withholding tax

What this section applies to

(1) This section applies to a person's tax credit remaining for a tax year under section LA 5(5), if it is a tax credit under section LB 5 (Tax credits for non-resident withholding tax).

Use of credits

(2) The Commissioner must—

(a) first, treat the tax credit as tax paid in excess and as transferable under Part 10B of the Tax Administration Act 1994:

(b) second, refund the tax credit under sections RB 4, RM 2 to RM 8, and RM 10 (which relate to refunds and their use), as applicable.

Defined in this Act: Commissioner, non-resident withholding tax, tax credit, tax year

Compare: 2004 No 35 ss LD 2, MD 1

LA 8B General rules particular to life insurers

Apportionment

(1) For the purposes of this subpart, a life insurer's total tax credit is apportioned between their policyholder base and shareholder base, to the extent to which section EY 4 (Apportionment of income of particular source or nature, and of tax credits) applies and apportions the credit.

Unsatisfied income tax liability

(2) Despite section LA 3,—

(a) a life insurer has an unsatisfied income tax liability to the extent to which—

(i) the tax credit apportioned to their policyholder base is less than their schedular income tax liability for schedular policyholder base income (the **policyholder base income tax liability**):

(ii) the tax credit apportioned to their shareholder base is less than their income tax liability for the tax year, calculating their income tax liability (the **shareholder base income tax liability**)

as if they only had shareholder base income and allowable deductions:

(b) the amount of unsatisfied income tax liability is the total of the difference, if any, described in paragraph (a)(i) and the difference, if any, described in paragraph (a)(ii):

(c) the amount of unsatisfied income tax liability under paragraph (b) is satisfied when the life insurer pays their terminal tax for the tax year.

Use of credits

(3) Despite section LA 4,—

(a) if the tax credit apportioned to the policyholder base or the shareholder base is greater than the relevant base income tax liability described in subsection (2)(a)(i) or (ii), the tax credit is used, in the order prescribed in section LA 4(1), to satisfy the relevant base income tax liability. There is no cross-crediting:

(b) tax credits not used under paragraph (a) are treated as remaining tax credits referred to in section LA 4(2) and the life insurer must deal with the credits under section LA 5.

Defined in this Act: income tax liability, life insurer, policyholder base, schedular policyholder base income, shareholder base, shareholder base allowable deduction, shareholder base income, tax credit, tax year

Section LA 8B: inserted, on 1 July 2010, by section 310(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LA 9 Use of tax credits

An amount of a tax credit is used once, so far as it extends.

Defined in this Act: amount, tax credit

Compare: 2004 No 35 ss BC 9(1), LB 2(2), LE 2(4), (8)

Section LA 9: amended (with effect on 1 April 2008), on 6 October 2009, by section 311(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LA 9: amended, on 1 April 2008, by section 435 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LA 10 Meaning of tax credit

An amount is a **tax credit** of a person if it is their tax credit under a provision in this Part.

Defined in this Act: amount, tax credit

Compare: 2004 No 35 s BC 9

Subpart LB—Tax credits for payments, deductions, and family payments

Subpart LB heading: substituted, on 1 April 2008, by section 436 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LB 1 Tax credits for PAYE income payments

When this section applies

(1) This section applies in a tax year when an employer provides the Commissioner with an employer monthly schedule that shows an amount of tax withheld from a PAYE income payment of a person who is an employee.

Amount of credit

(2) The person has a tax credit for the tax year equal to the amount of tax shown as withheld.

Application to close companies

(3) Despite subsection (2), the amount of the tax credit must be no more than the amount of tax paid to the Commissioner if—

- (a) the employer is a close company; and
- (b) the employer and the person are associated persons, or the employer and the spouse, civil union partner, or de facto partner of the person are associated persons; and
- (c) the employer withheld the amount of tax for the PAYE income payment shown in the employer monthly schedule.

Exclusions

(4) The person's credit is extinguished if the Commissioner does not receive an employer monthly schedule for the relevant amount of tax, or when the relevant particulars of the schedule are incorrect. However, the credit is restored to the person if

the relevant matter is corrected and, for the purposes of this section, it is as if the error had not been made.

Defined in this Act: amount, amount of tax, associated person, close company, Commissioner, employee, employer, employer monthly schedule, pay, PAYE income payment, tax credit

Section LB 1: substituted (with effect on 1 April 2008), on 6 October 2009, by section 312 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LB 2 Tax credits for provisional tax payments

A person has a tax credit for a tax year equal to the amount of provisional tax for the tax year paid by—

(a) the person; or

(b) an agent of the person, if the agent is liable to pay provisional tax on behalf of the person.

Defined in this Act: agent, amount, pay, provisional tax, tax credit, tax year

Compare: 2004 No 35 ss LD 6, LD 7

LB 3 Tax credits for resident withholding tax

Tax credit

(1) A person has a tax credit for a tax year equal to the amount of tax withheld and paid in relation to their resident passive income for the tax year if the evidential requirements of section 78D of the Tax Administration Act 1994 are met.

Exclusion

(2) No credit exists under subsection (1) for an amount of tax for resident passive income that is a replacement payment.

Multi-rate PIEs and their investors

(3) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under subpart HM (Portfolio investment entities).

Exclusion: Trustees' RWT substitution payment

(4) No credit exists under subsection (1) for an amount of tax equal to the amount of an RWT substitution payment that a trustee has paid to the person in relation to the tax.

Effect of RWT substitution payment

(5) A person who pays an RWT substitution payment has a tax credit for a tax year equal to the payment.

Defined in this Act: amount of tax, investor, multi-rate PIE, replacement payment, resident passive income, resident withholding tax, RWT substitution payment, tax credit, tax withheld, tax year, trustee

Compare: 2004 No 35 ss LD 3(2), NF 1(2)(b)(ix), (x), NF 8B(b)

Section LB 3(3) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 313(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 3(3): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 313(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 3(4) heading: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 99(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LB 3(4): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 99(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LB 3(5) heading: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 99(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LB 3(5): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 99(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LB 3 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 313(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 3 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 313(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 3 list of defined terms **RWT substitution payment**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 99(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LB 3 list of defined terms **trustee**: added (with effect on 1 April 2008), on 29 August 2011, by section 99(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

LB 4 Tax credits for families

Tax credits under subparts MD and ME

(1) A person has a tax credit for a tax year equal to the total amount of their tax credit under subpart MD (Abating WFF tax credits) and their minimum family tax credit under subpart ME (Minimum family tax credit) for the tax year.

Adjustments for credits used

(2) The person's tax credit is adjusted if an instalment of the credit under subpart MF (Payment of credits) is used to satisfy an amount of tax for an earlier income year. The adjustment to the tax credit is equal to the total amount of instalments payable under section MF 1 (Application for payment of tax credit by instalment) that are recovered by the Commissioner under section MF 6 (Overpayment or underpayment of tax credit) as tax payable by the person.

Defined in this Act: amount, amount of tax, corresponding income year, family scheme income, minimum family tax credit, pay, tax credit, tax year

Compare: 2004 No 35 ss KD 1A(2), KD 2(1), KD 3(2), MD 1(3A)

Section LB 4 heading: substituted, on 1 April 2008, by section 437(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4: amended, on 1 April 2008, by section 437(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4: amended, on 1 April 2008, by section 437(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4: amended, on 1 April 2008, by section 437(2)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4: amended, on 1 April 2008, by section 437(2)(d) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 314(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 4(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 314(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 4(2): added (with effect on 1 April 2008), on 6 October 2009, by section 314(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 4 list of defined terms **amount of tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 314(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 4 list of defined terms **corresponding income year**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 314(3) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 4 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 437(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4 list of defined terms **family tax credit**: repealed, on 1 April 2008, by section 437(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 437(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 4 list of defined terms **pay**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 314(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LB 4 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 314(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LB 5 Tax credits for non-resident withholding tax

A person has a tax credit for a tax year equal to the amount of tax withheld and paid in relation to their non-resident passive income for the tax year.

Defined in this Act: amount of tax, non-resident passive income, non-resident-withholding tax, pay, tax credit, tax withheld, tax year

Compare: 2004 No 35 s LD 2

LB 6 Tax credits for RSCT

When this section applies

(1) This section applies when—

(a) a person derives income as a retirement scheme contribution in an income year; and

(b) the retirement scheme contributor pays RSCT for the contribution; and

(c) the income is not excluded income of the person under section CX 50B (Contributions to retirement savings schemes).

Tax credit: New Zealand resident

(2) If the person is resident in New Zealand, they have a tax credit for the tax year corresponding to the income year of an amount equal to the RSCT withheld.

Tax credit: non-resident

(3) If the person is not resident in New Zealand, they have a tax credit for the tax year corresponding to the income year of an amount equal to the excess of RSCT withheld over NRWT paid in relation to the contribution.

When contribution is taxable Maori authority distribution

(4) If the person is not resident in New Zealand and the retirement scheme contribution is a taxable Maori authority distribution, they have a tax credit for the tax year corresponding to the income year of an amount equal to the RSCT withheld.

Defined in this Act: amount, excluded income, income, income year, non-resident, NRWT, pay, resident in New Zealand, retirement scheme contribution, retirement scheme contributor, RSCT, tax credit, tax year

Compare: 2004 No 35 s LD 12(1)–(4)

Section LB 6: substituted, on 1 April 2008, by section 438(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LB 7 Tax credits related to personal service rehabilitation payments: providers

When this section applies

(1) This section applies when—

(a) a person—

(i) is paid under the Accident Compensation Act 2001 a personal service rehabilitation payment for a period for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment**; and

(ii) pays another person (a **provider**) for providing the key aspect to them for the period; or

(b) the Accident Compensation Corporation pays a provider a personal service rehabilitation payment for a period for providing a key aspect of social rehabilitation to the person.

Tax credit

(2) The provider has a tax credit for the tax year corresponding to the income year in which the period falls.

Amount

(3) The amount of the tax credit is calculated using the formula—

$$\frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate}}$$

Definition of items in formula

(4) In the formula,—

(a) **amount paid** is the amount paid to the provider for providing a key aspect of social rehabilitation to the person for the period, to the extent to which the amount is equal to or less than the amount of the personal service rehabilitation payment for the period after taking into account any amount of tax withheld:

(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part I, clause 1 (Rates of tax for schedular payments) unless the payment is 1 of the following kinds, in which case the rate of tax is that set out in the subparagraph:

(i) for a payment to which section RD 18 (Schedular payments without notification) applies, the rate under schedule 4, part I, clause 1 together with any additional amount required to be withheld under section RD 18, determined using the rates set out in that section:

(ii) for a payment to which a special tax rate certificate applies, the rate applying to the payment as determined by the Commissioner under section 24N of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, income year, pay, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s LD 1B

Section LB 7: added, on 1 July 2008, by section 438(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 7(1)(a)(i): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LB 7(4)(b): substituted (with effect on 1 July 2008), on 6 October 2009, by section 315(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LB 8 Tax credits related to personal service rehabilitation payments: payers

When this section applies

(1) This section applies when—

(a) a person is paid under the Accident Compensation Act 2001 a personal service rehabilitation payment for a period for a key aspect of social rehabilitation referred to in the definition of **personal service rehabilitation payment** ; and

(b) the person pays another person (the **provider**) for providing the key aspect to them for the period; and

(c) the amount paid to the provider is less than the amount of the personal service rehabilitation payment to the person for the period after taking into account any amount of tax withheld.

Tax credit

(2) The person has a tax credit for the tax year corresponding to the income year in which the period falls to the extent of the amount calculated using the formula—

$$\text{total tax withheld} — \frac{\text{amount paid} \times \text{tax rate}}{1 - \text{tax rate}}$$

Definition of items in formula

(3) In the formula,—

(a) **total tax withheld** is the total amount of tax withheld from the personal service rehabilitation payment paid to the person for the period:

(b) **amount paid** is the amount paid to the provider:

(c) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under schedule 4, part I, clause 1 (Rates of tax for schedular payments) unless the payment is 1 of the following kinds, in which case the rate of tax is that set out in the subparagraph:

(i) for a payment to which section RD 18 (Schedular payments without notification) applies, the rate under schedule 4, part I, clause 1 together with any additional amount required to be withheld

under section RD 18, determined using the rates set out in that section:

(ii) for a payment to which a special code applies, the rate applying to the payment as determined by the Commissioner under section 24N of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, income year, pay, personal service rehabilitation payment, tax credit, tax year

Compare: 2004 No 35 s LD 1C

Section LB 8: added, on 1 July 2008, by section 438(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LB 8(1)(a): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LB 8(3)(c): substituted (with effect on 1 July 2008), on 6 October 2009, by section 316(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart LC—Tax credits for natural persons

Tax credits for persons on low incomes [Repealed]

Heading: repealed (with effect from 1 April 2008), on 29 May 2008, by section 24(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

LC 1 When net income under low income amount *[Repealed]*

Section LC 1: repealed (with effect from 1 April 2008), on 29 May 2008, by section 24(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

LC 2 When net income in low income abatement range *[Repealed]*

Section LC 2: repealed (with effect from 1 April 2008), on 29 May 2008, by section 25(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Tax credits for children

LC 3 Child's income

When this section applies

(1) This section applies for a tax year when a person other than an absentee derives income and is younger than—

(a) 15; or

(b) 18, and is attending—

(i) a private primary school or a state primary school or a private secondary school or a state secondary school (in each case as defined in the Education Act 1964); or

(ii) an integrated school (as defined in section 2 of the Private Schools Conditional Integration Act 1975); or

(iii) a school providing special education (as defined in the Education Act 1964 and the Education Act 1989); or

(c) 19, and—

(i) during the previous tax year was a person to whom paragraph (b) applied; and

(ii) turned 18 on or after 1 January in that previous tax year; and

(iii) continues to attend a school of any of the kinds referred to in paragraph (b).

Exclusion

(2) Despite subsection (1), if the person has a tax credit under section LC 4, they are not allowed a credit under this section.

Amount of credit

(3) The person has a tax credit equal to an amount that is the lesser of—

(a) $245.70; and

(b) an amount calculated using the formula in subsection (4).

Formula

(4) The formula referred to in subsection (3)(b) is—

$$(\text{net income} - \text{resident passive income}) \times \frac{10.5}{100.}$$

Definition of items in formula

(5) In the formula,—

(a) **net income** is the person's net income for the tax year:

(b) **resident passive income** is the resident passive income derived by the person in the tax year.

Defined in this Act: absentee, amount, income, net income, resident passive income, tax credit, tax year

Compare: 2004 No 35 s KC 2

Section LC 3(1): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 86(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LC 3(3)(a): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 59(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 3(3)(a): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 59(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 3(3)(a): amended, on 1 April 2009, by section 26(2)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LC 3(3)(a): amended (with effect from 1 April 2008), on 29 May 2008, by section 26(1)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LC 3(4) formula: amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 59(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 3(4) formula: amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 59(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 3(4) formula: amended, on 1 April 2009, by section 26(2)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LC 3(4) formula: amended (with effect from 1 April 2008), on 29 May 2008, by section 26(1)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LC 3 list of defined terms **absentee**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 86(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Tax credits for transitional circumstances

LC 4 Tax credits for transitional circumstances

When this section applies

(1) This section applies in a tax year to a person who is engaged in full-time work other than a person who—

(a) is a child younger than 18, other than a child older than 15 who has stopped going to a school of any of the kinds referred to in section LC 3(1)(b):

(b) is treated under section YD 1 (Residence of natural persons) as not resident in New Zealand throughout the tax year:

(c) has a tax credit for the tax year under subpart MD, ME, or MZ (which relate to tax credits under the family scheme):

(d) is throughout the tax year, the spouse, civil union partner, or de facto partner of a person who has a tax credit for the tax year under subpart MD, ME, or MZ.

Amount of credit

(2) The person has a tax credit equal to an amount calculated using the formula—

$$\text{person's net income} \times \frac{\text{weekly periods}}{52.}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **person's net income** is—

(i) $611.52, if the net income of the person for the tax year is less than $6,241; or

(ii) an amount calculated using the formula in subsection (4), if the net income of the person for the tax year is $6,241 or more:

(b) **weekly periods** is the number of periods of 1 week for which the person is engaged in full-time work.

Formula

(4) The formula referred to in subsection (3)(a)(ii) is—

$$\$611.52 - ((\text{person's net income} - \$6{,}240) \times 0.168).$$

Definition of item in formula

(5) In the formula in subsection (4), **person's net income** means the person's net income for the tax year in complete dollars.

Defined in this Act: amount, civil union partner, de facto partner, engaged in fulltime work, net income, resident in New Zealand, spouse, tax credit, tax year

Compare: 2004 No 35 s KC 3(1)

Section LC 4(1)(c): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 106(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LC 4(1)(d): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 106(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LC 4(3)(a)(i): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 60(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 4(3)(a)(i): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 60(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 4(4) formula: amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 60(2)(b)(i) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 4(4) formula: amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 60(2)(b)(ii) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 4(4) formula: amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 60(1)(b)(i) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 4(4) formula: amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 60(1)(b)(ii) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LC 4(4) formula: amended (with effect on 1 April 2008), on 6 October 2009, by section 317(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LC 5 Meaning of engaged in full-time work

Meaning

(1) For the purposes of section LC 4, a person who is **engaged in full-time work** for a week, means a person who, in the week, is engaged in paid work for at least 20 hours.

Inclusions

(2) A person **engaged in full-time work** includes a person who is not engaged in paid work for the following reasons:

(a) if they suffer incapacity due to personal injury by accident for which compensation is or will be paid when otherwise they would have been engaged in paid work:

(b) if they are on parental leave during a week for which a parental leave payment is payable under Part 7A of the Parental Leave and Employment Protection Act 1987:

(c) if they are temporarily, or for an indefinite period, incapacitated for work through sickness or accident in relation to which a sickness benefit is or will be paid under the Social Security Act 1964 when otherwise they would have been engaged in paid work.

Uniform daily rate

(3) For the purposes of the definition of **engaged in full-time work**, if a person performs paid work in a pay period that consists of a period longer than 1 week, the person is treated as having been engaged in paid work at a uniform daily rate throughout that pay period.

Meaning of personal injury by accident, and compensation

(4) For the purposes of subsection (2)(a),—

(a) **personal injury by accident** means—

(i) personal injury by accident within the meaning of section 2 of the Accident Compensation Act 1982:

(ii) personal injury within the meaning of section 4 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(iii) personal injury within the meaning of section 13 of the Accident Insurance Act 1998:

(iv) personal injury within the meaning of section 6 of the Accident Compensation Act 2001:

(b) **compensation** means—

(i) earnings related compensation under section 2 of the Accident Compensation Act 1982:

(ii) compensation for loss of earnings payable under sections 38, 39, and 43 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(iii) a vocational rehabilitation allowance payable under section 25 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(iv) compensation for loss of potential earning capacity payable under section 45 or 46 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(v) weekly compensation payable under section 58, 59, or 60 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(vi) continued compensation payable under section 138 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(vii) weekly compensation payable under section 428(2) or 429(2) or schedule 1, part 2 of the Accident Insurance Act 1998:

(viii) compensation payable under section 445, 446, or 447 or schedule 1, clauses 67, 70, and 71 of the Accident Insurance Act 1998 that is or will be paid when the person would have been engaged in full-time work, if not for the death of another person:

(ix) weekly compensation within the meaning of sections 6 and 365 and schedule 1, part 2 of the Accident Compensation Act 2001:

(x) compensation payable under sections 383, 384, and 385 and schedule 1, clauses 66, 70, and 71 of the Accident Compensation Act 2001.

Meaning of paid work

(5) **Paid work**, for a person, means work from, by, or through the performance of which the person derives assessable income.

Defined in this Act: assessable income, compensation, engaged in full-time work, paid work, pay period, personal injury by accident

Compare: 2004 No 35 s KC 3(3) **full-time earner**, **remunerative work**

Section LC 5(4)(a)(iv): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LC 5(4)(b)(ix): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LC 5(4)(b)(x): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Tax credits for housekeeping

LC 6 Tax credits for housekeeping

Amount of credit

(1) A person, other than an absentee, who makes housekeeping payments in a tax year for the services of a housekeeper and who meets the requirements of section 41A of the Tax Administration Act 1994, has a tax credit equal to the lesser of—

(a) $310; and

(b) an amount calculated using the formula in subsection (2).

Formula

(2) The formula referred to in subsection (1)(b) is—

housekeeping payments × 0.33.

Definition of item in formula

(3) In the formula, **housekeeping payments** is the amount of housekeeping payments that the person makes during the tax year in complete dollars.

Refundable credits

(4) A credit under this section is a refundable tax credit under section LA 7 (Remaining refundable credits: tax credits under social policy schemes) and excluded from the application of sections LA 2 to LA 6 (which relate to a person's income tax liability).

Defined in this Act: absentee, amount, housekeeper, housekeeping payments, refundable tax credit, tax credit, tax year

Compare: 2004 No 35 s KC 4(1), (1A)

Section LC 6(1): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 87(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LC 6(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 318 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LC 6(4): amended, on 1 April 2008, by section 439 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LC 6 list of defined terms **absentee**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 87(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

LC 7 Meaning of housekeeper

Definition

(1) For the purposes of section LC 6, **housekeeper**, for a person (**person A**) and a tax year, means,—

(a) if person A is a widow, a widower, a surviving civil union partner, a surviving de facto partner, a divorced person, a person whose civil union has been dissolved, a person who is not in a marriage, civil union, or de facto relationship, or a separated person,—

(i) a person or an institution that has the care and control of a household member, either in person A's home or elsewhere; or

(ii) a person who tends person A's home if the person's services are necessary because of a mental or physical infirmity or disability of person A; or

(b) if person A is living with their spouse, civil union partner, or de facto partner,—

(i) a person or an institution that has the care and control of a household member, either in person A's home or elsewhere, if the services of the person or the institution are necessary because of a mental or physical infirmity or disability of person A or their spouse, civil union partner, or de facto partner; or

(ii) a person who tends person A's home, if the services of the person or the institution are necessary because of a mental or physical infirmity or disability of person A or their spouse, civil union partner, or de facto partner; or

(c) if person A is living with their spouse, civil union partner, or de facto partner, a person or an institution that has the care and control of a household member, either in person A's home or elsewhere, if the services of the person or the institution are necessary because of the employment or business activities of both person A and their spouse, civil union partner, or de facto partner.

When both partners have credits

(2) Despite subsection (1)(c), if person A and their spouse, civil union partner, or de facto partner have a credit under section

LC 6, the Commissioner may apportion the amount of the credit as is fair and equitable. The maximum amount that may be apportioned in this way is $310.

Defined in this Act: amount, business, Commissioner, employment, home, household member, institution, separated person, tax year

Compare: 2004 No 35 s KC 4(2) **housekeeper**

LC 8 Some definitions

For the purposes of sections LC 6 and LC 7,—

home, for a person and a tax year,—

(a) means the dwelling in which the person resides during the tax year:

(b) does not include a motel, hotel, boardinghouse, guest house, convalescent home, nursing home, rest home, hospital, hospice, or other similar establishment, other than a part of an establishment that is occupied by any person regularly engaged in carrying on the activity of operating the establishment or by the person's spouse, civil union partner, or de facto partner

household member means a person who is—

(a) younger than 18; or

(b) suffering from a mental or physical infirmity or disability affecting their ability to earn a living

housekeeping payments, in relation to a person and a tax year, means payments—

(a) that are made by the person during the tax year for the services of a housekeeper; and

(b) for which no credit under any other provision of this Act is allowed to the person or to any other person

institution—

(a) means a creche, day nursery, play centre, kindergarten, or similar body:

(b) does not, in relation to the care and control of a household member who is 5 or older, include an institution

that is, in any way, concerned with the education of the household member.

Defined in this Act: home, household member, housekeeper, institution, pay, tax year

Compare: 2004 No 35 s KC 4(2) **child**, **communal home**, **home**, **institution**, **qualifying payments**, **separated person**

Tax credits for absentees

LC 9 Tax credits for absentees

When this section applies

(1) This section applies when—

(a) an absentee has derived assessable income from their personal services while they are personally present in New Zealand in a tax year; and

(b) the absentee would have a tax credit under any of sections LC 3 to LC 6 if they were not an absentee.

Amount of tax credit under applicable section

(2) The absentee has a tax credit under the applicable section equal to an amount calculated using the formula—

$$\text{credit amount} \times \frac{\text{days}}{365.}$$

Definition of items in formula

(3) In the formula,—

(a) **credit amount** is the tax credit that the person would have under the applicable section if they were not an absentee:

(b) **days** is the total number of days in the period for which the person is paid for the personal services.

Defined in this Act: absentee, amount, assessable income, New Zealand, pay period, tax credit, tax year

Compare: 2004 No 35 s KF 3

Section LC 9(1)(b): amended (with effect from 1 April 2008), on 29 May 2008, by section 27(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Adjustments to certain tax credits

LC 10 Adjustment for change in return date

When this section applies

(1) This section applies when—

(a) section 39 of the Tax Administration Act 1994 applies to a person; and

(b) for the purposes of that section, the person provides a return of income for a period that is—

(i) less than a year; or

(ii) more than a year.

Adjustment

(2) The amount of the total tax credits that the person has under this subpart is adjusted using the formula—

$$\text{person's total credits} \times \frac{\text{days}}{365}.$$

Definition of items in formula

(3) In the formula,—

(a) **person's total credits** is the total of the person's tax credits under sections LC 3 to LC 6:

(b) **days** is the number of days in the period in relation to which the person provides the return.

Defined in this Act: amount, return of income, tax credit, total tax credit, year

Compare: 2004 No 35 s KB 2

Section LC 10(3)(a): amended (with effect from 1 April 2008), on 29 May 2008, by section 28(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

LC 11 Adjustment when person is non-resident for part of tax year

When this section applies

(1) This section applies—

(a) for the purposes of section LC 4; and

(b) when a person is a non-resident for part of a tax year.

Amount of tax credit under applicable section

(2) The person's tax credit under the applicable section is calculated—

(a) first, by determining an annualised amount for the person's net income calculated using the formula in subsection (3); and

(b) second, by using the annualised amount calculated under paragraph (a) in the calculation of the credit in the applicable section; and

(c) third, by calculating the amount of the credit by using the formula in subsection (4).

Formula: increasing net income

(3) The formula referred to in subsection (2)(a) is—

$$\text{person's net income} \times \frac{365}{\text{days}}.$$

Formula: reducing amount of credit

(4) The formula referred to in subsection (2)(c) is—

$$\text{person's total credit} \times \frac{\text{days}}{365}.$$

Definition of items in formulas

(5) In the formulas in subsections (3) and (4),—

(a) **person's net income** is the amount of the person's net income for the period that the person is a New Zealand resident:

(b) **days** is the total number of days for which the person is a New Zealand resident:

(c) **person's total credit** is the total of the person's tax credits under the applicable section.

Relationship with section LC 12

(6) This section is overridden by section LC 12.

Defined in this Act: amount, net income, New Zealand resident, non-resident, tax credit, tax year

Compare: 2004 No 35 ss KC 1(2), KC 3(2)

Section LC 11(1)(a): amended (with effect from 1 April 2008), on 29 May 2008, by section 29(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

LC 12 Assessment when person is non-resident

When this section applies

(1) This section applies—

(a) for the purposes of section LC 4; and
(b) when a person derives for a tax year assessable income having a source in New Zealand during the part of the tax year when the person is a non-resident.

Determination of net income

(2) The Commissioner may determine the amount of the net income of the person for the tax year.

Fairness of determination

(3) A determination under subsection (2) must be fair, having regard to—
(a) the kind of assessable income derived by the person; and
(b) the circumstances in which the assessable income is derived; and
(c) any other matters the Commissioner considers relevant to the intended meaning of section LC 4, as applicable.

Defined in this Act: amount, assessable income, assessment, Commissioner, net income, non-resident, source in New Zealand, tax year

Compare: 2004 No 35 ss KC 1(3), KC 3(2)

Section LC 12(1)(a): amended (with effect from 1 April 2008), on 29 May 2008, by section 30(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LC 12(1)(b): amended, on 21 December 2010, by section 107(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LC 12(3)(c): amended (with effect from 1 April 2008), on 29 May 2008, by section 30(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LC 12 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 107(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LC 12 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 107(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Tax credits for independent earners

Heading: added, on 1 April 2009, by section 31 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

LC 13 Tax credits for independent earners

When this section applies

(1) This section applies for a natural person, for a period (the **credit period**) in a tax year when the person—

(a) is not receiving an income-tested benefit; and
(b) is not receiving a veteran's pension; and
(c) is not receiving New Zealand superannuation; and
(d) is not entitled to a WFF tax credit; and
(e) is not the spouse, civil union partner, or de facto partner of a person who is entitled to a WFF tax credit; and
(f) is not receiving an amount that is—
  (i) granted outside New Zealand; and
  (ii) in the nature of, and paid for similar purposes as, a benefit, pension, superannuation payment, or tax credit described in paragraphs (a) to (d); and
(g) is not the spouse, civil union partner, or de facto partner of a person who receives an amount that is—
  (i) granted outside New Zealand; and
  (ii) in the nature of, and paid for similar purposes as, a tax credit described in paragraph (d); and
(h) is resident in New Zealand.

Amount of credit

(2) For the credit period, the person has a tax credit equal to the positive amount calculated using the formula—

(person's credit − full year abatement) × credit period months / 12.

Definition of items in formula

(3) The items in the formula are defined in subsections (4) to (6).

Person's credit

(4) **Person's credit** is, if the person's net income for the tax year is equal to or more than $24,000, $520. Otherwise it is zero.

Full year abatement

(5) **Full year abatement** is, if the person's net income is greater than $44,000 for the tax year, 13 cents for each complete dollar of the excess.

Credit period months

(6) **Credit period months** is the number of whole months in the credit period.

Defined in this Act: amount, civil union partner, de facto partner, income-tested benefit, net income, New Zealand superannuation, resident in New Zealand, tax credit, tax year, veteran's pension, WFF tax credit

Section LC 13: added, on 1 April 2009, by section 31 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Subpart LD—Tax credits for gifts and donations

Subpart LD heading: amended, on 6 January 2010, by section 319 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Charitable and other public benefit gifts

Heading: inserted, on 6 January 2010, by section 320 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LD 1 Tax credits for charitable or other public benefit gifts

Amount of credit

(1) A person who makes a charitable or other public benefit gift in a tax year and who meets the requirements of section 41A of the Tax Administration Act 1994 has a tax credit for the tax year equal to the amount calculated using the formula in subsection (2).

Formula

(2) The formula referred to in subsection (1) is—

total gifts × 33⅓%.

Definition of item in formula

(3) In the formula, **total gifts** means the total amount of all charitable or other public benefit gifts made by the person in the tax year.

Administrative requirements

(4) Despite subsection (1), the requirements of section 41A are modified if a tax agent applies for a refund under that section on behalf of a person, and—

(a) the tax agent sees the receipt for the person's charitable or other public benefit gift; and

(b) the person retains the receipt for 4 tax years after the tax year to which the claim relates.

Refundable credits

(5) A credit under this section is a refundable tax credit under section LA 7 (Remaining refundable credits: tax credits under social policy schemes) and is excluded from the application of sections LA 2 to LA 6 (which relate to a person's income tax liability).

Defined in this Act: amount, charitable or other public benefit gift, refundable tax credit, tax agent, tax credit, tax year

Compare: 2004 No 35 s KC 5

Section LD 1(1): substituted, on 1 April 2008, by section 440(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LD 1(2): amended, on 1 April 2008, by section 440(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LD 1(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 321 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LD 1(5): amended, on 1 April 2008, by section 440(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LD 2 Exclusions

Section LD 1 does not apply to—

(a) an absentee:

(b) a company:

(c) a public authority:

(d) a Maori authority:

(e) an unincorporated body:

(f) a trustee liable for income tax under subpart HC, and section HZ 2 (which relate to trusts and distributions from trusts):

(g) in relation to the credit, a person who has a tax credit for a payroll donation.

Defined in this Act: absentee, company, income tax, Maori authority, public authority, trustee

Compare: 2004 No 35 s KC 5(1)

Section LD 2: amended, on 6 January 2010, by section 322(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LD 2(f): amended, on 6 January 2010, by section 322(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LD 2(g): added, on 6 January 2010, by section 322(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LD 3 Meaning of charitable or other public benefit gift

Meaning

(1) For the purposes of this subpart, a **charitable or other public benefit gift**—

(a) means a gift of $5 or more that is paid to a society, institution, association, organisation, trust, or fund, described in subsection (2) or listed in schedule 32 (Recipients of charitable or other public benefit gifts):

(b) includes a subscription paid to a society, institution, association, organisation, trust, or fund, only if the subscription does not confer any rights arising from membership in that or any other society, institution, association, organisation, trust, or fund:

(c) does not include a testamentary gift.

Description of organisations

(2) The following are the entities referred to in subsection (1)(a):

(a) a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand:

(b) a public institution maintained exclusively for any 1 or more of the purposes within New Zealand set out in paragraph (a):

(bb) a Board of Trustees that is constituted under Part 9 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual:

(bc) a tertiary education institution that is established under Part 14 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual:

(c) a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a), by a society, institution, association, organisation, or

trust that is not carried on for the private pecuniary profit of an individual:

(d) a public fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a).

Defined in this Act: charitable or other public benefit, charitable purpose, gift, New Zealand, pay

Compare: 2004 No 35 s KC 5(1)(aa)–(cp), (4)

Section LD 3(2)(bb): inserted, on 1 July 2008, by section 31 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LD 3(2)(bc): inserted, on 1 July 2008, by section 31 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Payroll donations

Heading: added, on 6 January 2010, by section 323 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LD 4 Tax credits for payroll donations

Who this section applies to

(1) This section applies to a person who—

(a) is an employee whose employer—

(i) files by electronic means an employer monthly schedule and a PAYE income payment form with particulars relating to the person's PAYE income payments for a pay period; and

(ii) agrees to offer payroll giving to their employees; and

(b) chooses to make a payroll donation in the pay period from an amount derived as pay.

Amount of credit

(2) The person has a tax credit for the pay period equal to an amount calculated using the formula—

total donations × 33⅓%.

Definition of item in formula

(3) In the formula, **total donations** is the total amount of all payroll donations made by the person in the pay period.

Maximum credit

(4) Despite subsection (2), the amount of the tax credit must not be more than the amount of tax for the person's pay for the period.

Non-refundable credits

(5) A credit under this section is a non-refundable tax credit to which section LA 4(1) (When total tax credit more than income tax liability) applies for the tax year in which the period falls.

No refunds for donations

(6) A person who has a tax credit under this section may not make an application under section 41A of the Tax Administration Act 1994 for any refund relating to the amount of a payroll donation.

Meaning of pay for payroll donation purposes

(7) For the purposes of this section, and sections LD 8(1) and 24Q of the Tax Administration Act 1994, **pay**, for a person,—

(a) means an amount referred to in section RD 5(1)(a) or (b)(i) (Salary or wages); and

(b) includes any similar amount earned by an employee in the normal course of their employment; and

(c) *[Repealed]*

Defined in this Act: amount, amount of tax, employee, employer, employer monthly schedule, employment, non-refundable tax credit, pay, pay period, PAYE income payment, PAYE income payment form, payroll donation, salary or wages, tax credit

Section LD 4: added, on 6 January 2010, by section 323 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LD 4(7)(c): repealed, on 7 January 2010, by section 74 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

LD 5 Calculating amount of tax credit and filing particulars

Employer's responsibility

(1) The employer of a person who makes a payroll donation in a pay period must calculate the amount of the person's tax credit for the pay period under section LD 4, and include the amount in the particulars described in section LD 4(1)(a).

Credit extinguished

(2) The tax credit is extinguished if—

(a) the Commissioner does not receive an employer monthly schedule and PAYE income payment form for the relevant payroll donation:

(b) the relevant particulars filed are incorrect.

When matters corrected

(3) Despite subsection (2), the credit is restored to the person if the relevant matter is corrected and, for the purposes of this section, it is as if the error had never been made.

Defined in this Act: amount, Commissioner, employer, employer monthly schedule, pay period, PAYE income payment form, payroll donation, tax credit

Section LD 5: added, on 6 January 2010, by section 323 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LD 6 When donation is paid to ineligible recipient

When this section applies

(1) This section applies for the purposes of section LD 4 when the employer or PAYE intermediary transfers the person's payroll donation to an entity that is not a donee organisation.

Credit extinguished

(2) The tax credit is extinguished.

Consequences when credit extinguished

(3) The consequences that arise when a tax credit is extinguished under subsection (2) are—

(a) the amount of the credit is removed from the person's tax credits for PAYE income payments under section LB 1 (Tax credits for PAYE income payments) for the tax year in which the pay period falls:

(b) when the extinguishing of the credit results in a shortfall in an amount of tax for a PAYE income payment, section RD 4 (Payment of amounts of tax to Commissioner) applies to the shortfall.

Defined in this Act: amount, amount of tax, donee organisation, employer, pay period, PAYE income payment, payroll donation, tax credit, tax year

Section LD 6: added, on 6 January 2010, by section 323 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LD 6(3)(a): amended, on 7 January 2010, by section 75 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

LD 7 When donation returned to person

When this section applies

(1) This section applies for the purposes of section LD 4 when the amount of a payroll donation is, for whatever reason, returned to the person.

Treatment of credit

(2) The tax credit is extinguished.

Consequences when credit extinguished

(3) The consequences that arise when a tax credit is extinguished under subsection (2) are—

(a) the amount of the credit is removed from the person's tax credits for PAYE income payments under section LB 1 (Tax credits for PAYE income payments) for the tax year in which the pay period falls:

(b) when the extinguishing of the credit results in a shortfall in an amount of tax for a PAYE income payment, section RD 4 (Payment of amounts of tax to Commissioner) applies to the shortfall.

Defined in this Act: amount, amount of tax, pay period, PAYE income payment, payroll donation, tax credit, tax year

Section LD 7: added, on 6 January 2010, by section 323 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LD 7(3)(a): amended, on 7 January 2010, by section 76 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

LD 8 Meaning and ranking of payroll donation

Meaning

(1) A **payroll donation**, for a pay period and employer who agrees to offer payroll giving to their employees, is an amount that a person asks their employer to transfer from the amount of the person's pay for the period to a donee organisation.

Priorities of amounts withheld and other deductions

(2) A person may make a payroll donation for a pay period only after satisfying—

(a) any tax obligation they may have:

(b) any statutory or legal requirement they may be obliged to meet from their PAYE income payment.

Defined in this Act: amount, donee organisation, pay, pay period, PAYE income payment, payroll donation

Section LD 8: added, on 6 January 2010, by section 323 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart LE—Tax credits for imputation credits

LE 1 Tax credits for imputation credits

Amount of credit

(1) A person whose assessable income for an income year includes an imputation credit has a tax credit for the tax year corresponding to the income year of an amount equal to the sum of the amount of the imputation credit and any credit carried forward from an earlier tax year. Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.

Multi-rate PIEs and their investors

(1B) An investor in a multi-rate PIE who has an imputation credit attributed for use under section HM 54 (Use of tax credits other than foreign tax credits by investors) has a tax credit for the tax year of an amount equal to the amount of the imputation credit.

Exclusion

(2) For a returning share transfer, a share user does not have a tax credit for an imputation credit attached to a dividend derived in a period in which they hold a share acquired under the transfer. However, a person providing a share under a returning share transfer is allowed a tax credit for the amount of an imputation credit recorded in the credit transfer notice, *see* section LE 7.

When amount altered

(3) The amount of the person's credit in subsection (1) may be reduced or increased if any of sections LE 4 to LE 10 apply.

Portfolio tax rate entities and investors in entities

[Repealed]

(4) *[Repealed]*

FIF income

(4B) For the purposes of this section, an amount that would, in the absence of section EX 59 (Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method), be income of a person from an attributing interest in a FIF is treated as if it were assessable income of the person.

Arrangements for tax advantage

(5) A person's credit under this section is extinguished if any of the following sections apply:

(a) section GB 36 (Reconstruction of imputation arrangements to obtain tax advantage):

(b) section GB 37 (Arrangements for payment of dividend by other companies):

(c) section GB 38 (When sections GB 35 to GB 37 apply to consolidated groups).

Defined in this Act: amount, assessable income, attributing interest, credit transfer notice, dividend, FIF, imputation credit, income, income year, investor, multi-rate PIE, returning share transfer, share, share user, tax credit, tax year

Compare: 2004 No 35 ss LB 1(1)(j), (k), LB 2(1), (1B), (1C), (2C)

Section LE 1(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 324(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(1B) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 324(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 324(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(1B): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 324(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 324(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(4) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 324(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(4): repealed (with effect on 1 April 2008), on 6 October 2009, by section 324(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1(4B) heading: inserted, on 1 April 2008, by section 441(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 1(4B): inserted, on 1 April 2008, by section 441(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 1 list of defined terms **attributing interest**: inserted, on 1 April 2008, by section 441(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 1 list of defined terms **FIF**: inserted, on 1 April 2008, by section 441(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 1 list of defined terms **income**: inserted, on 1 April 2008, by section 441(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 1 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 324(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 1 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 324(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LE 2 Use of remaining credits by companies and trustees

When this section applies

(1) This section applies when—

(a) a person described in subsection (2) has an amount of tax credit remaining for a tax year under section LA 5(4) (Treatment of remaining credits):

(b) a life insurer has an amount of tax credit remaining for a tax year under section LA 5(4), but only to the extent to which the amount is for their shareholder base.

Certain persons only

(2) The person referred to in subsection (1)(a) must be—

(a) a company that is not a life insurer; or

(b) a trustee (other than the Maori trustee); or

(c) a Maori authority.

Calculating amount of tax loss component

(3) The person or the life insurer, as applicable, has a tax loss component for the corresponding income year equal to an amount calculated using the formula—

$$\frac{\text{person's remaining credit}}{\text{tax rate}}.$$

Definition of items in formula

(4) In the formula,—

(a) **person's remaining credit** is the amount of the tax credit remaining for the tax year under section LA 5(4), but, for a life insurer, only to the extent to which the amount is for their shareholder base:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Defined in this Act: amount, company, corresponding income year, income tax, life insurer, Maori authority, shareholder base, tax loss component, tax year, trustee

Compare: 2004 No 35 ss GC 22(4), (5), (9), GC 23, GC 24, LB 2(2B), (3)

Section LE 2(1) heading: substituted, on 1 July 2010, by section 325(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2(1): substituted, on 1 July 2010, by section 325(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2(2): amended, on 1 July 2010, by section 325(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2(2)(a): amended, on 1 July 2010, by section 325(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2(3): amended, on 1 July 2010, by section 325(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2(4)(a): amended, on 1 July 2010, by section 325(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2(4)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 2 list of defined terms **life insurer**: inserted, on 1 July 2010, by section 325(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 2 list of defined terms **shareholder base**: inserted, on 1 July 2010, by section 325(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LE 2B Use of remaining credits by life insurer on policyholder base

When this section applies

(1) This section applies to a life insurer who has an amount of tax credit remaining for a tax year (the **surplus credit year**) under section LA 5(4) (Treatment of remaining credits), but only to the extent to which the amount is for their policyholder base.

Policyholder base allowable deduction

(2) The life insurer has a deduction included as their policyholder base allowable deduction, for the income year corresponding to the tax year after the surplus credit year equal to an amount calculated using the formula—

$$\frac{\text{policyholder remaining credit}}{\text{policyholder rate.}}$$

Definition of items in formula

(3) In the formula,—

(a) **policyholder remaining credit** is the amount of the tax credit remaining for the surplus credit year under section LA 5(4), but only to the extent to which the amount is for the life insurer's policyholder base:

(b) **policyholder rate** is the basic rate of income tax set out in schedule 1, part A, clause 8 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Defined in this Act: amount, deduction, income tax, income year, life insurer, policyholder base, policyholder base allowable deduction, tax credit, tax year

Section LE 2B: inserted, on 1 July 2010, by section 326(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LE 3 Use of remaining credits by others

When this section applies

(1) This section applies when a person other than a person referred to in section LE 2(2) or a life insurer has an amount of tax credit remaining for a tax year under section LA 5(4) (Treatment of remaining credits).

Amount carried forward

(2) The amount may be carried forward to the next tax year as a credit carried forward.

Amount of reduction

(3) The person's credit is reduced by an amount equal to the amount carried forward and extinguished by the Commissioner under section 177C of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, life insurer, tax credit, tax year

Compare: 2004 No 35 ss LB 1(1)(hb), LB 2(2B), (3B), (3C)

Section LE 3(1): amended, on 1 July 2010, by section 327(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LE 3 list of defined terms **life insurer**: inserted, on 1 July 2010, by section 327(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LE 4 Trustees for minor beneficiaries

When this section applies

(1) This section applies when a person who has a tax credit under section LE 1 is the trustee of a trust for a minor who derives beneficiary income from the trust.

Trustee treated as beneficiary

(2) To the extent to which section HC 7(2) (Trustee income) applies, the person is treated as deriving the minor's beneficiary income as a beneficiary.

Defined in this Act: beneficiary income, minor, tax credit, trustee

Compare: 2004 No 35 ss LB 1(1)(ab), LB 1A

LE 5 Beneficiaries of trusts

When this section applies

(1) This section applies when a person who has a tax credit under section LE 1 is the beneficiary of a trust and, in that capacity, derives a dividend with an imputation credit attached.

Limitation on amount of credit

(2) The person's credit is limited to an amount calculated using the formula—

$$\frac{\text{person's distributions}}{\text{trust distributions}} \times \text{total beneficiary credits} - \text{person's supplementary divide}$$

Definition of items in formula

(3) In the formula,—

(a) **person's distributions** is the total distributions for the tax year made to the person in their capacity as beneficiary of the trust:

(b) **trust distributions** is the total distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries and includes all supplementary dividends paid to them:

(c) **total beneficiary credits** is the total imputation credits attached to dividends and total supplementary dividends for the tax year paid to all beneficiaries of the trust in their capacity as beneficiaries:

(d) **person's supplementary dividend** is the total supplementary dividends for the tax year paid to the person in their capacity as beneficiary of the trust.

Defined in this Act: amount, distribution, dividend, imputation credit, pay, supplementary dividend, tax credit, tax year

Compare: 2004 No 35 s LB 1(1)(a), (2)–(3A)

LE 6 Partners in partnerships

When this section applies

(1) This section applies when a person who has a tax credit under section LE 1 is a partner in a partnership and, through the partnership, derives a dividend with an imputation credit attached.

Limitation on amount of credit

(2) The person's credit is limited to an amount calculated using the formula—

$$\frac{\text{partner's income}}{\text{partnership income}} \times \text{partnership imputation credits} - \text{partner's supplementary dividen}$$

Definition of items in formula

(3) In the formula,—

(a) **partner's income** is the total assessable income of the person for the tax year derived as a partner of the partnership excluding—

(i) an imputation credit or a foreign dividend payment (FDP) credit attached to a dividend derived by the person:

(ii) a supplementary dividend derived by the person as a non-resident partner of the partnership:

(b) **partnership income** is the total assessable income for the tax year of all the partners of the partnership excluding—

(i) all imputation credits and FDP credits attached to dividends derived by the partners:

(ii) all supplementary dividends derived by non-resident partners of the partnership:

(c) **partnership imputation credits** is the total imputation credits attached to dividends and total supplementary dividends for the tax year derived by all partners of the partnership:

(d) **partner's supplementary dividend** is the total supplementary dividends for the tax year derived by the person as a non-resident partner of the partnership.

Defined in this Act: amount, assessable income, dividend, FDP credit, imputation credit, non-resident, supplementary dividend, tax credit, tax year

Compare: 2004 No 35 s LB 1(1)(b), (4), (4A), (4B)

LE 7 Credit transfer notices

When this section applies

(1) This section applies in relation to a tax credit when a share supplier is given a credit transfer notice under section 30C of the Tax Administration Act 1994 by a share user under a share-lending arrangement.

Amount of reduction

(2) The person's credit is limited to the amount shown in the credit transfer notice.

Defined in this Act: amount, credit transfer notice, share-lending arrangement, share supplier, share user, tax credit

Compare: 2004 No 35 s LB 2(1C)

LE 7B Credit of RSCT for imputation credit

Retirement scheme contributions

(1) A retirement scheme contributor who attaches an imputation credit to a retirement scheme contribution for a person in an income year has a tax credit for the corresponding tax year of an amount equal to the lesser of—

(a) the amount of the imputation credit:

(b) the liability of the contributor for RSCT on the contribution.

When credit more than liability

(2) If the amount of the imputation credit is more than the liability of the contributor for RSCT on the contribution,—

(a) the amount of the excess is treated as an imputation credit attached to a distribution from the contributor to the person; and

(b) the person responsible for withholding the RSCT must, within 30 days of the contribution, notify the person of the amount of the excess credit.

Defined in this Act: amount, imputation credit, income year, notify, retirement scheme contribution, retirement scheme contributor, RSCT, tax credit, tax year

Compare: 2004 No 35 s LB 3

Section LE 7B: inserted, on 1 April 2008, by section 442 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LE 8 Application of imputation ratio

When this section applies

(1) This section applies when a person who has a tax credit under section LE 1 receives an imputation credit attached to a dividend, and the dividend has an imputation ratio greater than the maximum permitted ratio calculated under section OA 18 (Calculation of maximum permitted ratios). Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.

Amount of reduction

(2) The person's credit is reduced by an amount equal to the amount by which the credit is greater than the maximum permitted ratio.

Defined in this Act: amount, dividend, imputation credit, imputation ratio, maximum permitted ratio, tax credit

Compare: 2004 No 35 s LB 1(1)(c)

Section LE 8(1): amended, on 1 April 2008, by section 443 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LE 9 Application of combined imputation and FDP ratio

When this section applies

(1) This section applies when—

(a) a person who has a tax credit under section LE 1 receives an imputation credit and an FDP credit attached to a dividend; and

(b) an excess credit amount arises in relation to the dividend; and

(c) the FDP credit is equal to or less than the excess credit amount.

Amount of reduction

(2) The person's credit for the dividend is reduced by an amount calculated using the formula—

excess credit amount for dividend − attached FDP credit.

Relationship with section OZ 10

(3) Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.

Defined in this Act: amount, combined imputation and FDP ratio, dividend, excess credit amount, FDP credit, imputation credit, tax credit

Compare: 2004 No 35 s LB 1(1)(e), (5)

Section LE 9(3) heading: added, on 1 April 2008, by section 444 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LE 9(3): added, on 1 April 2008, by section 444 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LE 10 When income tax unpaid

When this section applies

(1) This section applies when—

(a) a person has a tax credit under section LE 1 and an imputation credit is attached to a dividend; and

(b) the dividend is paid by a company that has a debit balance in its imputation credit account at the end of the tax year; and

(c) the company has not paid further income tax by the due date in section OB 65(3) (Further income tax for ICA closing debit balance).

Amount of reduction

(2) The Commissioner may reduce the person's credit by an amount equal to their proportion of the unpaid amount under subsection (1)(c).

When failure to pay remedied

(3) To the extent to which a company remedies the failure after the due date, this section does not apply.

Defined in this Act: amount, Commissioner, company, dividend, further income tax, imputation credit, imputation credit account, pay, tax credit, tax year

Compare: 2004 No 35 ss LB 1(1)(h), LB 2(5), (6)

LE 11 Evidential requirements

If a person who has a tax credit under section LE 1 does not meet the evidential requirements of section 78D of the Tax Administration Act 1994, the person's credit may be reduced.

Defined in this Act: tax credit

Compare: 2004 No 35 ss LB 1(1)(f), LB 2(4)

Subpart LF—Tax credits for foreign dividend payment (FDP) credits

LF 1 Tax credits for FDP credits

Amount of credit

(1) A person whose assessable income for an income year includes a foreign dividend payment (FDP) credit has a tax credit equal to the amount of the FDP credit for the tax year corresponding to the income year. Section OZ 11 (Tax credits for imputation credits and FDP credits) may apply to modify this section.

Exclusion

(2) For a returning share transfer, a share user does not have a tax credit for an imputation credit attached to a dividend derived in a period in which they hold a share acquired under the transfer. However, a person providing a share under a returning share transfer is allowed a tax credit for the amount of an imputation credit recorded in the credit transfer notice, *see*section LF 5.

When amount adjusted

(3) The amount of the person's credit in subsection (1) may be reduced or increased if any of sections LF 2 to LF 9 apply.

Multi-rate PIEs and their investors

(4) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under subpart HM (Portfolio investment entities).

Arrangements for tax advantage

(5) A person's tax credit under this section is extinguished if either of the following sections apply:

(a) section GB 36 (Reconstruction of imputation arrangements to obtain tax advantage):

(b) section GB 38 (When sections GB 35 to GB 37 apply to consolidated groups).

Relationship of sections in this subpart

(6) Sections LF 1 to LF 7, LF 9, and LF 10 do not apply in relation to a non-resident or a person who receives exempt income as set out in section LF 8.

Defined in this Act: amount, assessable income, corresponding income year, credit transfer notice, dividend, exempt income, FDP credit, imputation credit, income year, investor, multi-rate PIE, non-resident, returning share transfer, share, share user, tax year

Compare: 2004 No 35 ss LB 1(1)(l), LD 8(1), (1B), (1C)

Section LF 1(1): amended, on 1 April 2008, by section 445 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LF 1(4) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 328(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LF 1(4): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 328(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LF 1 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 328(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LF 1 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 328(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LF 2 Trustees for minor beneficiaries

When this section applies

(1) This section applies when a person who has a tax credit under section LF 1 is the trustee of a trust for a minor who derives beneficiary income from the trust.

Trustee treated as beneficiary

(2) To the extent to which section HC 7(2) (Trustee income) applies, the person is treated as deriving the minor's beneficiary income as a beneficiary.

Defined in this Act: beneficiary income, minor, tax credit, trustee

Compare: 2004 No 35 ss LB 1(1)(ab), LB 1A

LF 3 Beneficiaries of trusts

When this section applies

(1) This section applies when a person who has a tax credit under section LF 1 is the beneficiary of a trust and, in that capacity, derives a dividend with an FDP credit attached.

Limitation on amount of credit

(2) The person's tax credit is limited to an amount calculated using the formula—

$$\frac{\text{person's distributions}}{\text{trust distributions}} \times \text{total beneficiary credits} - \text{person's supplementary dividend.}$$

Definition of items in formula

(3) In the formula,—

(a) **person's distributions** is the total distributions for the tax year made to the person in their capacity as beneficiary of the trust:

(b) **trust distributions** is the total distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries, and includes all supplementary dividends paid to them:

(c) **total beneficiary credits** is the total FDP credits attached to dividends and total supplementary dividends

for the tax year paid to all beneficiaries of the trust in their capacity as beneficiaries:

(d) **person's supplementary dividend** is the total supplementary dividends for the tax year paid to the person in their capacity as beneficiary of the trust.

Defined in this Act: amount, distribution, dividend, FDP credit, supplementary dividend, tax credit, tax year

Compare: 2004 No 35 s LB 1(1)(a), (2), (3), (3A)

LF 4 Partners in partnerships

When this section applies

(1) This section applies when a person who has a tax credit under section LF 1 is a partner in a partnership and, through the partnership, derives a dividend with an FDP credit attached.

Limitation on amount of credit

(2) The person's credit is limited to an amount calculated using the formula—

$$\frac{\text{partner's income}}{\text{partnership income}} \times \text{partnership FDP credits} - \text{partner's supplementary dividend}$$

Definition of items in formula

(3) In the formula,—

(a) **partner's income** is the total assessable income of the person for the tax year derived as a partner of the partnership excluding—

(i) an imputation credit or FDP credit attached to a dividend derived by the person:

(ii) a supplementary dividend derived by the person as a non-resident partner of the partnership:

(b) **partnership income** is the total assessable income for the tax year of all the partners of the partnership excluding—

(i) all imputation credits and FDP credits attached to any dividends derived by the partners:

(ii) all supplementary dividends derived by non-resident partners of the partnership:

(c) **partnership FDP credits** is the total FDP credits attached to dividends and total supplementary dividends

derived for the tax year by all partners of the partnership:

(d) **partner's supplementary dividend** is the total supplementary dividends for the tax year derived by the person as a non-resident partner of the partnership.

Defined in this Act: amount, assessable income, dividend, FDP credit, imputation credit, non-resident, supplementary dividend, tax credit, tax year

Compare: 2004 No 35 s LB 1(1)(b), (4), (4A), (4B)

LF 5 Credit transfer notices

When this section applies

(1) This section applies when a share supplier is given a credit transfer notice under section 30C of the Tax Administration Act 1994 by a share user under a share-lending arrangement.

Amount of reduction

(2) The share supplier's tax credit is limited to the amount of FDP shown in the credit transfer notice.

Defined in this Act: amount, credit transfer notice, FDP, share-lending arrangement, share supplier, share user, tax credit

Compare: 2004 No 35 s LD 8(1C)

LF 6 Application of FDP ratio

When this section applies

(1) This section applies when a person who has a tax credit under section LF 1 receives an FDP credit attached to a dividend, and the dividend has an FDP ratio greater than the maximum permitted ratio calculated under section OA 18 (Calculation of maximum permitted ratios). Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.

Amount of reduction

(2) The person's credit is reduced by an amount equal to the amount by which the credit is greater than the maximum permitted ratio.

Defined in this Act: amount, dividend, FDP credit, FDP ratio, maximum permitted ratio, tax credit

Compare: 2004 No 35 s LB 1(1)(d)

Section LF 6(1): amended, on 1 April 2008, by section 446 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LF 7 Application of combined imputation and FDP ratio

When this section applies

(1) This section applies when—

(a) a person who has a tax credit under section LF 1 receives an imputation credit and an FDP credit attached to a dividend; and

(b) an excess credit amount arises in relation to the dividend; and

(c) the FDP credit is equal to or less than the excess credit amount.

Amount of reduction

(2) The person's credit is reduced by an amount calculated using the formula—

excess credit amount for dividend – FDP credit attached.

Relationship with section OZ 10

(3) Section OZ 10 (Modifying ratios for imputation credits and FDP credits) may apply to modify this section.

Defined in this Act: amount, dividend, excess credit amount, FDP credit, imputation credit, tax credit

Compare: 2004 No 35 s LB 1(1)(e), (5)

Section LF 7(3) heading: added, on 1 April 2008, by section 447 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LF 7(3): added, on 1 April 2008, by section 447 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LF 8 Credits for persons who are non-resident or who receive exempt income

When this section applies

(1) This section applies for a tax year when a company resident in New Zealand pays a dividend with an FDP credit attached to a person as shareholder if—

(a) the person is non-resident; or

(b) the person is resident in New Zealand and the dividend is exempt income other than under sections CW 9 to CW 11 (which relate to dividends that are exempt income).

Amount of tax credit

(2) The person has a tax credit for the tax year equal to the amount of the FDP credit attached to the dividend.

When amount altered

(3) The amount of the person's credit in subsection (2) may be reduced or increased to the extent to which—

(a) any of sections LF 2 to LF 7 apply:

(b) an FDP credit is used for a tax year to reduce the person's liability under section RF 14 (Treatment of FDP credits).

Arrangements for tax advantage

(4) A person's tax credit under this section is extinguished if sections GB 35 (Imputation arrangements to obtain tax advantage) and GB 36 (Reconstruction of imputation arrangements to obtain tax advantage) apply.

Refunds

(5) To obtain a refund of the credit, the person must—

(a) ask the Commissioner for the refund after the 31 May that follows the end of the tax year; and

(b) meet the requirements of section 78D of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, company, dividend, exempt income, FDP credit, non-resident, pay, resident in New Zealand, shareholder, tax credit, tax year

Compare: 2004 No 35 ss LB 1(1)(d), (l), LD 9

Section LF 8(1): substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 108(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

LF 9 When income tax unpaid

When this section applies

(1) This section applies when—

(a) a person has a tax credit under section LF 1 and an FDP credit is attached to a dividend; and

(b) the dividend is paid by a company that has a debit balance in its FDP account at the end of the tax year; and

(c) the company has not paid further income tax by the due date referred to in section OB 65(3) (Further income tax for ICA closing debit balance).

Amount of reduction

(2) The Commissioner may reduce the person's credit by an amount equal to their proportion of the unpaid amount under subsection (1)(c).

When failure to pay remedied

(3) To the extent to which a company remedies the failure after the due date, this section does not apply.

Defined in this Act: amount, Commissioner, company, dividend, FDP account, FDP credit, further income tax, pay, tax credit, tax year

Compare: 2004 No 35 ss LB 1(1)(i), LD 8(4), (5)

LF 10 Evidential requirements

If a person who has a tax credit under section LF 1 does not meet the evidential requirements of section 78D of the Tax Administration Act 1994, the person's credit may be reduced.

Defined in this Act: tax credit

Compare: 2004 No 35 ss LB 1(1)(g), LD 8(3)

Subpart LH—Tax credits for expenditure on research and development

Subpart LH: inserted, on 1 April 2008, by section 448 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LH 1 Who this subpart applies to

[Repealed]

Section LH 1: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 1(1)(ab): inserted (with effect on 1 April 2008), on 6 October 2009, by section 330(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1(2)(ab): inserted (with effect on 1 April 2008), on 6 October 2009, by section 330(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 330(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1(2)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 330(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 330(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1(3): added (with effect on 1 April 2008), on 6 October 2009, by section 330(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1 list of defined terms **excluded income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 330(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1 list of defined terms **group of companies**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 330(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1 list of defined terms **New Zealand resident**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 330(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 1 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 2 Tax credits relating to expenditure on research and development

[Repealed]

Section LH 2: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 2(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 331(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 2(7): added (with effect on 1 April 2008), on 6 October 2009, by section 331(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 2 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 3 Requirements

[Repealed]

Section LH 3: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 3(1)(a)(ib): inserted (with effect on 1 April 2008), on 6 October 2009, by section 332(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 3(6) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 332(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 3(6): added (with effect on 1 April 2008), on 6 October 2009, by section 332(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 3 list of defined terms **control**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 332(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 3 list of defined terms **group of companies**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 332(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 3 list of defined terms **New Zealand resident**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 332(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 3 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 4 Calculation of amount of credit

[Repealed]

Section LH 4: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 4 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 5 Adjustments to eligible expenditure

[Repealed]

Section LH 5: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 5(4)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 333(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 5(4)(d): inserted (with effect on 1 April 2008), on 6 October 2009, by section 333(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 5 list of defined terms **employee**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 333(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 5 list of defined terms **employment income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 333(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 5 list of defined terms **shareholder-employee**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 333(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LH 5 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 6 Research and development activities outside New Zealand *[Repealed]*

Section LH 6: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 6 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 7 Research and development activities and related terms

Research and development activities

(1) In this subpart, **research and development activities** of a person are—

(a) systematic, investigative, and experimental activities that are performed for the purposes of acquiring new knowledge or creating new or improved materials, products, devices, processes, or services and that—

(i) are intended to achieve an advance in science or technology by resolving scientific or technological uncertainty:

(ii) involve an appreciable element of novelty:

(b) other activities that are wholly or mainly for the purpose of, required for, and integral to, the performing of the activities referred to in paragraph (a).

Systematic, investigative, and experimental activities

(2) In this subpart, **systematic, investigative, and experimental activities** of a person are activities that—

(a) are planned activities directed towards a particular purpose and following a logical progression of work involving hypothesis, experiment, observation, and evaluation; and

(b) are not excluded under schedule 21, part C (Expenditure and activities related to research and development).

Scientific or technological uncertainty

(3) In this subpart, **scientific or technological uncertainty** means uncertainty concerning the scientific or technological possibility of a thing, or the achievement of the thing in practice, created by an absence of relevant knowledge from the knowledge that is publicly available or deducible by a competent professional working in the field.

Novelty

(4) In this subpart, **novelty** means a development of technology or a new use of existing technology, by comparison with the knowledge of the technology that is publicly available on a reasonably accessible worldwide basis.

Technology

(5) In this subpart, **technology** means the practical application of scientific principles and knowledge.

Defined in this Act: novelty, research and development activities, scientific or technological uncertainty, systematic, investigative, and experimental activities, technology

Section LH 7: inserted, on 1 April 2008, by section 448 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LH 7 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 8 Orders in Council

[Repealed]

Section LH 8: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 8 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 9 Internal software development: general

[Repealed]

Section LH 9: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 9 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 10 Internal software development: no associated internal software developer

[Repealed]

Section LH 10: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 10 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 11 Internal software development: associated internal software developer with same income year

[Repealed]

Section LH 11: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 11 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 12 Internal software development: associated internal software developer with different income year

[Repealed]

Section LH 12: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 12 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 13 Internal software development: limit

[Repealed]

Section LH 13: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 13 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 14 Treatment of depreciation loss for certain depreciable property

[Repealed]

Section LH 14: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 14 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 14B Recovery of overpaid tax credit

When this section applies

(1) This section applies when the Commissioner considers the amount of a tax credit under this subpart that is used under sections LA 2, LA 6(2), or LH 2(6) (which relate to tax credits) for a tax year is more than the proper amount.

Recovery of overpayment

(2) The Commissioner may recover the excess as if it were income tax payable by the person.

Defined in this Act: amount, Commissioner, income tax, pay, tax credit, tax year

Section LH 14B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 334(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 15 Listed research providers

[Repealed]

Section LH 15: repealed, on 1 October 2009, by section 19(1)(d) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 15 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 16 Industry research co-operatives

[Repealed]

Section LH 16: repealed, on 1 April 2009, by section 19(1)(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section LH 16 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LH 17 Some definitions

In this subpart,—

associated internal software developer, for a person (**person A**) who is performing, or having another person perform,

internal software development at a time, means another person—

(a) who is performing, or having another person perform, internal software development at the time; and

(b) for whom the internal software development controller is the same as the internal software development controller of person A

internal software development, for a person, means a research and development activity of developing software with—

(a) a purpose of having the software used in—

(i) the internal administration of business activities of the person or of another person associated with them:

(ii) providing services to customers of the person or another person associated with them whose main reason for using the services is to obtain a service other than the use of the person's computer technology or software:

(b) the main purpose that is neither—

(i) selling, renting, licensing, hiring, or leasing the software by the person to customers of which 2 or more are not associated with the person nor with each other:

(ii) including the software as an integral part of an electrical or mechanical device for which the software is developed and that has for the person the main purpose of being sold, rented, licensed, hired, or leased to customers as part of the person's business

internal software development controller, for a person (**person A**) who is performing, or having another person perform, internal software development, means a group of 1 or more persons—

(a) having the power to govern, directly or indirectly, the financial and operating policies of person A to obtain benefits from person A's activities; and

(b) having no other person or persons with the power to govern, directly or indirectly, the financial and operating

policies of the group to obtain benefits from the group's activities

internal software development group, for an internal software development controller (the **controller**) and a tax year, means a group of entities of which each entity is a member at a time, in the entity's income year corresponding to the tax year, when—

(a) the controller is the internal software development controller of the entity; and

(b) the entity is performing, or having another person perform, internal software development; and

(c) the entity has an associated internal software developer.

Defined in this Act: associated person, deduction, income year, internal software development, internal software development controller, internal software development group, research and development activities, tax year

Section LH 17: inserted, on 1 April 2008, by section 448 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LH 17 compare note: repealed (with effect on 1 April 2008), on 6 October 2009, by section 329 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart LJ—Tax credits for foreign income tax

LJ 1 What this subpart does

When tax credits allowed

(1) This subpart provides the rules for dividing assessable income from foreign-sourced amounts into segments and allows a tax credit for foreign income tax paid in relation to a segment of that income.

Limited application of rules

(2) The rules in this subpart apply only when—

(a) a person resident in New Zealand derives assessable income that does not have a source in New Zealand; and

(b) foreign income tax is not paid in a country or territory listed in schedule 27 (Countries and types of income with unrecognised tax) to the extent to which the foreign income tax is paid on the types of income listed in the schedule.

When treated as assessable income

[Repealed]

(3) *[Repealed]*

Source of dividends

(4) If a company is not resident in New Zealand, and for the purposes of a law of another territory in relation to which a double tax agreement has been made is resident in that territory, and the law imposes foreign tax, a dividend paid by the company is treated as being derived from a source in that other territory for the purposes of the double tax agreement.

Double tax agreements

(5) This subpart and sections BH 1 (Double tax agreements) and CD 19(1) (Foreign tax credits and refunds linked to dividends) and section 88 of the Tax Administration Act 1994 as far as they are applicable, and modified as necessary, apply for the purposes of section LJ 2, as if that section were a double tax agreement.

Relationship with section YD 5

(6) Section YD 5 (Apportionment of income derived partly in New Zealand) applies to determine how an amount is apportioned to sources outside New Zealand.

Defined in this Act: amount, assessable income, attributing interest, company, dividend, double tax agreement, FIF, foreign income tax, foreign investment fund, foreign-sourced amount, foreign tax, income, pay, resident in New Zealand, source in New Zealand, tax credit

Compare: 2004 No 35 ss LC 1(1)–(5), LC 14(1), LC 14A

Section LJ 1(2)(a): amended, on 21 December 2010, by section 109(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LJ 1(3) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 335(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 1(3): repealed (with effect on 1 April 2008), on 6 October 2009, by section 335(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 1(6) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 335(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 1(6): added (with effect on 1 April 2008), on 6 October 2009, by section 335(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 1 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 109(2)(a)of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section LJ 1 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 109(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

LJ 2 Tax credits for foreign income tax

Amount of credit

(1) A person described in section LJ 1(2)(a) has a tax credit for a tax year for an amount of foreign income tax paid on a segment of foreign-sourced income, determined as if the segment were the net income of the person for the tax year. The amount of the New Zealand tax payable is calculated under section LJ 5.

Limitation on amount of credit

(2) The amount of the person's credit in subsection (1) must not be more than the amount of New Zealand tax payable by the person in relation to the segment calculated under section LJ 5(2), modified as necessary under section LJ 5(4).

Amount adjusted

(3) The amount of the person's credit in subsection (1) may be reduced or increased if either section LJ 6 or LJ 7 applies.

When person both resident in New Zealand and another country

(4) A person described in section LJ 1(2)(a) who has, because they are a citizen or resident of, or are domiciled in, a foreign country, paid foreign income tax on their assessable income, has a credit under subsection (1). However, the amount of the credit is limited to the amount of foreign income tax that would have been paid in the foreign country if the person were treated as not a citizen or resident of, or domiciled in, that foreign country.

Multi-rate PIEs and their investors

(5) For a multi-rate PIE and an investor in a multi-rate PIE, the amount of a tax credit is limited to the extent allowed under subpart HM (Portfolio investment entities).

When subsection (7) applies

(6) Subsection (7) applies to a person who derives an amount from an attributing interest in a FIF when the amount is treated as not being income under section EX 59(2) (Codes: comparative

value method, deemed rate of return method, fair dividend rate method, and cost method).

Tax credit

(7) The person has a tax credit under this subpart for foreign income tax paid on or withheld in relation to the amount. The calculation of the maximum amount of the tax credit is made under section LJ 5(2), modified so that the item **segment** in the formula is the amount of FIF income from the attributing interest that the person derives in the period referred to in section EX 59(2).

Defined in this Act: amount, assessable income, attributing interest, FIF, FIF income, foreign income tax, income, income tax liability, investor, multi-rate PIE, net income, New Zealand, New Zealand tax, pay, segment of foreign-sourced income, tax credit, tax year

Compare: 2004 No 35 ss LC 1(1), (1B), (1C), LC 2

Section LJ 2(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 336(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2(5) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 336(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2(5): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 336(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2(6) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 336(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2(6): added (with effect on 1 April 2008), on 6 October 2009, by section 336(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 336(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2(7): added (with effect on 1 April 2008), on 6 October 2009, by section 336(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **attributing interest**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 336(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **FIF**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 336(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **FIF income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 336(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 336(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 336(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 336(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 2 list of defined terms **tax credit**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 336(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LJ 3 Meaning of foreign income tax

For the purposes of this Part, **foreign income tax** means an amount of income tax of a foreign country.

Defined in this Act: amount, income tax

Compare: 2004 No 35 s LC 1(1)

Section LJ 3: substituted (with effect on 1 April 2008), on 6 October 2009, by section 337 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LJ 4 Meaning of segment of foreign-sourced income

For the purposes of this Part, a person has a **segment of foreign-sourced income** equal to an amount of assessable income derived from 1 foreign country that comes from 1 source or is of 1 nature.

Defined in this Act: amount, assessable income

Compare: 2004 No 35 s LC 14(1)

LJ 5 Calculation of New Zealand tax

What this section does

(1) This section provides the rules that a person must use to calculate the amount of New Zealand tax for an income year in relation to each segment of foreign-sourced income of the person that is allocated to the income year.

Calculation for single segment

(2) If the person has a notional income tax liability of more than zero, the amount of New Zealand tax for the income year relating to the allocated segment is calculated using the following formula, the result of which can not be less than zero:

$$\frac{\text{(segment – person's deductions)}}{\text{person's net income}} \times \text{notional liability.}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **segment** is the amount of the segment of foreign-sourced income for the income year:

(b) **person's deductions** is the amount of the person's deduction for the tax year corresponding to the income year that is attributable to the segment of foreign-sourced income:

(c) **person's net income** is the person's net income for the tax year corresponding to the income year under section BD 4(1) to (3) (Net income and net loss):

(d) **notional liability** is the person's notional income tax liability for the income year under subsection (5).

When subsection (4B) applies

(4) Subsection (4B) applies for the income year when the total amount of New Zealand tax for all segments of foreign-sourced income of the person calculated under subsection (2) is more than the notional income tax liability.

Modification to results of formula for single segment

(4B) Each amount of New Zealand tax calculated under subsection (2) in relation to each segment of foreign-sourced income is adjusted by multiplying the amount by the following ratio:

$$\frac{\text{person's notional income tax liability}}{\text{NZ tax.}}$$

Definition of item in formula

(4C) In the formula in subsection (4B), **NZ tax** is the amount given by adding together the result of the calculation under subsection (2), for each segment of assessable income from all sources, including assessable income sourced in New Zealand.

Person's notional income tax liability

(5) For the purposes of this section, a person's notional income tax liability for a tax year is calculated using the formula—

(person's net income – losses) × tax rate.

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **person's net income** is the person's net income for the tax year:

(b) **losses**—

(i) is the amount of the loss balance carried forward to the tax year that the person must subtract from their net income under section IA 4(1)(a) (Using loss balances carried forward to tax year):

(ii) must be no more than the amount of the person's net income:

(c) **tax rate** is the basic rate of income tax set out in schedule 1, part A (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Defined in this Act: amount, deduction, income tax, income tax liability, loss balance, net income, New Zealand, New Zealand tax, segment of foreign-sourced income, tax loss component, tax year

Compare: 2004 No 35 s LC 14

Section LJ 5(1) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(1): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(2) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(2): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(3) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(3): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(4) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(4): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(4B) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(4B): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(4C): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(4C): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 101(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LJ 5(6)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 338(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 5(6)(c): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LJ 5 list of defined terms **New Zealand**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 338(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LJ 6 Taxable distributions and NRWT rules

When this section applies

(1) This section applies when a person who is a beneficiary of a trust and resident in New Zealand derives a taxable distribution in their capacity as beneficiary of the trust.

When credit not allowed

(2) The person is not allowed a tax credit in relation to any foreign income tax paid on the taxable distribution unless the tax has substantially the same nature as non-resident withholding tax (NRWT).

Amount of credit

(3) The person's tax credit is equal to an amount calculated using the formula—

$$\frac{\text{person's taxable distribution}}{\text{total distribution}} \times \text{foreign tax paid.}$$

Definition of items in formula

(4) In the formula,—

(a) **person's taxable distribution** is the amount of the taxable distribution derived by the person in their capacity as beneficiary of the trust, including a payment of tax that meets the requirements of subsection (2):

(b) **total distribution** is the total amount of the distribution derived by the person in their capacity as beneficiary of the trust, including a payment of tax that meets the requirements of subsection (2):

(c) **foreign tax paid** is the payment of tax that meets the requirements of subsection (2).

Defined in this Act: amount, distribution, foreign income tax, non-resident withholding tax, NRWT, NRWT rules, pay, resident in New Zealand, tax credit, taxable distribution

Compare: 2004 No 35 s LC 1(2)

LJ 7 Repaid foreign tax: effect on income tax liability

Who this section applies to

(1) This section applies to a person who has—

(a) paid an amount of foreign income tax, or in relation to whom an amount of foreign income tax has been paid, on a segment of foreign-sourced income in relation to which they are entitled to a tax credit under section LJ 2; and

(b) received a refund, amount, or benefit (the **refund**) determined directly or indirectly by reference to some or all of the payment of foreign income tax.

When refund received before assessment

(2) If the person receives the refund before they assess their income tax liability for a tax year, the amount of the tax credit for the foreign income tax paid is reduced by the lesser of—

(a) the amount of the refund:

(b) the amount of New Zealand tax payable on the foreign-sourced income calculated under section LJ 5.

When refund received after assessment

(3) If the person receives the refund after they have assessed their income tax liability for a tax year, have used an amount of foreign tax credit in satisfying that liability, and have not taken

the refund into account in that assessment, the person is liable to pay the Commissioner the lesser of—

(a) the amount of the refund:

(b) the amount of New Zealand tax payable on the foreign income calculated under section LJ 5.

Date for payment

(4) In subsection (3), the date for payment is 30 days after the later of—

(a) the date on which the person receives the refund:

(b) the date of the notice of assessment in relation to which the person has used the credit.

Associated persons

(5) For the purposes of this section, the refund is treated as received by the person, whether it is received by the person, a person who paid the foreign income tax, or a person associated with either of them.

Defined in this Act: amount, associated person, Commissioner, foreign income tax, income tax liability, New Zealand, New Zealand tax, pay, return of income, segment of foreign-sourced income, tax credit, tax year, tax year

Compare: 2004 No 35 ss LC 1(3A), (3B), LC 3

Section LJ 7: substituted (with effect on 1 April 2008), on 6 October 2009, by section 339(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 7(4): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 102(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

LJ 8 Repaid foreign tax: effect on FDP liability

Who this section applies to

(1) This section applies to a person who receives a foreign dividend from a foreign dividend company, and the person or the company has—

(a) paid an amount of foreign income tax, or in relation to whom an amount of foreign income tax has been paid or withheld; and

(b) received a refund, amount, or benefit (the **refund**) determined directly or indirectly by reference to some or all of the payment of foreign income tax.

When refund received before calculation of FDP

(2) If the person or company receives the refund before the person calculates the amount of FDP payable under section RG 4 (Calculating amount of FDP) for a tax year, the formula is modified as follows:

(a) if the refund relates to foreign withholding tax on the dividend, the item **foreign tax** is the amount by which the foreign withholding tax paid is more than the amount of the refund:

(b) if the refund relates to foreign income tax taken into account in the item **total tax paid** in section LL 2(5) (Tax credits for underlying foreign tax) or the item **tax withheld** in section LL 6(3) (Foreign dividend company lower tier UFTCs), the foreign dividend company's calculation of UFTC is modified as follows:

(i) the item **foreign tax paid** is the amount by which the total income tax or foreign income tax paid by the foreign dividend company is more than the amount of the refund:

(ii) the item **tax withheld** is the amount by which the tax withheld and paid in relation to the standard dividend is more than the amount of the refund.

When subsection (4) applies

(3) Subsection (4) applies if—

(a) the person or company receives the refund after the person has calculated the amount of FDP payable for a tax year under section RG 4; and

(b) the person has taken the amount of foreign income tax paid or withheld into account in that calculation in the items **foreign tax** or **underlying credit** in section RG 4(1); and

(c) the person has not taken the refund into account in that calculation.

When refund received after calculation of FDP

(4) The person must recalculate the FDP liability for the tax year and pay the difference to the Commissioner as FDP.

Date for payment

(5) In subsection (4), the date for payment is 30 days after the later of—

(a) the date on which the person or the company receives the refund:

(b) the date for payment of FDP to the Commissioner in relation to the foreign dividend received for which the recalculation is required.

Associated persons

(6) For the purposes of this section, the refund is treated as received by the person or company, whether it is received by the person or company, a person who paid or withheld the foreign income tax, or a person associated with any of them.

Defined in this Act: amount, associated person, Commissioner, FDP, foreign dividend, foreign dividend company foreign income tax, income tax, pay, tax year

Compare: 2004 No 35 ss LC 1(3A), (3B), LC 3

Section LJ 8: added (with effect on 1 April 2008), on 6 October 2009, by section 339(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LJ 8(5): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 103(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Subpart LK—Tax credits relating to attributed controlled foreign company income

Amounts of credits

LK 1 Tax credits relating to attributed CFC income

Amount of credit

(1) A person who has an amount of attributed CFC income for an income year has a tax credit for the tax year corresponding to the income year equal to the following amounts paid or payable in relation to the attributed CFC income:

(a) an amount of income tax paid by the CFC from which the income is derived:

(b) an amount of tax withheld and paid on behalf of the CFC from which the income is derived:

(c) the amount of foreign income tax paid by the CFC from which the income is derived:

(d) the amount of foreign income tax paid by the person under legislation of another country or territory that is the equivalent of the international tax rules.

Amount adjusted

(2) The amount of the person's credit in subsection (1) may be reduced or increased if section LK 7 applies.

Limitation to quarantined amount

(3) The person's use under section LA 2 (Satisfaction of income tax liability) of a credit referred to in subsection (1) is limited to the amount (the **quarantined amount**) that would be their income tax liability for the tax year if their only assessable income were attributed CFC income derived from a CFC resident in the foreign country or territory referred to in subsection (1) in the accounting period in which the amount of tax giving rise to the credit was paid or payable.

Tax withheld

(4) In subsection (1), a payment of income tax or foreign income tax by the CFC includes a payment of an amount of tax withheld from income.

When subsection (7) applies

(5) Subsection (7) applies when—

(a) a person has a credit under subsection (1) in relation to an amount of income tax or foreign income tax; and

(b) the credit has been used under section LA 2 (Satisfaction of income tax liability) or is carried forward under section LK 4; and

(c) the person has received a refund, amount, or benefit (the **refund**) determined directly or indirectly by reference to some or all of the tax paid.

When refund received before assessment

(6) If the person receives the refund before they assess their income tax liability for a tax year, the amount of tax credit for the tax paid is reduced by the lesser of—

(a) the amount of the refund:

(b) the amount of New Zealand tax payable on the foreign-sourced income calculated under section LJ 5 (Calculation of New Zealand tax).

Credit repayable or extinguished

(7) The amount of the credit—

(a) must be paid to the Commissioner if it has been used under section LA 2:

(b) is extinguished, if it is carried forward under section LK 4.

Date for payment

(8) In subsection (7)(a), the date for payment is 30 days after the later of—

(a) the date on which the person who paid the tax receives the refund:

(b) the date of the notice of assessment in relation to which the person has used the credit.

Associated persons

(9) For the purposes of subsections (5) to (8), the refund is treated as received by the person, whether it is received by the person, a person who paid the foreign income tax, or a person associated with either of them.

Defined in this Act: accounting period, amount, amount of tax, assessable income, assessment, associated person, attributed CFC income, CFC, Commissioner, controlled foreign company, corresponding income year, foreign income tax, income tax, income tax liability, income year, international tax rules, New Zealand tax, notice, NRWT, pay, quarantined amount, segment of foreign-sourced income, tax credit, tax withheld, tax year

Compare: 2004 No 35 s LC 4(1), (4)

Section LK 1(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 340(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(3): amended (with effect on 30 June 2009), on 6 October 2009, by section 340(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(3): amended (with effect on 30 June 2009), on 6 October 2009, by section 340(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(5): added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(6) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(6): added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(7): added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(8) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 104(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LK 1(8): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 104(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LK 1(9) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1(9): added (with effect on 1 April 2008), on 6 October 2009, by section 340(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **assessment**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **associated person**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **Commissioner**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **conduit tax relief**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 340(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **CTR company**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 340(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **international tax rules**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **New Zealand tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **notice**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **NRWT**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LK 1 list of defined terms **segment of foreign-sourced income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 340(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LK 2 Calculation of amount of credit

Amount of credit

(1) For the purposes of section LK 1(1), the amount of a tax credit for a tax year for a person is equal to an amount calculated using the formula—

section EX 18 income interest × (tax paid − excluded foreign tax).

Definition of items in formula

(2) In the formula,—

(a) **section EX 18 income interest** is the income interest of the person used to calculate attributed CFC income under section EX 18 (Formula for calculating attributed CFC income or loss) for the accounting period corresponding to the tax year:

(b) **tax paid** is the amount of income tax or foreign income tax paid or payable by the CFC for the accounting period corresponding to the tax year, including an amount withheld by another person and paid or payable on behalf of the CFC:

(c) **excluded foreign tax** is an amount of foreign income tax paid in a country or territory listed in schedule 27 (Countries and types of income with unrecognised tax)

to the extent to which the foreign income tax is paid on the types of income listed in the schedule.

Defined in this Act: accounting period, amount, attributed CFC income, CFC, foreign income tax, income interest, income tax, pay, tax credit, tax year

Compare: 2004 No 35 s LC 4(1)–(3)

Section LK 2(2)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 341(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LK 3 Currency conversion

If foreign income tax is paid or payable by a CFC in a currency other than New Zealand currency, the amount must be converted into New Zealand currency by applying—

(a) the close of trading spot exchange rate on the date when the income tax is paid or becomes payable; or

(b) the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the period to which the attributed CFC income relates.

Defined in this Act: amount, attributed CFC income, CFC, close of trading spot exchange rate, foreign income tax, New Zealand, pay

Compare: 2004 No 35 s LC 4(1)

Use of credits in later tax years

LK 4 Use of remaining credits

When this section applies

(1) This section applies for the purposes of section LA 5(2) (Treatment of remaining credits) when a person has a tax credit remaining for a tax year after applying section LA 4(1) (When total tax credit more than income tax liability).

Amount carried forward

(2) The amount is carried forward to the next tax year as a credit carried forward.

Defined in this Act: amount, tax credit, tax year

Compare: 2004 No 35 s LC 4(4)

LK 5 Companies' credits carried forward

Company carrying credit forward

(1) A tax credit carried forward under section LK 4 may be carried forward to a later tax year only if, by treating the credit as a

tax loss component to which sections IA 2 to IA 10 (which relate to the treatment of tax losses) apply, those sections would allow the amount to be carried forward.

Timing

(2) For the purposes of this section, the credit is treated as a tax loss component arising on the last day of the income year corresponding to the tax year for which the person has the credit.

Defined in this Act: amount, company, corresponding income year, tax credit, tax loss component, tax year

Compare: 2004 No 35 s LC 4(4)–(6)

LK 5B Credits from tax year before first affected year

When this section applies

(1) This section applies when a person has a tax credit (the **available BE credit**) that—

(a) relates to a tax year before the first tax year for which this section applies to the person; and

(b) relates to a CFC or FIF that is resident in a country (the **jurisdiction**) in which the credit arose; and

(c) is carried forward to a tax year (the **conversion year**) for which this section applies to the person.

What this section does

(2) In this section, subsection (3) gives the person an option that an available BE credit for a jurisdiction not be carried forward and subsections (4) to (7) give, for whichever of the 4 alternative situations is otherwise relevant for the person,—

(a) the amount of the available BE credit (the **converted BE credit**) that is—

(i) treated as being converted into an amount referred to in paragraph (b) in the conversion year; and

(ii) not available to the person to be carried forward as available BE credit for a later tax year:

(b) the amount (the **equivalent tax credit**) of a tax credit that, for the purposes of the rest of this subpart, is treated as arising in relation to the jurisdiction in the conversion year.

Option: tax credit not carried forward

(3) A person may choose by giving a notice in a form and at a time acceptable to the Commissioner that the available BE credit for a jurisdiction not be carried forward under this section.

Person not resident group member: more jurisdictional BE income

(4) For a person who is not a resident group member and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person's jurisdictional attributed income for the conversion year,—

(a) the person's converted BE credit in the conversion year is the lesser of—

(i) the amount that would be the person's income tax liability if the person's only assessable income were the person's jurisdictional BE income for the conversion year:

(ii) the person's available BE credit for the conversion year:

(b) the person's equivalent tax credit in the conversion year is the lesser of—

(i) the amount that would be the person's income tax liability if the person's only assessable income were the person's jurisdictional attributed income for the conversion year:

(ii) the amount calculated by dividing the person's available BE credit for the conversion year by the person's jurisdictional income ratio for the conversion year.

Person not resident group member: more jurisdictional attributed income

(5) For a person who is not a resident group member and has jurisdictional attributed income for the conversion year that is greater than or equal to zero and greater than or equal to the person's jurisdictional BE income for the conversion year,—

(a) the person's converted BE credit for the conversion year is the lesser of—

(i) the person's available BE credit for the conversion year:

(ii) the amount that would be the person's income tax liability if the person's only assessable income were the person's jurisdictional attributed income for the conversion year:

(b) the person's equivalent tax credit is equal to the person's converted BE credit for the conversion year.

Resident group member: more jurisdictional BE income

(6) For a person who is a resident group member for a wholly-owned group of companies and has jurisdictional BE income for the conversion year that is greater than zero and greater than the person's jurisdictional attributed income for the conversion year,—

(a) the person's converted BE credit for the conversion year is the lesser of—

(i) the person's available BE credit for the conversion year:

(ii) the amount that would be the person's income tax liability if the person's only assessable income were the greater of the person's jurisdictional BE income for the conversion year and the amount calculated by multiplying the group's jurisdictional income ratio for the conversion year by the person's jurisdictional attributed income for the conversion year:

(b) the person's equivalent tax credit is the amount calculated by dividing the person's converted BE credit for the conversion year by the group's jurisdictional income ratio for the conversion year.

Resident group member: more jurisdictional attributed income

(7) For a person who is a resident group member and has jurisdictional attributed income for the conversion year that is greater than or equal to zero and greater than or equal to the person's jurisdictional BE income for the conversion year,—

(a) the person's converted BE credit for the conversion year is the lesser of—

(i) the person's available BE credit for the conversion year:

(ii) the amount that would be the person's income tax liability if the person's only assessable income were the person's jurisdictional attributed income for the conversion year multiplied by the group's jurisdictional income ratio for the conversion year:

(b) the person's equivalent tax credit is equal to the amount calculated by dividing the person's converted tax credit for the conversion year by the group's jurisdictional income ratio for the conversion year.

Option to determine jurisdictional BE income from accounts

(8) In determining the jurisdictional BE income of a person or wholly-owned group, the person or group may choose to use, instead of the branch equivalent income or loss of a CFC, the profit or loss of the CFC before taxation given by accounts—

(a) complying with generally accepted accounting practice in New Zealand or an equivalent standard for the consistent and undistorted reporting of net profits in the country in which the accounts are prepared; and

(b) audited by an accountant who is—

(i) a chartered accountant or an accountant of equivalent professional standard in the country in which the accounts are prepared; and

(ii) independent of the CFC and the person or wholly-owned group; and

(c) are given an unqualified opinion or an opinion of equivalent standard in the country in which the accounts are prepared.

Defined in this Act: attributed CFC income, attributed CFC loss, branch equivalent income, branch equivalent loss, CFC, group of companies, income interest, jurisdictional attributed income, jurisdictional BE income, jurisdictional income ratio, New Zealand resident, resident group member, tax year, wholly-owned group, wholly-owned group of companies

Section LK 5B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 342(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LK 6 Use of credits by group companies

When this section applies

(1) This section applies when a company (**company A**) in a group of companies has a tax credit under section LK 1 in relation to an income interest in a CFC (**company B**) of an amount other than a quarantined amount.

Making credit available

(2) Company A may choose to make the amount of the tax credit available to another company (**company C**) that is part of the group of companies for the tax year in which the credit is available to the company if the requirements of subsections (3) and (4) are met.

Amount limited

(3) The amount of the credit must not be more than the amount that would be company C's income tax liability if that company's only assessable income were the attributed CFC income derived in the corresponding income year from a CFC resident in the same country in which company B was resident in the accounting period in which the income tax giving rise to the credit was paid or payable.

Use limited

(4) Company A may make an amount of a tax credit available to company C to use only if the amount would be able to be used under subpart IC (Grouping tax losses), reading the subpart by substituting—

(a) a wholly-owned group of companies for a group of companies:

(b) a credit of company A for a tax loss component of the loss company:

(c) the use of the credit to satisfy an income tax liability for the use of a tax loss component to reduce net income, in both subpart IC and section GB 4 (Arrangements for grouping tax losses: companies):

(d) company C for the company B:

(e) the income tax liability of company C for the net income of company B:

(f) sections LK 1 to LK 5 for sections IA 3 to IA 5 (which relate to the use of tax losses generally).

Defined in this Act: accounting period, amount, assessable income, attributed CFC income, CFC, company, corresponding income year, group of companies, income interest, income tax, income tax liability, net income, pay, quarantined amount, tax credit, tax loss component, tax year, wholly-owned group of companies

Compare: 2004 No 35 s LC 5

Treatment of taxable distributions

LK 7 Taxable distributions and NRWT rules

When this section applies

(1) This section applies when a CFC receives a taxable distribution in an accounting period and, for a person with an income interest of 10% or more in the CFC under the rules in sections EX 14 to EX 17 (which relate to the 10% threshold and variations in income interest level), the taxable distribution gives rise to attributed CFC income to which section EX 19 (Taxable distribution from non-complying trust) applies.

When credit not allowed

(2) The person does not have a tax credit in relation to tax paid on the taxable distribution unless the tax is substantially the same as non-resident withholding tax (NRWT).

Amount of tax on distribution

(3) The amount of tax that gives rise to the credit must not be more than an amount calculated using the formula—

$$\frac{\text{person's taxable distribution}}{\text{total distribution}} \times \text{foreign tax paid.}$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **person's taxable distribution** is the amount of the taxable distribution derived by the CFC, including a payment of tax that meets the requirements of subsection (2):

(b) **total distribution** is the total amount of the distribution derived by the CFC, including a payment of tax that meets the requirements of subsection (2):

(c) **foreign tax paid** is the payment of tax that meets the requirements of subsection (2).

Amount of person's credit

(5) The amount of a credit of a person under this section is equal to an amount calculated using the formula—

section EX 18 income interest × amount of tax.

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **section EX 18 income interest** is the income interest of the person used to calculate attributed CFC income under section EX 18 (Formula for calculating attributed CFC income or loss) for the accounting period corresponding to the tax year:

(b) **amount of tax** is the amount of tax determined under subsection (3).

Defined in this Act: accounting period, amount, amount of tax, attributed CFC income, CFC, distribution, income interest, non-resident withholding tax, NRWT, NRWT rules, pay, tax year, taxable distribution

Compare: 2004 No 35 s LC 4(7)

Consolidated companies

LK 8 Tax credits of consolidated companies

If a consolidated group has a tax credit under section LK 1, the credit is treated as the consolidated group's credit and not the credit of a group company.

Defined in this Act: company, consolidated group, tax credit

Compare: 2004 No 35 s LC 16(1)

LK 9 Use of company's credits carried forward

When this section applies

(1) This section applies when a company that is part of a consolidated group of companies in an income year has a credit carried forward for the tax year corresponding to the income year.

First use by consolidated group

(2) The amount must first be used to satisfy the income tax liability of the consolidated group for the income year. However, the amount must not be more than the consolidated group's quarantined amount.

Second use by group company or another consolidated group

(3) If, after applying subsection (2), an amount remains, the amount may be used to satisfy the income tax liability of the company or the income tax liability of another consolidated group in the income year. Sections LK 10 and LK 11 override this subsection.

Third use: amount carried forward

(4) If, after applying subsections (2) and (3), a balance remains, the amount must be carried forward to the next income year under section LK 4(2).

Defined in this Act: amount, company, consolidated group, corresponding income year, income tax liability, income year, quarantined amount, tax year

Compare: 2004 No 35 s LC 16(2), (3)

LK 10 When group membership lacking in tax year in which credit arises

When this section applies

(1) This section applies when a company that is part of a consolidated group of companies has a credit carried forward for a tax year, but the company was not part of the same consolidated group as 1 or more companies in the consolidated group in an earlier tax year in which the credit arises.

Limitation on amount used

(2) The amount of the credit carried forward and made available for the consolidated group to use under section LK 9(2) is limited to the sum of—

- (a) the amount of the credit carried forward that the company could use under section LA 2 or LA 4 (which relate to the company's income tax liability), if the company were not part of the consolidated group for the tax year; and
- (b) the amount that each company in the consolidated group would have under section LK 6 in relation to the amount of credit carried forward if—
  - (i) the consolidation of the companies is ignored; and
  - (ii) all required steps are presumed taken for section LK 6 to apply.

Relationship with section FM 3

(3) In subsection (2), section FM 3 (Liability of consolidated groups and group companies) applies to the calculation of the income tax liability.

Defined in this Act: amount, company, consolidated group, income tax liability, tax year

Compare: 2004 No 35 s LC 16(4)

LK 11 When group membership lacking in tax year in which credit used

When this section applies

(1) This section applies when a company that is part of a consolidated group of companies has a credit carried forward for a tax year, but the company is not part of the consolidated group for the whole tax year in which the credit carried forward is used.

Limitation on amount

(2) The amount of the credit carried forward and made available for the consolidated group to use under section LK 9(2) is limited to the least of—

- (a) the amount of the credit carried forward shown in financial statements provided with the consolidated group's return of income for the income year corresponding to the tax year that—
  - (i) relate to the part of the income year when the company was part of the consolidated group; and
  - (ii) disclose the amount that would be the net income attributable to the part of the income year when the company is part of the consolidated group, determined on a fair and reasonable basis of attribution:
- (b) the amount of the credit calculated using the formula in subsection (3):
- (c) the amount referred to in section LK 10(2).

Formula

(3) The amount referred to in subsection (2)(b) is calculated using the formula—

amount carried forward – (part-year credits + pre-consolidation credits).

Definition of items in formula

(4) In the formula,—

(a) **amount carried forward** is the amount of the credit carried forward under section LK 9(2) before applying section LK 10 and this section:

(b) **part-year credits** is the amount of the credit carried forward that the company may use under section LA 2 or LA 4 (which relate to the company's income tax liability) for the part of the tax year before the company becomes part of the consolidated group:

(c) **pre-consolidation credits** is the amount of the credits carried forward that the company must make available for another consolidated group of which it was part before becoming part of the consolidated group.

Defined in this Act: amount, company, consolidated group, corresponding income year, income year, net income, return of income, tax year

Compare: 2004 No 35 s LC 16(5)

Amalgamations of companies

LK 12 Treatment of credits when companies amalgamate

On an amalgamation, for the purposes of determining whether a credit carried forward is available under section LK 5 or whether the requirements of section LK 6 are met, the amalgamated company is treated as if it were the amalgamating company with the same holders of shares and options over shares.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, share

Compare: 2004 No 35 ss LC 8, LC 11, LC 12

LK 13 Use of credits by amalgamated company

When this section applies

(1) This section applies when an amalgamating company ends its existence on a resident's restricted amalgamation and the company has a tax credit under this subpart that—

(a) has not otherwise been used by the amalgamating company before the date of amalgamation:

(b) if treated as a credit remaining for a tax year under section LA 4(1) (When total tax credit more than income tax liability), could be made available to each of the

amalgamated company, unless it is a company incorporated only on amalgamation, and a company that is amalgamated with the amalgamated company.

Amalgamated company's credit

(2) The tax credit is treated as a credit of the amalgamated company for the tax year in which the amalgamation occurs.

Defined in this Act: amalgamated company, amalgamating company, company, resident's restricted amalgamation, tax credit, tax year

Compare: 2004 No 35 s LC 8

LK 14 Use by amalgamated company of credits carried forward

When this section applies

(1) This section applies when an amalgamated company has a tax credit under this subpart for a tax year before that in which the amalgamation takes place, and the credit has not been used before the date of amalgamation.

Restrictions on carrying credit forward: year of amalgamation

(2) The credit may be carried forward to the tax year of amalgamation or a later tax year only if—

(a) the requirements of sections LK 1 to LK 5 are met; and

(b) the credit could be made available under section LK 6 for the part of the tax year ending with the date of the amalgamation to each amalgamating company.

Restrictions on carrying credit forward: order

(3) If the tax credits of 2 or more amalgamating companies are credited under section LK 13 against the amalgamated company's income tax liability for a tax year, those tax credits must—

(a) if resulting from tax payable in 2 or more tax years, be credited in the same order as arising; and

(b) if resulting from tax payable in the same tax year, be credited, so far as the tax extends,—

(i) in the order chosen by the amalgamated company by notice to the Commissioner; or

(ii) otherwise, on a pro rata basis.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, Commissioner, income tax liability, pay, tax credit, tax year

Compare: 2004 No 35 ss LC 9, LC 10

LK 15 Use of amalgamating company's credits

When this section applies

(1) This section applies when a company has a tax credit under this subpart arising in whole or in part before an amalgamation.

Restrictions on use

(2) The amalgamated company may use the credit only if the company and each amalgamating company meet the requirements of section LK 6.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, company, tax credit

Compare: 2004 No 35 s LC 12

Subpart LL—Underlying foreign tax credits (UFTC)

[Repealed]

Subpart LL: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 1 What this subpart does

[Repealed]

Section LL 1: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 2 Tax credits for underlying foreign tax

[Repealed]

Section LL 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LL 2(4)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LL 3 Meaning of grey list dividend

[Repealed]

Section LL 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 4 Tracking accounts

[Repealed]

Section LL 4: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 5 Meaning of foreign dividend company net earnings

[Repealed]

Section LL 5: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 6 Foreign dividend company lower tier UFTCs

[Repealed]

Section LL 6: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LL 6(4)(d): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LL 7 Conduit financing arrangements

[Repealed]

Section LL 7: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 8 Currency conversion

[Repealed]

Section LL 8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LL 9 Some definitions

[Repealed]

Section LL 9: repealed (with effect on 30 June 2009), on 6 October 2009, by section 343(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart LO—Tax credits for Maori authority credits

LO 1 Tax credits for Maori authority credits

Amount of credit

(1) A person who derives a taxable Maori authority distribution in a tax year has a tax credit for the tax year equal to the amount of the Maori authority credit attached to the distribution.

Amount altered

(2) The amount of the person's credit in subsection (1) may be reduced or increased if any of sections LO 2 to LO 4 apply.

Arrangements for tax advantage

(3) A person's credit under this section is extinguished if sections GB 42 and GB 43 (which relate to Maori authority arrangements to obtain tax advantage) apply.

Defined in this Act: amount, Maori authority credit, tax credit, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss LB 1(1)(m), LD 3A(1)

LO 2 Beneficiaries of trusts

When this section applies

(1) This section applies when a person who has a tax credit under section LO 1 is a beneficiary of a trust and, in that capacity, derives a taxable Maori authority distribution.

Limitation on amount of credit

(2) The person's credit is limited to an amount calculated using the formula—

$$\frac{\text{person's distributions}}{\text{trust distributions}} \times \text{total beneficiary credits} - \text{person's supplementary dividend}$$

Definition of items in formula

(3) In the formula,—

(a) **person's distributions** is the total taxable Maori authority distributions for the tax year made to the person in their capacity as beneficiary of the trust:

(b) **trust distributions** is the total distributions for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries, and includes all supplementary dividends paid to them:

(c) **total beneficiary credits** is the total Maori authority credits attached to taxable Maori authority distributions and total supplementary dividends for the tax year made to all beneficiaries of the trust in their capacity as beneficiaries:

(d) **person's supplementary dividend** is the total supplementary dividends for the tax year paid to the person in their capacity as beneficiary of the trust.

Defined in this Act: amount, distribution, Maori authority credit, pay, supplementary dividend, tax credit, tax year, taxable Maori authority distribution

Compare: 2004 No 35 s LB 1(3), (3A)

LO 2B Credit of RSCT for Maori authority credit

Retirement scheme contributions

(1) A retirement scheme contributor who attaches a Maori authority credit to a retirement scheme contribution for a person in an income year has a credit of RSCT equal to the lesser of—

(a) the amount of the Maori authority credit:

(b) the liability of the contributor for RSCT on the contribution.

When credit more than liability

(2) If the amount of the Maori authority credit is more than the liability of the contributor for RSCT on the contribution,—

(a) the amount of the excess is treated as a Maori authority credit attached to a taxable Maori authority distribution from the contributor to the person; and

(b) the person responsible for withholding the RSCT must, within 30 days of the contribution, notify the person of the amount of the excess credit.

Defined in this Act: amount, income year, Maori authority credit, notify, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s LD 4

Section LO 2B: inserted, on 1 April 2008, by section 449 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LO 3 Application of Maori authority distribution ratio

When this section applies

(1) This section applies when a person who has a tax credit under section LO 1 derives a taxable Maori authority distribution that

has a Maori authority credit ratio greater than the maximum permitted ratio calculated under section OA 18 (Calculation of maximum permitted ratios).

Amount of reduction

(2) The person's credit is reduced by an amount equal to the amount by which the credit is greater than the maximum permitted ratio.

Defined in this Act: amount, Maori authority credit ratio, maximum permitted ratio, tax credit, taxable Maori authority distribution

Compare: 2004 No 35 s LB 1(1)(ea)

LO 4 When income tax unpaid

When this section applies

(1) This section applies when—

(a) a person has a tax credit under section LO 1 and a Maori authority credit is attached to a dividend; and

(b) the dividend is paid by a Maori authority that has a debit balance in their Maori authority credit account at the end of the tax year; and

(c) the authority has not paid further income tax by the due date referred to in section OK 21 (Further income tax for closing debit balance).

Amount of reduction

(2) The Commissioner may reduce the person's credit by an amount equal to their proportion of the unpaid amount under subsection (1)(c).

When failure to pay remedied

(3) To the extent to which a Maori authority remedies the failure after the due date, this section does not apply.

Defined in this Act: amount, Commissioner, dividend, further income tax, Maori authority, Maori authority credit, Maori authority credit account, pay, tax credit, tax year

Compare: 2004 No 35 s LD 3A(6)

LO 5 Evidential requirements

If a person who has a tax credit under section LO 1 does not meet the evidential requirements of section 78D of the Tax Administration Act 1994, the person's credit may be reduced.

Defined in this Act: tax credit

Compare: 2004 No 35 s LD 3A(5)

Subpart LP—Tax credits for supplementary dividends

Introductory provision

LP 1 What this subpart does

Supplementary dividends

(1) This subpart provides the rules for the treatment of a tax credit for a supplementary dividend. The amount of the credit is determined by reference to an imputation credit attached to a dividend paid by a company to a non-resident. For a credit to arise under this subpart, the company must pay a supplementary dividend, and the amount of the credit is equal to the amount of the supplementary dividend.

Supplementary dividend holding companies [Repealed]

(2) *[Repealed]*

Defined in this Act: amount, company, dividend, imputation credit, non-resident, pay, supplementary dividend, supplementary dividend holding company, tax credit

Compare: 2004 No 35 s LE 1

Section LP 1(2) heading: repealed, on 1 April 2011, pursuant to section 77 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 1(2): repealed, on 1 April 2011, by section 77 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Use of credits

LP 2 Tax credits for supplementary dividends

When this section applies

(1) This section applies when a company resident in New Zealand pays a dividend and a related supplementary dividend to—

(a) a non-resident, if—

(i) the non-resident has less than a 10% direct voting interest in the company; and

(ii) the post-treaty tax rate for the dividend and the related supplementary dividend is 15% or more; or

(b) *[Repealed]*

Amount of credit

(2) For the tax year corresponding to the income year in which the company pays the dividend, the company has a tax credit equal to an amount calculated using the formula—

$$\text{attached imputation credit} \times \frac{54}{119.}$$

Definition of item in formula

(3) In the formula, **attached imputation credit** is the imputation credit that would, in the absence of this subpart, be attached to the dividend.

Limitation on use of credit

(4) A company that is a supplementary dividend holding company may choose under section LA 2 or LA 4 (which relate to the satisfaction of the company's income tax liability) to limit the amount of a tax credit for a tax year. The reduced amount must not be less than the amount of supplementary dividends that the company derives for the income year corresponding to the tax year.

Meaning of year of payment
[Repealed]

(5) *[Repealed]*

Associated persons test

(6) *[Repealed]*

(7) Section OZ 12 (Tax credits for non-resident investors) may apply to modify subsection (2).

Defined in this Act: amount, associated person, company, consolidated group, corresponding income year, direct voting interest, dividend, imputation credit, non-resident, pay, post-treaty tax rate, resident in New Zealand, supplementary dividend, tax credit, tax year

Compare: 2004 No 35 ss LE 2(1), (2), (2A), LE 3(5)

Section LP 2(1)(a): substituted, on 1 February 2010, by section 78(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2(1)(b): repealed, on 1 April 2011, by section 78(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2(2): amended, on 1 April 2011, by section 78(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2(2) formula: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 88(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LP 2(2) formula: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 91(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section LP 2(2) formula: amended (with effect from 1 April 2008), on 29 May 2008, by section 32(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section LP 2(2) formula: amended, on 1 April 2008, by section 450(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LP 2(5) heading: repealed, on 1 April 2011, pursuant to section 78(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2(5): repealed, on 1 April 2011, by section 78(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2(6): repealed, on 1 April 2011, by section 78(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2(7): added, on 1 April 2008, by section 450(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LP 2 list of defined terms **direct voting interest**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2 list of defined terms **post-treaty tax rate**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2 list of defined terms **supplementary dividend holding company**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 2 list of defined terms **year of payment**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

LP 3 Use of remaining credits

When this section applies

(1) This section applies when a company has a tax credit remaining for a tax year under section LA 5(3) (Treatment of remaining credits).

Grouping amount

(2) The company may make the amount available to another company (**company B**) that is part of the same wholly-owned group of companies as the company for the corresponding income year in which the remaining credit arises.

Carrying back and using or grouping amount

(3) If the amount of the remaining credit has never been carried forward from an earlier tax year, the company may either—

(a) use the amount for any 1 of the 4 tax years that are immediately before the tax year in which the remaining credit arises; or

(b) make the amount available to company B, if both companies are part of the same wholly-owned group of companies for the relevant tax year in the 4-year period.

Carrying amount forward

(4) If, after applying subsections (2) and (3), the company has an amount of tax credit remaining for the tax year, the amount must be carried forward to the next tax year as a credit carried forward.

Notifying Commissioner

(5) The company makes a choice under subsection (2) or (3) by notifying the Commissioner in their return of income for the income year that corresponds to the tax year.

When companies in same group

(6) For the purposes of subsections (2) and (3), the company and company B must be part of the same wholly-owned group of companies for the whole of the relevant income year or, if 1 of the companies exists for only part of the year, for the whole

of the period of the income year when both companies are in existence.

Defined in this Act: amount, Commissioner, company, corresponding income year, income year, notify, return of income, tax credit, tax year, wholly-owned group of companies

Compare: 2004 No 35 s LE 2(3), (4), (6), (7)

Section LP 3(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 344(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LP 4 Continuity rules for carrying credits forward

When this section applies

(1) This section applies for the purposes of section LA 5(3) (Treatment of remaining credits) when a company has an amount of a tax credit that must be carried forward under section LP 3(4).

Minimum interests required

(2) The amount is available for use under section LP 3(4) if a group of persons exists that has, for the continuity period,—

(a) minimum voting interests in the company that add up to 49% or more; and

(b) when a market value circumstance exists for the company in the continuity period, minimum market value interests in the company that add up to 49% or more.

Some definitions

(3) In this section,—

continuity period means the period that starts on the first day of the income year that corresponds to the tax year in which the tax credit first arises and ends on the last day of the income year that corresponds to the tax year to which the amount of the credit has been carried forward

minimum market value interest means the lowest market value interest that a person has in the company for the continuity period

minimum voting interest means the lowest voting interest that a person has in the company for the continuity period.

Defined in this Act: amount, company, continuity period, corresponding income year, group of persons, income year, market value circumstance, market value interest, minimum market value interest, minimum voting interest, tax credit, tax year, voting interest

Compare: 2004 No 35 s LE 2(5)

Section LP 4(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 345(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LP 4 list of defined terms **market value circumstance**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 345(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LP 5 Application of benchmark dividend rules and imputation credit ratio

Applying benchmark dividend rules

(1) The benchmark dividend rules in sections OB 61 and OC 28 (which relate to the allocation of imputation and FDP credits) and sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage) apply as if the company had never paid the supplementary dividend.

Increase in imputation credit

(2) The maximum permitted ratio referred to in section OB 60(5) (Imputation credits attached to dividends) and sections GB 35 and GB 36 apply to a dividend as if the imputation credit attached to the dividend were increased by an amount equal to the related supplementary dividend.

(3) Section OZ 12 (Tax credits for non-resident investors) may apply to modify this section.

Defined in this Act: amount, benchmark dividend, company, imputation credit, maximum permitted ratio, supplementary dividend

Compare: 2004 No 35 s LE 2(9), (10)

Section LP 5(3): added, on 1 April 2008, by section 451 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LP 6 Deriving supplementary dividend and breach of terms of trust

Class of shares

(1) The payment of a supplementary dividend on only some shares in a class of shares does not constitute a breach of—

(a) section 53 of the Companies Act 1993; or

(b) the company's constitution or its articles of association, unless the provision expressly refers to this subsection; or

(c) any other provision.

Trusts

(2) If a trustee derives a dividend and is required under the terms of a trust to distribute it as beneficiary income to a beneficiary, the trustee's distribution of a supplementary dividend does not breach the terms of the trust.

Defined in this Act: beneficiary income, company, distribution, dividend, pay, share, supplementary dividend, trustee

Compare: 2004 No 35 s LE 2(11), (12)

Supplementary dividend holding companies

LP 7 Requirements for supplementary dividend holding companies

When this section and sections LP 8 and LP 9 apply

(1) This section, and sections LP 8 and LP 9, apply for an income year when a company—

(a) is a supplementary dividend holding company when it derives a dividend and a related supplementary dividend; and

(b) is not part of the same consolidated group as the company paying the dividends, as described in section LP 2(1)(b).

When requirements no longer met

(2) The company must notify each company from which it may derive a supplementary dividend if it no longer meets the requirements set out in the definition of **supplementary dividend holding company**.

Defined in this Act: company, consolidated group, dividend, income year, notify, pay, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(1), (3), (11)

LP 8 Relationship with exempt income rules

What this section applies to

(1) This section applies to a supplementary dividend holding company that derives a dividend and related supplementary dividend in an income year when, but for this section, both dividends would be exempt income under section CW 10 (Dividend within New Zealand wholly-owned group).

Income

(2) The supplementary dividend holding company derives assessable income equal to an amount calculated using the formula—

$$\frac{\text{attached credit + dividend}}{\text{tax rate}}.$$

Definition of items in formula

(3) In the formula,—

(a) **attached credit** is the imputation credit attached to the dividend:

(b) **dividend** is the supplementary dividend related to the dividend:

(c) **tax rate** is the basic rate of income tax set out in schedule 1, part A (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Treatment of imputation credit

(4) The imputation credit referred to in subsection (3) is assessable income of the supplementary dividend holding company for the income year for the purposes of section LE 1 (Tax credits for imputation credits).

(5) Section OZ 12 (Tax credits for non-resident investors) may apply to modify subsection (3)(c).

Defined in this Act: amount, assessable income, dividend, exempt income, imputation credit, income tax, income year, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(6), (8)

Section LP 8(2) formula: substituted (with effect on 1 April 2008), on 7 December 2009, by section 80(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LP 8(3)(c): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section LP 8(5): added, on 1 April 2008, by section 452 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LP 9 Relationship with RWT rules

When this section applies

(1) This section applies to a supplementary dividend holding company that derives a dividend and related supplementary dividend in an income year.

When rules do not apply

(2) The RWT rules do not apply to the dividend or the related supplementary dividend to the extent to which the amount is no more than the amount calculated under section LP 8(2). The RWT rules do not apply to the imputation credit referred to in that section.

Defined in this Act: amount, dividend, imputation credit, income year, RWT rules, supplementary dividend, supplementary dividend holding company

Compare: 2004 No 35 s LE 3(7), (9)

LP 10 Limitation on deductions

Limitation on total annual deductions

(1) Despite section BD 4 (Allocation of deductions to particular income years), the annual total deduction of a supplementary dividend holding company under section BC 3 (Annual total deduction) for a tax year must not be more than an amount calculated using the formula—

$$\text{company's income} - \frac{\text{total credits + supplementary dividends}}{\text{tax rate.}}$$

Definition of items in formula

(2) In the formula,—

(a) **company's income** is the supplementary dividend holding company's income for the income year that corresponds to the tax year:

(b) **total credits** is the supplementary dividend holding company's total amount of tax credits that are non-refundable tax credits, tax credits for imputation credits, and tax credits for foreign dividend payment (FDP) credits for the income year that corresponds to the tax year:

(c) **supplementary dividends** is the total amount of supplementary dividends derived by the supplementary dividend holding company for the income year that corresponds to the tax year:

(d) **tax rate** is the basic rate of income tax set out in schedule 1, part A (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Tax loss components

(3) A deduction that would, in the absence of subsection (1), be allocated to the tax year is a tax loss component that may be carried forward under Part I (Treatment of tax losses) if the relevant requirements of that Part are met.

Calculating credits under this Part

(4) Subsection (1) does not affect the calculation of the amount of a supplementary dividend holding company's tax credit under this Part.

Defined in this Act: amount, annual total deduction, corresponding income year, deduction, FDP credit, imputation credit, income, income tax, income year, non-refundable tax credit, supplementary dividend, supplementary dividend holding company, tax credit, tax loss component, tax year

Compare: 2004 No 35 ss LE 3(10), LE 4

Section LP 10(1): amended (with effect on 1 April 2008), on 7 September 2010, by section 89(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LP 10(1) formula: substituted (with effect on 1 April 2008), on 7 September 2010, by section 89(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LP 10(2)(b): amended (with effect on 1 April 2008), on 7 September 2010, by section 89(3)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LP 10(2)(c): amended (with effect on 1 April 2008), on 7 September 2010, by section 89(3)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LP 10(2)(d): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart LQ—Tax credits of conduit tax relief companies

LQ 1 Tax credits of CTR companies

[Repealed]

Section LQ 1: repealed (with effect on 30 June 2009), on 6 October 2009, by section 346(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LQ 1(3)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

LQ 2 Limitation on amount of credit

[Repealed]

Section LQ 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 346(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LQ 3 Determining percentage of non-resident shareholders

[Repealed]

Section LQ 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 346(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LQ 4 Date for determining percentage of non-resident shareholders

[Repealed]

Section LQ 4: repealed (with effect on 30 June 2009), on 6 October 2009, by section 346(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LQ 5 CTR additional dividends

When this section applies

(1) This section applies when a CTR company pays a dividend to a non-resident, and a CTR credit is attached to the dividend. The rules for determining residence in sections YD 9 to YD 11 (which relate to CTR companies) apply for the purposes of this section.

Payment of additional dividend required

(2) The company must pay a CTR additional dividend relating to the dividend when the dividend is paid. The additional dividend is exempt income under section CW 11(2) (Dividend of

conduit tax relief holding company) of the company receiving the dividend.

Amount of additional dividend

(3) The amount of the CTR additional dividend must be equal to the amount of the CTR credit attached to the dividend.

Relationship with rules on imputation credits

(4) Sections GB 35, GB 36, OA 18, OB 60, OB 61, OC 27, and OC 28 (which relate to the allocation of imputation credits and FDP credits) apply as if the company had never paid a CTR additional dividend.

Class of shares

(5) The payment of an additional dividend to all non-resident shareholders who hold shares in a particular class does not constitute a breach of—

(a) section 53 of the Companies Act 1993; or

(b) the company's constitution or its articles of association, unless the provision expressly refers to this subsection; or

(c) any other provision.

Trusts

(6) If a trustee derives a dividend and is required under the terms of a trust to distribute it as beneficiary income to a beneficiary, the trustee's distribution of an additional dividend to the same beneficiary does not breach the terms of the trust.

Defined in this Act: amount, beneficiary income, company, CTR additional dividend, CTR company, CTR credit, distribution, dividend, exempt income, imputation credit, non-resident, pay, share, shareholder, trustee

Compare: 2004 No 35 s LG 1

Subpart LR—Tax credits for policyholder income

LR 1 Tax credits for policyholder income

Amount of credit

(1) A person who has a credit in their policyholder credit account for a tax year has a tax credit equal to the amount, as limited under subsection (2), of the balance of the account determined under sections OJ 8, OJ 9, OJ 16, OP 115, and OP 116 (which

relate to the use of credit balances against policyholder base income tax liability).

Limitation

(2) The person's use, under section LA 2 (Satisfaction of income tax liability), of a credit referred to in subsection (1) is limited to the amount that would be their income tax liability for the tax year if their only assessable income were policyholder income in the accounting period in which the amount of tax giving rise to the credit was paid or payable.

Defined in this Act: accounting period, amount, assessable income, income tax liability, pay, policyholder base income tax liability, policyholder credit account, policyholder income, tax credit, tax year

Compare: 2004 No 35 ss ME 19, ME 24, ME 28

Subpart LS—Tax credits for multi-rate PIEs and investors

Subpart LS: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 348(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

LS 1 Tax credits for multi-rate PIEs

Tax credit

(1) A multi-rate PIE has a tax credit for a tax year for the amount determined—

(a) under sections HM 51 and HM 53 (which relate to certain tax credits) for an imputation credit or a credit for tax paid or withheld:

(b) under section HM 55 (Tax credits for losses) arising from a tax loss attributed to an investor.

When this section does not apply

(2) This section does not apply—

(a) in relation to—

(i) a zero-rated investor:

(ii) an exiting investor who is treated under section HM 61 (Certain exiting investors zero-rated) as zero-rated:

(iii) a notified foreign investor in a foreign investment PIE in relation to an imputation credit attached to a dividend derived by the PIE:

(b) if the PIE pays tax using the provisional tax calculation option under section HM 44 (Provisional tax calculation option).

Amount of credit

(3) The amount of the tax credit equals the amount determined under the relevant section.

Timing

(4) The PIE has the tax credit for the tax year in which the relevant calculation period falls.

Exception: timing under exit calculation option

(5) If the PIE calculates its income tax liability using the exit calculation option under section HM 42 (Exit calculation option), the amount of a credit attributable to an investor is able to be used to satisfy a tax obligation relating to the investor.

Defined in this Act: amount, calculation period, foreign investment PIE, imputation credit, income tax liability, investor, multi-rate PIE, notified foreign investor, pay, PIE, provisional tax, tax credit, tax loss, tax year, zero-rated investor

Compare: 2007 No 97 s LS 1

Section LS 1: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 348(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LS 1(2)(a)(iii): added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 105(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LS 1 list of defined terms **foreign investment PIE**: inserted, on 29 August 2011, by section 105(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LS 1 list of defined terms **notified foreign investor**: inserted, on 29 August 2011, by section 105(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

LS 2 Tax credits for investors in multi-rate PIEs

When this section applies

(1) This section applies when—

(a) an investor has attributed PIE income from a multi-rate PIE for a tax year; and

(b) the investor's prescribed investor rate is—

(i) more than zero:

(ii) for an investor who is a trustee, the rate set out in schedule 6, table 1, row 5 or 7 (Prescribed rates: PIE investments and retirement scheme contributions), as applicable; and

(c) the income is not excluded income of the investor because—

(i) the test in section CX 56(1)(b) (Attributed income of certain investors in multi-rate PIEs) is not met; or

(ii) section CX 56(2)(b) applies.

Amount of credit

(2) The investor has a tax credit for the income year in which the PIE's tax year ends. The amount of the credit is equal to the amount of income tax liability satisfied by the PIE in relation to the attributed PIE income, and may be used to satisfy the investor's income tax liability for the tax year.

Defined in this Act: amount, attributed PIE income, excluded income, income, income year, investor, multi-rate PIE, PIE, prescribed investor rate, tax credit, tax year

Compare: 2007 No 97 s LS 2

Section LS 2(2) (as it read immediately before substitution on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 90(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LS 2 list of defined terms **pay** (as it read immediately before substitution on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): repealed (with effect on 1 April 2008), on 7 September 2010, by section 90(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LS 2(1)(c): substituted (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 106(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section LS 2: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 348(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LS 2(1): substituted (with effect on 1 April 2009), on 6 October 2009, by section 347(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LS 2(1)(a): amended, on 1 April 2010, by section 347(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LS 2(1)(b)(ii): amended, on 1 April 2010 (applying for income years beginning on or after 1 April 2010), by section 83(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section LS 2(2): amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 91(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LS 2 list of defined terms **pay**: repealed (with effect on 1 April 2010), on 7 September 2010, by section 91(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

LS 3 Tax credits for zero-rated investors

When this section applies

(1) This section applies when a zero-rated investor has attributed PIE income from a multi-rate PIE for a tax year.

Amount of credit

(2) The investor has a tax credit that may be used to satisfy their income tax liability for the tax year equal to the amount of income tax liability satisfied by the PIE for the attributed income for the tax year.

Credit for PIE's foreign tax

(3) A zero-rated investor also has a tax credit for the tax year for the amount determined under section HM 52 (Use of foreign tax credits by zero-rated and certain exiting investors) for foreign income tax paid by the PIE.

Credit for PIE's other tax credits

(4) A zero-rated investor also has a tax credit for the tax year for the amount determined under section HM 54 (Use of tax credits other than foreign tax credits by investors) for tax paid or withheld.

Timing

(5) The investor has the tax credit for the tax year corresponding to the income year in which the PIE's tax year ends.

Defined in this Act: amount, attributed PIE income, income tax, income tax liability, income year, multi-rate PIE, pay, PIE, tax credit, tax year, zero-rated investor

Compare: 2007 No 97 s LS 3

Section LS 3(2) (as it read immediately before substitution on 1 April 2010, relating to the period between 1 April 2008 to 31 March 2010): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and

later income years), by section 92(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section LS 3: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 348(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LS 3(2): amended (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 93(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

LS 4 Tax credits for certain exiting investors

When this section applies

(1) This section applies when an exiting investor in a multi-rate PIE who is treated under section HM 61 (Certain exiting investors zero-rated) as zero-rated has attributed PIE income from the PIE for a tax year in which the exit period falls.

Amount of credit

(2) The investor has a tax credit that may be used to satisfy their income tax liability for the tax year equal to any amount paid by the PIE under section HM 43(4) (Quarterly calculation option) to the Commissioner after the investor exits from the PIE for the residual value of the investor interest of the investor.

Credit for PIE's foreign tax

(3) An exiting investor also has a tax credit for the tax year for the amount determined under section HM 52 (Use of foreign tax credits by zero-rated and certain exiting investors) for foreign income tax paid by the PIE.

Credit for PIE's other tax credits

(4) An exiting investor also has a tax credit for the tax year for the amount determined under section HM 54 (Use of tax credits other than foreign tax credits by investors) for tax paid or withheld.

Timing

(5) The investor has the tax credit for the tax year corresponding to the income year in which the PIE's tax year ends.

Defined in this Act: attributed PIE income, exit period, foreign income tax, income tax liability, income year, investor, investor interest, multi-rate PIE, pay, PIE, tax credit, tax year

Compare: 2007 No 97 s LS 4

Section LS 4: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 348(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section LS 4(2): amended (with effect on 1 April 2010), on 21 December 2010, by section 110 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Subpart LZ—Terminating provisions

Underlying foreign tax credits

LZ 1 Low tax jurisdiction companies

Earnings and income tax

(1) If a company is treated under section YD 3 (Country of residence of foreign companies) for the purposes of the international tax rules as resident in a country or territory listed in schedule 26 (Low tax jurisdictions or territories) during any part of an accounting year ending before 28 September 1993 (a **low tax year**), the earnings of, and the income tax paid or payable by, the company for the low tax year are treated as not existing for the purposes of subpart LL (Underlying foreign tax credits (UFTC)), unless—

(a) the earnings are dividends derived from another company that is not a company listed in schedule 26:

(b) income tax is paid or payable in relation to the dividends referred to in paragraph (a), and the income tax is payable in the country or territory where the other company referred to in paragraph (a) is resident.

Exclusion

(2) Subsection (1) does not apply if the foreign dividend company is a controlled foreign company (CFC) for the whole of a low tax year, and the low tax year is an accounting year that ends on or after 1 April 1988.

Defined in this Act: accounting year, CFC, company, dividend, foreign dividend company, income tax, international tax rules, pay, resident

Compare: 2004 No 35 s LF 6(1), (3)

Section LZ 1(1): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Credits for certain non-resident investment companies

LZ 2 Certain development projects

When this section and sections LZ 3 to LZ 5 apply

(1) This section and sections LZ 3 to LZ 5 apply to a non-resident investment company in relation to the development projects set out in the orders listed in subsection (2).

Development projects

(2) The development projects are specified in the following orders:

- (a) the Income Tax (Non-Resident Investment Companies) Order 1970 (SR 1970/138); or
- (b) the Income Tax (Non-Resident Investment Companies) Order 1972 (SR 1972/19); or
- (c) the Income Tax (Non-Resident Investment Companies) Order (No 2) 1972 (SR 1972/248); or
- (d) the Income Tax (Non-Resident Investment Companies) Order (No 3) 1974 (SR 1974/277).

Relationship with sections KF 1, NF 1(2)(a)(vi), NG 1(2)(f), and OB 5

(3) Despite the repeal of sections KF 1, NF 1(2)(a)(vi), NG 1(2)(f), and OB 5 by sections 13, 21, 22, and 26 of the Income Tax Act 1994 Amendment Act (No 3) 1995, a non-resident investment company, in relation to the development projects described in subsection (2), continues to be eligible for the tax credits referred to in sections LZ 3 and LZ 4.

Defined in this Act: non-resident investment company, tax credit

Compare: 2004 No 35 s KZ 3(1), (4)

LZ 3 Interest derived from development investments

When this section applies

(1) This section applies when—

- (a) the only assessable income of a non-resident investment company in a tax year is interest derived from development investments; and
- (b) the amount of the non-resident investment company's income tax liability for the interest is more than the amount of income tax payable by the non-resident investment company on the interest if it had been derived

from a source in the country or territory in which the investment company is resident.

Tax credit

(2) The non-resident investment company is entitled to a tax credit equal to the amount of the excess referred to in subsection (1)(b).

Income tax liability under 15% of gross amount of interest

(3) Despite subsection (2), if the non-resident investment company and the person by whom the interest is paid are not associated persons, the amount of the non-resident investment company's income tax liability for that interest must not be more than 15% of the gross amount of the interest.

Defined in this Act: amount, assessable income, associated person, development investments, gross, income tax, income tax liability, interest, non-resident investment company, pay, resident, tax credit, tax year

Compare: 2004 No 35 s KZ 3(2)

LZ 4 Dividends derived from development investments

When this section applies

(1) This section applies when—

(a) the only assessable income of a non-resident investment company in a tax year consists of dividends derived from development investments; and

(b) the amount of the non-resident investment company's income tax liability for those dividends is more than the amount of income tax payable by the non-resident investment company on those dividends if they had been derived from a source in the country or territory in which the non-resident investment company is resident.

Tax credit

(2) A non-resident investment company is entitled to a tax credit equal to the amount of the excess referred to in subsection (1)(b).

Defined in this Act: amount, assessable income, development investments, dividend, income tax, income tax liability, non-resident investment company, pay, resident, tax credit, tax year

Compare: 2004 No 35 s KZ 3(3)

LZ 5 Some definitions

In sections LZ 2 to LZ 4,—

development investments has the same meaning as in section OB 1 of the Income Tax Act 1994 immediately before its repeal by section 25(6) of the Income Tax Act 1994 Amendment Act (No 3) 1995

non-resident investment company has the same meaning as in section OB 5 of the Income Tax Act 1994 immediately before its repeal by section 26 of the Income Tax Act 1994 Amendment Act (No 3) 1995.

Defined in this Act: development investments, non-resident investment company

Compare: 2004 No 35 s KZ 3(1)

Credits for interest on home vendor mortgages

LZ 6 Interest on home vendor mortgages

When this section applies

(1) This section applies when, in a tax year, a person derives interest in relation to a home vendor mortgage.

Exclusions

(2) This section does not apply to—

- (a) an absentee; or
- (b) a company; or
- (c) a public authority; or
- (d) a Maori authority; or
- (e) an unincorporated body; or
- (f) a trustee liable for income tax under subpart HC (Trusts) and section HZ 2 (Trusts that may become complying trusts).

Tax credit

(3) The person is entitled to a tax credit equal to an amount calculated using the formula—

$$\text{interest} \times 0.020.$$

Definition of item in formula

(4) In the formula, **interest** means the amount of interest in complete dollars that the person derives in the tax year in relation to a home vendor mortgage.

Relationship to section LZ 7

(5) This section is overridden by section LZ 7.

Defined in this Act: absentee, amount, company, distribution, home vendor mortgage, income tax, interest, Maori authority, public authority, tax credit, tax year, trustee

Compare: 2004 No 35 s KE 1(1)

LZ 7 Maximum amount of credit under section LZ 6

Maximum amount: 1 person

(1) If only 1 person has provided the loan secured by a home vendor mortgage, the maximum amount of tax credit that the person is entitled to under section LZ 6 in a tax year is $500.

Maximum amount: 2 or more persons

(2) When 2 or more persons have provided the loan secured by a home vendor mortgage, for each person who has provided the loan, the maximum amount of tax credit under section LZ 6 in a tax year is calculated using the formula—

$$\frac{\text{loan provided}}{\text{loan secured}} \times \$500.$$

Definition of items in formula

(3) In the formula,—

(a) **loan provided** is the amount of the loan provided by the persons:

(b) **loan secured** is the total amount of the loan secured by the home vendor mortgage.

Defined in this Act: amount, home vendor mortgage, loan, tax credit, tax year

Compare: 2004 No 35 s KE 1(1)

LZ 8 Meaning of home vendor mortgage

In sections LZ 6 and LZ 7, **home vendor mortgage** means a mortgage—

(a) that secures a loan provided by the vendor or vendors of a house; and

(b) that is guaranteed by the Housing New Zealand Corporation under its housing mortgage guarantee scheme; and

(c) that has been approved by the Housing New Zealand Corporation, on or before 5 August 1982, for the purpose of the credit under this section; and

(d) for which notice of such guarantee and approval and of any variation has been delivered by the Housing New Zealand Corporation to the Commissioner.

Defined in this Act: Commissioner, home vendor mortgage, loan, notice

Compare: 2004 No 35 s KE 1(3)

Credits for savings in special home ownership accounts

LZ 9 Savings in special home ownership accounts

When this section applies

(1) This section applies when a person operates a special home ownership account in a tax year.

Tax credit

(2) The person is entitled to a tax credit equal to an amount calculated using the formula—

increase in savings × 0.045.

Definition of item in formula

(3) In the formula, **increase in savings** is the total amount in complete dollars of the person's increase in savings for all special accounts in the tax year.

Relationship with sections LZ 10 and LZ 11

(4) Sections LZ 10 and LZ 11 override this section.

Defined in this Act: amount, increase in savings, special home ownership account, tax credit, tax year

Compare: 2004 No 35 s KG 1(1)

LZ 10 Maximum amount for 1 special home ownership account for 1 tax year

For the purpose of calculating the amount of a credit under section LZ 9, the maximum amount of a single increase in savings for a special home ownership account for a tax year is $3,000.

Defined in this Act: amount, increase in savings, special home ownership account, tax year

Compare: 2004 No 35 s KG 1(1) proviso

LZ 11 Maximum amount for all special home ownership accounts for all tax years

For the purpose of calculating the amount of a credit under section LZ 9, the maximum amount of increase in savings for all special home ownership accounts of the person for all tax years is $10,250 for a special home ownership account.

Defined in this Act: amount, increase in savings, special home ownership account, tax year

Compare: 2004 No 35 s KG 1(2)

LZ 12 Meaning of increase in savings

Meaning

(1) In sections LZ 9 to LZ 11, **increase in savings**, in relation to a special home ownership account of a person and a tax year, means the total of—

(a) the amount by which the amount standing to the credit of that special home ownership account at the end of that tax year or the date of the closure of that account, whichever is the earlier, is more than the amount standing to the credit of that account, if any, at the end of the tax year immediately before that tax year; and

(b) the amount of resident withholding tax (RWT) withheld during that tax year from interest paid for the account.

Withdrawals

(2) For the purposes of the definition of **increase in savings**,—

(a) an amount withdrawn from a special home ownership account in accordance with a withdrawal certificate is treated as not having been withdrawn:

(b) an amount withdrawn from a special home ownership account in accordance with a withdrawal certificate, and subsequently redeposited in the account, is treated as not having been redeposited.

Defined in this Act: amount, increase in savings, interest, pay, RWT, special home ownership account, tax year, withdrawal certificate

Compare: 2004 No 35 s KG 1(3), (4)

Part M
Tax credits paid in cash

Subpart MA—General provisions

MA 1 What this Part does

This Part identifies the tax credits to which a person is entitled—

(a) under the family scheme for a tax year, *see* subparts MA to MF and MZ (which relate to working for families tax credits):

(b) under the superannuation savings scheme for a year beginning on 1 July and ending on 30 June, *see* subpart MK (Tax credits for KiwiSaver schemes and complying superannuation funds):

(c) for a redundancy payment, *see* subpart ML (Tax credits for redundancy payments).

Section MA 1(a): substituted, on 1 April 2008, by section 453 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 1(b): substituted, on 1 April 2008, by section 453 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 1(c): added, on 1 April 2008, by section 453 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MA 2 Relationship with core provisions

Section BC 8 (Satisfaction of income tax liability) deals with how a tax credit arising under this Part is applied.

Defined in this Act: tax credit

MA 3 Excluded income

A tax credit that a person has under this Part is excluded income of the person.

Defined in this Act: excluded income, tax credit

Compare: 2004 No 35 s KD 8

MA 4 Calculation of amounts of credit producing negative amounts

If a calculation under this Part produces a result that is negative for the amount of a tax credit or the amount of a component of a credit, the amount of the credit or component is zero.

Defined in this Act: amount, tax credit

Compare: 2004 No 35 s KB 3

MA 5 Advice from outside agencies

In determining a person's entitlement to a tax credit under subparts MB to MF and MZ, the Commissioner may obtain the advice of the chief executive or, as applicable, the person appointed under section 61A of the Defence Act 1990 for the purposes of the War Pensions Act 1954.

Defined in this Act: chief executive, Commissioner, tax credit

Compare: 2004 No 35 s KD 9

MA 6 Avoidance arrangements

Section GB 44 (Arrangements involving tax credits for families) may apply to reduce a tax credit under subparts MB to MF and MZ.

Defined in this Act: tax credit

Section MA 6: amended, on 1 April 2008, by section 454 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MA 7 Meaning of full-time earner for family scheme

Weekly employment

(1) In subparts MB to MF and MZ, a **full-time earner** means a person who, for a week,—

(a) is employed for 20 hours or more and does not have a spouse, civil union partner, or de facto partner during the week; or

(b) has a spouse, civil union partner, or de facto partner (the **partner**) during the week, and either the person or the partner or both of them in total are employed for 30 hours or more.

Modifications to weekly employment

(2) For the purposes of subsection (1),—

(a) a person who is employed in a pay period that is longer than 1 week is treated as undertaking the employment activities to a uniform daily extent for the period:

(b) a person who is employed becomes incapacitated as described in subsection (3) and is unable to undertake employment in a week in which but for the incapacity they would be employed for the number of hours set out in subsection (1)(a) and (b) is treated as having been employed for the hours referred to:

(c) a person who is taking parental leave under the Parental Leave and Employment Protection Act 1987 for which a parental leave payment under Part 7A of that Act is payable, is treated as employed in the week for the number of hours for which they would have worked but for the period of parental leave.

Incapacity

(3) The incapacity referred to in subsection (2)(b) is an incapacity due to personal injury by accident for which an accident compensation earnings-related payment has been, is being, or will be paid.

Defined in this Act: accident compensation earnings-related payment, civil union partner, de facto partner, employment, pay, pay period, spouse

Compare: 2004 No 35 s OB 1 **full-time earner**

Section MA 7(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 349(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MA 7(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 349(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MA 7 list of defined terms **employment**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 349(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

MA 8 Some definitions for family scheme

In subparts MB to MF and MZ,—

abating WFF tax credit means a tax credit under section MD 1 (Abating WFF tax credit)

chief executive means the chief executive of the department currently responsible for administering the Social Security Act 1964

child tax credit means the component of the WFF tax credit that is calculated using the formula in section MZ 2 (Calculation of child tax credit)

family credit abatement means the component of the abating WFF tax credit that is calculated using the formula in section MD 13 (Calculation of family credit abatement)

family scheme means all the entitlements and tax credits arising under subparts MB to MF and MZ

family scheme income means an amount calculated under subpart MB (Adjustment of net income for family scheme) on which an entitlement and a tax credit under the family scheme is based

family tax credit means the component of the abating WFF tax credit calculated using the formula in section MD 3 (Calculation of family tax credit)

in-work tax credit means the component of the abating WFF tax credit calculated using the formula in section MD 10 (Calculation of in-work tax credit)

minimum family tax credit means a tax credit under section ME 1 (Minimum family tax credit)

New Zealand resident—

(a) means ordinarily resident; and

(b) does not include being unlawfully resident in New Zealand; and

(c) does not include being lawfully resident in New Zealand only because of holding a temporary entry class visa

parental tax credit means the component of the abating WFF tax credit calculated using the formula in section MD 12

social assistance payment means—

(a) an income-tested benefit; or

(b) a veteran's pension; or

(c) New Zealand superannuation; or

(d) a basic grant or an independent circumstances grant, made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or a substituted provision; or

(e) an accident compensation earnings-related payment, when the compensation relates to a day forming part of

a continuous period of eligibility for the compensation and the day falls after the earlier of—

(i) the day with the same date as the first day of the continuous period of eligibility for compensation and occurring in the third calendar month after that first day; and

(ii) the last day of the third calendar month after the first day of the continuous period of eligibility for compensation.

WFF tax credit means a tax credit under either section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit)

Defined in this Act: abating WFF tax credit, accident compensation earnings-related payment, amount, child tax credit, Commissioner, entitlement period, family tax credit, income-tested benefit, in-work payment, minimum family tax credit, net income, New Zealand, New Zealand superannuation, parental tax credit, relationship period, resident in New Zealand, tax credit, tax year, veteran's pension, WFF tax credit

Section MA 8 **abating WFF tax credit**: inserted, on 1 April 2008, by section 455(1)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **child tax credit**: amended, on 1 April 2008, by section 455(1)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **family assistance credit**: repealed, on 1 April 2008, by section 455(1)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **family credit abatement**: amended, on 1 April 2008, by section 455(1)(d) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **family plus**: repealed, on 1 April 2008, by section 455(1)(e) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **family support**: repealed, on 1 April 2008, by section 455(1)(f) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **family tax credit**: substituted, on 1 April 2008, by section 455(1)(g) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **in-work payment**: repealed, on 1 April 2008, by section 455(1)(h) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **in-work tax credit**: inserted, on 1 April 2008, by section 455(1)(h) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **minimum family tax credit**: inserted, on 1 April 2008, by section 455(1)(i) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **net family scheme income**: repealed, on 1 April 2008, by section 455(1)(j) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **New Zealand resident**: substituted, on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section MA 8 **parental tax credit**: amended, on 1 April 2008, by section 455(1)(k) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 **WFF tax credit**: added, on 1 April 2008, by section 455(1)(l) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 455(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 list of defined terms **full-time earner**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 350 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MA 8 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 455(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 list of defined terms **WFF tax credit**: inserted, on 1 April 2008, by section 455(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MA 8 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 455(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart MB—Adjustment of net income for family scheme

MB 1 Adjustments for calculation of family scheme income

Assessable income derived at uniform daily rate

(1) To determine the net income (the **family scheme income**) on which the calculation of an entitlement and tax credit under the family scheme is based, the following paragraphs apply in relation to the assessable income derived by the person in a relationship period in an income year:

(a) to the extent to which the income is derived from employment during all or part of the income year, it is treated as derived at a uniform daily rate during the period of the employment; and

(b) to the extent to which the income is derived as an income-tested benefit, it is treated as derived at a uniform daily rate during the period in the income year for which the benefit is paid to the person; and

(c) despite section 38(1) of the Tax Administration Act 1994,—

(i) to the extent to which the income is derived otherwise than under paragraph (a) or (b), it is treated as derived at a uniform daily rate during the income year; and

(ii) any expenditure incurred in deriving the income referred to in subparagraph (i) that is allowed as a deduction is treated as incurred at a uniform daily rate during the income year.

Exempt income included

(2) For the purposes of subsection (1), an amount derived by the person in the income year is not treated as exempt income if it is—

(a) an amount referred to in section CW 28(1)(e) or CW 32 (which relate to overseas pensions and maintenance payments):

(b) an amount of salary or wages that is exempt from income tax under an Act, or under a regulation or Order in Council made under an Act, that is listed in schedule 38 (Acts exempting income from tax: income included in family scheme income).

Deduction

(3) For the purposes of subsection (1), the person is allowed a deduction for—

(a) the amount of any payment, made by the person during the income year, of the kind referred to in section CW 32 (Maintenance payments); and

(b) the amount of any payment made by the person during the income year under section 27K of the Social Security Act 1964, as saved by section 256 of the Child Support Act 1991.

Tax loss of qualifying company

(4) For the purposes of subsection (1), an amount of a tax loss of a qualifying company that is attributed to the person as a shareholder of the qualifying company under sections HA 20 and HA 24 (which relate to the treatment of tax losses of LAQCs) is not included in family scheme income.

Income from portfolio investment entities

(5) For the purposes of subsection (1),—

(a) an amount of income attributed by a portfolio investment entity to the person for an income year—

(i) is not included in family scheme income of the person for the income year if the portfolio investment entity is a superannuation fund or retirement savings scheme:

(ii) is included in family scheme income of the person for the income year if subparagraph (i) does not apply:

(b) a distribution from a listed PIE that is derived by the person in an income year is included in family scheme income of the person for the income year.

Retirement scheme contributions

(5B) For the purposes of subsection (1), an amount of retirement scheme contribution that is not excluded income of the person and would be their excluded income in the absence of section CX 50B(2) (Contributions to retirement savings schemes) is not included in family scheme income.

Amounts of depreciation loss on sale of building

(5C) For the purposes of subsection (1), in relation to a building from the sale of which the person derives assessable income, an amount of depreciation loss allowed in the 2002–03 or earlier income year is not included in family scheme income. However, this subsection does not apply to an amount of depreciation loss of a business that under section MB 4 is treated as having no net income for the purposes of calculating family scheme income.

Refunds from main income equalisation accounts

(5D) For the purposes of subsection (1), a refund under sections EH 8 to EH 26 (which relate to refunds from main income

equalisation accounts) of a deposit made on or after 1 April 2011 is not included in family scheme income of a person, except to the extent that the refund is interest payable to the person under section EH 6 (Interest on deposits in main income equalisation account).

All known income sources

[Repealed]

(6) *[Repealed]*

Transitional adjustments

(7) The amounts described in section MZ 2 (Calculation of child tax credit) are not included in the person's family scheme income.

Defined in this Act: amount, assessable income, business, Commissioner, deduction, depreciation loss, excluded income, exempt income, family scheme, family scheme income, income, income from employment, income statement, income tax, income-tested benefit, income year, LAQC, listed PIE, main income equalisation account, net income, pay, portfolio investment entity, qualifying company, relationship period, retirement savings scheme, retirement scheme contribution, salary or wages, shareholder, superannuation fund, tax credit, tax loss, tax year

Compare: 2004 No 35 s KD 1(1)(a), (b), (e)(vii), (i), (3)

Section MB 1(2): substituted, on 1 April 2011, by section 111(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1(5) heading: substituted, on 1 April 2011, by section 111(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1(5): substituted, on 1 April 2011, by section 111(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1(5B) heading: inserted, on 1 April 2008, by section 456(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MB 1(5B): inserted, on 1 April 2008, by section 456(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MB 1(5C) heading: inserted (with effect on 1 April 2008), on 7 December 2009, by section 84(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section MB 1(5C): inserted (with effect on 1 April 2008), on 7 December 2009, by section 84(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section MB 1(5D) heading: inserted, on 1 April 2011, by section 111(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1(5D): inserted, on 1 April 2011, by section 111(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1(6) heading: repealed, on 1 April 2011, pursuant to section 111(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1(6): repealed, on 1 April 2011, by section 111(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1 list of defined terms **business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section MB 1 list of defined terms **depreciation loss**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section MB 1 list of defined terms **income tax**: inserted, on 1 April 2011, by section 111(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1 list of defined terms **listed PIE**: inserted, on 1 April 2011, by section 111(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1 list of defined terms **main income equalisation account**: inserted, on 1 April 2011, by section 111(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1 list of defined terms **portfolio investment entity**: inserted, on 1 April 2010, by section 351(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MB 1 list of defined terms **portfolio investor allocated income**: repealed, on 1 April 2010, by section 351(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MB 1 list of defined terms **retirement savings scheme**: inserted, on 1 April 2011, by section 111(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1 list of defined terms **retirement scheme contribution**: inserted, on 1 April 2008, by section 456(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MB 1 list of defined terms **salary or wages**: inserted, on 1 April 2011, by section 111(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 1 list of defined terms **superannuation fund**: inserted, on 1 April 2011, by section 111(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

MB 2 Adjustment for period that is less or more than 1 year

Calculation of adjustment

(1) If a person's income is calculated for a period that is less or more than a year, their family scheme income must be adjusted by an amount calculated using the formula—

$$\text{person's family scheme income} \times \frac{365}{\text{days}}.$$

Definition of items in formula

(2) In the formula,—

(a) **person's family scheme income** is the person's income calculated under subparts MB to MF and MZ:

(b) **days** is the total number of days in the period for which the income has been derived.

Defined in this Act: amount, family scheme income, income, year

Compare: 2004 No 35 s KD 1(4)–(6)

MB 3 When person carries on 1 or more businesses or investment activities

When this section applies

(1) This section applies when a person carries on 1 or more businesses in the income year, or has or carries on 1 or more investment activities in the income year (each separate business or investment activity, a single **family scheme activity**).

Ignore income and deductions for net loss activity

(2) The income and deductions for a person's family scheme activity for an income year are ignored when calculating the person's family scheme income for the year if, treating the person as having only the income and deductions of that activity, the person would have a net loss for that year.

Modification of what counts as 1 family scheme activity

(3) For the purposes of applying subsection (2), and despite subsection (1), 2 or more family scheme activities may be treated as a single family scheme activity, if the Commissioner considers that the 2 or more activities are of the kind that are normally carried on in association with each other.

Apportionment of deductions between family scheme activities

(4) For the purposes of applying subsection (2) as modified by subsection (3), deductions that relate to an asset used in carrying on 2 or more family scheme activities must be appropriately apportioned between the activities on the basis of the use of that asset in those 2 or more activities.

Definition

(5) In this section, **investment activity** includes passive holding of an investment asset, other than a variable principal debt instrument.

Defined in this Act: business, deduction, family scheme income, income, income year, investment activity, net loss, variable principal debt instrument

Section MB 3: substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 93(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MB 3: substituted, on 1 April 2008 (applying for the 2008–09 and later income years), by section 92(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

MB 4 Family scheme income of major shareholders in close companies

When this section applies

(1) This section applies for the purposes of determining the amount that represents the family scheme income of a person for an income year when the person is a major shareholder in a close company on the last day of the company's balance date for financial purposes. If the company has paid the major shareholder a dividend in the income year, the amount of family scheme income calculated under subsection (2) is reduced by the total dividends paid for the income year.

What is included in family scheme income

(2) The person's family scheme income includes an amount calculated using the formula—

$$\frac{\text{person's shares}}{\text{company's shares}} \times \text{company's income}$$

Definition of items in formula

(3) In the formula,—

(a) **person's shares** is the number of shares issued by the company and held by the person, excluding fixed-rate shares, on the last day of the company's accounting year:

(b) **company's shares** is the number of shares issued by the company, excluding fixed-rate shares, on the last day of the company's accounting year:

(c) **company's income** is the net income of the company for the company's accounting year.

Defined in this Act: accounting year, amount, close company, dividend, family scheme income, income year, major shareholder, net income, share

Compare: 2004 No 35 s KD 1(1)(g)

Section MB 4(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 352(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

MB 5 Treatment of distributions from superannuation schemes

When this section applies

(1) This section applies when—

(a) a person receives a distribution from a superannuation scheme in an income year; and

(b) an employer of the person has made contributions to the superannuation scheme in—

(i) the income year in which the distribution was received; or

(ii) the 2 income years immediately before that income year; and

(c) the person continues to work for the employer for 1 month or more after the date of the distribution.

When this section does not apply

(2) This section does not apply to a person who receives a distribution from a superannuation scheme as a result of and on or after the person's retirement from employment with an employer who was a contributor to the scheme.

Assessable income

(3) For the purposes of calculating family scheme income, the distribution referred to in subsection (1) is assessable income of the person derived in the tax year or years that corresponds to the income year or years in which the contributions were made. The amount does not include an amount attributable to a contribution by the person as a member of the superannuation scheme.

Defined in this Act: assessable income, corresponding income year, employer, employment, family scheme income, income year, superannuation scheme, tax year

Compare: 2004 No 35 s KD 1(1)(h)

MB 6 Treatment of distributions from retirement savings schemes

When this section applies

(1) This section applies when—

(a) a person receives a distribution of a retirement scheme contribution from a retirement savings scheme in an income year; and

(b) RSCT has been withheld from the contribution; and

(c) at the time of the distribution, the person is—

(i) not eligible for New Zealand superannuation; and

(ii) eligible for a distribution of a retirement scheme contribution from a retirement scheme contributor.

Assessable income

(2) For the purposes of calculating family scheme income, the distribution is assessable income of the person derived in the income year in which the distribution is made.

Defined in this Act: assessable income, family scheme income, income year, New Zealand superannuation, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s KD 1(1)(hb)

Section MB 6: added, on 1 April 2008, by section 457 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MB 7 Family scheme income of settlor of trust

When this section applies

(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when the person is the settlor of a trust (the **person's trust**) at a time in the income year, other than solely as a result of providing personal services for less than market value in the administration of the trust or the maintenance of trust property.

Exception for some trusts

(2) This section does not apply if—

(a) the trustee of the person's trust is registered as a charitable entity under the Charities Act 2005:

(b) the person's trust is solely for the benefit of a local authority:

(c) interest and dividends derived by the trustee of the person's trust would be exempt income of the trustee under section CW 45 (Funeral trusts):

(d) the person's trust is a superannuation fund:

(e) the person and the members of the person's family are not permitted to benefit from the person's trust except under an order of a court.

What is included in family scheme income

(3) The person's family scheme income for the income year includes an amount calculated using the formula—

$$\frac{\text{trustee} + \text{company} - \text{dividends}}{\text{settlor number}}.$$

Definition of items in formula

(4) In the formula—

(a) **trustee** is the net income of the trustee of the person's trust for the income year reduced, to not less than zero, by the amount of the trustee's income that vests or is paid by the trustee as beneficiary income for the income year:

(b) **company** is the total of amounts calculated for companies in which, at the end of the company's income year, the trustee of the person's trust and associated persons hold voting interests of 50% or more, or market value interests of 50% or more if there is a market value circumstance, with the amount for each company being calculated by multiplying the company's net income for the income year by the trustee's voting interest or market value interest in the company at the end of the income year:

(c) **dividends** is the total amount, not exceeding the item company, of dividends that are derived by the trustee of the person's trust in the income year from companies referred to in paragraph (b):

(d) **settlor number** is the number of settlors of the person's trust, including the person, for which this section applies.

Defined in this Act: amount, beneficiary income, company, dividend, exempt income, family scheme income, income, income year, interest, local authority, market value, market value circumstance, market value interest, net income, settlor, superannuation fund, trustee, trustee income, voting interest

Section MB 7: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

MB 8 Family scheme income from fringe benefits

When this section applies

(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when—

(a) the person is an employee of a company in which the person and associated persons hold—

(i) voting interests of 50% or more:

(ii) market value interests of 50% or more, if a market value circumstance exists; and

(b) the company provides a fringe benefit that must be attributed to the person under section RD 47 (Attribution of certain fringe benefits).

What is included in family scheme income

(2) The person's family scheme income for the income year includes an amount equal to the total of the following amounts:

(a) the taxable value of the fringe benefits that the company must attribute to the person under sections RD 47 to RD 49 for the income year; and

(b) the company's FBT liability in relation to the person under section RD 50 (Employer's liability for attributed benefits) for the income year.

Defined in this Act: associated person, company, employee, family scheme income, FBT, fringe benefit, income year, market value circumstance, market value interest, voting interest

Section MB 8: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

MB 9 Family scheme income from deposits in main income equalisation accounts

The family scheme income of a person for an income year includes the amount of a deduction under section DQ 1 (Main income equalisation scheme) allowed for a payment made to the Commissioner under section EH 4 (Main deposit) for an accounting year, corresponding to the same tax year as does the income year, and for a business of—

(a) the person:

(b) a company that meets the requirements of section MB 4 for the person's family scheme income to be affected by net income of the company for the accounting year:

(c) a trustee of a trust that meets the requirements of section MB 7 for the person's family scheme income to be affected by net income of the trustee for the accounting year:

(d) a company in which a trustee referred to in paragraph (c) and associated persons hold a voting interest of 50% or more, or a market value interest of 50% or more if a market value circumstance exists.

Defined in this Act: accounting year, business, close company, Commissioner, company, family scheme income, income year, market value circumstance, market value interest, net income, pay, voting interest

Section MB 9: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

MB 10 Family scheme income from certain pensions and annuities

When this section applies

(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when the person derives in the income year a pension or annuity that is exempt income of the person under section CW 4 (Annuities under life insurance policies) or is a pension from a superannuation fund.

Half of pension or annuity included in family scheme income

(2) The family scheme income of the person for the income year—

(a) includes half of the amount of pension or annuity derived in the income year; and

(b) does not include the other half of the amount of pension or annuity derived in the income year.

Defined in this Act: amount, excluded income, exempt income, family scheme income, income year

Section MB 10: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

MB 11 Family scheme income from amounts derived by dependent children

When this section applies

(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person for an income year when the person is a principal caregiver of a dependent child and the dependent child derives in the income year an amount that is—

(a) resident passive income:

(b) a royalty:

(c) rent:

(d) beneficiary income that is not an amount referred to in section HC 35(4)(b)(i), (ii), or (v) (Beneficiary income of minors):

(e) attributed income from a portfolio investment entity that is not a superannuation fund or retirement savings scheme:

(f) a distribution from a listed PIE.

Amount included in family scheme income

(2) If the total of amounts derived by the dependent child in the income year and referred to in subsection (1) is more than $500, the family scheme income of the person for the income year includes an amount calculated using the formula—

$$\frac{\text{child's amounts} - \$500}{\text{principal caregivers.}}$$

Definitions of items in formula

(3) In the formula,—

(a) **child's amounts** is the total of amounts—

(i) derived by the dependent child in the income year; and

(ii) referred to in subsection (1):

(b) **principal caregivers** is the number of people who are each a principal caregiver of the child.

Defined in this Act: beneficiary income, dependent child, excluded income, family scheme income, income year, listed PIE, portfolio investment entity, principal caregiver, resident passive income, retirement savings scheme, royalty, superannuation fund

Section MB 11: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 11(1): amended (with effect on 1 April 2011), on 29 August 2011, by section 107(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MB 11(2) heading: substituted (with effect on 1 April 2011), on 29 August 2011, pursuant to section 107(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MB 11(2): substituted (with effect on 1 April 2011), on 29 August 2011, by section 107(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MB 11(3) heading: added (with effect on 1 April 2011), on 29 August 2011, by section 107(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MB 11(3): added (with effect on 1 April 2011), on 29 August 2011, by section 107(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MB 11 list of defined terms **principal caregiver**: inserted (with effect on 1 April 2011), on 29 August 2011, by section 107(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

MB 12 Family scheme income from non-residents' foreign-sourced income

The family scheme income of a person for an income year includes the non-residents' foreign-sourced income for the income year of the person's spouse, civil union partner, or de facto partner.

Defined in this Act: civil union partner, de facto partner, family scheme income, income year, non-residents' foreign-sourced income, spouse

Section MB 12: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

MB 13 Family scheme income from other payments

(1) The family scheme income of a person for an income year includes the value of payments—

(a) paid or provided to the person from any source; and

(b) used by the person to—

(i) replace lost or diminished income of the person or the person's family:
(ii) meet usual living expenses of the person or the person's family; and

(c) not excluded from family scheme income under subsection (2).

Payments and benefits excluded from family scheme income

(2) A payment to a person is not included under subsection (1) in the family scheme income of the person if it is—

(a) a loan under ordinary commercial terms and conditions:
(b) from an amount that is—
(i) proceeds of the disposal of property; and
(ii) not assessable income of the person disposing of the property:
(c) a payment on behalf of the person by a local authority or public authority:
(d) a forgiveness of debt by a public authority:
(e) a charitable distribution from a charitable entity registered under the Charities Act 2005:
(f) an educational scholarship:
(g) a student loan under the Student Loan Scheme Act 1992:
(h) a grant for the payment of expenses relating to medical treatment or a funeral:
(i) a payment under an insurance contract, other than a payment for a loss of income:
(j) compensation for a loss other than a loss of income:
(k) lump sum compensation under the Accident Compensation Act 2001:
(l) a monetary benefit under the Social Security Act 1964 that is exempt income:
(m) a pension or allowance under the War Pensions Act 1954 that is exempt income:
(n) a payment that is exempt income under section CW 33(1)(c), (e), or (f) (Allowances and benefits):
(o) an amount that is declared not to be income for the purposes of the Social Security Act 1964 by a regulation under section 132 of that Act:

(p) included in the family scheme income of the person under another section:

(q) expressly excluded from the family scheme income of the person under another section:

(r) a payment—

(i) to relieve the adverse effects of an event declared to be an emergency event by the Commissioner in a determination under section 91AAS of the Tax Administration Act 1994; and

(ii) in the period set by the Commissioner in the determination as relating to the event.

Exception for total value of payments less than threshold

(3) If, in the absence of this subsection, the total value of payments that would be included under subsection (1) in the family scheme income for the year of the person and the person's spouse, civil union partner, or de facto partner is less than or equal to $5,000, then the payments paid or provided to the person are not included in the person's family scheme income for the income year.

Defined in this Act: assessable income, dispose, exempt income, family scheme income, income, income year, insurance contract, land, loan, local authority, pay, public authority

Section MB 13: added, on 1 April 2011, by section 112 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MB 13(2)(q): amended (with effect on 1 April 2011), on 24 May 2011, by section 7 of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Section MB 13(2)(r): added (with effect on 1 April 2011), on 24 May 2011, by section 7 of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Subpart MC—Entitlements under family scheme

MC 1 What this subpart does

Rules about entitlements under family scheme

(1) This subpart provides the rules for determining whether a person and their spouse, civil union partner, or de facto partner are entitled to WFF tax credits as entitlements and tax credits under the family scheme.

WFF tax credits

(2) The WFF tax credit is the amount of a person's entitlement and tax credit made up of—

(a) the family tax credit calculated under section MD 3 (Calculation of family tax credit):

(b) the in-work tax credit, *see* sections MD 4 to MD 10 (which relate to the entitlement to and calculation of the in-work tax credit), or the child tax credit continued under section MZ 1 (Entitlement to child tax credit):

(c) the parental tax credit, *see* sections MD 11 and MD 12 (which relate to the entitlement to and calculation of the parental tax credit):

(d) the minimum family tax credit, *see* section ME 1 (Minimum family tax credit).

Classification of credits

(3) For the purposes of the calculation of an amount of a WFF tax credit, entitlements and tax credits under the family scheme are divided into—

(a) abating WFF tax credits, made up of the family tax credit, in-work tax credit or child tax credit, and the parental tax credit:

(b) the minimum family tax credit.

Classification of credits

[Repealed]

(4) *[Repealed]*

Defined in this Act: abating WFF tax credit, amount, child tax credit, civil union partner, Commissioner, de facto partner, family scheme, family tax credit, in-work tax credit, minimum family tax credit, parental tax credit, spouse, tax credit, WFF tax credit

Compare: 2004 No 35 s KD 1A

Section MC 1(1): amended, on 1 April 2008, by section 458(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1(2) heading: substituted, on 1 April 2008, by section 458(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1(2): substituted, on 1 April 2008, by section 458(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1(3) heading: substituted, on 1 April 2008, by section 458(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1(3): substituted, on 1 April 2008, by section 458(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1(4) heading: repealed, on 1 April 2008, by section 458(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1(4): repealed, on 1 April 2008, by section 458(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 458(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 458(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **family plus**: repealed, on 1 April 2008, by section 458(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **family support**: repealed, on 1 April 2008, by section 458(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **in-work payment,**: repealed, on 1 April 2008, by section 458(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 458(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 458(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 list of defined terms **WFF tax credit**: inserted, on 1 April 2008, by section 458(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 1 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 353 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

MC 2 Who qualifies for entitlements under family scheme?

A person qualifies for an entitlement under the family scheme if, for an entitlement period, they meet—

(a) the qualifying criteria set out in sections MC 3 to MC 7; and

(b) the continuing requirements set out in section MC 8.

Defined in this Act: entitlement period, family scheme

MC 3 First requirement: person's age

The first requirement is that the person referred to in section MC 2 is 16 or older.

Compare: 2004 No 35 ss KD 2AA (4), KD 3(1), OB 1 **qualifying person** (a)(i)

MC 4 Second requirement: principal care

The second requirement is that the person referred to in section MC 2 is the principal caregiver for 1 or more dependent children.

Defined in this Act: dependent child, principal caregiver

Compare: 2004 No 35 ss KD 2AA (4), KD 3(1), OB 1 **qualifying person** (a)(ii)

MC 5 Third requirement: residence

Third requirement

(1) The third requirement is that either the person referred to in section MC 2 or the child referred to in section MC 4 meets the residence requirements of subsections (2) and (3), as applicable.

When person meets residence requirements

(2) The person meets the residence requirements of subsection (1) if the person—

(a) has been a New Zealand resident who has been both resident and present in New Zealand for a continuous period of 12 months at any time, and has been tax resident and resident in New Zealand on the date on which a tax credit arises under section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit); and

(b) is not a transitional resident, and has not made an election under section HR 8(4) (Transitional residents), and is not the spouse, civil union partner, or de facto partner of a transitional resident.

When child meets residence requirements

(3) The child meets the residence requirements of subsection (1) if the child is both a New Zealand resident and present in New Zealand for the entitlement period.

Defined in this Act: child, civil union partner, de facto partner, entitlement period, New Zealand, New Zealand resident, spouse, tax credit, transitional resident

Compare: 2004 No 35 ss KD 3(1), OB 1 **qualifying person** (a)(iii)

Section MC 5(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 354(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 5(2)(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 108(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MC 5(2)(a): amended, on 1 April 2008, by section 459 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 5(3): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 108(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MC 5 list of defined terms **resident**: repealed (with effect on 1 April 2008), on 29 August 2011, by section 108(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

MC 6 When person does not qualify

Despite sections MC 3 to MC 5, a person does not qualify for—

(a) an abating WFF tax credit if, during the relationship period, they receive a parent's allowance under section 32(2) of the War Pensions Act 1954:

(b) an in-work tax credit, parental tax credit, or minimum family tax credit if, during the relationship period, they receive—

(i) an income-tested benefit; or

(ii) *[Repealed]*

(iii) a parent's allowance.

Defined in this Act: abating WFF tax credit, income-tested benefit, in-work tax credit, minimum family tax credit, parental tax credit, relationship period, veteran's pension

Compare: 2004 No 35 s KD 3(1), "qualifying person"

Section MC 6(a): amended, on 1 April 2008, by section 460(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6(b): amended, on 1 April 2008, by section 460(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6(b)(ii): repealed (with effect on 1 April 2008), on 6 October 2009, by section 355(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 6 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 460(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 460(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6 list of defined terms **family tax credit**: repealed, on 1 April 2008, by section 460(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 460(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 460(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6 list of defined terms **parental tax credit**: inserted, on 1 April 2008, by section 460(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 6 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 355(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

MC 7 When spouse or partner entitled under family scheme

When this section applies

(1) This section applies when a person has a spouse, civil union partner, or de facto partner throughout an entitlement period, and during the period—

- (a) the person meets the criteria in sections MC 3 to MC 5 in relation to 1 or more dependent children; and
- (b) the spouse or partner meets the criteria in sections MC 3 to MC 5 in relation to 1 or more dependent children; and
- (c) the dependent child, or at least 1 of the dependent children, referred to in paragraph (b) is not a dependent child referred to in paragraph (a).

Single person

(2) In the circumstances described in subsection (1),—

- (a) this section applies as if—
  - (i) the person or their spouse or partner meets the qualifying criteria in relation to all those children; and
  - (ii) the other person does not meet the qualifying criteria in relation to any of the children; and
- (b) for all WFF tax credits other than the in-work tax credit, the Commissioner must determine which of the persons referred to in paragraph (a) meets the qualifying criteria.

Defined in this Act: civil union partner, Commissioner, de facto partner, dependent child, entitlement period, spouse

Compare: 2004 No 35 s KD 3A(2)–(4)

Section MC 7(2)(b): amended, on 1 April 2008, by section 461 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MC 8 Continuing requirements

Requirements for entitlement period

(1) To receive entitlements and tax credits under the family scheme, a person who meets the qualifying criteria set out in sections MC 3 to MC 7 must also meet the following requirements throughout the entitlement period:

- (a) the person meets the qualifying criteria on each day of the period; and
- (b) another person does not on any day start or stop being a spouse, civil union partner, or de facto partner of the person; and
- (c) the person does not start or stop being the principal caregiver of a dependent child other than on the first or, as applicable, the last day; and
- (d) a child for whom the person is the principal caregiver does not stop being a dependent child other than on the first or, as applicable, the last day; and
- (e) the composition of a WFF tax credit does not change, other than on the first, or as applicable, the last day; and
- (f) the person does not start or stop being a person receiving protected family tax credit, other than on the first, or as applicable, the last day.

Relationship with section MD 6(2)

(2) Section MD 6(2) (Second requirement: principal care) overrides this section in relation to the in-work tax credit.

Defined in this Act: child, civil union partner, de facto partner, dependent child, entitlement period, family scheme, in-work tax credit, principal caregiver, protected family tax credit, spouse, tax credit, WFF tax credit

Compare: 2004 No 35 s OB 1 **eligible period**

Section MC 8(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 356(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 8(e): amended, on 1 April 2008, by section 462(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 8(f): amended, on 1 April 2008, by section 462(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 8(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 356(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 8(2): added (with effect on 1 April 2008), on 6 October 2009, by section 356(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 8 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 462(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 8 list of defined terms **in-work tax credit**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 356(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 8 list of defined terms **protected family support**: repealed, on 1 April 2008, by section 462(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 8 list of defined terms **protected family tax credit**: inserted, on 1 April 2008, by section 462(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 8 list of defined terms **WFF tax credit**: inserted, on 1 April 2008, by section 462(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MC 9 Credits for person aged 18

For person aged 18

(1) A person is entitled to a tax credit under sections MD 1 (Abating WFF tax credit) and ME 1 (Minimum family tax credit) for a person aged 18 who—

(a) is not financially independent; and

(b) is attending school or a tertiary educational establishment.

Determining period

(2) The Commissioner must determine the period for which a person is entitled to an abating WFF tax credit or a minimum family tax credit for a person who is 18 years of age.

When period expires

(3) The period determined by the Commissioner ends on or before the first day fixed by the Commissioner for payments of instalments of tax credits under section 80KI of the Tax Administration Act 1994 in the calendar year following that in which the person turns 18 years of age.

Defined in this Act: abating WFF tax credit, Commissioner, family tax credit, financially independent, minimum family tax credit, pay, tax credit, year

Compare: 2004 No 35 ss KD 2AA(7)–(10), KD 3A(5)–(9)

Section MC 9(1): amended, on 1 April 2008, by section 463(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 9(2): amended, on 1 April 2008, by section 463(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 9 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 463(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 9 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 463(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 9 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 463(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MC 10 Principal caregiver

General meaning

(1) A **principal caregiver**, for a dependent child,—

(a) means the person, whether or not a parent of the child, who the Commissioner considers has the primary responsibility for the day-to-day care for the child, other than on a temporary basis:

(b) does not include—

(i) a body of persons, incorporated or otherwise:

(ii) the spouse, civil union partner, or de facto partner of a person eligible to be a transitional resident who has not made an election under section HR 8(4) (Transitional residents):

(iii) a person who is the proprietor of, or employed in, a residence established under the Children, Young Persons, and Their Families Act 1989, or a residential disability care institution as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001, or another institution in which a child is cared for.

Meaning for abating WFF tax credit, family tax credit, child tax credit

(2) For the purposes of sections MD 3 and MZ 1 (which relate to family tax credit and the child tax credit), a person is a **principal caregiver** of a dependent child if the person—

(a) lives apart from another person who qualifies under section MC 2 in relation to the dependent child; and

(b) has the dependent child in their exclusive care for periods totalling at least one-third of—

(i) a 4-month period:

(ii) the tax year:

(iii) the entitlement period, in the case of the parental tax credit.

Meaning for in-work tax credit

(3) For the purposes of section MD 6 (Second requirement: principal care), a person is a **principal caregiver** of a dependent child for an entitlement period if the person—

(a) lives apart from another person who qualifies under section MC 2 in relation to the dependent child; and

(b) has the dependent child in their exclusive care for periods, whether or not they coincide with the entitlement period, totalling at least one-third of a 4-month period or the tax year.

Entitlement to in-work tax credit

(4) If subsection (3) applies, section MD 10(3) (Calculation of in-work tax credit) is to be read as applying to the periods during which the principal caregiver has exclusive care of the dependent child.

Meaning for parental tax credit

(5) For the purposes of section MD 11 (Entitlement to parental tax credit), a person is a **principal caregiver** of a dependent child if the person—

(a) lives apart from another person who qualifies under section MC 2 in relation to the dependent child; and

(b) has the dependent child in their exclusive care for periods totalling at least one-third of the parental entitlement period.

Principal caregiver to notify Commissioner of change

(6) A person who is a principal caregiver under this section must notify the Commissioner immediately of a change in the arrangements for the care of the child that has, or will have, the effect of ending the person's status as a principal caregiver.

Defined in this Act: abating WFF tax credit, child tax credit, civil union partner, Commissioner, de facto partner, dependent child, entitlement period, family tax

credit, in-work tax credit, notify, parental entitlement period, parental tax credit, principal caregiver, spouse, tax year, transitional resident

Compare: 2004 No 35 ss KD 2AA(2)–(3), OB 1 **principal caregiver**

Section MC 10(2) heading: amended, on 1 April 2008, by section 464(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10(2): amended, on 1 April 2008, by section 464(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10(3) heading: amended, on 1 April 2008, by section 464(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10(4) heading: amended, on 1 April 2008, by section 464(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 357(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MC 10(4): amended, on 1 April 2008, by section 464(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 464(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 464(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10 list of defined terms **family support**: repealed, on 1 April 2008, by section 464(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10 list of defined terms **family tax credit**: inserted, on 1 April 2008, by section 464(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 464(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 10 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 464(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MC 11 Relationship periods and entitlement periods

Meaning

(1) In subparts MB to MF and MZ,—

(a) a **relationship period** means an unbroken period in a tax year, whether the period consists of some or all of the days in the tax year:

(b) an **entitlement period**, for a person, means a period that forms all or part of a relationship period during which

the person meets the continuing requirements set out in section MC 8.

When day included in more than 1 period

(2) If a day is part of more than 1 entitlement period or 1 relationship period, the day is treated as part only of the particular period that the Commissioner determines is fair in the circumstances.

Defined in this Act: Commissioner, entitlement period, relationship period, tax year

Compare: 2004 No 35 ss KD 2AA(1), (11), OB 1 **eligible period**, **specified period**

Subpart MD—Abating WFF tax credits

Subpart MD heading: substituted, on 1 April 2008, by section 465 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Calculating amount of credit

MD 1 Abating WFF tax credit

Tax credit

(1) A person who qualifies under section MC 2 (Who qualifies for entitlements under family scheme?) is entitled to a tax credit (the **abating WFF tax credit**) equal to an amount calculated using the formula in subsection (2).

Formula

(2) The formula is—

family tax credit + (in-work tax credit or child tax credit) + parental tax credit – credit abatement.

Definition of items in formula

(3) In the formula,—

(a) **family tax credit** is the family tax credit for the entitlement period calculated using the formula in section MD 3:

(b) **in-work tax credit or child tax credit** is 1 of the following, as applicable:

(i) the in-work tax credit for the entitlement period calculated using the formula in section MD 10, if the person is entitled to the in-work tax credit for the entitlement period:

(ii) the amount of child tax credit for the entitlement period calculated using the formula in section MZ 2 (Calculation of child tax credit), if the person is not entitled to the in-work tax credit for the entitlement period, and is entitled to the child tax credit for the entitlement period under section MZ 1 (Entitlement to child tax credit):

(c) **parental tax credit** is the amount of parental tax credit for the entitlement period calculated using the formula in section MD 12:

(d) **credit abatement** is the total amount, for the entitlement period, of—

(i) a family credit abatement calculated using the formula in section MD 13(2) other than an amount used as described in section MD 16(3)(b); and

(ii) a parental tax credit abatement calculated using the formula in section MD 16(2).

Extra instalment

(4) This section is overridden by section 80KW of the Tax Administration Act 1994.

Defined in this Act: abating WFF tax credit, amount, child tax credit, entitlement period, family credit abatement, family tax credit, in-work tax credit, parental tax credit, tax credit

Compare: 2004 No 35 s KD 2(1), (2)

Section MD 1 heading: substituted, on 1 April 2008, by section 466(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(1): amended, on 1 April 2008, by section 466(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(2) formula: amended, on 1 April 2008, by section 466(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(2) formula: amended, on 1 April 2008, by section 466(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(2) formula: amended, on 1 April 2008, by section 466(3)(c) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(3)(a): amended, on 1 April 2008, by section 466(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(3)(b): amended, on 1 April 2008, by section 466(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(3)(b)(i): amended, on 1 April 2008, by section 466(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(3)(b)(ii): amended, on 1 April 2008, by section 466(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1(3)(d): substituted, on 1 April 2008, by section 466(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 466(7)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1 list of defined terms **family support**: repealed, on 1 April 2008, by section 466(7)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1 list of defined terms **family tax credit**: inserted, on 1 April 2008, by section 466(7)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 466(7)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 1 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 466(7)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 2 Calculating net contributions to credits

When this section applies

(1) This section applies when the Commissioner calculates the amounts making up the family tax credit, the in-work tax credit, the child tax credit, and the parental tax credit that relate to a period under this subpart.

Calculating net contributions

(2) The Commissioner must—

- (a) treat the family tax credit, the in-work tax credit, the child tax credit, and the parental tax credit as tax credits corresponding to the period; and
- (b) treat as a debit the amount of family credit abatement corresponding to the period; and
- (c) apply the amount of the family credit abatement corresponding to the period,—
  - (i) first, to reduce the amount of the family tax credit corresponding to the period; and
  - (ii) second, to reduce the amount of the in-work tax credit or, as applicable, the child tax credit corresponding to the period; and

(iii) third, to reduce the amount of the parental tax credit corresponding to the period.

Credit abatements

(3) Section MD 16 overrides this section in relation to the amount of the family credit abatement and the parental tax credit abatement.

Defined in this Act: amount, child tax credit, Commissioner, family credit abatement, family tax credit, in-work tax credit, parental tax credit, tax credit

Compare: 2004 No 35 s KD 2A

Section MD 2(1): amended, on 1 April 2008, by section 467(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2(2)(a): amended, on 1 April 2008, by section 467(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2(2)(c)(i): amended, on 1 April 2008, by section 467(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2(2)(c)(ii): amended, on 1 April 2008, by section 467(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2(3) heading: added, on 1 April 2008, by section 467(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2(3): added, on 1 April 2008, by section 467(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2 list of defined terms **family support**: repealed, on 1 April 2008, by section 467(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2 list of defined terms **family tax credit**: inserted, on 1 April 2008, by section 467(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 467(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 2 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 467(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Family tax credit

Heading: substituted, on 1 April 2008, by section 468(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 3 Calculation of family tax credit

Entitlement

(1) A person who qualifies under section MC 2 (Who qualifies for entitlements under family scheme?) is entitled to an amount

of family tax credit calculated using the formula in subsection (2).

Formula

(2) The formula is—

$$\text{prescribed amount} \times \frac{\text{days}}{365}.$$

Definition of items in formula

(3) The items in the formula are defined in subsections (4) and (5).

Prescribed amount

(4) **Prescribed amount** is the sum of the following amounts:

(a) for the eldest dependent child for whom the person is a principal caregiver during the entitlement period, 1 of the following, as applicable:

(i) $4,578, if the child is younger than 16:

(ii) $5,303, if the child is 16 or older:

(iii) a weighted average of the amounts in subparagraphs (i) and (ii) that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period; and

(b) for each dependent child for whom the person is a principal caregiver during the entitlement period, other than the eldest dependent child, 1 of the following, as applicable:

(i) $3,182, if the child is younger than 13:

(ii) $3,629, if the child is 13, 14, or 15:

(iii) $4,745, if the child is 16 or older:

(iv) a weighted average of the amounts in subparagraphs (i) and (ii) that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 13 during the entitlement period:

(v) a weighted average of the amounts in subparagraphs (ii) and (iii) that reflects the proportion of the entitlement period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period.

Days

(5) **Days** is the number of days in the entitlement period.

Order in Council increasing amount

(6) In subsection (4)(a)(i) and (ii), and (b)(i) to (iii), the amount referred to may be increased as prescribed by the Governor-General by Order in Council under section MF 7 (Orders in Council).

When another person cares for dependent child

(7) A family tax credit must be reduced in proportion to the time in the entitlement period that a dependent child spends in the exclusive care of another person who qualifies under section MC 2.

Defined in this Act: amount, child, dependent child, entitlement period, family tax credit, principal caregiver

Compare: 2004 No 35 ss KD 2(3), KD 2AA(3)

Section MD 3 heading: amended, on 1 April 2008, by section 468(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 3(1): amended, on 1 April 2008, by section 468(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 3(4)(a)(i): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 61(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(a)(i): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 61(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(a)(i): amended, on 1 April 2009, by section 5(2)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(a)(i): amended (with effect from 1 April 2008), on 29 May 2008, by section 5(1)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(a)(ii): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 61(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(a)(ii): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 61(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(a)(ii): amended, on 1 April 2009, by section 5(2)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(a)(ii): amended (with effect from 1 April 2008), on 29 May 2008, by section 5(1)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(b)(i): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 61(2)(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(b)(i): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 61(1)(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(b)(i): amended, on 1 April 2009, by section 5(2)(c) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(b)(i): amended (with effect from 1 April 2008), on 29 May 2008, by section 5(1)(c) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(b)(ii): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 61(2)(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(b)(ii): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 61(1)(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(b)(ii): amended, on 1 April 2009, by section 5(2)(d) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(b)(ii): amended (with effect from 1 April 2008), on 29 May 2008, by section 5(1)(d) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(b)(iii): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 61(2)(e) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(b)(iii): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 61(1)(e) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MD 3(4)(b)(iii): amended, on 1 April 2009, by section 5(2)(e) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(4)(b)(iii): amended (with effect from 1 April 2008), on 29 May 2008, by section 5(1)(e) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 3(7): amended, on 1 April 2008, by section 468(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 3 list of defined terms **family support**: repealed, on 1 April 2008, by section 468(5)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MC 3 list of defined terms **family tax credit**: inserted, on 1 April 2008, by section 468(5)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

In-work tax credit

Heading: substituted, on 1 April 2008, by section 469(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 4 Entitlement to in-work tax credit

Requirements

(1) A person is entitled to an in-work tax credit for a child if, for an entitlement period, the person meets the 5 requirements of sections MD 5 to MD 9.

When another person entitled to in-work tax credit or child tax credit

(2) If 2 persons are entitled to an in-work tax credit or a child tax credit for a child for an entitlement period, the entitlement of each is not affected by the entitlement of the other person.

Defined in this Act: child, entitlement period, in-work tax credit

Compare: 2004 No 35 s KD 2AAA(1), (3A)

Section MD 4 heading: amended, on 1 April 2008, by section 469(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 4(1): amended, on 1 April 2008, by section 469(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 4(2) heading: amended, on 1 April 2008, by section 469(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 4(2): amended, on 1 April 2008, by section 469(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 4 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 469(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 4 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 469(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 5 First requirement: person's age

The first requirement for an entitlement to an in-work tax credit is that the person referred to in section MD 4 is 16 or older.

Defined in this Act: in-work tax credit

Compare: 2004 No 35 s KD 2AAA(1)(a)

Section MD 5: amended, on 1 April 2008, by section 470(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 5 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 470(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 5 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 470(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 6 Second requirement: principal care

When child financially dependent

(1) The second requirement for an entitlement to an in-work tax credit is that the person referred to in section MD 4 is the principal caregiver for a child who is financially dependent on them.

Inclusions

(2) A child for whom payments are made under section 363 of the Children, Young Persons, and Their Families Act 1989, or a child for whom a benefit is paid under section 28 or 29 of the Social Security Act 1964, is treated as financially dependent on the person.

Relationship with section MC 8

(3) Subsection (2) overrides section MC 8 (Continuing requirements).

Defined in this Act: child, in-work tax credit, principal caregiver

Compare: 2004 No 35 s KD 2AAA(1)(b)

Section MD 6(1): amended, on 1 April 2008, by section 471(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 6(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 358(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 6(3): added (with effect on 1 April 2008), on 6 October 2009, by section 358(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 6 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 471(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 6 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 471(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 7 Third requirement: residence

Third requirement

(1) The third requirement for an entitlement to an in-work tax credit is that the person or child referred to in section MD 4

meet the residence requirements of subsections (2) and (3), as applicable.

When person meets residence requirements

(2) The person meets the residence requirements of subsection (1) if the person—

(a) is a New Zealand resident who has been both resident and present in New Zealand for a continuous period of 12 months at any time, and is tax resident and resident in New Zealand on the date on which a tax credit arises under section MD 1; and

(b) is neither a transitional resident, nor the spouse, civil union partner, or de facto partner of a transitional resident.

When child meets residence requirements

(3) The child meets the residence requirements of subsection (1) if the child is both resident and present in New Zealand for the entitlement period.

Defined in this Act: child, civil union partner, de facto partner, entitlement period, in-work tax credit, New Zealand, New Zealand resident, resident, spouse, tax credit, transitional resident

Compare: 2004 No 35 s KD 2AAA(1)(c), (3), (4)

Section MD 7(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 359(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 7(1): amended, on 1 April 2008, by section 472(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 7 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 472(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 7 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 472(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 8 Fourth requirement: person not receiving benefit

The fourth requirement for an entitlement to an in-work tax credit is that the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, do not receive—

(a) an income-tested benefit; or

(b) a basic grant and an independent circumstances grant made under regulations made under section 193 of the

Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections; or

(c) a parent's allowance under section 32(2) of the War Pensions Act 1954.

Defined in this Act: civil union partner, de facto partner, income-tested benefit, in-work tax credit, spouse

Compare: 2004 No 35 s KD 2AAA(1)(e)

Section MD 8: amended, on 1 April 2008, by section 473(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 8 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 473(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 8 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 473(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 9 Fifth requirement: full-time earner

Income from employment or compensation

(1) The fifth requirement for an entitlement to an in-work tax credit is that either or both the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, is normally a full-time earner receiving income from a work activity, and derives—

(a) income as set out in subsections (2) and (3) as a fulltime earner; or

(b) an amount of compensation described in subsection (4).

Income

(2) The income referred to in subsection (1)(a) is—

(a) a PAYE income payment that is—

(i) not excluded under subsection (3), although it does not matter if the person also derives income of the type described in subsection (3); and

(ii) not a benefit or allowance described in section MD 8; or

(b) income to which section RD 3(2) to (4) (PAYE income payments) applies; or

(c) income from a business carried on for profit; or

(d) an amount paid or benefit provided—

(i) by a person (the **claimant**), who receives a personal service rehabilitation payment from which

an amount of tax has been withheld at the rate specified in schedule 4, part I (Rates of tax for schedular payments) or under section RD 18 (Schedular payments without notification); and

(ii) to another person for providing to the claimant a key aspect of social rehabilitation referred to in paragraph (c) of the definition of **personal service rehabilitation payment** in section YA 1 (Definitions).

Exclusions from income

(3) The following PAYE income payments are excluded from income under subsection (2):

(a) a payment referred to in paragraphs (a) to (c) of the definition of **accident compensation earnings-related payment**:

(b) a PAYE income payment referred to in section RD 5(6)(a) (Salary or wages), other than a parental leave payment referred to in section CF 1 (Benefits, pensions, compensation, and government grants):

(c) a PAYE income payment referred to in section RD 5(6)(bb), (bc), or (bd):

(d) a schedular payment that is a contract payment for a contract activity or service of a non-resident contractor:

(e) an amount paid as a result of incapacity, suffered before 1 January 2006, due to personal injury by accident within the meaning of section 26 of the Accident Compensation Act 2001.

Compensation payments for personal injury

(4) A person meets the fifth requirement if—

(a) they receive a child tax credit for an entitlement period ending on 31 March 2006; and

(b) on or after 1 January 2006, they or their spouse, civil union partner, or de facto partner suffers an incapacity due to personal injury by accident within the meaning of section 26 of the Accident Compensation Act 2001; and

(c) weekly compensation within the meaning of section 6 of the Accident Compensation Act 2001, is or will be paid for the incapacity; and

(d) the person or their spouse, civil union partner, or de facto partner would have met the fifth requirement in deriving income as a full-time earner under subsection (1)(a) and been eligible for the tax credit calculated using the formula in section MD 10 at the time of the incapacity had this section come into force before the date of the incapacity.

Absence from work due to birth of child

(5) Despite subsection (1), a person also meets the fifth requirement if they are normally a full-time earner as described in subsection (1)(a) but, in a 1-week period, they do not work, or work less than, the number of hours required to be a full-time earner because of the birth of a child. However, this subsection applies only if the person is entitled to receive the parental tax credit for the child.

Defined in this Act: amount, business, child, child tax credit, civil union partner, contract activity or service, contract payment, de facto partner, entitlement period, full-time earner, income, income from employment, in-work tax credit, non-resident contractor, parental tax credit, pay, PAYE income payment, schedular payment, spouse, tax credit

Compare: 2004 No 35 s KD 2AAA(1)(d), (5)–(8)

Section MD 9(1): amended, on 1 April 2008, by section 474(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 9(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 360(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 9(2)(c): amended (with effect on 1 July 2008), on 6 October 2009, by section 360(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 9(2)(d): added (with effect on 1 July 2008), on 6 October 2009, by section 360(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 9(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 360(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 9(3)(c): amended (with effect on 5 January 2010), on 29 August 2011, by section 109 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MD 9(3)(e): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section MD 9(4)(b): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section MD 9(4)(c): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section MD 9 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 474(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 9 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 474(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 10 Calculation of in-work tax credit

Entitlement

(1) A person who meets the requirements of section MD 4 is entitled to an in-work tax credit calculated using the formula in subsection (2).

Formula

(2) The formula is—

$$(\text{amount A} + (\text{amount B} \times (\text{children} - 3))) \times \frac{\text{weekly periods}}{52.}$$

Definition of items in formula

(3) In the formula,—

(a) **amount A** is $3,120:

(b) **amount B** is $780:

(c) **children** is the greater of—

(i) 3; and

(ii) the number of children for whom the person is allowed the in-work tax credit:

(d) **weekly periods**—

(i) for 2 or more entitlement periods forming 1 continuous period, is the number of whole periods of 1 week in the continuous period for which the person or their spouse, civil union partner, or de facto partner has, from the work activity, income to which MD 9(2) refers:

(ii) for an entitlement period to which paragraph (i) does not apply, is the number of whole periods of 1 week in the entitlement period for which the person or their spouse, civil union partner, or de facto partner has, from the work activity, income to which section MD 9(2) refers.

Order in Council increasing amount

(4) In subsection (3)(a) and (b), the amount referred to may be increased as prescribed by the Governor-General by Order in Council under section MF 7 (Orders in Council).

Defined in this Act: amount, child, civil union partner, de facto partner, entitlement period, in-work tax credit, spouse

Compare: 2004 No 35 s KD 2AAA(2)

Section MD 10 heading: amended, on 1 April 2008, by section 475(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 10(1): amended, on 1 April 2008, by section 475(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 10(3)(c)(ii): amended, on 1 April 2008, by section 475(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 10(3)(d)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 361(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MD 10 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 475(4)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 10 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 475(4)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Parental tax credit

MD 11 Entitlement to parental tax credit

When this section applies

(1) This section applies when—

(a) a person qualifies under section MC 2 (Who qualifies for entitlements under family scheme?) in relation to a dependent child; and

(b) neither the person nor their spouse, civil union partner, or de facto partner receives—

(i) a social assistance payment or has a suspended entitlement to an income-tested benefit at any time during the first 56 days after the date of the dependent child's birth (the **parental entitlement period**); or

(ii) a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 at any time for the child.

Entitlement

(2) The person is entitled to a parental tax credit for the parental entitlement period.

If dependent child dies during parental entitlement period

(3) The person continues to be entitled to the parental tax credit if—

(a) the dependent child dies during the parental entitlement period; and

(b) the person and their spouse, civil union partner, or de facto partner otherwise meet the requirements of subsection (1).

When another person cares for dependent child

(4) The parental tax credit must be reduced in proportion to the time in the parental entitlement period that a dependent child spends in the exclusive care of another person who qualifies under section MC 2.

Relationship with section 2B of Parental Leave and Employment Protection Act 1987

(5) Section 2B of the Parental Leave and Employment Protection Act 1987 applies for the purposes of subsection (1)(b) if a person—

(a) gives birth to 2 or more children as a result of 1 pregnancy; or

(b) assumes the care of 2 or more children with a view to adoption.

Payment of parental tax credit

(6) The parental tax credit is paid to the person either—

(a) as a tax credit in an end-of-year assessment; or

(b) in the 56 days after the date on which an application is made if—

(i) the person applies to receive the parental tax credit by instalment under section MF 1 (Application for payment of tax credit by instalment); and

(ii) at any time during the period of 56 days, the person and their spouse, civil union partner, or de facto partner do not receive a social assistance

payment and do not have a suspended entitlement to an income-tested benefit.

Defined in this Act: assessment, civil union partner, de facto partner, dependent child, income-tested benefit, parental entitlement period, parental tax credit, social assistance payment, spouse, tax credit

Compare: 2004 No 35 ss KD 2AA(3), KD 2AB

MD 12 Calculation of parental tax credit

Entitlement

(1) A person who meets the requirements of section MD 11 is entitled to a parental tax credit calculated using the formula in subsection (2).

Formula

(2) The formula is—

$$\text{prescribed amount} \times \frac{\text{days}}{56.}$$

Definition of items in formula

(3) In the formula,—

(a) **prescribed amount** is $1,200 for each dependent child born on or after 1 October 1999:

(b) **days** is the number of days in the parental entitlement period, up to a maximum of 56 days, for which the person and their spouse, civil union partner, or de facto partner do not receive a social assistance payment and do not have a suspended entitlement to an income-tested benefit.

Order in Council increasing amount

(4) In subsection (3)(a), the amount referred to may be increased as prescribed by the Governor-General by Order in Council under section MF 7 (Orders in Council).

Defined in this Act: amount, civil union partner, de facto partner, dependent child, income-tested benefit, parental entitlement period, parental tax credit, social assistance payment, spouse

Compare: 2004 No 35 s KD 2(5)

Credit abatement

Heading: substituted, on 1 April 2008, by section 476(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 13 Calculation of family credit abatement

When this section applies

(1) This section applies for the purposes of section MD 1 to determine the amount of a person's family credit abatement for an entitlement period.

Formula

(2) The formula is—

$$\text{full-year abatement} \times \frac{\text{days}}{365}.$$

Definition of items in formula

(3) In the formula,—

(a) **full-year abatement** is,—

(i) if the person has no spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income for the relationship period containing the entitlement period is more than $36,827, 20 cents for each complete dollar of the excess; or

(ii) if the person has a spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for the relationship period containing the entitlement period is more than $36,827, 20 cents for each complete dollar of the excess:

(b) **days** is the number of days in the entitlement period excluding the days of any calendar months in which the person receives protected family tax credit as described in section MD 14.

When 56-day period includes 31 March

(4) If a person who qualifies under section MC 2 (Who qualifies for entitlements under family scheme?) receives fortnightly instalments of the parental tax credit in a 56-day period that includes 31 March, the formula is applied so that—

(a) instalments of the parental tax credit received in the first tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil

union partner, or de facto partner, or the sum of those incomes for that tax year; and

(b) instalments of the parental tax credit received in the second tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year.

Order in Council increasing amount

(5) In subsection (3)(a), the amounts referred to may be increased as prescribed by the Governor-General by Order in Council under section MF 7 (Orders in Council).

Defined in this Act: amount, civil union partner, de facto partner, entitlement period, family credit abatement, family scheme income, parental tax credit, protected family tax credit, relationship period, spouse, tax year

Compare: 2004 No 35 s KD 2(6), (7)

Section MD 13(3)(a)(i): amended, on 1 April 2009, by section 6(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 13(3)(a)(i): amended (with effect from 1 April 2008), on 29 May 2008, by section 6(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 13(3)(a)(ii): amended, on 1 April 2009, by section 6(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 13(3)(a)(ii): amended (with effect from 1 April 2008), on 29 May 2008, by section 6(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MD 13(3)(b): amended, on 1 April 2008, by section 476(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 13 list of defined terms **protected family support**: repealed, on 1 April 2008, by section 476(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 13 list of defined terms **protected family tax credit**: inserted, on 1 April 2008, by section 476(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 14 Person receiving protected family tax credit

Requirements

(1) For the purposes of section MD 13(3)(b), a person who receives protected family tax credit for a calendar month in an entitlement period, is a person who, in the calendar month,—

(a) has no spouse, civil union partner, or de facto partner, receives an income-tested benefit, and derives family scheme income that is less than the amount set out in section MD 13(3)(a)(i):

(b) has a spouse, civil union partner, or de facto partner, receives an income-tested benefit, and derives family scheme income that together with the family scheme income of their spouse is less in total than the amount set out in section MD 13(3)(a)(ii).

Annualised equivalent

(2) Section MB 2 (Adjustment for period that is less or more than 1 year) applies to adjust the amount of family scheme income to provide an annualised equivalent.

Defined in this Act: amount, civil union partner, de facto partner, entitlement period, family scheme income, income-tested benefit, protected family tax credit, spouse

Compare: 2004 No 35 s KD 2(6B)

Section MD 14 heading: amended, on 1 April 2008, by section 477(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 14(1): amended, on 1 April 2008, by section 477(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 14 list of defined terms **protected family support**: repealed, on 1 April 2008, by section 477(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MD 14 list of defined terms **protected family tax credit**: inserted, on 1 April 2008, by section 477(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MD 15 Family scheme income for purposes of section MD 14

For the purposes of section MD 14, in the calculation of family scheme income,—

(a) section MB 1(1)(a) and (b) (Adjustments for calculation of family scheme income) does not apply; and

(b) any income from employment that is derived in the calendar month as a result of an extra pay period that occurs in that month is disregarded; and

(c) for a person who derives, for part of an income year, income to which section RD 3(2) to (4) (PAYE income payments) applies, or income from a business, the assessable income and any expenditure incurred in deriving that income that is allowed as a deduction are treated

as derived and incurred, respectively, at a uniform daily rate throughout that part of the income year.

Defined in this Act: assessable income, business, deduction, family scheme income, income, income from employment, income year, pay period

Compare: 2004 No 35 s KD 2(6C)

MD 16 Calculation of parental tax credit abatement

When this section applies

(1) This section applies when—

(a) a person is entitled under section MD 11 to a parental tax credit for a parental entitlement period; and

(b) they choose to have the credit paid in a lump sum; and

(c) the birth occurs within 56 days of the end of the tax year.

Amount of abatement

(2) Despite section MD 2, the amount of the person's parental tax credit abatement for the parental entitlement period is calculated using the formula—

$$\text{full-year abatement} \times \frac{56}{365} - \text{amount used.}$$

Definition of items in formula

(3) In the formula,—

(a) **full-year abatement** has the same meaning as the item full-year abatement in section MD 13(3)(a):

(b) **amount used** means an amount of family credit abatement under section MD 13 for an entitlement period that ends on the last day of the tax year to the extent to which the abatement would be applied under section MD 2(2)(c)(i) and (ii) in calculating a net contribution.

Defined in this Act: amount, entitlement period, family credit abatement, parental entitlement period, parental tax credit, pay, tax year

Compare: 2004 No 35 s KD 2B

Section MD 16: added, on 1 April 2008, by section 478 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart ME—Minimum family tax credit

Subpart ME heading: substituted, on 1 April 2008, by section 479 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

ME 1 Minimum family tax credit

Tax credit

(1) A person who qualifies under sections MC 3 to MC 6 (which relate to the qualifying criteria) is entitled to a tax credit (the **minimum family tax credit**) for an entitlement period equal to an amount calculated using the formula in subsection (2).

Formula

(2) The formula is—

$$(\text{prescribed amount} - \text{net family scheme income}) \times \frac{\text{weekly periods}}{52.}$$

Definition of items in formula

(3) In the formula,—

(a) **prescribed amount** is $21,216:

(b) **net family scheme income** is the net family scheme income, calculated using the formula in section ME 3, for a relationship period containing the entitlement period, of—

(i) the person; or

(ii) their spouse, civil union partner, or de facto partner; or

(iii) the person and their spouse, civil union partner, or de facto partner:

(c) **weekly periods** is the number of periods of 1 week in the entitlement period for which the person is a fulltime earner.

Order in Council increasing amount

(4) In subsection (3)(a), the amount referred to may be increased as prescribed by the Governor-General by Order in Council under section MF 7 (Orders in Council).

Relationship with section 80KW of the Tax Administration Act 1994

(5) This section is overridden by section 80KW of the Tax Administration Act 1994.

Defined in this Act: amount, civil union partner, de facto partner, entitlement period, full-time earner, minimum family tax credit, net family scheme income, relationship period, spouse, tax credit

Compare: 2004 No 35 s KD 3(2)–(5)

Section ME 1 heading: substituted, on 1 April 2008, by section 480(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 1(1): amended, on 1 April 2008, by section 480(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 1(2) formula: substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 113(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section ME 1(3)(a): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 62(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section ME 1(3)(a): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 62(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section ME 1(3)(a): amended, on 1 April 2010 (applying in respect of the 2010–11 tax year and later), by clause 3(1) of the Income Tax (Minimum Family Tax Credit) Order 2009 (SR 2009/367).

Section ME 1(3)(a): amended, on 1 April 2009, by clause 3(1) of the Income Tax (Minimum Family Tax Credit) Order 2008 (SR 2008/384).

Section ME 1(3)(b): amended, on 1 April 2008, by section 480(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 1 list of defined terms **family tax credit**: repealed, on 1 April 2008, by section 480(4)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 1 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 480(4)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

ME 2 Meaning of employment for this subpart

Meaning

(1) For the purposes of the calculation of a minimum family tax credit, **employment** in the definition of **full-time earner**, means the activity of a person that gives rise, or will give rise, to an entitlement to a PAYE income payment other than—

(a) a payment of any of the kinds referred to in section RD 5(3) and (6)(b), (bb), (bc), (bd), and (c) (Salary or wages):

(b) a schedular payment that is a contract payment for a contract activity or service of a non-resident contractor:

(c) a payment made by a close company to a person who is a major shareholder of the close company:

(d) a payment made by a person to their spouse, civil union partner, or de facto partner:

(e) a payment made by a business carried on by 2 or more persons jointly, whether in partnership or otherwise, to a spouse, civil union partner, or de facto partner of 1 of the persons in business.

When subsections (3) and (4) apply

(2) Subsections (3) and (4) apply when a person—

(a) receives a PAYE income payment; and

(b) on the date of receipt—

(i) does not undertake any employment; or

(ii) performs an activity to an extent less than would give rise to an entitlement to the PAYE income payment.

Commissioner's determination

(3) The Commissioner may treat the person as having undertaken the employment or performed the activity that would have given rise to the PAYE income payment.

Considerations

(4) The Commissioner must have regard to—

(a) the date of receipt of the PAYE income payment; and

(b) the pay period in which the PAYE income payment occurs; and

(c) the circumstances giving rise to the PAYE income payment; and

(d) any other matters that the Commissioner considers relevant.

Defined in this Act: business, civil union partner, close company, Commissioner, contract activity or service, contract payment, de facto partner, employment, full-time earner, minimum family tax credit, major shareholder, non-resident contractor, pay, pay period, PAYE income payment, schedular payment, spouse

Compare: 2004 No 35 ss KD 3(1) **employment**, KD 3A(10)

Section ME 2(1): amended, on 1 April 2008, by section 481(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 2(1)(a): amended (with effect on 5 January 2010), on 29 August 2011, by section 110 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section ME 2 list of defined terms **family tax credit**: repealed, on 1 April 2008, by section 481(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 2 list of defined terms **full-time earner**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 362 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ME 2 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 481(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

ME 3 Meaning of net family scheme income

When this section applies

(1) This section applies for the purposes of this subpart.

Formula

(2) **Net family scheme income**, for a person and a relationship period, means the amount calculated using the formula—

adjusted income – adjusted liability + amount received – amount paid.

Definition of items in formula

(3) In the formula,—

(a) **adjusted income** is—

(i) the amount of the person's net income under section MB 1 (Adjustments for calculation of family scheme income) for the tax year in which the relationship period falls that is attributable to the number of weeks in which the person is a full-time earner, adjusted to an annualised amount that is found by multiplying the amount by the fraction that is 52 divided by the number of weeks in the relationship period for which the person is a full-time earner; and

(ii) calculated without reference to the amounts referred to in section MB 1(2) and (3):

(b) *[Repealed]*

(c) **adjusted liability** is the amount that would be the person's income tax liability—

(i) treating the amount of adjusted income under paragraph (a) as if it were the person's net income:

(ii) *[Repealed]*

(d) **amount received** is the amount referred to in section MB 1(2) for the tax year:

(e) **amount paid** is the amount of the deduction referred to in section MB 1(3) for the tax year.

Defined in this Act: amount, deduction, full-time earner, income tax liability, net income, pay, relationship period, tax credit, tax year

Compare: 2004 No 35 s OB 1 net specified income

Section ME 3: added, on 1 April 2008, by section 482 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section ME 3(2) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 363(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ME 3(3)(a)(i): substituted (with effect on 1 April 2008), on 6 October 2009, by section 363(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ME 3(3)(b): repealed (with effect on 1 April 2008), on 6 October 2009, by section 363(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ME 3(3)(c)(i): amended (with effect from 1 April 2008), on 29 May 2008, by section 34(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section ME 3(3)(c)(ii): repealed (with effect from 1 April 2008), on 29 May 2008, by section 34(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Subpart MF—Payment of credits

MF 1 Application for payment of tax credit by instalment

When this section applies

(1) This section applies when—

(a) a person who is a principal caregiver expects to be entitled, throughout a selected period, to a tax credit under section MD 1 (Abating WFF tax credit) or, as applicable, sections MD 1 and ME 1 (Minimum family tax credit); and

(b) section MF 2 does not apply to the person; and

(c) the person wants the tax credit to be paid by instalment before the end of the tax year that contains the selected period.

Application

(2) The person may ask the Commissioner to pay the tax credit by instalment to them.

Meaning of selected period

(3) **Selected period** is a relationship period chosen by the person for the purposes of this section and sections 80KA to 80KG of the Tax Administration Act 1994.

Defined in this Act: Commissioner, pay, principal caregiver, relationship period, selected period, tax credit, tax year

Compare: 2004 No 35 s KD 5(1), (1A)

Section MF 1(1)(a): amended, on 1 April 2008, by section 483 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MF 2 When person not entitled to payment by instalment

When this section applies

(1) This section applies when—

(a) a person—

(i) expects that in a relationship period they will be entitled to receive an income-tested benefit; or

(ii) applies under section 80KP of the Tax Administration Act 1994 to the chief executive for payment of a tax credit for a period after an income-tested benefit has ended; and

(b) the chief executive—

(i) is authorised by section 80KN of that Act to pay an abating WFF tax credit to the person; and

(ii) does not ask the Commissioner under section 80KQ of that Act to accept from the person an application for a notice of entitlement.

No entitlement

(2) The person is not entitled to apply under section MF 1 for the payment of the tax credit by instalment for the relationship period, and section 80KN applies.

Defined in this Act: abating WFF tax credit, chief executive, Commissioner, income-tested benefit, notice of entitlement, pay, relationship period, tax credit

Compare: 2004 No 35 s KD 5(8)

Section MF 2(1)(b)(i): amended, on 1 April 2008, by section 484(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 2 list of defined terms **abating WFF tax credit**: inserted, on 1 April 2008, by section 484(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 2 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 484(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MF 3 Calculating amount of interim WFF tax credit

When this section applies

(1) This section applies when the Commissioner receives an application under section MF 1 and is required under section 80KD(2) of the Tax Administration Act 1994 to determine the amount of the tax credit to which the person applying would be entitled.

Method for determining family assistance credit

(2) The Commissioner must—

(a) calculate an amount (the **annual amount**) using the formula in subsection (3); and

(b) ascertain the amount (**amount A**) that, in schedule 31, column 2 (Annualised equivalent amount for Part M) is the equivalent of the annual amount represented in schedule 31, column 1; and

(c) calculate the WFF tax credit that the person would be entitled to for the tax year in which the calculation period falls if the family scheme income of the person for the calculation period were equal to amount A.

Formula

(3) The formula is—

$$\text{attributed net income} \times \frac{365}{\text{days}}.$$

Definition of items in formula

(4) In the formula,—

(a) **attributed net income** is equal to such amount of the family scheme income expected to be attributable to the part of the tax year that is the part (the **calculation period**) for which the Commissioner determines that a tax credit is allowable to the person:

(b) **days** is the number of days in the calculation period.

Defined in this Act: amount, Commissioner, family scheme income, tax credit, tax year, WFF tax credit

Compare: 2004 No 35 s KD 5(6)

Section MF 3 heading: amended, on 1 April 2008, by section 485(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 3(2)(c): amended, on 1 April 2008, by section 485(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 3 list of defined terms **family assistance credit**: repealed, on 1 April 2008, by section 485(2)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 3 list of defined terms **WFF tax credit**: inserted, on 1 April 2008, by section 485(2)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MF 4 Requirements for calculating instalment of tax credit

How to calculate instalment

(1) The Commissioner must calculate the amount of an instalment by way of tax credit under section MD 1 (Abating WFF tax credit) or, as applicable, sections MD 1 and ME 1 (Minimum family tax credit)—

(a) as if the calculation period referred to in section MF 3 were a relationship period; and

(b) using—

(i) a value for family scheme income as directed by section MF 3(2)(c); and

(ii) the amounts of family tax credit, in-work tax credit, child tax credit, parental tax credit, family credit abatement, and minimum family tax credit set out in sections MD 3, MD 4, MD 11, MD 12, and ME 1 (which relate to credits).

Instalment shown in complete dollars

(2) An instalment of a tax credit under section MD 1 or, as applicable, sections MD 1 and ME 1, is to be shown in a notice of entitlement in complete dollars.

Defined in this Act: amount, child tax credit, Commissioner, family credit abatement, family scheme income, family tax credit, in-work tax credit, minimum family tax credit, notice of entitlement, parental tax credit, relationship period, tax credit

Compare: 2004 No 35 s KD 5(6A), (7)

Section MF 4(1): amended, on 1 April 2008, by section 486(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 4(1)(b)(ii): amended, on 1 April 2008, by section 486(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 4 list of defined terms **family support**: repealed, on 1 April 2008, by section 486(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 4 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 486(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 4 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 486(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 4 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 486(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MF 4B Calculation of instalments: 1 April 2008 to 30 September 2008

[Repealed]

Section MF 4B: repealed, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 63(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

MF 4C Calculation of instalments: 1 October 2008 to 31 March 2009

[Repealed]

Section MF 4C: repealed, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 63(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

MF 4D Calculation of instalments: 1 April 2010 to 30 September 2010

When this section applies

(1) This section applies for calculating the amount of an instalment by way of tax credit under section MD 1 (Abating WFF tax credit), or as applicable, sections MD 1 and ME 1 (Minimum family tax credit) for the period starting on 1 April 2010 and finishing on 30 September 2010.

Family tax credit formula: section MD 3

(2) The instalments for the relevant tax credit are calculated using, for the calculation of the **family tax credit**, the following formula:

$$\text{prescribed amount} \times \frac{\text{days}}{365.}$$

Definition of items in formula in subsection (2)

(3) The items in the formula are defined in subsections (4) and (5).

Prescribed amount

(4) **Prescribed amount** is the sum of the following amounts:

(a) for the eldest dependent child for whom the person is a principal caregiver during the entitlement period, 1 of the following, as applicable:

(i) $4,487, if the child is younger than 16:

(ii) $5,198, if the child is 16 or older:

(iii) a weighted average of the amounts in subparagraphs (i) and (ii) that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period; and

(b) for each dependent child for whom the person is a principal caregiver during the entitlement period, other than the eldest dependent child, 1 of the following, as applicable:

(i) $3,119, if the child is younger than 13:

(ii) $3,557, if the child is 13, 14, or 15:

(iii) $4,651, if the child is 16 or older:

(iv) a weighted average of the amounts in subparagraphs (i) and (ii) that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 13 during the entitlement period:

(v) a weighted average of the amounts in subparagraphs (ii) and (iii) that reflects the proportion of the entitlement period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period.

Days

(5) **Days** is the number of days in the entitlement period.

When another person cares for dependent child

(6) A family tax credit must be reduced in proportion to the time in the entitlement period that a dependent child spends in the exclusive care of another person who qualifies under section MC 2 (Who qualifies for entitlements under family scheme?).

Family credit abatement formula: section MD 13

(7) The instalments for the relevant tax credit are calculated using, for the calculation of the **family credit abatement**, the following formula:

$$\text{full-year abatement} \times \frac{\text{days}}{365.}$$

Definition of items in formula in subsection (7)

(8) In the formula,—

(a) **full-year abatement** is,—

(i) if the person has no spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income for the relationship period containing the entitlement period is more than $36,827, 20 cents for each complete dollar of the excess; or

(ii) if the person has a spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for the relationship period containing the entitlement period is more than $36,827, 20 cents for each complete dollar of the excess:

(b) **days** is the number of days in the entitlement period excluding the days of any calendar months in which the person receives protected family tax credit as described in section MD 14 (Person receiving protected family tax credit).

When 56-day period includes 31 March

(9) If a person who qualifies under section MC 2 receives instalments of the parental tax credit in a 56-day period that includes 31 March, the formula is applied so that—

(a) instalments of the parental tax credit received in the first tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year; and

(b) instalments of the parental tax credit received in the second tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year.

Relationship with subject matter

(10) Sections MD 14 to MD 16 (which relate to family credit abatement), with necessary modifications, apply to the calculation of the **family credit abatement** in subsection (7).

Minimum family tax credit formula: section ME 1

(11) The instalments for the relevant tax credit are calculated using, for the calculation of the **minimum family tax credit**, the following formula:

$$\text{prescribed amount} - \text{net family scheme income} \times \frac{\text{weekly periods}}{52.}$$

Definition of items in formula in subsection (11)

(12) In the formula,—

(a) **prescribed amount** is $20,800:

(b) **net family scheme income** is the net family scheme income, calculated using the formula in section ME 3 (Meaning of net family scheme income), for a relationship period containing the entitlement period, of—

(i) the person; or

(ii) their spouse, civil union, or de facto partner; or

(iii) the person and their spouse, civil union, or de facto partner:

(c) **weekly periods** is the number of periods of 1 week in the entitlement period for which the person is a full-time earner.

Relationship with subject matter

(13) Sections ME 2 (Meaning of employment for this subpart) and ME 3, with necessary modifications, apply to the calculation of the **minimum family tax credit** in subsection (11).

Defined in this Act: amount, child, civil union partner, de facto partner, dependent child, entitlement period, family credit abatement, family scheme income, family tax credit, full-time earner, minimum family tax credit, net family scheme income, parental tax credit, principal caregiver, protected family tax credit, relationship period, spouse, tax credit, tax year

Section MF 4D: inserted (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 63(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

MF 4E Calculation of instalments: 1 October 2010 to 31 March 2011

When this section applies

(1) This section applies for calculating the amount of an instalment by way of tax credit under section MD 1 (Abating WFF tax credit), or as applicable, sections MD 1 and ME 1 (Minimum family tax credit) for the period starting on 1 October 2010 and finishing on 31 March 2011.

Family tax credit formula: section MD 3

(2) The instalments for the relevant tax credit are calculated using, for the calculation of the **family tax credit**, the following formula:

$$\text{prescribed amount} \times \frac{\text{days}}{365.}$$

Definition of items in formula in subsection (2)

(3) The items in the formula are defined in subsections (4) and (5).

Prescribed amount

(4) **Prescribed amount** is the sum of the following amounts:

(a) for the eldest dependent child for whom the person is a principal caregiver during the entitlement period, 1 of the following, as applicable:

(i) $4,578, if the child is younger than 16:

(ii) $5,303, if the child is 16 or older:

(iii) a weighted average of the amounts in subparagraphs (i) and (ii) that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period; and

(b) for each dependent child for whom the person is a principal caregiver during the entitlement period, other than the eldest dependent child, 1 of the following, as applicable:

(i) $3,182, if the child is younger than 13:

(ii) $3,629, if the child is 13, 14, or 15:

(iii) $4,745, if the child is 16 or older:

(iv) a weighted average of the amounts in subparagraphs (i) and (ii) that reflects the proportion of the period for which those subparagraphs apply to the child, if the child turns 13 during the entitlement period:

(v) a weighted average of the amounts in subparagraphs (ii) and (iii) that reflects the proportion of the entitlement period for which those subparagraphs apply to the child, if the child turns 16 during the entitlement period.

Days

(5) **Days** is the number of days in the entitlement period.

When another person cares for dependent child

(6) A family tax credit must be reduced in proportion to the time in the entitlement period that a dependent child spends in the exclusive care of another person who qualifies under section MC 2 (Who qualifies for entitlements under family scheme?).

Family credit abatement formula: section MD 13

(7) The instalments for the relevant tax credit are calculated using, for the calculation of the **family credit abatement**, the following formula:

$$\text{full-year abatement} \times \frac{\text{days}}{365.}$$

Definition of items in formula in subsection (7)

(8) In the formula,—

(a) **full-year abatement** is,—

(i) if the person has no spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income for the relationship period containing the entitlement period is more than $36,827, 20 cents for each complete dollar of the excess; or

(ii) if the person has a spouse, civil union partner, or de facto partner during the entitlement period, and the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for the relationship period containing the entitlement period is more than $36,827, 20 cents for each complete dollar of the excess:

(b) **days** is the number of days in the entitlement period excluding the days of any calendar months in which the person receives protected family tax credit as described in section MD 14 (Person receiving protected family tax credit).

When 56-day period includes 31 March

(9) If a person who qualifies under section MC 2receives instalments of the parental tax credit in a 56-day period that includes 31 March, the formula is applied so that—

(a) instalments of the parental tax credit received in the first tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year; and

(b) instalments of the parental tax credit received in the second tax year are abated against the person's family scheme income, the family scheme income of their spouse, civil union partner, or de facto partner, or the sum of those incomes for that tax year.

Relationship with subject matter

(10) Sections MD 14 to MD 16 (which relate to family credit abatement), with necessary modifications, apply to the calculation of the **family credit abatement** in subsection (7).

Minimum family tax credit formula: section ME 1

(11) The instalments for the relevant tax credit are calculated using, for the calculation of the **minimum family tax credit**, the following formula:

$$\text{prescribed amount} - \text{net family scheme income} \times \frac{\text{weekly periods}}{52.}$$

Definition of items in formula in subsection (11)

(12) In the formula,—

(a) **prescribed amount** is $21,216:

(b) **net family scheme income** is the net family scheme income, calculated using the formula in section ME 3 (Meaning of net family scheme income), for a relationship period containing the entitlement period, of—

(i) the person; or

(ii) their spouse, civil union, or de facto partner; or

(iii) the person and their spouse, civil union, or de facto partner:

(c) **weekly periods** is the number of periods of 1 week in the entitlement period for which the person is a full-time earner.

Relationship with subject matter

(13) Sections ME 2 (Meaning of employment for this subpart) and ME 3, with necessary modifications, apply to the calculation of the **minimum family tax credit** in subsection (11).

Defined in this Act: amount, child, civil union partner, de facto partner, dependent child, entitlement period, family credit abatement, family scheme income, family tax credit, full-time earner, minimum family tax credit, net family scheme income, parental tax credit, principal caregiver, protected family tax credit, relationship period, spouse, tax credit, tax year

Section MF 4E: inserted (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 63(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

MF 5 Recovery of overpaid tax credit

When this section applies

(1) This section applies when the Commissioner considers that the amount of a tax credit under section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit) set off or refunded to a person for a tax year is more than the proper amount.

Recovery of overpayment

(2) The Commissioner may recover the excess as if it were income tax payable by the person. However, if, throughout the tax year, the person is in a relationship with a spouse, civil union partner, or de facto partner, the person and that spouse or partner are jointly and severally liable for the payment of the excess.

Shortfall penalties

(3) The person is not liable for a shortfall penalty under Part 9 of the Tax Administration Act 1994 in relation to an amount that the Commissioner may recover under this section if the amount set off or refunded is more than the proper amount because the person—

(a) applied for a tax credit under section 41 of that Act before 1 April 2007; and

(b) was eligible to be a transitional resident at the time of the application; and

(c) notified the Commissioner before 1 June 2007 that they did not wish the application to be treated under section HR 8(5) (Transitional residents) as an election under section HR 8(4).

Defined in this Act: amount, civil union partner, Commissioner, de facto partner, income tax, notify, pay, shortfall penalty, spouse, tax credit, tax year, transitional resident

Compare: 2004 No 35 s KD 4(4)

Section MF 5(1): amended, on 1 April 2008, by section 487 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 5(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 364(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

MF 6 Overpayment or underpayment of tax credit

When this section applies

(1) This section applies for the purposes of sections LA 3 and LA 4 (which relate to the treatment of a person's total tax credits) when—

(a) a person has an entitlement to a tax credit under section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit); and

(b) the person applies under section MF 1 to have the tax credit paid by instalment; and

(c) the instalments of the estimated tax credit, or the total of those instalments, differs from the tax credit, or total tax credit, to which the person is entitled under the family scheme because the instalment has, or the total instalments have, either been overpaid resulting in an excess or underpaid resulting in a shortfall; and

(d) the Commissioner—

(i) gives the person a notice of entitlement for the tax year because an instalment of the estimated tax credit has been paid to the person during the tax year; or

(ii) finds out, otherwise than by way of a notice of entitlement, that an instalment of the estimated tax credit has been paid to the person for the tax year.

Overpayment

(2) For an overpayment of the person's entitlement, an amount equal to the excess is—

(a) added to the tax payable by the person for the tax year; and

(b) recoverable by the Commissioner under section 80KLB of the Tax Administration Act 1994 as if it were tax payable by the person for the tax year.

Underpayment

(3) For an underpayment of the entitlement, an amount equal to the shortfall is used to satisfy the person's income tax liability, and any balance remaining is treated as tax paid in excess and

available for use under section LA 7(2) (Remaining refundable credits: tax credits under social policy schemes).

Defined in this Act: amount, Commissioner, family scheme, income tax liability, notice of entitlement, pay, tax, tax credit, tax year

Section MF 6: substituted (with effect on 1 April 2008), on 6 October 2009, by section 365(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MF 6(1)(a): amended, on 1 April 2008, by section 488 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MF 7 Orders in Council

What may be done by Order in Council

(1) The Governor-General may, by Order in Council,—

(a) increase the amounts in section MD 3(4)(a)(i) and (b)(i) and (ii) (Calculation of family tax credit) by amounts that—

(i) correspond to the movement in the New Zealand Consumer Price Index that has not yet been taken into account by an increase:

(ii) are rounded up to the nearest whole dollar, without affecting the calculation of later increases made under this paragraph:

(ab) increase the amount in—

(i) section MD 3(4)(a)(ii) to equal the corresponding amount in section MD 3(4)(a)(i), if the amount in section MD 3(4)(a)(i) would otherwise be the greater:

(ii) section MD 3(4)(b)(iii) to equal the corresponding amount in section MD 3(4)(b)(ii), if the amount in section MD 3(4)(b)(ii) would otherwise be the greater:

(b) increase the amounts appearing as items in the formula for the in-work tax credit set out in section MD 10(3) (Calculation of in-work tax credit):

(c) increase the amount appearing as an item in the formula for the parental tax credit set out in section MD 12(3) (Calculation of parental tax credit):

(cb) increase the amounts appearing as the amount of the threshold set out in section MD 13(3):

(d) increase the amount appearing as an item in the formula for the minimum family tax credit in section ME 1(3) (minimum family tax credit):

(e) replace schedule 31 (Annualised equivalent amount for Part M).

Order in Council under subsection (1)(a): requirements

(2) An Order in Council under subsection (1)(a),—

(a) in the case of the first Order in Council made under subsection (1)(a), must be made when the total percentage increase in the movement in the New Zealand Consumers Price Index measured from that applying on 1 October 2008 is 5% or more:

(b) in the case of a subsequent Order in Council under subsection (1)(a), must be made when the total percentage increase in the movement in the New Zealand Consumers Price Index measured from that applying on the date when the requirement to make the immediately preceding adjustment arose is 5% or more.

How movement in CPI determined

(2B) For the purposes of subsections (1)(a)(i) and (2)(a) and (b), a movement in the New Zealand Consumers Price Index over a period is determined by comparing the following numbers:

(a) the number that, when the period started, was the most recent quarterly index number of—

(i) the New Zealand Consumers Price Index all groups, if the period starts before 29 April 2010; and

(ii) the New Zealand Consumers Price Index all groups excluding cigarettes and other tobacco products, if the period starts after 28 April 2010:

(b) the number that, when the period ended, was the most recent quarterly index number of—

(i) the New Zealand Consumers Price Index all groups, if the period ends before 29 April 2010; and

(ii) the New Zealand Consumers Price Index all groups excluding cigarettes and other tobacco products, if the period ends after 28 April 2010.

Order in Council under subsection (1)(ab)

(2C) An Order in Council must be made under subsection (1)(ab) if an Order in Council under subsection (1)(a) would otherwise result in—

(a) the amount in section MD 3(4)(a)(i) exceeding the amount in section MD 3(4)(a)(ii):

(b) the amount in section MD 3(4)(b)(ii) exceeding the amount in section MD 3(4)(b)(iii).

Timing of Order in Council

(3) An Order in Council made under this section must be made no later than 1 December in each year and must apply from 1 April following that date.

Review of in-work tax credit and parental tax credit

(4) The Minister responsible for the Inland Revenue Department, in consultation with the Minister responsible for the department currently responsible for administering the Social Security Act 1964, must cause a review to be undertaken of the amounts of the in-work tax credit and the parental tax credit allowable under subparts MB to MF and MZ.

Timing of review

(5) A review undertaken under subsection (4) must occur,—

(a) in the case of the first review, not later than 30 June 2008; and

(b) in the case of subsequent reviews, not later than 30 June in the third year after each preceding review.

Defined in this Act: amount, family tax credit, in-work tax credit, minimum family tax credit, parental tax credit

Compare: 2004 No 35 s KD 5C

Section MF 7(1)(a): substituted, on 24 May 2011, by section 6(1) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MF 7(1)(a): amended (with effect on 20 May 2010), on 28 May 2010, by section 94(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(1)(a): amended, on 1 April 2008, by section 489(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7(1)(a)(i): amended (with effect on 1 October 2008), on 21 December 2010, by section 114 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section MF 7(1)(a)(i): amended (with effect on 29 April 2010), on 28 May 2010 (applying for Working for Families entitlements for the 2011–12, 2012–13, and 2013–14 tax years), by section 94(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(1)(ab): inserted, on 24 May 2011, by section 6(2) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MF 7(1)(b): amended, on 1 April 2008, by section 489(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7(1)(cb): inserted (with effect on 20 May 2010), on 28 May 2010, by section 94(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(1)(d): amended, on 1 April 2008, by section 489(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7(2)(a): amended (with effect on 29 April 2010), on 28 May 2010 (applying for Working for Families entitlements for the 2011–12, 2012–13, and 2013–14 tax years), by section 94(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(2)(a): amended (with effect from 1 April 2008), on 29 May 2008, by section 35 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section MF 7(2)(b): amended (with effect on 29 April 2010), on 28 May 2010 (applying for Working for Families entitlements for the 2011–12, 2012–13, and 2013–14 tax years), by section 94(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(2B) heading: inserted (with effect on 29 April 2010), on 28 May 2010 (applying for Working for Families entitlements for the 2011–12, 2012–13, and 2013–14 tax years), by section 94(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(2B): inserted (with effect on 29 April 2010), on 28 May 2010 (applying for Working for Families entitlements for the 2011–12, 2012–13, and 2013–14 tax years), by section 94(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section MF 7(2C) heading: inserted, on 24 May 2011, by section 6(3) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MF 7(2C): inserted, on 24 May 2011, by section 6(3) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MF 7(4) heading: amended, on 1 April 2008, by section 489(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7(4): amended, on 1 April 2008, by section 489(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7 list of defined terms **family support**: repealed, on 1 April 2008, by section 489(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 489(6)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 489(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MF 7 list of defined terms **minimum family tax credit**: inserted, on 1 April 2008, by section 489(6)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart MK—Tax credits for KiwiSaver schemes and complying superannuation funds

MK 1 Tax credits for superannuation contributions

Tax credits for members paid to fund providers

(1) A fund provider of a person's KiwiSaver scheme or a complying superannuation fund has a tax credit equal to an amount calculated under section MK 4 for a member credit contribution to the scheme or fund. Section MK 2 imposes some eligibility requirements for the year described in subsection (3) in relation to the person.

Tax credits for employers

[Repealed]

(2) *[Repealed]*

Calculations: fund providers

(3) A tax credit referred to in subsection (1) is calculated for a year that begins on 1 July and ends on 30 June.

Calculations: employers

[Repealed]

(4) *[Repealed]*

Defined in this Act: amount, complying superannuation fund, employee, employer, employer contribution, fund provider, KiwiSaver scheme, member credit contribution, pay, tax credit, tax year

Compare: 2004 No 35 ss KJ 1, KJ 6, OB 1 **member credit year**

Section MK 1: substituted, on 1 April 2008, by section 125 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 1(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 366 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MK 1(2) heading: repealed, on 1 April 2009, pursuant to section 53 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section MK 1(2): repealed, on 1 April 2009, by section 53 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section MK 1(4) heading: repealed, on 1 April 2009, pursuant to section 53 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section MK 1(4): repealed, on 1 April 2009, by section 53 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Tax credits for fund providers

Heading: inserted, on 1 April 2008, by section 126 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

MK 2 Eligibility requirements

Requirements for person

(1) For the purposes of section MK 1(1), the requirements for the person for the year described in section MK 1(3) are the following:

- (a) they must be 18 years or older; and
- (b) they must have a creditable membership of a complying superannuation fund or a KiwiSaver scheme; and
- (c) they must not be entitled under schedule 1, clause 4(3) of the KiwiSaver Act 2006 or an equivalent provision to withdraw an amount from the scheme or fund; and
- (d) they must reside mainly in New Zealand, or otherwise they must—
  - (i) be an employee of the State services under the State Sector Act 1988 serving outside New Zealand; or
  - (ii) work overseas as a volunteer or for token payment for a charitable organisation named in regulations made under the Student Loan Scheme Act 1992 and the work meets 1 or more of the requirements in sections 38AEA(a)(i) to (iii) of that Act.

Evidence

(2) For the purposes of subsection (1)(d)(i) and (ii), the person must give the fund provider written evidence that they meet the requirements, and of the period in which they meet the requirements.

Defined in this Act: amount, complying superannuation fund, creditable membership, employee, KiwiSaver scheme, New Zealand, resident in New Zealand, tax credit

Compare: 2004 No 35 s KJ 2

Section MK 2(1) heading: substituted, on 1 April 2008, by section 127(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 2(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 367 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section MK 2(1): amended, on 1 April 2008, by section 127(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 2(1)(b): substituted, on 1 April 2008, by section 127(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 2 **creditable membership**: inserted, on 1 April 2008, by section 127(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

MK 3 Payment of tax credits

When this section applies

(1) This section applies when a member credit contribution is made to a KiwiSaver scheme or a complying superannuation fund.

Payment

(2) The Commissioner must pay a tax credit to the trustees of the scheme or fund (the **fund provider**) to which the person has contributed. The amount of the tax credit is calculated under section MK 4. Subsection (5) overrides this subsection.

Full amount paid

(3) The Commissioner must pay the full amount of the tax credit by direct credit to the fund provider without subtracting any amount that the person or fund provider may be obliged to pay to the Commissioner. Subsection (5) overrides this subsection.

Payment

(4) The Commissioner must pay the amount of the tax credit to the fund provider within 30 working days of the provider filing a claim form under section 68C(3) or (4) of the Tax Administration Act 1994.

Exception: payment to person or another provider

(5) Despite subsections (2) and (3), the Commissioner may pay the amount of the tax credit as follows:

(a) to the person, if it would be impossible or impractical to pay it to the person's fund provider because either the person has no fund provider, or because the person has died or has suffered a serious illness as defined in schedule 1, clause 12(3) of the KiwiSaver Act 2006; or

(b) to a fund provider (**provider B**) other than the fund provider referred to in subsections (2) and (3), if the person is transferring or has transferred to provider B.

Defined in this Act: amount, Commissioner, complying superannuation fund, employer contribution, employer's superannuation contribution, fund provider, KiwiSaver scheme, member credit contribution, pay, tax credit, trustee

Compare: 2004 No 35 ss KJ 1, KJ 4, OB 1 **member credit contributions**

Section MK 3(1) heading: substituted, on 1 April 2008, by section 128(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(1): substituted, on 1 April 2008, by section 128(1) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(2): amended, on 1 April 2008, by section 128(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(3): amended, on 1 April 2008, by section 128(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(4) heading: substituted, on 1 April 2008, by section 128(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(4): substituted, on 1 April 2008, by section 128(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(5) heading: added, on 1 April 2008, by section 128(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(5): added, on 1 April 2008, by section 128(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3(5)(b): amended, on 29 August 2011, by section 111 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section MK 3 list of defined terms **employer contribution**: inserted, on 1 April 2008, by section 128(5)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3 list of defined terms **member credit contribution**: inserted, on 1 April 2008, by section 128(5)(a) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 3 list of defined terms **superannuation contribution**: repealed, on 1 April 2008, by section 128(5)(b) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

MK 4 Amount of tax credit

What this section does

(1) This section sets out how to calculate the amount of a tax credit paid to a fund provider under section MK 3(2) for a year described in section MK 1(3).

Amount of credit for year

(2) The amount of the tax credit is an amount equal to half of a person's total member credit contributions for the year for

all of their complying superannuation funds and KiwiSaver schemes up to a maximum amount of $521.43.

Part-year equivalents: amount of tax credit

(3) Despite subsection (2), if the person meets the requirements of section MK 2 for only part of the year, the amount of the tax credit is,—

(a) equal to half of their total member credit contributions for the year, if that amount is equal to or less than the part-year maximum amount calculated under subsection (4); or

(b) equal to the part-year maximum amount calculated under subsection (4), if half of their total member credit contributions for the year is greater than the part-year maximum amount calculated under subsection (4).

Part-year equivalents: maximum amount

(4) The part-year maximum amount referred to in subsection (3) is calculated using the formula—

$$\$521.43 \times \frac{\text{days}}{365.}$$

Definition of item in formula

(5) In the formula, **days** is the number of days in the year in which the person meets the requirements of section MK 2.

Parts of years

(6) In subsection (3), a part of the year may include 1 or more periods of the year in which the person meets the relevant requirements and, if there are several periods, for the purposes of the item **days** in the formula, the days in those periods are added together.

Defined in this Act: amount, employee, employer contribution, first payment period, fund provider, member credit contribution, salary or wages, second payment period, tax credit

Compare: 2004 No 35 ss KJ 3, OB 1 **member credit year**

Section MK 4: substituted, on 1 April 2008, by section 129 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section MK 4(2): amended, on 1 July 2011 (applying for calculating a tax credit for the year starting on 1 July 2011 and later years), by section 7(1)(a) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MK 4(2): amended, on 1 July 2011 (applying for calculating a tax credit for the year starting on 1 July 2011 and later years), by section 7(1)(b) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MK 4(3)(a): substituted, on 1 July 2011 (applying for calculating a tax credit for the year starting on 1 July 2011 and later years), by section 7(2) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MK 4(3)(b): substituted, on 1 July 2011 (applying for calculating a tax credit for the year starting on 1 July 2011 and later years), by section 7(2) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

Section MK 4(4) formula: amended, on 1 July 2011 (applying for calculating a tax credit for the year starting on 1 July 2011 and later years), by section 7(3) of the Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23).

MK 5 Crown contributions for members

A tax credit paid to a person's fund provider under section MK 3 is treated as a Crown contribution for the person, and the KiwiSaver scheme rules and complying fund rules, as applicable, apply to the amount.

Defined in this Act: amount, complying fund rules, fund provider, KiwiSaver scheme, pay, tax credit

Compare: 2004 No 35 s KJ 5(2)

MK 6 Credit given by fund providers

A fund provider who receives a tax credit under section MK 3 must credit the relevant person with the amount which must vest in the person immediately after it is paid to the fund provider. The provider must use the contribution allocation for a member to credit the amount of the tax credit on a pro rata basis across the investment products to which the person has subscribed or been allocated as a member of a KiwiSaver scheme or complying superannuation fund.

Defined in this Act: amount, complying superannuation fund, fund provider, KiwiSaver scheme, pay, tax credit

Compare: 2004 No 35 s KJ 5(3), (4)

Section MK 6: amended, on 1 April 2008, by section 130 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

MK 7 Amounts paid in excess

Despite section MK 6, a fund provider is treated as having the amount of a tax credit paid under section MK 3 for the purposes of recovering any amount paid in excess of that properly payable. For the purposes of this section, the fund provider

may subtract an amount from a person's account to pay the Commissioner the excess amount.

Defined in this Act: amount, Commissioner, fund provider, pay, tax credit

Compare: 2004 No 35 s KJ 5(1), (5)

MK 8 Treatment of tax credits on permanent emigration

When this section applies

(1) This section applies in the case of a permanent emigration from New Zealand when a person for whom a tax credit has been paid asks their fund provider after their emigration to withdraw or transfer from their KiwiSaver scheme or complying superannuation fund under schedule 1, clause 14 of the KiwiSaver Act 2006 or an equivalent provision.

Payment to Commissioner

(2) The fund provider must pay to the Commissioner as soon as practicable the lesser of—

(a) the amount of the tax credit paid for the person and held by the provider:

(b) the amount of member's accumulation, as defined in the KiwiSaver Act 2006 for the person for a KiwiSaver scheme:

(c) the amount of employee's superannuation accumulation for the person for a complying superannuation fund.

Recovery

(3) If the fund provider does not pay the amount under subsection (2) as soon as practicable, they are treated as having an amount of tax credit paid in excess of that properly payable.

Defined in this Act: amount, Commissioner, complying superannuation fund, employee's superannuation accumulation, fund provider, KiwiSaver scheme, New Zealand, pay, tax credit

Compare: 2004 No 35 ss KJ 3, OB 1 **member credit year**

Section MK 8(2)(a): amended, on 1 April 2008, by section 131 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Tax credits for employers
[Repealed]

Heading: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

MK 9 Eligibility requirements

[Repealed]

Section MK 9: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

MK 10 Amount of credit

[Repealed]

Section MK 10: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

MK 11 When tax credits arise

[Repealed]

Section MK 11: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

MK 12 Using tax credits

[Repealed]

Section MK 12: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

MK 13 When short payment and unpaid compulsory employer contributions found after tax credit used

[Repealed]

Section MK 13: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section MK 13(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 368(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

MK 14 Employees opting out

[Repealed]

Section MK 14: repealed, on 1 April 2009, by section 54 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

MK 15 Groups of persons

For the purposes of this subpart, a group of persons described in 1 of the following paragraphs is treated as 1 employer:

(a) 2 or more companies, if the companies are a group of companies; and

(b) all partners in a partnership; and

(c) all persons in whom property has become vested, or to whom the control of property has passed in the case of an estate of a deceased person, or a trust, or a company in liquidation, or an assigned estate, or other case in which property is vested or controlled in a fiduciary capacity.

Defined in this Act: company, employer, group of companies, group of persons

Compare: 2004 No 35 s KJ 12

Section MK 15: added, on 1 April 2008, by section 132 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

MK 16 Private domestic workers

For the purposes of this subpart, a private domestic worker who is an employer under paragraph (c) of the definition of **employer** in section 4 of the KiwiSaver Act 2006 is treated as paying salary or wages to themselves in the capacity of employee.

Defined in this Act: employee, private domestic worker, salary or wages

Compare: 2004 No 35 s KJ 6(4)

Section MK 16: added, on 1 April 2008, by section 132 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Subpart ML—Tax credits for redundancy payments

Subpart ML: inserted, on 1 April 2008, by section 490 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 110).

ML 1 What this subpart does

Redundancy payments

(1) This subpart provides a tax credit for a person who derives a redundancy payment before 1 October 2011 for loss of employment.

Exclusions

(2) Despite subsection (1), no tax credit arises for a redundancy payment—

(a) related to—

(i) retirement from employment:

(ii) loss of seasonal employment arising from the normal seasonal work cycle:

(iii) a contract of employment for a fixed term or for the duration of a project:
(iv) employment for a period following notice of termination of employment:

(b) paid—
(i) to a director of a company by the company or a person associated with the company:
(ii) to a person by a person associated with them:
(iii) by a person to an employee who has been paid a redundancy payment by a person associated with the person.

Defined in this Act: 1988 version provisions, associated person, company, director, employee, employment, pay, tax credit

Compare: 2004 No 35 s KC 6(1), (3)

Section ML 1: inserted, on 1 April 2008, by section 490 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 110).

Section ML 1(1): amended (with effect on 1 April 2011), on 24 May 2011, by section 8 of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Section ML 1(1): amended, on 1 October 2010, by section 10 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section ML 1(2)(b)(i): substituted (with effect on 1 April 2008), on 6 October 2009, by section 369 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ML 1(2)(b)(ii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 369 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ML 1(2)(b)(iii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 369 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

ML 2 Tax credit for redundancy payments

Tax credit

(1) A person who derives a redundancy payment before 1 October 2011 has a tax credit of an amount equal to 6 cents for every complete dollar of total redundancy payments derived by them before 1 October 2011. It does not matter whether—
(a) a redundancy payment is paid in a lump sum or by instalment:
(b) the total redundancy payments relate to 1 or more occasions of redundancy of the person.

Maximum amount

(2) Despite subsection (1), the maximum credit that the person has for each occasion of redundancy is $3,600.

Defined in this Act: amount, redundancy payment, tax credit

Section ML 2: substituted (with effect on 1 April 2008), on 6 October 2009, by section 370 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section ML 2: inserted, on 1 April 2008, by section 490 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 110).

Section ML 2(1): amended (with effect on 1 April 2011), on 24 May 2011, by section 9 of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Section ML 2(1): amended (with effect on 1 October 2010), on 21 December 2010, by section 116 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section ML 2(1): amended, on 1 October 2010, by section 11 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

ML 3 Payment by Commissioner

The person referred to in section ML 2 must apply under section 41B of the Tax Administration Act 1994 to the Commissioner for payment of the tax credit.

Defined in this Act: Commissioner, pay, tax credit

Compare: 2004 No 35 s KC 6(2)

Section ML 3: inserted, on 1 April 2008, by section 490 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 110).

Subpart MZ—Terminating provisions

MZ 1 Entitlement to child tax credit

When this section applies

(1) This section applies when—

(a) a person is claiming or receiving a child tax credit for a child for an entitlement period ending on 31 March 2006; and

(b) the person is not entitled to an in-work tax credit under section MD 4 (Entitlement to in-work tax credit).

Entitlement

(2) If the person maintains continuously their entitlement after 31 March 2006, they remain entitled to receive the child tax credit for entitlement periods after that date.

When another person entitled to credit

(3) If 2 persons are entitled to an in-work tax credit or a child tax credit for a child for an entitlement period, the amount to which each is entitled is not affected by the entitlement of the other person.

Defined in this Act: amount, child, child tax credit, entitlement period, in-work tax credit

Compare: 2004 No 35 ss KD 2AA(3A), KD 2AAAB

Section MZ 1(1)(b): amended, on 1 April 2008, by section 491(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MZ 1(3): amended, on 1 April 2008, by section 491(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MZ 1 list of defined terms **in-work payment**: repealed, on 1 April 2008, by section 491(3)(b) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section MZ 1 list of defined terms **in-work tax credit**: inserted, on 1 April 2008, by section 491(3)(a) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

MZ 2 Calculation of child tax credit

Entitlement

(1) A person who meets the requirements of section MZ 1 is entitled to a child tax credit calculated using the formula in subsection (2).

Formula

(2) The formula is—

$$\$780 \times \text{dependent children} \times \frac{\text{days in entitlement peri}}{365.}$$

Definition of items in formula

(3) In the formula,—

(a) **dependent children** is the number of dependent children for whom the person is a principal caregiver during the entitlement period:

(b) **days in entitlement period** is the number of days in the entitlement period for which the person and their spouse, civil union partner, or de facto partner do not

receive a social assistance payment and do not have a suspended entitlement to an income-tested benefit.

Defined in this Act: amount, child tax credit, civil union partner, de facto partner, dependent child, entitlement period, income-tested benefit, principal caregiver, social assistance payment, spouse

Compare: 2004 No 35 s KD 2(4)

MZ 3 Exclusions from determination of family scheme income

When this section applies

(1) This section applies for the purposes of determining under section MB 1 (Adjustments for calculation of family scheme income) the entitlement and tax credit of a person under the family scheme.

Refunds of main deposit

(2) An amount of main deposit made in relation to the 2002–03 or earlier income year that is refunded to the person in the 2003–04 or later income year under any of sections EH 10, EH 13, EH 15, EH 17, and EH 23 (which relate to income equalisation accounts) is not included in family scheme income.

Refunds of adverse event deposit

(3) An amount of adverse event deposit made under section EH 39 (Adverse event income equalisation account) in relation to the 2002–03 or earlier income year that is refunded to the person in the 2003–04 or later income year under any of sections EH 45, EH 47, and EH 53 (which relate to refunds on application) is not included in family scheme income.

Treatment of interest

(4) The amount of a refund under subsections (2) and (3) does not include an amount of interest payable under section EH 6 or EH 40 (which relate to interest on deposits), as applicable.

Defined in this Act: adverse event deposit, amount, family scheme, family scheme income, income year, interest, main deposit, tax credit

Compare: 2004 No 35 s KD 1(1)(e)(i), (vi)

Section MZ 3: added (with effect on 1 April 2008), on 6 October 2009, by section 371(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part O
Memorandum accounts

Subpart OA—General provisions

Introductory provisions

OA 1 What this Part does

This Part provides some rules of general application for recording amounts as credits and debits to a memorandum account.

Defined in this Act: memorandum account

OA 2 Memorandum accounts

Types of account in this Part

(1) The following accounts are dealt with in this Part

- (a) an imputation credit account, *see* subparts OB and OP:
- (b) a foreign dividend payment (FDP) account, *see* subparts OC and OP:
- (c) a conduit tax relief (CTR) account, *see* subparts OD and OP:
- (d) a branch equivalent tax account, *see* subparts OE and OP:
- (e) an available subscribed capital (ASC) account, *see* subpart OF:
- (f) *[Repealed]*
- (g) a Maori authority credit account, *see* subpart OK.

Role of accounts

(2) A memorandum account is an account listed in subsection (1) that provides a record of the credits and debits arising in the account.

Tax year

(3) A memorandum account is maintained for a tax year unless a provision in this Part expressly states otherwise.

Tables

(4) The credits and debits that arise in a memorandum account are listed in tables in each of the subparts. The tables—

- (a) state the credits and the debits; and
- (b) provide the credit dates and the debit dates; and

(c) refer to the section that fully defines the credits and debits, and their credit dates and debit dates.

Determination

(5) The Commissioner may issue a determination under section 104B of the Tax Administration Act 1994 adjusting the amount of a credit or debit, or a credit date or debit date recorded in a memorandum account if the Commissioner considers the amount or date is not correct. The determination may be reviewed in challenge proceedings under Part 8A of that Act.

Defined in this Act: ASC account, branch equivalent tax account, Commissioner, CTR account, FDP account, imputation credit account, Maori authority credit account, memorandum account, policyholder credit account, tax year

Compare: 2004 No 35 ss ME 1(1), ME 3(1), ME 10(1), (1A)–(1C), ME 15, ME 17(1), ME 20, ME 21(1), ME 22(1), ME 25, ME 26(2), ME 40, MF 1(1), MF 3(1), MF 6, MF 7(1), MF 11(1), MF 12(1), MG 2(1), MG 3(1), MG 12, MG 13(1), MG 14(1), MG 15(1), MI 2(1), (4), MI 3(1), MI 14, MI 17(1), MI 18(1), MJ 1(1), MJ 3(1), MJ 8, MK 1(1), MK 3(1), MK 9

Section OA 2(1)(f): repealed, on 1 July 2010, by section 372(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OA 3 General rules for maintaining memorandum accounts

What this section does

(1) This section sets out the rules that apply in relation to a memorandum account to a person who—

(a) is required to maintain a memorandum account; or

(b) may choose to maintain an account.

Record

(2) A person who maintains a memorandum account must record all credits and all debits that arise in the account as at their credit date or debit date. The credits and debits are listed in provisions in the relevant subpart for each type of memorandum account.

Credit balances

(3) The credit balance recorded in a memorandum account during a tax year or income year, as applicable, is the excess of credits over debits.

Debit balances

(4) The debit balance recorded in a memorandum account during a tax year or income year, as applicable, is the excess of debits over credits.

Defined in this Act: amount, income year, memorandum account, tax year

Compare: 2004 No 35 ss ME 2, ME 3(1), ME 16, ME 17(1), ME 22(1), ME 26, MF 2, MF 3(1), MF 8, MF 12(1), MG 1, MG 3(1), MG 14(1), MG 15(1), MI 1, MI 3(1), MI 17(1), MI 18(1), MJ 2, MJ 3(1), MK 2, MK 3(1)

OA 4 Certain credits and debits arising only in group accounts

Certain credits or debits of a consolidated group may arise only in the memorandum account of the consolidated group and not in the memorandum account of a group company. Memorandum accounts of consolidated groups are dealt with in subpart OP (Memorandum accounts of consolidated groups).

Defined in this Act: company, consolidated group, memorandum account

Compare: 2004 No 35 ss ME 13, ME 28(4), MF 9, MF 11(3), MG 16, MI 19

Credits and debits

OA 5 Credits

What this section does

(1) This section defines the credits that arise under this Part in a memorandum account.

Imputation credits

(2) A credit is an **imputation credit** if it is an amount—

(a) set out in any of sections OA 7, OB 4 to OB 29, and OP 7 to OP 27:

(b) described in a row of table O1: imputation credits or table O19: imputation credits of consolidated imputation groups:

(c) credited under section OZ 18 (Credit-back of PCA balance).

FDP credits

(3) A credit is an **FDP credit** if it is an amount—

(a) set out in any of sections OA 7, OC 6 to OC 12, and OP 56 to OP 63:

(b) described in a row of table O3: FDP credits or table O21: FDP credits of consolidated FDP groups.

CTR credits

(4) A credit is a **CTR credit** if it is an amount—

(a) set out in any of sections OA 7, OD 5 to OD 9, and OP 81 to OP 86:

(b) described in a row of table O5: CTR credits or table O23: CTR credits of consolidated groups.

Branch equivalent tax credits

(5) A credit is a **branch equivalent tax credit** if it is an amount,—

(a) for a branch equivalent tax account (BETA) company,—

(i) set out in any of sections OA 7 and OE 6 to OE 11:

(ii) described in a row of table O7: branch equivalent tax credits:

(b) for a BETA person,—

(i) set out in section OA 7 or OE 19:

(ii) described in a row of table O9: person's branch equivalent tax credits:

(c) for a consolidated BETA group,—

(i) set out in any of sections OA 7 and OP 100 to OP 104:

(ii) described in a row of table O25: branch equivalent tax credits of consolidated BETA groups.

ASC credits

(6) A credit is an **ASC credit** if it is an amount—

(a) set out in section OA 7 or OF 4:

(b) described in a row of table O11: ASC credits.

Policyholder credits

[Repealed]

(7) *[Repealed]*

Maori authority credits

(8) A credit is a **Maori authority credit** if it is an amount—

(a) set out in any of sections OA 7 and OK 2 to OK 9:

(b) described in a row of table O17: Maori authority credits.

Defined in this Act: amount, ASC credit, BETA company, BETA person, branch equivalent tax credit, CTR credit, consolidated BETA group, consolidated FDP group, consolidated group, consolidated imputation group, FDP credit, imputation credit, Maori authority credit, memorandum account, PCA company, PCA person

Section OA 5(2)(b): amended, on 1 July 2010, by section 373(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 5(2)(c): added, on 1 July 2010, by section 373(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 5(7) heading: repealed, on 1 July 2010, pursuant to section 373(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 5(7): repealed, on 1 July 2010, by section 373(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 5 list of defined terms **policyholder credit**: repealed, on 1 July 2010, by section 373(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OA 6 Debits

What this section does

(1) An ICA company has an imputation credit for an amount representing an entitlement to funds held in a tax pooling account if the intermediary transfers the entitlement from another person to the company.

Imputation debits

(2) A debit is an **imputation debit** if it is an amount—

(a) set out in any of sections OA 7, OB 30 to OB 59, OP 28 to OP 50, and OZ 3:

(b) described in a row of table O2: imputation debits or table O20: imputation debits of consolidated imputation groups.

FDP debits

(3) A debit is an **FDP debit** if it is an amount—

(a) set out in any of sections OA 7, OC 13 to OC 26, and OP 64 to OP 77:

(b) described in a row of table O4: FDP debits or table O22: FDP debits of consolidated FDP groups.

CTR debits

(4) A debit is a **CTR debit** if it is an amount—

(a) set out in any of sections OA 7, OD 10 to OD 19, and OP 87 to OP 94:

(b) described in a row of table O6: CTR debits or table O24: CTR debits of consolidated groups.

Branch equivalent tax debits

(5) A debit is a **branch equivalent tax debit** if it is an amount,—

(a) for a BETA company,—

(i) set out in any of sections OA 7 and OE 12 to OE 16:

(ii) described in a row of table O8: branch equivalent tax debits:

(b) for a BETA person,—

(i) set out in any of sections OA 7 and OE 20 to OE 22:

(ii) described in a row of table O10: person's branch equivalent tax debits:

(c) for a consolidated BETA group,—

(i) set out in any of sections OA 7 and OP 105 to OP 108:

(ii) described in a row of table O26: branch equivalent tax debits of consolidated BETA groups.

ASC debits

(6) A debit is an **ASC debit** if it is an amount—

(a) set out in section OA 7 or OF 5:

(b) described in a row of table O12: ASC debits.

Policyholder debits

[Repealed]

(7) *[Repealed]*

Maori authority debits

(8) A debit is a **Maori authority debit** if it is an amount—

(a) set out in any of sections OA 7 and OK 10 to OK 18:

(b) described in a row of table O18: Maori authority debits.

Defined in this Act: amount, ASC debit, BETA company, BETA person, branch equivalent tax debit, CTR debit, consolidated BETA group, consolidated FDP group, consolidated group, consolidated imputation group, FDP debit, imputation debit, Maori authority debit, memorandum account, PCA company, PCA person

Section OA 6(7) heading: repealed, on 1 July 2010, pursuant to section 374(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 6(7): repealed, on 1 July 2010, by section 374(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 6 list of defined terms **policyholder debit**: repealed, on 1 July 2010, by section 374(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Opening balances

OA 7 Opening balances of memorandum accounts

Balances carried forward

(1) The opening balance of a memorandum account at the start of a tax year or income year, as applicable, is the closing balance of the account in the previous tax year or income year, as applicable.

Credit date

(2) The credit date or debit date for an opening balance is,—

(a) for an imputation credit account, the first day of the tax year:

(b) for an FDP account, the first day of the tax year:

(c) for a CTR account, the first day of the tax year:

(d) for a branch equivalent tax account—

(i) of a BETA company, the first day of the tax year; or

(ii) of a BETA person, the first day of the income year; or

(iii) of a consolidated BETA group, the first day of the tax year:

(e) for an ASC account, the first day of the tax year:

(f) *[Repealed]*

(g) for a Maori authority credit account, the first day of the tax year.

First year

(3) If a consolidated group, company, or person starts a memorandum account during a tax year, no credit for an opening balance arises in the account. But this subsection does not apply—

(a) when the companies of 2 or more consolidated imputation groups choose to combine to form, or to join,

an imputation group, for which *see*section OP 3(2) (Changes in consolidated imputation groups):

(b) when the companies that are part of an imputation group choose to convert their status to that of a consolidated group that is a consolidated imputation group, for which *see*section OP 3(3):

(c) to a resident imputation subgroup associated with a trans-Tasman imputation group, for which *see*section OP 4 (Resident imputation subgroups).

Defined in this Act: ASC account, BETA company, BETA person, branch equivalent tax account, company, CTR account, consolidated BETA account, consolidated group, consolidated imputation group, FDP account, imputation credit account, imputation group, income year, Maori authority credit account, memorandum account, PCA company, PCA person, resident imputation subgroup, tax year, trans-Tasman imputation group

Compare: 2004 No 35 ss ME 3(2), ME 10(1A)–(1C), (2), ME 17(2), ME 22(2), ME 26(1), MF 3(2), MF 8(1), MF 12(2), MG 3(2), MG 13(3), MI 3(2), MI 15, MJ 3(2), MK 3(2)

Section OA 7(2)(c): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OA 7(2)(d): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OA 7(2)(f): repealed, on 1 July 2010, by section 375(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 7 list of defined terms **policyholder credit account**: repealed, on 1 July 2010, by section 375(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Shareholder continuity requirements

OA 8 Shareholder continuity requirements for memorandum accounts

When this section applies

(1) This section applies when a company or a consolidated group maintains a memorandum account.

Shareholder continuity requirement

(2) An amount that is a credit in the account may be carried forward from a credit date to a later time only if the company or consolidated group that has the credit maintains a 66% continuity of shareholding under subsection (7) from the credit

date to the later time. Subsections (3B) to (5) override this subsection.

Continuity

(3) A credit is treated as continuing to exist to the extent to which it is not reduced by an earlier or later debit arising in the account.

Exclusions: qualifying companies

(3B) Subsection (2) does not apply to a qualifying company. But, if section HA 11(1) (When requirements no longer met) applies to the company,—

(a) an adjustment must be made under section HA 18 (Treatment of dividends when qualifying company status ends) to the company's imputation credit account and FDP account, as applicable; and

(b) the shareholder continuity requirements apply to the company from the day on which the status as a qualifying company ends.

Exclusion: ASC accounts

(4) Subsection (2) does not apply to a person who maintains an ASC account.

Modification: CTR accounts

(5) The general rule in subsection (2) is modified by section OD 16 (CTRA increase in resident shareholding) for CTR accounts.

When continuity lost

(6) For a memorandum account and for a company or consolidated group that maintains the account when the continuity of shareholding required by subsection (7) is lost, a debit arises under the relevant section in each subpart only to the extent to which an unused amount of credit remains in the memorandum account. The relevant sections are—

(a) section OB 41 (ICA debit for loss of shareholder continuity):

(b) section OC 24 (FDPA debit for loss of shareholder continuity):

(c) section OE 15 (BETA debit for loss of shareholder continuity):

(d) section OK 15 (MACA debit for loss of shareholder continuity):

(e) section OP 42 (Consolidated ICA debit for loss of shareholder continuity):

(f) section OP 73 (Consolidated FDPA debit for loss of shareholder continuity):

(g) section OP 108 (Consolidated BETA debit for loss of shareholder continuity).

Shareholder continuity requirement

(7) The shareholder continuity requirement is that, while some or all of the credit still exists, a group of persons must continue to hold—

(a) aggregate minimum voting interests in a company or consolidated group of at least 66%; and

(b) if a market value circumstance exists for a company or, in the case of a consolidated group, a group company, aggregate minimum market value interests in the company or group of at least 66%.

Modifications

(8) The following rules apply for the purposes of subsection (7)

(a) the minimum interest referred to in subsection (7)(a) or (b) of a person must be counted if their interests change after the credit arises; and

(b) a credit retains its separate character and is not treated as part of a credit referred to in section OA 7 in a later tax year; and

(c) the amount by which a credit is reduced by an earlier or later debit is found by—

(i) treating debits as reducing credits in the order in which credits arise; and

(ii) counting an amount of a debit only once in the reduction of some or all of a credit; and

(iii) applying any relevant terminating modifications set out in section OZ 4 (Terminating modifications to debits for loss of shareholder continuity) for a credit arising before 1 April 1992.

Defined in this Act: amount, ASC account, branch equivalent tax account, company, CTR account, consolidated group, FDP account, group of persons, imputation credit account, Maori authority credit account, market value circumstance,

market value interest, memorandum account, minimum market value interest, minimum voting interest, shareholder, tax year, voting interest

Compare: 2004 No 35 ss ME 5(3), ME 12(1)(h), ME 13(2), (4), MF 4(5), MF 8(4), MG 15(1), MI 5(3)–(7), MI 18(1)(e), (3), (4), MK 5(3), (4)

Section OA 8(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 376(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 8(3B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 376(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 8(3B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 376(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 8(4) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 376(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 8(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 376(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OA 8 list of defined terms **policyholder credit account**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 376(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Treatment of credits and debits on resident's restricted amalgamation

General provision

OA 9 General treatment of credits and debits on resident's restricted amalgamation

When this section applies

(1) This section applies—

(a) on a resident's restricted amalgamation, in relation to an amalgamated company and a memorandum account, if an amalgamating company ends its existence on the amalgamation and, at the time of the amalgamation, the amalgamating company maintains 1 or more memorandum accounts of the type referred to in sections OA 2(1)(a) to (d), and (f); and

(b) for the purposes of determining whether a credit or debit arises in the same type of account of the amalgamated company.

Treatment of pre-amalgamation credits and debits

(2) A credit or debit recorded in the memorandum account of the amalgamating company before the date of the amalgamation is treated as if it were recorded in the same type of account of the amalgamated company on the date it was recorded in the amalgamating company's account with effect from the time of the amalgamation.

Treatment of pre-amalgamation period

(3) For the purposes of section OA 8(7)(b) and (8), in determining at a time after the amalgamation whether continuity of shareholding exists for the credit or debit in the memorandum account, the amalgamated company is treated for all times before the amalgamation as if—

(a) it did not separately exist; and

(b) it were instead the amalgamating company, with the same shareholders and option holders.

Avoidance provisions

(4) For the purposes of determining the credits and debits in the memorandum account of an amalgamating company, sections GB 34, GB 40, and GB 41 (which relate to arrangements to defeat the application of certain provisions) apply, modified as necessary.

Defined in this Act: amalgamated company, amalgamating company, consolidated group, memorandum account, resident's restricted amalgamation, shareholder

Compare: 2004 No 35 ss ME 29(1)(a), MF 16(1)(a), MG 17(1)(a), MI 13

When companies amalgamate

OA 10 When credits or debits due to amalgamating company but not recorded

When this section applies

(1) This section applies on a resident's restricted amalgamation if, at the time of the amalgamation, an amalgamating company maintains—

(a) an imputation credit account:

(b) an FDP account:

(c) a CTR account:

(d) a branch equivalent tax account:

(e) a policyholder credit account.

Credits and debits due

(2) A credit or a debit due to the amalgamating company but not recorded in its memorandum account before the date of amalgamation is recorded in the same type of memorandum account of the amalgamated company. Subsections (3) and (4) override this subsection.

Exclusion: shareholder continuity rules

(3) Subsection (2) does not apply to—

(a) a debit for loss of shareholder continuity in an imputation credit account arising under section OB 41 (ICA debit for loss of shareholder continuity) and described in table O2: imputation debits, row 14 (debit for loss of shareholder continuity):

(b) a debit for an increase in resident shareholding in a CTR account arising under section OD 16 (CTRA increase in resident shareholding) and described in table O6: CTR debits, row 8 (increase in resident shareholding):

(c) a credit or debit in a branch equivalent tax account arising—

(i) under section OE 10 (BETA credit for loss of shareholder continuity) and described in table O7: branch equivalent tax credits, row 5 (credit for loss of shareholder continuity); and

(ii) under section OE 15 (BETA debit for loss of shareholder continuity) and described in table O8: branch equivalent tax debits, row 5 (debit for loss of shareholder continuity).

Recording in imputation credit account

(4) If the amalgamated company does not maintain a memorandum account referred to in subsection (1)(b), (c), and (e), the credit or debit is recorded in the imputation credit account of the amalgamated company. *See*sections OA 11 to OA 13.

Defined in this Act: amalgamated company, amalgamating company, branch equivalent tax account, CTR account, FDP account, imputation credit, imputation credit account, imputation debit, memorandum account, policyholder credit account, resident's restricted amalgamation

Compare: 2004 No 35 ss ME 29(1), MF 16(1), MG 17(1), MI 13

OA 11 FDP account on resident's restricted amalgamation

When this section applies

(1) This section applies on a resident's restricted amalgamation if—

(a) an amalgamating company ends its existence on amalgamation; and

(b) at the time of amalgamation, the company maintains an FDP account; and

(c) the amalgamated company does not maintain an FDP account.

Credits and debits due

(2) A credit or a debit due to the amalgamating company for the purposes of the FDP account but not recorded before the date of amalgamation is recorded in the imputation credit account of the amalgamated company, as appropriate,—

(a) under section OB 24 (ICA credit on resident's restricted amalgamation) as described in table O1: imputation credits, row 22 (credit on resident's restricted amalgamation); or

(b) under section OB 53 (ICA debit on resident's restricted amalgamation) as described in table O2: imputation debits, row 26 (debit on resident's restricted amalgamation).

Defined in this Act: amalgamated company, amalgamating company, FDP account, imputation credit account, resident's restricted amalgamation

Compare: 2004 No 35 s MG 17(1)

OA 12 CTR account on resident's restricted amalgamation

[Repealed]

Section OA 12: repealed (with effect on 30 June 2009), on 6 October 2009, by section 377(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OA 13 Policyholder credit account on resident's restricted amalgamation

When this section applies

(1) This section applies on a resident's restricted amalgamation if—

(a) an amalgamating company ends its existence on amalgamation; and
(b) at the time of amalgamation, the company maintains a policyholder credit account; and
(c) the amalgamated company does not maintain a policyholder credit account.

Credits and debits due

(2) A credit or a debit due to the amalgamating company for the purposes of the policyholder credit account but not recorded in the account before the date of amalgamation, is recorded in the imputation credit account of the amalgamated company, as appropriate,—
(a) under section OB 24 (ICA credit on resident's restricted amalgamation) as described in table O1: imputation credits, row 22 (credit on resident's restricted amalgamation); or
(b) under section OB 53 (ICA debit on resident's restricted amalgamation) as described in table O2: imputation debits, row 26 (debit on resident's restricted amalgamation).

Defined in this Act: amalgamated company, amalgamating company, imputation credit account, policyholder credit account, resident's restricted amalgamation

Compare: 2004 No 35 s ME 29(1)

Amalgamation of companies in consolidated groups

OA 14 Continuity of shareholding when group companies amalgamate

What this section does

(1) This section and sections OA 15 to OA 17 apply when all the companies in a consolidated group or consolidated imputation group amalgamate on a resident's restricted amalgamation, and the amalgamation results in—
(a) the end of the group's existence; and
(b) the formation of an amalgamated company.

Other company

(2) The amalgamation may include a company that is not part of the consolidated group or consolidated imputation group.

Continuity of shareholding: credits and debits

(3) Subsections (4) and (5) apply for the purposes of determining whether a credit or debit arises in the memorandum account of the amalgamated company that is of the type referred to in section OA 2(1)(a), (b), (d), and (f).

Treatment of pre-amalgamation credits and debits

(4) A credit or debit recorded in the memorandum account of the consolidated group before the date of the amalgamation is treated as if it were recorded in the same type of account of the amalgamated company on the date it was recorded in the consolidated group's account with effect from the date of amalgamation.

Treatment of pre-amalgamation period

(5) For the purposes of section OA 8(7)(b) and (8), in determining at a time after the amalgamation whether continuity of shareholding exists for the credit or debit in the memorandum account, the amalgamated company is treated for all times before the amalgamation as if—

(a) it did not separately exist; and

(b) it were instead the consolidated group, with the same shareholders and option holders.

Avoidance provisions

(6) For the purposes of determining the credits and debits in the memorandum account of a consolidated group, sections GB 34, GB 40, and GB 41 (which relate to arrangements to defeat the application of certain provisions) apply, modified as necessary.

Defined in this Act: amalgamated company, company, consolidated group, consolidated imputation group, memorandum account, resident's restricted amalgamation, shareholder, voting interest

Compare: 2004 No 35 ss ME 29(2)(a), MF 16(2)(a), MG 17(2)(a)

OA 15 When credits or debits due to consolidated group but not recorded

When this section applies

(1) This section applies on a resident's restricted amalgamation referred to in section OA 14 when, at the time of the amalgamation, a consolidated group maintains—

(a) an imputation credit account:

(b) an FDP account:

(c) a branch equivalent tax account:

(d) a policyholder credit account.

Credits and debits due

(2) A credit or a debit due to the consolidated group but not recorded in its account before the date of amalgamation is recorded in the same type of memorandum account of the amalgamated company. Subsections (3) and (4) override this subsection.

Exclusion: shareholder continuity rules

(3) Subsection (2) does not apply to—

(a) a debit for loss of shareholder continuity in an imputation credit account arising under section OP 42 (Consolidated ICA debit for loss of shareholder continuity) and described in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):

(b) a debit for an increase in resident shareholding in a CTR account arising under section OP 91 (Consolidated CTRA increase in resident shareholding) and described in table O24: CTR debits of consolidated groups, row 6 (increase in resident shareholding):

(c) a credit or debit in a branch equivalent tax account arising—

(i) under section OP 104 (Consolidated BETA credit for loss of shareholder continuity) and described in table O25: branch equivalent tax credits of consolidated BETA groups, row 5 (credit for loss of shareholder continuity); and

(ii) under section OP 108 (Consolidated BETA debit for loss of shareholder continuity) and described

in table O26: branch equivalent tax debits of consolidated BETA groups, row 5 (debit for loss of shareholder continuity).

Recording in imputation credit account

(4) If the amalgamated company does not maintain a memorandum account referred to in subsection (1)(b) or (d), the credit or debit is recorded in the imputation credit account of the amalgamated company. *See*sections OA 16 and OA 17.

Defined in this Act: amalgamated company, branch equivalent tax account, CTR account, consolidated group, FDP account, imputation credit account, policyholder credit account, resident's restricted amalgamation, shareholder, voting interest

Compare: 2004 No 35 ss ME 29(2)(b), MF 16(2)(b), MG 17(2)(b)

OA 16 When FDP account ends on resident's restricted amalgamation

When this section applies

(1) This section applies on a resident's restricted amalgamation referred to in section OA 14 if—

(a) a consolidated group ends its existence on amalgamation; and

(b) at the time of amalgamation, the consolidated group maintains an FDP account; and

(c) the amalgamated company does not maintain an FDP account.

Credits and debits due

(2) A credit or a debit due to the group but not recorded before the date of amalgamation is recorded in the imputation credit account of the amalgamated company, as appropriate,—

(a) under section OB 24 (ICA credit on resident's restricted amalgamation) as described in table O1: imputation credits, row 22 (credit on resident's restricted amalgamation); or

(b) under section OB 53 (ICA debit on resident's restricted amalgamation) as described in table O2: imputation

debits, row 26 (debit on resident's restricted amalgamation).

Defined in this Act: amalgamated company, consolidated group, FDP account, imputation credit account, resident's restricted amalgamation, shareholder

Compare: 2004 No 35 s MF 17(2)(b)

OA 17 When policyholder credit account ends on resident's restricted amalgamation

When this section applies

(1) This section applies on a resident's restricted amalgamation referred to in section OA 14 if,—

(a) a consolidated group ends its existence on amalgamation; and

(b) at the time of amalgamation, the consolidated group maintains a policyholder credit account; and

(c) the amalgamated company does not maintain a policyholder credit account.

No policyholder credit account

(2) A credit or a debit due to the group but not recorded before the date of amalgamation is recorded in the imputation credit account of the amalgamated company, as appropriate,—

(a) under section OB 24 (ICA credit on resident's restricted amalgamation) as described in table O1: imputation credits, row 22 (credit on resident's restricted amalgamation); or

(b) under section OB 53 (ICA debit on resident's restricted amalgamation) as described in table O2: imputation debits, row 26 (debit on resident's restricted amalgamation).

Defined in this Act: amalgamated company, amalgamating company, consolidated group, imputation credit account, policyholder credit account, resident's restricted amalgamation

Compare: 2004 No 35 s ME 29(2)

Maximum permitted ratios

OA 18 Calculation of maximum permitted ratios

When this section applies

(1) This section applies in relation to an imputation credit, an FDP credit, a CTR credit, and a Maori authority credit, for the purposes of the calculation of—

- (a) an imputation ratio; and
- (b) an FDP ratio; and
- (c) a combined imputation and FDP ratio; and
- (d) a CTR ratio; and
- (e) a combined imputation and CTR ratio; and
- (f) a Maori authority credit ratio.

Maximum permitted ratio

(2) A dividend or distribution with a credit attached must not have a ratio for the amount of the credit to the amount of the dividend or distribution that is more than the maximum permitted ratio calculated using the formula—

$$\frac{\text{tax rate}}{1 - \text{tax rate}}.$$

Definition of item in formula

(3) In the formula, **tax rate** is—

- (a) for subsection (1)(a) to (e), the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT and attributed fringe benefits) for the income year in which the dividend is paid:
- (b) for subsection (1)(f), the basic rate of income tax set out in schedule 1, part A, clause 7 for the income year in which the distribution is paid.

Relationship with sections OZ 8 and OZ 9

(4) Sections OZ 8 and OZ 9 (which relate to the calculation of maximum permitted ratios in certain income years) may apply to modify this section.

Defined in this Act: amount, basic rate, combined imputation and CTR ratio, combined imputation and FDP ratio, CTR credit, dividend, FDP credit, imputation credit, income tax, income year, Maori authority credit ratio, maximum permitted ratio, pay, tax year

Compare: 2004 No 35 ss ME 8(1), MG 8(1), MG 10(1), MI 8(1), MK 7(1)

Section OA 18(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 85(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OA 18(3): amended (with effect from 1 April 2008), on 29 May 2008, by section 36(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section OA 18(3): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OA 18(4) heading: added, on 1 April 2008, by section 492 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OA 18(4): added, on 1 April 2008, by section 492 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OA 18 list of defined terms **pay**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Subpart OB—Imputation credit accounts (ICA)

Introductory provisions

OB 1 General rules for companies with imputation credit accounts

New Zealand resident

(1) A company that is resident in New Zealand (the **imputation credit account (ICA) company**) must establish and maintain an imputation credit account for a tax year. Subsection (2) overrides this subsection.

Exclusions

(2) A company that is resident in New Zealand is excluded from being an ICA company if it is—

- (a) a company that—
  - (i) *[Repealed]*
  - (ii) is acting in the capacity of trustee, not being a company that is a trustee, of a group investment fund to which paragraph (c) of the definition of **company** in YA 1 (Definitions) applies; or
  - (iii) has a constitution that prohibits a distribution to a shareholder; or
  - (iv) derives only exempt income other than income exempt under sections CW 9 to CW 11 (which relate to income from equity); or

(v) under a double tax agreement, is treated as not being resident in New Zealand; or

(b) a Maori authority; or

(c) a local authority; or

(d) a Crown Research Institute; or

(e) a subsidiary of the Accident Compensation Corporation affected by section 266 of the Accident Compensation Act 2001, or section 334(1) of the Accident Insurance Act 1998; or

(f) a multi-rate PIE.

Exception to subsection (2): Australian resident [Repealed]

(3) *[Repealed]*

Defined in this Act: company, Crown Research Institute, double tax agreement, exempt income, group investment fund, ICA company, imputation credit account, income, local authority, Maori authority, multi-rate PIE, New Zealand, resident in New Zealand, shareholder, tax, tax year, trustee

Compare: 2004 No 35 s ME 1

Section OB 1(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 378(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1(2)(a)(i): repealed (with effect on 1 April 2008), on 6 October 2009, by section 378(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1(2)(e): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OB 1(2)(f): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 378(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1(3) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 378(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1(3): repealed (with effect on 1 April 2008), on 6 October 2009, by section 378(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1 list of defined terms **Australian ICA company**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 378(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 378(6)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 378(6)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 1 list of defined terms **resident in Australia**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 378(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 2 Australian companies with imputation credit accounts

Company resident in Australia

(1) A company that is resident in Australia may choose to establish and maintain an imputation credit account.

Ineligibility

(2) Despite meeting the residency requirements, a company is not eligible to make an election referred to in subsection (1) if—

(a) the company—

(i) is a company referred to in section OB 1(2)(a)(ii) to (iv), and (b) to (f); or

(ii) is treated as resident in a country other than Australia under an agreement between Australia and the other country that would be a double tax agreement if negotiated between New Zealand and that other country; or

(b) an earlier election has been revoked by the Commissioner under subsection (7)(b), and the company has not shown the Commissioner that it has taken adequate steps to prevent the grounds of revocation occurring again.

Election, and when status starts

(3) The election is made by notifying the Commissioner, and the company must maintain an imputation credit account from the following date, as applicable:

(a) the first day of the tax year in which the Commissioner is notified:

(b) for the purposes of section OB 60,—

(i) for a company that is formed or becomes eligible in the tax year, the first day of the tax year in which the Commissioner receives the notice and the Commissioner notifies the company of that date; or

(ii) if subparagraph (i) does not apply, 30 days after the date on which the Commissioner receives the notice.

Joint and several liability

(4) A company that is part of the same wholly-owned group of companies as an Australian ICA company may have joint and several liability with the Australian ICA company for further income tax, civil penalties, and interest under Part 7 of the Tax Administration Act 1994 imposed on the Australian ICA company for a breach by the Australian ICA company of the imputation rules.

Exclusion

(5) Despite subsection (4), no joint and several liability arises if the Australian ICA company is prohibited by an independent regulatory body from being subject to the liability.

Dividend in Australian currency

(6) An Australian ICA company that pays a dividend in Australian currency must make a currency conversion under section OB 60(6).

How status ends

(7) A company ends its status as an Australian ICA company if—

(a) the company becomes ineligible to maintain an imputation credit account; or

(b) the company revokes the election by notifying the Commissioner; or

(c) the Commissioner gives the company notice revoking the election.

When status ends

(8) For the purposes of subsection (7), the company ends its status as an Australian ICA company—

(a) from the day on which the relevant circumstance of ineligibility in subsection (2) applies; or

(b) unless paragraph (c) applies, from the last day of the tax year in which the company or the Commissioner revokes the election; or

(c) for the purposes of section OB 60,—

(i) when the company notifies the Commissioner, on the date on which the Commissioner receives the notice; or

(ii) on the date set out in the Commissioner's notice.

Outstanding obligations

(9) A company that stops being an Australian ICA company for a tax year must nevertheless satisfy all obligations that the company had as an Australian ICA company.

Defined in this Act: Australian ICA company, Commissioner, company, dividend, double tax agreement, imputation credit account, imputation rules, income, New Zealand, notice, notify, pay, resident in Australia, tax year, wholly-owned group of companies

Compare: 2004 No 35 s ME 1A

Section OB 2(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 379(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 2(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 379(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 2(2)(a)(i): amended, on 1 April 2008, by section 493(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 2(2)(a)(ii): substituted, on 1 April 2008, by section 493(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 2 list of defined terms **resident in New Zealand**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 379(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 3 Imputation credit accounts

General rules

(1) The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to an imputation credit account of an ICA company.

Consolidated imputation groups

(2) Under section OP 2 (When credits and debits arise only in group accounts), certain credits and debits do not arise in an

ICA company's memorandum account if the company is part of a consolidated imputation group.

Defined in this Act: consolidated imputation group, ICA company, imputation credit account, memorandum account

Compare: 2004 No 35 s ME 13(1)

OB 3B General rule for life insurer's policyholder base

An imputation credit does not arise in relation to a life insurer's policyholder base. Similarly, an imputation debit does not arise in relation to a life insurer's policyholder base.

Defined in this Act: imputation credit, imputation debit, life insurer, policyholder base

Section OB 3B: inserted, on 1 July 2010, by section 380(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Imputation credits

OB 4 ICA payment of tax

Credit

(1) An ICA company has an imputation credit for an amount of income tax or provisional tax paid or an amount treated under section RC 32(5)(b) (Wholly-owned groups of companies) as a payment of provisional tax. Subsection (3) overrides this subsection.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 2 (payment of tax).

No credit

(3) An ICA company does not have an imputation credit for an amount of—

- (a) a transfer from a tax pooling account to a tax account with the Commissioner; or
- (b) income tax paid on income derived when the company is not an ICA company; or
- (c) income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or

(d) income tax paid under sections LA 2 and LE 1 (which relate to tax credits for imputation credits and their use) by crediting an imputation credit; or

(e) income tax paid under subpart LA and section LF 1 (which relate to tax credits for FDP credits and their use) by crediting a foreign dividend payment (FDP) credit; or

(eb) income tax paid by a tax credit under subpart LA and section LH 2 (which relate to tax credits for research development and their use); or

(f) income tax paid by a tax credit under subpart LP (Tax credits for supplementary dividends); or

(g) further income tax applied under section OB 69 to pay income tax or provisional tax; or

(h) income tax paid under section OE 7 (BETA payment of income tax) by crediting a branch equivalent tax credit; or

(i) income tax paid as a trustee, unless paid on category A income of the type described in paragraph (c) of the definition of **company** in section YA 1 (Definitions).

Credit date

(4) The credit date is—

(a) for an amount of income tax or provisional tax paid other than an amount referred to in paragraph (b), the day the tax is paid:

(b) for an amount treated under section RC 32(5)(b) as a payment of provisional tax, the day on which notice of the allocation of the tax is given to the Commissioner.

Limitation on credits

(5) No amount may give rise to more than 1 imputation credit.

Defined in this Act: amount, branch equivalent tax account, category A income, Commissioner, company, tax credit, FDP credit, further income tax, ICA company, imputation credit, imputation credit account, income, income tax, life insurer, pay, provisional tax, schedular income tax liability, schedular policyholder base income, tax account with the Commissioner, tax pooling account, tax year, trustee

Compare: 2004 No 35 s ME 4(1)(a), (1C), (2)(a)

Section OB 4(1): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 112(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 4(3)(c): substituted, on 1 July 2010, by section 381(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 4(3)(c): substituted (with effect on 1 April 2008), on 7 December 2009, by section 86 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OB 4(3)(e): substituted (with effect on 1 April 2008), on 6 October 2009, by section 381(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 4(3)(eb): substituted (with effect on 1 April 2008), on 6 October 2009, by section 381(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 4(3)(eb): inserted, on 1 April 2008, by section 494 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 4(4): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 112(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 4 list of defined terms **policyholder base income tax liability**: repealed, on 1 July 2010, by section 381(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 4 list of defined terms **schedular income tax liability**: inserted, on 1 July 2010, by section 381(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 4 list of defined terms **schedular policyholder base income**: inserted, on 1 July 2010, by section 381(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 5 ICA deposit in tax pooling account

Credit

(1) An ICA company has an imputation credit for an amount provided by it and paid by an intermediary into a tax pooling account.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 3 (deposit in tax pooling account).

Credit date

(3) The credit date is the day the amount is deposited.

Defined in this Act: amount, ICA company, imputation credit, imputation credit account, intermediary, pay, tax pooling account

Compare: 2004 No 35 s ME 4(1)(ac), (2)(ac)

OB 6 ICA transfer from tax pooling account

Credit

(1) An ICA company has an imputation credit for an amount representing an entitlement to funds held in a tax pooling account if the intermediary transfers the entitlement from another person to the company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 4 (transfer from tax pooling account).

Credit date

(3) The credit date is,—

(a) for an entitlement to funds that are transferred by the intermediary from the tax pooling account to the company's tax account with the Commissioner, the credit date under section RP 19 (Transfers from tax pooling accounts) for the amount transferred; or

(b) for an entitlement to funds that are refunded by the intermediary from the tax pooling account to the company, the date of the refund; or

(c) for an entitlement that is transferred by the intermediary from the company to another person, the date of the transfer.

Defined in this Act: amount, Commissioner, ICA company, imputation credit, intermediary, tax account with the Commissioner, tax pooling account

Compare: 2004 No 35 s ME 4(1)(ad), (2)(ad)

Section OB 6(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 95(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 6(3): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 95(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OB 7 ICA payment of further income tax

Credit

(1) An ICA company has an imputation credit for an amount of further income tax paid under section OB 65 or OB 66.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 5 (payment of further income tax).

Credit date

(3) The credit date is the day the further income tax is paid.

Defined in this Act: amount, further income tax, ICA company, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(c), (2)(a)

OB 7B ICA payment of qualifying company election tax

Credit

(1) An ICA company has an imputation credit for an amount of qualifying company election tax paid under section HA 40 (Liability for qualifying company election tax).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 5B (payment of qualifying company election tax).

Credit date

(3) The credit date is the day the qualifying company election tax is paid.

Defined in this Act: amount, ICA company, imputation credit, pay, qualifying company election tax

Compare: 2004 No 35 s ME 4(1)(ae), (2)(ae)

Section OB 7B: inserted, on 1 April 2008, by section 495 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 7C ICA expenditure on research and development

Credit

(1) An ICA company has an imputation credit for an amount of a tax credit that the company has under section LH 2 (Tax credits relating to expenditure on research and development).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 5C (tax credit for research and development expenditure).

Credit date

(3) The credit date is the day the Commissioner is notified in the company's return of income of the entitlement to the credit.

Defined in this Act: amount, Commissioner, ICA company, imputation credit, return of income, tax credit

Compare: 2004 No 35 s ME 4(1)(ib), (2)(g)

Section OB 7C: inserted, on 1 April 2008, by section 495 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 8 ICA resident withholding tax withheld

Credit

(1) An ICA company has an imputation credit for resident withholding tax (RWT) that is treated under section RA 9(1)(b) (Treatment of amounts withheld as received) as derived by the company other than as policyholder base income.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 6 (amount of tax withheld for resident passive income).

Credit date

(3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount, amount of tax, ICA company, imputation credit, policyholder base income, resident passive income, resident withholding tax, RWT

Compare: 2004 No 35 s ME 4(1)(i), (2)(g)

Section OB 8(1): amended, on 1 July 2010, by section 382(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 8 list of defined terms **policyholder base income**: inserted, on 1 July 2010, by section 382(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 9 ICA dividend derived with imputation credit

Credit

(1) An ICA company has an imputation credit for the amount of an imputation credit attached to a dividend derived by the company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 7 (dividend derived with imputation credit).

Credit date

(3) The credit date is the day the dividend is paid to the company.

Defined in this Act: amount, dividend, ICA company, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(d), (2)(c)

OB 9B ICA attributed PIE income with imputation credit

Credit

(1) An ICA company that is an investor in a multi-rate PIE has an imputation credit for the amount of an imputation credit attributed to it under section HM 54 (Use of tax credits other than foreign tax credits by investors).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 7B (attributed PIE income with imputation credit).

Credit date

(3) The credit date is the day the amount is attributed.

Defined in this Act: amount, attributed PIE income, ICA company, imputation credit, multi-rate PIE

Section OB 9B: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 384(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 9B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 383 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 10 ICA dividend derived with FDP credit

Credit

(1) An ICA company has an imputation credit for the amount of an FDP credit attached to a dividend derived by the company when it is not a foreign dividend payment account (FDPA) company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 8 (dividend derived with FDP credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDPA company, ICA company, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(e), (2)(c)

OB 11 ICA payment of FDP

[Repealed]

Section OB 11: repealed (with effect on 30 June 2009), on 6 October 2009, by section 385(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 12 ICA transfer from FDP account

Credit

(1) An ICA company has an imputation credit for an amount equal to the amount of an FDP debit transferred from its FDP account under section OC 18 (FDPA transfer to imputation credit account).

Table references

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 10 (transfer from FDP account). The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 7 (transfer to imputation credit account).

Credit date

(3) The credit date is the day the amount is transferred.

Defined in this Act: amount, FDP account, FDP debit, ICA company, imputation credit

Compare: 2004 No 35 s ME 4(1)(g), (2)(e)

OB 13 ICA transfer of debit balance on leaving wholly-owned group

Election

(1) If the requirements of subsections (2) and (3) are met, an ICA company may choose to transfer a debit balance in its imput-

ation credit account when the company stops being part of a wholly-owned group of companies.

Eligibility

(2) The company may make an election under subsection (1) if, at a particular time,—

(a) the company is or has recently been part of a wholly-owned group of companies; and

(b) the company is no longer part of the group, or will shortly no longer be part of the group; and

(c) the company has a debit balance in its imputation credit account; and

(d) the group has a loss balance carried forward from earlier tax years of more than $1,000,000 for the income year before the particular time.

Credit and debit

(3) The company may choose that an amount of no more than the debit balance is—

(a) an imputation credit in its imputation credit account; and

(b) an imputation debit in the imputation credit account of another company in the group after the date on which the company stops being part of the wholly-owned group.

Table references

(4) The imputation credit in subsection (3)(a) is referred to in table O1: imputation credits, row 11 (debit balance on leaving wholly-owned group). The imputation debit in subsection (3)(b) is referred to in table O2: imputation debits, row 17 (debit balance on leaving wholly-owned group).

Form and timing of election

(5) The company must make the election—

(a) in a form that the Commissioner may require; and

(b) with a notice of agreement from the group company in whose account the imputation debit arises under subsection (3)(b); and

(c) before the company stops being part of the wholly-owned group.

Further time

(6) For the purposes of subsection (5)(b), the Commissioner may allow further time in which to provide the notice if the company did not have sufficient information at the time it stops being part of the wholly-owned group.

Credit date

(7) The credit date is the day the company stops being part of the wholly-owned group.

Defined in this Act: amount, Commissioner, company, ICA company, imputation credit, imputation credit account, imputation debit, income year, notice, tax loss, wholly-owned group of companies

Compare: 2004 No 35 ss ME 4(1)(cb), (2)(bb), ME 9B(1), (2)

OB 14 ICA payment of tax on leaving wholly-owned group

Credit

(1) An ICA company has an imputation credit for a payment of imputation additional tax that it chooses to pay under section OB 71, excluding an excess tax payment applied under section OB 71(8).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 12 (payment of tax on leaving wholly-owned group).

Credit date

(3) The credit date is the day the imputation additional tax is paid to the Commissioner.

Defined in this Act: amount, Commissioner, excess tax payment, ICA company, imputation additional tax, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(cc), (2)(bc)

OB 15 ICA payment of tax on joining wholly-owned group

Credit

(1) An ICA company has an imputation credit for a payment of imputation additional tax for which it is liable under section OB 72, excluding an excess tax payment applied under section OB 72(9).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 13 (payment of tax on joining wholly-owned group).

Credit date

(3) The credit date is the day the imputation additional tax is paid to the Commissioner.

Defined in this Act: amount, Commissioner, excess tax payment, ICA company, imputation additional tax, imputation credit, pay

Compare: 2004 No 35 s ME 4(1)(cd), (2)(bd)

OB 16 ICA attribution for personal services

Credit

(1) An ICA company that is not a qualifying company has an imputation credit for an amount equal to 38.89% of the personal services attribution under section GB 29 (Attribution rule: calculation).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 14 (attribution for personal services).

Credit date

(3) The credit date is the last day of the tax year for which the attribution is made.

Defined in this Act: amount, ICA company, imputation credit, imputation credit account, qualifying company, tax year

Compare: 2004 No 35 s ME 4(1)(ab), (2)(ab)

Section OB 16(1): amended, on 1 April 2011, by section 96 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 16(1): amended, on 1 April 2008, by section 496 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 17 ICA transfer from policyholder credit account

[Repealed]

Section OB 17: repealed, on 1 July 2010, by section 386(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 18 ICA transfer from ASC account

Credit

(1) An ICA company has an imputation credit for the transfer of an amount from its available subscribed capital (ASC) account. The amount is calculated under section OF 5(4) (ASCA transfer to imputation credit account).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 16 (transfer from ASC account).

Credit date

(3) The credit date is the day the amount is transferred.

Defined in this Act: amount, ASC account, ICA company, imputation credit, imputation credit account

Compare: 2004 No 35 s ME 4(1)(da), (2)(ca)

OB 19 ICA transfer to master fund

Credit

(1) An ICA company that is a master fund has an imputation credit for the transfer of an amount of expenditure under sections DV 5 to DV 7 (which relate to the transfer of expenditure to master funds). The amount is calculated using the formula—

expenditure transferred × tax rate.

Definition of items in formula

(2) In the formula,—

(a) **expenditure transferred** is the amount of expenditure transferred under sections DV 5 to DV 7 (which relate to the expenditure of investment funds) to the company as a master fund:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Table reference

(3) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 17 (transfer to master fund).

Credit date

(4) The credit date is the last day of the tax year corresponding to the income year in which the expenditure is deducted.

Defined in this Act: amount, basic rate, ICA company, imputation credit, imputation credit account, income tax, master fund

Compare: 2004 No 35 s ME 4(1)(aab), (2)(aab)

Section OB 19(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 387(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 19(2)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 20 ICA distribution with Maori authority credit

Credit

(1) An ICA company has an imputation credit for the amount of a Maori authority credit attached to a distribution received by the company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 18 (distribution with Maori authority credit).

Credit date

(3) The credit date is the day the distribution is paid.

Defined in this Act: amount, ICA company, imputation credit, Maori authority credit, pay

Compare: 2004 No 35 s ME 4(1)(ea), (2)(cb)

OB 21 ICA balance of Maori authority credit account

Credit

(1) An ICA company has an imputation credit for an amount equal to the amount of a Maori authority debit under section OK 18 (MACA final balance) when the Maori authority stops being a Maori authority.

Table references

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 19 (balance of Maori authority credit account). The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 10 (final balance).

Credit date

(3) The credit date is the same as the debit date recorded for the debit under section OK 18.

Defined in this Act: amount, ICA company, imputation credit, Maori authority, Maori authority debit

Compare: 2004 No 35 s ME 4(1)(k), (2)(k)

OB 22 ICA replacement payment to company under share-lending arrangement

Credit

(1) An ICA company has an imputation credit for the amount of an imputation credit attached under section OB 64, or treated as attached under section RE 25 (When amount of tax treated as imputation credit) to a replacement payment paid under a share-lending arrangement to the company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 20 (replacement payment under share-lending arrangement).

Credit date

(3) The credit date is the day the replacement payment is paid.

Defined in this Act: amount, ICA company, imputation credit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s ME 4(1)(eb), (ec), (2)(cc)

OB 23 ICA credit transfer to company

Credit

(1) An ICA company has an imputation credit for the amount of an imputation credit shown in a credit transfer notice given to the company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 21 (credit in credit transfer notice).

Credit date

(3) The credit date is the day the notice is given.

Defined in this Act: amount, credit transfer notice, ICA company, imputation credit

Compare: 2004 No 35 s ME 4(1)(ed), (2)(cd)

OB 24 ICA credit on resident's restricted amalgamation

Credit

(1) An ICA company has an imputation credit for the amount of a credit that arises on or after a resident's restricted amalgamation in the imputation credit account of the amalgamated company under 1 of the sections listed in subsection (3).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 22 (credit on resident's restricted amalgamation).

Sections

(3) The sections are—

(a) section OA 10 (When credits or debits due to amalgamating company but not recorded) for imputation credits in the imputation credit account of an amalgamating company:

(b) section OA 11 (FDP account on resident's restricted amalgamation) for an FDP credit in the FDP account of an amalgamating company because the amalgamated company does not maintain an FDP account:

(c) section OA 12 (CTR account on resident's restricted amalgamation) for the conduit tax relief (CTR) credits in the CTR account of an amalgamating company because the amalgamated company does not maintain a CTR account:

(d) section OA 13 (Policyholder credit account on resident's restricted amalgamation) for a policyholder credit in the policyholder credit account of an amalgamating company because the amalgamated company does not maintain a policyholder credit account:

(e) section OA 14 (Continuity of shareholding when group companies amalgamate) for imputation credits in the

imputation credit account of a consolidated imputation group that ends its existence on the amalgamation:

(f) section OA 16 (When FDP account ends on resident's restricted amalgamation) for an FDP credit in the FDP account of a consolidated FDP group because the amalgamated company does not maintain an FDP account:

(g) section OA 17 (When policyholder credit account ends on resident's restricted amalgamation) for the policyholder credits in the policyholder credit account of a consolidated group because the company does not maintain a policyholder credit account.

Defined in this Act: amalgamated company, amalgamating company, amount, CTR account, CTR credit, consolidated FDP group, consolidated group, consolidated imputation group, FDP account, FDP credit, ICA company, imputation credit, imputation credit account, policyholder credit, policyholder credit account, resident's restricted amalgamation

Compare: 2004 No 35 ss ME 29, MG 17, MI 13

OB 25 ICA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that an imputation credit in an ICA company's imputation credit account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The company has an imputation credit for an amount equal to the amount of a debit in the company's imputation credit account under section OB 54.

Table references

(3) The imputation credit in subsection (2) is referred to in table O1: imputation credits, row 23 (reversal of tax advantage arrangement). The imputation debit in subsection (2) is referred to in table O2: imputation debits, row 27 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date of the debit under section OB 54.

Defined in this Act: amount, arrangement, ICA company, imputation credit, imputation credit account, imputation debit, tax advantage

Compare: 2004 No 35 s ME 4(1)(h), (2)(f)

OB 26 ICA elimination of double debit

When this section applies

(1) This section applies when an imputation debit in an ICA company's imputation credit account under section OB 41 has the effect of cancelling an imputation credit under section OB 5.

Credit

(2) The company has an imputation credit for an amount equal to the amount of the debit referred to in subsection (1), and either—

(a) another debit arises under section OB 34 for a refund of the amount of the deposit on a debit date after the debit date for the debit for loss of shareholder continuity; or

(b) the deposit is taken into account under section RP 19 (Transfers from tax pooling accounts) in determining the balance of the company's tax account with the Commissioner after the debit date for the debit for loss of shareholder continuity.

Table references

(3) The table references are as follows:

(a) the imputation debit in subsection (1) is referred to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity):

(b) the imputation credit in subsection (1) is referred to in table O1: imputation credits, row 3 (deposit in tax pooling account):

(c) the imputation credit in subsection (2) is referred to in table O1: imputation credits, row 24 (elimination of double debit):

(d) the imputation debit in subsection (2)(a) is referred to in table O2: imputation debits, row 6 (refund from tax pooling account).

Credit date

(4) The credit date is the day—

(a) the deposit is refunded; or

(b) the credit arises in the company's tax account with the Commissioner.

Defined in this Act: amount, Commissioner, ICA company, imputation credit, imputation credit account, imputation debit, shareholder, tax account with the Commissioner

Compare: 2004 No 35 s ME 4(1A), (2A)

OB 27 ICA non-resident withholding tax withheld

Credit

(1) An Australian ICA company has an imputation credit for an amount of tax withheld by the payer of non-resident passive income.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 25 (NRWT withheld).

Credit date

(3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, non-resident passive income, non-resident withholding tax, NRWT

Compare: 2004 No 35 s ME 4(1B)(a), (2B)(a)

OB 28 ICA payment of amount of tax for schedular payment

Credit

(1) An Australian ICA company has an imputation credit for an amount equal to the amount of tax for a schedular payment paid to the company as a non-resident contractor.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 26 (amount of tax for schedular payment).

Credit date

(3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, non-resident contractor, pay, schedular payment

Compare: 2004 No 35 s ME 4(1B)(b), (2B)(b)

OB 29 ICA payment of schedular income tax

Credit

(1) An Australian ICA company has an imputation credit for a payment of income tax relating to the company's schedular income tax liability for income derived under section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 27 (payment of schedular income tax).

Credit date

(3) The credit date is the day the schedular income tax is paid.

Defined in this Act: Australian ICA company, company, imputation credit, income, pay, schedular income

Compare: 2004 No 35 s ME 4(1B)(c), (2B)(c)

Imputation debits

OB 30 ICA payment of dividend

Debit

(1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend paid by the company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 2 (payment of dividend).

Debit date

(3) The debit date is the day the dividend is paid.

Arrangement for dividend from another company

(4) Section GB 37 (Arrangements for payment of dividend by other companies) may apply to treat an amount as a debit under this section.

Defined in this Act: amount, dividend, ICA company, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 5(1)(a), (2)(a)

OB 31 ICA allocation of provisional tax

Debit

(1) An ICA company has an imputation debit for an amount of provisional tax allocated by the company under section RC 32 (Wholly-owned groups of companies) to an underpaid company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 3 (allocation of provisional tax).

Debit date

(3) The debit date is the day the Commissioner is notified of the allocation.

Defined in this Act: amount, Commissioner, company, ICA company, imputation debit, notify, provisional tax

Compare: 2004 No 35 s ME 5(1)(d), (2)(d)

OB 32 ICA refund of income tax

Debit

(1) An ICA company has an imputation debit for the amount of a refund of income tax paid to the company. Subsection (2) overrides this subsection.

No debit

(2) A debit under subsection (1) does not include—

(a) a refund of income tax paid for a period when the company was not an ICA company; or

(ab) a refund of income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or

(b) a refund of income tax paid before a debit arises under section OB 41, but only to the extent to which the amount of the refund is less than or equal to the amount of the debit; or

(c) a refund under subpart LP (Tax credits for supplementary dividends) because the supplementary dividend generating the refund was paid before a debit arises under section OB 41, but only to the extent to which the amount of the refund is less than the amount of the debit.

Table references

(3) The table references are as follows:

(a) the imputation debit in subsection (1) is referred to in table O2: imputation debits, row 4 (refund of income tax):

(b) the imputation debit in subsection (2)(b) is referred to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity):

(c) the imputation debit in subsection (2)(c) is referred to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity).

Part-year ICA company

(4) The amount of the debit that arises if the company is an ICA company for only part of a tax year is an amount calculated using the formula—

$$\frac{\text{ICA days}}{365} \times \text{refund.}$$

Definition of items in formula

(5) In the formula,—

(a) **ICA days** is the number of days in which the company is an ICA company:

(b) **refund** is the amount of the refund.

Debit date

(6) The debit date is the day the refund is made.

Relationship with section OB 37

(7) This section does not apply to an amount that gives rise to a debit under section OB 37.

Defined in this Act: amount, company, ICA company, imputation debit, income tax, life insurer, pay, schedular income tax liability, schedular policyholder base income, shareholder, supplementary dividend, tax year

Compare: 2004 No 35 s ME 5(1)(e), (2)(e)

Section OB 32(2)(ab): inserted, on 1 July 2010, by section 388(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 32(2)(b): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 97(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 32(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 388(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 32(7): added (with effect on 1 April 2008), on 6 October 2009, by section 388(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 32 list of defined terms **life insurer**: inserted, on 1 July 2010, by section 388(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 32 list of defined terms **schedular income tax liability**: inserted, on 1 July 2010, by section 388(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 32 list of defined terms **schedular policyholder base income**: inserted, on 1 July 2010, by section 388(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 33 ICA amount applied to pay other taxes

Debit

(1) An ICA company has an imputation debit for—

(a) an amount of overpaid income tax applied to pay an amount due under the Inland Revenue Acts:

(b) an increased amount of tax as described in section RP 17B(3) (Tax pooling accounts and their use) applied to pay an amount due under the Inland Revenue Acts other than income tax.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 5 (amount applied to pay other taxes).

No debit

(3) A debit under subsection (1) does not include an amount of overpaid income tax—

(a) applied to satisfy a liability for income tax or provisional tax; or

(b) relating to income tax paid before an imputation debit arises under section OB 41 (table O2: imputation debits, row 14 (debit for loss of shareholder continuity)), but only to the extent to which the amount of overpaid income tax is no more than the amount of the debit for loss of shareholder continuity.

Debit date

(4) The debit date is the day the amount is applied.

Relationship with section OB 37

(5) This section does not apply to an amount that gives rise to a debit under section OB 37.

Defined in this Act: amount, ICA company, imputation debit, income tax, Inland Revenue Acts, pay, provisional tax, shareholder

Compare: 2004 No 35 s ME 5(1)(l), (2)(k)

Section OB 33(1): substituted, on 6 October 2009, by section 389(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 33(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 389(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 33(5): added (with effect on 1 April 2008), on 6 October 2009, by section 389(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 34 ICA refund from tax pooling account

When this section applies

(1) This section applies for an ICA company when—

(a) the company has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under—

(i) section OB 5 (table O1: imputation credits, row 3 (deposit in tax pooling account)); or

(ii) section OB 6 (table O1: imputation credits, row 4 (transfer from tax pooling account)); and

(b) the intermediary refunds the amount from the tax pooling account to the company.

Debit

(2) The company has an imputation debit for the amount of the refund.

Table reference

(3) The imputation debit in subsection (2) is referred to in table O2: imputation debits, row 6 (refund from tax pooling account).

Debit date for companies other than qualifying companies

(4) The debit date for a company that is not a qualifying company is the date found by applying the following paragraphs in order:

(a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the imputation credit account on that date:

(b) the day the refund is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of refund:

(c) the last day of the previous tax year for the remainder of the debit.

Debit date for qualifying companies

(5) The debit date for a qualifying company is the day the refund is made.

Defined in this Act: amount, company, ICA company, imputation credit, imputation credit account, imputation debit, intermediary, pay, qualifying company, tax pooling account, tax year

Compare: 2004 No 35 s ME 5(1)(ea), (2)(ea), (eb)

Section OB 34(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 98(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 34(4) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 390(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 390(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34(4)(b): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 98(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 34(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 390(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34(5): added (with effect on 1 April 2008), on 6 October 2009, by section 390(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34(5): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 98(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 34 list of defined terms **company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 390(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34 list of defined terms **imputation credit account**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 390(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34 list of defined terms **qualifying company**: added (with effect on 1 April 2008), on 6 October 2009, by section 390(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 34 list of defined terms **tax pooling account**: inserted (with effect on 1 April 2008), on 7 September 2010, by section 98(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 34 list of defined terms **tax year**: added (with effect on 1 April 2008), on 6 October 2009, by section 390(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 35 ICA transfer within tax pooling account

When this section applies

(1) This section applies for an ICA company when—

(a) the company has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under—

(i) section OB 5 (table O1: imputation credits, row 3 (deposit in tax pooling account)); or

(ii) section OB 6 (table O1: imputation credits, row 4 (transfer from tax pooling account)); and

(b) the intermediary transfers the entitlement from the company to another person.

Debit

(2) The company has an imputation debit for a tax year for the amount of the transfer of the entitlement to funds in the tax pooling account.

Table reference

(3) The imputation debit in subsection (2) is referred to in table O2: imputation debits, row 7 (transfer within tax pooling account).

Debit date for companies other than qualifying companies

(4) The debit date for a company that is not a qualifying company is—

(a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the account on that date; or

(b) the day the transfer is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of the transfer; or

(c) the last day of the previous tax year for the remainder of the debit.

Debit date for qualifying companies

(5) The debit date for a qualifying company is the day the transfer is made.

Defined in this Act: amount, ICA company, imputation credit, imputation credit account, imputation debit, intermediary, pay, qualifying company, tax pooling account, tax year

Compare: 2004 No 35 s ME 5(1)(eb), (2)(ea), (eb)

Section OB 35(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 99(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 35(4)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 391 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 35(5): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 99(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OB 35B ICA debit for transfer from tax pooling account for policyholder base liability

Debit

(1) An ICA company has an imputation debit for the amount transferred from a tax pooling account to their tax account with the Commissioner, to the extent to which the company is a life insurer, and the amount satisfies its schedular income tax liability for schedular policyholder base income or its income tax liability for a life fund PIE that is a multi-rate PIE.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 7B (debit for transfer from tax pooling account for policyholder base liability).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, schedular income tax liability, schedular policyholder base income, tax year

Section OB 35B: inserted, on 1 July 2010, by section 392(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 36 ICA refund of FDP

Debit

(1) An ICA company has an imputation debit for the amount of a refund of FDP paid to the company when it is not an FDPA company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 8 (refund of FDP).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, FDP, FDPA company, ICA company, imputation debit, pay

Compare: 2004 No 35 s ME 5(1)(g), (2)(g)

OB 37 ICA refund of tax credit

Debit

(1) An ICA company has an imputation debit for—

(a) the amount of a transfer under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax:

(b) the amount of a refund to the company under section LA 6(2)(e):

(c) an amount used by the company under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland

Revenue Act to the extent to which the use does not lead to a refund of income tax.

Exclusion: FDPA companies

(1B) Despite subsection (1), an FDPA company does not have an imputation debit to the extent to which the amount transferred, refunded, or used is a tax credit under subpart LF (Tax credits for FDP credits).

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 9 (refund of tax credit).

Debit date

(3) The debit date is—

(a) for a debit referred to in subsection (1)(a), the day the amount is transferred:

(b) for a debit referred to in subsection (1)(b), the day the amount is refunded:

(c) for a debit referred to in subsection (1)(c), the day the amount is applied.

Defined in this Act: amount, FDPA company, ICA company, imputation debit, pay

Compare: 2004 No 35 s ME 5(1)(h), (2)(e)

Section OB 37(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 393(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 37(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 393(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 37(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 393(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 37(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 393(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 37(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 393(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 38 ICA overpayment of FDP

Debit

(1) An ICA company has an imputation debit for an amount of overpaid FDP applied to pay an amount due under the Inland

Revenue Acts. This subsection applies only to a company at a time when it is not an FDPA company. subsection (3) overrides this subsection.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 10 (overpayment of FDP).

No debit

(3) The debit does not include an overpayment of FDP applied to satisfy a liability for income tax or provisional tax, or relating to a foreign dividend.

Debit date

(4) The debit date is the day the amount is applied.

Defined in this Act: amount, FDP, foreign dividend, ICA company, imputation debit, income tax, Inland Revenue Acts, pay, provisional tax

Compare: 2004 No 35 s ME 5(1)(m), (2)(k)

OB 39 ICA transfer for net foreign attributed income

[Repealed]

Section OB 39: repealed (with effect on 30 June 2009), on 6 October 2009, by section 395(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 39(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 394(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 40 ICA attribution for personal services

Debit

(1) An ICA company has an imputation debit for an amount of an attribution for personal services equal to the amount of an imputation credit under section OB 16.

Table references

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 13 (attribution for personal services). The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 14 (attribution for personal services).

Accounts adjusted

(3) A debit under subsection (1) is recorded in the imputation credit account only if the company has accounted for an attribution of income under section GB 29 (Attribution rule: calculation).

Debit date

(4) The debit date is the last day of the tax year that falls in the income year for which the company accounts in its financial statements for the attribution of income referred to in subsection (3).

Defined in this Act: amount, financial statements, ICA company, imputation credit, imputation credit account, imputation debit, income, income year, tax year

Compare: 2004 No 35 s ME 5(1)(ia), (2)(ha)

OB 41 ICA debit for loss of shareholder continuity

Debit

(1) An ICA company has an imputation debit for the amount equal to the amount of an imputation credit retained in the imputation credit account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity).

When debit arises

(3) The debit arises at the time shareholder continuity is lost.

Qualifying companies

(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treatment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).

Avoidance arrangements

(4) Section GB 34 (ICA arrangements for carrying amounts forward) may exclude a company from the application of this section.

Defined in this Act: amount, ICA company, imputation credit, imputation credit account, imputation debit, qualifying company, shareholder

Compare: 2004 No 35 ss HG 13(6), ME 5(1)(i), (2)(h)

Section OB 41(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 87(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OB 41(3) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 87(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OB 41(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 87(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OB 41(3B) heading: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 117(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OB 41(3B): inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 117(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OB 41 list of defined terms **qualifying company**: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 117(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OB 41 compare note: amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 117(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OB 42 ICA on-market cancellation

Debit

(1) When an ICA company acquires its shares in an on-market cancellation, it has an imputation debit for an amount calculated using the formula—

$$\text{ASC per share excess} \times \frac{\text{tax rate}}{1 - \text{tax rate}}.$$

Definitions of items in formula

(2) In the formula,—

(a) **ASC per share excess** is the amount distributed on the on-market cancellation that is more than the amount

of the available subscribed capital per share calculated under the ordering rule:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year in which the acquisition occurs.

Table reference

(3) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 15 (on-market cancellation).

Negative result

(4) If the formula produces a negative result, the debit is treated as zero.

Debit date

(5) The debit date is the day the shares are acquired by the company in the on-market cancellation.

Defined in this Act: amount, available subscribed capital, ICA company, imputation debit, on-market cancellation, ordering rule, RWT, share

Compare: 2004 No 35 s ME 5(1)(c), (2)(c)

Section OB 42(1) formula: amended, on 1 April 2008, by section 498(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 42(2)(b): substituted, on 1 April 2008, by section 498(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 43 ICA breach of imputation ratio

Debit

(1) An ICA company has an imputation debit for a breach of the benchmark dividend rules in section OB 61(5) for an amount calculated using the formula—

(net dividends × imputation ratio) – attached credits.

Definition of items in formula

(2) In the formula,—

(a) **net dividends** is the total amount of all dividends paid by the company during the tax year, excluding the amount of imputation credits and FDP credits attached to the dividends:

(b) **imputation ratio** is the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios) for an imputation credit or, if

less, the greatest imputation ratio of dividends paid by the company for the tax year:

(c) **attached credits** is the total amount of all imputation credits attached to dividends paid by the company for the tax year.

Table reference

(3) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 16 (breach of imputation ratio).

Ratio change declaration

(4) A debit under subsection (1) does not arise if the company provides a ratio change declaration under section OB 61(6).

Debit date

(5) The debit date is the last day of the tax year.

Defined in this Act: amount, benchmark dividend, dividend, FDP credit, ICA company, imputation credit, imputation debit, imputation ratio, maximum permitted ratio, tax year

Compare: 2004 No 35 s ME 5(1)(f), (2)(f)

OB 44 ICA debit on leaving wholly-owned group

Debit

(1) An ICA company (**company A**) has an imputation debit for an amount equal to the amount of an imputation debit that another company (**company B**) chooses under section OB 13 as a debit to company A's imputation credit account when company B leaves a wholly-owned group of companies.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 17 (debit balance on leaving wholly-owned group).

Debit date

(3) The debit date is the date when the company B stops being part of the wholly-owned group.

Defined in this Act: amount, company, ICA company, imputation credit account, imputation debit, wholly-owned group of companies

Compare: 2004 No 35 ss ME 5(1)(fb), (2)(fb), ME 9B(2)(a)(i)

OB 45 ICA redemption debit

Debit

(1) An ICA company has an imputation debit for the amount of a redemption debit.

When redemption debit arises

(2) A redemption debit arises when—

(a) a company that is not an Australian ICA company is—

(i) the manager of a unit trust; or

(ii) the trustee or manager of a group investment fund; and

(b) the company derives a dividend on the redemption or cancellation of—

(i) a unit issued by the unit trust; or

(ii) an interest of an investor in the group investment fund; and

(c) the company has acquired the unit or interest in the ordinary course of its management activities for the unit trust or group investment fund; and

(d) the unit or interest had been acquired by the company on the same terms as those offered to the investors in the unit trust or group investment fund.

Calculating amount

(3) The debit is for the greater of the amounts described in subsections (4) and (6) calculated for the income year in which the company derived the dividend referred to in subsection (2)(b).

First amount

(4) The first amount is calculated using the formula—

credits attached – imputation debits.

Definition of items in formula

(5) In the formula in subsection (4), —

(a) **credits attached** is the total amount of all imputation credits and FDP credits attached to dividends derived in the circumstances set out in subsection (2) by the company for the income year:

(b) **imputation debits** is the total amount of all imputation debits arising for the income year under—

(i) section OB 41 in the company's imputation credit account; or

(ii) section OP 42 (Consolidated ICA debit for loss of shareholder continuity) in the imputation credit account of the consolidated imputation group of which the company is part.

Second amount

(6) The second amount is calculated using the formula—

$$\frac{\text{total dividends}}{\text{taxable income}} \times \text{(tax liability – debits)}.$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **total dividends** is the total amount of all dividends derived in the circumstances set out in subsection (2), including imputation credits and FDP credits attached to the dividends:

(b) **taxable income** is the taxable income of the company for the income year in which the dividends are derived:

(c) **tax liability** is the company's income tax liability for the income year:

(d) **debits** is the imputation credits attached to the dividends that have been cancelled by an imputation debit arising during the income year under —

(i) section OB 41 in the company's imputation credit account; or

(ii) section OP 42 in the imputation credit account of the consolidated imputation group of which the company is part.

Table references

(8) The table references are as follows:

(a) the imputation debit in subsection (1) is referred to in table O2: imputation debits, row 18 (redemption debit):

(b) the imputation debit in subsection (5)(b)(i) is referred to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity):

(c) the imputation debit in subsection (5)(b)(ii) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):

(d) the imputation debit in subsection (7)(d)(i) is referred to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity):

(e) the imputation debit in subsection (7)(d)(ii) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).

Debit date

(9) The debit date is the date on which the company or the group's nominated company files the return of income for the income year in which the dividend is derived.

Defined in this Act: amount, Australian ICA company, company, consolidated imputation group, dividend, FDP credit, group investment fund, ICA company, imputation credit, imputation credit account, imputation debit, income, income tax, income tax liability, income year, investor, nominated company, return of income, shareholder, tax, taxable income, trustee, unit trust

Compare: 2004 No 35 s ME 41

OB 46 ICA transfer from member fund

Debit

(1) An ICA company has an imputation debit for an amount calculated using the formula—

expenditure transferred × tax rate.

Definition of items in formula

(2) In the formula,—

(a) **expenditure transferred** is the amount of expenditure transferred under sections DV 5 to DV 7 (which relate to expenditure related to investment funds) by the company, as a member fund, to a master fund:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Table reference

(3) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 19 (transfer from member fund).

Debit date

(4) The debit date is the last day of the tax year corresponding to the income year in which the expenditure is deducted.

Defined in this Act: amount, basic rate, ICA company, imputation debit, master fund, tax year

Compare: 2004 No 35 s ME 5(1)(ja), (2)(ia)

Section OB 46(2)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 47 Debit for policyholder base imputation credits

Debit

(1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend derived by the company, to the extent to which it is derived by it as a life insurer and apportioned to their policyholder base.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 20 (debit for policyholder base imputation credits).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, policyholder base, tax year

Section OB 47: substituted, on 1 July 2010, by section 396(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 48 ICA credit balance when Maori authority credit account starts

Debit

(1) An ICA company has an imputation debit for a credit balance in the company's imputation credit account immediately before the company becomes a Maori authority.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 21 (credit balance when Maori authority credit account starts).

Debit date

(3) The debit date is the day before the company becomes a Maori authority.

Defined in this Act: ICA company, imputation credit account, imputation debit, Maori authority

Compare: 2004 No 35 s ME 5(1)(ka), (2)(ja)

OB 49 ICA replacement payment by company under share-lending arrangement

Debit

(1) An ICA company has an imputation debit for the amount of an imputation credit attached under section OB 64 to a replacement payment paid by the company under a share-lending arrangement.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 22 (replacement payment under share-lending arrangement).

Debit date

(3) The debit date is the day the replacement payment is paid.

Defined in this Act: amount, ICA company, imputation credit, imputation debit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s ME 5(1)(ab), (2)(ab)

OB 50 ICA returning share transfer

Debit

(1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend paid to the company as a share user in a returning share transfer that is not a share-lending arrangement.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 23 (returning share transfer).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, dividend, ICA company, imputation credit, imputation debit, pay, returning share transfer, share-lending arrangement, share user

Compare: 2004 No 35 s ME 5(1)(ac), (2)(ac)

OB 51 ICA credit transfer by company

Debit

(1) An ICA company has an imputation debit for the amount of an imputation credit attached to a dividend that is paid to the company and shown in a credit transfer notice given by the company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 24 (credit transfer notice).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, credit transfer notice, dividend, ICA company, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 5(1)(ad), (2)(ac)

OB 52 ICA imputation credit of consolidated imputation group

When this section applies

(1) This section applies when—

(a) an ICA company that is part of a consolidated imputation group has a credit in its imputation credit account; and

(b) a debit arises in the imputation credit account of the consolidated imputation group that is not cancelled by a credit in the imputation credit account arising before or on the same date as the company's credit.

Debit

(2) The ICA company has an imputation debit for the amount of the imputation credit that is transferred to the imputation credit account of the consolidated imputation group.

Table reference

(3) The imputation debit in subsection (2) is referred to in table O2: imputation debits, row 25 (credit of consolidated imputation group).

Debit date

(4) The debit date is the day on which the imputation credit is recorded in the imputation credit account of the consolidated imputation group.

Defined in this Act: amount, consolidated imputation group, ICA company, imputation credit, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 13(3)

OB 53 ICA debit on resident's restricted amalgamation

Debit

(1) An ICA company has an imputation debit for the amount of a debit described in subsection (3) that arises on or after a resident's restricted amalgamation in the account of the amalgamated company under 1 of the sections listed in subsection (3).

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 26 (debit on resident's restricted amalgamation).

Sections

(3) The sections are—

(a) section OA 10 (When credits or debits due to amalgamating company but not recorded) for imputation debits in the imputation credit account of an amalgamating company:

(b) section OA 11 (FDP account on resident's restricted amalgamation) for FDP debits in the FDP account of an amalgamating company because the amalgamated company does not maintain an FDP account:

(c) section OA 12 (CTR account on resident's restricted amalgamation) for the CTR debits in the CTR account of an amalgamating company because the amalgamated company does not maintain a CTR account:

(d) section OA 13 (Policyholder credit account on resident's restricted amalgamation) for the policyholder debits in the policyholder credit account of an amalgamating company because the amalgamated company does not maintain a policyholder credit account:

(e) section OA 14 (Continuity of shareholding when group companies amalgamate) for imputation debits in the

imputation credit account of a consolidated imputation group that ends its existence on the amalgamation:

(f) section OA 16 (When FDP account ends on resident's restricted amalgamation) for FDP debits in the FDP account of a consolidated group because the amalgamated company does not maintain an FDP account:

(g) section OA 17 (When policyholder credit account ends on resident's restricted amalgamation) for the policyholder debits on the policyholder credit account of a consolidated group because the amalgamated company does not maintain a policyholder credit account.

Defined in this Act: amalgamated company, amalgamating company, amount, consolidated group, consolidated imputation group, CTR account, CTR debit, FDP account, FDP debit, ICA company, imputation credit account, imputation debit, policyholder credit account, policyholder debit, resident's restricted amalgamation

Compare: 2004 No 35 ss ME 29, MG 17, MI 13

OB 54 ICA tax advantage arrangement

Debit

(1) An ICA company has an imputation debit for the amount of a debit for a tax advantage arrangement determined under section GB 36 (Reconstruction of imputation arrangements to obtain tax advantage).

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 27 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the debit for the tax advantage arrangement is determined.

Defined in this Act: amount, arrangement, ICA company, imputation debit, tax advantage, tax year

Compare: 2004 No 35 s ME 5(1)(j), (2)(i)

OB 55 ICA retrospective imputation credit

Debit

(1) An ICA company has an imputation debit for an imputation credit that is retrospectively attached to a non-cash dividend under section OB 62.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 28 (retrospective imputation credit).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: ICA company, imputation credit, imputation debit, non-cash dividend, pay

Compare: 2004 No 35 s ME 6(4)(a)

OB 56 ICA final balance

Debit

(1) An ICA company has an imputation debit for a credit balance in the imputation credit account when the company stops being an ICA company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 29 (final balance).

Debit date

(3) The debit date is the day the company stops being an ICA company.

Defined in this Act: ICA company, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 5(1)(k), (2)(j)

OB 57 ICA refund of NRWT

Debit

(1) An Australian ICA company has an imputation debit for an amount of a refund of NRWT that gave rise to an imputation credit under section OB 27.

Table references

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 30 (refund of NRWT). The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 25 (NRWT withheld).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, imputation debit, NRWT

Compare: 2004 No 35 s ME 5(1A)(a), (2A)

OB 58 ICA refund of amount of tax for schedular payment

Debit

(1) An Australian ICA company has an imputation debit for the amount of a refund of an amount of tax for a schedular payment that gave rise to an imputation credit under section OB 28.

Table references

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 31 (refund of amount of tax for schedular payment). The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 26 (amount of tax for schedular payment).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, amount of tax, Australian ICA company, imputation credit, imputation debit, pay, schedular payment

Compare: 2004 No 35 s ME 5(1A)(b), (2A)

OB 59 ICA refund of schedular income tax

Debit

(1) An Australian ICA company has an imputation debit for the amount of a refund of schedular income tax that gave rise to an imputation credit under section OB 29.

Table references

(2) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 32 (refund of schedular income tax). The imputation credit in subsection (1) is referred to in table O1: imputation credits, row 27 (payment of schedular income tax).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, Australian ICA company, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 5(1A)(c), (2A)

Imputation credits attached to dividends

OB 60 Imputation credits attached to dividends

Attaching imputation credits

(1) When an ICA company pays a dividend, it may attach an imputation credit to the dividend. Section OB 63 overrides this section.

Retrospective attachment

(2) The ICA company may determine that an imputation credit is retrospectively attached to a dividend in the circumstances described in section OB 62

Imputation ratio for dividend

(3) A dividend with an imputation credit attached has an imputation ratio calculated using the formula—

$$\frac{\text{credit attached}}{\text{net dividend paid}}.$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **credit attached** is the amount of the imputation credit attached to the dividend:

(b) **net dividend paid** is the amount of the dividend paid, excluding the amount of the imputation credit and FDP credit attached.

Maximum permitted ratio

(5) A dividend with an imputation credit attached must not have an imputation ratio that is more than the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Conversion of AUD dividend

(6) A dividend paid in Australian currency by an Australian ICA company must be converted into New Zealand currency, calculated using the formula—

Australian dollar value × exchange rate.

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **Australian dollar value** is the amount of the dividend in Australian dollars:

(b) **exchange rate** is the close of trading spot exchange rate for the Australian dollar on—

(i) the day the dividend is declared if that day is no more than 3 months before the dividend is paid; or

(ii) the day the dividend is paid if that day is more than 3 months after the dividend is declared.

Defined in this Act: amount, Australian ICA company, close of trading spot exchange rate, dividend, FDP credit, ICA company, imputation credit, imputation ratio, income year, maximum permitted ratio, pay, tax year

Compare: 2004 No 35 ss ME 1B, ME 6, ME 8(1), (2)

OB 61 ICA benchmark dividend rules

When this section applies

(1) This section applies when an ICA company pays a dividend on more than 1 occasion during a tax year. Subsection (2) overrides this subsection.

Exclusions

(2) This section does not apply to the following dividends:

(a) a dividend that is the subject of an election by a statutory producer board under sections OB 73 to OB 75:

(b) a dividend that is the subject of an election by a co-operative company under sections OB 78 to OB 80:

(c) a dividend paid when the company is not an ICA company.

Benchmark dividend

(3) The first dividend of the tax year is the benchmark dividend.

Same imputation ratio

(4) The imputation ratio of a dividend paid after the benchmark dividend must be the same as the imputation ratio of the benchmark dividend. This subsection is modified by section OZ 9 (Benchmark dividends: ratio change).

Breach of imputation ratio

(5) A breach of subsection (4) gives rise to an amount of an imputation debit under section OB 43 (table O2: imputation debits, row 16 (breach of imputation ratio)) calculated using the formula in section OB 43(1).

Ratio change declaration

(6) An ICA company may notify the Commissioner that the dividend is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the dividend is not part of an arrangement to which sections GB 35 and GB 36 (which relate to imputation arrangements to obtain tax advantage) apply. The company must provide the declaration before the dividend is paid, or by a later date if the Commissioner allows. For the purposes of this subsection, the dividend must not be part of an arrangement to obtain a tax advantage. This subsection overrides subsection (5).

Consolidated imputation group
[Repealed]

(7) *[Repealed]*

Group debit

(8) Under section OP 2(2) (When credits and debits arise only in group accounts), a breach of an imputation ratio alternatively gives rise to an imputation debit under section OP 43 (Consolidated ICA breach of imputation ratio) (table O20: imputation debits of consolidated imputation groups, row 17 (breach of imputation ratio)) if the company is part of a consolidated imputation group.

Treatment of group dividends

(9) In the application of this section to a consolidated imputation group, a dividend paid between group companies is disregarded.

Defined in this Act: arrangement, benchmark dividend, Commissioner, company, consolidated imputation group, co-operative company, dividend, ICA company, imputation debit, imputation ratio, notify, pay, statutory producer board, tax advantage, tax year

Compare: 2004 No 35 ss ME 8(2), (3), ME 14(2)

Section OB 61(4): amended, on 1 October 2010, by section 12 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OB 61(7) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 397(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 61(7): repealed (with effect on 1 April 2008), on 6 October 2009, by section 397(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 62 Retrospective attachment of imputation credits

When this section applies

(1) This section applies in relation to a dividend arising from a transfer pricing arrangement or under subpart FL (Emigration of resident companies) when—

(a) an ICA company pays a non-cash dividend whose amount is later adjusted under section GC 7 or GC 8 (which relate to transfer pricing arrangements):

(b) an emigrating company that was an ICA company immediately before the time of emigration and is treated under section FL 2 (Treatment of emigrating companies and their shareholders) as paying a distribution to shareholders.

Imputation credits attached retrospectively

(2) The company may attach retrospectively an imputation credit to the dividend or distribution, as applicable.

Limit for ICA company

(3) The amount of all imputation credits attached retrospectively by a company referred to in subsection (1)(a) during a tax year must not be more than the lesser of—

(a) the credit balance of the company's imputation credit account at the end of the tax year in which the dividend is paid; or

(b) the credit balance of the company's imputation credit account at the end of each of the tax years in the period that runs from the tax year of payment of the dividend to the tax year in which the credit is attached retrospectively under subsection (1).

Limit for emigrating company

(4) The amount of all imputation credits attached retrospectively by a company referred to in subsection (1)(b) must be no more

than the credit balance of the company's imputation credit account immediately before the time of emigration.

When subsection (6) applies

(5) Subsection (6) applies if—

(a) a company provides a company dividend statement and issues a shareholder dividend statement for a non-cash dividend at the time it retrospectively attaches an imputation credit; and

(b) the adjustment under section GC 7 or GC 8 results in a payment of income tax; and

(c) the attachment of the imputation credit would otherwise result in a liability for imputation penalty tax.

New credit date

(6) The credit date for the imputation credit arising for the payment of the income tax referred to in subsection (5)(b) is the day on which the non-cash dividend is paid, and the company is excused a breach of section 69 of the Tax Administration Act 1994 for not filing a correct annual ICA return through the retrospective attachment of an imputation credit.

Statements still required

(7) A company that does not meet the requirement of subsection (5)(a) remains liable to—

(a) provide a company dividend statement; and

(b) issue a shareholder dividend statement for the non-cash dividend and the retrospective attachment of an imputation credit.

When subsection (9) applies

(8) Subsection (9) applies when an amount of tax paid by an emigrating company is attributable to income derived before the time of emigration or to the application of subpart FL.

Amount of tax paid by emigrating company

(9) The amount of tax referred to in subsection (8) is treated for the purposes of this subpart as paid immediately before the time of emigration if—

(a) the company determines to attach an imputation credit to a dividend; and

(b) the imputation credit is not less than the amount of tax; and

(c) the company notifies the Commissioner when providing the company dividend statement.

Defined in this Act: amount, amount of tax, annual ICA return, arrangement, Commissioner, company dividend statement, dividend, emigrating company, ICA company, imputation credit, imputation credit account, imputation penalty tax, income, income tax, non-cash dividend, notify, pay, shareholder, shareholder dividend statement, tax year, time of emigration

Compare: 2004 No 35 s ME 6

OB 63 Australian dividends

No credits attached

(1) Despite section OB 60(1), an ICA company must not attach an imputation credit to a dividend if—

(a) the Income Tax Assessment Act 1997 (Aust) applies to the payment of the dividend by the company; and

(b) the dividend is paid in relation to a share that is, or forms part of, a debt interest under that Act; and

(c) the payment of the dividend is included in the company's return of income to the Australian Federal Commissioner of Taxation.

Exclusion: groups of companies

(2) Subsection (1) does not apply in relation to a share issued before 21 July 2005 if, when the dividend is paid, the shareholder and the ICA company—

(a) are not part of the same group of companies:

(b) are part of the same wholly-owned group of companies and not resident in New Zealand.

Exclusion: reasons for acquisition of shares

(3) Subsection (1) does not apply in relation to a share issued before 21 July 2005 if—

(a) the shareholder and the ICA company are part of the same group of companies; and

(b) the shareholder acquired the share—

(i) as part of a sharebroking business:

(ii) as an investment held by the shareholder as part of an insurance business:

(iii) as security for a loan given as part of a business of lending money:

(iv) as a trustee for a beneficiary who is not a company that is part of the same group of companies as the shareholder:

(v) for a reason that does not include the fact that the shareholder and the ICA company were part of the same group of companies.

Defined in this Act: business, company, dividend, group of companies, ICA company, imputation credit, pay, resident in New Zealand, share, shareholder, trustee, wholly-owned group of companies

Compare: 2004 No 35 s ME 6(1B)–(1D)

OB 64 Replacement payments

Attaching credits

(1) On making a replacement payment, a share user under a share-lending arrangement may attach an imputation credit to the payment.

Amount of credit

(2) The amount of the imputation credit must be equal to or less than the amount of any imputation credit attached to a dividend relating to the replacement payment that is received by the share user before the replacement payment is made.

Defined in this Act: amount, dividend, imputation credit, pay, replacement payment, share-lending arrangement, share user

Compare: 2004 No 35 s ME 6B

Further income tax

OB 65 Further income tax for ICA closing debit balance

Liability

(1) An ICA company is liable to pay further income tax for a debit balance in the company's imputation credit account at the end of a tax year.

Exclusion

(2) An imputation debit arising under section OB 46 (table O2: imputation debits, row 19 (transfer from member fund)) is disregarded when determining under subsection (1) if the company has a debit balance at the end of a tax year.

Due date

(3) The company must pay the further income tax to the Commissioner no later than 20 June following the end of the tax year.

Defined in this Act: Commissioner, company, further income tax, ICA company, imputation credit account, imputation debit, pay, tax year

Compare: 2004 No 35 s ME 9(1), (1A), (2)

OB 66 Further income tax when company stops being ICA company

Liability

(1) An ICA company is liable to pay further income tax for a debit balance in the company's imputation credit account when the company stops being an ICA company.

Due date

(2) The company must pay the further income tax to the Commissioner—

(a) by the day the company stops being an ICA company; or

(b) for a company that is no longer an ICA company because it becomes a portfolio investment entity, by the end of the tax year in which it stops being an ICA company.

Paramount section

(3) A company that stops being an ICA company on the last day of a tax year is liable to pay further income tax under this section and not under section OB 65.

Defined in this Act: Commissioner, company, further income tax, ICA company, imputation credit account, pay, portfolio investment entity, tax year

Compare: 2004 No 35 s ME 9(3)

Section OB 66(2): substituted, on 1 April 2008, by section 499(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 66 list of defined terms **portfolio investment entity**: inserted, on 1 April 2008, by section 499(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 67 Reduction of further income tax

Debit at previous year-end

(1) An ICA company's liability for further income tax under sections OB 65 and OB 66 may be reduced under subsection (2) if—

(a) a debit balance existed in the company's imputation credit account at the end of a tax year; and

(b) the credits that arise in the account in the following tax year totals less than the debit balance; and

(c) the company notifies the Commissioner.

Reduction applying for consecutive tax years

(2) In relation to 2 tax years that are consecutive, the liability for further income tax at the end of the second tax year is reduced by the amount calculated using the formula—

debit balance at end of second year – first year adjustment.

Definition of items in formula

(2B) In the formula in subsection (2),—

(a) **debit balance at end of second year** is the amount of the debit balance in the company's imputation credit account at the end of the second tax year:

(b) **first year adjustment** is the amount—

(i) of the first year's debit balance in the company's imputation credit account less the credits made to the account during the second tax year; and

(ii) that cannot be less than zero.

Qualifying companies

(3) The liability of an ICA company that is a qualifying company for further income tax under sections OB 65 and OB 66 may be reduced under subsection (4) if an imputation debit arises under section OB 32 (table O2: imputation debits, row 4 (refund of income tax)) in the company's imputation credit account before the end of the tax year for which the liability arises.

Amount of reduction

(4) The liability of the qualifying company for further income tax at the end of the tax year referred to in subsection (3) is reduced by an amount calculated using the formula—

refunds – credits.

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **refunds** is the total amount of all refunds of income tax paid to the company before the debit balance creating the liability for further income tax referred to in subsection (3) arises:

(b) **credits** is the total amount of all credits to the company's imputation credit account for the period that runs from the tax year in which the first refund was received to the time the calculation is made.

Defined in this Act: amount, Commissioner, further income tax, ICA company, imputation credit account, imputation debit, imputation rules, income tax, notify, pay, qualifying company, tax year

Compare: 2004 No 35 s ME 9(7)–(9)

Section OB 67(2) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to section 113(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 67(2): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 113(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 67(2B) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 113(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 67(2B): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 113(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 67(5): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 113(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OB 68 Income tax paid satisfying liability for further income tax

Election

(1) On meeting the requirements of subsection (2), an ICA company that is liable for further income tax may choose to satisfy the liability through a payment of income tax.

Requirements

(2) The company must pay the income tax—

(a) after the end of the tax year in which the relevant debit balance arises; and

(b) for an income year corresponding to the tax year in which the company is an ICA company.

Payment credited

(3) The payment of income tax satisfies the company's liability to pay further income tax.

When treated as paid

(4) The further income tax is treated as paid on the date on which the Commissioner receives the payment of income tax.

Defined in this Act: Commissioner, further income tax, ICA company, income tax, income year, pay, tax year

Compare: 2004 No 35 s ME 9(5A), (8), (9)

OB 69 Further income tax paid satisfying liability for income tax

Election

(1) An ICA company that pays further income tax may choose to treat the payment as satisfying a liability of the company to pay income tax or provisional tax.

ICA company status

(2) The liability for income tax or provisional tax referred to in subsection (1) must be for an income year corresponding to a tax year in which the company is an ICA company.

Alternative for consolidated imputation group

(3) A company that is part of a consolidated imputation group may choose that the payment under subsection (1) satisfies a group liability for income tax or provisional tax that arises at or after the time of payment.

When treated as paid

(4) The liability for income tax or provisional tax is treated as paid on the day on which the further income tax is paid.

Australian ICA company

(5) An Australian ICA company may choose to convert a payment of further income tax into a tax loss of an amount calculated under subsection (7). Subsection (6) overrides this subsection.

Requirement

(6) The election under subsection (5) may be made only if no possibility exists that the further income tax can be credited against a future income tax liability of the company.

Tax loss

(7) For the purposes of subsection (5), the amount of the tax loss for the payment of further income tax is calculated using the formula—

$$\frac{\text{further income tax paid}}{\text{tax rate.}}$$

Definition of items in formula

(8) In the formula,—

(a) **further income tax paid** is the amount of further income tax paid that is not credited against an income tax liability:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) at the time the further income tax is paid.

Benefit of the loss

(9) For the purposes of subsection (5), the company may choose that the tax loss is attributed to itself or to another company that is part of the same wholly-owned group of companies.

When loss is attributed

(10) The tax loss referred to in subsection (5) is a loss for the income year corresponding to the tax year in which the company paid the further income tax.

Defined in this Act: amount, Australian ICA company, basic rate, consolidated imputation group, further income tax, ICA company, income tax, income tax liability, income year, pay, provisional tax, tax loss, tax year, wholly-owned group of companies

Compare: 2004 No 35 ss ME 9(5), (5B), ME 13(6)

Section OB 69(8)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 70 Application of other provisions

When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—

(a) apply to further income tax as if they addressed further income tax and not income tax; and
(b) apply, modified as necessary, to ensure their application to further income tax rather than income tax; and
(c) do not override the imputation rules or section 101 of the Tax Administration Act 1994.

Defined in this Act: further income tax, imputation rules, income tax

Compare: 2004 No 35 s ME 9(6)

Imputation additional tax

OB 71 Imputation additional tax on leaving wholly-owned group

When this section applies

(1) This section applies in a tax year when—
(a) a company (**company A**) stops being part of a wholly-owned group of companies because of a change in the ultimate owner of the company; and
(b) *[Repealed]*
(c) the loss balance carried forward from the previous tax year for companies in the group is more than $1,000,000.

Sources of liability

(1B) Company A is liable for imputation additional tax under—
(a) subsection (2), if the company has a debit balance in the imputation credit account when the ultimate owner of the company changes:
(b) subsection (4), if the company has an amount of excess entitlement under subsection (5) when the ultimate owner of the company changes.

Liability arising from debit balance

(2) At the time company A stops being part of the wholly-owned group, it may choose to reduce or eliminate the debit balance by paying imputation additional tax of an amount no greater than the debit balance but, in dealing with the liability, it may transfer some or all of the debit balance under subsection (3) or choose to use its excess entitlement under subsection (4), or a combination of both.

Debit balance

(3) Company A may choose to transfer under section OB 44 some or all of a debit balance in the company's imputation credit account to another company (**company B**) in the same wholly-owned group. An imputation additional tax liability remains for the amount of the debit balance that is not transferred.

Liability arising from excess entitlement

(4) Company A is liable for an amount of imputation additional tax equal to the amount of the excess entitlement described in subsection (5) reduced, to no less than zero, by the amount of any payment that Company A—

(a) made as provisional tax or income tax; and

(b) chooses to treat as having been paid by company B.

Amount of excess entitlement

(5) Company A's excess entitlement at the time it stops being part of the wholly-owned group is 1 of the following amounts:

(a) zero, if the credit balance of its imputation credit account at the time is equal to or more than—

(i) the amount in the tax pooling account provided by or for the benefit of company A that is more than its liability to pay income tax or provisional tax at the time; or

(ii) the entitlement company A would have to a refund under sections RM 2, and RM 4 to RM 6 (which relate to refunds of excess tax) as if sections RM 13 to RM 17 (which relate to limits on refunds) did not apply; or

(b) the total of the amounts referred to in paragraph (a)(i) and (ii) if no credit balance exists at the time; or

(c) the excess of the total of the amounts referred to in paragraph (a)(i) and (ii) over the credit balance, if paragraph (b) does not apply.

Due date

(6) If company A chooses to pay imputation additional tax under subsections (2) and (4), it must pay the amount to the Commissioner no later than the 20th day of the month following the month in which company A stops being part of the group.

Joint liability

(7) Company A and all companies in the group are jointly liable for a payment of imputation additional tax under subsection (6). A payment of imputation additional tax does not satisfy any other liability of company A or the group.

Payment by excess tax

(8) Company A, or another company in the wholly-owned group, may choose to apply an excess tax payment to satisfy company A's liability.

Form of election

(9) An election under this section must follow the form of an election under section OB 13(5). However, if subsections (3) or (4) apply to transfer a debit or treat an amount of tax as having been paid, company A must also provide a notice of agreement from company B in relation to the amount of excess tax payment.

Defined in this Act: amount, Commissioner, company, excess tax payment, imputation additional tax, imputation credit account, income tax, income tax liability, pay, provisional tax, tax loss, tax pooling account, tax year, ultimate owner, wholly-owned group of companies

Compare: 2004 No 35 s ME 9B

Section OB 71(1) heading: substituted (with effect on 1 April 2008), on 7 September 2010, by section 100(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(1): substituted (with effect on 1 April 2008), on 7 September 2010, by section 100(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(1)(b): repealed (with effect on 1 April 2008), on 6 October 2009, by section 398(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 71(1B) heading: inserted (with effect on 1 April 2008), on 7 September 2010, by section 100(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(1B): inserted (with effect on 1 April 2008), on 7 September 2010, by section 100(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(2) heading: substituted (with effect on 1 April 2008), on 7 September 2010, by section 100(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(4) heading: substituted (with effect on 1 April 2008), on 7 September 2010, by section 100(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(4): substituted (with effect on 1 April 2008), on 7 September 2010, by section 100(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(4)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 398(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 71(5)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 398(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OB 71(6): amended (with effect on 1 April 2008), on 7 September 2010, by section 100(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 71(9): amended (with effect on 1 April 2008), on 6 October 2009, by section 398(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OB 72 Imputation additional tax on joining wholly-owned group

Liability

(1) An ICA company to which subsection (2) applies may be liable for imputation additional tax under—

(a) subsection (3) as the company's first liability under this section:

(b) subsection (5) as the company's second liability under this section.

Liable company

(2) The company is 1 to which all of the following apply:

(a) the company is or was recently part of a wholly-owned group of companies (the **former group**); and

(b) the company has or will soon join a different wholly-owned group of companies (the **new group**); and

(c) the former group has a loss balance carried forward from an earlier tax year of more than $1,000,000 for the tax year before the income year corresponding to the tax year in which the company changes groups.

First liability

(3) The company is liable for imputation additional tax if, at a particular time,—

(a) a debit balance exists in the company's imputation credit account; and

(b) an imputation debit arose when the company was part of the former group; and

(c) the imputation additional tax liability of the company has not been paid under section OB 71 by the company or another company in the former group.

Amount of liability

(4) The amount of the imputation additional tax liability under subsection (3) is equal to the amount of the imputation debit at the time the company becomes part of the new group.

Second liability

(5) The company is liable for an amount of imputation additional tax, equal to the excess entitlement determined under subsection (6), if a group of people hold common voting interests in the new group that exceed by 67% or more the common voting interests in the former group that are held by the same people immediately before the company joins the new group.

Possible liability under section OB 72B

(5B) The company is liable for an amount of imputation additional tax given by section OB 72B(8) if the requirements of that provision are met.

Excess entitlement

(6) The company's excess entitlement at a particular time is 1 of the following amounts:

(a) zero, if the credit balance of the company's imputation credit account at the time is equal to or more than the amount (the **total refundable amount**) that is the total of the following:

(i) the amount in the tax pooling account provided by or for the benefit of the company that is more than the company's liability to pay income tax or provisional tax at the time:

(ii) the amount of the refund to which the company is entitled under sections RM 2 and RM 4 to RM 6

(which relate to refunds of excess tax), other than an amount affected by a restriction under section OB 72B(5); or

(b) the total refundable amount, if there is no credit balance in the company's imputation credit account at the time; or

(c) the excess of the total refundable amount over the credit balance in the company's imputation credit account at the time, if paragraph (b) does not apply.

Due date

(7) The imputation additional tax must be paid to the Commissioner no later than the 20th day of the month following the month in which the company stops being part of the former group.

Joint liability

(8) The company and all companies in the new group are jointly liable for the imputation additional tax. A payment of imputation additional tax does not satisfy any other liability of the company or the new group.

Payment by excess tax

(9) For a liability under subsections (3) and (5), the company or another company in the new group may choose to satisfy the liability by applying an excess tax payment in discharging it.

Defined in this Act: amount, Commissioner, company, excess tax payment, ICA company, imputation additional tax, imputation credit account, imputation debit, income tax liability, income year, pay, provisional tax, tax loss, tax pooling account, tax year, wholly-owned group of companies

Compare: 2004 No 35 s ME 9C

Section OB 72(1)(a): amended (with effect on 1 March 2010), on 7 September 2010, by section 101(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 72(5): substituted (with effect on 1 March 2010), on 7 September 2010, by section 101(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 72(5B) heading: inserted (with effect on 1 March 2010), on 7 September 2010, by section 101(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 72(5B): inserted (with effect on 1 March 2010), on 7 September 2010, by section 101(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 72(6)(a): substituted (with effect on 1 March 2010), on 7 September 2010, by section 101(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 72(6)(b): substituted (with effect on 1 March 2010), on 7 September 2010, by section 101(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OB 72(6)(c): substituted (with effect on 1 March 2010), on 7 September 2010, by section 101(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OB 72B Limit on using entitlement to refund after joining wholly-owned group

When this section applies

(1) This section applies when—

(a) an ICA company joins a wholly-owned group of companies (the **new group**) from another wholly-owned group of companies (the **former group**); and

(b) the ICA company is not liable for imputation additional tax under section OB 72(5).

Restricted refund amount for company and new group

(2) Subsections (3) to (8) apply to an amount (the **restricted refund amount**) for the ICA company and the new group that is greater than zero and calculated using the formula—

refund amount – ICA credit balance.

Definition of items in formula

(3) In the formula,—

(a) **refund amount** is the total of the following amounts, determined immediately before the ICA company joins the new group:

(i) the amount in the tax pooling account provided by or for the benefit of the ICA company that is more than the company's liability to pay income tax or provisional tax at the time:

(ii) the amount of the refund to which the ICA company is entitled under sections RM 2 and RM 4 to RM 6 (which relate to refunds of excess tax) other than an amount affected by a restriction under subsection (5) for the company and another group:

(b) **ICA credit balance** is the credit balance of the ICA company's imputation credit account immediately before the company joins the new group.

Payment to Commissioner

(4) If the restricted refund amount is greater than the amount referred to in subsection (3)(a)(ii), the ICA company must pay to the Commissioner an amount equal to the excess and the Commissioner must hold the amount with the balance of the restricted refund amount as if the excess were a refund to which the company were entitled under section RM 2 (Refunds for overpaid tax).

Use of restricted refund amount

(5) The Commissioner must hold the restricted refund amount for the ICA company and the new group subject to the restriction that the amount—

(a) may be refunded for an imputation credit only if the ICA company satisfies the Commissioner that the credit—

(i) arises from taxation paid by the ICA company or by a company that is in the same wholly-owned group as the ICA company and was in the former group immediately before the ICA company joined the new group:

(ii) is attached to a dividend received in relation to a shareholding by the ICA company or by a company that is in the same wholly-owned group as the ICA company and was in the former group immediately before the ICA company joined the new group and had the shareholding then; and

(b) may be used to satisfy a tax liability of—

(i) the ICA company:

(ii) a company that is in the same wholly-owned group as the ICA company (the **member**), if the ICA company satisfies the Commissioner that the member was in the former group immediately before the ICA company joined the new group.

Restriction additional to other requirements

(6) The restriction imposed by subsection (5) on the use of a restricted refund amount is in addition to the requirements under other provisions of the Act for a refund or the satisfaction of a tax liability from an amount to which the ICA company is entitled under sections RM 2 and RM 4 to RM 6.

Reducing restricted refund amount

(7) The restricted refund amount for the ICA company and a group is reduced by the amount of—

(a) a refund permitted under subsection (5)(a) relating to the restricted refund amount:

(b) a satisfaction of a tax liability permitted by subsection (5)(b) relating to the restricted refund amount:

(c) a payment of imputation additional tax under subsection (8) relating to the restricted refund amount:

(d) a payment of imputation additional tax under section OB 71(4) relating to the restricted refund amount.

Liability for imputation additional tax

(8) The ICA company is liable for an amount of imputation additional tax equal to the restricted refund amount for the company and a wholly-owned group of companies (the **old group**) determined immediately after a change in the holding of voting interests in the ICA company if, immediately after the change, a group of people hold common voting interests in the ICA company that exceed, by 67% or more, the common voting interests—

(a) in the wholly-owned group of companies to which the company belonged immediately before the company joined the old group; and

(b) that were held by the same people immediately before the company joined the old group.

Defined in this Act: Commissioner, common voting interest, company, dividend, ICA company, imputation additional tax, imputation credit, income tax, provisional tax, tax pooling account, wholly-owned group of companies

Section OB 72B: inserted (with effect on 1 March 2010), on 7 September 2010, by section 102 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Distributions of statutory producer boards and co-operative companies

OB 73 Statutory producer boards attaching imputation credits to cash distributions

Election

(1) On meeting the requirements of subsection (2), a statutory producer board that is an ICA company may choose, for an income year, to attach an imputation credit to a cash distribution paid to a member of the producer board.

Requirements

(2) The producer board may make an election under subsection (1) if—

(a) the distribution is made to all persons who were members of the board at a time in the income year; and

(b) the board proposes to pay the distribution based on 1 of the factors set out in subsection (3); and

(c) the board would, in the absence of this section, have a deduction for some or all of the distribution, whether as an association rebate under subpart HE (Mutual associations) or under some other provision of this Act.

Methods

(3) The amount of the distribution must be based on 1 of the following methods of determination, as applicable, for an income year:

(a) all payments for a member's produce transactions during the income year as a proportion of total payments for all members' produce transactions during the income year; or

(b) all levies payable by a member for the income year as a proportion of total levies payable by members for the income year; or

(c) another method of determination approved by the Commissioner.

Total credits attached

(4) The total amount of imputation credit attached to the distribution is calculated using the formula—

$$\text{total net dividend} \times \frac{\text{tax rate}}{1 - \text{tax rate}}$$

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **total net dividend** is the total amount of the distribution excluding the amount of imputation credit:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the income year.

Member's credits

(6) The amount of a member's share of an imputation credit attached under subsection (4) is calculated using the formula—

$$\frac{\text{member's distribution}}{\text{total distribution}} \times \text{total imputation credit attac}$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **member's distribution** is the amount of the member's share of the distribution excluding the amount of imputation credit:

(b) **total distribution** is the amount of the total distribution paid excluding the amount of imputation credit:

(c) **total imputation credit attached** is total amount of imputation credit attached to the distribution calculated under subsection (4).

When producer board chooses not to have deduction

(8) If a producer board chooses to treat a distribution as a dividend, it is denied a deduction for the amount of the distribution under section DV 18 (Statutory producer boards and co-operative companies).

Relationship with section OZ 15

(9) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (4).

Defined in this Act: amount, association rebate, basic rate, Commissioner, deduction, dividend, ICA company, imputation credit, income tax, income year, levy, member, pay, produce transactions, statutory producer board

Compare: 2004 No 35 ss ME 30, ME 31

Section OB 73(5)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 73(9) heading: added, on 1 April 2008, by section 500 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 73(9): added, on 1 April 2008, by section 500 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 74 Statutory producer boards attaching imputation credits to notional distributions

Election

(1) A statutory producer board that is an ICA company may choose, for an income year, to attach an imputation credit to a notional distribution, as a result of which a member derives a dividend of an amount calculated under section OB 75(2). Subsections (2) and (8) override this subsection.

All members

(2) A statutory producer board may make an election under subsection (1) only if the distribution is made to all persons who were members of the producer board at a time in the income year.

Methods

(3) The producer board may determine that the amount of an imputation credit attached to a notional distribution is based on—

- (a) produce transactions, and calculated under subsection (5) for each member; or
- (b) members' levies, and calculated under subsection (7) for each member; or
- (c) a combination of paragraphs (a) and (b); or
- (d) some other method of determination approved by the Commissioner.

Produce transactions

(4) The amount of an imputation credit attached to a member's distribution that is based on produce transactions is calculated using the formula—

$$\frac{\text{member's payment}}{\text{total payments}} \times \text{credit attached.}$$

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **member's payments** is the total amount of all payments to or by a member for the member's produce transactions during the income year:

(b) **total payments** is all payments to or by all members for produce transactions during the income year:

(c) **credit attached** is the amount of imputation credit attached to the distribution.

Members' levies

(6) An imputation credit attached to a member's distribution that is based on members' levies is calculated using the formula—

$$\frac{\text{member's levies}}{\text{total levies}} \times \text{credit attached.}$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **member's levies** is the total amount of all levies payable by a member to the producer board for the income year:

(b) **total levies** is total amount of all levies payable by all members to the producer board for the income year:

(c) **credit attached** is the amount of imputation credit attached to the distribution.

Commissioner's determination

(8) The Commissioner may apply subsections (4) to (7) to determine the amount of the imputation credit to be treated as attached to a member's distribution if the Commissioner considers that the producer board's application of subsections (3) to (7) does not result in a fair and reasonable allocation of an amount of imputation credit to a member having regard to—

(a) the produce transactions of the producer board; and

(b) the levies payable to the producer board; and

(c) any other relevant factor.

Defined in this Act: amount, Commissioner, dividend, ICA company, imputation credit, income year, levy, member, pay, produce transactions, statutory producer board

Compare: 2004 No 35 s ME 32

OB 75 Statutory producer boards' notional distributions that are dividends

Dividend derived

(1) A notional distribution to which section OB 74 applies that has an imputation credit attached is a dividend under section CD 13 (Notional distributions of producer boards and co-operative companies) derived by a member.

Calculation of amount

(2) The amount of the dividend is calculated using the formula—

$$\frac{\text{credit attached}}{\text{tax rate}} - \text{credit attached.}$$

Definitions of items in formula

(3) In the formula,—

(a) **credit attached** is the amount of imputation credit attached to the member's distribution:

(b) **tax rate** is the basic rate of income tax for companies set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the income year.

When derived

(4) The member derives the dividend on the date the statutory producer board chooses under section OB 74 to make a notional distribution.

Returns and information

(5) For the purposes of this section, the producer board must—

(a) include the details of the dividend with the return of income filed for the tax year corresponding to the income year in relation to which the distribution was made; and

(b) retain relevant information to enable the Commissioner to determine whether a later distribution is not a dividend under section CD 26(3) or CD 33(1) (which relate

to capital distributions on liquidation or emigration and payments that correspond to notional distributions).

Relationship with section OZ 15

(6) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (2).

Defined in this Act: amount, basic rate, Commissioner, company, dividend, imputation credit, income tax, income year, member, pay, return of income, statutory producer board, tax year

Compare: 2004 No 35 s ME 33

Section OB 75(3)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 75(6) heading: added, on 1 April 2008, by section 501 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 75(6): added, on 1 April 2008, by section 501 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 76 Statutory producer boards attaching FDP credits

FDP credits attached

(1) A statutory producer board that is an FDPA company may choose, for an income year, to attach an FDP credit to a cash distribution or a notional distribution. An FDP credit may be attached in conjunction with an imputation credit.

Application of provisions

(2) Sections OB 73 to OB 75 and OB 77 apply, modified as necessary, to the producer board, the distribution, and the FDP credit.

Both credits at once

(3) A producer board may choose to attach both an imputation credit and an FDP credit as part of 1 distribution.

Defined in this Act: FDP credit, FDPA company, imputation credit, income year, statutory producer board

Compare: 2004 No 35 s ME 34

OB 77 When and how statutory producer board makes election

Timing of election

(1) A statutory producer board may make an election under section OB 73, OB 74, or OB 76 in relation to a distribution either—

(a) after the income year in relation to which the distribution is made; but

(b) no later than 6 months after the end of the income year in relation to which the distribution is made.

Notice

(2) A producer board must notify the Commissioner of an election referred to in subsection (1) no later than the time allowed for the statutory producer board to file a return of income for the tax year corresponding to the income year in relation to which the distribution is made.

Defined in this Act: Commissioner, dividend, income year, return of income, statutory producer board, tax year

Compare: 2004 No 35 s ME 30(3), (4)

OB 78 Co-operative companies attaching imputation credits to cash distributions

Election

(1) On meeting the requirements of subsection (2), a co-operative company that is an ICA company may choose, for an income year, to attach an imputation credit to a cash distribution paid to the company's shareholders.

Requirements

(2) A co-operative company may make an election under subsection (1) if—

(a) the distribution is made to all persons who were shareholders of the company at a time during the income year; and

(b) the distribution is based on the proportion for the income year in which the payments to or by a shareholder for their produce transactions are of total payments to or by all shareholders for all produce transactions; and

(c) the company would, in the absence of this section, have a deduction for some or all of the distribution, whether as an association rebate under subpart HE (Mutual associations) or some other provision of this Act; and

(d) no other election for a cash distribution is made for the income year.

Total credit attached

(3) The total amount of imputation credit attached to the distribution is calculated using the formula—

$$\text{total net dividend} \times \frac{\text{tax rate}}{1 - \text{tax rate}}.$$

Definition of items in formula

(4) In the formula in subsection (3),—

(a) **total net dividend** is the total amount of the distribution excluding the amount of imputation credit:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the income year.

Shareholder's credit

(5) The amount of a shareholder's share of the imputation credit attached as described in subsection (3) is calculated using the formula—

$$\frac{\text{shareholder's distribution}}{\text{total distribution}} \times \text{total imputation credit attacl}$$

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **shareholder's distribution** is the amount that is the shareholder's share of the distribution, excluding the amount of imputation credit:

(b) **total distribution** is the amount of the total distribution paid, excluding the amount of imputation credit:

(c) **total imputation credit attached** is the total amount of imputation credit attached to the distribution calculated under subsection (3).

When co-operative company chooses not to have deduction

(7) If a co-operative company chooses to treat a distribution as a dividend, it is denied a deduction under section DV 18 (Statutory producer boards and co-operative companies). The company must notify the Commissioner of an election under this subsection under section OB 82(3) for the election to be effective.

Relationship with section OZ 15

(8) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (3).

Defined in this Act: amount, association rebate, basic rate, Commissioner, co-operative company, deduction, dividend, ICA company, imputation credit, income tax, income year, notify, pay, produce transactions, shareholder

Compare: 2004 No 35 ss ME 35, ME 36

Section OB 78(4)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 78(8) heading: added, on 1 April 2008, by section 502 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 78(8): added, on 1 April 2008, by section 502 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 78 list of defined terms **Maori Authority**: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OB 79 Co-operative companies attaching imputation credits to notional distributions

Election

(1) On meeting the requirements of subsection (2), a co-operative company that is an ICA company may choose, for an income year, to attach an imputation credit to a notional distribution, as a result of which a member derives a dividend of an amount calculated under section OB 80.

Requirements

(2) A co-operative company may make an election under subsection (1) if—

(a) the distribution is made to all persons who were shareholders of the company at a time during the income year; and

(b) no other election to pay a notional distribution is made for the income year.

Shareholder's credits

(3) The amount of a shareholder's share of an imputation credit attached to a notional distribution is calculated using the formula—

$$\frac{\text{produce payments}}{\text{total payments}} \times \text{credit attached.}$$

Definition of items in formula

(4) In the formula,—

(a) **produce payments** is the amount of all payments to or by the shareholder for the shareholder's produce transactions during the income year:

(b) **total payments** is the amount of all payments to or by shareholders for produce transactions during the income year:

(c) **credit attached** is the amount of imputation credit attached to the distribution.

Defined in this Act: amount, co-operative company, dividend, ICA company, imputation credit, income year, member, pay, produce transactions, shareholder

Compare: 2004 No 35 s ME 37

OB 80 Co-operative companies' notional distributions that are dividends

Dividends

(1) A notional distribution referred to in section OB 79 that has an imputation credit attached is a dividend under section CD 13 (Notional distributions of producer boards and co-operative companies) derived by a shareholder of the co-operative company.

Amount

(2) The amount of a shareholder's dividend is calculated using the formula—

$$\frac{\text{credit attached}}{\text{tax rate}} - \text{credit attached.}$$

Definition of items in formula

(3) In the formula,—

(a) **credit attached** is the amount of imputation credit attached to the shareholder's distribution:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the income year.

When derived

(4) The shareholder derives the dividend on the date the co-operative company chooses under section OB 79 to make a notional distribution.

Relationship with section OZ 15

(5) Section OZ 15 (Attaching imputation credits and notional distributions: modifying amounts) may apply to modify subsection (2).

Defined in this Act: amount, basic rate, co-operative company, dividend, imputation credit, income tax, income year, shareholder

Compare: 2004 No 35 s ME 38

Section OB 80(2) formula: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 114(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OB 80(3)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 80(5) heading: added, on 1 April 2008, by section 503 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OB 80(5): added, on 1 April 2008, by section 503 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OB 81 Co-operative companies attaching FDP credits

Election

(1) A co-operative company that is an FDPA company may choose, for an income year, to attach an FDP credit to a cash distribution. The FDP credit may be attached in conjunction with an imputation credit.

Application of provisions

(2) Sections OB 78 to OB 80 and section 64 of the Tax Administration Act 1994 apply, modified as necessary, to the co-operative company, the distribution, and the FDP credit.

Both credits at once

(3) A co-operative company may choose to attach both an imputation credit and an FDP credit as part of 1 distribution.

Defined in this Act: co-operative company, FDP credit, FDPA company, imputation credit, income year

Compare: 2004 No 35 s ME 39

OB 82 When and how co-operative company makes election

One a year

(1) A co-operative company may make an election under section OB 78, OB 79, or OB 81 in relation to a distribution for—

(a) only 1 cash distribution during the income year:

(b) only 1 notional distribution during the income year.

Timing

(2) A co-operative company may make an election referred to in subsection (1)—

(a) after the income year in relation to which the distribution is made; but

(b) no later than 6 months after the end of the income year in relation to which the distribution is made.

Notice

(3) A co-operative company must notify the Commissioner of an election referred to in subsection (1)(a) no later than the time allowed for the company to file a return of income for the tax year corresponding to the income year in relation to which the distribution is made.

Defined in this Act: Commissioner, co-operative company, income year, notify, return of income, tax year

Compare: 2004 No 35 s ME 35

Tables of credits and debits in memorandum accounts

How to use these tables

Each row of a table describes—

(a) the credits or debits that may arise in a memorandum account during a tax year; and

(b) the credit date or debit date when the credit or debit arises.

A more detailed description of the credits or debits is contained in the section noted in the last column.

Table O1—imputation credits

Row	Imputation credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Provisional tax and income tax paid	day of payment	section OB 4
3	Deposit into tax pooling account	day of payment	section OB 5
4	Transfer from tax pooling account	day of credit	section OB 6
5	Payment of further income tax	day of payment	section OB 7
5B	Payment of qualifying company election tax	day of payment	section OB 7B
5C	Tax credit for research and development expenditure	day return filed	section OB 7C.
6	Amount of tax withheld for resident passive income	day on which amount is withheld	section OB 8
7	Imputation credit attached to dividend derived	day on which dividend is paid	section OB 9
7B	Attributed PIE income with imputation credit	day of attribution	section OB 9B
8	FDP credit attached to dividend derived when not FDPA company	day on which dividend is paid	section OB 10
9	*[Repealed]*		

Table O1—*continued*

Row	Imputation credit	Credit date	Further defined
10	Transfer from FDP account	day of payment	section OB 12
11	Transfer of debt balance when company leaves wholly-owned group	day on which company leaves group	section OB 13
12	Additional income tax payable when company leaves wholly-owned group	day of payment	section OB 14
13	Additional income tax when company joins wholly-owned group	day of payment	section OB 15
14	Attribution for personal services if company is not qualifying company	31 March	section OB 16
15	*[Repealed]*		
16	Transfer from ASC account	day of transfer	section OB 18
17	Transfer from master fund by company	day of transfer	section OB 19
18	Maori authority credit attached to day of distribution	day of distribution	section OB 20
19	Transfer of balance of Maori authority credit account	day of transfer	section OB 21

Table O1—*continued*

Row	Imputation credit	Credit date	Further defined
20	Replacement money paid under share-lending arrangement	day of payment	section OB 22
21	Imputation credit shown in credit transfer notice	day on which notice is given	section OB 23
22	Imputation credit, FDP credit, or policyholder credit on resident's restricted amalgamation	credit date in account of amalgamating company	section OB 24
23	Reversal of debt for tax advantage arrangement	debit date of debit	section OB 25
24	Eliminating debit for loss of shareholder continuity cancelling tax pooling account deposit that is refunded or credited	day of refund or credit	section OB 26
25	Amount of tax withheld by Australian ICA company for non-resident passive inncome	day on which amount is withheld	section OB 27

Table O1—*continued*

Row	Imputation credit	Credit date	Further defined
26	Amount of tax withheld from schedular payment to Australian ICA company	day on which amount is withheld	section OB 28
27	Schedular income tax paid by Australian ICA company	day of payment	section OB 29

Table O1 row 5B: inserted, on 1 April 2008, by section 497 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Table O1 row 5C: inserted, on 1 April 2008, by section 497 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Table O1 row 7B: substituted (with effect on 1 April 2009), on 6 October 2009, by section 399(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O1 row 7B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 399(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O1 row 9: repealed (with effect on 30 June 2009), on 6 October 2009, by section 399(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O1 row 14: amended (with effect on 1 April 2008), on 6 October 2009, by section 399(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O1 row 15: repealed, on 1 July 2010, by section 399(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O2—imputation debits

Row	Imputation debit	Debit date	Further defined
1	Opening debt balance	1 April	section OA 7

Table O2—*continued*

Row	Imputation debit	Debit date	Further defined
2	Imputation credit attached to dividend paid	day of payment	section OB 30
3	Allocation of provisional tax	day of notice of allocation	section OB 31
4	Refund of income tax	day of refund	section OB 32
5	Overpaid income tax applied to meet another tax liability	day of application	section OB 33
6	Refund from tax pooling account	day of refund	section OB 34
7	Transfer of entitlement to another person in tax pooling account	set out in section OB 35	section OB 35
7B	Debit for transfer from tax pooling account for policyholder base liability	31 March	section OB 35B
8	Refund of FDP when not FDPA company	day of refund	section OB 36
9	Transfer, refund, or use of tax credit	day of transfer, refund, or use	section OB 37
10	Overpaid FDP applied to satisfy liability when not FDPA company	day of application	section OB 38

Table O2—*continued*

Row	Imputation debit	Debit date	Further defined
11	Overpaid income tax or FDP applied to satisfy pre-imputation income tax when not FDPA company	day of application	section OZ 3
12	*[Repealed]*		
13	Attribution for personal service	31 March	section OB 40
14	Debit for loss of shareholder continuity	time of loss of continuity	section OB 41
15	Debit for on-market cancellation	day of acquisition	section OB 42
16	Debit for breach of imputation ratio	31 march	section OB 43
17	Transfer for debit balance when company leaves wholly-owned group	day on which company leaves group	section OB 44
18	Redemption debit for unit trust or group investment fund for income year	day on which return of income for income year is filed	section OB 45
19	Transfer from member fund to master fund	31 March	section OB 46
20	Debit for policyholder base imputation credits	31 March	section OB 47

Table O2—*continued*

Row	Imputation debit	Debit date	Further defined
21	Credit balance when Maori authority credit account starts	day of becoming Maori authority	section OB 48
22	Credit attached to replacement payment paid by company under share-lending arrangement	day of payment	section OB 49
23	Credit attached to dividend paid to company shown in returning share transfer	day of payment	section OB 50
24	Credit attached to dividend paid to company shown in credit transfer notice	day of payment	section OB 51
25	Credit that is also credit to imputation credit account of consolidated imputation group	credit date for imputation credit	section OB 52
26	Imputation debit, FDP debit, or policyholder debit in account of amalgamating company	debit date in account of amalgamating company	section OB 53
27	Debit for tax advantage arrangement	last day of tax year in which tax arrangement began	section OB 54

Table O2—*continued*

Row	Imputation debit	Debit date	Further defined
28	Retrospective attachment of imputation credit to non-cash dividend	day of payment of dividend	section OB 55
29	Final balance when ICA company status ends	day of cessation	section OB 56
30	Refund of amount of tax for non-resident passive income to Australian ICA company	day of refund	section OB 57
31	Refund of amount of tax for schedular payment to Australian ICA company	day of refund	section OB 58
32	Refund of schedular income tax to Australian ICA company	day of refund	section OB 59

Table O2 row 7B: inserted, on 1 July 2010, by section 400(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O2 row 9: substituted (with effect on 1 April 2008), on 6 October 2009, by section 400(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O2 row 12: repealed (with effect on 30 June 2009), on 6 October 2009, by section 400(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O2 row 14: amended (with effect on 1 April 2008), on 7 December 2009, by section 88 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Table O2 row 20: substituted, on 1 July 2010, by section 400(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart OC—Foreign dividend payment accounts (FDPA)

Introductory provisions

OC 1 General rules for companies with FDP accounts

FDPA company

(1) A company resident in New Zealand may choose to become a foreign dividend payment account (FDPA) company. This subsection does not apply to a multi-rate PIE.

FDP accounts

(2) An FDPA company must maintain a foreign dividend payment (FDP) account for a tax year. The account is a record of FDP credits and FDP debits that arise in the account during the tax year.

Main credit

[Repealed]

(3) *[Repealed]*

Main debit

(4) An FDPA company has an FDP debit for the amount of an FDP credit attached to a dividend paid to the company's shareholders.

Treatment of FDP credit by shareholder

(5) The amount of an FDP credit attached to a dividend derived by a shareholder is included in the amount of the dividend under section CD 15 (Tax credits linked to dividends).

Refunds

(6) When a dividend with an FDP credit attached is derived by a non-resident or by a person who is resident and the dividend is exempt income of the person, they are entitled to a refund under section LF 8 (Credits for persons who are non-resident or who receive exempt income).

Shareholder continuity requirements

(7) The carrying forward of a credit in a company's FDP account is subject to the shareholder continuity requirements of section OA 8 (Shareholder continuity requirements for memorandum accounts).

Imputation credits

(8) If a company does not choose to become an FDPA company, a payment of FDP on a dividend derived from a non-resident company is accounted for under the imputation rules under section OB 11 (ICA payment of FDP).

Defined in this Act: amount, assessable income, company, dividend, exempt income, FDP account, FDP credit, FDP debit, FDPA company, imputation rules, income, multi-rate PIE, non-resident company, pay, resident in New Zealand, shareholder, tax year

Compare: 2004 No 35 ss CD 9, LD 9, ME 4(1)(e), (f), MG 2(1), (3), MG 4(1)(a), (b), MG 5(3)

Section OC 1(1): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 401(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 1(3) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 401(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 1(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 401(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 1 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 401(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 1 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 401(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 2 FDP accounts

General rules apply

(1) The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to the FDP account of an FDPA company.

Consolidated groups

(2) Under section OP 54 (When credits and debits arise only in consolidated FDP group accounts), certain credits and debits do not arise in the account if the company is part of a consolidated group.

Defined in this Act: consolidated group, FDP account, FDPA company, memorandum account

Compare: 2004 No 35 s MG 16(1), (4)

OC 2B General rule for life insurer's policyholder base

An FDP credit does not arise in relation to a life insurer's policyholder base. Similarly, an FDP debit does not arise in relation to a life insurer's policyholder base.

Defined in this Act: FDP credit, FDP debit, life insurer, policyholder base

Section OC 2B: inserted, on 1 July 2010, by section 402(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 3 Choosing to become FDPA company

Election

(1) A company that chooses to become an FDPA company must notify the Commissioner of the election no later than 21 days after the date of the election or by a later date if the Commissioner allows.

Effect of election

(2) An FDPA company must maintain the FDP account referred to in section OC 1(2) from the date of election.

Defined in this Act: Commissioner, company, FDP account, FDPA company, notify

Compare: 2004 No 35 s MG 2(2), (3)

OC 4 When company chooses to stop being FDPA company

Election

(1) An FDPA company may choose to stop being an FDPA company.

When election made

(2) An FDPA company may make an election under subsection (1) only in a tax year that is later than the tax year in which the company chooses under section OC 3 to become an FDPA company.

When company's status ends

(3) The company ends its status as an FDPA company from the first day of the tax year after the tax year in which the election referred to in subsection (2) is made but only if the company—

(a) files an annual FDPA return for the year of election in the time allowed by section 71 of the Tax Administration Act 1994; and

(b) pays any further income tax payable under section OC 30 or OC 31 for the year of election.

Defined in this Act: amount, annual FDPA return, FDP, FDPA company, further FDP, pay, tax year

Compare: 2004 No 35 s MG 2(4), (5)

Section OC 4(3)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 403(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 5 When company emigrates

Status ends

(1) If an emigrating company is an FDPA company immediately before the time of emigration, its status as an FDPA company ends at the time of emigration.

Further payments and returns

(2) The company referred to in subsection (1) must—

(a) file an annual FDPA return for the tax year in which the company becomes non-resident; and

(b) pays any further income tax payable under sections OC 30 to OC 34 for the tax year.

Defined in this Act: annual FDPA return, emigrating company, FDPA company, further FDP, non-resident, pay, tax year, time of emigration

Compare: 2004 No 35 s MG 2(6), (7)

Section OC 5(2)(b): substituted (with effect on 30 June 2009), on 6 October 2009, by section 404(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

FDP credits

OC 6 FDPA payment of FDP

[Repealed]

Section OC 6: repealed (with effect on 30 June 2009), on 6 October 2009, by section 405(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 7 FDPA dividend derived with FDP credit

Credit

(1) An FDPA company has an FDP credit for the amount of an FDP credit attached to a dividend derived by the company.

Table reference

(2) The FDP credit in subsection (1) is referred to in table O3: FDP credits, row 4 (dividend derived with FDP credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDPA company, pay

Compare: 2004 No 35 s MG 4(1)(b), (2)(b)

OC 8 FDPA payment of FDP for transfer from CTR account

[Repealed]

Section OC 8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 406(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 9 FDPA transfer for net foreign attributed income

[Repealed]

Section OC 9: repealed (with effect on 30 June 2009), on 6 October 2009, by section 407(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 10 FDPA payment of FDP for conduit debit balance

[Repealed]

Section OC 10: repealed (with effect on 30 June 2009), on 6 October 2009, by section 408(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 11 FDPA credit transfer to company

Credit

(1) An FDPA company has an FDP credit for the amount of a credit shown in a credit transfer notice given to the company.

Table reference

(2) The FDP credit in subsection (1) is referred to in table O3: FDP credits, row 8 (credit transfer).

Credit date

(3) The credit date is the day the notice is given.

Defined in this Act: amount, credit transfer notice, FDP credit, FDPA company

Compare: 2004 No 35 s MG 4(1)(bd), (2)(bd)

OC 12 FDPA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that an FDP credit in an FDPA company's FDP account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The company has an FDP credit for an amount equal to the amount of a debit in the company's FDP account under section OC 25.

Table references

(3) The FDP credit in subsection (2) is referred to in table O3: FDP credits, row 9 (reversal of tax advantage arrangement). The FDP debit in subsection (2) is referred to in table O4: FDP debits, row 14 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date recorded for the debit.

Defined in this Act: amount, FDP account, FDP credit, FDPA company, tax advantage

Compare: 2004 No 35 s MG 4(1)(d), (2)(d)

FDP debits

OC 13 FDPA payment of dividend

Debit

(1) An FDPA company has an FDP debit for the amount of an FDP credit attached to a dividend paid by the company.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 2 (payment of dividend).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDP debit, FDPA company, pay

Compare: 2004 No 35 s MG 5(1)(a), (2)(a)

OC 14 FDPA refund of FDP

Debit

(1) An FDPA company has an FDP debit for the amount of a refund of FDP paid to the company. Subsection (3) overrides this subsection.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 3 (refund of FDP).

No debit

(3) The company does not have a debit for the amount of—

(a) a refund to the extent to which it refunds FDP paid before a debit arises under section OC 24 (table O4: FDP debits, row 13 (debit for loss of shareholder continuity)); or

(b) a refund of FDP paid under section OD 25 (Refunds on transfers to CTR account).

Debit date

(4) The debit date is the day the refund is made.

Defined in this Act: amount, FDP, FDP account, FDP debit, FDPA company, pay

Compare: 2004 No 35 s MG 5(1)(d), (2)(d)

OC 15 FDPA overpayment of FDP

Debit

(1) An FDPA company has an FDP debit for the amount of an overpayment of FDP that is applied to pay an amount due under the Inland Revenue Acts. Subsection (3) overrides this subsection.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 4 (overpayment of FDP).

No debit

(3) The company does not have a debit for the amount of an overpayment of FDP—

(a) that is applied to satisfy a liability for FDP; or

(b) that—

(i) relates to a payment of FDP before an FDP debit arises under section OC 24 (table O4: FDP debits, row 13 (debit for loss of shareholder continuity)); and

(ii) is no more than the debit for loss of shareholder continuity.

Debit date

(4) The debit date is the day the amount is applied.

Defined in this Act: amount, FDP, FDP debit, FDPA company, Inland Revenue Acts, pay, shareholder

Compare: 2004 No 35 s MG 5(1)(k), (2)(i)

OC 16 FDPA refund of tax credit

Debit

(1) An FDPA company has an FDP debit for the amount of a transfer or refund to the company under section LA 6(2)(d) or (e) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the amount transferred or refunded is a tax credit under subpart LF (Tax credits for FDP credits).

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 5 (refund of tax credit).

Debit date

(3) The debit date is the day the transfer or refund is made.

Defined in this Act: amount, FDP debit, FDPA company

Compare: 2004 No 35 s MG 5(1)(e), (2)(d)

Section OC 16(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 409(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 16(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 409(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 17 FDPA credit transfer by company

Debit

(1) An FDPA company has an FDP debit for the amount of an FDP credit attached to a dividend paid by the company and shown in a credit transfer notice given by the company.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 6 (credit transfer).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, credit transfer notice, dividend, FDP credit, FDP debit, FDPA company, pay

Compare: 2004 No 35 s MG 5(1)(ab), (2)(ab)

OC 18 FDPA transfer to imputation credit account

Election

(1) An FDPA company may choose for a tax year to transfer some or all of a closing credit balance in the company's FDP account to the imputation credit account of—

(a) the company; or

(b) an imputation group of which the company is part.

Debit and credit

(2) The amount transferred is—

(a) an FDP debit in the company's FDP account; and

(b) an imputation credit under, as applicable,—

(i) section OB 12 (ICA transfer from FDP account) in the company's imputation credit account; or

(ii) section OP 18 (Consolidated ICA transfer from group company's FDP account) in the imputation credit account of the consolidated imputation group.

Table references

(3) The table references are as follows:

(a) the FDP debit in subsection (2)(a) is referred to in table O4: FDP debits, row 7 (transfer to imputation credit account):

(b) the imputation credit in subsection (2)(b)(i) is referred to in table O1: imputation credits, row 10 (transfer from FDP account):

(c) the imputation credit in subsection (2)(b)(ii) is referred to in table O19: imputation credits of consolidated imputation groups, row 13 (transfer from group company's FDP account).

Method of election

(4) The company makes the election by recording the credit balance transferred as—

(a) a debit in the company's FDP account; and

(b) a credit in the imputation credit account of—

(i) the company; or

(ii) the imputation group.

CTR companies

(5) Despite subsection (1), an FDPA company that is also a CTR company may not choose to make the transfer.

Debit date

(6) The debit date is the last day of the tax year.

Defined in this Act: amount, CTR company, consolidated imputation group, FDP, FDP account, FDP debit, FDPA company, imputation credit, imputation credit account, imputation group, tax year

Compare: 2004 No 35 ss MG 5(1)(c), (2)(c), MG 11

OC 19 FDPA transfer to CTR account

Debit

(1) An FDPA company has an FDP debit for an amount transferred when a credit balance in the company's FDP account is treated under subsections (2) and (3) as transferred to the company's CTR account. The amount of the debit is the smaller of the credit balance and debit balance in subsection (2).

When debit arises

(2) The debit for the transfer arises when—

(a) a credit balance exists in the company's FDP account immediately before the end of the tax year; and

(b) a debit balance exists in the company's CTR account immediately before the end of the tax year.

Determining balances

(3) For the purposes of subsection (2), —

(a) the credit balance in the FDP account is found by including an FDP credit under section OC 9; and

(b) the debit balance in the CTR account is found by including a CTR credit under section OD 5 (CTRA tax credit for conduit tax relief); and

(c) the debit balance and the credit balance are determined immediately before a transfer under this section is made.

Amount of debit and credit

(4) The smaller of the debit balance or the credit balance referred to in subsection (2) becomes—

(a) the FDP debit transferred; and

(b) the CTR credit under section OD 6 (CTRA transfer from FDP account).

Table references

(5) The table references are as follows:

(a) the FDP debit in subsection (1) is referred to in table O4: FDP debits, row 8 (transfer to CTR account):

(b) the FDP credit in subsection (3)(a) is referred to in table O3: FDP credits, row 6 (transfer for net foreign attributed income):

(c) the CTR credit in subsection (3)(b) is referred to in table O5: CTR credits, row 2 (tax credit for conduit tax relief):

(d) the FDP credit in subsection (4)(a) is referred to in table O4: FDP debits, row 8 (transfer to CTR account):

(e) the CTR credit in subsection (4)(b) is referred to in table O5: CTR credits, row 3 (transfer from FDP account).

Debit date

(6) The debit date is the last day of the tax year.

Defined in this Act: amount, CTR account, CTR credit, FDP account, FDP credit, FDP debit, FDPA company, foreign attributed income, income tax, tax year

Compare: 2004 No 35 ss MG 5(1)(ca), (2)(ca), MI 6(1)

OC 20 Debit for policyholder base FDP credits

Debit

(1) An FDP company has an FDP debit for the amount of an FDP credit attached to a dividend derived by the company, to the extent to which it is derived by it as a life insurer and apportioned to their policyholder base.

Table reference

(2) The FDP debit in section (1) is referred to in table O4: FDP debits, row 9 (debit for policyholder base FDP credits).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: FDP company FDP credit, FDP debit, life insurer, policyholder base, tax year

Section OC 20: substituted, on 1 July 2010, by section 410(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 21 FDPA transfer to group account

Debit

(1) An FDPA company has an FDP debit for an amount equal to the amount of an FDP credit under section OP 59 (Consolidated FDPA group company's credit) for the transfer of a credit to the FDP account of the consolidated group of which the company is part.

Table references

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 10 (transfer to group account). The FDP credit in subsection (1) is referred to in table O21: FDP credits of consolidated FDP groups, row 5 (group company's credit).

Debit date

(3) The debit date is the same as the credit date recorded in the consolidated group's FDP account.

Defined in this Act: amount, consolidated group, FDP account, FDP credit, FDP debit, FDPA company

Compare: 2004 No 35 s MG 16(3)

OC 22 FDPA breach of FDP ratio

Debit

(1) An FDPA company has an FDP debit for a breach of the benchmark dividend rules in section OC 28(4) for an amount calculated using the formula—

net dividends × FDP ratio – credits attached.

Definition of items in formula

(2) In the formula,—

(a) **net dividends** is the total amount of all dividends paid by the company during the tax year, excluding imputation credits and FDP credits attached to the dividends:

(b) **FDP ratio** is the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios) or, if it is less, the greatest FDP ratio of dividends paid by the company during the tax year:

(c) **credits attached** is the total amount of all FDP credits attached to dividends paid by the company during the tax year.

Table reference

(3) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 11 (breach of FDP ratio).

Ratio change declaration

(4) A debit under subsection (1) does not arise if the FDPA company provides a ratio change declaration under section OC 28(6).

Debit date

(5) The debit date is the last day of the tax year.

Defined in this Act: amount, benchmark dividend, dividend, FDP account, FDP credit, FDP debit, FDP ratio, FDPA company, imputation credit, pay, tax year

Compare: 2004 No 35 ss MG 5(1)(f), (2)(e), MG 8(4)

OC 23 FDPA breach of FDP ratio by PCA company

[Repealed]

Section OC 23: repealed, on 1 July 2010, by section 411(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 24 FDPA debit for loss of shareholder continuity

Debit

(1) An FDPA company has an FDP debit for the amount equal to the amount of an FDP credit retained in the FDP account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 13 (debit for loss of shareholder continuity).

When debit arises

(3) The debit arises at the time shareholder continuity is lost.

Qualifying companies

(3B) This section does not apply to a qualifying company in circumstances other than those set out in section HA 18 (Treatment of dividends when qualifying company status ends), and that section overrides subsections (1) to (3).

Avoidance arrangements

(4) Section GB 41 (FDPA arrangements for carrying amounts forward) may apply to treat a company as not meeting the requirements of this section.

Defined in this Act: amount, FDP account, FDP credit, FDP debit, FDPA company, qualifying company, shareholder

Compare: 2004 No 35 ss HG 13(6), MG 5(1)(i), (2)(g), (3), (4)

Section OC 24(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 89(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OC 24(3) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 89(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OC 24(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 89(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OC 24(3B) heading: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OC 24(3B): inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OC 24 list of defined terms **qualifying company**: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 118(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section OC 24 compare note: amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 118(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OC 25 FDPA tax advantage arrangement

Debit

(1) An FDPA company has an FDP debit for the amount of a debit for a tax advantage arrangement determined under sections

GB 35 and GB 36 (which relate to imputation arrangements to obtain tax advantage).

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 14 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the tax advantage arrangement began.

Defined in this Act: amount, arrangement, FDP debit, FDPA company, tax advantage, tax year

Compare: 2004 No 35 s MG 5(1)(h), (2)(f)

OC 26 FDPA final balance

Debit

(1) An FDPA company has an FDP debit for a credit balance in the FDP account when the company stops being an FDPA company.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 15 (final balance).

Debit date

(3) The debit date is the day the company stops being an FDPA company.

Defined in this Act: FDP account, FDP debit, FDPA company

Compare: 2004 No 35 s MG 5(1)(j), (2)(h)

FDP credits attached to dividends

OC 27 FDP credits attached to dividends

Attaching FDP credits

(1) When an FDPA company pays a dividend, it may attach an FDP credit to the dividend. Subsection (2) overrides this subsection.

Exclusion

(2) Subsection (1) does not apply to an FDPA company that is also a CTR company.

FDP ratio for dividend

(3) A dividend with an FDP credit attached has an FDP ratio calculated using the formula—

$$\frac{\text{credit attached}}{\text{net dividends}}.$$

Definition of items in formula

(4) In the formula,—

(a) **credit attached** is the amount of FDP credit attached to the dividend:

(b) **net dividends** is the amount of dividends paid, excluding imputation credits and FDP credits.

Maximum permitted ratio

(5) A dividend with an FDP credit attached must not have an FDP ratio that is more than the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Defined in this Act: amount, company, CTR company, dividend, FDP, FDP account, FDP credit, FDP ratio, FDPA company, imputation credit, maximum permitted ratio, pay

Compare: 2004 No 35 ss MG 6, MG 8(1), (2)

OC 28 FDPA benchmark dividend rules

When this section applies

(1) This section applies when an FDPA company pays a dividend on more than 1 occasion during a tax year. Subsection (2) overrides this subsection.

Exclusions

(2) This section does not apply to a dividend that is the subject of an election by—

(a) a statutory producer board under sections OB 73 to OB 75 (which relate to statutory boards' notional distributions); and

(b) a co-operative company under sections OB 78 to OB 80 (which relate to co-operative companies' notional distributions).

Benchmark dividend

(3) The first dividend of the tax year is the benchmark dividend.

Same FDP ratio

(4) The FDP ratio of a dividend paid after the benchmark dividend must be the same as the FDP ratio of the benchmark dividend. This subsection is modified by section OZ 9 (Benchmark dividends: ratio change).

Breach of FDP ratio

(5) A breach of subsection (4) gives rise to an FDP debit under section OC 22 (table O4: FDP debits, row 11 (breach of FDP ratio)) for an amount calculated using the formula in section OC 22(1).

Ratio change declaration

(6) An FDPA company may notify the Commissioner that the dividend is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the dividend is not part of an arrangement to which sections GB 35 and GB 36 (which relate to imputation arrangements to obtain tax advantage) apply. The company must provide the declaration before the dividend is paid, or by a later date if the Commissioner allows. For the purposes of this subsection, the dividend must not be part of an arrangement to obtain a tax advantage. This subsection overrides subsection (5).

Consolidated group

(7) This section applies, modified as necessary, to a consolidated group as if it were a single company.

Group debit

(8) Under section OP 54 (When credits and debits arise only in consolidated FDP group accounts), a breach of an FDP ratio alternatively gives rise to an FDP debit under section OP 72 (Consolidated FDPA breach of FDP ratio) (table O22: FDP debits of consolidated group, row 10 (breach of FDP ratio)) if the company is part of a consolidated group.

Treatment of group dividends

(9) In the application of this section to a consolidated group, a dividend paid between group companies is disregarded.

Defined in this Act: amount, arrangement, benchmark dividend, Commissioner, company, consolidated group, co-operative company, dividend, FDP, FDP debit, FDP ratio, FDPA company, pay, statutory producer board, tax advantage, tax year

Compare: 2004 No 35 ss MG 8(2), (3), MG 16A(1)

Section OC 28(4): amended, on 1 October 2010, by section 13 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

OC 29 FDP credits and imputation credits attached to dividends

Attaching combined credits

(1) When an FDPA company pays a dividend, it may attach both an FDP credit and an imputation credit to the dividend.

Combined ratio

(2) A dividend with combined credits attached has a combined imputation and FDP ratio calculated using the formula—

$$\frac{\text{combined credits attache}}{\text{net dividends.}}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **combined credits attached** is the total amount of FDP credits and the imputation credits attached to the dividend:

(b) **net dividends** is the amount of dividends paid, excluding the amount of FDP credits and the imputation credits.

Maximum permitted ratio

(4) A dividend with combined credits attached must not have a combined imputation and FDP ratio that is more than the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Breach of combined ratio breach

(5) A breach of the maximum ratio referred to in subsection (4) gives rise to an excess credit amount that is calculated using the formula—

net dividends × (combined ratio – maximum ratio).

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **net dividends** is the amount of dividends paid, excluding FDP credits and the imputation credits:

(b) **combined ratio** is the combined imputation and FDP ratio of the dividend:

(c) **maximum ratio** is the maximum combined imputation and FDP ratio permitted under subsection (4).

Relationship with section OZ 8

(7) Section OZ 8 (Attaching imputation credits and FDP credits: maximum permitted ratio) may apply to modify this section.

Defined in this Act: amount, basic rate, combined imputation and FDP ratio, company, dividend, excess credit amount, FDP credit, FDP ratio, FDPA company, imputation credit, income tax, income year, maximum permitted ratio, pay, tax year

Compare: 2004 No 35 s MG 10

Section OC 29(7) heading: added, on 1 April 2008, by section 504 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OC 29(7): added, on 1 April 2008, by section 504 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Further income tax

Heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 412 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 30 Payment of further income tax for closing debit balance

Liability

(1) An FDPA company or consolidated FDP group is liable to pay further income tax for a closing debit balance in the FDP account of the company or the group.

Due date

(2) The company or group must pay the further income tax to the Commissioner no later than the 20 June following the end of the tax year.

Application of other provisions
[Repealed]

(3) *[Repealed]*

Defined in this Act: amount, Commissioner, company, consolidated FDP group, FDP account, FDPA company, further income tax, pay, tax year

Compare: 2004 No 35 s MG 9(1), (2), (6)

Section OC 30 heading: amended (with effect on 30 June 2009), on 6 October 2009, by section 413(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30(1) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 413(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 413(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30(2) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 413(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 413(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30(3) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 413(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 413(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30 list of defined terms **FDP rules**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 413(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30 list of defined terms **further FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 413(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30 list of defined terms **income tax**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 413(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 30 list of defined terms **further income tax**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 413(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 31 Payment of further income tax when company no longer New Zealand resident

Liability

(1) An FDPA company is liable to pay further income tax for a debit balance in the company's FDP account when the company stops being resident in New Zealand.

Due date

(2) The company must pay the further income tax to the Commissioner by the day the company stops being resident in New Zealand.

Paramount section

(3) A company to which this section applies that stops being an FDPA company on the last day of a tax year is liable for further income tax under this section and not under section OC 30.

Application of other provisions

[Repealed]

(4) *[Repealed]*

Defined in this Act: Commissioner, FDP account, FDPA company, further income tax, pay, resident in New Zealand, tax year

Compare: 2004 No 35 s MG 9(3)

Section OC 31 heading: amended (with effect on 30 June 2009), on 6 October 2009, by section 414(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(1) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 414(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(1): substituted (with effect on 30 June 2009), on 6 October 2009, by section 414(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(2) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 414(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 414(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(3) heading: substituted (with effect on 30 June 2009), on 6 October 2009, by section 414(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(3): substituted (with effect on 30 June 2009), on 6 October 2009, by section 414(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(4) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 414(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31(4): repealed (with effect on 30 June 2009), on 6 October 2009, by section 414(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31 list of defined terms **FDP rules**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 414(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31 list of defined terms **further FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 414(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 31 list of defined terms **further income tax**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 414(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 32 Reduction of further income tax

Debit at previous year-end

(1) An FDPA company's liability for further income tax under section OC 30 or OC 31 may be reduced under subsection (2) if—

(a) a debit balance existed in the company's FDP account at the end of a tax year; and

(b) a credit that arises in the account in the following tax year is less than the debit balance; and

(c) the company notifies the Commissioner.

Amount of reduction

(2) The liability is reduced by the amount that is the debit balance for the tax year less the total amount of credits for the following tax year.

Defined in this Act: amount, Commissioner, FDP account, FDP credit, FDPA company, further income tax, notify, tax year

Compare: 2004 No 35 s MG 9(7), (8)

Section OC 32 heading: amended (with effect on 30 June 2009), on 6 October 2009, by section 415(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 32(1): amended (with effect on 30 June 2009), on 6 October 2009, by section 415(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 32 list of defined terms **further FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 415(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OC 32 list of defined terms **further income tax**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 415(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 33 Income tax paid satisfying liability for further income tax

Election

(1) On meeting the requirements of subsection (2), an FDPA company that is liable for further income tax may choose to satisfy the liability through a payment of income tax.

Requirements

(2) The company must pay the income tax—

(a) after the end of the tax year in which the relevant debit balance arises; and

(b) for an income year corresponding to a tax year in which the company is an FDPA company.

Payment credited

(3) The payment of income tax satisfies the company's liability to pay further income tax.

When treated as paid

(4) The further income tax is treated as paid on the day the Commissioner receives the payment of income tax.

Defined in this Act: Commissioner, company, FDPA company, further income tax, income tax, income year, pay, tax year

Section OC 33: substituted (with effect on 30 June 2009), on 6 October 2009, by section 416(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 34 Further income tax paid satisfying liability for income tax

Election

(1) A company that pays further income tax may choose to treat the payment as satisfying a liability of the company to pay income tax.

FDPA company status

(2) The liability referred to in subsection (1) must be for an income year that corresponds with a tax year in which the company is an FDPA company.

Alternative for consolidated group

(3) A company that is part of a consolidated FDP group may choose that the payment under subsection (1) satisfies a group

liability for income tax owed by another group company when or after the payment is made.

Defined in this Act: company, consolidated FDP group, FDPA company, further income tax, income tax, income year, pay, tax year

Section OC 34: substituted (with effect on 30 June 2009), on 6 October 2009, by section 417(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Some definitions
[Repealed]

Heading: repealed, on 1 July 2010, by section 418(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 35 Meaning of FDP reference period

[Repealed]

Section OC 35: repealed, on 1 July 2010, by section 418(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 36 Meaning of maximum deficit debit

[Repealed]

Section OC 36: repealed, on 1 July 2010, by section 418(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 37 Meaning of policyholder FDP ratio

[Repealed]

Section OC 37: repealed, on 1 July 2010, by section 418(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 38 Meaning of reduced deficit debit

[Repealed]

Section OC 38: repealed, on 1 July 2010, by section 418(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OC 39 Meaning of shareholder FDP ratio

[Repealed]

Section OC 39: repealed, on 1 July 2010, by section 418(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O3: FDP credits

Row	FDP credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	*[Repealed]*		
3	*[Repealed]*		
4	FDP credit attached to dividend derived	day on which dividend is paid	section OC 7
5	*[Repealed]*		
6	*[Repealed]*		
7	*[Repealed]*		
8	FDP credit attached to dividend and shown in credit transfer notice	day on which notice is given	section OC 11
9	Reversal of debt for tax advantage arrangement	debit date of debit	section OC 12

Table O3 row 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 419(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O3 row 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 419(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O3 row 5: repealed (with effect on 30 June 2009), on 6 October 2009, by section 419(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O3 row 6: repealed (with effect on 30 June 2009), on 6 October 2009, by section 419(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O3 row 7: repealed (with effect on 30 June 2009), on 6 October 2009, by section 419(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O4: FDP debits

Row	FDP debit	Debit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	FDP credit attached to dividend paid	day of payment	section OC 13
3	Refund of FDP	day of refund	section OC 14
4	Overpaid FDP applied to satisfy tax liability	day of application	section OC 15
5	Transfer or refund of tax credit	day of transfer or refund	section OC 16
6	FDP credit attached to dividend and shown in credit transfer notice	day of payment	section OC 17
7	Transfer of closing credit balance to companyy's imputation credit account	31 March	section OC 18
8	Transfer of credit balance to company's conduit tax relief account	31 March	section OC 19

Row	FDP debit	Debit date	Further defined
9	Debit for policyholder base FDP credits	31 March	section OC 20
10	Transfer of credit to group FDP account	credit date in group account	section OC 21
11	Debit for breach of FDP ratio	31 March	section OC 22
12	Breach of FDP ratio by FDPA company that is also PCA company	31 March	section OC 23
13	Debit for loss of shareholder continuity	time of loss of continuity	section OC 24
14	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OC 25
15	Final balance when FDPA company status ends	day of cessation	section OC 26

Table O4 row 5: substituted (with effect on 1 April 2008), on 6 October 2009, by section 420(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O4 row 9: substituted, on 1 July 2010, by section 420(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O4 row 10: amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Table O4 row 13: amended (with effect on 1 April 2008), on 7 December 2009, by section 90 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Subpart OD—Conduit tax relief accounts (CTRA)

Introductory provisions

OD 1 General rules for companies with CTR accounts

CTR company

(1) A foreign dividend payment account (FDPA) company may choose to become a conduit tax relief (CTR) company.

CTR account

(2) A CTR company must maintain a CTR account for a tax year as set out in section OD 3(2). The account is a record of CTR credits and CTR debits that arise in the account during the tax year.

Credits

[Repealed]

(3) *[Repealed]*

Debits

(4) Debits to the account include the amount of a CTR credit attached to a dividend paid to the company's non-resident shareholders.

Group accounts

(5) A consolidated group must maintain a group CTR account if a group company is a CTR company.

Resident shareholder continuity requirements

(6) The carrying forward of a credit in the company's CTR account is subject to the resident shareholder continuity requirements of section OD 16.

Relationship with section OZ 17

(7) Section OZ 17 (CTRA reductions) may apply to modify the credits and debits arising under this subpart.

Defined in this Act: amount, amount of tax, CTR account, CTR company, CTR credit, CTR debit, consolidated group, dividend, FDP, FDPA company, foreign attributed income, income tax, non-resident, non-resident passive income, pay, shareholder, tax credit, tax year

Compare: 2004 No 35 ss MI 2(1), (4), MI 4(1)(a), MI 5(1)(a), MI 14(1), NG 9(1)(a)

Section OD 1(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 421(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 1(3) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 421(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 1(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 421(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 1(7) heading: added, on 1 April 2008, by section 505 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OD 1(7): added, on 1 April 2008, by section 505 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OD 2 CTR accounts

General rules

(1) The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to the CTR account of a CTR company.

Credits and debits of consolidated groups

(2) Under section OP 79 (When credits and debits arise only in CTR group accounts), certain credits and debits do not arise in the account if the company is part of a consolidated group.

Defined in this Act: CTR account, CTR company, consolidated group, memorandum account

Compare: 2004 No 35 ss MI 2(4), MI 19(1), (5)

OD 3 Choosing to become CTR company

Notifying Commissioner

(1) An FDPA company that chooses to become a CTR company must notify the Commissioner of its election and state the tax year for which the election is first to apply. The notification must be made no later than the day on which the company is required to file a return of income for the income year that corresponds to the first tax year for which the election is made.

Maintaining CTR account

(2) A CTR company must maintain the CTR account referred to in section OD 1(2) from the first day of the tax year referred to in subsection (1), whether or not the company is treated as a CTR company for the purposes of sections LQ 5, OD 20, or RG 7 (which relate to credits attached to dividends). The company must continue to maintain the account until it chooses to stop being a CTR company under section OD 4.

Treatment of company for certain provisions

(3) Despite subsection (1), the company is not treated as a CTR company for the purposes of applying sections LQ 5, OD 20, or RG 7 until the date on which the company notifies the Commissioner of its election.

Defined in this Act: Commissioner, company, CTR account, CTR company, FDPA company, income year, notify, return of income, tax year

Compare: 2004 No 35 s MI 2(1)–(3)

Section OD 3(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 422(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 3(2) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 422(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 3(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 422(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 3(3) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 422(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OD 3(3): added (with effect on 1 April 2008), on 6 October 2009, by section 422(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 4 When company stops being CTR company

Election

(1) A company stops being a CTR company—

(a) by election under subsection (2); or

(b) when the company stops being an FDPA company under section OC 4 (When company chooses to stop being FDPA company).

When election made

(2) A CTR company may make an election under subsection (1)(a) only in a tax year that is later than the tax year in which the company chooses under section OD 3 to become a CTR company.

When company's status ends

(3) The company stops being a CTR company on the day after the day on which the election referred to in subsection (1)(a) is made but only if the company—

(a) files an annual imputation credit account (ICA) return for the year of election in the time allowed by section 69 of the Tax Administration Act 1994; and

(b) pays further FDP, if any, under section OD 23 or OD 24 for the year of election.

Continuation of account

(4) The company must continue to maintain its CTR account to the end of the year of election.

Defined in this Act: annual ICA return, company, CTR account, CTR company, FDPA company, further FDP, tax year

Compare: 2004 No 35 s MI 2(5)–(7)

Section OD 4(3): amended (with effect on 30 June 2009), on 6 October 2009, by section 423(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

CTR credits

OD 5 CTRA tax credit for conduit tax relief

[Repealed]

Section OD 5: repealed (with effect on 30 June 2009), on 6 October 2009, by section 424(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 6 CTRA transfer from FDP account

Credit

(1) A CTR company has a CTR credit for an amount equal to the amount of an FDP debit under section OC 19 (FDPA transfer to CTR account) for a transfer to the CTR account.

Table references

(2) The CTR credit in subsection (1) is referred to in table O5: CTR credits, row 3 (transfer from FDP account). The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 8 (transfer to CTR account).

Credit date

(3) The credit date is the last day of the tax year.

Defined in this Act: amount, CTR account, CTR company, CTR credit, FDP account, FDP debit, tax year

Compare: 2004 No 35 ss MI 4(1)(e), (2)(e), MI 6(1)

OD 7 CTRA dividend derived with CTR credit

Credit

(1) A CTR company has a CTR credit for the amount of a CTR credit attached to a dividend derived by the company.

Table reference

(2) The CTR credit in subsection (1) is referred to in table O5: CTR credits, row 4 (dividend derived with CTR credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, CTR company, CTR credit, dividend, pay

Compare: 2004 No 35 s MI 4(1)(c), (2)(c)

OD 8 CTRA reduction of FDP

[Repealed]

Section OD 8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 425(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 9 CTRA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that a CTR credit in a CTR company's CTR account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The company has a CTR credit for an amount that equals the amount of the debit in the company's CTR account under section OD 18.

Table references

(3) The CTR credit in subsection (2) is referred to in table O5: CTR credits, row 6 (reversal of tax advantage arrangement). The CTR debit in subsection (2) is referred to in table O6: CTR debits, row 10 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date for the debit.

Defined in this Act: amount, arrangement, CTR account, CTR company, CTR credit, CTR debit, tax advantage

Compare: 2004 No 35 s MI 4(1)(d), (2)(d)

CTR debits

OD 10 CTRA payment of dividend

Debit

(1) A CTR company has a CTR debit for the amount of a CTR credit attached to a dividend paid by the company.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 2 (payment of dividend).

Debit date

(3) The debit date is the day of payment.

Defined in this Act: amount, CTR company, CTR credit, CTR debit, dividend, pay

Compare: 2004 No 35 s MI 5(1)(a), (2)(a)

OD 11 CTRA transfer to FDP account

[Repealed]

Section OD 11: repealed (with effect on 30 June 2009), on 6 October 2009, by section 426(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 12 CTRA transfer to group account

Debit

(1) A CTR company has a CTR debit for an amount equal to the amount of a CTR credit under section OP 84 (Consolidated CTRA group company's credit) for a transfer of a credit to the CTR account of the consolidated group of which the company is part.

Table references

(2) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 4 (transfer to group account). The CTR credit in subsection (1) is referred to in table O23: CTR credits of consolidated groups, row 5 (group company's credit).

Debit date

(3) The debit date is the day of transfer.

Defined in this Act: amount, CTR account, CTR company, CTR credit, CTR debit, consolidated group

Compare: 2004 No 35 s MI 5(1)(j), (2)(i)

OD 13 CTRA adjustment for conduit tax relief

Debit

(1) A CTR company has a CTR debit for the amount of an adjustment under section FF 7(8) (Surplus to foreign dividends).

Table reference

(2) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 5 (adjustment for conduit tax relief).

Debit date

(3) The debit date is the day the company files a return of income for the tax year corresponding to the income year in which the adjustment occurred.

Defined in this Act: amount, CTR account, CTR company, CTR debit, income year, return of income, tax year

Compare: 2004 No 35 s MI 5(1)(b), (2)(b)

OD 14 CTRA break in shareholding chain for group company

Debit

(1) A CTR company that is part of a wholly-owned group has a CTR debit for an amount arising in the circumstances set out in subsections (2) and (3).

When debit arises

(2) A debit under subsection (1) arises when—

- (a) a credit has arisen in the company's CTR account under—
  - (i) section OD 5:
  - (ii) section OD 8; and
- (b) the credit has not been cancelled by a later debit; and
- (c) sections YD 9 to YD 11 (which relate to the residence of CTR companies and their shareholders) have enabled the credit to arise by treating a CTR group member as a non-resident; and
- (d) the CTR group member is no longer a CTR group company because the requirements of section YD 11(4) (Meaning of CTR group member) are no longer met.

Table references

(3) The table references are as follows:

(a) the CTR debit in subsection (1) is referred to in table O6: CTR debits, row 6 (chain break for group company):

(b) the CTR credit in subsection (2)(a)(i) is referred to in table O5: CTR credits, row 2 (tax credit for conduit tax relief):

(c) the FDP credit in subsection (2)(a)(ii) is referred to in table O5: CTR credits, row 5 (reduction of FDP).

Cancellation

(4) To determine whether the credit has been cancelled by a later debit as described in subsection (2)(b),—

(a) credits retain their separate character and are not treated as part of a credit for an opening credit balance under section OA 7 (Opening balances of memorandum accounts); and

(b) a debit is counted only once in the cancellation of a credit; and

(c) debits cancel credits in the order in which the credits arise.

Amount of debit

(5) The amount of the debit is the residual amount after taking into account the amount of any cancellation.

Residence

(6) The residence of companies for the purposes of this section is determined under sections YD 9 to YD 11.

Debit date

(7) The debit date is the day the shareholding chain is broken.

Defined in this Act: amount, company, CTR account, CTR company, CTR credit, CTR debit, CTR group member, FDP, non-resident, shareholder, wholly-owned group

Compare: 2004 No 35 s MI 5(1)(f), (2)(f), (5), (7)

OD 15 CTRA break in shareholding chain for company

Debit

(1) A CTR company that is part of a wholly-owned group has a CTR debit for an amount arising in the circumstances set out in subsections (2) and (3).

When debit arises

(2) The debit arises when—

(a) the company derives a dividend from another company in the same wholly-owned group and the dividend gives rise to a credit under section OD 7 in the company's CTR account; and

(b) the other company is in the same wholly-owned group when the dividend is derived; and

(c) the credit has not been cancelled by a later debit; and

(d) the company is no longer part of the wholly-owned group because the requirements of section YD 11(4) (Meaning of CTR group member) are no longer met.

Table references

(3) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 7 (chain break when group membership stops). The CTR credit in subsection (2)(a) is referred to in table O5: CTR credits, row 4 (dividend derived with CTR credit).

Cancellation

(4) To determine whether a credit has been cancelled by a later debit under subsection (2)(c),—

(a) credits retain their separate character and are not treated as part of a credit for an opening credit balance under section OA 7 (Opening balances of memorandum accounts); and

(b) a debit is counted only once in the cancellation of a credit; and

(c) debits cancel credits in the order in which the credits arise.

Amount of debit

(5) The amount of the debit is the residual amount after taking into account the amount of any cancellation.

Debit date

(6) The debit date is the day before the company stops being part of the consolidated group.

Defined in this Act: amount, company, CTR account, CTR company, CTR credit, CTR debit, dividend, pay, wholly-owned group

Compare: 2004 No 35 s MI 5(1)(g), (2)(f), (5)

OD 16 CTRA increase in resident shareholding

Debit

(1) A CTR company has a CTR debit for an amount of a CTR credit in the company's CTR account if the resident shareholding requirements of subsection (2) and section OA 8 (Shareholder continuity requirements for memorandum accounts) are not met.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 8 (increase in resident shareholding).

Resident shareholding requirements

(3) For the purposes of subsection (1), the resident shareholding requirements are that—

- (a) the credit continues to exist to the extent to which it is not reduced by a later CTR debit; and
- (b) since the credit date for the credit, the percentage of the company's shareholders who are resident in New Zealand does not increase by 34 percentage points or more; and
- (c) an amount that is the CTR debit under subsection (1) arises for an amount of the credit that still exists when the requirement of paragraph (b) is not met.

Supporting rules

(4) The following rules apply for the purposes of subsection (3):

- (a) the percentage of shareholders resident in New Zealand at any time is found by taking the highest of the following percentages:
  - (i) the percentage of direct voting interests held in the company by residents; and
  - (ii) the percentage of direct market value interests held in the company, if a direct market value circumstance exists, by residents; and
  - (iii) if not all shares in the company are shares of the same class, the percentage of total dividends that would be derived by residents if the company were liquidated; and
- (b) a credit retains its separate character and is not treated as part of a credit referred to in section OA 7 (Opening

balances of memorandum accounts) in a later tax year; and

(c) the amount by which a credit is reduced by an earlier or later debit is found by—

(i) treating debits as reducing credits in the order in which the credits arise; and

(ii) counting a debit, whether some or all, only once in the reduction of a credit; and

(d) the requirement of subsection (3)(b) is met if the increase in shareholders resident in New Zealand is solely because the requirements of section YD 10(4) (Meaning of CTR holding company) are not met; and

(e) a debit still arises despite an arrangement affecting the company's shares that has a purpose or effect of defeating the intent and application of the resident shareholding requirements.

Debit date

(5) The debit date is the day on which the shareholding threshold is first reached or passed.

Defined in this Act: amount, arrangement, company, CTR account, CTR company, CTR credit, CTR debit, direct market value circumstance, direct market value interest, direct voting interest, dividend, liquidation, resident in New Zealand, share, shareholder, shares of the same class, tax year

Compare: 2004 No 35 s MI 5(1)(e), (2)(e), (3)–(6)

Section OD 16(3)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 427(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 17 CTRA breach of CTR ratio

Debit

(1) A CTR company has a CTR debit for a tax year for a breach of the benchmark dividend rules in section OD 21 for an amount calculated using the formula—

(net dividends × CTR ratio) – credits attached.

Definition of items in formula

(2) In the formula,—

(a) **net dividends** is the total amount of all dividends paid by the company during the tax year, excluding imputation credits and CTR credits attached to the dividends:

(b) **CTR ratio** is the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios) or, if less, the greatest CTR ratio of a dividend paid by the company during the tax year:

(c) **credits attached** is the total amount of all CTR credits attached to dividends paid by the company during the tax year.

Table reference

(3) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 9 (breach of CTR ratio).

No FDP debit

(4) If a CTR company has a debit under this section, no debit arises for the amount in the company's FDP account.

Ratio change declaration

(5) A debit under subsection (1) does not arise if the CTR company provides a ratio change declaration under section OD 21(6).

Debit date

(6) The debit date is the last day of the tax year in which the breach occurred.

Defined in this Act: amount, benchmark dividend, company, CTR account, CTR company, CTR credit, CTR debit, CTR ratio, dividend, FDP account, imputation credit, tax year

Compare: 2004 No 35 ss MG 8(4), MI 5(1)(c), (2)(c)

OD 18 CTRA tax advantage arrangement

Debit

(1) A CTR company has a CTR debit for the amount of a debit for a tax advantage arrangement determined under sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage), which apply to a CTR credit as if it were an FDP credit.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 10 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the tax advantage arrangement began.

Defined in this Act: amount, arrangement, CTR company, CTR debit, tax advantage, tax year

Compare: 2004 No 35 ss MI 5(1)(d), (2)(d), MI 9

OD 19 CTRA final balance

Debit

(1) A CTR company has a CTR debit for a credit balance in the account when the company stops being a CTR company.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O6: CTR debits, row 11 (final balance).

Debit date

(3) The debit date is the day before the company stops being a CTR company.

Defined in this Act: CTR company, CTR debit

Compare: 2004 No 35 s MI 5(1)(h), (2)(g)

CTR credits attached to dividends

OD 20 CTR credits attached to dividends

Attaching CTR credits

(1) When a CTR company pays a dividend to a non-resident shareholder, it may attach a CTR credit to the dividend. Subsection (2) overrides this subsection.

Dividends of producer boards and co-operative companies

(2) Subsection (1) does not apply to a dividend with a CTR credit attached that is subject to an election by—

(a) a statutory producer board under sections OB 73 to OB 75 (which relate to producer boards' notional distributions); and

(b) a co-operative company under sections OB 78 to OB 80 (which relate to co-operative companies' notional distributions).

CTR ratio for dividend

(3) A dividend with a CTR credit attached has a CTR ratio calculated using the formula—

$$\frac{\text{credit attached}}{\text{net dividends}}.$$

Definition of items in formula

(4) In the formula,—

(a) **credit attached** is the amount of CTR credit attached to the dividend:

(b) **net dividends** is the amount of the dividend paid, excluding the amount of imputation credit and CTR credit.

Maximum permitted ratio

(5) A CTR credit attached to a dividend must not be more than the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Residence

(6) Residence for the purposes of this section is ascertained under sections YD 9 to YD 11 (which relate to the residence of CTR companies).

Defined in this Act: amount, CTR company, CTR credit, CTR ratio, co-operative company, dividend, imputation credit, maximum permitted ratio, non-resident, pay, shareholder, statutory producer board

Compare: 2004 No 35 ss MG 8(1), (8), MI 7(2), MI 8(1)

OD 21 CTRA benchmark dividend rules

When this section applies

(1) This section applies when a CTR company pays a dividend on more than 1 occasion during a tax year. Subsection (2) overrides this subsection.

Exclusions

(2) This section does not apply to a dividend with a CTR credit attached that is subject to an election by—

(a) a statutory producer board under sections OB 73 to OB 75 (which relate to producer boards' notional distributions); and

(b) a co-operative company under sections OB 78 to OB 80 (which relate to co-operative companies' notional distributions).

Benchmark dividend

(3) The first dividend of the tax year is the benchmark dividend.

Same CTR ratio

(4) The CTR ratio of a dividend paid after the benchmark dividend must be the same as the CTR ratio of the benchmark dividend.

Debit for breach of CTR ratio

(5) A breach of subsection (4) gives rise to a CTR debit under section OD 17 (table O6: CTR debits, row 9 (breach of CTR ratio)) for an amount calculated using the formula in OD 17(1).

Ratio change declaration

(6) A CTR company may notify the Commissioner that the dividend is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the dividend is not part of an arrangement to which sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage) applies. The company must provide the declaration before the dividend is paid, or by a later date if the Commissioner allows. For the purposes of this subsection, the dividend must not be part of an arrangement to obtain a tax advantage. This subsection overrides subsection (5).

Consolidated group

(7) This section applies, modified as necessary, to a consolidated group as if it were a single company.

Group debit

(8) If the company is part of a consolidated group, a breach of a CTR ratio alternatively gives rise to a CTR debit under section OP 92 (Consolidated CTRA breach of CTR ratio) (table O24: CTR debits of consolidated groups, row 7 (breach of CTR ratio)).

Treatment of group dividends

(9) In the application of this section to a consolidated group, a dividend paid between group companies is disregarded.

Defined in this Act: amount, arrangement, benchmark dividend, Commissioner, company, CTR company, CTR credit, CTR debit, CTR ratio, consolidated group, co-operative company, dividend, notify, pay, statutory producer board, tax advantage, tax year

Compare: 2004 No 35 ss MG 8(2), (3), (8), MI 8, MI 22(1)–(3)

OD 22 CTR credits and imputation credits attached to dividends

Attaching combined credits

(1) When a CTR company pays a dividend, it may attach both a CTR credit and an imputation credit to the dividend.

Combined ratio

(2) A dividend with combined credits attached has a combined imputation and CTR ratio calculated using the formula—

$$\frac{\text{combined credits}}{\text{net dividends}}.$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **combined credits** is the total amount of CTR credit and imputation credit attached to the dividend:

(b) **net dividends** is the amount of the dividend paid, excluding the amount of CTR credit and imputation credit.

Maximum permitted ratio

(4) A dividend with combined credits attached must not have a combined imputation and CTR ratio that is more than the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Combined ratio breach

(5) A breach of the maximum ratio set out in subsection (4) gives rise to an excess credit amount that is calculated using the formula—

net dividends × (combined ratio – maximum ratio).

Definition of items in formula

(6) In the formula in subsection (5),—

(a) **net dividends** is the amount of the dividend paid, excluding the amount of CTR credit and imputation credit:

(b) **combined ratio** is the combined imputation and CTR ratio of the dividend:

(c) **maximum ratio** is the maximum combined imputation and CTR ratio permitted under subsection (4).

Relationship with section OZ 8

(7) Section OZ 8 (Attaching imputation credits and FDP credits: maximum permitted ratio) may apply to modify this section.

Defined in this Act: amount, combined imputation and CTR ratio, company, CTR company, CTR credit, dividend, excess credit amount, imputation credit, maximum permitted ratio, pay

Compare: 2004 No 35 ss MG 10, MI 7(1), MI 8(1)

Section OD 22(7) heading: added, on 1 April 2008, by section 506 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OD 22(7): added, on 1 April 2008, by section 506 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Payment of FDP and refunds

OD 23 FDP payable for CTR debits

[Repealed]

Section OD 23: repealed (with effect on 30 June 2009), on 6 October 2009, by section 428(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 24 FDP payable on resident's restricted amalgamation

[Repealed]

Section OD 24: repealed (with effect on 30 June 2009), on 6 October 2009, by section 429(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OD 25 Refunds on transfers to CTR account

Refund

(1) A CTR company has a refund for the amount of a CTR credit under section OD 6 (table O5: CTR credits, row 3 (transfer from FDP account)) in the company's CTR account.

Application of refund

(2) The Commissioner may apply the refund to pay an amount due under the Inland Revenue Acts. This subsection overrides subpart RM (Refunds).

Defined in this Act: amount, Commissioner, CTR account, CTR company, CTR credit, Inland Revenue Acts

Compare: 2004 No 35 s MI 11

Table O5: conduit tax relief credits

Row	Conduit tax relief credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	*[Repealed]*		
3	Transfer from FDP account	31 March	section OD 6
4	CTR credit attached to dividend derived	day on which dividend is paid	section OD 7
5	*[Repealed]*		
6	Reversal of debit for tax advantage arrangement	debit date of debit	section OD 9

Table O5 row 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 430(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O5 row 5: repealed (with effect on 30 June 2009), on 6 October 2009, by section 430(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O6: conduit tax relief debits

Row	Conduit tax relief debit	Debit date	Further defined
1	Opening debit balance	1 April	section OD 7
2	CTR credit attached to dividend paid	day of payment	section OD 10
3	*[Repealed]*		

Row	Conduit tax relief debit	Debit date	Further defined
4	Transfer of credit to group conduit tax relief account	day of transfer	section OD 12
5	Adjustment for conduit relief	day on which return of income with adjustment is filed	section OD 13
6	Shareholding chain broken when non-resident shareholder disposes of shares	when shareholding ends	section OD 14
7	Chain break when company stops being part of consolidated group	when group relationship stops	section OD 15
8	Increase in resident shareholding by 34% or more	day of shareholding change	section OD 16
9	Debit for breach of CTR ratio	31 March	section OD 17
10	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OD 18
11	Final balance when CTR company status ends	day of cessation	section OD 19

Table O6 row 2: amended (with effect on 1 April 2008), on 6 October 2009, by section 431(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O6 row 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 431(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart OE—Branch equivalent tax accounts (BETA)

Introductory provision

OE 1 General rules for companies and other persons with branch equivalent tax accounts

BETA company

(1) A company resident in New Zealand may choose to be a branch equivalent tax account (BETA) company with a branch equivalent tax account.

BETA person

(2) A person resident in New Zealand who is not a company may choose to be a BETA person with a branch equivalent tax account.

General rules: BETA company

(3) The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to the branch equivalent tax account of a BETA company.

General rules: BETA person

(4) Sections OA 2 and OA 3 apply to a BETA person and their branch equivalent tax account as if references in those sections to a tax year were references to an income year.

Defined in this Act: BETA company, BETA person, branch equivalent tax account, company, income year, memorandum account, resident in New Zealand, tax year

Compare: 2004 No 35 ss MF 1(1), MF 11(1)

Companies with branch equivalent tax accounts

Introductory provisions

OE 2 Branch equivalent tax accounts of companies

Accounts

(1) A BETA company must maintain a branch equivalent tax account for a tax year. The account is a record of branch equivalent tax credits and branch equivalent tax debits that arise in the account during the tax year.

Credits

[Repealed]

(2) *[Repealed]*

Debits

[Repealed]

(3) *[Repealed]*

Consolidated groups

(4) A consolidated group has a branch equivalent tax account if a group company is a BETA company, or if the group chooses to have the account.

Group credits and debits

(5) Certain credits and debits arise in the branch equivalent tax account of a consolidated group and not in the account of a group company.

Shareholder continuity requirement

(6) The carrying forward of a credit or a debit in the company's branch equivalent tax account is subject to the shareholder continuity requirement of section OA 8 (Shareholder continuity requirements for memorandum accounts).

Relationship with section OZ 16

(7) Section OZ 16 (BETA reductions) may apply to modify the application of sections OE 6 to OE 16.

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, CFC, consolidated group, dividend, FDP, foreign attributed income, income tax, pay, shareholder, tax year

Compare: 2004 No 35 ss MF 1(3), MF 4(1)(a), (3)(a), (5), MF 7(1)(a), MF 9

Section OE 2(2) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 432(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OE 2(2): repealed (with effect on 30 June 2009), on 6 October 2009, by section 432(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OE 2(3) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 432(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OE 2(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 432(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OE 2(7) heading: added, on 1 April 2008, by section 507 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OE 2(7): added, on 1 April 2008, by section 507 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OE 3 Choosing to become BETA company

Election

(1) A company may choose to become a BETA company for a tax year—

(a) at any time during the tax year; or

(b) no later than the day on which the company is required to file a return of income for the tax year; or

(c) by a later date if the Commissioner allows.

Notifying Commissioner

(2) The company must notify the Commissioner of an election under subsection (1)—

(a) no later than 21 days after the date of the election; or

(b) by a later date if the Commissioner allows.

Effect of election

(3) A BETA company must maintain a branch equivalent tax account referred to in section OE 2(1) from the first day of the tax year in which the company makes the election.

Defined in this Act: BETA company, branch equivalent tax account, Commissioner, company, income year, notify, return of income, tax year

Compare: 2004 No 35 s MF 1(1), (2)

OE 4 When company stops being BETA company

Election

(1) A BETA company may choose to stop being a BETA company only in a tax year that is later than the tax year in which the company chooses under section OE 3 to become a BETA company.

When company's status ends

(2) The company ends its status as a BETA company from the first day of the tax year after the tax year in which it makes the election but only if it files an annual imputation credit account (ICA) return for the year of election in the time allowed by section 69 of the Tax Administration Act 1994.

Defined in this Act: annual ICA return, BETA company, tax year

Compare: 2004 No 35 s MF 1(4), (5)

OE 5 Treatment of attributed CFC income and FIF income in this subpart

This subpart applies to a person with an attributing interest in a foreign investment fund (FIF) by treating—

(a) FIF income derived from the person's interest as attributed CFC income, if the FIF income is calculated—

(i) under the accounting profits method or the branch equivalent method; or

(ii) under a method to which section EX 50(6) or EX 58 (which relate to the calculation of FIF income) applies; and

(b) the fund as a CFC; and

(c) the interest as an income interest.

Defined in this Act: accounting profits method, attributed CFC income, attributing interest, branch equivalent method, CFC, FIF, FIF income, income interest

Compare: 2004 No 35 s MF 15

Branch equivalent tax credits

OE 6 BETA payment of income tax on foreign income

Credit

(1) A BETA company has a branch equivalent tax credit for an amount calculated using the formula—

((CFC income for year – deductions for year) × tax rate) – foreign tax credits – debit balances.

Definition of items in formula

(2) In the formula,—

(a) **CFC income for year** is the amount of attributed CFC income derived during the income year corresponding to the tax year referred to in subsection (3):

(b) **deductions for year** is the total amount in the income year corresponding to the tax year referred to in subsection (3) of—

(i) attributed CFC loss; and

(ii) attributed CFC net loss; and

(iii) FIF loss; and

(iv) FIF net loss:

(c) **tax rate** is the basic rate of income tax set out in—

(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or

(ii) schedule 1, part A, clause 7 if the company is a Maori authority:

(d) **foreign tax credits** is the amount of foreign tax credits allowed for the income year corresponding to the tax year referred to in subsection (3) under sections LK 1 to LK 7 (which relate to foreign tax credits of CFCs), as applicable:

(e) **debit balances** is the total amount of all debit balances in a branch equivalent tax account applied to satisfy the company's income tax liability for the income year corresponding to the tax year referred to in subsection (3).

Table reference

(3) The branch equivalent tax credit in subsection (1) is referred to in table O7: branch equivalent tax credits, row 2 (income tax on foreign income).

Credit date

(4) The credit date is the day the company files the return of income for the tax year.

Defined in this Act: amount, attributed CFC income, attributed CFC loss, attributed CFC net loss, basic rate, BETA company, branch equivalent tax ac-

count, branch equivalent tax credit, FIF loss, FIF net loss, foreign tax, income tax, income tax liability, income year, Maori authority, tax year

Compare: 2004 No 35 s MF 4(1)(a), (2)(a)

Section OE 6(2)(c)(i): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OE 7 BETA payment of income tax

When this section applies

(1) This section applies when—

(a) a BETA company has a debit balance in its branch equivalent tax account; and

(b) the income of the company includes an amount of attributed CFC income; and

(c) an amount of FDP that gives rise to a debit included in the debit balance has been paid—

(i) directly; or

(ii) by reducing a tax loss; or

(iii) to reduce an FDP liability under section RG 7 (Reduction of payments for conduit tax relief).

Group companies

(2) This section also applies in relation to a BETA company if another company (**company B**) that is part of the same group of companies has a debit balance in its branch equivalent tax account that arises in the circumstances set out in subsection (1).

Election

(3) The company or company B may choose to apply some or all of the debit balance under section BC 8 (Satisfaction of income tax liability) to satisfy an income tax liability in relation to the attributed CFC income. The election is made by recording a credit in the branch equivalent tax account with the debit balance.

Maximum amount

(3B) Despite subsection (3) and section OP 101(2) (Consolidated BETA payment of income tax), the amount of BETA debits applied under elections under subsection (3) and section OP 101(2) relating to the attributed CFC income referred to in subsection (3) must be no more than the amount calculated

under section OE 6(1) for the company that has the attributed CFC income, treating the item debit balances as zero.

Credit

[Repealed]

(4) *[Repealed]*

Table reference

(5) The branch equivalent tax credit in subsection (3), as limited by subsection (3B), is referred to in table O7: branch equivalent tax credits, row 3 (payment of income tax).

Excess amount treated as tax loss component

(6) If a company chooses under subsections (3) and (3B) to apply a debit amount that exceeds the total income tax liability for the attributed CFC income referred to in subsection (3), the excess amount is treated as an amount of tax loss component of the company having the attributed income calculated using the formula—

$$\frac{\text{debit applied} - \text{tax liability}}{\text{tax rate}}.$$

Definition of items in formula

(7) In the formula,—

(a) **debit applied** is the amount of the debit balance applied by the company under an election under subsections (3) and (3B):

(b) **tax liability** is the total income tax liability for the attributed CFC income:

(c) **tax rate** is the basic rate of income tax set out in—

(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or

(ii) schedule 1, part A, clause 7, if the company is a Maori authority.

Income tax paid

(8) For the purposes of this section, the income tax liability —

(a) is calculated by applying the formula in section OE 6(1) on the basis that the item **debit balances** is zero:

(b) is satisfied to the extent to which the liability is no more than the income tax payable in relation to the amount of the attributed CFC income.

Credit date

(9) The credit date is the day of election.

Defined in this Act: amount, attributed CFC income, basic rate, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, company, consolidated group, dividend, FDP, income, income interest, income tax, income tax liability, income year, Maori authority, pay, tax loss component, tax year

Compare: 2004 No 35 ss MF 4(1)(c), (2)(b), MF 5(4)–(7)

Section OE 7(2): amended, on 1 April 2008, by section 508(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OE 7(3B): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 115(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(4) heading: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to section 115(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(4): repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 115(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(5): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 115(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(6) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to section 115(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(6): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 115(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(7) heading: substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to section 115(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OE 7(7): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 115(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OE 8 BETA unused amount of debit balance

[Repealed]

Section OE 8: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 116(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OE 9 BETA refund of FDP

Credit

(1) A BETA company has a branch equivalent tax credit for the amount of a refund of FDP paid to the company. Subsections (2) and (3) override this subsection.

Refund giving rise to debit

(2) A refund under subsection (1) must be a refund of a payment of FDP that gave rise to a debit under section OE 12.

Reduction

(3) The amount of the credit under subsection (1) is reduced to the extent to which—

(a) the payment of FDP is made before a branch equivalent tax credit arises under section OE 10 in the company's branch equivalent tax account; and

(b) the amount of the refund is no more than the amount of the credit for loss of shareholder continuity.

Table references

(4) The table references are as follows

(a) the branch equivalent tax credit in subsection (1) is referred to in table O7: branch equivalent tax credits, row 4 (refund of FDP):

(b) the branch equivalent tax debit in subsection (2) is referred to in table O8: branch equivalent tax debits, row 2 (payment of FDP):

(c) the branch equivalent tax credit in subsection (3)(a) is referred to in table O7: branch equivalent tax credits, row 5 (credit for loss of shareholder continuity).

Credit date

(5) The credit date is the day the refund is made.

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, FDP, pay, shareholder

Compare: 2004 No 35 s MF 4(1)(d), (2)(c)

OE 10 BETA credit for loss of shareholder continuity

Credit

(1) A BETA company has a branch equivalent tax credit for the amount of a branch equivalent tax debit retained in the branch equivalent tax account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The branch equivalent tax credit in subsection (1) is referred to in table O7: branch equivalent tax credits, row 5 (credit for loss of shareholder continuity).

When credit arises

(3) The credit arises at the time shareholder continuity is lost.

Avoidance arrangements

(4) Section GB 40 (BETA arrangements for carrying amounts forward) may exclude a company from the application of this section.

Defined in this Act: amount, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, shareholder

Compare: 2004 No 35 s MF 4(1)(e), (2)(d), (5), (6)

Section OE 10(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 91(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OE 10(3) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 91(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OE 10(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 91(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

OE 11 BETA final balance

Credit

(1) A BETA company has a branch equivalent tax credit for a debit balance in the branch equivalent tax account when the company stops being resident in New Zealand.

Table reference

(2) The branch equivalent tax credit in subsection (1) is referred to in table O7: branch equivalent tax credits, row 6 (final balance).

Credit date

(3) The credit date is the day the company stops being resident in New Zealand.

Defined in this Act: BETA company, branch equivalent tax account, branch equivalent tax credit, resident in New Zealand

Compare: 2004 No 35 s MF 4(1)(f), (2)(e)

Treatment of debits from conduit relief

Heading: inserted (with effect on 30 June 2009), on 7 September 2010 (applying for income years beginning on or after 1 July 2009), by section 103(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OE 11B Company with debit balance, including debits from conduit relief, in some income years

When this section applies

(1) This section applies when a BETA company, in an income year beginning on or after 1 July 2009 (an **affected year**), has a debit balance—

- (a) in its branch equivalent tax account; and
- (b) that includes an amount (the **CTR-relief amount**) equal to the total of amounts that—
  - (i) relate to branch equivalent tax debits in the branch equivalent tax account that each arose under section OE 12 in relation to a foreign dividend; and
  - (ii) equal, for each branch equivalent tax debit, the reduction under section RG 7 (Reduction of payments for conduit tax relief) of the company's liability to pay FDP to the Commissioner for the foreign dividend.

Use of CTR-relief amount

(2) The BETA company may not choose under section OE 7 to apply the CTR-relief amount to satisfy an income tax liability except by an election—

- (a) relating to attributed CFC income that the company allocates to an income year beginning before 1 July 2009; and
- (b) made before the earlier of—

(i) the first election under section OE 7 relating to attributed CFC income that the company allocates to an affected year:

(ii) the end of the first affected year.

Determination of CTR-relief amount

(3) The CTR-relief amount in a branch equivalent tax account is found by—

(a) treating a branch equivalent tax debit that arises partly from a reduction of FDP under section RG 7 and partly from a payment of FDP as being 2 debits, one equal to the reduction of FDP and the other equal to the amount of the payment of FDP; and

(b) if a branch equivalent tax credit arises before the first affected year other than from an election relating to attributed CFC income allocated to an affected year or arises in an affected year from an election meeting the requirements of the exception to subsection (2), treating the credit as—

(i) reducing branch equivalent tax debits in the order in which the debits arise; and

(ii) for branch equivalent tax debits arising at the same time and not reduced to zero by the credit, reducing each debit in proportion to the contribution of the debit to the total of the debits; and

(c) if the treatment of a branch equivalent tax credit is not given by paragraph (b), treating the credit as—

(i) reducing branch equivalent tax debits arising from the payment of FDP in the order in which the debits arise; and

(ii) after all branch equivalent tax debits arising from the payment of FDP are reduced to zero, reducing debits arising from a reduction of FDP under section RG 7 in the order in which the debits arise; and

(iii) for branch equivalent tax debits subject to the same subparagraph and arising at the same time and not reduced to zero by the credit, reducing each debit in proportion to the contribution of the debit to the total of the debits; and

(d) counting an amount of a branch equivalent tax credit only once in the reduction of some or all of a branch equivalent tax debit.

Defined in this Act: attributed CFC income, BETA company, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, Commissioner, company, FDP, foreign dividend income tax liability, income year

Section OE 11B: inserted (with effect on 30 June 2009), on 7 September 2010 (applying for income years beginning on or after 1 July 2009), by section 103(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Branch equivalent tax debits
[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 433(1) the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OE 12 BETA payment of FDP

[Repealed]

Section OE 12: repealed (with effect on 30 June 2009), on 6 October 2009, by section 433(1) the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OE 13 BETA reduction in FDP

[Repealed]

Section OE 13: repealed (with effect on 30 June 2009), on 6 October 2009, by section 433(1) the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OE 14 BETA refund of income tax

[Repealed]

Section OE 14: repealed (with effect on 30 June 2009), on 6 October 2009, by section 434(1) the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OE 15 BETA debit for loss of shareholder continuity

[Repealed]

Section OE 15: repealed (with effect on 30 June 2009), on 6 October 2009, by section 434(1) the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OE 16 BETA final balance

[Repealed]

Section OE 16: repealed (with effect on 30 June 2009), on 6 October 2009, by section 434(1) the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Debit if credit balance at beginning of first affected income year

[Repealed]

Heading: repealed (with effect on 30 June 2009), on 7 September 2010, by section 104 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OE 16B Company with credit balance at beginning of first affected income year

[Repealed]

Section OE 16B: repealed (with effect on 30 June 2009), on 7 September 2010, by section 104 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OE 16B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 435(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Persons with branch equivalent tax accounts

Introductory provisions

OE 17 Person choosing to become BETA person

Election

(1) A person who is eligible under section OE 1(2) and who chooses to become a BETA person may make the election for an income year—

(a) at any time during the income year; or

(b) no later than the day on which the person is required to file a return of income for the income year; or

(c) by a later date if the Commissioner allows.

Notice

(2) The person must notify the Commissioner of the election under subsection (1)—

(a) no later than 21 days after the election; or

(b) by a later date if the Commissioner allows.

Effect of election

(3) A BETA person must maintain a branch equivalent tax account from the first day of the income year in which they make the election.

Defined in this Act: BETA person, branch equivalent tax account, Commissioner, income year, notify, return of income

Compare: 2004 No 35 s MF 11(1), (2)

OE 18 When person stops being BETA person

Election

(1) A BETA person may choose to stop the branch equivalent tax account.

When election made

(2) A person may make an election under subsection (1) only in an income year that is later than the income year in which the person chose under section OE 1(2) to become a BETA person.

When person's status ends

(3) The person ends their status as a BETA person from the first day of the income year after the income year in which the election referred to in subsection (1) is made but only if they file an annual branch equivalent tax account return for the year of election in the time allowed by section 78(3) of the Tax Administration Act 1994.

Defined in this Act: annual branch equivalent tax account return, BETA person, branch equivalent tax account, income year

Compare: 2004 No 35 s MF 13(1), (2)

Branch equivalent tax credits

OE 19 BETA person's payment of income tax on foreign income

Credit

(1) A BETA person has a branch equivalent tax credit for an income year for an amount calculated using the formula—

$$\text{tax liability} \times \frac{\text{(CFC or taxable income)}}{\text{(taxable income)}} - \text{foreign tax credits}$$

Definition of items in formula

(2) In the formula,—

(a) **tax liability** is the person's income tax liability for the income year:

(b) **CFC or taxable income** is the lesser of the person's—

(i) attributed CFC income derived during the income year; or

(ii) taxable income for the income year:

(c) **taxable income** is the person's taxable income for the income year:

(d) **foreign tax credits** is the foreign tax credits allowed for the income year under sections LK 1 to LK 7 (which relate to tax credits relating to attributed CFC income).

Table reference

(3) The branch equivalent tax credit in subsection (1) is referred to in table O9: person's branch equivalent tax credits, row 2 (payment of income tax on foreign income).

Credit date

(4) The credit date is the day the person files the return of income for the tax year corresponding to the income year.

Defined in this Act: amount, attributed CFC income, BETA person, branch equivalent tax account, branch equivalent tax credit, foreign tax, income tax, income tax liability income year, return of income, tax year, taxable income

Compare: 2004 No 35 ss MF 13(1), (2), MF 14

Branch equivalent tax debits

OE 20 BETA person's payment of income tax

Election

(1) On meeting the requirements of subsection (4), a BETA person may choose to use some or all of a credit balance in their branch equivalent tax account to satisfy an income tax liability of the person for an income year.

Debit

(2) The amount used to satisfy the income tax liability is a branch equivalent tax debit in the person's branch equivalent tax account.

Table reference

(3) The branch equivalent tax debit in subsection (2) is referred to in table O10: person's branch equivalent tax debits, row 2 (payment of income tax).

Requirements

(4) The person may make an election under subsection (1) if—

(a) they derive a dividend from an income interest in a CFC during the income year; and

(b) a credit balance exists in their branch equivalent tax account; and

(c) they have paid the income tax giving rise to a credit included in the credit balance.

Manner of election

(5) The person makes the election by recording the amount as a debit in the branch equivalent tax account.

Income tax paid

(6) Once the election is made, the income tax liability is satisfied to the extent to which the liability is no more than the income tax payable on the amount of the dividend derived.

Debit date

(7) The debit date is the day of election.

Defined in this Act: amount, BETA person, branch equivalent tax account, branch equivalent tax debit, CFC, dividend, income interest, income tax, income tax liability, income year, pay

Compare: 2004 No 35 ss MF 13(3)(a), MF 14

OE 21 BETA person's refund of income tax

Debit

(1) A BETA person has a branch equivalent tax debit for an income year for the amount of a refund of income tax attributable to income tax paid for the income year on attributed CFC income derived during the income year.

Table reference

(2) The branch equivalent tax debit in subsection (1) is referred to in table O10: person's branch equivalent tax debits, row 3 (refund of income tax).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, attributed CFC income, BETA person, branch equivalent tax debit, income tax, income year, pay

Compare: 2004 No 35 s MF 13(3)(b)

OE 22 BETA person's final balance

Debit

(1) A BETA person has a branch equivalent tax debit for a credit balance in the branch equivalent tax account when the person stops being resident in New Zealand.

Table reference

(2) The branch equivalent tax debit in subsection (1) is referred to in table O10: person's branch equivalent tax debits, row 4 (final balance).

Debit date

(3) The debit date is the day the person stops being resident in New Zealand.

Defined in this Act: BETA person, branch equivalent tax account, branch equivalent tax debit, resident in New Zealand

Compare: 2004 No 35 s MF 13(3)(c)

Table O7 branch equivalent tax credits

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA7
2	*[Repealed]*		
3	Debit balance applied to satisfy income tax liability	day of election	section OE 7
4	Refund of FDP	day of refund	section OE 9
5	Credit for loss of shareholder continuity	time of loss of continuity	section OE 10
6	Debit balance when company stops being resident in New Zealand	day of cessation	section OE 11

Table O7 row 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 436(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O7 row 5: amended (with effect on 1 April 2008), on 7 December 2009, by section 92 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Table O8 branch equivalent tax debits
[Repealed]

Table O8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 437(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O9 person's equivalent tax credits

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Income tax paid on foreign income derived in income year	day on which return of income for income year is filed	section OE 19

Table O10 person's equivalent tax debits

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Credit balance applied to satisfy income tax liability	day of election	section OE 20

3	Refund of income tax for attributed CFC income	day of refund	section OE 21
4	Credit balance when New Zealand residence ends	day of cessation	section OE 22

Subpart OF—Available subscribed capital accounts (ASCA)

Introductory provisions

OF 1 General rules for companies with ASC accounts

ASC account company

(1) A public unit trust or a group investment fund that derives category A income may choose to become an available subscribed capital (ASC) account company. This section does not apply to a multi-rate PIE.

ASC account

(2) An ASC account company must maintain an ASC account for a tax year. The account is a record of ASC credits and ASC debits that arise in the account during the tax year.

Credits

(3) Credits to the account include redemption proceeds that are less than the ASC company's available subscribed capital calculated under the slice rule.

Debits

(4) Debits to the account include a transfer of a credit balance to the company's imputation credit account.

Defined in this Act: ASC account, ASC account company, ASC credit, ASC debit, available subscribed capital, category A income, group investment fund, imputation credit account, multi-rate PIE, public unit trust, slice rule, tax year

Compare: 2004 No 35 ss MJ 1(1), MJ 5(1), MJ 6(1)

Section OF 1(1): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 438(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OF 1 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 438(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OF 1 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 438(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OF 2 ASC accounts

The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to the ASC account of an ASC account company.

Defined in this Act: ASC account, ASC account company, memorandum account

Compare: 2004 No 35 s MJ 3(1)

OF 3 Choosing to become ASC account company

Election

(1) A company may choose to become an ASC account company if—

(a) it is a public unit trust or a group investment fund that derives category A income; and

(b) it has issued shares on terms that their redemption will be subject to section CD 22(4) (Returns of capital: off-market share cancellations).

Notifying Commissioner

(2) A company that makes an election under subsection (1) must notify the Commissioner of the election no later than the day on which the company is required to file a return of income for the tax year that corresponds to the income year in which the election is made.

Effect of election

(3) An ASC account company must maintain the ASC account referred to in section OF 1(2) from the day the company chooses to become an ASC account company.

Defined in this Act: ASC account company, category A income, Commissioner, company, group investment fund, income year, notify, public unit trust, return of income, share, tax year

Compare: 2004 No 35 s MJ 1(1)

ASC credits

OF 4 ASCA redemption credit

Credit

(1) An ASC account company has an ASC credit when the company redeems a share in the company for an amount calculated using the formula—

ASC amount – redemption proceeds.

Definition of items in formula

(2) In the formula,—

(a) **ASC amount** is the amount of the available subscribed capital for the redemption calculated under section CD 22(4) (Returns of capital: off-market share cancellations):

(b) **redemption proceeds** is the amount of the proceeds from the redemption calculated under sections CD 4 to CD 6 (which relate to the nature of a dividend).

Positive result

(3) If the result of the formula in subsection (1) is negative, the amount is treated as zero.

Table reference

(4) The ASC credit in subsection (1) is referred to in table O11: ASC credits, row 2 (redemption credit).

Credit date

(5) The credit date is the day the company redeems the share.

Defined in this Act: amount, ASC account, ASC account company, ASC credit, available subscribed capital, share

Compare: 2004 No 35 s MJ 5

ASC debits

OF 5 ASCA transfer to imputation credit account

Election

(1) An ASC account company may choose that some or all of the credit balance in the company's ASC account is transferred to the company's imputation credit account.

Debit and credit

(2) The amount of the credit balance transferred is—

(a) an ASC debit for the full amount of the credit balance transferred; and

(b) an imputation credit under section OB 18 (ICA transfer from ASC account) for the amount calculated under subsection (4).

Table references

(3) The ASC debit in subsection (2)(a) is referred to in table O12: ASC debits, row 2 (transfer to imputation credit account). The imputation credit in subsection (2)(b) is referred to in table O1: imputation credits, row 16 (transfer from ASC account).

Amount

(4) The amount of the credit to the imputation credit account is calculated using the formula—

credit balance × maximum imputation ratio.

Definition of items in formula

(5) In the formula,—

(a) **credit balance** is some or all of the credit balance in the company's ASC account that the ASC account company chooses to use:

(b) **maximum imputation ratio** is the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Timing of election

(6) An election under subsection (1) may be made at any time when the company is an imputation credit account (ICA) company.

Manner of election

(7) A company makes an election under subsection (1) by recording the credit balance transferred as—

(a) a debit in the company's ASC account; and

(b) a credit in the company's imputation credit account.

Debit date

(8) The debit date is—

(a) the day of election; or

(b) the day before the company stops being an ICA company if the election is made on the occasion of cessation.

Defined in this Act: amount, ASC account, ASC account company, ASC debit, ICA company, imputation credit, imputation credit account, imputation ratio

Compare: 2004 No 35 ss ME 4(1)(da), MJ 6

Table O11 ASC credits

Row	ASC credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Amount by which ASC is more than proceeds on redemption of shares	day on which shares are redeemed	section OF 4

Table O12 ASC debits

Row	ASC credit	Credit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Transfer of credit balance to imputation credit account	set out in section OF 5	section OF 5

Subpart OJ—Policyholder credit accounts (PCA)

[Repealed]

Subpart OJ: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provision
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 1 General rules for companies and other persons with policyholder credit accounts
[Repealed]

Section OJ 1: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Companies with policyholder credit accounts
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provision
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 2 Policyholder credit accounts of companies
[Repealed]

Section OJ 2: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Policyholder credits of PCA company
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 3 PCA transfer from imputation credit account
[Repealed]

Section OJ 3: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 4 PCA transfer from FDP account

[Repealed]

Section OJ 4: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 5 PCA transfer of life insurance business

[Repealed]

Section OJ 5: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 6 PCA credit for maximum deficit in FDP account

[Repealed]

Section OJ 6: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 7 PCA credit for reduced deficit in FDP account

[Repealed]

Section OJ 7: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Policyholder debits of PCA company
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 8 PCA payment of tax relating to policyholder base

[Repealed]

Section OJ 8: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 9 PCA transfer to imputation credit account

[Repealed]

Section OJ 9: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 10 PCA transfer to group account

[Repealed]

Section OJ 10: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 11 PCA company's transfer of life insurance business

[Repealed]

Section OJ 11: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Persons with policyholder credit accounts
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provisions
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 12 Choosing to become PCA person

[Repealed]

Section OJ 12: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 13 Choosing to stop being PCA person

[Repealed]

Section OJ 13: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Policyholder credits of PCA person
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 14 PCA person's equivalent credit

[Repealed]

Section OJ 14: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 15 PCA person's credit for transfer of life insurance business

[Repealed]

Section OJ 15: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Policyholder debits of PCA person
[Repealed]

Heading: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 16 PCA person's payment of tax relating to policyholder base

[Repealed]

Section OJ 16: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 17 PCA person's equivalent debit

[Repealed]

Section OJ 17: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OJ 18 PCA person's debit for transfer of life insurance business

[Repealed]

Section OJ 18: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O13 policy holder credits
[Repealed]

Table O13: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O14 policyholder debits
[Repealed]

Table O14: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O15 person's policyholder credits
[Repealed]

Table O15: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O16 person's policyholder debits
[Repealed]

Table O16: repealed, on 1 July 2010, by section 439(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart OK—Maori authority credit accounts (MACA)

Introductory provision

OK 1 General rules for Maori authorities with Maori authority credit accounts

Accounts

(1) A Maori authority must maintain a Maori authority credit account for a tax year. The account is a record of Maori authority credits and Maori authority debits that arise in the account during the tax year. Subsection (2) overrides this subsection.

Exclusion

(2) Subsection (1) does not apply for a period in which—

(a) the constitution or rules of the Maori authority prohibit a distribution of any kind to a member; or

(b) the Maori authority derives only exempt income, disregarding exempt income under section CW 10 (Dividend within New Zealand wholly-owned group).

Credits

(3) Credits include an amount of income tax paid during a tax year, an imputation credit attached to a dividend derived by the Maori authority and, if the Maori authority is not also a foreign dividend payment account (FDPA) company, a foreign dividend payment (FDP) credit attached to a dividend derived.

Debits

(4) Debits may include a refund of income tax and a Maori authority credit attached to a taxable Maori authority distribution paid by the Maori authority.

General rules

(5) The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to Maori authority credit accounts.

Defined in this Act: amount, dividend, exempt income, FDP credit, FDPA company, imputation credit, income tax, Maori authority, Maori authority credit, Maori authority credit account, Maori authority debit, member, memorandum account, pay, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss MK 1, MK 3

Maori authority credits

OK 2 MACA payment of tax

Credit

(1) A Maori authority has a Maori authority credit for a payment of income tax or provisional tax. Subsection (3) overrides this subsection.

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 2 (payment of tax).

No credit

(3) No credit under subsection (1) arises for—

(a) income tax paid for a tax year before the 2004–05 tax year; or

(b) income tax paid for income derived when the Maori authority was not a Maori authority; or

(c) income tax paid by a credit under section LE 1 (Tax credits for imputation credits); or

(cb) income tax paid by a tax credit under subpart LA (Tax credits and other credits) and section LH 2 (Tax credits relating to expenditure on research and development); or

(d) further income tax applied under section OK 23 to pay income tax or provisional tax.

Credit date

(4) The credit date is the day the tax is paid.

Defined in this Act: further income tax, income, income tax, Maori authority, Maori authority credit, pay, provisional tax, tax year

Compare: 2004 No 35 s MK 4(1)(a), (2)(a)

Section OK 2(3)(cb): substituted (with effect on 1 April 2008), on 6 October 2009, by section 440(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OK 2(3)(cb): inserted, on 1 April 2008, by section 510 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OK 3 MACA payment of tax to other Maori authorities

Credit

(1) A Maori authority has a Maori authority credit for a payment of tax to another Maori authority that is treated as a payment transferred from company A to company B under section RC 32 (Wholly-owned groups of companies).

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 3 (payment of tax to another Maori authority).

Credit date

(3) The credit date is the day the tax is paid.

Defined in this Act: Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(b), (2)(a)

OK 4 MACA payment of further income tax

Credit

(1) A Maori authority has a Maori authority credit for a payment of further income tax under section OK 21 or OK 22.

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 4 (payment of further income tax).

Credit date

(3) The credit date is the day the further income tax is paid.

Defined in this Act: further income tax, Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(c), (2)(a)

OK 4B MACA expenditure on research and development

Credit

(1) A Maori authority has a Maori authority credit for an amount of a tax credit that the authority has under section LH 2 (Tax credits relating to expenditure on research and development).

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 4B (tax credit for research and development expenditure).

Credit date

(3) The credit date is the day the authority's return of income is filed.

Defined in this Act: amount, Commissioner, Maori authority credit, return of income, tax credit

Compare: 2004 No 35 s MK 4(1)(gb), (2)(db)

Section OK 4B: inserted, on 1 April 2008, by section 511 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OK 5 MACA distribution with Maori authority credit

Credit

(1) A Maori authority has a Maori authority credit for the amount of a Maori authority credit attached to a distribution derived by the Maori authority.

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 5 (distribution with Maori authority credit).

Credit date

(3) The credit date is the day the distribution is made.

Defined in this Act: amount, distribution, Maori authority, Maori authority credit

Compare: 2004 No 35 s MK 4(1)(d), (2)(b)

OK 6 MACA dividend derived with imputation credit

Credit

(1) A Maori authority has a Maori authority credit for the amount of an imputation credit attached to a dividend derived by the Maori authority.

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 6 (dividend derived with imputation credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, dividend, imputation credit, Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(e), (2)(c)

OK 6B MACA attributed PIE income with imputation credit

Credit

(1) A Maori authority that is an investor in a multi-rate PIE has a Maori authority credit for the amount of an imputation credit attributed to it under section HM 54 (Use of tax credits other than foreign tax credits by investors).

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 6B (attributed PIE income with imputation credit).

Credit date

(3) The credit date is the day the amount is attributed.

Defined in this Act: amount, attributed PIE income, imputation credit, multi-rate PIE

Section OK 6B: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 117(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OK 7 MACA dividend derived with FDP credit

Credit

(1) A Maori authority has a Maori authority credit for the amount of an FDP credit attached to a dividend derived by the Maori authority when it is not an FDPA company.

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 7 (dividend derived with FDP credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, dividend, FDP credit, FDPA company, Maori authority, Maori authority credit, pay

Compare: 2004 No 35 s MK 4(1)(f), (2)(c)

OK 8 MACA resident withholding tax withheld

Credit

(1) A Maori authority has a Maori authority credit for the amount of tax for resident passive income treated under section RA 9(1)(b) (Treatment of amounts withheld as received) as derived by the Maori authority.

Table reference

(2) The Maori authority credit in subsection (1) is referred to in table O17: Maori authority credits, row 8 (RWT).

Credit date

(3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount of tax, Maori authority, Maori authority credit, resident passive income, RWT

Compare: 2004 No 35 s MK 4(1)(h), (2)(e)

OK 9 MACA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that a Maori authority credit in a Maori authority's credit account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The Maori authority has a Maori authority credit for an amount that equals the amount of a debit in the Maori authority credit account under section OK 17.

Table references

(3) The Maori authority credit in subsection (2) is referred to in table O17: Maori authority credits, row 9 (reversal of tax advantage arrangement). The Maori authority debit in subsection (2) is referred to in table O18: Maori authority debits, row 9 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date for the debit under section OK 17.

Defined in this Act: amount, Maori authority, Maori authority credit, Maori authority credit account, Maori authority debit, tax advantage

Compare: 2004 No 35 s MK 4(1)(g), (2)(d)

Maori authority debits

OK 10 MACA distribution

Debit

(1) A Maori authority has a Maori authority debit for the amount of a Maori authority credit attached to a distribution made by the Maori authority.

Table reference

(2) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 2 (distribution).

Debit date

(3) The debit date is the day the distribution is made.

Defined in this Act: amount, distribution, Maori authority, Maori authority credit, Maori authority debit

Compare: 2004 No 35 s MK 5(1)(a), (2)(a)

OK 11 MACA allocation of provisional tax

Debit

(1) A Maori authority has a Maori authority debit for an amount of provisional tax treated under section RC 32 (Wholly-owned

groups of companies) as allocated by the Maori authority to another Maori authority as an underpaid company.

Table reference

(2) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 3 (allocation of provisional tax).

Debit date

(3) The debit date is the day the Commissioner is notified of the allocation.

Defined in this Act: amount, Commissioner, company, Maori authority, Maori authority debit, notify, provisional tax

Compare: 2004 No 35 s MK 5(1)(b), (2)(b)

OK 12 MACA refund of income tax

Debit

(1) A Maori authority has a Maori authority debit for the amount of a refund of income tax paid to the Maori authority. Subsections (2) and (4) override this subsection.

No debit

(2) The amount of a debit under subsection (1) does not include—

- (a) a refund of income tax paid for a tax year before the 2004–05 tax year; or
- (b) a refund of income tax paid to the Maori authority that is no more than the debit under section OK 15; or
- (c) a refund of income tax paid for a period when the Maori authority credit account was not maintained.

Table references

(3) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 4 (refund of income tax). The Maori authority debit in subsection (2)(b) is referred to in table O18: Maori authority debits, row 7 (debit for loss of shareholder continuity).

Part-year Maori authorities

(4) If a Maori authority maintains a Maori authority credit account for only part of a tax year, the amount of the debit is calculated using the formula—

$$\frac{\text{account days}}{365} \times \text{refund.}$$

Definition of items in formula

(5) In the formula,—

(a) **account days** is the number of days in the tax year for which the Maori authority maintains the Maori authority credit account:

(b) **refund** is the amount of the refund.

Debit date

(6) The debit date is the day the refund is made.

Relationship with section OK 14B

(7) This section does not apply to an amount that gives rise to a debit under section OK 14B.

Defined in this Act: amount, income tax, Maori authority, Maori authority credit account, Maori authority debit, pay, tax year

Compare: 2004 No 35 s MK 5(1)(c), (g), (2)(c)

Section OK 12(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 441(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OK 12(7): added (with effect on 1 April 2008), on 6 October 2009, by section 441(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OK 13 MACA payment of other taxes

Debit

(1) A Maori authority has a Maori authority debit for an amount of overpaid income tax applied to pay an amount due under the Inland Revenue Acts. Subsection (2) overrides this subsection.

No debit

(2) The amount of a debit under subsection (1) does not include an amount of overpaid income tax—

(a) applied to satisfy a liability for income tax or provisional tax; or

(b) paid for a tax year before the 2004–05 tax year; or

(c) that relates to income tax paid before a Maori authority debit arises under section OK 15 when the amount is no more than the amount of the debit for loss of shareholder continuity.

Table references

(3) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 5 (payment of other taxes). The Maori authority debit in subsection (2)(c) is referred to in table O18: Maori authority debits, row 7 (debit for loss of shareholder continuity).

Debit date

(4) The debit date is the day the amount is applied.

Relationship with section OK 14B

(5) This section does not apply to an amount that gives rise to a debit under section OK 14B.

Defined in this Act: amount, income tax, income tax liability, income year, Inland Revenue Acts, Maori authority, Maori authority debit, pay, provisional tax, shareholder, tax year

Compare: 2004 No 35 s MK 5(1)(j), (2)(i)

Section OK 13(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 442(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OK 13(5): added (with effect on 1 April 2008), on 6 October 2009, by section 442(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OK 14 MACA refund of FDP

Debit

(1) A Maori authority has a Maori authority debit for the amount of a refund of FDP paid to the Maori authority when it is not an FDPA company.

Table reference

(2) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 6 (refund of FDP).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, FDP, FDPA company, Maori authority, Maori authority debit, pay

Compare: 2004 No 35 s MK 5(1)(e), (2)(c)

OK 14B MACA refund of tax credit

Debit

(1) A Maori authority has a Maori authority debit for—

(a) the amount of a transfer under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax:

(b) the amount of a refund to the authority under section LA 6(2)(e):

(c) an amount used under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax.

Exclusion

(2) Despite subsection (1), a Maori authority that is an FDPA company does not have a Maori authority debit to the extent to which the amount transferred, refunded, or used is a tax credit under subpart LF (Tax credits for FDP credits).

Table reference

(3) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 6B (refund of tax credit).

Debit date

(4) The debit date is—

(a) for a debit referred to in subsection (1)(a), the day the amount is transferred:

(b) for a debit referred to in subsection (1)(b), the day the amount is refunded:

(c) for a debit referred to in subsection (1)(c), the day the amount is applied.

Defined in this Act: amount, FDPA company, Inland Revenue Acts, Maori authority, Maori authority debit, pay

Section OK 14B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 443(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OK 15 MACA debit for loss of shareholder continuity

Debit

(1) A Maori authority has a Maori authority debit for the amount of a Maori authority credit retained in the Maori authority

credit account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 7 (debit for loss of shareholder continuity).

When debit arises

(3) The debit arises at the time shareholder continuity is lost.

Defined in this Act: amount, company, Maori authority, Maori authority credit, Maori authority credit account, Maori authority debit, shareholder

Compare: 2004 No 35 s MK 5(1)(f), (2)(f)

Section OK 15(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 93(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OK 15(3) heading: amended (with effect on 1 April 2008), on 7 December 2009, by section 93(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OK 15(3): amended (with effect on 1 April 2008), on 7 December 2009, by section 93(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

OK 16 MACA breach of Maori authority credit ratio

Debit

(1) A Maori authority has a Maori authority debit for a breach in a tax year of the Maori authority credit ratio under section OK 20(3) for an amount calculated using the formula—

(net distributions × Maori authority credit ratio) – credits attached.

Definition of items in formula

(2) In the formula,—

(a) **net distributions** is the total amount of all taxable Maori authority distributions made by the Maori authority during the tax year, excluding the amount of Maori authority credits attached to the distributions:

(b) **Maori authority credit ratio** is the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios) or, if less, the greatest Maori authority credit ratio of all taxable Maori authority distributions made by the Maori authority during the tax year:

(c) **credits attached** is the total amount of all Maori authority credits attached to distributions paid by the Maori authority during the tax year.

Ratio change declaration

(3) A debit under subsection (1) does not arise if the Maori authority provides a ratio change declaration under section OK 20(5).

Table reference

(4) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 8 (breach of Maori authority credit ratio).

Debit date

(5) The debit date is the last day of the tax year.

Defined in this Act: amount, distribution, Maori authority, Maori authority credit, Maori authority credit account, Maori authority credit ratio, Maori authority debit, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss MK 5(1)(d), (2)(d), MK 7(5)

OK 17 MACA tax advantage arrangement

Debit

(1) A Maori authority has a Maori authority debit for the amount of a further debit for a tax advantage arrangement referred to in section GB 43(2) and (3) (Reconstruction of Maori authority credit arrangements to obtain tax advantage).

Table reference

(2) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 9 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the tax advantage arrangement began.

Defined in this Act: amount, arrangement, Maori authority, Maori authority credit account, Maori authority debit, tax advantage, tax year

Compare: 2004 No 35 s MK 5(1)(h), (2)(g)

OK 18 MACA final balance

Debit

(1) A Maori authority has a Maori authority debit for a credit balance in the Maori authority credit account when the Maori authority stops being a Maori authority.

Table reference

(2) The Maori authority debit in subsection (1) is referred to in table O18: Maori authority debits, row 10 (final balance).

Debit date

(3) The debit date is day the Maori authority stops being a Maori authority.

Defined in this Act: Maori authority, Maori authority credit account, Maori authority debit

Compare: 2004 No 35 s MK 5(1)(i), (2)(h)

Maori authority credits attached to distributions

OK 19 Maori authority credits attached to distributions

Attaching Maori authority credits

(1) When a Maori authority makes a taxable Maori authority distribution, it may attach a Maori authority credit to the distribution.

Maori authority credit ratio

(2) A distribution referred to in subsection (1) must have a Maori authority credit ratio calculated using the formula—

$$\frac{\text{credit attached}}{\text{net distribution}}.$$

Definition of items in formula

(3) In the formula,—

(a) **credit attached** is the amount of Maori authority credit attached to the distribution:

(b) **net distribution** is the amount of distribution made, excluding the amount of Maori authority credit.

Maximum permitted ratio

(4) A Maori authority credit attached to a distribution must not be more than the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios).

Co-operative companies

(5) A Maori authority that is also a co-operative company may attach a Maori authority credit to a notional distribution. The provisions of section OB 79 (Co-operative companies attaching imputation credits to notional distributions) apply to the notional distribution as if references in that section to—

(a) an imputation credit were a reference to a Maori authority credit; and

(b) an imputation credit account were a reference to a Maori authority credit account.

Retrospective attachment

(6) A Maori authority may retrospectively attach a Maori authority credit to a taxable Maori authority distribution.

Application of other provisions

(7) The provisions of section OB 62 (Retrospective attachment of imputation credits) apply to a distribution under this section as if a reference in that section to—

(a) an imputation credit were a reference to a Maori authority credit; and

(b) an imputation credit account were a reference to a Maori authority credit account.

Defined in this Act: amount, co-operative company, imputation credit, imputation credit account, Maori authority, Maori authority credit, Maori authority credit account, Maori authority credit ratio, maximum permitted ratio, taxable Maori authority distribution

Compare: 2004 No 35 ss MK 6, MK 7(1)

OK 20 MACA benchmark distribution rules

When this section applies

(1) This section applies when a Maori authority pays a taxable Maori authority distribution on more than 1 occasion during a tax year.

Benchmark distribution

(2) The first distribution of the tax year is the benchmark distribution.

Same Maori authority credit ratio

(3) The Maori authority credit ratio of a distribution made after the benchmark distribution must be the same as the Maori authority credit ratio of the benchmark distribution.

Debit for breach of Maori authority credit ratio

(4) A breach of subsection (3) gives rise to a Maori authority debit under section OK 16 (table O18: Maori authority debits, row 8 (breach of Maori authority credit ratio)) for an amount calculated using the formula in section OK 16(1).

Ratio change declaration

(5) A Maori authority may notify the Commissioner that the distribution is not part of an arrangement to obtain a tax advantage by providing a ratio change declaration stating that the distribution is not part of an arrangement to which sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage) apply. The Maori authority must provide the declaration before the distribution is made, or by a later date if the Commissioner allows. For the purposes of this subsection, the distribution must not be part of an arrangement to obtain a tax advantage. This subsection overrides subsection (4).

Defined in this Act: amount, arrangement, benchmark distribution, Commissioner, Maori authority, Maori authority credit ratio, Maori authority debit, notify, pay, tax advantage, tax year, taxable Maori authority distribution

Compare: 2004 No 35 s MK 7(2)–(4)

Further income tax

OK 21 Further income tax for closing debit balance

Liability

(1) A Maori authority is liable to pay further income tax for the amount of a debit balance in its Maori authority credit account at the end of a tax year.

Due date

(2) The Maori authority must pay the further income tax to the Commissioner no later than 20 June following the end of the tax year.

Application of other provisions

(3) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—

(a) apply to further income tax as if they addressed further income tax and not income tax; and

(b) apply, modified as necessary, to ensure their application to the further income tax rather than income tax; and

(c) do not override the imputation rules and section 101 of the Tax Administration Act 1994.

Defined in this Act: amount, Commissioner, further income tax, imputation rules, income tax, Maori authority, Maori authority credit account, pay, tax year

Compare: 2004 No 35 s MK 8(1), (2), (6)

OK 22 Further income tax paid when Maori authority no longer Maori authority

Liability

(1) A Maori authority is liable to pay further income tax for a debit balance in its Maori authority credit account immediately before the Maori authority stops being a Maori authority.

Due date

(2) The Maori authority must pay the further income tax to the Commissioner by the day on which the Maori authority stops being a Maori authority.

Paramount section

(3) A Maori authority that stops being a Maori authority on the last day of a tax year is liable for further income tax under this section and not under section OK 21.

Application of other provisions

(4) When it is appropriate for the purposes of this section, the other sections of this Act and the Tax Administration Act 1994—

(a) apply to further income tax as if they addressed further income tax and not income tax; and

(b) apply, modified as necessary, to ensure their application to the further income tax rather than income tax; and

(c) do not override the imputation rules and section 101 of the Tax Administration Act 1994.

Defined in this Act: Commissioner, further income tax, imputation rules, income tax, Maori authority, Maori authority credit account, pay, tax year

Compare: 2004 No 35 s MK 8(3), (4), (6)

OK 23 Further income tax paid satisfying liability for income tax

Election

(1) A Maori authority that is liable for income tax or provisional tax may choose to satisfy the liability through a payment of further income tax.

Requirements

(2) The liability referred to in subsection (1) must be for an income year corresponding to a tax year in which the Maori authority maintains a Maori authority credit account.

When treated as paid

(3) The income tax or provisional tax is treated as paid on the day the further income tax is paid to the Commissioner.

Defined in this Act: Commissioner, further income tax, income tax, income year, Maori authority, Maori authority credit account, pay, provisional tax, tax year

Compare: 2004 No 35 s MK 8(5)

OK 24 Income tax paid satisfying liability for further income tax

Election

(1) A Maori authority that is liable for further income tax may choose to satisfy the liability through a payment of income tax.

Requirements

(2) The liability referred to in subsection (1) must be for an income year corresponding to a tax year in which the Maori authority maintains a Maori authority credit account.

When treated as paid

(3) The further income tax is treated as paid on the day the income tax is paid to the Commissioner.

Defined in this Act: Commissioner, further income tax, income tax, income year, Maori authority, Maori authority credit account, pay, tax year

Compare: 2004 No 35 s MK 8(5B)

Table O17 Maori authority credits

Row	Maori authority credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	Provisional tax and income tax paid	day of payment	section OK 2
3	Tax paid to another Maori authority	day of payment	section OK 3
4	Further income tax paid	day of payment	section OK 4
4B	Tax credit for research and development expenditure	day return filed	section OK 4B.
5	Maori authority credit attached to distribution derived	day on which distribution is paid	section OK 5
6	Imputation credit attached to dividend derived	day on which dividend is paid	section OK 6
6B	Attributed PIE income with imputation credit	day of attribution	section OK 6B
7	FDP credit attached to dividend derived when not FDP company	day on which dividend is paid	section OK 7
8	RWT withheld	day on which amount withheld	section OK 8
9	Reversal of debit for tax advantage arrangement	debit date for debit	section OK 9

Table O17 row 4B: inserted, on 1 April 2008, by section 512 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Table O17 row 6B: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Table O18 Maori authority debits

Row	Maori authority	Credit date	Further defined
1	Opening debit balance	1 April	section OA 7
2	Maori authority credit attached to distribution paid	day of distribution	section OK 10
3	allocation of provisional tax	day of notice of allocation	section OK 11
4	Refund of income tax	day of refund	section OK 12
5	Overpaid income tax applied to satisfy another taxation liability	day of application	section OK 13
6	Refund of FDP when not FDPA company	day of refund	section OK 14
6B	Transfer, refund, or use of tax credit	day of transfer, refund, or use	section OK 14B

7	Debit for loss of shareholder continuity for Maori authority that is company	time of loss of continuity	section OK 15
8	Debit for breach of Maori authority credit ratio	31 March	section OK 16
9	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OK 17
10	Credit balance when Maori authority credit account stops	day of cessation	section OK 18

Table O18 row 6B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 444(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O18 row 7: amended (with effect on 1 April 2008), on 7 December 2009, by section 94 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Subpart OP—Memorandum accounts of consolidated groups

Introductory provisions

OP 1 Memorandum accounts of consolidated groups

Single company

(1) For the purposes of this Part, a consolidated group is treated as if it were a single company, and subpart FM (Consolidated groups of companies) applies to the consolidated group.

Consolidated group accounts

(2) A consolidated group may be—

(a) required to maintain a memorandum account for a tax year; or

(b) entitled to maintain a memorandum account for a tax year.

Separate accounts

(3) A consolidated group's memorandum account is separate from the memorandum account of each company in the consolidated group.

General rules

(4) The general rules on memorandum accounts set out in sections OA 2 and OA 3 (which relate to the treatment of memorandum accounts) apply to a memorandum account of a consolidated group.

Tables

(5) The credits and debits that arise in a memorandum account are listed in tables set out at the end of this subpart. The tables—

(a) state the credits and the debits; and

(b) state the credit dates and debit dates when the credits and debits arise; and

(c) refer to the section that fully defines them, and provides the credit dates and debit dates for each credit and debit.

Defined in this Act: company, consolidated group, memorandum account, tax year

Compare: 2004 No 35 ss ME 10, ME 25, MF 7(2), MG 13, MI 14

OP 2 When credits and debits arise only in group accounts

Credits only in group account

(1) A credit may arise only in the memorandum account of a consolidated group and not in the memorandum account of a group company, unless another provision expressly states otherwise.

Debits only in group account

(2) A debit may arise only in the memorandum account of a consolidated group and not in the memorandum account of a group company, unless another provision expressly states otherwise.

Particular credits and debits

(3) The credit referred to in subsection (1) and the debit referred to in subsection (2) are listed in provisions in this subpart.

Company's obligation overridden

(4) This section applies despite—

(a) the obligation that a group company may have under this Part to record a credit or debit; and

(b) the fact that the credit and debit referred to in this section may otherwise be eligible to give rise to a credit or debit in the group company's account.

Defined in this Act: company, consolidated group, memorandum account

Compare: 2004 No 35 ss ME 13, ME 27, MF 9, MG 16, MI 19

Consolidated groups and imputation credit accounts

Introductory provisions

OP 3 Changes in consolidated imputation groups

New group company

(1) A consolidated group that is a consolidated imputation group continues to have the same imputation credit account if the group starts an imputation group with a company that is not part of another consolidated group.

Combining consolidated imputation groups

(2) The companies that are part of 2 or more consolidated imputation groups that choose to combine to form 1 imputation group must record in the imputation credit account of the new group—

(a) all credits and debits in the imputation credit accounts of the 2 groups immediately before the election takes effect; and

(b) all credits and debits that arise for a group company that is part of the new group on and after the election takes effect.

Imputation group becoming consolidated group

(3) An imputation group continues to use its imputation credit account if the companies that are part of the imputation group

choose to convert their status to that of a consolidated group that is a consolidated imputation group.

Opening balances

(4) The opening balances for the imputation credit account of the consolidated imputation group referred to in subsection (3) are set out in section OA 7 (Opening balances of memorandum accounts).

Defined in this Act: company, consolidated group, consolidated imputation group, imputation credit account, imputation group

Compare: 2004 No 35 s ME 10(1A), (1B), (1D)

OP 4 Resident imputation subgroups

Subgroup of trans-Tasman imputation group

(1) The resident imputation subgroup of a trans-Tasman imputation group must record in its imputation credit account the credits and debits described in subsection (2).

Eligible credits and debits

(2) The credits and debits referred to in subsection (1) are those that arise in the imputation credit account of the subgroup's trans-Tasman imputation group in relation to a company that—

(a) will be part of the subgroup if the credit or debit arises before the subgroup is formed; or

(b) is part of the subgroup if the credit or debit arises when or after the subgroup is formed.

Defined in this Act: company, imputation credit account, imputation group, resident imputation subgroup, trans-Tasman imputation group

Compare: 2004 No 35 s ME 10(1C)

OP 5 When credits and debits arise only in consolidated imputation group accounts

Credits only in group account

(1) A credit listed in subsection (2) arises only in the imputation credit account of a consolidated imputation group and not in the imputation credit account of a group company.

Particular credits

(2) The credit referred to in subsection (1) is a credit under the following sections and described in the following rows of table O19: imputation credits of consolidated imputation groups:

(a) section OP 7, row 2 (payment of tax):
(b) section OP 8, row 3 (deposit in tax pooling account):
(bb) section OP 11B, row 6B (tax credit for research and development expenditure):
(c) section OP 12, row 7 (dividend derived with imputation credit):
(d) section OP 13, row 8 (dividend derived with FDP credit).
(e) *[Repealed]*

Debits only in the group account

(3) A debit listed in subsection (4) arises only in the imputation credit account of a consolidated imputation group and not in the imputation credit account of a group company.

Particular debits

(4) The debit referred to in subsection (3) is a debit under the following sections and described in the following rows of table O20: imputation debits of consolidated imputation groups:
(a) section OP 28, row 2 (payment of dividend):
(b) section OP 30, row 4 (refund of income tax):
(c) section OP 32, row 6 (refund from tax pooling account):
(d) section OP 33, row 7 (transfer within tax pooling account):
(db) section OP 33B, row 7B (debit for transfer from tax pooling account for policyholder base liability):
(e) section OP 34, row 8 (refund of FDP):
(f) section OP 35, row 9 (refund of tax credit):
(g) section OP 37, row 11 (group company's debit):
(h) section OP 39, row 13 (replacement payment under share-lending arrangement):
(i) section OP 40, row 14 (returning share transfer):
(j) section OP 41, row 15 (credit transfer):
(k) section OP 43, row 17 (breach of imputation ratio):
(l) section OP 44, row 18 (debit for policyholder base imputation credits).

Defined in this Act: company, consolidated imputation group, imputation credit, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 12(1)

Section OP 5(2)(bb): inserted, on 1 April 2008, by section 513 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OP 5(2)(d): amended (with effect on 1 April 2009), on 6 October 2009, by section 445(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 5(2)(e): repealed (with effect on 1 April 2009), on 6 October 2009, by section 445(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 5(4)(d): amended (with effect on 1 April 2008), on 7 September 2010, by section 105 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OP 5(4)(db): inserted, on 1 July 2010, by section 445(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 5(4)(k): amended, on 1 July 2010, by section 445(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 5(4)(l): added, on 1 July 2010, by section 445(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 6 Provisions applying to consolidated imputation groups

Single company, tax liabilities

(1) The provisions listed in subsection (2) apply, modified as necessary, to a consolidated imputation group and to the imputation credit account of the group as if—

- (a) the group were a single company; and
- (b) a reference to a company's liability for further income tax, late payment penalty, or imputation penalty tax were a reference to a joint and several liability owed by group companies when the tax or penalty becomes payable.

Other provisions

(2) The provisions are—

- (a) section OB 61 (ICA benchmark dividend rules); and
- (ab) sections OB 65 and OB 66 (which relate to further income tax); and
- (ac) sections OB 71 and OB 72 (which relate to imputation additional tax); and
- (b) sections 97, 101, 139B, 140B, 140D, and 180 of the Tax Administration Act 1994.

Consolidation provisions

(3) Sections FM 4 and FM 5 (which relate to the liabilities of group companies) override subsection (1)(b).

Tax advantage arrangements and determinations

(4) Sections GB 35 and GB 36 (which relate to tax advantage arrangements), LE 1(5) (Tax credits for imputation credits), OA 2(5) (Memorandum accounts), and sections 90AF and 104B of the Tax Administration Act 1994 apply, modified as necessary, in a case that involves accounts of a consolidated imputation group as if—

(a) the group were a single company; and

(b) references to the provisions of this Act or the Tax Administration Act 1994 were references to the equivalent provisions applicable to the equivalent accounts.

Refunds for overpaid amounts

(5) Sections RM 13 to RM 17, RM 32, and RZ 6 (which relate to limits on refunds) apply, modified as necessary, in relation to income tax paid by a consolidated imputation group as if—

(a) the group were a single company; and

(b) a reference to that company when it stops being an ICA company were a reference to the consolidated group when it stops being a consolidated imputation group; and

(c) references to the provisions of this Act or the Tax Administration Act 1994 were references to the equivalent provisions applicable to the equivalent accounts.

Limits on refunds

(6) Despite subsection (5), sections RM 13 to RM 17, RM 32, and RZ 6 do not apply to limit a refund payable to a company that is part of a consolidated imputation group in relation to income tax paid individually by the company to the extent to which those sections would not have limited the refund if it had been a refund payable to the group in relation to income tax paid by the group. However, if an amount is refunded and would not have been payable but for this subsection, section RM 15(1) (Changes in credit balances) applies as if the refund were made in relation to income tax paid by the group.

Applying for refunds

(7) If a company that is part of an imputation group is entitled to a refund under sections RM 2 or RM 4 to RM 6 (which relate to refunds for overpaid income tax), the company must apply for a refund by notifying the Commissioner. Sections RM 13 to RM 17, RM 32, and RZ 6 apply to the entitlement as if—

(a) the imputation credit account of the group were the imputation credit account of the company:

(b) a credit in the imputation credit account for the purposes of those sections were reduced by the amount of a refund to a company that is part of the group.

Defined in this Act: Commissioner, company, consolidated group, consolidated imputation group, further income tax, ICA company, imputation additional tax, imputation credit account, imputation group, imputation penalty tax, income tax, notify, pay, tax

Compare: 2004 No 35 s ME 14(3)

Section OP 6(2)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 446(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(2)(ab): inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(2)(ac): inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(4) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(4): added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(5): added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(6) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(6): added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6(7): added (with effect on 1 April 2008), on 6 October 2009, by section 446(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **Commissioner**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **consolidated group**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **ICA company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **imputation additional tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **imputation group**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **income tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **notify**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 6 list of defined terms **tax**: added (with effect on 1 April 2008), on 6 October 2009, by section 446(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Imputation credits of consolidated imputation groups

OP 7 Consolidated ICA payment of tax

Credit

(1) A consolidated imputation group has an imputation credit for a payment of income tax. Subsection (3) overrides this subsection.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 2 (payment of tax).

No credit

(3) A consolidated imputation group does not have an imputation credit for an amount of—

(a) income tax paid as a trustee, unless paid on category A income; or

(b) a transfer from a tax pooling account to a tax account with the Commissioner; or

(c) income tax paid on income derived by a company that is not an imputation credit account (ICA) company; or

(d) income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or

(e) income tax paid under section LE 1 (Tax credits for imputation credits) by crediting an imputation credit; or

(f) income tax paid under section LF 1 (Tax credits for FDP credits) by crediting a foreign dividend payment (FDP) credit; or

(fb) income tax paid by a tax credit under subpart LA (Tax credits and other credits) and section LH 2 (Tax credits relating to expenditure on research and development); or

(g) income tax paid by crediting an amount under subpart LP (Tax credits for supplementary dividends); or

(h) further income tax applied under section OB 65 or OB 66 (which relate to further income tax) to pay income tax or provisional tax; or

(i) income tax paid by crediting further income tax under section OB 69(3) (Further income tax paid satisfying liability for income tax).

Credit date

(4) The credit date is the day the tax is paid.

Defined in this Act: amount, category A income, Commissioner, company, consolidated imputation group, FDP credit, further income tax, ICA company, imputation credit, imputation credit account, income, income tax, life insurer, pay,

provisional tax, schedular income tax liability, schedular policyholder base income, tax account with the Commissioner, tax pooling account, tax year, trustee

Compare: 2004 No 35 s ME 11(1)(a), (2)(a)

Section OP 7(3)(d): substituted, on 1 July 2010, by section 447(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 7(3)(fb): substituted (with effect on 1 April 2008), on 6 October 2009, by section 447(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 7(3)(fb): inserted, on 1 April 2008, by section 514 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OP 7 list of defined terms **policyholder base income tax liability**: repealed, on 1 July 2010, by section 447(3)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 7 list of defined terms **schedular income tax liability**: inserted, on 1 July 2010, by section 447(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 7 list of defined terms **schedular policyholder base income**: inserted, on 1 July 2010, by section 447(3)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 8 Consolidated ICA deposit in tax pooling account

Credit

(1) A consolidated imputation group has an imputation credit for an amount provided by it and paid by an intermediary into a tax pooling account.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 3 (deposit in tax pooling account).

Credit date

(3) The credit date is the day the amount is deposited.

Defined in this Act: amount, consolidated imputation group, imputation credit, intermediary, pay, tax pooling account

Compare: 2004 No 35 s ME 11(1)(aa), (2)(aa)

OP 9 Consolidated ICA transfer from tax pooling account

Credit

(1) A consolidated imputation group has an imputation credit for an amount representing an entitlement to funds held in a tax

pooling account if the intermediary transfers the entitlement from another person to the group.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 4 (transfer from tax pooling account).

Credit date

(3) The credit date is,—

(a) for an entitlement to funds that are transferred by the intermediary from the tax pooling account to the group's tax account with the Commissioner, the credit date under section RP 19 (Transfers from tax pooling accounts) for the amount transferred; or

(b) for an entitlement to funds that are refunded by the intermediary from the tax pooling account to the group, the date of the refund; or

(c) for an entitlement that is transferred by the intermediary from the group to another person, the date of the transfer.

Defined in this Act: amount, Commissioner, consolidated imputation group, imputation credit, intermediary, tax account with the Commissioner, tax pooling account

Compare: 2004 No 35 s ME 11(1)(ab), (2)(ab)

Section OP 9(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 106(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OP 9(3): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 106(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OP 10 Consolidated ICA allocation from company with overpaid provisional tax

Credit

(1) A consolidated imputation group has an imputation credit for an amount allocated under section RC 32 (Wholly-owned groups of companies) by a company that has overpaid its provisional tax.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 5 (allocation from excess company).

Credit date

(3) The credit date is the day the Commissioner is notified of the allocation.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, notify

Compare: 2004 No 35 s ME 11(1)(b), (2)(b)

OP 11 Consolidated ICA payment of further income tax

Credit

(1) A consolidated imputation group has an imputation credit for an amount of further income tax paid under section OB 65 or OB 66 (which relate to further income tax).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 6 (payment of further income tax).

Credit date

(3) The credit date is the day the further income tax is paid.

Defined in this Act: amount, consolidated imputation group, further income tax, imputation credit, pay

Compare: 2004 No 35 s ME 11(1)(c), (2)(a)

OP 11B Consolidated ICA expenditure on research and development

Credit

(1) A consolidated imputation group has an imputation credit for an amount of a tax credit that a group company has under section LH 2 (Tax credits relating to expenditure on research and development).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated groups, row 6B (tax credit for research and development expenditure).

Credit date

(3) The credit date is the day the return of income relating to the amount, is filed.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation credit, return of income, tax credit

Compare: 2004 No 35 s ME 11(1)(ib), (2)(db)

Section OP 11B: inserted, on 1 April 2008, by section 515 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OP 12 Consolidated ICA dividend derived with imputation credit

Credit

(1) A consolidated imputation group has an imputation credit for the amount of an imputation credit attached to a dividend derived by a group company.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 7 (dividend derived with imputation credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated imputation group, dividend, imputation credit, pay

Compare: 2004 No 35 s ME 11(1)(d), (2)(c)

OP 13 Consolidated ICA dividend derived with FDP credit

Credit

(1) A consolidated imputation group has an imputation credit for the amount of an FDP credit attached to a dividend derived by a group company that—

(a) is part of a consolidated group without an FDP account; or

(b) does not have an FDP account and is not part of a consolidated group.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 8 (dividend derived with FDP credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP account, FDP credit, imputation credit, pay

Compare: 2004 No 35 s ME 11(1)(e), (2)(c)

OP 14 Consolidated ICA payment of FDP

[Repealed]

Section OP 14: repealed (with effect on 30 June 2009), on 6 October 2009, by section 448(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 15 Consolidated ICA replacement payment to company under share-lending arrangement

Credit

(1) A consolidated imputation group has an imputation credit for the amount of an imputation credit attached under section OB 64 (Replacement payments) or treated as attached under section RE 25 (When amount of tax treated as imputation credit) to a replacement payment paid under a share-lending arrangement to a company that is part of the consolidated imputation group at the date of payment.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 10 (replacement payment under share-lending arrangement).

Credit date

(3) The credit date is the day the replacement payment is paid.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s ME 11(1)(eb), (ec), (2)(cb)

OP 16 Consolidated ICA credit transfer to company

Credit

(1) A consolidated imputation group has an imputation credit for the amount of an imputation credit shown in a credit transfer notice given to a company that is part of the consolidated imputation group when the notice is given.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 11 (credit transfer).

Credit date

(3) The credit date is the day the notice is given.

Defined in this Act: amount, company, consolidated imputation group, credit transfer notice, imputation credit

Compare: 2004 No 35 s ME 11(1)(ed), (2)(cc)

OP 17 Consolidated ICA resident withholding tax withheld

Credit

(1) A consolidated imputation group has an imputation credit for resident withholding tax (RWT) that is treated under section RA 9(1)(b) (Treatment of amounts withheld as received) as derived by a group company other than as policyholder base income.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 12 (RWT withheld).

Credit date

(3) The credit date is the day the interest or dividend relating to the resident passive income is paid.

Defined in this Act: company, consolidated imputation group, dividend, imputation credit, interest, pay, policyholder base income, resident passive income, RWT

Compare: 2004 No 35 s ME 11(1)(j), (2)(c)

Section OP 17(1): amended, on 1 July 2010, by section 449(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 17 list of defined terms **policyholder base income**: inserted, on 1 July 2010, by section 449(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 18 Consolidated ICA transfer from group company's FDP account

Credit

(1) A consolidated imputation group has an imputation credit for an amount equal to the amount of an FDP debit under section OC 18 (FDPA transfer to imputation credit account) transferred from the FDP account of a group company.

Table references

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 13 (transfer from group company's FDP account). The FDP debit in subsection (1) is referred to in table O4: FDP debits, row 7 (transfer to imputation credit account).

Credit date

(3) The credit date is the same as the debit date for the transfer.

Defined in this Act: amount, company, consolidated imputation group, FDP account, FDP debit, imputation credit

Compare: 2004 No 35 s ME 11(1)(fb), (2)(fb)

OP 19 Consolidated ICA transfer from group's FDP account

Credit

(1) A consolidated imputation group has an imputation credit for an amount equal to the amount transferred under section FM 30(3) and (4) (Application of certain provisions to consolidated groups) from the FDP account of a consolidated group.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 14 (transfer from consolidated group's FDP account).

Credit date

(3) The credit date is the same as the debit date for the transfer.

Defined in this Act: amount, consolidated group, consolidated imputation group, FDP account, imputation credit

Compare: 2004 No 35 s ME 11(1)(g), (2)(d)

OP 20 Consolidated ICA transfer from group company's policyholder credit account

[Repealed]

Section OP 20: repealed, on 1 July 2010, by section 450(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 21 Consolidated ICA transfer from group's policyholder credit account

[Repealed]

Section OP 21: repealed, on 1 July 2010, by section 451(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 22 Consolidated ICA group company's credit

Credit

(1) A consolidated imputation group has an imputation credit for the amount of a credit that arises when—

(a) an imputation credit described in a row of table O1: imputation credits, arises in the imputation credit account of a group company; and

(b) an imputation debit described in a row of table O20: imputation debits of consolidated imputation groups, arises in the imputation credit account of the group; and

(c) the debit is not offset by a credit arising in the group account before or on the same date on which the credit arose in the group company's account.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 17 (group company's credit).

Offsetting debits

(3) For the purposes of subsection (1)(c), to determine whether a debit has been offset by a credit in the group account,—

(a) credits are treated as reducing debits in the order in which the credits arise; and

(b) a credit, whether some or all, is counted only once in determining whether a debit has been offset; and

(c) credits in the accounts of more than 1 group company become a credit to the group account—

(i) in the order of their credit date; and

(ii) as chosen by the group, if credits arise on the same credit date; and

(iii) on a pro rata basis, if no election is made under subparagraph (ii).

Credit date

(4) The credit date is the same as the debit date for the debit to the group account.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 13(2), (3)

Section OP 22(2): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OP 23 Consolidated ICA elimination of double debit

When this section applies

(1) This section applies when an imputation debit in a consolidated imputation group's imputation credit account under section OP 42 has the effect of cancelling an imputation credit under section OP 8.

Credit

(2) The consolidated imputation group has an imputation credit for an amount that equals the amount of the debit referred to in subsection (1), and either—

(a) another debit arises under section OP 32 for a refund or transfer of the deposit on a debit date that is after the debit date for the debit for loss of shareholder continuity; or

(b) the deposit is taken into account under sections RP 19 and RP 20 (which relate to transfers from tax pooling accounts) in determining the balance of the company's tax account with the Commissioner after the debit date for the debit for loss of shareholder continuity.

Table references

(3) The table references are as follows:

(a) the imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):
(b) the imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 3 (deposit in tax pooling account):
(c) the imputation credit in subsection (2) is referred to in table O19: imputation credits of consolidated imputation groups, row 18 (elimination of double debit):
(d) the imputation debit in subsection (2)(a) is referred to in table O20: imputation debits of consolidated imputation groups, row 6 (refund from tax pooling account).

Credit date

(4) The credit date is the day—
(a) the deposit is refunded; or
(b) a credit arises in the company's tax account with the Commissioner.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, deposit, imputation credit, imputation credit account, imputation debit, shareholder, tax account with the Commissioner

Compare: 2004 No 35 s ME 11(1A), (2A)

OP 24 Consolidated ICA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that an imputation credit in a consolidated imputation group's imputation credit account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The consolidated imputation group has an imputation credit for an amount equal to the amount of a debit in the group's account under section OP 46.

Table references

(3) The imputation credit in subsection (2) is referred to in table O19: imputation credits of consolidated imputation groups, row 19 (reversal of tax advantage arrangement). The imputation debit in subsection (2) is referred to in table O20: imput-

ation debits of consolidated imputation groups, row 20 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date for the debit.

Defined in this Act: amount, consolidated imputation group, imputation credit, imputation debit, tax advantage

Compare: 2004 No 35 s ME 11(1)(i), (2)(e)

OP 25 Consolidated ICA non-resident withholding tax withheld

Credit

(1) A consolidated imputation group that includes an Australian ICA company has an imputation credit for an amount of non-resident passive income derived by the company from which non-resident withholding tax (NRWT) is withheld.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 20 (NRWT paid).

Credit date

(3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, non-resident passive income, NRWT, pay

Compare: 2004 No 35 s ME 11(1B)(a), (2B)(a)

OP 26 Consolidated ICA payment of amount of tax for schedular payment

Credit

(1) A consolidated imputation group that includes an Australian ICA company has an imputation credit for the amount of tax for a schedular payment paid to the company as a non-resident contractor.

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 21 (amount of tax for schedular payment).

Credit date

(3) The credit date is the day the amount of tax is withheld.

Defined in this Act: amount of tax, Australian ICA company, consolidated imputation group, imputation credit, non-resident contractor, schedular payment

Compare: 2004 No 35 s ME 11(1B)(b), (2B)(b)

OP 27 Consolidated ICA payment of schedular income tax

Credit

(1) A consolidated imputation group that includes an Australian ICA company has an imputation credit for the amount of a payment by the company of schedular income tax for income derived under section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters).

Table reference

(2) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 22 (payment of schedular income tax).

Credit date

(3) The credit date is the day the schedular income tax is paid.

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, imputation credit account, income, pay, schedular income tax

Compare: 2004 No 35 s ME 11(1B)(c), (2B)(c)

Imputation debits of consolidated imputation groups

OP 28 Consolidated ICA payment of dividend

Debit

(1) A consolidated imputation group has an imputation debit for an amount that equals the amount of an imputation credit attached to a dividend paid by a group company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 2 (payment of dividend).

Debit date

(3) The debit date is the day the dividend is paid.

Arrangement for dividend from another country

(4) Section GB 38 (When sections GB 35 to GB 37 apply to consolidated groups) may apply to treat an amount as a debit under this section.

Defined in this Act: amount, company, consolidated imputation group, dividend, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 12(1)(a), (2)(a)

OP 29 Consolidated ICA allocation of provisional tax

Debit

(1) A consolidated imputation group has an imputation debit for an amount of provisional tax allocated by the group under section RC 32 (Wholly-owned groups of companies) to an underpaid company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 3 (allocation of provisional tax).

Debit date

(3) The debit date is the day the Commissioner is notified of the allocation.

Defined in this Act: amount, Commissioner, company, consolidated imputation group, imputation debit, notify, provisional tax

Compare: 2004 No 35 s ME 12(1)(c), (2)(c)

OP 30 Consolidated ICA refund of income tax

Debit

(1) A consolidated imputation group has an imputation debit for the amount of a refund of income tax or provisional tax paid to the group. Subsection (2) overrides this subsection.

No debit

(2) The debit in subsection (1) does not include—

(a) a refund of income tax paid by a life insurer to satisfy its schedular income tax liability for schedular policyholder base income; or

(b) a refund of income tax paid before a debit arises under section OP 42 to the extent to which the amount of the refund is less than the amount of the debit.

Table references

(3) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 4 (refund of income tax). The imputation debit in subsection (2)(b) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).

Debit date

(4) The debit date is the day the refund is made.

Relationship with section OP 35

(5) This section does not apply to an amount that gives rise to a debit under section OP 35.

Defined in this Act: amount, consolidated imputation group, imputation debit, income tax, life insurer, pay, provisional tax, schedular income tax liability, schedular policyholder base income

Compare: 2004 No 35 s ME 12(1)(d), (2)(d)

Section OP 30(2) heading: substituted, on 1 July 2010, by section 452(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30(2): substituted, on 1 July 2010, by section 452(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30(3): amended, on 1 July 2010, by section 452(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 452(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30(5): added (with effect on 1 April 2008), on 6 October 2009, by section 452(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30 list of defined terms **life insurer**: inserted, on 1 July 2010, by section 452(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30 list of defined terms **schedular income tax liability**: added, on 1 July 2010, by section 452(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 30 list of defined terms **schedular policyholder base income**: added, on 1 July 2010, by section 452(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 31 Consolidated ICA amount applied to pay other taxes

Debit

(1) A consolidated imputation group has an imputation debit for an amount of overpaid income tax that is applied to pay an amount due under the Inland Revenue Acts. Subsection (2) overrides this subsection.

No debit

(2) The debit referred to in subsection (1) does not include overpaid income tax to the extent to which it is—

(a) applied to satisfy an income tax liability; or

(b) for an amount paid before an imputation debit arises under section OP 42, no more than the debit for loss of shareholder continuity.

Table references

(3) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 5 (amount applied to pay other taxes). The imputation debit in subsection (2) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).

Debit date

(4) The debit date is the day the amount is applied.

Relationship with section OP 35

(5) This section does not apply to an amount that gives rise to a debit under section OP 35.

Defined in this Act: amount, company, consolidated imputation group, imputation debit, income tax, income tax liability, Inland Revenue Acts, pay, shareholder

Compare: 2004 No 35 s ME 12(1)(l), (2)(k)

Section OP 31(5) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 453(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 31(5): added (with effect on 1 April 2008), on 6 October 2009, by section 453(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 32 Consolidated ICA refund from tax pooling account

When this section applies

(1) This section applies for a consolidated imputation group when—

(a) the group has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under sections OP 8 and OP 9; and

(b) the intermediary refunds the amount from the tax pooling account to the group.

Debit

(2) The consolidated imputation group has an imputation debit for the tax year for the amount of the refund.

Table references

(3) The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 3 (deposit in tax pooling account) or row 4 (transfer from tax pooling account). The imputation debit in subsection (2) is referred to in table O20: imputation debits of consolidated imputation groups, row 6 (refund from tax pooling account).

Debit date

(4) The debit date for the debit is—

(a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the imputation credit account on that date:

(b) the day the refund is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of refund:

(c) the last day of the previous tax year for the remainder of the imputation debit.

Defined in this Act: amount, consolidated imputation group, deposit, imputation credit, imputation credit account, imputation debit, intermediary, pay, tax pooling account, tax year

Compare: 2004 No 35 s ME 12(1)(da), (2)(da)

Section OP 32(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 107(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OP 33 Consolidated ICA transfer within tax pooling account

When this section applies

(1) This section applies for a consolidated imputation group when—

(a) the group has an entitlement to an amount in a tax pooling account and has an imputation credit for the entitlement under sections OP 8 and OP 9; and

(b) the intermediary transfers the entitlement from the group to another person.

Debit

(2) The consolidated imputation group has an imputation debit for the amount of the transfer.

Table reference

(3) The imputation debit in subsection (2) is referred to in table O20: imputation debits of consolidated imputation groups, row 7 (transfer to tax pooling account).

Debit date

(4) The debit date for the debit is—

(a) the last day of the previous tax year to the extent of the amount of the debit that is no more than the credit balance in the imputation credit account on that date:

(b) the day the transfer is made to the extent of the remaining amount of the debit that is no more than the credit balance in the imputation credit account on the day of transfer:

(c) the last day of the previous tax year for the remainder of the imputation debit.

Defined in this Act: amount, consolidated imputation group, imputation credit, imputation credit account, imputation debit, tax pooling account, tax year

Compare: 2004 No 35 s ME 12(1)(db), (2)(da)

Section OP 33 heading: substituted (with effect on 1 April 2008), on 7 September 2010, by section 108(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OP 33(1): substituted (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 108(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OP 33(4)(b): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 108(3) of

the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OP 33B Consolidated ICA debit for transfer from tax pooling account for policyholder base liability

Debit

(1) A consolidated imputation group has an imputation debit for the amount transferred from a tax pooling account to their tax account with the Commissioner, to the extent to which the amount satisfies its schedular income tax liability for schedular policyholder base income or its income tax liability for a life fund PIE that is a multi-rate PIE.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 7B (debit for transfer from tax pooling account for policyholder base liability).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: ICA company, imputation credit, imputation debit, life insurer, schedular income tax liability, schedular policyholder base income, tax year

Section OP 33B: inserted, on 1 July 2010, by section 454(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 34 Consolidated ICA refund of FDP

Debit

(1) A consolidated imputation group has an imputation debit for the amount of a refund of FDP that relates to a dividend derived by a group company at a time when—

(a) the group company is part of a consolidated group without an FDP account; or

(b) the group company does not have an FDP account and is not part of a consolidated group.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 8 (refund of FDP).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP, FDP account, imputation debit

Compare: 2004 No 35 s ME 12(1)(f), (2)(d)

OP 35 Consolidated ICA refund of tax credit

Debit

(1) A consolidated imputation group has an imputation debit for—

(a) the amount of a transfer under section LA 6(2)(d) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the transfer does not lead to a refund of income tax:

(b) the amount of a refund under section LA 6(2)(e):

(c) an amount used under section LH 2(6) (Tax credits relating to expenditure on research and development) to pay an amount payable under an Inland Revenue Act to the extent to which the use does not lead to a refund of income tax.

Exclusion

(1B) Despite subsection (1), a consolidated imputation group does not have an imputation debit to the extent to which—

(a) the amount transferred, refunded, or used is a tax credit for a payment of FDP relating to a dividend derived by a group company; and

(b) the dividend was derived when the company—

(i) had an FDP account and was not part of a consolidated group; or

(ii) was part of a consolidated group with an FDP account.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 9 (refund of tax credit).

Debit date

(3) The debit date is—

(a) for a debit referred to in subsection (1)(a), the day the amount is transferred:

(b) for a debit referred to in subsection (1)(b), the day the amount is refunded:

(c) for a debit referred to in subsection (1)(c), the day the amount is applied.

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP, FDP account, imputation debit, pay, tax credit

Compare: 2004 No 35 s ME 12(1)(f), (2)(d)

Section OP 35(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 455(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 35(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 455(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 35(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 455(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 35 list of defined terms **FDP**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 455(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 35 list of defined terms **pay**: added (with effect on 1 April 2008), on 6 October 2009, by section 455(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 35 list of defined terms **tax credit**: added (with effect on 1 April 2008), on 6 October 2009, by section 455(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 36 Consolidated ICA overpayment of FDP

Debit

(1) A consolidated imputation group has an imputation debit for the amount of an overpayment of FDP relating to a dividend derived by a group company in the following circumstances:

(a) the dividend is derived by the company at a time when—

(i) the company is part of a consolidated group without an FDP account; or

(ii) the company does not have an FDP account and is not part of a consolidated group; and

(b) the overpayment is applied to pay an amount due under the Inland Revenue Acts other than a liability for income tax or FDP; and

(c) the group does not have an FDP account when the amount is applied.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 10 (overpayment of FDP).

Debit date

(3) The debit date is the day the amount is applied.

Defined in this Act: amount, company, consolidated group, consolidated imputation group, dividend, FDP, FDP account, imputation debit, income tax, Inland Revenue Acts, pay

Compare: 2004 No 35 s ME 12(1)(m), (2)(k)

OP 37 Consolidated ICA group company's debit

Debit

(1) A consolidated imputation group has an imputation debit for an amount to the extent to which the amount would, in the absence of subsection (3), give rise to—

(a) an imputation debit described in a row of table O2: imputation debits, in the imputation credit account of a group company; and

(b) an imputation debit that would create or increase a debit balance in the group company's imputation credit account.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 11 (group company's debit).

No debit for group company

(3) The amount referred to in subsection (1) does not give rise to an imputation debit in the group company's account although otherwise eligible to be one.

Debit date

(4) The debit date is the day that the amount would have been debited to the imputation credit account of the group company in the absence of subsection (3).

Defined in this Act: amount, company, consolidated imputation group, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 12(1)(k), (2)(j)

OP 38 Consolidated ICA transfer for net foreign attributed income

[Repealed]

Section OP 38: repealed (with effect on 30 June 2009), on 6 October 2009, by section 456(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 39 Consolidated ICA replacement payment by company under share-lending arrangement

Debit

(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached under section OB 64 (Replacement payments) to a replacement payment paid under a share-lending arrangement by a company that is part of the consolidated imputation group at the time of payment.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 13 (replacement payment under share-lending arrangement).

Debit date

(3) The debit date is the day the replacement payment is paid.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, imputation debit, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 s ME 12(1)(ab), (2)(ab)

OP 40 Consolidated ICA returning share transfer

Debit

(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend paid to a company if—

(a) at the time of payment, the company is part of the consolidated imputation group; and

(b) the dividend is paid to the company as a share user, or a person associated with a share user, in a returning share transfer that is not a share-lending arrangement.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 14 (returning share transfer).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, associated person, company, consolidated imputation group, dividend, imputation credit, imputation debit, pay, returning share transfer, share-lending arrangement, share user

Compare: 2004 No 35 s ME 12(1)(ac), (2)(ac)

OP 41 Consolidated ICA credit transfer by company

Debit

(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend paid to a company if—

(a) at the time of payment, the company is a part of the consolidated imputation group; and

(b) the amount is shown in a credit transfer notice given by the company.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 15 (credit transfer).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated imputation group, credit transfer notice, dividend, imputation credit, imputation debit, pay

Compare: 2004 No 35 s ME 12(1)(ad), (2)(ac)

OP 42 Consolidated ICA debit for loss of shareholder continuity

Debit

(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit retained in the group's imputation credit account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).

When debit arises

(3) The debit arises at the time shareholder continuity is lost.

Defined in this Act: amount, consolidated imputation group, imputation credit, imputation credit account, imputation debit, shareholder

Compare: 2004 No 35 ss ME 12(1)(h), (2)(g), ME 13(2)

Section OP 42(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 95(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OP 42(3) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 95(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OP 42(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 95(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

OP 43 Consolidated ICA breach of imputation ratio

Debit

(1) A consolidated imputation group has an imputation debit for a tax year for the amount of a debit under section OB 43 (ICA breach of imputation ratio) that would arise in the imputation credit account of a group company in the absence of section OP 5(3).

Table references

(2) The group's imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 17 (breach of imputation ratio). The group company's imputation debit in subsection (1) is referred to in table O2: imputation debits, row 16 (breach of imputation ratio).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, consolidated imputation group, imputation credit account, imputation debit, tax year

Compare: 2004 No 35 s ME 12(1)(e), (2)(e)

OP 44 Consolidated ICA debit for policyholder base imputation credits

Debit

(1) A consolidated imputation group has an imputation debit for the amount of an imputation credit attached to a dividend derived by a group company, to the extent to which it is derived by a group company that is a life insurer and apportioned to that life insurer's policyholder base.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 18 (debit for policyholder base imputation credits).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: consolidated imputation group, imputation credit, imputation debit, life insurer, policyholder base, tax year

Section OP 44: substituted, on 1 July 2010, by section 458(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44(6) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 457(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44(6): added (with effect on 1 April 2008), on 6 October 2009, by section 457(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44(7) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 457(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44(7): added (with effect on 1 April 2008), on 6 October 2009, by section 457(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44(8) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 457(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44(8): added (with effect on 1 April 2008), on 6 October 2009, by section 457(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44 list of defined terms **accounting year**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 457(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44 list of defined terms **FDP**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 457(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44 list of defined terms **pay**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 457(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44 list of defined terms **provisional tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 457(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 44 list of defined terms **tax year**: added (with effect on 1 April 2008), on 6 October 2009, by section 457(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 45 Consolidated ICA redemption debit

Debit

(1) A consolidated imputation group has an imputation debit for the amount of a redemption debit.

When redemption debit arises

(2) A redemption debit arises when—

(a) a group company that is not an Australian ICA company is—

(i) the manager of a unit trust; or

(ii) the trustee or manager of a group investment fund; and

(b) the group company derives a dividend from the redemption or cancellation of—

(i) a unit issued by the unit trust; or

(ii) an interest of an investor in the group investment fund; and

(c) the company has acquired the unit or interest in the ordinary course of its management activities for the unit trust or group investment fund; and

(d) the unit or interest had been acquired by the company on the same terms as those offered to the investors in the unit trust or group investment fund.

Calculating amount

(3) The debit is for the greater of the amounts described in subsections (4) and (6) calculated for the income year referred to in subsection (8) in which the group company derives the dividend referred to in subsection (2)(b).

First amount

(4) The first amount is calculated using the formula—

credits attached – imputation debits.

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **credits attached** is the total amount of all imputation credits and FDP credits attached to dividends derived by the group company in the income year in the circumstances set out in subsection (2):

(b) **imputation debits** is the amount of imputation debits in the income year under section OP 42 in the group's imputation credit account.

Second amount

(6) The second amount is calculated using the formula—

$$\frac{\text{total dividends}}{\text{taxable income}} \times (\text{tax liability} - \text{continuity debit}$$

Definition of items in formula

(7) In the formula in subsection (6),—

(a) **total dividends** is the total amount of all dividends derived in the circumstances set out in subsection (2), including imputation credits and FDP credits attached to the dividends:

(b) **taxable income** is the taxable income of the group company for the tax year corresponding to the income year in which the dividends are derived:

(c) **tax liability** is the group company's income tax liability for the tax year corresponding to the income year in which the dividends are derived:

(d) **continuity debits** is the amount of imputation credits attached to the dividends that have been cancelled by an imputation debit under section OP 42.

Table references

(8) The table references are as follows:

(a) the imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 19 (redemption debit):

(b) the imputation debit in subsection (5)(b) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity):

(c) the imputation debit in subsection (7)(d) is referred to in table O20: imputation debits of consolidated imputation groups, row 16 (debit for loss of shareholder continuity).

Debit date

(9) The debit date is the day the company or the group's nominated company files the return of income for the tax year corresponding to the income year in which the dividend is derived.

Defined in this Act: amount, Australian ICA company, company, consolidated imputation group, dividend, FDP credit, group investment fund, imputation credit, imputation credit account, imputation debit, income tax liability, income year, investor, nominated company, return of income, tax year, taxable income, trustee, unit trust

Compare: 2004 No 35 s ME 41

OP 46 Consolidated ICA tax advantage arrangement

Debit

(1) A consolidated imputation group has an imputation debit for the amount of a debit for a tax advantage arrangement determined under sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage).

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 20 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the arrangement began.

Defined in this Act: amount, arrangement, consolidated imputation group, imputation debit, tax advantage, tax year

Compare: 2004 No 35 s ME 12(1)(i), (2)(h)

OP 47 Consolidated ICA final balance

Debit

(1) A consolidated imputation group has an imputation debit for a credit balance in the imputation credit account when the group stops being a consolidated imputation group.

Table reference

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 21 (final balance).

Debit date

(3) The debit date is the day before the group stops being a consolidated imputation group.

Defined in this Act: consolidated imputation group, imputation credit account, imputation debit

Compare: 2004 No 35 s ME 12(1)(j), (2)(h)

OP 48 Consolidated ICA refund of NRWT

Debit

(1) A consolidated imputation group that includes an Australian ICA company has an imputation debit for the amount of a refund of NRWT that gave rise to an imputation credit under section OP 25.

Table references

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 22 (refund of NRWT). The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 20 (NRWT withheld).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, imputation debit, NRWT

Compare: 2004 No 35 s ME 12(1A)(a), (2A)

OP 49 Consolidated ICA refund of amount of tax for schedular payment

Debit

(1) A consolidated imputation group that includes an Australian ICA company has an imputation debit for the amount of a refund of an amount of tax for a schedular payment that gave rise to an imputation credit under section OP 26.

Table references

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 23 (refund of amount of tax for schedular payment). The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 21 (amount of tax for schedular payment).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, amount of tax, Australian ICA company, consolidated imputation group, imputation credit, imputation debit, schedular payment

Compare: 2004 No 35 s ME 12(1A)(b), (2A)

OP 50 Consolidated ICA refund of schedular income tax

Debit

(1) A consolidated imputation group that includes an Australian ICA company has an imputation debit for the amount of a refund of a payment of schedular income tax that gave rise to an imputation credit under section OP 27.

Table references

(2) The imputation debit in subsection (1) is referred to in table O20: imputation debits of consolidated imputation groups, row 24 (refund of schedular income tax). The imputation credit in subsection (1) is referred to in table O19: imputation credits of consolidated imputation groups, row 22 (payment of schedular income tax).

Debit date

(3) The debit date is the day the refund is made.

Defined in this Act: amount, Australian ICA company, consolidated imputation group, imputation credit, imputation debit, income tax, pay, schedular income tax

Compare: 2004 No 35 s ME 12(1A)(c), (2A)

Table O19 imputation credits of consolidated imputation groups

Row	Imputation credit	Credit date	Further defined
1	Opening credit balance	1 April or when group starts	section OA 7
2	Income tax paid for group tax liability	day of payment	section OP 7
3	Group funds paid into tax pooling account	day of payment	section OP 8
4	Transfer from tax pooling account	day of credit refund	section OP 9
5	Allocation from excess company	day of notice of allocation	section OP 10
6	Further income tax paid	day of payment	section OP 11
6B	Tax credit for research and development expenditure	day return filed	section OP 11B.
7	Imputation credit attached to dividend derived	day on which dividend is paid	section OP 12
8	FDP credit attached to dividend derived	day on which dividend is paid	section OP 13

9	*[Repealed]*		
10	Replacement payment paid under share-lending arrangement	day of payment	section OP 15
11	Imputation credit attached to dividend and shown in credit transfer notice	day on which notice is given	section OP 16
12	RWT withheld	day on which interest is paid	section OP 17
13	Transfer from group company's FDP account	debit day for transfer	section OP 18
14	Transfer from consolidated group's FDP account	debit date for transfer	section OP 19
15	*[Repealed]*		
16	*[Repealed]*		
17	Group company's credit	set out in section O 22	section OP 22
18	Debit for loss of shareholder continuity that cancels credit for tax pooling account deposit that is refunded	day of refund	section OP 23
19	Reversal of debt for tax advantage arrangement	debit day of debit	section OP 24

20	NRWT on non-resident withholding income derived by group company that is Australian ICA company	day on which amount is withheld	section OP 25
21	Amount of tax for schedular payment to group company that is also Australian ICA company	day on which amount is withheld	section OP 26
22	Schedular income tax paid by group company that is Australian ICA company	day of payment	section OP 27

Table O19 row 6B: inserted, on 1 April 2008, by section 516 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Table O19 row 9: repealed (with effect on 30 June 2009), on 6 October 2009, by section 459(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O19 row 15: repealed, on 1 July 2010, by section 459(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O19 row 16: repealed, on 1 July 2010, by section 459(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O20 imputation debits of consolidated imputation groups

Row	Imputation debit	Debit date	Further defined
1	Opening debit balance	1 April or when group starts	section OA 7

2	Imputation credit attached to dividend paid by group company	day of payment	section OP 28
3	Provisional tax allocated by group to underpaid company	day of notice of allocation	section OP 29
4	Refund of income tax or provisional tax to group	day of refund	section OP 30
5	Income tax overpaid that is applied to satisfy amount of tax, other than income tax, due by group company	day of application	section OP 31
6	Refund from tax pooling account	set out in section OP 32	section OP 32
7	Transfer to another taxpayer of funds in tax pooling account	set out in section OP 33	section OP 33
7B	Debit for transfer from tax pooling account for policyholder base liability	31 March	section OP 33B
8	Refund of FDP when no FDP account	day of refund	section OP 34
9	Transfer, refund, or use of tax credit	day of transfer, refund, or use	section OP 35

10	Overpaid FDP applied, when group does not have FDP account, to satisfy amount due that is not income tax or FDP	day of application	section OP 36
11	Debit that would increase debit balance for group company	set out in section 37	section OP 37
12	*[Repealed]*		
13	Credit attached to replacement payment under share-lending arrangement	day of payment	section OP 39
14	Credit attached to dividend shown in returning share transfer	day of payment	section OP 40
15	Credit attached to dividend and shown in credit transfer notice	day of payment	section OP 41
16	Debit for loss of shareholder continuity	time of loss of continuity	section OP 42
17	Debit for breach of imputation ratio	31 March	section OP 43
18	Debit for policyholder base imputation credits	31 March	section OP 44
19	Redemption debit for unit trust or group investment fund for income year	day on which return of income for income year is filed	section OP 45

20	Debit for tax arrangement	last day of tax year in which arrangement began	section OP 46
21	Credit balance of group's imputation credit account when group stops being consolidated imputation group	day of cessation	section OP 47
22	Refund of NRWT to group company that is Australian ICA company	day of refund	section OP 48
23	Refund of amount of tax for schedular payment to group company that is Australian ICA company	day of refund	section OP 49
24	Refund of schedular income tax to group company that is Australian ICA company	day of refund	section OP 50

Table O20 row 7B: inserted, on 1 July 2010, by section 460(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O20 row 9: substituted (with effect on 1 April 2008), on 6 October 2009, by section 460(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O20 row 12: repealed (with effect on 30 June 2009), on 6 October 2009, by section 460(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O20 row 18: substituted, on 1 July 2010, by section 460(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O20 row 18: amended (with effect on 1 April 2008), on 6 October 2009, by section 460(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O20 row 20: amended (with effect on 1 April 2008), on 7 December 2009, by section 96 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Consolidated groups and FDP accounts

Introductory provisions

OP 51 FDP accounts of consolidated FDP groups

Consolidated group account

(1) A consolidated group is a consolidated FDP group for a tax year if—

(a) a group company is a foreign dividend payment account (FDPA) company at a time during the tax year; or

(b) the group chooses to maintain an FDP account.

Effect of election

(2) If a consolidated FDP group makes an election under subsection (1)(b), it must maintain the FDP account referred to in section OC 2 (FDP accounts) from the date of election.

Notifying Commissioner

(3) The nominated company of a consolidated FDP group must notify the Commissioner of an election under subsection (1)(b)—

(a) no later than 21 days after the day of election; or

(b) by a later date if the Commissioner allows.

Defined in this Act: Commissioner, company, consolidated FDP group, consolidated group, FDP account, FDPA company, nominated company, notify, tax year

Compare: 2004 No 35 s MG 13(1)

OP 52 Choosing to stop being consolidated FDP group

Election

(1) The nominated company of a consolidated FDP group may choose that the group's status as a consolidated FDP group is to end.

When election made

(2) The election referred to in subsection (1) may be made during a tax year that is later than the tax year in which the group chooses under section OP 51 to become a consolidated FDP group.

When company's status ends

(3) The election referred to in subsection (1) takes effect from the first day of the tax year after the tax year in which the election referred to in subsection (2) is made, but only if,—

(a) the group—

(i) files an annual FDPA return for the year of election in the time allowed by section 71 of the Tax Administration Act 1994; and

(ii) pays further FDP, if any, under section OC 30 (Payment of further FDP for closing debit balance) for the year of election; and

(b) no group company is an FDPA company in the tax year after the year of election.

Defined in this Act: annual FDPA return, company, consolidated FDP group, FDPA company, further FDP, nominated company, pay, tax year

Compare: 2004 No 35 s MG 2(4), (5)

OP 53 When group company emigrates

When this section applies

(1) This section applies when an FDPA company in a consolidated FDP group is an emigrating company.

Status ends

(2) The group's status as a consolidated FDP group ends at the time of emigration of the company.

Further payments and returns

(3) The consolidated FDP group must—

(a) provide the annual FDPA return required for the group for the tax year in which the company becomes non-resident; and

(b) for a debit balance in the consolidated FDP group's account at the time of emigration, pay further FDP payable for the tax year of an amount equal to the debit balance.

Defined in this Act: amount, annual FDPA return, consolidated FDP group, emigrating company, FDPA company, further FDP, non-resident, pay, tax year, time of emigration

Compare: 2004 No 35 s MG 13(6), (7)

OP 54 When credits and debits arise only in consolidated FDP group accounts

Credits to group accounts

(1) A credit listed in subsection (2) arises only in the FDP account of a consolidated FDP group and not in the FDP account of a group company.

Particular credits

(2) The credit referred to in subsection (1) is a credit under section OP 58, described in table O21, row 4.

Debits only in group accounts

(3) A debit listed in subsection (4) arises only in the FDP account of a consolidated FDP group and not in the FDP account of a group company.

Particular debits

(4) The debit referred to in subsection (3) is a debit under the following sections and described in the following rows of table O22: FDP debits of consolidated FDP groups:

(a) section OP 64, row 2 (payment of dividend):

(b) section OP 66, row 4 (refund of FDP):

(c) section OP 68, row 6 (refund of tax credit):

(d) section OP 72, row 10 (breach of FDP ratio):

(e) section OP 74, row 12 (debit for policyholder base FDP credits).

Defined in this Act: company, consolidated FDP group, FDP account

Compare: 2004 No 35 s MG 16(1)

Section OP 54(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 461(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 54(4)(d): amended, on 1 July 2010, by section 461(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 54(4)(e): added, on 1 July 2010, by section 461(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 55 Provisions applying to consolidated FDP groups

Single company, tax liabilities

(1) The provisions set out in subsection (2) apply, modified as necessary, to a consolidated FDP group and to the FDP account of the group as if—

(a) the group were a single company; and

(b) a reference to a section of this Act were to an equivalent provision applicable to a consolidated group; and

(c) a reference to a company's liability for further FDP, late payment penalty, or FDP penalty tax were a reference to a joint and several liability owed by group companies when the tax or penalty becomes payable.

Other provisions

(2) The provisions are—

(a) sections OC 30 and OC 31 (which relate to further FDP); and

(b) sections 103, 104, 139B, 140C, 140D, and 181 of the Tax Administration Act 1994.

Consolidation provisions

(3) Sections FM 3 and FM 4 (which relate to the liabilities of consolidated groups and group companies) overrides subsection (1)(c).

Defined in this Act: company, consolidated FDP group, consolidated group, FDP account, FDP penalty tax, further FDP, pay

Compare: 2004 No 35 s MG 16A(2)

FDP credits of consolidated FDP groups

OP 56 Consolidated FDPA payment of FDP

[Repealed]

Section OP 56: repealed (with effect on 1 April 2009), on 6 October 2009, by section 462(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 57 Consolidated FDPA payment of further FDP

[Repealed]

Section OP 57: repealed (with effect on 1 April 2009), on 6 October 2009, by section 463(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 58 Consolidated FDPA dividend derived with FDP credit

Credit

(1) A consolidated FDP group has an FDP credit for the amount of an FDP credit attached to a dividend derived by a group company.

Table reference

(2) The FDP credit in subsection (1) is referred to in table O21: FDP credits of consolidated FDP groups, row 4 (dividend derived with FDP credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated FDP group, dividend, FDP credit, pay

Compare: 2004 No 35 s MG 14(1)(b), (2)(a)

OP 59 Consolidated FDPA group company's credit

Credit

(1) A consolidated FDP group has an FDP credit for the amount of a credit arising as follows:

(a) an FDP credit described in a row of table O3: FDP credits, arises in the FDP account of a group company; and

(b) an FDP debit described in a row of table O22: FDP debits of consolidated FDP groups, arises in the group FDP account; and

(c) the debit is not offset by a credit arising in the group account before or on the same date on which the credit arose in the group company's account.

Table reference

(2) The FDP credit in subsection (1) is referred to in table O21: FDP credits of consolidated FDP groups, row 5 (group company's credits).

Offsetting debits

(3) For the purposes of subsection (1)(c), to determine whether the debit has been offset by a credit in the group account,—

(a) credits are treated as reducing debits in the order in which the credits arise; and

(b) a credit, whether some or all, is counted only once in determining whether a debit has been offset; and

(c) credits in the accounts of more than 1 group company become a credit to the group account—

(i) in the order of their credit date; and

(ii) as chosen by the group, if credits arise on the same credit date; and

(iii) on a pro rata basis, if no election is made under subparagraph (ii).

Credit date

(4) The credit date is immediately before the debit date for the debit to the group account.

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP credit, FDP debit

Compare: 2004 No 35 ss MG 14(1)(e), (2)(c), MG 16(2), (4)

OP 60 Consolidated FDPA credit transfer to company

Credit

(1) A consolidated FDP group has an FDP credit for the amount of an FDP credit shown in a credit transfer notice given to a company that is part of the consolidated FDP group when the notice is given.

Table reference

(2) The FDP credit in subsection (1) is referred to in table O21: FDP credits of consolidated imputation groups, row 6 (credit transfer).

Credit date

(3) The credit date is the day the notice is given.

Defined in this Act: amount, company, consolidated FDP group, credit transfer notice, FDP credit

Compare: 2004 No 35 s MG 14(1)(bb), (2)(ab)

OP 61 Consolidated FDPA transfer from group's CTR account

[Repealed]

Section OP 61: repealed (with effect on 1 April 2009), on 6 October 2009, by section 464(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 62 Consolidated FDPA transfer for net foreign attributed income

[Repealed]

Section OP 62: repealed (with effect on 1 April 2009), on 6 October 2009, by section 465(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 63 Consolidated FDPA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that an FDP credit in a consolidated FDP group's FDP account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The consolidated FDP group has an FDP credit for an amount equal to a debit in the group's FDP account under section OP 76.

Table references

(3) The FDP credit in subsection (2) is referred to in table O21: FDP credits of consolidated FDP groups, row 9 (reversal of tax advantage arrangement). The FDP debit in subsection (2) is referred to in table O22: FDP debits of consolidated FDP groups, row 14 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date of the debit.

Defined in this Act: amount, consolidated FDP group, FDP account, FDP credit, tax advantage

Compare: 2004 No 35 s MG 14(1)(d), (2)(b)

FDP debits of consolidated FDP groups

OP 64 Consolidated FDPA payment of dividend

Debit

(1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend paid by a group company that is part of the group when the dividend is paid.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 2 (payment of dividend).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, company, consolidated FDP group, dividend, FDP account, FDP credit, FDP debit, pay

Compare: 2004 No 35 s MG 15(1)(a), (2)(a)

OP 65 Consolidated FDPA credit transfer by company

Debit

(1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend paid to a company if—

(a) at the time of payment, the company is a part of the consolidated FDP group; and

(b) the amount is shown in a credit transfer notice given by the company.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 3 (credit transfer notice).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, consolidated FDP group, credit transfer notice, dividend, FDP credit, FDP debit, pay

Compare: 2004 No 35 s MG 15(1)(ab), (2)(ab)

OP 66 Consolidated FDPA refund of FDP

Debit

(1) A consolidated FDP group has an FDP debit for a refund of FDP paid to a group company that is part of the group when it derived the dividend giving rise to the payment of FDP and the refund. Subsection (2) overrides this subsection.

No debit

(2) A debit under subsection (1) does not arise if—

(a) the payment of FDP giving rise to the refund was made before an FDP debit arises under section OP 73; and

(b) the debit for the refund is no more than the debit for loss of shareholder continuity.

Table references

(3) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 4 (refund of FDP). The FDP debit in subsection (2)(a) is referred to in table O22: FDP debits of consolidated FDP groups, row 11 (debit for loss of shareholder continuity).

Debit date

(4) The debit date is the day the refund is made.

Defined in this Act: company, consolidated FDP group, dividend, FDP, FDP debit, pay, shareholder

Compare: 2004 No 35 s MG 15(1)(d), (2)(d)

OP 67 Consolidated FDPA overpayment of FDP

Debit

(1) A consolidated FDP group has an FDP debit for an overpayment of FDP that is—

(a) paid by a group company that is part of the group at the time it derived the dividend giving rise to the overpayment of FDP; and

(b) applied to pay an amount due under the Inland Revenue Acts.

No debit

(2) Despite subsection (1), the debit does not include an overpayment of FDP to the extent to which it is—

(a) applied to satisfy a liability for FDP; or

(b) for a payment of FDP before an FDP debit arises under section OP 73, no more than the debit for loss of shareholder continuity.

Table references

(3) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 5 (overpayment of FDP). The FDP debit in subsection (2)(b) is referred to in table O22: FDP debits of consolidated FDP groups, row 11 (debit for loss of shareholder continuity).

Debit date

(4) The debit date is the day the amount is applied.

Defined in this Act: amount, company, consolidated FDP group, dividend, FDP, FDP debit, Inland Revenue Acts, pay, shareholder

Compare: 2004 No 35 s MG 15(1)(1), (2)(j)

OP 68 Consolidated FDPA refund of tax credit

Debit

(1) A consolidated FDP group has an FDP debit for the amount of a transfer or refund under section LA 6(2)(d) or (e) (Remaining refundable credits: PAYE, RWT, and certain other items) to the extent to which the amount transferred or refunded is a tax credit under subpart LF (Tax credits for FDP credits) relating to a dividend derived by a group company that is part of the group at the time it derives the dividend.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 6 (refund of tax credit).

Debit date

(3) The debit date is the day the transfer or refund is made.

Defined in this Act: company, consolidated FDP group, tax credit, dividend, FDP debit

Compare: 2004 No 35 s MG 15(1)(e), (2)(d)

Section OP 68(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 466(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 68(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 466(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 69 Consolidated FDPA transfer to imputation credit account

Debit

(1) A consolidated FDP group has an FDP debit for a tax year for an amount equal to a closing credit balance transferred under section FM 29 (Treatment of credit balance in consolidated group's FDP account) to the group's imputation credit account.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 7 (transfer to imputation credit account).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: amount, consolidated FDP group, FDP debit, imputation credit account, tax year

Compare: 2004 No 35 s MG 15(1)(c), (2)(c)

OP 70 Consolidated FDPA transfer to group's CTR account

Debit

(1) A consolidated FDP group has an FDP debit for a tax year for an amount equal to a CTR credit under section OP 85 for the transfer of a credit balance to the group's CTR account.

Table references

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 8 (transfer to group's CTR account). The CTR credit in subsection (1) is referred to in table O23: CTR credits of consolidated groups, row 6 (transfer from group's FDP account).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: amount, CTR account, CTR credit, consolidated FDP group, FDP debit, tax year

Compare: 2004 No 35 s MI 20(1)

OP 71 Consolidated FDPA group company's debit

Debit

(1) A consolidated FDP group has an FDP debit for an amount to the extent to which it would, in the absence of subsection (2), give rise to—

(a) an FDP debit described in a row of table O4: FDP debits, in the FDP account of a group company; and

(b) an FDP debit that would create or increase a debit balance in the group company's FDP account.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 9 (group company's debit).

No debit for group company

(3) The amount referred to in subsection (1) does not give rise to an FDP debit in the group company's account although otherwise eligible to be one.

Debit date

(4) The debit date is the day that would be the debit date for the amount in the absence of subsection (3).

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP debit

Compare: 2004 No 35 ss MG 15(1)(k), (2)(i), MG 16(5)

OP 72 Consolidated FDPA breach of FDP ratio

Debit

(1) A consolidated FDP group has an FDP debit for a tax year for the amount of a debit that would arise under section OC 22 (FDPA breach of FDP ratio) in the FDP account of a group company in the absence of section OP 54(3).

Table references

(2) The group's FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 10 (breach of FDP ratio). The group company's FDP debit in subsection (1) is referred to in table O4: FDP debits, row 11 (breach of FDP ratio).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP debit, tax year

Compare: 2004 No 35 s MG 15(1)(f), (2)(e)

OP 73 Consolidated FDPA debit for loss of shareholder continuity

Debit

(1) A consolidated FDP group has an FDP debit for the amount of an FDP credit retained in the group's FDP account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 11 (debit for loss of shareholder continuity).

When debit arises

(3) The debit arises at the time shareholder continuity is lost.

Defined in this Act: amount, consolidated FDP group, FDP account, FDP credit, FDP debit, shareholder

Compare: 2004 No 35 s MG 15(1)(i), (2)(g)

Section OP 73(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 97(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OP 73(3) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 97(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OP 73(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 97(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

OP 74 Consolidated FDPA debit for policyholder base FDP credits

Debit

(1) A consolidated FDP group has an FDP debit for the amount of an FDP credit attached to a dividend derived by a group company, to the extent to which it is derived by a group company that is a life insurer and apportioned to that life insurer's policyholder base.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 12 (debit for policyholder base FDP credits).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: consolidated FDP group, FDP credit, FDP debit, life insurer, policyholder base, tax year

Section OP 74: substituted, on 1 July 2010, by section 467(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 75 Consolidated FDPA breach of FDP ratio by PCA company

Debit

(1) A consolidated FDP group has an FDP debit for a tax year for the amount of a debit that would arise under section OC 23 (FDPA breach of FDP ratio by PCA company) in the FDP account of a group company in the absence of section OP 54(4)(d).

Table references

(2) The group's FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 13 (breach of FDP ratio by PCA company). The group company's FDP debit in subsection (1) is referred to in table O4: FDP debits, row 12 (breach of FDP ratio by PCA company).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, consolidated FDP group, FDP account, FDP debit, tax year

Compare: 2004 No 35 s MG 15(1)(g), (2)(e)

OP 76 Consolidated FDPA tax advantage arrangement

Debit

(1) A consolidated FDP group has an FDP debit for the amount of a debit for a tax advantage arrangement determined under sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage).

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 14 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the arrangement began.

Defined in this Act: amount, arrangement, consolidated FDP group, FDP account, FDP debit, tax advantage, tax year

Compare: 2004 No 35 s MG 15(1)(h), (2)(f)

OP 77 Consolidated FDPA final balance

Debit

(1) A consolidated FDP group has an FDP debit for a credit balance in the FDP account when the group stops being a consolidated FDP group.

Table reference

(2) The FDP debit in subsection (1) is referred to in table O22: FDP debits of consolidated FDP groups, row 15 (final balance).

Debit date

(3) The debit date is the day the group stops being a consolidated FDP group.

Defined in this Act: consolidated FDP group, FDP account, FDP debit

Compare: 2004 No 35 s MG 15(1)(j), (2)(h)

Table O21 : credits of consolidated FDP groups

Row	FDP credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	*[Repealed]*		
3	*[Repealed]*		

4	FDP credit attached to dividend derived	day on which dividend is paid	section OP 58
5	Credit of group company	set out in section OP 59	section OP 59
6	FDP credit attached to dividend and shown in credit transfer notice	day on which notice is given	section OP 60
7	*[Repealed]*		
8	*[Repealed]*		
9	Reversal of debit for tax advantage arrangement	debit date for debit	section OP 63

Table O21 row 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 468(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O21 row 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 468(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O21 row 7: repealed (with effect on 30 June 2009), on 6 October 2009, by section 468(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O21 row 8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 468(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O22 : FDP debits of consolidated FDP groups

Row	**FDP debit**	**Debit date**	**Further defined**
1	opening debit balance	1 April	section OA 7
2	FDP credit attached to dividend paid by group company	day on which dividend is paid	section OP 64

3	FDP credit attached to dividend and show to credit transfer notice	day on which dividend is paid	section OP 65
4	Refund of FDP	day of refund	section OP 66
5	Overpaid FDP applied to satisfy amount other than FDP due under Inland Revenue Acts	day of application	section OP 67
6	Refund of tax credit	day of refund	section OP 68
7	Transfer of year-end credit balance to imputation credit account	31 March	section OP 69
8	*[Repealed]*		
9	Debit that would increase debit balance for group company	set out in section OP 71	section OP 71
10	Debit for breach of FDP ratio	31 March	section OP 72
11	Debit for loss of shareholder continuity	time of loss of continuity	section OP 73
12	Debit for policyholder base FDP credits	31 March	section OP 74
13	Branch of FDP ratio by group company that is PCA company	31 March	section OP 75

14	Debit for tax advantage arrangement	last day of tax year in which arrangement begun	section OP 76
15	Credit balance when group stops being consolidated FDP group	days on which group stops being consolidated FDP group	section OP 77

Table O22 row 8: repealed (with effect on 30 June 2009), on 6 October 2009, by section 469(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O22 row 11: amended (with effect on 1 April 2008), on 7 December 2009, by section 98 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Table O22 row 12: substituted, on 1 July 2010, by section 469(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Consolidated groups and CTR credits

Introductory provisions

OP 78 CTR accounts of consolidated groups

Consolidated group accounts

(1) A consolidated group must maintain a group CTR account for a tax year if a group company is a CTR company at a time during the tax year.

Group company's status

(2) Every company that is part of a consolidated group with a CTR account is a CTR company, despite the absence of an election under section OD 1(1) (General rules for companies with CTR accounts) by a group company.

Relationship with section OZ 17

(3) Section OZ 17 (CTRA reductions) may apply to modify the credits and debits arising under sections OP 81 to OP 96.

Defined in this Act: company, CTR account, CTR company, consolidated group, tax year

Compare: 2004 No 35 ss MI 14, MI 16

Section OP 78(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 470(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 78(3) heading: added, on 1 April 2008, by section 517 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OP 78(3): added, on 1 April 2008, by section 517 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OP 79 When credits and debits arise only in CTR group accounts

Credits only in the group accounts

(1) A credit listed in subsection (2) arises only in the CTR account of a consolidated group and not in the CTR account of a group company.

Particular credits

(2) The credit referred to in subsection (1) is a credit under section OD 7, described in table O5, row 4.

Debits only in the group accounts

(3) A debit listed in subsection (4) arises only in the CTR account of a consolidated group and not in the CTR account of a group company.

Particular debits

(4) The debit referred to in subsection (3) is a debit under the following sections and described in the following rows of table O6: CTR debits

(a) section OD 10 (CTRA payment of dividend), row 2 (payment of dividend):

(b) section OD 13 (CTRA adjustment for conduit tax relief), row 5 (adjustment for conduit tax relief):

(c) section OD 17 (CTRA breach of CTR ratio), row 9 (breach of CTR ratio).

Defined in this Act: company, CTR account, CTR credit, CTR debit, CTR ratio, consolidated group

Compare: 2004 No 35 s MI 19(1), (2)

Section OP 79(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 471(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 80 Provisions applying to consolidated groups with CTR accounts

Single company, tax liabilities

(1) The provisions set out in subsection (2) apply, modified as necessary, to a consolidated group and to the CTR account of the group as if—

(a) the group were a single company; and

(b) a reference to a section of this Act were to an equivalent provision applicable to a consolidated group; and

(c) a reference to a company's liability for further FDP, late payment penalty, or FDP penalty tax were a reference to a joint and several liability owed by group companies when the tax or penalty becomes payable.

Other provisions

(2) The provisions are—

(a) sections OD 22 and OD 23 (which relate to credits attached to dividends and FDP payable); and

(b) sections 103, 104, 139B, 140C, 140D, and 181 of the Tax Administration Act 1994.

Consolidation provisions

(3) Sections FM 4 and FM 5 (which relate to the liability of consolidated groups) override subsection (1)(c).

Defined in this Act: company, CTR account, consolidated group, FDP penalty tax, further FDP

Compare: 2004 No 35 s MI 22(1)

CTR credits of consolidated groups

OP 81 Consolidated CTRA tax credit for conduit tax relief

[Repealed]

Section OP 81: repealed (with effect on 30 June 2009), on 6 October 2009, by section 472(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 82 Consolidated CTRA reduction of FDP

[Repealed]

Section OP 82: repealed (with effect on 30 June 2009), on 6 October 2009, by section 473(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 83 Consolidated CTRA dividend derived with CTR credit

Credit

(1) A consolidated group has a CTR credit for the amount of a CTR credit attached to a dividend derived by a group company that is part of the group when the dividend is derived.

Table reference

(2) The CTR credit in subsection (1) is referred to in table O23: CTR credits of consolidated groups, row 4 (dividend derived with CTR credit).

Credit date

(3) The credit date is the day the dividend is paid.

Defined in this Act: amount, company, CTR credit, consolidated group, dividend, pay

Compare: 2004 No 35 s MI 17(1)(c), (2)(c)

OP 84 Consolidated CTRA group company's credit

Credit

(1) A consolidated group has a CTR credit for the amount of a credit that arises when—

(a) a CTR credit described in a row of table O5: CTR credits, arises in the CTR account of a group company; and

(b) a CTR debit described in a row of table O24: CTR debits of consolidated groups, arises in the CTR account of the group; and

(c) the debit is not offset by a credit arising in the group account before the credit arose in the group company's account; and

(d) the amount of the credit is no more than the amount of the debit.

Table reference

(2) The CTR credit in subsection (1) is referred to in table O23: CTR credits of consolidated groups, row 5 (group company's credit).

Offsetting debits

(3) For the purposes of subsection (1)(c), to determine whether a debit has been offset by a credit in the group account,—

(a) a credit retains its separate character and is not treated as part of a credit under section OA 7 (Opening balances of memorandum accounts); and

(b) credits are treated as reducing debits in the order in which the credits arise; and

(c) a credit, whether some or all, is counted only once in determining whether the debit has been offset; and

(d) credits in the accounts of more than 1 group company become a credit to the group account—

(i) in the order of their credit date; and

(ii) as chosen by the group, if the credits arise on the same credit date; and

(iii) on a pro rata basis, if no election is made under subparagraph (ii).

Credit date

(4) The credit date is the day the credit is recorded as transferred to the group account.

Defined in this Act: amount, company, CTR account, CTR credit, CTR debit, consolidated group

Compare: 2004 No 35 ss MI 17(1)(e), (2)(e), MI 19(3), (4)

OP 85 Consolidated CTRA transfer from group's FDP account

Credit

(1) A consolidated group has a CTR credit for a tax year for an amount of a credit balance in the group's FDP account that is treated as transferred to the group's CTR account when—

(a) a credit balance exists in the group's FDP account immediately before the end of the tax year; and

(b) a debit balance exists in the group's CTR account immediately before the end of the tax year.

Finding balances

(2) For the purposes of subsection (1),—

(a) the debit balance in the CTR account is determined after a CTR credit arises at the end of the tax year under the following sections and described in the following rows of table O23: CTR credits of consolidated groups—

(i) section OP 81, row 2 (tax credit for conduit tax relief); and

(ii) section OP 84, row 5 (group company's credit); and

(b) the credit balance in the FDP account is determined after an FDP credit arises under section OP 62 before the end of the tax year.

Amount of credit and debit

(3) The amount of the credit is equal to the smaller of the 2 balances referred to in subsection (1), and becomes—

(a) the CTR credit; and

(b) the FDP debit under section OP 70.

Table references

(4) The table references are as follows

(a) the CTR credit in subsection (1) is referred to in table O23: CTR credits of consolidated groups, row 6 (transfer from group's FDP account):

(b) the FDP credit in subsection (2)(b) is referred to in table O21: FDP credits of consolidated FDP groups, row 8 (transfer for net foreign attributed income):

(c) the CTR credit in subsection (3)(a) is referred to in table O23: CTR credits of consolidated groups, row 6 (transfer from group's FDP account):

(d) the FDP debit in subsection (3)(b) is referred to in table O22: FDP debits of consolidated groups, row 8 (transfer to groups CTR account).

Credit date

(5) The credit date is the last day of the tax year.

Defined in this Act: amount, company, CTR account, CTR credit, consolidated group, FDP account, FDP credit, FDP debit, tax year

Compare: 2004 No 35 ss MI 17(1)(f), (2)(f), MI 20(1)

OP 86 Consolidated CTRA reversal of tax advantage arrangement

When this section applies

(1) This section applies when it is established that a CTR credit in a consolidated group's CTR account was incorrectly determined to be the subject of an arrangement to obtain a tax advantage.

Credit

(2) The consolidated group has a CTR credit for an amount equal to a debit in the group's CTR account under section OP 93.

Table references

(3) The CTR credit in subsection (2) is referred to in table O23: CTR credits of consolidated groups, row 7 (reversal of tax advantage arrangement). The CTR debit in subsection (2) is referred to in table O24: CTR debits of consolidated groups, row 8 (tax advantage arrangement).

Credit date

(4) The credit date is the same as the debit date for the debit.

Defined in this Act: amount, CTR account, CTR credit, consolidated group, tax advantage

Compare: 2004 No 35 s MI 17(1)(d), (2)(d)

CTR debits of consolidated groups

OP 87 Consolidated CTRA payment of dividend

Debit

(1) A consolidated group has a CTR debit for the amount of a CTR credit attached to a dividend paid by a group company that is part of the group when the dividend is paid.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 2 (payment of dividend).

Debit date

(3) The debit date is the day the dividend is paid.

Defined in this Act: amount, company, CTR credit, CTR debit, consolidated group, dividend, pay

Compare: 2004 No 35 s MI 18(1)(a), (2)(a)

OP 88 Consolidated CTRA transfer to group's FDP account

[Repealed]

Section OP 88: repealed (with effect on 30 June 2009), on 6 October 2009, by section 474(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 89 Consolidated CTRA adjustment for conduit tax relief

Debit

(1) A consolidated group has a CTR debit for a tax year for the amount of an adjustment allowed under section FF 7(8) (Surplus to foreign dividends) to a group company that is part of the group on the last day of the income year corresponding to the tax year for which the adjustment is allowed.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 4 (adjustment for conduit tax relief).

Debit date

(3) The debit date is the day the company files a return of income for the tax year corresponding to the income year for which the adjustment is made.

Defined in this Act: amount, company, CTR debit, consolidated group, income year, return of income, tax year

Compare: 2004 No 35 s MI 18(1)(b), (2)(b)

OP 90 Consolidated CTRA group company's debit

Debit

(1) A consolidated group has a CTR debit for an amount to the extent to which the amount would, in the absence of section OP 54(3), give rise to—

(a) a CTR debit described in a row of table O6: CTR debits, in the CTR account of a group company; and

(b) a CTR debit that would create or increase a debit balance in the group company's CTR account.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 5 (group company's debit).

Debit date

(3) The debit date is the day that would be the debit date if the debit had arisen in the company's account.

Defined in this Act: amount, company, CTR account, CTR debit, consolidated group

Compare: 2004 No 35 s MI 19(5)

OP 91 Consolidated CTRA increase in resident shareholding

Debit

(1) A consolidated group has a CTR debit for the amount of a CTR credit in the group's CTR account if the resident shareholding requirements of subsection (2) and section OA 8 (Shareholder continuity requirements for memorandum accounts) are not met.

Resident shareholding requirements

(2) For the purposes of subsection (1), the resident shareholding requirements are that—

- (a) the credit continues to exist to the extent to which it is not reduced by a later CTR debit; and
- (b) since the credit date for the credit, the percentage of the group's shareholders who are resident in New Zealand does not increase by 34% or more; and
- (c) an amount that is the CTR debit under subsection (1) arises for the amount of the credit that still exists when the requirement of paragraph (b) is not met.

Supporting rules

(3) The following rules apply for the purposes of subsection (2)

- (a) the percentage of shareholders resident in New Zealand at any time is found by taking the highest of the following percentages:
  - (i) the percentage of direct voting interests held in the group by residents; and
  - (ii) the percentage of direct market value interests held in the group, if a direct market value circumstance exists, by residents; and
  - (iii) if not all shares held by the group's shareholders are shares of the same class, the percentage of total dividends that would be derived by residents if the group were liquidated:
- (b) a credit retains its separate character and is not treated as part of a credit referred to in section OA 7 (Opening balances of memorandum accounts) in a later tax year; and
- (c) the amount by which a credit is reduced by an earlier or later debit is found by—

(i) treating debits as reducing credits in the order in which the credits arise; and

(ii) counting a debit, whether some or all, only once in the reduction of a credit; and

(d) the credit date for a credit arising under section OP 84 is the credit date when the credit arose in the CTR account of the group company; and

(e) the debit still arises despite an arrangement affecting the company's shares that has a purpose or effect of defeating the intent and application of the resident shareholding requirements.

Table references

(4) The CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 6 (increase in resident shareholding). The CTR credit in subsection (3)(d) is referred to in table O23: CTR credits of consolidated groups, row 5 (group company's credits).

Debit date

(5) The debit date is the day on which the shareholding threshold is first reached or passed.

Defined in this Act: amount, arrangement, company, CTR account, CTR credit, CTR debit, consolidated group, direct market value circumstance, direct market value interest, direct voting interest, dividend, liquidation, resident, resident in New Zealand, share, shareholder, shares of the same class, tax year

Compare: 2004 No 35 s MI 18(1)(e), (2)(e), (3), (4)

OP 92 Consolidated CTRA breach of CTR ratio

Debit

(1) A consolidated group has a CTR debit for a tax year for the amount of a debit under section OD 17 (CTRA breach of CTR ratio) that would arise in the CTR account of a group company in the absence of OP 79.

Table references

(2) The group's CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 7 (breach of CTR ratio). The group company's CTR credit in subsection (1) is referred to in table O6: CTR debits, row 9 (breach of CTR ratio).

Debit date

(3) The debit date is the last day of the tax year.

Defined in this Act: amount, company, CTR account, CTR debit, consolidated group, tax year

Compare: 2004 No 35 s MI 18(1)(c), (2)(c)

OP 93 Consolidated CTRA tax advantage arrangement

Debit

(1) A consolidated group has a CTR debit for the amount of a debit for a tax advantage arrangement determined under sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage) which apply to a CTR credit as if it were an FDP credit.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 8 (tax advantage arrangement).

Debit date

(3) The debit date is the last day of the tax year in which the arrangement began.

Defined in this Act: amount, arrangement, CTR debit, consolidated group, tax advantage, tax year

Compare: 2004 No 35 s MI 18(1)(d), (2)(d)

OP 94 Consolidated CTRA final balance

Debit

(1) A consolidated group has a CTR debit for a credit balance in the CTR account when the group is no longer required to maintain the account.

Table reference

(2) The CTR debit in subsection (1) is referred to in table O24: CTR debits of consolidated groups, row 9 (final balance).

Debit date

(3) The debit date is the day before the group is no longer required to maintain a CTR account.

Defined in this Act: consolidated group, CTR account, CTR debit

Compare: 2004 No 35 s MI 18(1)(f), (2)(f)

Consolidated groups' FDP payments and refunds

OP 95 FDP payable for credits and debits in group's CTR account

[Repealed]

Section OP 95: repealed (with effect on 30 June 2009), on 6 October 2009, by section 475(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 96 Refund on transfer from group's FDP account

Refund

(1) A consolidated FDP group is entitled to a refund for the amount referred to in section OP 85 for a transfer from the group's CTR account.

Table reference

(2) The amount in subsection (1) is referred to in table O23: CTR credits of consolidated groups, row 6 (transfer from group's FDP account).

Application of refund

(3) The Commissioner may apply the amount of the refund to pay an amount due under the Inland Revenue Acts.

Defined in this Act: amount, Commissioner, CTR account, consolidated FDP group, Inland Revenue Acts

Compare: 2004 No 35 s MI 22(4)

Section OP 96 list of defined terms **Inland Revenue Acts**: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Table O23 : conduit tax relief credits of consolidated groups

Row	Conduit tax relief credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7
2	*[Repealed]*		

3	*[Repealed]*		
4	CTR credit attached to dividend derived	day on which dividend is paid	section OP 83
5	Credit from group company's CTR account	set out section OP 84	section OP 84
6	Transfer from group's FDP account	31 March	section OP 85
7	Reversal of debt to tax advantage arangement	debit date for debit	section OP 86

Table O23 row 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 476(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O23 row 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 476(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O24 : conduit tax relief debits of consolidated groups

Row	**Conduit tax relief debit**	**Debit date**	**Further defined**
1	opening debit balance	1 April	section OA 7
2	CTR credit atttached to dividend paid by group company	day on which dividend is paid	section OP 87
3	*[Repealed]*		
4	Adjustment for conduit relief	day on which return of income with adjustment is filed	section OP 89

5	Debit that would increase debit balance for group company	company's debit date	section OP 90
6	Increase in resident shareholding by more than 34%	day of shareholding change	section OP 91
7	Debit for breach of CTR ratio	31 March	section OP 92
8	Debit for tax advantage arrangement	last day of tax year in which arrangement began	section OP 93
9	Credit balance when group is no longer required to maintain CTR account	day on which account stops	section OP 94

Table O24 row 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 477(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Consolidated groups and branch equivalent tax accounts

Introductory provisions

OP 97 Branch equivalent tax accounts of consolidated BETA groups

Consolidated group accounts

(1) A consolidated group is a consolidated branch equivalent tax account (BETA) group for a tax year if—

(a) a group company is a BETA company at a time during the tax year; or

(b) the group chooses to maintain a branch equivalent tax account.

Notifying Commissioner

(2) The nominated company of a consolidated BETA group must notify the Commissioner of an election under subsection (1)(b)—

(a) no later than 21 days after the day of election; or

(b) by a later date if the Commissioner allows.

Defined in this Act: BETA company, branch equivalent tax account, Commissioner, consolidated BETA group, consolidated group, nominated company, notify, tax year

Compare: 2004 No 35 s MF 7(1), (2)

OP 98 Choosing to stop being consolidated BETA group

Election

(1) The nominated company of a consolidated BETA group may choose that the group's status as a consolidated BETA group is to end.

No election

(2) An election under subsection (1) may be made during a tax year that is later than the tax year in which the group chooses under section OP 97 to become a consolidated BETA group.

When group ends status

(3) The election takes effect from the first day of the tax year after the tax year in which the election referred to in subsection (2) is made, but only if—

(a) the group files an annual ICA return for the year of election in the time allowed by section 69 of the Tax Administration Act 1994; and

(b) no group company is a BETA company in the tax year after the year of the election.

Defined in this Act: annual ICA return, BETA company, company, consolidated BETA group, nominated company, tax year

Compare: 2004 No 35 s MF 7(3), (4)

OP 99 When credits and debits arise only in branch equivalent tax group accounts

[Repealed]

Section OP 99: repealed (with effect on 30 June 2009), on 6 October 2009, by section 478(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OP 99(5) heading: added, on 1 April 2008, by section 518 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OP 99(5): added, on 1 April 2008, by section 518 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Branch equivalent tax credits of consolidated BETA groups

OP 100 Consolidated BETA payment of income tax on foreign income

Credit

(1) A consolidated BETA group has a branch equivalent tax credit for an income year for an amount calculated using the formula—

((group CFC income – group deductions) × tax rate) – foreign tax – debit balances.

Definition of items in formula

(2) In the formula,—

(a) **group CFC income** is the amount of attributed foreign income derived by the consolidated BETA group during the income year:

(b) **group deductions** is the total amount for the group for the income year of—

(i) attributed controlled foreign company (CFC) loss; and

(ii) attributed CFC net loss; and

(iii) foreign investment fund (FIF) loss; and

(iv) FIF net loss:

(c) **tax rate** is the basic rate of income tax set out in—

(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) if the company is not a Maori authority; or

(ii) schedule 1, part A, clause 7 if the company is a Maori authority:

(d) **foreign tax** is the amount of foreign tax credits allowed under sections LK 1 to LK 7 (which relate to tax credits relating to attributed CFC income), as applicable, relating to the group's income tax liability for the income year:

(e) **debit balances** is the amount of all debit balances in a branch equivalent tax account applied to satisfy the group's income tax liability for the income year.

Table reference

(3) The branch equivalent tax credit in subsection (1) is referred to in table O25: branch equivalent tax credits of consolidated BETA groups, row 2 (payment of income tax on foreign income).

Credit date

(4) The credit date is the day the nominated company files the return of income for the tax year corresponding to the income year for which the calculation is made.

Defined in this Act: amount, attributed CFC loss, attributed CFC net loss, attributed foreign income, basic rate, branch equivalent tax account, branch equivalent tax credit, consolidated BETA group, FDP, FIF loss, FIF net loss, foreign tax, income tax, income tax liability, income year, Maori authority, nominated company, return of income, tax year

Compare: 2004 No 35 s MF 8(2)(a), (3)(a)

Section OP 100(2)(c)(i): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OP 101 Consolidated BETA payment of income tax

When this section applies

(1) This section applies when, for a consolidated BETA group,—

(a) attributed CFC income is derived by—

(i) the consolidated BETA group, and there is a debit balance in the branch equivalent tax account of the consolidated BETA group, of a member of the consolidated BETA group, or of a BETA company (a **BETA group company**) that would be part of the same group of companies as the consolidated BETA group if the consolidated BETA group were a single company:

(ii) a BETA group company, and there is a debit balance in the branch equivalent tax account of the consolidated BETA group; and

(b) the debits producing the debit balance arise from FDP that has been paid—

(i) directly:

(ii) by reducing a tax loss:

(iii) to reduce an FDP liability under section RG 7 (Reduction of payments for conduit tax relief).

Election

(2) A company that is allowed under subsection (6) to make an election under this subsection may choose to apply some or all of the debit balance in the branch equivalent tax account to satisfy an income tax liability arising from attributed CFC income of the consolidated BETA group or the BETA group company.

Maximum amount

(2B) Despite subsection (2) and section OE 7(3) (BETA payment of income tax), the amount of BETA debits applied under elections under subsection (2) and section OE 7(3) relating to the attributed CFC income referred to in subsection (2) must be no more than the amount calculated under section OE 6(1) (BETA payment of income tax on foreign income) for the company that has the attributed CFC income or under section OP 100(1) for the consolidated BETA group, in both cases treating the item debit balances as zero.

Credit

[Repealed]

(3) *[Repealed]*

Table reference

(4) The branch equivalent tax credit in subsection (2), as limited by subsection (2B), is referred to in table O25: branch equivalent tax credits of consolidated BETA groups, row 3 (payment of income tax).

Excess amount treated as tax loss component

(4B) If a company chooses under subsections (2) and (2B) to apply a debit amount that exceeds the total income tax liability for the attributed CFC income referred to in subsection (1), the excess amount is treated as an amount of tax loss component—

(a) of the BETA group company, if it has the attributed CFC income, or of the consolidated BETA group, otherwise; and

(b) calculated using the formula—

$$\frac{\text{debit applied} - \text{tax liability}}{\text{tax rate}}.$$

Definition of items in formula

(4C) In the formula,—

(a) **debit applied** is the amount of the debit balance applied by the company under an election under subsections (2) and (2B):

(b) **tax liability** is the total income tax liability for the attributed CFC income:

(c) **tax rate** is the basic rate of income tax set out in—

(i) schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), if the company is not a Maori authority; or

(ii) schedule 1, part A, clause 7, if the company is a Maori authority.

Income tax paid

[Repealed]

(5) *[Repealed]*

Who makes the election

(6) An election under subsection (2) may be made as follows:

(a) if the income tax liability of the consolidated BETA group is to be satisfied, the election may be made by—

(i) the nominated company, if the debit balance is in the branch equivalent tax account of the consolidated BETA group:

(ii) a company that is a member of the consolidated BETA group, if the debit balance is in the branch equivalent tax account of that company:

(iii) a BETA group company, if the debit balance is in the branch equivalent tax account of that BETA group company:

(b) if the income tax liability of a BETA group company is to be satisfied, the election may be made by the nominated company of the consolidated BETA group.

How election made

(7) An election under subsection (2), limited by subsection (2B), is made by recording in the branch equivalent tax account a credit equal to the amount of the debit balance for which the election is made.

Credit date

(8) The credit date is the day of election.

Defined in this Act: amount, attributed CFC income, branch equivalent tax account, branch equivalent tax credit, company, consolidated BETA group, dividend, FDP, group of companies, income, income tax, income tax liability, income year, Maori authority, nominated company, pay, tax loss, tax year

Compare: 2004 No 35 ss MF 8(2)(c), (3)(b), MF 10(3), (4)–(6)

Section OP 101(1): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(2): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(2B) heading: inserted, on 1 April 2008, by section 519(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OP 101(2B): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(3) heading: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to section 119(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(3): repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(4): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(4B) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(4B): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(4C) heading: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(4C): inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(5) heading: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), pursuant to section 119(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(5): repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(6): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101(7): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 119(9) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101 compare note: amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OP 101 compare note: amended, on 1 April 2008, by section 519(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OP 102 Consolidated BETA remaining debit balances

[Repealed]

Section OP 102: repealed (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 120(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OP 103 Consolidated BETA refund of FDP

Credit

(1) A consolidated BETA group has a branch equivalent tax credit for a tax year for the amount of a refund of FDP. Subsections (2) and (3) override this subsection.

Refund giving rise to debit

(2) A refund under subsection (1) must be a refund of a payment of FDP that gave rise to a debit under section OP 105.

Reduction

(3) The amount of the credit under subsection (1) is reduced to the extent to which—

(a) the payment of FDP is made before a branch equivalent tax credit arises under section OP 104 in the group's branch equivalent tax account; and

(b) the amount of the refund is no more than the amount of the credit for the loss of shareholder continuity.

Table references

(4) The table references are as follows:

(a) the branch equivalent tax credit in subsection (1) is referred to in table O25: branch equivalent tax credits of consolidated BETA groups, row 4 (refund of FDP):

(b) the branch equivalent tax debit in subsection (2) is referred to in table O26: branch equivalent tax debits of consolidated BETA groups, row 2 (payment of FDP):

(c) the branch equivalent tax credit in subsection (3)(a) is referred to in table O25: branch equivalent tax credits of consolidated BETA groups, row 5 (credit for loss of shareholder continuity).

Credit date

(5) The credit date is the day the refund is made.

Defined in this Act: amount, branch equivalent tax account, branch equivalent tax credit, consolidated BETA group, consolidated group, FDP, pay, shareholder, tax year

Compare: 2004 No 35 s MF 8(2)(d), (3)(c)

OP 104 Consolidated BETA credit for loss of shareholder continuity

Credit

(1) A consolidated BETA group has a branch equivalent tax credit for the amount of a branch equivalent tax debit retained in the branch equivalent tax account and unused at the time at which shareholder continuity is lost.

Table reference

(2) The branch equivalent tax credit in subsection (1) is referred to in table O25: branch equivalent tax credits of consolidated BETA groups, row 5 (credit for loss of shareholder continuity).

When credit arises

(3) The credit arises at the time shareholder continuity is lost.

Defined in this Act: amount, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, consolidated BETA group, shareholder

Compare: 2004 No 35 s MF 8(2)(e), (3)(d)

Section OP 104(1): amended (with effect on 1 April 2008), on 7 December 2009, by section 99(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OP 104(3) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 99(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section OP 104(3): substituted (with effect on 1 April 2008), on 7 December 2009, by section 99(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Treatment by consolidated BETA groups of BETA debits from conduit relief

Heading: inserted (with effect on 30 June 2009), on 7 September 2010 (applying for income years beginning on or after 1 July 2009), by section 109(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OP 104B Consolidated BETA group with debit balance, including debits from conduit relief, in certain income years

When this section applies

(1) This section applies when a consolidated BETA group, in an income year beginning on or after 1 July 2009 (an **affected year**), has a debit balance—

(a) in its branch equivalent tax account; and

(b) that includes an amount (the **CTR-relief amount**) equal to the total of amounts that—

(i) relate to branch equivalent tax debits in the branch equivalent tax account that each arose under section OP 105 in relation to a foreign dividend; and

(ii) equal, for each branch equivalent tax debit, the reduction under section RG 7 (Reduction of payments for conduit tax relief) of a company's liability to pay FDP to the Commissioner for the foreign dividend.

Use of CTR-relief amount

(2) The consolidated BETA group may not choose under section OP 101 to apply the CTR-relief amount to satisfy an income tax liability except by an election—

(a) relating to attributed CFC income that the consolidated BETA group allocates to an income year beginning before 1 July 2009; and

(b) made before the earlier of—

(i) the first election under section OP 101 relating to attributed CFC income that the group allocates to an affected year:

(ii) the end of the first affected year.

Determination of CTR-relief amount

(3) The CTR-relief amount in a branch equivalent tax account is found by—

(a) treating a branch equivalent tax debit that arises partly from a reduction of FDP under section RG 7 and partly from a payment of FDP as being 2 debits, one equal to the reduction of FDP and the other equal to the amount of the payment of FDP; and

(b) if a branch equivalent tax credit arises before the first affected year other than from an election relating to attributed CFC income allocated to an affected year or arises in an affected year from an election meeting the requirements of the exception to subsection (2), treating the credit as—

(i) reducing branch equivalent tax debits in the order in which the debits arise; and

(ii) for branch equivalent tax debits arising at the same time and not reduced to zero by the credit, reducing each debit in proportion to the contribution of the debit to the total of the debits; and

(c) if the treatment of a branch equivalent tax credit is not given by paragraph (b), treating the credit as—

(i) reducing branch equivalent tax debits arising from the payment of FDP in the order in which the debits arise; and

(ii) after all branch equivalent tax debits arising from the payment of FDP are reduced to zero, reducing

debits arising from a reduction of FDP under section RG 7 in the order in which the debits arise; and

(iii) for branch equivalent tax debits subject to the same subparagraph and arising at the same time and not reduced to zero by the credit, reducing each debit in proportion to the contribution of the debit to the total of the debits; and

(d) counting an amount of a branch equivalent tax credit only once in the reduction of some or all of a branch equivalent tax debit.

Defined in this Act: attributed CFC income, branch equivalent tax account, branch equivalent tax credit, branch equivalent tax debit, Commissioner, company, consolidated BETA group, FDP, foreign dividend income tax liability, income year

Section OP 104B: inserted (with effect on 30 June 2009), on 7 September 2010 (applying for income years beginning on or after 1 July 2009), by section 109(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Branch equivalent tax debits of consolidated BETA groups [Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 479(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 105 Consolidated BETA payment of FDP

[Repealed]

Section OP 105: repealed (with effect on 30 June 2009), on 6 October 2009, by section 479(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 106 Consolidated BETA reduction of FDP

[Repealed]

Section OP 106: repealed (with effect on 30 June 2009), on 6 October 2009, by section 479(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 107 Consolidated BETA refund of income tax

[Repealed]

Section OP 107: repealed (with effect on 30 June 2009), on 6 October 2009, by section 479(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 108 Consolidated BETA debit for loss of shareholder continuity

[Repealed]

Section OP 108: repealed (with effect on 30 June 2009), on 6 October 2009, by section 479(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Debit if credit balance at beginning of first affected income year

[Repealed]

Heading: repealed (with effect on 30 June 2009), on 7 September 2010, by section 110 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Heading: inserted (with effect on 30 June 2009), on 6 October 2009, by section 480(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 108B Consolidated BETA group with credit balance at beginning of first affected income year

[Repealed]

OP 108B: repealed (with effect on 30 June 2009), on 7 September 2010, by section 110 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

OP 108B: inserted (with effect on 30 June 2009), on 6 October 2009, by section 480(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O25 : branch equivalent tax credits of consolidated BETA groups

Row	Branch equivalent tax credit	Credit date	Further defined
1	Opening credit balance	1 April	section OA 7

2	*[Repealed]*		
3	Debit balance applied to satisfy income tax liabilit	day of election	section OP 101
4	Refund of FDP	day of refund	section OP 103
5	Credit for loss of shareholder continuity	time of loss of continuity	section OP 104

Table O25 row 2: repealed (with effect on 30 June 2009), on 6 October 2009, by section 481(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O25 row 5: amended (with effect on 1 April 2008), on 7 December 2009, by section 100 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Table O26 : branch equivalent tax debits of consolidated BETA groups
[Repealed]

Table O26: repealed (with effect on 30 June 2009), on 6 October 2009, by section 482(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Consolidated groups and policyholder credit accounts
[Repealed]

Heading: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provision
[Repealed]

Heading: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 109 Policyholder credit accounts of consolidated groups

[Repealed]

Section OP 109: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Policyholder credits of consolidated groups
[Repealed]

Heading: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 110 Consolidated PCA transfer from imputation credit account

[Repealed]

Section OP 110: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 111 Consolidated PCA transfer from FDP account

[Repealed]

Section OP 111: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 112 Consolidated PCA group company's credit

[Repealed]

Section OP 112: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 113 Consolidated PCA maximum deficit debit in FDP account

[Repealed]

Section OP 113: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 114 Consolidated PCA reduced deficit debit in FDP account

[Repealed]

Section OP 114: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Policyholder debits of consolidated groups
[Repealed]

Heading: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 115 Consolidated PCA payment of tax relating to policyholder base

[Repealed]

Section OP 115: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

OP 116 Consolidated PCA transfer to imputation credit account

[Repealed]

Section OP 116: repealed, on 1 July 2010, by section 483(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O27: policyholder credits of consolidated groups
[Repealed]

Table O27: repealed, on 1 July 2010, by section 484(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table O28: policyholder debits of consolidated groups
[Repealed]

Table O28: repealed, on 1 July 2010, by section 484(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart OZ—Terminating provisions

OZ 1 No imputation credit for pre-imputation tax paid

No imputation credit arises in the imputation credit account of an imputation credit account (ICA) company for a payment of income tax imposed for a pre-imputation income year.

Defined in this Act: ICA company, imputation credit, imputation credit account, income tax, pay, pre-imputation income year

Compare: 2004 No 35 s ME 4(1)(a)(viii)

OZ 2 No imputation debit for pre-imputation refund

No imputation debit arises in the imputation credit account of an ICA company for a refund of income tax for a pre-imputation income year.

Defined in this Act: ICA company, imputation credit account, imputation debit, income tax, pre-imputation income year

Compare: 2004 No 35 s ME 5(1)(e)(i)

OZ 3 Overpaid income tax or foreign dividend payment for pre-imputation income year

Debit

(1) An ICA company has an imputation debit for an amount of overpaid income tax and foreign dividend payment (FDP) that is applied, when the company is not a foreign dividend payment account (FDPA) company, to satisfy the company's income tax liability under BB 1 (Imposition of income tax) for a pre-imputation income year. Subsection (2) overrides this subsection.

No debit

(2) The debit does not include an amount of overpaid income tax and FDP that is—

(a) paid before an imputation debit under section OB 41 (ICA debit for loss of shareholder continuity); and

(b) no more than the debit for loss of shareholder continuity.

Table references

(3) The imputation debit in subsection (1) is referred to in table O2: imputation debits, row 11 (overpayment of income tax or FDP). The imputation debit in subsection (2)(a) is referred

to in table O2: imputation debits, row 14 (debit for loss of shareholder continuity).

Debit date

(4) The debit date is the day the amount is applied.

Defined in this Act: amount, company, FDP, FDPA company, ICA company, imputation credit account, imputation debit, income tax, income tax liability, pay, pre-imputation income year, shareholder

Compare: 2004 No 35 s ME 5(1)(n)

OZ 4 Terminating modifications to debits for loss of shareholder continuity

The terminating modifications that apply under section OA 8(8) (Shareholder continuity requirements for memorandum accounts) are—

(a) the shareholder continuity requirement does not apply to a credit that arises on or before 16 December 1988; and

(b) credits arising after 16 December 1988 and before 1 April 1992 are treated as 1 credit arising on 1 April 1992 and, until such time as the credit can be treated as cancelled by later debits,—

(i) the shareholder continuity requirement applying to the credit is the earlier version of the requirement incorporated in section 394E(2)(g) of the Income Tax Act 1976 (despite its repeal and replacement by section 51 of the Income Tax Act Amendment Act (No 2) 1992); and

(ii) the earlier version of the requirement of section 394E(2)(g) applies by reading the figure "66" instead of the figure "75".

Defined in this Act: shareholder

Compare: 2004 No 35 ss ME 5(4), MG 5(4)

OZ 5 ASCA lost excess available subscribed capital

When this section applies

(1) This section applies when a public unit trust or a group investment fund that derives category A income—

(a) is in existence between 17 October 2002 and 30 September 2003 (both dates inclusive); and

(b) has redeemed a unit in the trust or fund; and

(c) the slice rule was used to determine the tax treatment of the proceeds from the redemption; and

(d) the amount of the available subscribed capital, calculated on a per unit basis, is greater than the proceeds from the redemption for the unit.

Calculating opening balance

(2) The trust or fund may choose for the period to calculate an opening credit balance using 1 of the methods set out in subsections (3) and (4).

Method 1

(3) Method 1 requires the trust or fund to calculate the actual amount of available subscribed capital lost, that is the difference, in total, between the amount paid on subscription for a unit and the amount paid on redemption of the unit.

Method 2

(4) Method 2 requires the trust or fund to make a calculation for the notional winding up of the trust or fund by taking the following steps:

(a) step 1: determine the total amount of income tax that would be payable on liquidation, treating the value of assets and liabilities as determined at their market value at the date of the notional liquidation according to provisions applying at that date:

(b) step 2: determine the amount of notional credits that are available after notional tax is paid in relation to them:

(c) step 3: determine the amount of notional credits required to fully impute, for each unit holder, the payment of a redemption dividend, and aggregate the amounts, applying the maximum imputation ratio to the total amount:

(d) step 4: establish the imputation credit shortfall between the notional credits under step 2 and the credits required under step 3.

Opening balance

(5) The amount of the opening balance is—

(a) the amount of the difference for method 1; and

(b) the shortfall referred to in subsection (4)(d) for method 2.

Certain causes of shortfalls

(6) For the purposes of subsection (4), the structural features of the taxation and imputation systems that would allow a company that does not issue shares on terms subject to section CD 22(4) (Returns of capital: off-market share cancellations) to fully impute a distribution made on the liquidation of the company, include the tax effects of—

(a) non-taxable gains and losses, including exempt income; and

(b) imputation credits lost because shareholder continuity is lost; and

(c) foreign tax credits; and

(d) retained earnings generated before the trust or fund established an imputation credit account.

Date of notional liquidation, orderly calculations

(7) For the purposes of this section,—

(a) the date of notional liquidation is the date chosen by the trust or fund falling in the period referred to in subsection (1)(a):

(b) a calculation under this section must be undertaken in a manner consistent with the preparation of financial statements and unit pricing calculations, based on an orderly realisation of assets in the ordinary course of business and demonstrable market valuations.

Defined in this Act: amount, available subscribed capital, business, category A income, company, dividend, exempt income, financial statements, foreign tax, group investment fund, imputation credit, imputation credit account, imputation ratio, liquidation, pay, public unit trust, share, shareholder, slice rule

Compare: 2004 No 35 ss MJ 1(2), MJ 4, MJ 5(1)

Section OZ 5(1)(d): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 121(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section OZ 5(6)(a): substituted (with effect on 30 June 2009), on 6 October 2009, by section 485(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OZ 5 compare note: amended (with effect on 1 April 2008), on 29 August 2011, by section 121(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

OZ 6 ASCA redemption of unused investments

When this section applies

(1) The section applies when a public unit trust or a group investment fund that derives category A income—

(a) redeems a share within the meaning in paragraphs (c) and (d) of the definition of **share** in section YA 1 (Definitions); and

(b) has never established an ASC account.

Election

(2) The company may choose to establish an ASC account, and the only ASC credit arising in the account is an ASC credit for an opening balance calculated under section OZ 5(5).

Closing balance

(3) An opening balance under subsection (2) is treated as the closing balance of the account.

Defined in this Act: ASC account, ASC credit, category A income, complying trust, group investment fund, public unit trust, share

Compare: 2004 No 35 s MJ 7

OZ 7 Memorandum accounts in transitional period

Unless the context otherwise requires, sections OZ 8 to OZ 15 apply for a period (the **transitional period**)—

(a) beginning the first day of a person's 2011–12 income year; and

(b) ending on 31 March 2013.

Defined in this Act: income year

Section OZ 7: substituted, on 1 October 2010, by section 14 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 7: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

OZ 7B Maori authority credit ratios for transitional period

When this section applies

(1) This section applies when a Maori authority makes a taxable Maori authority distribution in the transitional period referred to in section OZ 7.

Application of modified sections OZ 8 to OZ 15

(2) Sections OZ 8 to OZ 11 and OZ 13 apply for the transitional period to the Maori authority and the taxable Maori authority distribution as if,—

(a) for each section,—

(i) a reference to a company had been replaced by a reference to a Maori authority:

(ii) a reference to a dividend had been replaced by a reference to a taxable Maori authority distribution:

(iii) a reference to an imputation credit account had been replaced by a reference to a Maori authority credit account:

(iv) a reference to an imputation credit had been replaced by a reference to a Maori authority credit:

(v) a reference to a benchmark dividend had been replaced by a reference to a benchmark distribution:

(vi) a reference to an imputation ratio had been replaced by a reference to a Maori authority credit ratio:

(vii) a reference to an FDP account or FDP credit or FDP ratio had been omitted:

(b) in section OZ 8(2), the reference to 30% had been replaced by a reference to 19.5%:

(c) in section OZ 9,—

(i) in subsection (1)(b), the reference to sections OB 61(4) and OC 28(4) had been replaced by a reference to section OK 20(3):

(ii) in subsection (1)(c)(ii), the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:

(iii) in subsection (3)(b), the reference to a ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5:

(d) in section OZ 10,—

(i) in subsection (1)(b), a reference to a ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5 and a reference to a ratio of 30/70

had been replaced by a reference to a ratio of 19.5/80.5:

(ii) subsection (1)(b)(ii) and (iii) were omitted:

(iii) in subsection (2), the reference to sections LE 8, LE 9, LF 6, and LF 7 had been replaced by a reference to section LO 3:

(iv) in subsection (2), the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:

(e) in section OZ 11,—

(i) in subsection (1)(b)(i), the reference to a ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5 and the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:

(ii) subsection (1)(b)(ii) and (iii) had been omitted:

(iii) in subsection (1)(c), a reference to a new company tax rate person had been replaced by a reference to a Maori authority that uses a 17.5% basic tax rate for the 2011–12 income year or later income years:

(iv) in subsection (2), in the formula, the figure 0.28 had been replaced by the figure 17.5:

(v) in subsection (3), the reference to section LE 1(1) or LF 1(1) had been replaced by a reference to section LO 1(1):

(vi) subsections (4) and (5) had been omitted:

(f) in section OZ 13,—

(i) in subsection (1), the reference to the ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5 and the reference to a ratio of 30/70 had been replaced by a reference to a ratio of 19.5/80.5:

(ii) in subsection (2), the reference to the ratio of 28/72 had been replaced by a reference to a ratio of 17.5/82.5.

Defined in this Act: benchmark distribution, income year, Maori authority, Maori authority credit, Maori authority credit account, Maori authority credit ratio, taxable Maori authority distribution

Section OZ 7B: inserted (with effect on 1 October 2010), on 21 December 2010, by section 120 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 8 Attaching imputation credits and FDP credits: maximum permitted ratio

When this section applies

(1) This section applies when—

(a) a company pays a dividend in the transitional period; and

(b) the company has a credit balance in its imputation credit account and FDP account from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, amounts withheld, or other items dealt with, arising, or calculated using an old company tax rate.

Rate applying for transitional period

(2) If the amount of the imputation credit or FDP credit attached to the dividend is limited by the maximum permitted ratio set out in section OA 18 (Calculation of maximum permitted ratios), the company may choose to treat the item tax rate in the formula in section OA 18(2) as 30%.

Defined in this Act: amount, company, dividend, FDP account, FDP credit, imputation credit, imputation credit account, income, maximum permitted ratio, tax credit, tax year, transitional period

Section OZ 8: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 8(2): amended, on 1 October 2010, by section 15 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 8 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 9 Benchmark dividends: ratio change

When this section applies

(1) This section applies when—

(a) a company pays a dividend in the transitional period; and

(b) the dividend is a later dividend for the purposes of sections OB 61(4) and OC 28(4) (which relate to the benchmark dividend rules), as applicable; and

(c) the relevant benchmark dividend—

(i) was 1 to which section OZ 8 applied; or

(ii) has a ratio of 30/70, for a reason other than the application of section OZ 8.

When ratio treated as same as ratio for benchmark dividend

(2) If, in the cases set out in subsection (3), the imputation ratio or FDP ratio of the later dividend is less than that of the relevant benchmark dividend, the ratio is treated as the same as that of the relevant benchmark dividend.

Cases

(3) The cases referred to in subsection (2) are the following:

(a) in the case of a benchmark dividend described in subsection (1)(c)(i), section OZ 8 does not apply to the later dividend through the lack of a relevant credit balance described in section OZ 8 (1)(b):

(b) in the case of a benchmark dividend described in subsection (1)(c)(ii), the later dividend has a ratio of 28/72.

Defined in this Act: benchmark dividend, company, dividend, FDP ratio, imputation ratio, transitional period

Section OZ 9: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 9(1)(c)(ii): amended, on 1 October 2010, by section 16(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 9(3)(b): amended, on 1 October 2010, by section 16(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 9 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 10 Modifying ratios for imputation credits and FDP credits

When this section applies

(1) This section applies when—

(a) a person derives a dividend in the period from 1 October 2010 to 31 March 2013; and

(b) the dividend and the imputation credits and FDP credits attached to the dividend, as applicable, have —

(i) an imputation ratio greater than 28/72 and less than or equal to 30/70; or

(ii) an FDP ratio greater than 28/72 and less than or equal to 30/70; or

(iii) a combined imputation and FDP ratio greater than 28/72 and less than or equal to 30/70.

Ratio applying

(2) For the purposes of sections LE 8, LE 9, LF 6, and LF 7 (which relate to tax credits for imputation credits and FDP credits), if the amount of the imputation credit or FDP credit, as applicable, is limited by the maximum permitted ratio set out in section OA 18 (Calculation of maximum permitted ratios), the relevant ratio is treated as 30/70.

Defined in this Act: combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, imputation credit, imputation ratio, maximum permitted ratio, transitional period

Section OZ 10: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 10(1)(a): amended, on 1 October 2010, by section 17(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(1)(b)(i): amended, on 1 October 2010, by section 17(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(1)(b)(i): amended, on 1 October 2010, by section 17(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(1)(b)(ii): amended, on 1 October 2010, by section 17(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(1)(b)(ii): amended, on 1 October 2010, by section 17(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(1)(b)(iii): amended, on 1 October 2010, by section 17(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(1)(b)(iii): amended, on 1 October 2010, by section 17(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(2): amended, on 1 October 2010, by section 17(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 10(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 486(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section OZ 10 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 11 Tax credits for imputation credits and FDP credits

When this section applies

(1) This section applies when—

(a) a person—

(i) derives a dividend in the transitional period, if the person is a new company tax rate person that is not a multi-rate PIE:

(ii) derives a dividend in the period from 1 October 2010 to 31 March 2013, if the person is a new company tax rate person that is a multi-rate PIE; and

(b) the dividend, and the imputation credits and FDP credits attached to the dividend, as applicable, have—

(i) an imputation ratio greater than 28/72 and less than or equal to 30/70; or

(ii) an FDP ratio greater than 28/72 and less than or equal to 30/70; or

(iii) a combined imputation and FDP ratio greater than 28/72 and less than or equal to 30/70; and

(c) the person is a new company tax rate person in the period for the dividend.

Imputation ratio and FDP ratio

(2) For a ratio described in subsection (1)(b)(i) or (ii), the amount of the tax credit that the person has is calculated using the formula

dividend and credits × 0.28.

Definition of item in formula

(3) In the formula in subsection (2), **dividend and credits** is the amount of the imputation credit or FDP credit, as applicable, included in the person's assessable income for the purposes of section LE 1(1) or LF 1(1) (which relate to tax credits for imputation credits and FDP credits), together with the amount of dividend to which the relevant credit is attached.

Combined imputation and FDP ratio

(4) For a ratio described in subsection (1)(b)(iii), the total amount of tax credit that the person has is calculated using the formula—

dividend and credits × 0.28.

Definition of item in formula

(5) In the formula in subsection (4), **dividend and credits** is the total amount of the imputation credit and FDP credit included in the person's assessable income for the purposes of section LE 1(1) and LF 1(1), together with the amount of the dividend to which the credits are attached. For the purposes of the calculation of the total tax credit, imputation credits are reduced before FDP credits.

Defined in this Act: amount, assessable income, basic tax rate, combined imputation and FDP ratio, dividend, FDP credit, FDP ratio, imputation credit, imputation ratio, multi-rate PIE, new company tax rate person, tax credit, total tax credit, transitional period

Section OZ 11: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 11(1)(a): substituted, on 1 October 2010, by section 18(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(b)(i): amended, on 1 October 2010, by section 18(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(b)(i): amended, on 1 October 2010, by section 18(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(b)(ii): amended, on 1 October 2010, by section 18(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(b)(ii): amended, on 1 October 2010, by section 18(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(b)(iii): amended, on 1 October 2010, by section 18(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(b)(iii): amended, on 1 October 2010, by section 18(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(1)(c): amended, on 1 October 2010, by section 18(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(2) formula: amended, on 1 October 2010, by section 18(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11(4) formula: amended, on 1 October 2010, by section 18(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11 list of defined terms **multi-rate PIE**: inserted, on 1 October 2010, by section 18(6) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11 list of defined terms **new company tax rate person**: inserted, on 1 October 2010, by section 18(6) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 11 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 12 Tax credits for non-resident investors

When this section applies

(1) This section applies when—

(a) a company pays or derives a dividend with an imputation credit attached in the transitional period; and

(b) the dividend and imputation credit, to the extent to which, in the absence of subpart LP (Tax credits for supplementary dividends),—

(i) the combined imputation and FDP ratio is greater than 28/72 and less than or equal to 30/70; or

(ii) the imputation ratio is greater than 28/72 and less than or equal to 30/70; and

(c) section LP 2(1) (Tax credits for supplementary dividends) applies to the company, or the company is a supplementary dividend holding company.

When ratio equal to old rate

(2) For a ratio described in subsection (1)(b)(i) or (ii) that is equal to 30/70, then any tax credit that the company has is calculated using the formula in section LP 2(2), treating 54/119 as 7/17.

When ratio less than old rate

(3) For a ratio described in subsection (1)(b)(i) or (ii) that is less than 30/70, then, to the extent to which a part of the amount of the dividend and imputation credit has a ratio of 30/70 through the application of section OZ 8, any tax credit that the company has is calculated using the formula in section LP 2(2), treating 54/119 as 7/17.

Benchmark calculations

(4) In the application of sections GB 35, GB 36, OA 18, OB 60, OB 61, OC 28 (which relate to imputation and FDP credit ratios) under section LP 5 (Application of benchmark dividend rules and imputation credit ratio), the provisions apply using the ratio 30/70 and the old company tax rates.

Relationship with exempt income rules

(5) If the company derives a dividend to which this section applies, item **tax rate** in the formula in section LP 8(2) (Relationship with exempt income rules) is treated as 30%, to the extent to

which a part of the supplementary dividend was calculated as described in subsection (2) or (3).

Defined in this Act: amount, combined imputation and FDP ratio, company, dividend, imputation credit, imputation ratio, non-resident, pay, supplementary dividend, supplementary dividend holding company, tax credit, transitional period

Section OZ 12: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 12(1)(b)(i): amended, on 1 October 2010, by section 19(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(1)(b)(i): amended, on 1 October 2010, by section 19(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(1)(b)(ii): amended, on 1 October 2010, by section 19(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(1)(b)(ii): amended, on 1 October 2010, by section 19(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(2): amended, on 1 October 2010, by section 111(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OZ 12(2): amended, on 1 October 2010, by section 19(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(2): amended, on 1 October 2010, by section 19(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(2): amended (with effect from 1 April 2008), on 29 May 2008, by section 37(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section OZ 12(3): amended, on 1 October 2010, by section 111(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section OZ 12(3): amended, on 1 October 2010, by section 19(3)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(3): amended, on 1 October 2010, by section 19(3)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(3): amended (with effect from 1 April 2008), on 29 May 2008, by section 37(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section OZ 12(4): amended, on 1 October 2010, by section 19(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12(5): amended, on 1 October 2010, by section 19(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 12 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 13 Fully credited dividends: modifying actual ratio

What this section applies to

(1) This section applies in the transitional period to a dividend for which, in the absence of this section, the actual ratio under section CD 43(26) (Available subscribed capital (ASC) amount) is greater than 28/72 and less than or equal to 30/70.

Ratio for calculation

(2) In the calculation under section CD 43(26), the part of the dividend that is fully credited, the actual ratio is treated as 28/72.

Defined in this Act: dividend, fully credited, transitional period

Section OZ 13: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 13(1): amended, on 1 October 2010, by section 20(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 13(1): amended, on 1 October 2010, by section 20(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 13(2): amended, on 1 October 2010, by section 20(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 13 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 14 Dividends from qualifying companies

When this section applies

(1) This section applies when—

(a) a qualifying company pays a dividend in the transitional period; and

(b) section OZ 8 applies to the dividend.

Exempt income

(2) In the calculation under section HA 14 (Dividends paid by qualifying companies) the extent to which the dividend is exempt income of the person, item **tax rate** in the formula in section HA 15(2) (Fully imputed dividends) is treated as 0.30.

Defined in this Act: dividend, exempt income, qualifying company, transitional period

Section OZ 14: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 14(2): amended, on 1 October 2010, by section 21 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 14 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 15 Attaching imputation credits and notional distributions: modifying amounts

When this section applies

(1) This section applies when—

(a) a statutory producer board or a co-operative company determines to pay a cash distribution or make a notional distribution in the transitional period; and

(b) the board or company has a credit balance in its imputation credit account from income, expenditure, memorandum account debits, credits, and balances, refunds, tax, tax credits, transfers, amounts withheld, or other items dealt with, arising, or calculated using an old company tax rate.

Statutory producer boards' imputation credits

(2) In the calculation under section OB 73(4) (Statutory producer boards attaching imputation credits to cash distributions), the board may choose to treat item **tax rate** in the formula as 30%.

Statutory producer boards' notional distributions

(3) In the calculation under section OB 75(2) (Statutory producer boards' notional distributions that are dividends), the board may choose to treat item **tax rate** in the formula as 30%.

Co-operative companies' imputation credits

(4) In the calculation under section OB 78(3) (Co-operative companies attaching imputation credits to cash distributions), the company may choose to treat item **tax rate** in the formula as 30%. This subsection does not apply to a Maori authority.

Co-operative companies' notional distributions

(5) In the calculation under section OB 80(2) (Co-operative companies' notional distributions that are dividends), the company may choose to treat item **tax rate** in the formula as 30%. This subsection does not apply to a Maori authority.

Defined in this Act: amount, co-operative company, imputation credit account, income, Maori authority, statutory producer board, tax credit, transitional period

Section OZ 15: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 15(2): amended, on 1 October 2010, by section 22(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 15(3): amended, on 1 October 2010, by section 22(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 15(4): amended, on 1 October 2010, by section 22(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 15(5): amended, on 1 October 2010, by section 22(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 15 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 16 BETA reductions

What this section applies to

(1) This section applies to—

(a) a credit and a debit in the branch equivalent tax account of a company or a consolidated group before the first day of their 2011–12 income year:

(b) a credit and a debit arising to the branch equivalent tax account of a company or a consolidated group on or after the first day of their 2011–12 income year, if the credit and debit relate to their 2010–11 or earlier income years.

Reduction

(2) The amount of the credit and debit are reduced by multiplying the amount by 28/30.

Defined in this Act: amount, branch equivalent tax account, company, consolidated group, income year

Section OZ 16: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 16(1)(a): amended, on 1 October 2010, by section 23(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 16(1)(b): amended, on 1 October 2010, by section 23(1)(b)(i) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 16(1)(b): amended, on 1 October 2010, by section 23(1)(b)(ii) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 16(2): amended, on 1 October 2010, by section 23(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 16 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 17 CTRA reductions

What this section applies to

(1) This section applies to—

(a) a credit and a debit in the CTR account of a company or a consolidated group before the first day of their 2011–12 income year:

(b) a credit and a debit arising to the CTR account of a company or a consolidated group on or after the first day of their 2011–12 income year, if the credit and debit relate to their 2010–11 or earlier income years.

Reduction

(2) The amount of the credit and debit are reduced by multiplying the amount by 28/30.

Defined in this Act: amount, company, consolidated group, CTR account, income year

Section OZ 17: added, on 1 April 2008, by section 520 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section OZ 17(1)(a): amended, on 1 October 2010, by section 24(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 17(1)(b): amended, on 1 October 2010, by section 24(1)(b)(i) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 17(1)(b): amended, on 1 October 2010, by section 24(1)(b)(ii) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 17(2): amended, on 1 October 2010, by section 24(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section OZ 17 compare note: repealed (with effect on 1 April 2008), on 21 December 2010, by section 119 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

OZ 18 Credit-back of PCA balance

When this section applies

(1) This section applies for a life insurer immediately before a day (the **application day**) that is—

(a) 1 July 2010, if the life insurer does not have an early life regime application day, or

(b) their early life regime application day, if the life insurer does have an early life regime application day.

Credit-back

(2) Immediately before the application day,—

(a) the credit balance of a life insurer's policyholder credit account is credited as an imputation credit to the life insurer's imputation credit account, and the policyholder credit account is debited accordingly:

(b) the credit balance of a consolidated group's policyholder credit account is credited as an imputation credit to the consolidated group's imputation credit account, and the consolidated group's policyholder credit account is debited accordingly.

Defined in this Act: early life regime application day consolidated group, imputation credit, imputation credit amount, life insurer, policyholder credit account

Section OZ 18: added, on 30 June 2010, by section 487 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part R
General collection rules

Subpart RA—General withholding and payment obligations

Introductory provisions

RA 1 What this Part does

This Part provides the rules to require a person to pay to the Commissioner interim and terminal payments of tax and other amounts payable under the Inland Revenue Acts. The Part provides for—

(a) a person's general withholding and payment obligations; and

(b) the payment of terminal tax, *see* subpart RB; and

(c) the payment of provisional tax, *see* subpart RC; and

(d) the payment of the following employment-related taxes, *see* subpart RD:

(i) pay-as-you-earn (PAYE):

(ii) fringe benefit tax (FBT):

(iii) employer's superannuation contribution tax (ESCT); and

(e) the payment of resident withholding tax (RWT), *see* subpart RE; and

(f) the payment of non-resident withholding tax (NRWT), *see* subpart RF; and

(g) *[Repealed]*

(gb) the payment of retirement scheme contribution tax (RSCT), *see* subpart RH; and

(h) the treatment of refunds by the Commissioner, *see* subpart RM; and

(i) the use of intermediaries in the tax system, *see* subpart RP.

Defined in this Act: amount, Commissioner, employer's superannuation contribution, ESCT, FBT, fringe benefit tax, Inland Revenue Acts, intermediary, NRWT, pay, PAYE, provisional tax, retirement scheme contribution, RSCT, RWT, tax, terminal tax

Section RA 1(g): repealed (with effect on 30 June 2009), on 6 October 2009, by section 488(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 1(gb): inserted, on 1 April 2008, by section 521(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 1 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 488(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 1 list of defined terms **retirement scheme contribution**: inserted, on 1 April 2008, by section 521(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 1 list of defined terms **RSCT**: inserted, on 1 April 2008, by section 521(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RA 2 Amounts treated as income tax

The provisions of this Act and the Tax Administration Act 1994 apply in relation to an amount that a person is liable to pay under this Part as if the amount were income tax imposed under section BB 1 (Imposition of income tax).

Defined in this Act: amount, income tax, pay

Compare: 2004 No 35 ss MB 12, NC 20(1), ND 1W(2), NE 7(2), NF 13, NG 17(2), NH 3(7)

Section RA 2 compare note: amended (with effect on 1 April 2008), on 7 December 2009, by section 101(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Payment and withholding obligations

RA 3 Terminal tax obligations

A person liable under section BC 8 (Satisfaction of income tax liability) to pay an amount of terminal tax for a tax year must pay the amount to the Commissioner under subpart RB (Terminal tax) by the due date.

Defined in this Act: amount, Commissioner, pay, tax year, terminal tax

Compare: 2004 No 35 ss BC 9, MC 1

RA 4 Provisional tax obligations

A person liable to pay provisional tax must pay instalments on account of their income tax liability for a tax year to the Commissioner under subpart RC (Provisional tax) by the due dates.

Defined in this Act: Commissioner, income tax liability, pay, provisional tax, tax year

Compare: 2004 No 35 ss BB 2(3), MB 4

RA 5 Tax obligations for employment-related taxes

Withholding and payment obligations

(1) A person who makes a payment or provides a benefit of 1 of the following kinds must either withhold and pay, or pay, the amount of tax for the payment or benefit to the Commissioner under subpart RD (Employment-related taxes) by the due dates:

(a) a PAYE income payment:

(b) a fringe benefit:

(c) an employer's superannuation cash contribution.

Timing for PAYE income payments

(2) An amount of tax withheld from a PAYE income payment must be withheld at the time the person makes the payment.

Defined in this Act: amount of tax, Commissioner, employer's superannuation cash contribution, fringe benefit, pay, PAYE income payment

Compare: 2004 No 35 ss BE 1(1), (4), (5), NC 15, ND 1, NE 3

Section RA 5(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 489(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 5(1)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 489(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 5(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 489(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 5(2): added (with effect on 1 April 2008), on 6 October 2009, by section 489(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 5 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 489(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 5 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 489(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RA 6 Withholding and payment obligations for passive income

Resident passive income

(1) A person who makes a payment of resident passive income must withhold and pay RWT for the payment to the Commissioner under subpart RE (Withholding tax on resident passive income (RWT)) by the due dates.

Non-resident passive income

(2) A person who makes a payment of non-resident passive income must withhold and pay NRWT for the payment to the Commissioner under subpart RF (Withholding tax on non-resident passive income (NRWT)) by the due dates.

Foreign dividends

[Repealed]

(3) *[Repealed]*

Timing for payments of passive income

(4) An amount of tax withheld under subsections (1) and (2) must be withheld at the time the person makes the payment.

Defined in this Act: Commissioner, company, non-resident passive income, NRWT, pay, resident passive income, RWT

Compare: 2004 No 35 ss BE 1(4)–(6), NF 4, NG 11, NH 3

Section RA 6(3) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 490(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 6(3): repealed (with effect on 30 June 2009), on 6 October 2009, by section 490(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 6(4) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 490(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 6(4): inserted (with effect on 1 April 2008), on 6 October 2009, by section 490(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 6 list of defined terms **FDP**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 490(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 6 list of defined terms **foreign dividend**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 490(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RA 6B Withholding and payment obligations for retirement scheme contributions

A person who makes a contribution to a retirement savings scheme must withhold and pay RSCT for the contribution to the Commissioner under subpart RH (Withholding tax on retirement scheme contributions) by the due dates.

Defined in this Act: Commissioner, pay, retirement savings scheme, RSCT

Compare: 2004 No 35 s NEB 1

Section RA 6B: inserted, on 1 April 2008, by section 522 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RA 7 Payment of tax by public authorities

A public authority that pays an amount under this Act acts within its capacity, whether further appropriation is made or not.

Defined in this Act: amount, pay, public authority

Compare: 2004 No 35 s MH 1

RA 8 Liability of persons receiving payments or benefits

Despite sections RA 5 and RA 6, a person receiving or deriving a payment or benefit in relation to which an amount of tax must be withheld or paid may be liable under this Part for payment of the tax.

Defined in this Act: amount of tax, pay, tax

Compare: 2004 No 35 ss NC 16, NE 2A(1), (2), NF 3, NG 12

RA 9 Treatment of amounts withheld as received

Payments treated as received or derived

(1) An amount withheld from a payment under this Part, unless a provision in this Part states otherwise,—

(a) is treated as received—

(i) by the person to whom the payment is made; and

(ii) at the time the payment is made; and

(b) is treated for the purposes of this Act as derived by the person at the same time and in the same way as they derive the payment from which the amount is withheld; and

(c) includes a combined tax and earner-related payment.

Exclusion

(2) Subsection (1) does not apply to a replacement payment under a share-lending arrangement.

Defined in this Act: amount, combined tax and earner-related payment, pay, replacement payment, share-lending arrangement

Compare: 2004 No 35 ss NC 19, NE 6, NF 12, NG 15

RA 10 When obligations not met

When this section applies

(1) This section applies when—

(a) a person liable to withhold an amount of tax for a PAYE income payment, an employer's superannuation cash contribution, a retirement scheme contribution, a payment of resident passive income, or a payment of non-resident passive income, does not withhold and pay the amount to the Commissioner; or

(b) a person liable to pay an amount of tax to the Commissioner for a fringe benefit does not pay the amount.

(c) *[Repealed]*

Debt payable to Commissioner

(2) The amount is a debt payable to the Commissioner.

When payable

(3) The amount is due to be paid to the Commissioner on the relevant due date after the end date for the original liability set out in section RA 15.

Premiums and levies

(4) The amount includes a combined tax and earner-related payment.

Defined in this Act: amount, amount of tax, combined tax and earner-related payment, Commissioner, employer's superannuation cash contribution, fringe benefit, non-resident passive income, pay, PAYE income payment, resident passive income

Compare: 2004 No 35 ss NC 5(2), NC 16, NC 20(1), ND 1, ND 1W(2), NE 5, NEB 4(1), NF 3, NF 4, NF 13, NG 12, NG 13

Section RA 10(1)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 491(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 10(1)(a): amended, on 1 April 2008, by section 523(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 10(1)(b): amended (with effect on 30 June 2009), on 6 October 2009, by section 491(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 10(1)(c): repealed (with effect on 30 June 2009), on 6 October 2009, by section 491(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 10 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 491(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 10 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 491(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 10 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 491(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 10 compare note: amended, on 1 April 2008, by section 523(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RA 11 Adjustment to correct errors: certain underpayments

When this section applies

(1) This section applies when—

(a) a person (the **payer**) is required to withhold and pay to the Commissioner—

(i) RWT in relation to a payment to another person (the **payee**) of resident passive income that is interest or a dividend treated as interest; or

(ii) NRWT in relation to a payment to the payee of non-resident passive income; and

(b) the payer, through an error, does not withhold some or all of the amount.

Amount withheld from later payment or recovered

(2) The payer may—

(a) subtract from a later payment to the payee an amount to correct the deficiency; or

(b) recover from the payee an amount to correct the deficiency.

Requirements when withholding from later payment

(3) For the purposes of subsection (2)(a),—

(a) the later payment must be a payment of interest, a dividend treated as interest, or a payment of non-resident passive income, as applicable; and

(b) the payment must be made in the same tax year in which the first payment is made.

Defined in this Act: amount, Commissioner, dividend treated as interest, interest, non-resident passive income, NRWT, pay, resident passive income, RWT, tax year

Compare: 2004 No 35 ss NF 6(1), NG 16A(1)

RA 12 Adjustment to correct errors: certain excess amounts

When this section applies

(1) This section applies when—

(a) a person (the **payer**) is required to withhold and pay to the Commissioner an amount of RWT or NRWT for a payment to another person (the **payee**); and

(b) the payer, through an error, withholds an amount (the **excess amount**) that is more than the amount required under this Part.

Refunding excess amount of resident passive income

(2) For a payment of resident passive income, the payer may pay the excess amount to the payee at any time before the end of the tax year in which the amount of tax is withheld if,—

(a) for a payment of interest or a dividend treated as interest, an RWT withholding certificate relating to the amount has either not been sent out or has been returned and cancelled:

(b) for a payment of a dividend other than a dividend treated as interest, a shareholder dividend statement relating to the amount has either not been sent out for the purposes of section 29 of the Tax Administration Act 1994 or has been returned and cancelled:

(c) for a taxable Maori authority distribution, a notice relating to the amount has either not been given to a member of the Maori authority under section 31 of that Act or has been returned and cancelled.

Treatment of amount

(3) For the purposes of this section, when the payer pays the excess amount under subsection (2), the amount is no longer treated as RWT.

Amendments to notices

(4) If the RWT withholding certificate, shareholder dividend statement, or notice referred to in subsection (2)(c) has been returned or cancelled, the payer must provide the payee with an amended certificate, statement, or notice, as applicable.

Commissioner refunding overpayment

(5) If the excess amount has been paid to the Commissioner, the Commissioner must refund the amount of the overpayment to—

(a) the payee; or

(b) the payer, if they have not subtracted the amount under subsection (6)(a) from a later payment made in relation to the payee.

Payer's options

(6) For the purposes of subsection (5), if the excess amount has been refunded to the payee, the payer may—

(a) subtract the amount from an amount paid later to the Commissioner under section RE 21 or RF 13 (which relate to resident passive income and non-resident passive income), noting the action in the statement required under section 50 of the Tax Administration Act 1994; or

(b) apply for a refund of the amount under section RM 8 (Overpaid RWT or NRWT).

Overpayment through payee's act or omission

(7) Despite subsections (2) and (5), if the excess amount arises from an act or omission by the payee, the payer must pay the full amount withheld to the Commissioner and is not liable to repay the excess amount to the payee or another person.

Defined in this Act: amount, amount of tax, Commissioner, dividend, dividend treated as interest, interest, Maori authority, non-resident passive income, notice, NRWT, pay, resident passive income, RWT, RWT withholding certificate, shareholder dividend statement, tax year, taxable Maori authority distribution

Compare: 2004 No 35 ss NF 6(2)–(4), NF 7(1), (2), NG 16A(2), (3)

Payment dates

RA 13 Payment dates for terminal tax

When payment due

(1) A person must pay their terminal tax for a tax year by—

(a) the 7th day of the month in schedule 3, part A, column G or H (Payment of provisional tax and terminal tax) for the person's corresponding income year, unless paragraph (b) applies; and

(b) the 15th day of January, if January is the month in schedule 3, part A, column G or H, for the person's corresponding income year.

Columns G and H

(2) For the purposes of subsection (1), the month in schedule 3, part A, column G or H, for the person's corresponding income year is—

(a) the month in column H, if—

(i) the person's return of income for the income year was linked to a tax agent as described in subsection (4); or

(ii) the person has asked for an income statement under section 80C of the Tax Administration Act 1994 or has been sent an income statement under section 80D of that Act, and the Commissioner has been notified that a tax agent will respond to the income statement sent to the person; or

(b) the month in column G in any other case.

First occurrence of month

(3) For the purposes of subsection (1),—

(a) the month in column G is the first occurrence of that month after the balance date:

(b) the month in column H is the first occurrence of that month after the month in column G.

Linked to tax agent

(4) For the purposes of subsection (2)(a)(i), a return of income is linked to a tax agent if the Commissioner has been notified that the return is to be filed by the tax agent who has an extension of time under section 37(4) of the Tax Administration Act 1994.

Defined in this Act: Commissioner, corresponding income year, income statement, notify, pay, return of income, tax agent, tax year, terminal tax

Compare: 2004 No 35 s MC 1

Section RA 13(1)(b): amended (with effect from 1 April 2008), on 29 May 2008, by section 38(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RA 13(2)(a)(i): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 112(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

RA 14 Payment dates for provisional tax

A person must pay their provisional tax for a tax year under section RC 9 (Provisional tax payable in instalments) according to the relevant cycle of instalments set out in schedule 3, part A, columns A to F (Payment of provisional tax and terminal tax).

Defined in this Act: pay, provisional tax, tax year

Compare: 2004 No 35 s MB 8(1), (2)

RA 15 Payment dates for interim and other tax payments

When this section applies

(1) This section applies when a person is required—

(a) to withhold under section RA 5 an amount of tax for a payment and pay it to the Commissioner; or

(b) to withhold and pay, or pay, under section RA 6 an amount to the Commissioner for a payment received or benefit provided by them; or

(c) to withhold and pay under section RA 6B an amount of tax to the Commissioner for a retirement scheme contribution.

When payment due

(2) The person must pay the amount to the Commissioner by the following dates:

(a) when the period for which the payment is made is shorter than a month, by the 5th day after the relevant end date:

(b) when the period for which the payment is made is a month or a period that is longer than a month but not a period referred to in paragraph (c) or (d), by the 20th day of the month after the relevant end date:

(c) when the period for which the payment is made is a tax year or income year or both, by 31 May:

(cb) despite subsection (3)(c), for FBT payable for the last quarter of a tax year, by 31 May:

(d) for a close company that pays FBT on an income year basis, by terminal tax date.

Relevant end dates

(3) In this section, an **end date** means 1 of the following, as applicable:

(a) for PAYE and ESCT payable for 2 payment periods in a month under section RD 4(1)(b) or RD 65(3) (which set out the basis for payment of PAYE and ESCT),—

(i) for the first payment period, the 15th day of the month; and

(ii) for the second payment period, the last day of the month:

(b) for PAYE, RWT, NRWT, and RSCT payable monthly under section RD 4(1)(a), RE 21(2) and (7), RF 13(3), or RH 2(2) (which set out the basis for payment of PAYE, RWT, NRWT, and RSCT), as applicable, the last day of a month:

(c) for FBT payable quarterly under sections RD 58, RD 59, and RD 62 (which set out the basis for payment of FBT), the last day of a quarter:

(d) for RWT and NRWT payable by instalment under section RE 21(3) or RF 13(2) (which set out the basis for payment of RWT and NRWT)—

(i) for the first instalment, the last day of September; and

(ii) for the second instalment, the last day of March.

When payment due in December

(4) Despite subsection (2), for the purposes of this section and the payment of PAYE and ESCT to the Commissioner, if the month referred to in subsection (3) is December, the payment is due by 15 January.

Discrepancies

(5) Subsection (6)—

(a) applies when a discrepancy arises in the information that a person is required to provide under,—

(i) for resident passive income, section 51(1), (4), or (5) of the Tax Administration Act 1994:

(ii) for non-resident passive income, section 49(1) or (2) of that Act:

(b) does not apply to an unpaid amount that the Commissioner assesses for a particular return period.

Payment dates

(6) If an amount of RWT or NRWT remains unpaid, the person required to withhold the amount must pay it to the Commissioner no later than—

(a) 20 April after the end of the tax year in relation to information provided under section 49(1) or 51(1) of the Tax Administration Act 1994:

(b) the last date for providing the information, in relation to information provided under section 49(2) or 51(4) or (5) of that Act.

Non-resident passive income

(7) The Commissioner may extend the time for payment of NRWT.

Defined in this Act: amount of tax, assessment, close company, Commissioner, end date, ESCT, FBT, first payment period, income year, non-resident passive income, NRWT, pay, PAYE, quarter, resident passive income, retirement scheme contribution, RSCT, RWT, second payment period, tax year, terminal tax

Compare: 2004 No 35 ss NC 15, ND 9(2), (3), ND 10, ND 13, ND 14, NE 4, NEB 3(1), NF 4, NG 11, NH 3

Section RA 15(1)(b): amended, on 1 April 2008, by section 524(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 15(1)(c): added, on 1 April 2008, by section 524(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 15(2)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 492(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15(2)(c): substituted (with effect on 1 April 2009), on 6 October 2009, by section 492(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15(2)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 492(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15(2)(cb): inserted (with effect on 1 April 2009), on 6 October 2009, by section 492(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15(2)(d): substituted (with effect on 1 April 2008), on 6 October 2009, by section 492(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15(3)(b): substituted, on 1 April 2008, by section 524(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 15(3)(c): substituted (with effect on 30 June 2009), on 6 October 2009, by section 492(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 492(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 15 list of defined terms **retirement scheme contribution**: inserted, on 1 April 2008, by section 524(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RA 15 list of defined terms **RSCT**: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RA 15 compare note: amended, on 1 April 2008, by section 524(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RA 16 Payment date when taxable activity ends

When this section applies

(1) This section applies for a month when a registered person is required under section RA 6 to withhold and pay RWT or NRWT, and the person—

(a) stops carrying on a taxable activity; or

(b) no longer carries on a taxable activity in New Zealand.

Payment to Commissioner

(2) The person must pay to the Commissioner by the 20th day of the next month the total amount of tax for all payments relating

to the taxable activity to the extent to which an amount of tax remains unpaid.

Exemption continuing

(3) This section does not apply for resident passive income if the person continues to hold an RWT exemption certificate.

Defined in this Act: amount of tax, Commissioner, NRWT, pay, registered person, resident passive income, RWT, RWT exemption certificate, taxable activity

Compare: 2004 No 35 ss NF 4(5), NG 11(4)

RA 17 Payment date when RWT exemption certificate expires

When this section applies

(1) This section applies in relation to a month of a tax year when an RWT exemption certificate of a person expires.

Payment to Commissioner

(2) The person must pay to the Commissioner by the 20th day of the month following that in which the certificate expires the total amount of tax withheld by them to the extent to which the amount remains unpaid.

Exclusion

(3) This section does not apply if the person continues to be required to withhold RWT through the carrying on of a taxable activity.

Defined in this Act: amount of tax, Commissioner, pay, RWT, RWT exemption certificate, tax withheld, tax year, taxable activity

Compare: 2004 No 35 s NF 4(6)

RA 18 Payment date for emigrating companies

When this section applies

(1) This section applies to an emigrating company that is treated under section FL 2 (Treatment of emigrating companies and their shareholders) as paying a distribution to a shareholder.

Payment

(2) On or before the date that is 3 months after the time of emigration, the company must pay to the Commissioner all amounts

of tax for resident passive income or non-resident passive income withheld in relation to the distribution.

Defined in this Act: amount of tax, Commissioner, emigrating company, non-resident passive income, pay, resident passive income, shareholder, time of emigration

Compare: 2004 No 35 ss NF 4(6B), NG 11(4B)

Refunds

RA 19 Refunds of excess amounts or when amounts mistakenly paid

When this section applies

(1) This section applies for a person (the **payer**) and the withholding of an amount of tax that is more than the amount required to be withheld and paid under this Part (the **excess amount**) or an amount mistakenly paid, when—

(a) the payer withholds and pays to the Commissioner an excess amount of RWT or NRWT:

(b) the payer pays FDP of an excess amount:

(c) a PAYE intermediary pays an amount of tax for an employer through an error, or when the payment is not funded by the employer, as described in section RM 7 (Refunds to PAYE intermediaries):

(d) the result of a calculation for FBT made by an employer under sections RD 50 to RD 53 (which relate to attributed benefits and non-attributed benefits) is negative.

Refunds

(2) The Commissioner must refund the excess amount to the payer.

Defined in this Act: amount, amount of tax, Commissioner, employer, FBT, FDP, NRWT, pay, PAYE intermediary, RWT

Compare: 2004 No 35 ss NBA 7, ND 10(4)(a), NF 7(1), NG 16, NH 4

Amalgamations

RA 20 Amalgamation of companies

Amalgamated company's obligation

(1) If an amalgamating company ends its existence on a resident's restricted amalgamation, an unsatisfied obligation that the amalgamating company has at the time of the amalgamation

to withhold and pay an amount of tax to the Commissioner under this Part is treated as an obligation of the amalgamated company.

Thresholds for close companies

(2) For the purpose of determining whether the threshold under section RD 60 (Close company option) has been met, the amalgamated company is treated as paying the gross amounts of tax withheld under section RA 5(1)(a) and (c) by the amalgamating company in the income year before that in which the amalgamation takes place.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount of tax, close company, Commissioner, gross, income year, pay, resident's restricted amalgamation

Compare: 2004 No 35 ss NC 15(7), ND 13(8), ND 14(8), NEB 3(2), NH 4(8)

Section RA 20(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 493(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 493(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20(2): added (with effect on 1 April 2008), on 6 October 2009, by section 493(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20 list of defined terms **amalgamation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 493(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20 list of defined terms **close company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 493(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20 list of defined terms **gross**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 493(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20 list of defined terms **income year**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 493(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 20 compare note: amended, on 1 April 2008, by section 525 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Regulations

RA 21 Regulations

PAYE income payments

(1) The Governor-General may make regulations by Order in Council to—

(a) declare a particular payment, or particular class of payments, to be included in, or excluded from, the definition of—

(i) salary or wages; or

(ii) extra pay; or

(iii) schedular payment:

(b) provide further rules in relation to schedular payments as set out in subsection (2):

(c) provide that the regulations do not apply to a particular person, or class or persons, on notification from the Commissioner.

Schedular payments

(2) For the purposes of subsection (1)(b), regulations may be made under this Act or the Tax Administration Act 1994 in relation to schedular payments for the following purposes:

(a) to set the amount of tax for a particular schedular payment or particular class of schedular payment:

(b) to provide that the Commissioner may, if a person asks, set the rate of tax for a schedular payment to the person:

(c) to provide that the amount of tax for a particular schedular payment, class of schedular payment, or schedular payments under a particular threshold is the person's income tax liability in relation to the relevant kind of income:

(d) to provide that an amount of tax must be withheld and paid despite any assignment or charge.

Employment-related loans

(3) The Governor-General may make regulations by Order in Council to declare the rate of interest applying to employment-related loans.

Application to quarters

(4) When regulations referred to in subsection (3) are made, they apply to quarters starting from a date at least 1 month following

the date the regulations were made. Regulations that reduce the rate of interest from the prescribed rate of interest at the time, if made at least 1 month before the quarter ends, may apply for that quarter.

Defined in this Act: amount of tax, employment-related loan, extra pay, income, income tax liability, interest, notify, pay, prescribed rate of interest, quarter, salary or wages, schedular payment, tax

Compare: 2004 No 35 ss NC 21, ND 1F

Section RA 21(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 494 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Application of other provisions

RA 22 Limits on application of other provisions for purposes of PAYE rules

Amounts not separated

(1) For an amount of tax not withheld and paid to the Commissioner, the provisions listed in subsection (2) do not require—

(a) the separate identification of the amounts of a combined tax and earner-related payment that are attributable to—

(i) an amount of tax for a PAYE income payment that an employer or PAYE intermediary is required to make under the PAYE rules:

(ii) an amount that an employer must subtract under the sections referred to in subsection (2)(b) to (d):

(b) the bringing of separate proceedings or separate treatment for the collection, recovery, or imposition of penalties in relation to an amount of a combined tax and earner-related payment.

Provisions

(2) The sections referred to in subsection (1) are—

(a) sections 143, 143A, and 156 to 165 of the Tax Administration Act 1994:

(b) section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992:

(c) section 285 of the Accident Insurance Act 1998:

(d) section 221 of the Accident Compensation Act 2001.

Defined in this Act: amount, amount of tax, combined tax and earner-related payment, Commissioner, employer, pay, PAYE income payment, PAYE intermediary, PAYE rules

Compare: 2004 No 35 s NC 20

Section RA 22(2)(d): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

RA 23 Application of other provisions for purposes of ESCT rules and NRWT rules

References

(1) For the purposes of the ESCT rules and the NRWT rules, sections 167 and 169 of the Tax Administration Act 1994 apply, modified as necessary, as if—

(a) a reference to an amount of tax withheld were a reference to ESCT or NRWT, as applicable:

(b) a reference to an employer were a reference to a person required to withhold and pay ESCT or NRWT, as applicable:

(c) a reference to the PAYE rules were a reference to the ESCT rules or the NRWT rules.

Exclusion

[Repealed]

(2) *[Repealed]*

Defined in this Act: amount of tax, employer, ESCT, ESCT rules, NRWT, NRWT rules, pay, PAYE rules, tax withheld

Compare: 2004 No 35 ss NE 7, NG 17(1)

Section RA 23(2) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 495(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 23(2): repealed (with effect on 1 April 2008), on 6 October 2009, by section 495(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 23(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 495(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RA 23 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 495(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RA 24 Application of other provisions for purposes of RSCT rules

For the purposes of the RSCT rules, sections 170(2), 171, and 172 of the Tax Administration Act 1994, modified as necessary, apply as if—

(a) a reference to an amount of tax withheld were a reference to RSCT:

(b) a reference to the RWT rules were a reference to the RSCT rules.

Defined in this Act: amount of tax, RSCT rules, RWT rules

Compare: 2004 No 35 s NEB 7(1)

Section RA 24: added, on 1 April 2008, by section 526 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart RB—Terminal tax

RB 1 Payment of terminal tax

A person must pay their terminal tax for a tax year on the due date set out in section RA 13 (Payment dates for terminal tax).

Defined in this Act: pay, tax year, terminal tax

Compare: 2004 No 35 s MC 1

Section RB 1: amended (with effect on 1 April 2008), on 6 October 2009, by section 496(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RB 2 Income tax liability for non-filing taxpayers for non-resident passive income

For the purposes of calculating a person's terminal tax under section BC 8 (Satisfaction of income tax liability), the income tax liability of a non-filing taxpayer who derives non-resident passive income is determined under section BC 1 (Non-filing and filing taxpayers).

Defined in this Act: income tax liability, non-filing taxpayer, non-resident passive income, terminal tax

Compare: 2004 No 35 s BC 1

RB 3 Schedular income tax liability for filing taxpayers for non-resident passive income

When this section applies

(1) This section applies for the purposes of calculating a filing taxpayer's terminal tax under section BC 8 (Satisfaction of income tax liability).

Calculating amount of liability

(2) The schedular income tax liability of the filing taxpayer under section BC 7 (Income tax liability of person with schedular income) for each class of non-resident passive income that is schedular income under paragraph (f) of the definition of **schedular income** is equal to an amount calculated using the formula—

amount of income × tax rate.

Definition of item in formula

(3) In the formula, **tax rate** is the rate set out in sections RF 7 to RF 10, and RF 12 (which relate to the calculation of NRWT) that applies to the class of non-resident passive income.

No imputation credits

(4) If the taxpayer derives a dividend to which subsection (2) applies, they do not have a credit under section LE 1 (Tax credits for imputation credits) for an imputation credit attached to the dividend.

Defined in this Act: amount, dividend, filing taxpayer, imputation credit, non-filing taxpayer, non-resident passive income, NRWT, schedular income, schedular income tax liability, terminal tax

Compare: 2004 No 35 ss BC 7, NG 3

Section RB 3(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 497(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RB 4 Using refunds to satisfy tax liabilities

If a person is entitled to a refund of an amount of tax from the Commissioner, the amount may be applied under section RM 10 (Using refund to satisfy tax liability) to satisfy a liability that the person has under the Inland Revenue Acts.

Defined in this Act: amount of tax, Commissioner, Inland Revenue Acts

Compare: 2004 No 35 s MD 1(3), (3A)

Subpart RC—Provisional tax

Introductory provisions

RC 1 What this subpart does

When this subpart applies

(1) Sections RC 3 to RC 39 apply, for the purposes of the provisional tax rules, to provide—

- (a) the circumstances in which a person has a provisional tax obligation:
- (b) a person's provisional tax liability for a tax year, and the methods for calculating the amount payable for the tax year:
- (c) the number of instalments of provisional tax and the instalment dates for a corresponding income year:
- (d) how the amount of an instalment of provisional tax is determined:
- (e) the payment of provisional tax in a transitional year:
- (f) the application of the rules relating to use of money interest in Part 7 of the Tax Administration Act 1994, and late payment penalties and shortfall penalties in Part 9 of that Act.

Instalment dates

(2) In this subpart, a reference to an instalment classified by the letters A to F is a reference to a date in the table in schedule 3, part A (Payment of provisional tax and terminal tax) on which an instalment of provisional tax is payable for an income year corresponding to a tax year.

Defined in this Act: amount, corresponding income year, income year, instalment date, pay, provisional tax, provisional tax rules, shortfall penalty, tax year, transitional year

Compare: 2004 No 35 s MB 1

RC 2 Provisional tax rules and their application

Meaning

(1) The **provisional tax rules** means—

- (a) this subpart; and
- (b) section LB 2 (Tax credits for provisional tax payments); and

(c) sections 15N to 15S, 119, 120KB to 120N, 120OE, 139B and 139C, 173P to 173R of the Tax Administration Act 1994.

Application

(2) The provisional tax rules apply to a person who is required or who chooses to pay provisional tax.

Defined in this Act: provisional tax, provisional tax rules

Compare: 2004 No 35 s OB 1 **provisional tax rules**

RC 3 Who is required to pay provisional tax?

Threshold or election

(1) A person who is liable to pay provisional tax for a tax year is—

(a) a person whose residual income tax for the tax year is more than $2,500; or

(b) a person who chooses under section RC 4 to pay provisional tax.

Exclusions

(2) Despite subsection (1), the following persons do not pay provisional tax:

(a) a company that does not have a fixed establishment in New Zealand and is not treated as resident in New Zealand:

(b) a person referred to in section 33A(1) of the Tax Administration Act 1994:

(c) a non-resident contractor who has not been given an exemption certificate by the Commissioner for the tax year:

(d) a multi-rate PIE that does not choose to calculate and pay tax using the provisional tax calculation option under section HM 44 (Provisional tax calculation option).

No obligation

(3) A person has no obligation to pay provisional tax for a tax year if their residual income tax for the preceding tax year is $2,500 or less.

Defined in this Act: Commissioner, company, exemption certificate, fixed establishment, multi-rate PIE, New Zealand, non-resident, non-resident contractor, pay, provisional tax, resident in New Zealand, residual income tax, tax year

Compare: 2004 No 35 ss MB 2, OB 1 **provisional taxpayer**

Section RC 3(2)(d): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 498(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 3 list of defined terms **multi-rate PIE**: inserted, on 1 April 2010, by section 498(2)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 3 list of defined terms **portfolio tax rate entity**: repealed, on 1 April 2010, by section 498(2)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RC 4 Choosing to pay provisional tax

Election

(1) A person, when first providing a return of income for a tax year, may choose to pay provisional tax for the tax year if—

(a) they have paid provisional tax of more than $2,500 on or before—

(i) the date of instalment F for the corresponding income year; or

(ii) the final instalment date in a transitional year; and

(b) they have, on the day on which the first payment of provisional tax is made for the tax year, a reasonable expectation that they are liable to pay provisional tax for the tax year, other than by this election.

Exclusion

(2) This section does not apply to a person described in section RC 3(2).

Defined in this Act: corresponding income year, final instalment, instalment date, pay, provisional tax, return of income, tax year, transitional year

Compare: 2004 No 35 s MB 3

Calculating provisional tax liability

RC 5 Methods for calculating provisional tax liability

Choice of method

(1) A person liable to pay provisional tax must calculate the amount payable for a tax year using 1 of the methods described in subsections (2) to (7).

Standard method: 5% uplift

(2) Under the standard method, the amount of provisional tax payable for the tax year is 105% of the person's residual in-

come tax for the preceding tax year, determined under section RC 6. Subsection (3) overrides this subsection.

Standard method: 10% uplift

(3) Despite subsection (2), the amount of provisional tax payable for the tax year is 110% of the person's residual income tax for the tax year before the preceding tax year if—

(a) they are required to provide a return of income for the preceding tax year; and

(b) the return is not due on or before the date on which the first payment of provisional tax for the tax year is required through the application of section 37 of the Tax Administration Act 1994, or an extension granted under that section; and

(c) they have not provided the return on or before that date; and

(d) the date is not the date of instalment F for the corresponding income year.

Relationships and modification of standard method

(4) Subsections (5) to (7) override subsection (3). Sections RZ 3 (Standard method: 2010–11 to 2012–13 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities) modify subsections (2) and (3).

Estimation method

(5) The person may estimate their provisional tax liability for the tax year under section RC 7.

GST ratio method

(6) A person who is eligible under section RC 16 and not excluded by section RC 17 may choose to use a goods and services tax (GST) ratio under section RC 8 to determine their provisional tax liability for the tax year.

Commissioner's determination

(7) If the Commissioner determines a person's provisional tax liability under section 119 of the Tax Administration Act 1994, the amount or liability is that last determined by the Commissioner and notified to the person at least 30 days before the instalment date. The 30-day requirement does not apply in a case to which section 119(1)(d) of that Act applies (which re-

lates to an estimate of residual income tax that is not fair and reasonable).

Life insurance business

(8) A person who carries on a business of providing life insurance and who is liable for income tax under the life insurance rules, must at the time they determine their provisional tax liability provide the Commissioner with details of the calculation of that liability. In particular, they must detail the extent to which the amount of provisional tax relates to the policyholder base.

Defined in this Act: amount, business, Commissioner, corresponding income year, GST ratio, income tax, instalment date, life insurance, life insurance rules, notify, pay, policyholder base, provisional tax, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 4

Section RC 5(4): amended (with effect on 1 October 2010), on 21 December 2010, by section 121 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RC 5(4): amended, on 1 October 2010, by section 25 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RC 5(4): amended, on 1 October 2008, by section 39 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

RC 6 Standard method

When this section applies

(1) This section applies to a person liable to pay provisional tax for the purposes of section RC 5(2) and (3) and the calculation of the amount of provisional tax payable for a tax year under the standard method.

Assessment for preceding tax year

(2) The person's residual income tax for a tax year is based on their assessment for the preceding tax year unless the Commissioner has sent out a notice of assessment for the tax year at least 30 days before the relevant instalment date, in which case the amount of residual income tax is based on the Commissioner's assessment for the preceding tax year.

Commissioner's assessment for preceding tax year

(3) The person's residual income tax is based on the Commissioner's assessment for the preceding tax year, whenever the assessment is made, if—

(a) they are required under sections 33 and 37 of the Tax Administration Act 1994 to provide a return of income for the preceding tax year but have failed to do so by the relevant instalment date; or

(b) they are not required under sections 33 and 37 of that Act to provide a return by the relevant instalment date, and subsections (2) and (4) do not apply.

Residual income tax for preceding tax year

(4) The amount of provisional tax payable for a tax year is the amount of the person's residual income tax for the preceding tax year if—

(a) they are not required to provide a return of income for the preceding tax year; or

(b) their residual income tax for the tax year before the preceding tax year was $2,500 or less, and they were not required to provide, and have not provided, a return of income for the tax year by the date of instalment F for the corresponding income year.

Later increased assessment

(5) If the Commissioner's assessment of a person's income tax liability occurs after the payment date for an instalment of provisional tax and would result in an increase in the person's residual income tax for the preceding tax year, the residual income tax is treated for the purposes of the provisional tax rules as if it had not been increased.

Transitional years and consolidated groups

(6) A person's residual income tax in a transitional year is calculated under section RC 20. For consolidated groups, the calculation is made under section RC 29.

Defined in this Act: amount, assessment, Commissioner, consolidated group, corresponding income year, income tax liability, instalment date, notice, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year, transitional year

Compare: 2004 No 35 s MB 5

RC 7 Estimation method

When this section applies

(1) This section applies to a person who is liable to pay provisional tax under section RC 5(5) and to the calculation of the amount

of their provisional tax payable for a tax year under the estimation method.

Fair and reasonable estimate

(2) On or before an instalment date, the person may make a fair and reasonable estimate of their residual income tax for the tax year by informing the Commissioner of the estimate. The amount of provisional tax payable for a tax year is the amount of the estimated residual income tax.

Revising estimates

(3) The person may choose to revise an estimate made under subsection (2) before an instalment date. The amount last estimated is the amount taken into account under section RC 5(5).

Reasonable care in making and maintaining assessment

(4) A person who makes an estimate under subsection (2) must take reasonable care in making it, and must revise the estimate for the tax year if, at some time in the tax year, the amount estimated is no longer fair and reasonable.

Estimation higher than provisional tax payable

(5) If a person's estimate is more than the provisional tax that is payable for the tax year, they are treated as having taken reasonable care in making the estimate.

Changing calculation method from GST ratio

(6) If, under section RC 18(5), a person changes the way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for their corresponding income year, and must pay provisional tax on whichever of the following instalment dates for the income year occur after 30 days from their last ratio instalment date:

(a) C and F for changes to a 6-monthly GST taxable period:

(b) B, D, and F for other changes.

Disaster relief

[Repealed]

(7) *[Repealed]*

Defined in this Act: amount, Commissioner, corresponding income year, GST ratio, instalment date, pay, provisional tax, ratio instalment date, residual income tax, tax year

Compare: 2004 No 35 s MB 6

Section RC 7(6): substituted, on 1 April 2008, by section 527 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 7(7) heading: repealed, on 6 October 2009, pursuant to section 499(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 7(7): repealed, on 6 October 2009, by section 499(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 7 list of defined terms **qualifying event**: repealed, on 6 October 2009, by section 499(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 7 list of defined terms **self-assessed adverse event**: repealed, on 6 October 2009, by section 499(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RC 8 GST ratio method

Using GST ratio

(1) A person liable to pay provisional tax who meets the requirements of section RC 16 and is not excluded by section RC 17 may choose to use a GST ratio to determine the amount of provisional tax payable for a tax year.

Meaning of GST ratio

(2) The person's **GST ratio** is the percentage figure that is obtained by dividing their residual income tax for the preceding tax year by their total taxable supplies for the corresponding income year. The amount of residual income tax and the amount of total taxable supplies are called **base amounts** for the purposes of this section.

When amounts based on tax year before preceding tax year

(3) If a base amount for the preceding tax year or corresponding income year is not known, the GST ratio is the percentage based on the assessment for the tax year and corresponding income year that are just before the preceding tax year and corresponding income year.

When no assessment for tax year before preceding tax year

(3B) Subsection (3) does not apply and the GST ratio is the percentage based on the assessments of the base amounts for the year that is 2 years before the preceding tax year if—

(a) for the year before the preceding tax year—

(i) an assessment of a base amount has not been made and the absence of an assessment arises because of an extension of time for filing a return for the year, or a period in the year:

(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:

(iii) the year is a transitional year; and

(b) for the year that is 2 years before the preceding tax year—

(i) the base amounts have been assessed; and

(ii) the circumstances in paragraph (a)(ii) and (iii) do not exist.

Commissioner's calculation

(4) The Commissioner must calculate a person's GST ratio, informing them by—

(a) including the percentage figure on the person's preprinted GST return form; or

(b) advising them in writing or by telephone; or

(c) some other means.

Adjustment to GST ratio

(5) The Commissioner must adjust a person's GST ratio if a base amount is revised through, among other reasons,—

(a) an assessment or an amended assessment of the person's income tax return for the preceding tax year; or

(b) a change in the value of the total taxable supplies for the corresponding income year; or

(c) the disposal of an asset to which section RC 19 applies.

New GST ratio

(6) When subsection (5) applies, the Commissioner must inform the person of the new GST ratio. The new ratio applies in relation to the relevant instalment dates that occur 30 days after the date on which the person is informed.

Transitional years

(7) If a person has paid instalments of provisional tax in a transitional year, for the tax year that follows the transitional year, for the purposes of this section and section RC 11, they must—

(a) ignore the transitional year when determining their residual income tax or total taxable supplies; and

(b) base their determination of residual income tax and total taxable supplies on the tax year preceding the transitional year.

When no assessment for tax year before preceding tax year

(7B) Subsection (7) does not apply and the GST ratio is the percentage based on the assessments of the base amounts for the year that is 2 years before the transitional year if—

(a) for the year before the transitional year—

(i) an assessment of a base amount has not been made and the absence of an assessment arises because of an extension of time for filing a return for the year, or a period in the year:

(ii) an assessment of a base amount is the subject of a dispute or challenge under the Tax Administration Act 1994:

(iii) the year is a transitional year; and

(b) for the year that is 2 years before the transitional year—

(i) the base amounts have been assessed; and

(ii) the circumstances in paragraph (a)(ii) and (iii) do not exist.

Total taxable supplies

(8) In subsections (2), (5), and (7), and in sections RC 11, RC 19, and RC 31, **total taxable supplies**, for a person and a period, means the amount that is the total value of taxable supplies by the person for the period. The amount includes the GST charged on the supplies.

Modification

(9) Sections RZ 4 (GST ratio method: 2010–11 to 2013–14 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities) modify this section.

Defined in this Act: amount, assessment, base amount, Commissioner, corresponding income year, GST, GST ratio, income tax, instalment date, pay, provisional tax, residual income tax, return, tax year, taxable supply, total taxable supplies, transitional year

Compare: 2004 No 35 s MB 7

Section RC 8(3B) heading: inserted, on 1 April 2008, by section 528(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 8(3B): inserted, on 1 April 2008, by section 528(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 8(7B) heading: inserted, on 1 April 2008, by section 528(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 8(7B): inserted, on 1 April 2008, by section 528(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 8(9): amended (with effect on 1 October 2010), on 21 December 2010, by section 122 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RC 8(9): amended, on 1 October 2010, by section 26 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RC 8(9): amended, on 1 October 2008, by section 40 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Instalments of provisional tax

RC 9 Provisional tax payable in instalments

Who this section applies to

(1) This section applies to a person who is liable to pay provisional tax.

General principle

(2) For a person liable to pay provisional tax using the standard and estimation methods, the amount of the provisional tax liability must be spread evenly over the applicable number of instalments, so that equal amounts are paid on each instalment date. If the full amount is not divisible into exactly equal instalments, the final instalment carries the difference.

Provisional tax payable in 3 instalments

(3) A person pays provisional tax in 3 instalments on the interest instalment dates for the tax year in the months set out in schedule 3, part A, columns B, D, and F (Payment of provisional tax and terminal tax) for the person's corresponding income year. The amount of each instalment is calculated under section RC 10. Subsection (4) overrides this subsection.

Exclusions

(4) Subsection (3) does not apply—

(a) to a person liable to pay provisional tax who—

(i) pays GST on a 6-monthly basis; or

(ii) uses a GST ratio to determine the amount of provisional tax payable, or who changes their calculation method under section RC 18(5); or

(iii) changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985:

(b) to a person with an initial provisional tax liability who—

(i) pays GST on a 6-monthly basis; or

(ii) pays GST on a monthly or 2-monthly basis, and starts a taxable activity within 30 days before the date of instalment B in their corresponding income year:

(c) to a person liable to pay provisional tax who has not provided a return of income for the preceding tax year, and whose residual income tax for the tax year before the preceding tax year was $2,500 or less:

(d) in a transitional year.

Provisional tax when GST paid on 6-monthly basis

(5) A person liable to pay provisional tax who pays GST on a 6-monthly basis must pay provisional tax on the 2 interest instalment dates for the tax year in the months set out in schedule 3, part A, columns C and F for their corresponding income year. This subsection applies to a person with an initial provisional tax liability other than 1 who pays GST on a 6-monthly basis and starts a taxable activity within 30 days before the date of instalment C.

Provisional tax determined using GST ratio

(6) A person liable to pay provisional tax who uses a GST ratio to determine the amount of provisional tax payable for a tax year, must pay provisional tax on the 6 ratio instalment dates in the months set out in schedule 3, part A, columns A to F for their corresponding income year. The amount of each instalment is calculated under section RC 11.

Changing calculation method

(7) A person who is unable or who decides not to use a GST ratio, changing their calculation method under section RC 18, must pay the provisional tax payable for the tax year on the relevant

instalment dates under the replacement method. The amount of each instalment is calculated under section RC 10.

Changing cycle of taxable periods

(8) A person who changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985 must pay provisional tax for the tax year on the instalment dates set out in section RC 27 after the change in taxable period takes effect. The amount of each instalment is calculated under section RC 10.

Persons with initial provisional tax liability

(9) A person with a new provisional tax liability who starts a taxable activity in a tax year is liable to pay interest calculated under section 120KC of the Tax Administration Act 1994 as if they were liable to pay provisional tax for the tax year—

(a) in 3 instalments under subsection (3) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment B:

(b) in 2 instalments—

(i) in a case to which section RC 13 applies; or

(ii) if they pay GST on a 6-monthly basis and start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:

(c) in 1 instalment in a case to which section RC 14 applies.

Extension of time for return

(10) A person who has not provided a return of income for a preceding tax year and whose residual income tax for the tax year before the preceding tax year was $2,500 or less must pay provisional tax for the tax year on the instalment dates set out in section RC 13 or RC 14, as applicable.

Transitional years

(11) In a transitional year, provisional tax is payable as set out in section RC 21 and schedule 3, part B. The amount of each instalment is calculated under sections RC 22 to RC 24.

Voluntary payments

(12) A person liable to pay provisional tax may pay an instalment under section RC 12 at any time.

Defined in this Act: amount, corresponding income year, final instalment, GST, GST ratio, initial provisional tax liability, instalment date, interest instalment date, pay, provisional tax, ratio instalment date, residual income tax, return of income, tax year, taxable activity, taxable period, transitional year

Compare: 2004 No 35 s MB 8

Section RC 9(7): amended, on 1 April 2008, by section 529(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 9(9): amended, on 1 April 2008, by section 529(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 9(9)(b)(ii): substituted, on 1 April 2008, by section 529(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RC 10 Calculating amount of instalment under standard and estimation methods

When this section applies

(1) This section applies for the purposes of—

(a) section RC 5(2), (3), and (5) (which relates to the calculation of a provisional tax liability); and

(b) section RC 9(3) and (5) (which relates to payment of instalments); and

(c) sections RC 13 and RC 14 (which relate to persons with an initial provisional tax liability and those with an extension of time for providing a return); and

(d) sections RC 26 and RC 27 (which relate to changes in taxable periods).

Calculation

(2) The amount of an instalment of provisional tax is calculated using the formula—

$$\text{residual income tax} \times \frac{\text{instalment number}}{\text{total instalments}} - \text{provisional tax.}$$

Definition of items in formula

(3) In the formula,—

(a) **residual income tax** is a person's residual income tax, as applicable—

(i) for the preceding tax year, uplifted by 5% (modified as applicable by sections RZ 5 (Calculating amounts under standard method: 2010–11 to 2012–13 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities); or

(ii) for the tax year before the preceding tax year, uplifted by 10% (modified as applicable by sections RZ 5 and RZ 5D); or

(iii) the amount estimated by them:

(b) **instalment number** is the number of the instalment for the tax year, whether first, second, or third:

(c) **total instalments** is the total number of instalments for the tax year:

(d) **provisional tax** is the amount of a person's provisional tax liabilities for the tax year to date.

Instalment amounts after change in balance date or taxable period

(4) If a change occurs to the balance date or cycle of a person's taxable periods, the calculation of the amount of an instalment is made under this section, applying the updated figures to the items in the formula.

Defined in this Act: amount, balance date, initial provisional tax liability, pay, provisional tax, residual income tax, return of income, tax year, taxable period

Compare: 2004 No 35 s MB 9

Table R1—Summary of Instalment dates and calculation methods for provisional tax

Categories	**Variables**	**Method**	**Instalments**	**Instalment dates**	**Calculation**	**Interest penalties**
Standard RC 5(2), (3)		RC 6	3: RC 9(3)	B, D, F	RC 10	120KE(1), (2)

Table R1—*continued*

Categories	**Variables**	**Method**	**Instalments**	**Instalment dates**	**Calculation**	**Interest penalties**
Estimation RC 5(5)		RC 7	3: RC 9(3)	B, D, F	RC 10	120KB
GST Ratio RC 5(6)	1 month	RC 8	6: RC 9(6)	A to F	RC 11	120KE(3), 139C
	2 month	RC 8	6: RC 9(6)	A to F	RC 11	120KE(3), 139C
GST 6-month RC 9(4)	standard	RC 6	2: RC 9(5)	C and F	RC 11	120KE(1)
	estimation	RC 7	2: RC 9(5)	C and F	RC 11	120KB
Categories: exceptional						

Table R1—*continued*

Categories	**Variables**	**Method**	**Instalments**	**Instalment dates**	**Calculation**	**Interest penalties**
Persons with initial provisional tax liability		RC 6 or RC 7	RC 9(9), RC 13(3), RC 14(2)	D and F, or F as required	RC 10 (RC 13(4)), RC 10 (RC14(3))	120KC
Transitional years		RC 20	RC 22 (RC 9(11))	B, D, F, or C, F as required	RC 22 – RC 24	120KC
Changing taxable period, or starting and stopping Gst registration		RC 27, 15C, 15E (GST Act)	RC 27 (RC 9(8))	B, D, F, or C, F as required	RC 26, RC27	120KD

Table R1—*continued*

Categories	Variables	Method	Instalments	Instalment dates	Calculation	Interest penalties
Changing calculation method		RC 18	RC 7(6), RC 9(7)	B, D, F, or C, F as required	RC 18	120KE(5)–(7)
Voluntary payments		RC 12				120E

Section RC 10(1)(b): amended, on 1 April 2008, by section 530 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 10(3)(a)(i): amended (with effect on 1 October 2010), on 21 December 2010, by section 123(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RC 10(3)(a)(i): amended, on 1 October 2010, by section 27(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RC 10(3)(a)(i): amended, on 1 October 2008, by section 41(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RC 10(3)(a)(ii): amended (with effect on 1 October 2010), on 21 December 2010, by section 123(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RC 10(3)(a)(ii): amended, on 1 October 2010, by section 27(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RC 10(3)(a)(ii): amended, on 1 October 2008, by section 41(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

RC 11 Calculating amount of instalment using GST ratio

Calculation

(1) For a person who uses a GST ratio, the amount of provisional tax payable on an instalment date for a tax year is calculated using the formula—

GST ratio for tax year × total taxable supplies.

Definition of item in formula

(2) In the formula, **total taxable supplies** is the amount of the person's total taxable supplies in the taxable period that matches the instalment period.

Taxable supplies when person pays on monthly basis

(3) For the purposes of subsection (1), a person who pays GST on a 1-month cycle under section 15 of the Goods and Services Tax Act 1985 must apply the GST ratio to the sum of their taxable supplies in the current taxable period and the preceding taxable period, that is, the taxable supplies in the 2-month period matching the instalment period.

Modification

(4) Sections RZ 4 (GST ratio method: 2010–11 to 2013–14 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities) modify this section.

Defined in this Act: amount, GST, GST ratio, instalment date, pay, provisional tax, tax year, taxable period, taxable supply, total taxable supplies

Compare: 2004 No 35 s MB 10

Section RC 11(4): amended (with effect on 1 October 2010), on 21 December 2010, by section 124 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RC 11(4): amended, on 1 October 2010, by section 28 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RC 11(4): amended, on 1 October 2008, by section 42 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

RC 12 Voluntary payments

A person who is liable to pay provisional tax may at any time make a voluntary payment of an amount of provisional tax that—

(a) relates to their income tax liability for a tax year in which they are not liable for provisional tax; or

(b) is more than the provisional tax payable by them for the tax year; or

(c) is more than the income tax payable by them for the tax year.

Defined in this Act: amount, income tax, income tax liability, pay, provisional tax, tax year

Compare: 2004 No 35 s MB 12

RC 13 Paying 2 instalments for tax year

Who this section applies to

(1) This section applies for a tax year to—

(a) a person with an initial provisional tax liability whose first business day occurs in the period that starts 30 days before the date of instalment B and ends 30 days before the date of instalment D; or

(b) a person liable to pay provisional tax whose return of income for the preceding tax year is provided in the period that starts on the date of instalment B and ends on the date of instalment D if—

(i) they were required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, are not required to provide the return by the date of instalment B; and

(ii) their residual income tax for the tax year before the preceding tax year was $2,500 or less.

Exclusion

(2) Despite subsection (1), this section does not apply to a person liable to pay provisional tax who pays GST on a 6-monthly basis.

When instalments are payable

(3) For the purposes of section RC 9(9)(b), the instalments are payable on the date of instalments D and F for the person's corresponding income year.

Formula for amount of instalment

(4) The amount of each instalment is calculated under section RC 10.

Defined in this Act: amount, corresponding income year, first business day, GST, initial provisional tax liability, pay, provisional tax, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 13

RC 14 Paying 1 instalment for tax year

Who this section applies to

(1) This section applies for a tax year to—

(a) a person with an initial provisional tax liability whose first business day occurs in the period that starts 30 days before the date of instalment D and ends at the end of the corresponding income year:

(b) a person liable to pay provisional tax whose return of income for the preceding tax year is not provided on or before the date of instalment D if—

(i) they were required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, are not required to provide the return by the date of instalment D; and

(ii) their residual income tax for the tax year before the preceding tax year was $2,500 or less:

(c) a person who pays GST on a 6-monthly basis if—

(i) their first business day occurs in the period that starts 30 days before the date of instalment C and ends at the end of the corresponding income year; or

(ii) they meet the requirements of paragraph (b)(i) and (ii) as if the reference to instalment D in paragraph (b)(i) were a reference to instalment C.

When instalment payable

(2) For the purposes of section RC 9(9)(c), the instalment is payable on the date of instalment F for the person's corresponding income year.

Amount of instalment

(3) The amount of the instalment is calculated under section RC 10.

Defined in this Act: amount, corresponding income year, first business day, GST, initial provisional tax liability, pay, provisional tax, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 14

Requirements for using GST ratio

RC 15 Choosing to use GST ratio

A person who meets the requirements of section RC 16(2) and (3) for a tax year may choose to use a GST ratio for the corresponding income year if they inform the Commissioner of their election before the start of the income year.

Defined in this Act: Commissioner, corresponding income year, GST ratio, tax year

Compare: 2004 No 35 s MB 16

RC 16 Who may use GST ratio?

General eligibility

(1) A person liable to pay provisional tax may choose to use a GST ratio to determine under section RC 5(6) the amount of provisional tax payable for a tax year only if they meet all the requirements of subsections (2) and (3) in relation to the same entity.

Requirements for preceding tax year

(2) For the purposes of determining their eligibility for a tax year, the person must meet the following requirements in the preceding tax year and corresponding income year::

(a) their residual income tax, as calculated, was more than $2,500 but no more than $150,000; and

(b) they were a registered person for the whole income year, and provided a return under the Goods and Services Tax Act 1985 for an entity whose taxable activity did not begin operations in that tax year; and

(c) the ratio of their residual income tax to total taxable supplies, as calculated under section RC 11 and expressed as a percentage, is between zero and 100%.

Requirement for current year

(3) For the tax year in which the person uses a GST ratio, they must be liable to file a return under the Goods and Services Tax Act 1985 for a 2-month or a 1-month period under section 15(1)(b) and (c) of that Act.

When election applies

(4) A person's election under section RC 15 to use a GST ratio applies for the tax year for which the election is made and

in later tax years, unless the person changes their calculation method under RC 18.

References to preceding tax year

(5) In this section, a reference to a preceding tax year includes a reference to a tax year earlier than the preceding tax year if that earlier tax year is used for the purposes of calculating a GST ratio.

Defined in this Act: amount, GST ratio, pay, provisional tax, registered person, residual income tax, tax year, taxable activity, total taxable supplies

Compare: 2004 No 35 s MB 15(1)–(4), (11)

Section RC 16(2): amended, on 1 April 2008, by section 531(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 16(2)(b): amended, on 1 April 2008, by section 531(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 16(5): amended, on 1 April 2008, by section 531(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RC 17 When GST ratio must not be used

Requirement to discontinue use of GST ratio

(1) Despite section RC 16, a person must stop using a GST ratio for a tax year and must apply section RC 18(4) or (5) if—

(a) their GST registration ends under section 52 of the Goods and Services Tax Act 1985 in the tax year; or

(b) they no longer qualify under section RC 16(2) as a result of an amended assessment of their income tax liability or their GST liability for the preceding tax year; or

(c) they no longer qualify under section RC 16(3) as a result of a change in their taxable period.

No GST return

(2) A person must not use, or must stop using, a GST ratio for a tax year if they—

(a) are liable to provide a return under the Goods and Services Tax Act 1985 for a period in their corresponding income year; and

(b) do not file the return within 60 days after the due date for filing the return.

Instalments following default

(3) A person who is required by subsection (2) to stop using a GST ratio must pay the provisional tax instalments required under

section RC 18 for an instalment period beginning on or after the due date for filing the return referred to in subsection (2) that is not the subject of notification under subsection (4).

Further use of GST ratio

(4) Despite subsections (2) and (3), a person may use a GST ratio for an instalment period referred to in subsection (3) if—

(a) they apply in writing or by telephone to the Commissioner; and

(b) the Commissioner considers—

(i) the failure to file the return is caused by an event or circumstance beyond the person's control; and

(ii) the event or circumstance provides reasonable justification or excuse for the failure; and

(iii) the person remedied the failure as soon as practicable; and

(c) the Commissioner notifies the person that they may use the GST ratio for the instalment period.

Standard required

(5) For the purposes of subsection (4)(b), the Commissioner must use the same approach that would be used to justify the remission of a penalty under section 183A of the Tax Administration Act 1994.

Later default

(6) Notification under subsection (4) does not apply to an instalment period if—

(a) the person fails to file a return due after the date of the notice unless the failure is anticipated and referred to in the notice; and

(b) the instalment period begins on or after the due date of the return described in paragraph (a).

Defined in this Act: assessment, Commissioner, corresponding income year, GST ratio, income tax liability, notify, pay, provisional tax, tax year, taxable period

Compare: 2004 No 35 s MB 15(5)–(10)

Section RC 17(4)(a): amended, on 1 April 2008, by section 532 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RC 18 Changing calculation method

When this section applies

(1) This section applies if, after having chosen to use a GST ratio for a tax year, a person liable to pay provisional tax either—

(a) chooses another way to calculate the amount of provisional tax payable for the tax year; or

(b) is required under section RC 17(1) or (2) to stop using a GST ratio for the corresponding income year.

Informing Commissioner of decision to change

(2) The person must inform the Commissioner of their decision under subsection (1)(a), and may do this either in writing or by telephone. Subsection (4) or (5) then applies for the remaining instalments of provisional tax for the tax year.

Date on which use of GST ratio stopped

(3) For the purposes of subsection (1)(b), the date on which the person stops using a GST ratio is, as applicable,—

(a) the date their GST registration ends; or

(b) the date of the amended assessment of their income tax liability or GST liability for the preceding tax year; or

(c) the effective date of a change in taxable period; or

(d) the last day of the period in which a return is liable to be provided under the Goods and Services Tax Act 1985.

Changing method before date of instalment A

(4) If the person is unable or decides not to use a GST ratio before the date of instalment A, they may choose to determine the amount of provisional tax payable under section RC 5(2), (3) or (5). The person is treated as never having chosen to use the GST ratio method and, for the purposes of section 120KE(5) of the Tax Administration Act 1994, as never having changed the way they determine an amount of provisional tax under this section.

Changing method after instalment date

(5) If the person is unable or decides not to use the GST ratio after an instalment date, they must determine the amount of provisional tax payable on instalment for the remainder of the income year under section RC 5(5) using the estimation method. For this purpose, the person may provide the estimate in writing or by telephone.

Date of application when method changed

(6) If the person changes their calculation method under subsection (4) or (5), the date on which the change applies may be a future date agreed between the person and the Commissioner.

Other consequences of changing method

(7) For the purposes of this section,—

(a) the number of instalments and the instalment dates remaining for an income year depend on—

(i) the requirements of the method chosen by the person when they stop using the GST ratio; and

(ii) the cycle of taxable periods chosen by the person, being either a monthly or 2-monthly basis:

(b) a person may change from using a GST ratio to a 6-monthly cycle of taxable periods only if—

(i) the requirements of section 15C of the Goods and Services Tax Act 1985 are met; and

(ii) their 6-month taxable period is aligned with their balance date under section 15B of the Goods and Services Tax Act 1985:

(c) section 120KE(5) to (7) of the Tax Administration Act 1994 applies in deciding whether use of money interest is payable in relation to instalments under the new method.

Defined in this Act: amount, assessment, balance date, Commissioner, corresponding income year, GST ratio, income tax liability, income year, instalment date, pay, provisional tax, tax year, taxable period

Compare: 2004 No 35 s MB 17

Section RC 18(2): amended, on 1 April 2008, by section 533(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 18(4): amended, on 1 April 2008, by section 533(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RC 19 Disposal of assets

When this section applies

(1) This section applies if, as part of the taxable activity of an entity referred to in section RC 16(2) and (3), a person who is liable to pay provisional tax, disposes of an asset—

(a) that is not revenue account property; and

(b) the value of the supply of which is not less than the greater of—

(i) an amount equal to 5% of the total taxable supplies of the business for the previous 12 months; or

(ii) $1,000.

Adjustment to GST ratio for current and next income year

(2) The person may choose to take the disposal of the asset into account in adjusting their taxable supplies for the relevant taxable period and income year, by subtracting the value, including GST, of the asset from—

(a) the total taxable supplies for a taxable period for the purposes of the formula in section RC 11(1), in proportion to the output tax which is attributed under section 20(4) of that Act to that taxable period for the supply of the asset:

(b) the base amount of total taxable supplies for the corresponding income year under section RC 8(2), in proportion to the output tax which is attributed under section 20(4) of that Act to a taxable period in that income year for the supply of the asset.

Informing Commissioner

(3) For the purposes of subsection (2), the person must inform the Commissioner of both the disposal of the asset and the value of its supply, and may do this either in writing or by telephone.

Rounding percentages

(4) In the determination of the value of the supply of the asset under subsection (1)(b)(i), the amount must be rounded to a whole percentage number.

Defined in this Act: amount, base amount, business, Commissioner, GST, GST ratio, income year, pay, provisional tax, revenue account property, taxable activity, taxable period, taxable supply, total taxable supplies

Compare: 2004 No 35 s MB 18

Section RC 19(2): substituted, on 1 April 2008, by section 534 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Transitional years

RC 20 Calculating residual income tax in transitional years

Calculation for transitional year

(1) This section applies for the purposes of section RC 5(2) and (3) and the calculation of a person's residual income tax for a tax year if—

(a) the preceding tax year is a transitional year:

(b) the tax year before the preceding tax year is a transitional year.

Amount increased or decreased

(2) The amount of residual income tax for the transitional year must be increased or decreased by the amount calculated under subsection (3) to reflect the amount that would apply in a 12-month period.

Formula

(3) The amount of residual income tax is calculated using the formula—

$$\frac{\text{residual income tax} \times \text{days in current tax y}}{\text{days in transitional year.}}$$

Definition of items in formula

(4) In the formula,—

(a) **residual income tax** is a person's residual income tax, as applicable—

(i) for the preceding tax year, uplifted by 5%; or

(ii) for the tax year before the preceding tax year, uplifted by 10%; or

(iii) the amount estimated by them:

(b) **days in current tax year** is the number of days in the current tax year:

(c) **days in transitional year** is the number of days in the person's transitional year.

Defined in this Act: amount, residual income tax, tax year, transitional year

Compare: 2004 No 35 s MB 19

RC 21 Paying provisional tax in transitional years

Total amount payable

(1) A person liable to pay provisional tax in a transitional year must pay the sum of all instalments of provisional tax payable for the transitional year, both interim instalments under subsection (2) and a final instalment under subsection (3).

When instalments payable

(2) The person must pay an instalment other than a final instalment on—

(a) the 28th day of the months set out in schedule 3 part B (Payment of provisional tax and terminal tax) unless paragraph (b) or (c) applies:

(b) 15 January, when the month set out in schedule 3, part B is December and the year is a transitional year:

(c) 7 May, when the month set out in schedule 3, part B is April and the year is a transitional year.

When final instalment payable

(3) The person must pay the final instalment on—

(a) the 28th day of the month following the final month in the transitional year; or

(b) the 15th day of January, when November is the final month; or

(c) 7 May, when March is the final month and the year is a transitional year.

Modifications to instalment dates

(4) For the purposes of subsection (2), provisional tax is not payable on—

(a) the date of instalment B, if section RC 13 would have applied if the year were not a transitional year; or

(b) the dates of instalments B and D, if section RC 14(1)(a) and (b) would have applied if the year were not a transitional year; or

(c) the dates of instalments B, D, and F, if the person liable to pay provisional tax is a person with an initial provisional tax liability whose first business day occurs within 30 days of the date of instalment F; or

(d) the date of instalment C, if section RC 14(1)(c) would have applied if the year were not a transitional year; or

(e) the dates of instalments C and F, if the person liable to pay provisional tax is a person with an initial provisional tax liability who pays GST on a 6-monthly basis whose first business day occurs after the day that is 30 days before the date of instalment F.

Counting months in transitional years

(5) In this section, and in sections RC 22 to RC 25, and in schedule 3, part B, the number of months in a transitional year is determined as follows:

(a) the first month in a person's transitional year is the first whole month in the transitional year:

(b) the final month in a person's transitional year is the month in which their new balance date under section 39 of the Tax Administration Act 1994 occurs:

(c) each month falling between the first and final months must be included in determining the length of the transitional year.

Defined in this Act: balance date, final instalment, first business day, GST, initial provisional tax liability, pay, provisional tax, transitional year, year

Compare: 2004 No 35 s MB 20

Section RC 21(2)(a): substituted, on 1 April 2008, by section 535(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 21(2)(b): substituted, on 1 April 2008, by section 535(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 21(2)(c): added, on 1 April 2008, by section 535(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 21(3)(b): amended, on 1 April 2008, by section 535(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RC 21(3)(c): added, on 1 April 2008, by section 535(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RC 22 Calculating instalments in transitional years: standard method

When this section applies

(1) This section applies to a person liable to pay provisional tax using the standard method in relation to instalments of provisional tax payable in a transitional year under section RC 21.

Instalment other than final instalment

(2) For an instalment date other than the date of the final instalment, the person must pay an amount calculated using the formula—

$$\frac{\text{person's provisional tax} \times \text{instalments payable}}{\text{total instalments}} - \text{tax previously payab}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **person's provisional tax** is the person's provisional tax liability under section RC 5(2) or (3):

(b) **instalments payable** is the number of instalments that the person has in the transitional year on or before the instalment date:

(c) **total instalments** is whichever of the following applies:

(i) 3, for a person who pays on instalment dates B, D, and F; or

(ii) 2, for a person who pays on instalment dates C and F:

(d) **tax previously payable** is the amount for the transitional year of the person's provisional tax payable before the instalment date.

Final instalment

(4) For the final instalment, the person must pay an amount calculated using the formula—

$$\frac{\text{person's provisional tax} \times \text{transitional year days}}{\text{preceding year days}} - \text{tax previously payable.}$$

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **person's provisional tax** is the person's provisional tax liability under section RC 5(2) or (3):

(b) **transitional year days** is the number of days in the person's transitional year:

(c) **preceding year days** is the number of days in the person's preceding tax year:

(d) **tax previously payable** is the amount of provisional tax for a tax year calculated on the basis of the person's transitional year that is payable before the instalment date.

Defined in this Act: amount, instalment date, final instalment, pay, provisional tax, tax year, transitional year

Compare: 2004 No 35 s MB 21

RC 23 Calculating instalments in transitional years: estimation method

When this section applies

(1) This section applies to a person liable to pay provisional tax using the estimation method in relation to instalments of provisional tax payable in a transitional year under section RC 21.

Instalment other than final instalment

(2) For an instalment date other than the date of the final instalment, the person must pay an amount calculated using the formula—

$$\text{tax estimate} \times \frac{\text{instalments payable}}{\text{transitional months}} - \text{tax previously payable.}$$

Definition of items in formula

(3) In the formula,—

(a) **tax estimate** is the person's provisional tax liability last estimated by the person under section RC 5(5):

(b) **instalments payable** is either—

(i) 4 multiplied by the number of instalments in the person's transitional year payable on or before the instalment date, for a person who pays on the equivalent of instalment dates B, D, and F; or

(ii) 6 multiplied by the number of instalments in the person's transitional year payable on or before the instalment date, for a person who pays on the equivalent of instalment dates C and F:

(c) **transitional months** is the number of months in the person's transitional year:

(d) **tax previously payable** is the amount of provisional tax for a tax year calculated on the basis of the person's

transitional year that is payable before the instalment date.

Final instalment

(4) For the final instalment, the person must pay the amount calculated under section RC 5(5) less the amount of any instalment previously payable.

Defined in this Act: amount, final instalment, instalment date, pay, provisional tax, tax year, transitional year

Compare: 2004 No 35 s MB 22

RC 24 Calculating instalments in transitional years: GST ratio method

What this section applies to

(1) This section applies to a person liable to pay provisional tax using a GST ratio in relation to instalments of provisional tax payable in a transitional year.

Adjustment if required

(2) For a period or part period before the start of the new income year, the person must apply the GST ratio under section RC 11 on whichever dates of instalments A to F for their corresponding income year occur in the transitional year.

Defined in this Act: corresponding income year, GST ratio, income year, pay, provisional tax, transitional year

Compare: 2004 No 35 s MB 23

RC 25 Consequences of change in balance date

Continuing frequency

(1) This section applies to a person liable to pay provisional tax who changes their balance date.

Continuing to use instalment dates to new balance date

(2) The person must continue to use the instalment dates that applied before the change in balance date was approved until the new balance date is reached.

How amounts determined

(3) Sections RC 20 to RC 24 and schedule 3, part B (Payment of provisional tax and terminal tax) apply for the person's transitional year to determine the amount and payment date of the instalments.

Estimation method

(4) In a transitional year, if the person uses the estimation method, they must,—

(a) before the date on which the Commissioner notifies a change in balance date, estimate the residual income tax as if no change in balance date is or will be approved; and

(b) after the date on which the Commissioner notifies a change in balance date, re-estimate the residual income tax.

GST ratio method

(5) Subsection (6) applies if the person uses a GST ratio to determine the provisional tax payable for a tax year, and in changing their balance date, moves from—

(a) a set of instalment dates in even-numbered months to a set of instalment dates in odd-numbered months; or

(b) a set of instalment dates in odd-numbered months to a set of instalment dates in even-numbered months.

Adjustment to liability

(6) The person must—

(a) adjust their provisional tax liability for the part-period of 1 month before the start of the new income year; and

(b) pay the instalment of provisional tax for the part-period as their final taxable period—

(i) 28 days after the end of the part period, unless subparagraph (ii) or (iii) applies; or

(ii) by 15 January if the part-period falls in November; or

(iii) by 7 May if the part period falls in March.

Aligning taxable periods

(7) For a registered person, if a change in balance date means that their taxable period is not aligned with the balance date, an adjustment must be made to their taxable period under section 15B(3) or 15C of the Goods and Services Tax Act 1985.

Defined in this Act: amount, balance date, Commissioner, GST ratio, income year, instalment date, notify, pay, provisional tax, registered person, residual income tax, tax year, taxable period, transitional year

Compare: 2004 No 35 s MB 24

Section RC 25(6): substituted, on 1 April 2008, by section 536 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

When persons start or stop paying GST, or change taxable periods

RC 26 Registering for GST or cancelling registration

When this section applies

(1) This section applies if a person who uses the standard or estimation method to determine the amount of provisional tax payable for a tax year—

(a) applies to the Commissioner to become a registered person under section 51 of the Goods and Services Tax Act 1985; or

(b) is treated as registered under section 51B of that Act; or

(c) asks the Commissioner to cancel their GST registration, or has their GST registration cancelled under section 52 of that Act.

Starting or ending GST registration: monthly or 2-monthly basis

(2) For a person liable to pay provisional tax who becomes registered for GST paying on a monthly or 2-monthly basis, or who cancels or has their GST registration cancelled having paid on that basis, the instalments of provisional tax payable by them for the tax year are unaffected.

Starting GST registration: 6-monthly basis

(3) A person liable to pay provisional tax who becomes registered for GST paying on a 6-monthly basis must pay their instalments of provisional tax on whichever dates of instalments C and F for their corresponding income year coincide with the cycle of their taxable periods after they become a registered person.

Ending GST registration: 6-monthly basis

(4) A person liable to pay provisional tax who pays GST on a 6-monthly basis and cancels their GST registration or has their registration cancelled, must pay their instalments of provisional tax on whichever dates of instalments B, D, and F for their corresponding income year occur after 30 days from the date of cancellation.

Date of cancellation

(5) For the purposes of subsection (4) and the provisional tax rules, the date of cancellation is the later of the date on which—

(a) the cancellation of GST registration is notified:
(b) the person's liability under section 52 of the Goods and Services Tax Act 1985 stops.

Formula for amount of instalment

(6) The amount of each instalment is calculated under section RC 10.

Defined in this Act: amount, Commissioner, corresponding income year, GST, pay, provisional tax, provisional tax rules, registered person, tax year, taxable period

Compare: 2004 No 35 s MB 25

Section RC 26(5): substituted, on 1 April 2008, by section 537 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RC 27 Payment of provisional tax instalments when GST cycle changed

When subsection (2) applies

(1) Subsection (2) applies in a tax year to a person liable to pay provisional tax who—
(a) uses the standard or estimation method to determine the amount of provisional tax payable; and
(b) has been paying GST on a monthly or 2-monthly basis; and
(c) changes to a 6-monthly basis under section 15C(1) of the Goods and Services Tax Act 1985.

Changing to 6-monthly basis

(2) The person must pay their instalments of provisional tax on whichever dates of instalments C and F for their corresponding income year occur after the change in taxable period takes effect.

When subsection (4) applies

(3) Subsection (4) applies in a tax year to a person liable to pay provisional tax who—
(a) uses the standard or estimation method to determine the amount of provisional tax payable; and
(b) has been paying GST on a 6-monthly basis; and
(c) changes to a monthly or 2-monthly basis under section 15C(2) or (3) of the Goods and Services Tax Act 1985.

Changing to monthly or 2-monthly basis

(4) The person must pay their instalments of provisional tax on whichever dates of instalments B, D, and F for the person's corresponding income year occur after the change in taxable period takes effect.

Interest instalment dates in new cycle

(5) If an instalment of provisional tax that falls on an instalment date in the new cycle is payable in relation to a period in the person's original cycle that was, under that original cycle, an interest instalment date, it remains an interest instalment date in the new cycle. However, if the instalment falls on an instalment date other than an interest instalment date, the change does not affect the nature of the instalment.

Formula for amount of instalment

(6) The amount of each instalment is calculated under section RC 10.

Defined in this Act: amount, corresponding income year, GST, instalment date, interest instalment date, pay, provisional tax, tax year, taxable period

Compare: 2004 No 35 s MB 27

Treatment of groups of companies and amalgamated companies

RC 28 Provisional tax rules and consolidated groups

Single company

(1) The provisional tax rules apply, modified as necessary, to a consolidated group of companies as if it were a single company.

Joint and several liability

(2) Each company in a consolidated group in a tax year is jointly and severally liable for the amount of provisional tax payable by the consolidated group to be credited against the income tax liability of the group for the tax year. The liability of a group company for income tax for the tax year is substituted by that joint and several liability to the extent to which the liability arises while the company is part of the consolidated group.

Relationship with section FM 4

(3) Section FM 4(3) to (5) (Limiting joint and several liability of group companies) overrides this section.

Defined in this Act: amount, company, consolidated group, income tax, income tax liability, pay, provisional tax, provisional tax rules, tax year

Compare: 2004 No 35 s MB 29

RC 29 Residual income tax of consolidated groups

When this section applies

(1) This section applies for the purposes of the provisional tax rules if a company is part of a consolidated group of companies in a tax year but was not part of the group for some or all of the preceding tax year.

Increased residual income tax

(2) The residual income tax of the consolidated group for the preceding tax year is treated as increased by an amount equal to the residual income tax of the company for the preceding tax year. If the company is part of the group for part of the current tax year, the amount of residual income tax is increased as a proportion on the basis of the part of the tax year during which the company is part of the group.

Instalments after company joins group

(3) If the company is part of a group for part of the tax year, this section applies only to instalments of provisional tax payable after the date on which the company becomes part of the group.

Defined in this Act: amount, company, consolidated group, pay, provisional tax, provisional tax rules, residual income tax, tax year

Compare: 2004 No 35 s MB 30

RC 30 Consolidated groups using estimation method

When subsection (2) applies

(1) Subsection (2) applies for the purposes of the provisional tax rules if a company is part of a consolidated group of companies for some or all of a tax year but is not part of the group for some or all of the following tax year.

Estimation before final instalment date

(2) The company must estimate its residual income tax on or before the date of instalment F for the following income year

that corresponds to the tax year, and the company is treated as a person to which section RC 7 applies for the purposes of its estimate.

When company part of another consolidated group

(3) The consolidated group, in the case of a company that is part of another consolidated group, must make an estimate of residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the consolidated group is treated as a person to which section RC 7 applies for the purposes of its estimate.

When company no longer part of group

(4) If a company stops being part of the consolidated group in the following tax year, the company's estimate applies only to instalments of provisional tax payable after the date on which it stopped being part of the group.

Defined in this Act: company, consolidated group, corresponding income year, pay, provisional tax, provisional tax rules, residual income tax, tax year

Compare: 2004 No 35 s MB 31

RC 31 Consolidated groups using GST ratio method

Sections RC 8, RC 9(6), RC 11, and RC 15 to RC 19 apply to a consolidated group of companies with the following modifications:

(a) if a consolidated group that is eligible to use, or is using, a GST ratio for a tax year is joined by a company, the following subparagraphs apply:

(i) if the company joins at the start of the tax year and, as a result, the threshold in section RC 16(2)(a) is exceeded, the group is no longer eligible to use a GST ratio:

(ii) if the company joins at the start of the tax year, and the group, allowing for the inclusion of the company, is eligible under section RC 16(1), the group may use a GST ratio, subject to the recalculation of the ratio under paragraph (c):

(iii) if the company joins at some time in the tax year, the group may continue to use a GST ratio for the tax year, as recalculated under paragraph (c), pro-

vided the requirements for eligibility other than the threshold in RC 16(2)(a) are met:

(b) if a consolidated group that does not determine provisional tax payable for a tax year using a GST ratio, is joined by a company that is using a GST ratio for the tax year, the group may not start using a GST ratio for this purpose for the tax year:

(c) for the purposes of paragraph (a),—

(i) the group must recalculate the GST ratio applying for a tax year to include the residual income tax of the company for the preceding tax year and the total taxable supplies of the company for the corresponding income year, applying section RC 8(3) if required; and

(ii) the recalculated GST ratio applies to provisional tax payments made for the corresponding income year on or after the date on which the company joins the group:

(d) sections RC 17(3) and RC 18(4) or (5), as applicable, apply to a company that leaves a consolidated group at some time in a tax year.

Defined in this Act: company, consolidated group, corresponding income year, GST ratio, pay, provisional tax, residual income tax, tax year, total taxable supplies

Compare: 2004 No 35 s MB 32

RC 32 Wholly-owned groups of companies

When this section applies

(1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in relation to a company (**company A**) that is in a tax year part of a wholly-owned group of companies that includes another company (**company B**). Sections RM 13 to RM 17 (which relate to refunds) override this section.

Company A transferring overpayment to company B

(2) If, for a tax year, company A has paid an amount that is more than the provisional tax payable for the tax year, the company may transfer some or all of the overpayment to company B to the extent to which the amount of provisional tax paid by com-

pany B is less than their residual income tax for the tax year. Company A must notify the Commissioner under subsection (4).

When transfer made

(3) Company A may transfer an amount under subsection (2) on or after the later of—

(a) the day on which company A overpays the provisional tax; or

(b) the day on which the first instalment of provisional tax for the tax year becomes payable by company B.

Notice

(4) A notice under subsection (2) must—

(a) name company B, and the amount to be transferred; and

(b) state the date on which the overpayment is treated as transferred to company B; and

(c) be given to the Commissioner within—

(i) the time for providing a return of income for the tax year for company B; or

(ii) an extension of time allowed by the Commissioner.

When transfer made, and how transfer treated

(5) For the purposes of this section,—

(a) a transfer under subsection (2) is treated as made on the date stated in the notice; and

(b) provisional tax transferred by company A to company B is treated as provisional tax paid by company B and not by company A.

Defined in this Act: amount, Commissioner, company, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year, wholly-owned group of companies

Compare: 2004 No 35 s MB 33

RC 33 Amalgamated companies: calculating residual income tax

When this section applies

(1) This section applies for a tax year when an amalgamating company ends its existence on an amalgamation.

Residual income tax for preceding tax year

(2) The residual income tax of the amalgamated company for the preceding tax year is the amount that would have been the residual income tax of the amalgamated company for the preceding tax year if the amalgamating company and the amalgamated company had been 1 company.

Exclusion

(3) Subsection (2) does not apply for the purposes of the provisional tax rules in relation to instalments of provisional tax payable before the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, pay, provisional tax, provisional tax rules, residual income tax, tax year

Compare: 2004 No 35 s MB 34

Attribution rule for income from personal services

RC 34 Attribution rule for income from personal services

When this section applies

(1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 for provisional tax paid for income from personal services to which section GB 27 (Attribution rule for income from personal services) may apply. The references in this section to **working person** and **associated entity** reflect the terminology used in section GB 27.

Associated entity transferring amount to working person

(2) If, in a tax year, the associated entity pays an amount of tax that is more than the provisional tax payable for the tax year, the entity may transfer some or all of the overpayment to the working person to the extent to which the amount of provisional tax paid by the person is less than their residual income tax for the tax year.

Working person transferring amount to associated entity

(3) If, in a tax year, the working person pays an amount of tax that is more than the provisional tax payable for the tax year, they may transfer some or all of the overpayment to the associated entity to the extent to which the amount of provisional tax paid

by the entity is less than their residual income tax for the tax year.

When transfer made

(4) The associated entity and the working person may transfer an amount under subsection (2) or (3), as applicable, on or after the later of—

(a) the day on which the overpayment of provisional tax is paid by the entity or person, as applicable:

(b) the day on which the instalment of provisional tax payable for the tax year becomes payable by—

(i) the person, if the entity is making the transfer; or

(ii) the entity, if the person is making the transfer.

Notice

(5) The Commissioner must be notified of a transfer under subsection (2) or (3) in a notice that—

(a) names the person to whom a transfer is made, and the amount to be transferred; and

(b) states the date on which the overpayment is treated as transferred to the associated entity or working person, as applicable; and

(c) is provided within the time for filing a return of income for the tax year for the person to whom the transfer is made, or an extended time allowed by the Commissioner.

When transfer made and how transfer treated

(6) For the purposes of this section,—

(a) a transfer under subsection (2) or (3) is treated as made on the day stated in the notice; and

(b) provisional tax transferred by the associated entity to the working person for a tax year is treated as provisional tax paid by the working person and not by the associated entity; and

(c) provisional tax transferred by the working person to the associated entity is treated as provisional tax paid by the associated entity and not by the working person.

Defined in this Act: amount, amount of tax, associated person, Commissioner, income, notice, notify, pay, provisional tax, provisional tax rules, residual income tax, return of income, tax year

Compare: 2004 No 35 s MB 35

Section RC 34(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(2) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(2): substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(3) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(4) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(5) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(5): substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(6) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34(6): substituted (with effect on 1 April 2008), on 6 October 2009, by section 500(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34 list of defined terms **amount of tax**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 500(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RC 34 list of defined terms **associated person**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 500(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Credits

RC 35 Further income tax credited to provisional tax liability

When this section applies

(1) This section applies for the purposes of sections RC 9 to RC 11 if, under sections OB 65 to OB 69 (which relate to further income tax for ICA companies), a company applies an amount of further income tax to pay an instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax.

Amount treated as provisional tax

(2) The instalment is satisfied to the extent of the amount of further income tax. The amount is treated as provisional tax paid on the date on which the instalment was payable.

Order

(3) The Commissioner must credit the amount of the further income tax in payment successively of—

(a) the instalment of provisional tax that is first payable after the date of payment of the further income tax; and

(b) to the extent of the amount of further income tax, to later instalments in the order in which they are payable.

Defined in this Act: amount, Commissioner, company, further income tax, ICA company, pay, provisional tax

Compare: 2004 No 35 s MB 37

Disaster relief
[Repealed]

Heading: repealed, on 6 October 2009, pursuant to section 501 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RC 36 Persons affected by adverse events

[Repealed]

Section RC 36: repealed, on 6 October 2009, by section 501 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Early-payment discounts

RC 37 Availability of early-payment discounts

Sections RC 38 and RC 39 apply for an income year to a small-business person who is not liable to pay provisional tax for the income year and, for earlier income years,—

(a) has never been liable to pay provisional tax and either—

(i) has never received an early-payment discount; or

(ii) has not derived assessable income from a business in a period of 4 income years starting after the latest income year for which they received an early-payment discount; or

(b) has not derived assessable income from a business in a period of 4 income years starting after the latest income year for which they were liable to pay provisional tax.

Defined in this Act: assessable income, business, early-payment discount, income year, pay, provisional tax, small-business person

Compare: 2004 No 35 s MBB 2(1)(a), (d)

RC 38 Crediting income tax with early-payment discount

When this section applies

(1) This section applies when a small-business person—

(a) pays income tax on or before their balance date for the income year; and

(b) during the period from the balance date for the income year to their terminal tax date for the income year, has a credit in their tax account with the Commissioner that is greater than or equal to the lesser of—

(i) the total amount paid under paragraph (a):

(ii) the amount that would be their terminal tax for the income year in the absence of this section; and

(c) files a return of income for the tax year corresponding to the income year; and

(d) applies for an early-payment discount on or before the last date for filing a return of income under section 37(5) of the Tax Administration Act 1994.

Crediting early-payment discount

(2) The Commissioner must credit the tax account of the small-business person with an early-payment discount calculated under subsection (3).

Amount of early-payment discount

(3) The amount of the early-payment discount is found by multiplying the discount rate under subsection (4) by the lesser of—

(a) the total amount paid under subsection (1)(a):

(b) 105% of the small-business person's residual income tax for the income year.

Discount rate

(4) The discount rate is—

(a) 6.7%, if no rate is set under paragraph (b):

(b) the rate set by the Governor-General by Order in Council.

Defined in this Act: amount, balance date, Commissioner, corresponding income year, early-payment discount, income, income tax, income year, pay, residual income tax, return of income, small-business person, tax account with the Commissioner, tax year, terminal tax

Compare: 2004 No 35 s MBB 2(1)(b), (c), (2)–(4)

RC 39 Credit treated as payment of income tax

A credit of an early-payment discount under section RC 38 is treated as a payment made by a small-business person on the day after the last day of the income year referred to in section RC 38 as income tax for the income year.

Defined in this Act: early-payment discount, income tax, income year, pay, small-business person

Compare: 2004 No 35 s MBB 3

RC 40 Some definitions

In this subpart,—

early-payment discount means a discount of income tax under sections RC 38 and RC 39

small-business person means a person who—

(a) conducts a business on their own account, acting alone or as a partner in a partnership; and

(b) does not use a company or a trust in the conduct of the business; and

(c) derives income that is mainly from the business, and does not consist of interest, dividends, royalties, rent, or beneficiary income.

Defined in this Act: beneficiary income, business, company, dividend, income, income tax, interest, royalty

Compare: 2004 No 35 s MBB 4

Subpart RD—Employment-related taxes

Introductory provision

RD 1 What this subpart does

This subpart establishes and measures an employer's liability under—

(a) the PAYE rules by—
  (i) listing the types of payments to which the rules apply:
  (ii) calculating the amounts of tax that must be withheld and paid to the Commissioner under the rules:
  (iii) providing for certain adjustments to the amounts:
  (iv) providing some rules related to the payment of the amounts:

(b) the FBT rules by—
  (i) calculating the value of the benefit provided:
  (ii) attributing certain fringe benefits to employees:
  (iii) setting out the taxable value of certain fringe benefits:
  (iv) providing options for the payment of FBT to the Commissioner:

(c) the ESCT rules and RSCT rules by setting out the payments to which the rules apply and calculating the amounts of tax that must be withheld and paid to the Commissioner under the rules.

Defined in this Act: amount of tax, Commissioner, employee, employer, ESCT rules, FBT, FBT rules, fringe benefit, fringe benefit tax, pay, PAYE rules, RSCT rules

Section RD 1(c): amended, on 1 April 2008, by section 538 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 1 list of defined terms **RSCT rules**: inserted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years),

by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

PAYE rules and PAYE income payments

Introductory provisions

RD 2 PAYE rules and their application

Meaning

(1) The **PAYE rules** means—

(a) section BC 1 (Non-filing and filing taxpayers); and

(b) sections LA 6, LB 1, and LD 4 (which relate to tax credits); and

(c) sections RD 3 to RD 24; and

(d) sections RP 2 to RP 16 (which relate to PAYE intermediaries); and

(e) sections 15C to 15M, 24, 24B to 24P, 48, and 133, Part 9, and sections 167 to 169 of the Tax Administration Act 1994.

Application

(2) The PAYE rules apply to a person who makes or is required to make a PAYE income payment and, in certain circumstances, to the person to whom the PAYE income payment is made.

Deceased employers

(3) The executor or administrator of a deceased employer must complete any uncompleted PAYE obligations of the employer.

Defined in this Act: employer, PAYE income payment, PAYE rules

Compare: 2004 No 35 ss NC 15(4), OB 1 **PAYE rules**

Section RD 2(1)(b): substituted, on 6 January 2010, by section 502 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 3 PAYE income payments

Meaning generally

(1) The PAYE rules apply to a **PAYE income payment which**—

(a) means—

(i) a payment of salary or wages, *see* section RD 5; or

(ii) extra pay, *see* section RD 7; or

(iii) a schedular payment, *see* section RD 8:

(b) does not include—

(i) an amount attributed under section GB 29 (Attribution rule: calculation):

(ii) an amount paid to a shareholder-employee in the circumstances set out in subsection (2):

(iii) an amount paid or benefit provided, by a person (the **claimant**) who receives a personal service rehabilitation payment from which an amount of tax has been withheld at the rate specified in schedule 4, part I (Rates of tax for schedular payments) or under section RD 18 (Schedular payments without notification), to another person for providing a key aspect of social rehabilitation referred to in paragraph (c) of the definition of **personal service rehabilitation payment** in section YA 1 (Definitions).

When subsections (3) and (4) apply: close companies

(2) Subsections (3) and (4) apply for an income year when a person is a shareholder-employee of a close company, and—

(a) they do not derive as an employee salary or wages of a regular amount for regular pay periods—

(i) of 1 month or less throughout the income year; or

(ii) that total 66% or more of the annual gross income of the person in the corresponding tax year as an employee; or

(b) an amount is paid as income that may later be allocated to them as an employee for the income year.

Income in current tax year

(3) The person may choose to treat all amounts paid to them in the income year in their capacity as employee of the close company as income other than from a PAYE income payment.

Income in later tax years

(4) All amounts paid to the person in later income years in their capacity as employee of the close company are treated as income other than from a PAYE income payment.

If questions arise

(5) If a question arises whether the PAYE rules apply to all or part of a PAYE income payment, other than an amount referred to in subsections (2) to (4), the Commissioner must determine the matter.

Defined in this Act: amount, annual gross income, close company, Commissioner, employee, extra pay, income, income year, pay, pay period, PAYE income payment, PAYE rules, salary or wages, schedular payment, shareholder-employee, tax year

Compare: 2004 No 35 ss NC 1(2), OB 2

Section RD 3(1)(b)(ii): amended, on 1 July 2008, by section 539 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 3(1)(b)(iii): substituted (with effect on 1 July 2008), on 6 October 2009, by section 503(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 3(1)(b)(iii): added, on 1 July 2008, by section 539 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 3(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 503(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 3(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 503(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 4 Payment of amounts of tax to Commissioner

Payments monthly or fortnightly

(1) An employer or PAYE intermediary who withholds an amount of tax for a PAYE income payment must pay the amount to the Commissioner as follows

(a) on a monthly basis, if they are an employer to whom section RD 22(3) or (4) applies:

(b) for 2 payment periods in a month, if paragraph (a) does not apply.

Liability when amount not withheld

(2) If some or all of the amount of tax for a PAYE income payment is not withheld under subsection (1), the employee in relation to whom the payment is made must—

(a) pay an amount equal to the amount of tax to the Commissioner by the 20th day of the month following that in which the PAYE income payment was made; and

(b) provide an employer monthly schedule to the Commissioner by the date described in paragraph (a).

When taxable activity ends

(3) Section RA 17 (Payment date when RWT exemption certificate expires) overrides subsection (1).

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer monthly schedule, pay, PAYE income payment, PAYE intermediary

Compare: 2004 No 35 ss NC 15(1), NC 16

Section RD 4(2): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 125(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Types of PAYE income payments

RD 5 Salary or wages

Meaning

(1) **Salary or wages**—

(a) means a payment of salary, wages, or allowances made to a person in connection with their employment; and

(b) includes—

(i) a bonus, commission, gratuity, overtime pay, or other pay of any kind; and

(ii) a payment described in subsections (2) to (8); and

(iii) an accident compensation earnings-related payment; and

(c) does not include—

(i) an amount of exempt income:

(ii) an extra pay:

(iii) a schedular payment:

(iv) an amount of income described in section RD 3(3) and (4):

(v) an employer's superannuation contribution other than a contribution referred to in subsection (9):

(vi) a payment excluded by regulations made under this Act; and

(d) is defined in section RD 65(13) for the purposes of that section.

Employees' expenditure on account

(2) A payment of expenditure on account of an employee is included in their salary or wages.

Payments to working partners

(3) A payment to a working partner under section DC 4 (Payments to working partners) is included in their salary or wages.

Payments to working owners

(3B) A payment to a working owner under section DC 3B (Payments to working owners) is included in their salary or wages.

Payments to past employees

(4) A periodic payment of a pension, allowance, or annuity made to a person or their spouse, civil union partner, de facto partner, child, or dependant in connection with the past employment of the person is included in their salary or wages.

Payments to Governor-General, members of Parliament, and judicial officers

(5) The following payments made under a determination of the Remuneration Authority are included in salary or wages

(aa) salary made to the Governor-General:

(a) salary or allowances made to a member of Parliament:

(b) salary and principal allowances made to a judicial officer.

(5B) A payment to a person made under section 7 of the Governor-General Act 2010 is included in the salary and wages of that person.

Certain benefits and grants

(6) A payment of the following benefits or grants is included in salary or wages

(a) a gratuitous payment as described in paragraph (a) of the definition of **pension** in section CF 1(2) (Benefits, pensions, compensation, and government grants):

(b) an income-tested benefit:

(bb) a veteran's pension, other than a veteran's pension paid under section 74J(2)(b) of the War Pensions Act 1954:

(bc) New Zealand superannuation, other than New Zealand superannuation paid under section 26(2)(b) of the New Zealand Superannuation and Retirement Income Act 2001:

(bd) a living alone payment:

(c) a basic grant and independent circumstances grant made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections.

Parental leave payments

(7) A parental leave payment made under Part 7A of the Parental Leave and Employment Protection Act 1987 is included in salary or wages.

Accommodation benefits

(8) A benefit treated as income under section CE 1(1B) (Amounts derived in connection with employment) is included in salary or wages.

Cash contributions

(9) An amount of an employer's superannuation cash contribution that an employee chooses to have treated as salary or wages under section RD 68 is included in salary or wages.

Defined in this Act: accident compensation earnings-related payment, accommodation, amount, de facto partner, employer's superannuation cash contribution, employer's superannuation contribution, employment, exempt income, expenditure on account of an employee, extra pay, income, income-tested benefit, living alone payment, New Zealand superannuation, pay, salary or wages, schedular payment, veteran's pension

Compare: 2004 No 35 s OB 1 **salary or wages**

Section RD 5(1)(b)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 504(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5(1)(c)(v): substituted (with effect on 1 April 2008), on 6 October 2009, by section 504(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5(1)(c)(v): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 126(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 5(1)(c)(vi): amended, on 1 April 2008, by section 133 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section RD 5(1)(d): added, on 1 April 2008, by section 133 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section RD 5(3B) heading: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 126(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 5(3B): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 126(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 5(5) heading: amended, on 23 November 2010, by section 24(1) of the Governor-General Act 2010 (2010 No 122).

Section RD 5(5)(aa): inserted, on 23 November 2010, by section 24(2) of the Governor-General Act 2010 (2010 No 122).

Section RD 5(5B): inserted, on 23 November 2010, by section 24(3) of the Governor-General Act 2010 (2010 No 122).

Section RD 5(6)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 504(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5(6)(b): substituted, on 5 January 2010, by section 102 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 5(6)(bb): inserted, on 5 January 2010, by section 102 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 5(6)(bc): inserted, on 5 January 2010, by section 102 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 5(6)(bd): inserted, on 5 January 2010, by section 102 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 5(6)(c): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 122(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RD 5(8) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 504(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5(8): added (with effect on 1 April 2008), on 6 October 2009, by section 504(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5(8): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RD 5(9) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 504(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5(9): added (with effect on 1 April 2008), on 6 October 2009, by section 504(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5 list of defined terms **accommodation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 504(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 5 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 504(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 6 Certain benefits and payments

When this section applies

(1) This section applies when an employee receives—

(a) an accommodation benefit treated as income under section CE 1(1B) (Amounts derived in connection with employment); or

(b) another benefit in kind that is included in their salary or wages; or

(c) 1 or more of the following payments:

(i) a superannuation payment:

(ii) a pension:

(iii) a retiring or other allowance:

(iv) an annuity.

Value or amount included in salary or wages

(2) The value of the benefit or amount of the payment is treated as—

(a) accruing from day to day; and

(b) included in the employee's salary or wages for the pay period or, as applicable, as part of their salary or wages for the pay period.

When non-cash benefit treated as paid

(3) If the employee receives the benefit otherwise than in cash, the value is treated as paid—

(a) for a benefit that constitutes the only salary or wages of the employee, on the last day of the pay period; or

(b) for all other benefits, when the last amount of salary or wages for the pay period is paid.

Defined in this Act: accommodation, employee, employment, pay, pay period, salary or wages

Compare: 2004 No 35 s NC 4

Section RD 6(1)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 505(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 6(1)(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RD 6(1)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 505(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 6 list of defined terms **accommodation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 505(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 7 Extra pay

Meaning

(1) An **extra pay**—

(a) means a payment that—

(i) is made to a person in connection with their employment; and

(ii) is not a payment regularly included in salary or wages payable to the person for a pay period; and

(iii) is not overtime pay; and

(iv) is made in 1 lump sum or in 2 or more instalments; and

(b) includes a payment of the kind described in paragraph (a) made—

(i) as a bonus, gratuity, or share of profits; or

(ii) as a redundancy payment; or

(iii) when the person retires from employment; or

(iv) as a result of a retrospective increase in salary or wages, but only to the extent described in subsection (2); and

(c) includes an amount of income that a person derives under section CE 9 (Restrictive covenants) or CE 10 (Exit inducements) if the income is derived in connection with an employment relationship between the person and the person who paid the amount; and

(d) does not include a payment of exempt income.

Limit on retrospective increase in salary or wages

(2) A payment described in subsection (1)(b)(iv) is included in extra pay only to the extent to which,—

(a) it accrues from the start of the increase until the start of the first pay period in which the increase is included in salary or wages; and

(b) when a week ends with a Saturday, the total of the increase for the week, and of the salary or wages for the week excluding the increase, and of any other salary or

wages that the person earns for the week, is more than $4.

Defined in this Act: amount, employment, exempt income, income, pay, pay period, salary or wages

Compare: 2004 No 35 s OB 1 **extra pay**

RD 8 Schedular payments

Meaning

(1) A **schedular payment**—

(a) means—

(i) a payment of a class set out in schedule 4 (Rates of tax for schedular payments); and

(ii) in relation to a sale, the net amount paid after subtracting from the purchase price all commission, insurance, freight, classing charges and other expenses incurred by the seller in connection with the sale; and

(b) does not include—

(i) salary or wages; or

(ii) an extra pay; or

(iii) a payment for services provided by a public authority, a local authority, a Maori authority, or a company, other than a non-resident contractor, a non-resident entertainer, or an agricultural, horticultural, or viticultural company; or

(iv) a payment covered by an exemption certificate provided under section 24M of the Tax Administration Act 1994; or

(v) a payment for services provided by a non-resident contractor who has full relief from tax under a double tax agreement, and is present in New Zealand for 92 or fewer days in a 12-month period; or

(vi) a contract payment for a contract activity or service of a non-resident contractor when the total amount paid for those activities to the contractor or another person on their behalf is $15,000 or less in a 12-month period.

Protected payments

(2) The fact that a schedular payment may be protected against assignment or charge does not override a person's obligation to withhold the amount of tax for the payment.

Determination of expenditure incurred

(3) The Commissioner may determine from time to time the amount or proportion of expenditure that a person incurs in deriving a particular schedular payment or class of schedular payments.

Defined in this Act: agricultural, horticultural, or viticultural company, amount, amount of tax, Commissioner, company, contract activity or service, contract payment, double tax agreement, exemption certificate, extra pay, local authority, Maori authority, New Zealand, non-resident contractor, non-resident entertainer, pay, public authority, salary or wages, schedular payment

Compare: 2004 No 35 s NC 21(f)–(h), Income Tax (Withholding Payments) Regulations 1979, regulations 2, 4, 6–8

Section RD 8(1)(b)(v): amended (with effect on 1 April 2008), on 6 October 2009, by section 506 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculating amounts of tax

RD 9 Maximum amount

When a person calculates an amount of tax for a PAYE income payment, they must use the maximum rate under schedule 2 (Basic tax rates for PAYE income payments) at the time for the payment and the person receiving the payment, unless this Act states otherwise.

Defined in this Act: amount of tax, pay, PAYE income payment

Compare: 2004 No 35 s NC 6(1A), (3)

RD 10 Amounts of tax for PAYE income payments

PAYE income payments other than schedular payments

(1) The amount of tax for a PAYE income payment that a person must withhold and pay to the Commissioner under section RA 5 (Tax obligations for employment-related taxes) is the relevant amount under schedule 2 (Basic tax rates for PAYE income payments). Subsections (2) and (3) and sections RD 12 to RD 20 override this subsection.

Choosing rate for extra pay

(2) An employee who notifies their employer of their tax code may choose to have the amount of tax for an extra pay fixed as follows

(a) for an employee whose taxable income for the income year is expected to be not more than $48,000, the rate set out in schedule 2, part B, table 1, row 2; or

(b) for an employee whose taxable income for the income year is expected to be not more than $70,000, the rate set out in schedule 2, part B, table 1, row 3; or

(c) for other employees, the rate set out in schedule 2, part B, table 1, row 4.

Relationship with section RD 17

(2B) Despite subsection (2), a person must not choose a rate set out in schedule 2, part B, table 1 that is lower than the rate that would apply to the amount of extra pay under section RD 17.

Schedular payments

(3) The amount of tax for a schedular payment is determined—

(a) at the relevant rate set out in schedule 4 (Rates of tax for schedular payments); and

(b) on the basis of the gross amount of the payment, whether—

(i) some or all of the payment is income; and

(ii) the full income tax liability lies with the person receiving the payment, or lies partly with an employee or subcontractor of the person.

Tax tables

(4) The Commissioner may provide tables for the calculation of an amount of tax for a PAYE income payment that may incorporate other relevant information.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, extra pay, gross, income, income tax liability, income year, notify, pay, PAYE income payment, schedular payment, tax code, taxable income

Compare: 2004 No 35 ss NC 6, NC 8(1A), Income Tax (Withholding Payments) Regulations 1979, regulation 3

Section RD 10(2)(a): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 10(2)(a): amended, on 1 October 2008, by section 14(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RD 10(2)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 10(2)(c): added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 10(2B) heading: inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 10(2B): inserted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 103(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RD 11 Reduction in certain circumstances

Special circumstances

(1) Despite sections RD 2 to RD 10, the Commissioner may, in special circumstances, reduce the amount of tax for a PAYE income payment to an employee or a class of employees. The PAYE rules then apply as if amended.

When schedule or regulations inapplicable

(2) If the amount of tax for a PAYE income payment cannot be determined under schedule 2 (Basic tax rates for PAYE income payments) or under regulations made under this Act because of the size of the PAYE income payment, or the number of the employee's dependants, or for any other reason, the amount of tax for the payment must be determined by the Commissioner, taking into account the factors considered in fixing the amount of tax for other similar payments.

Income-tested benefits and education allowances

(3) The amount of tax for a PAYE income payment that is an income-tested benefit or an allowance paid under regulations made under section 303 of the Education Act 1989 must be determined by the Commissioner in consultation with the chief executive of the administering department or the Secretary of Education.

When Commissioner makes determination under section RD 8(3)

(4) If the Commissioner makes a determination under section RD 8(3) in relation to the amount or proportion of expenditure that a person incurs in deriving a schedular payment, the basis for calculating the amount of tax for the schedular payment is the reduced amount found after subtracting the amount or proportion of expenditure determined by the Commissioner from the amount of the payment. This subsection overrides section RD 10(3).

Defined in this Act: amount, amount of tax, chief executive of the administering department, Commissioner, employee, income-tested benefit, PAYE income payment, PAYE rules, schedular payment

Compare: 2004 No 35 ss NC 6(1C), (1D), NC 13, Income Tax (Withholding Payments) Regulations 1979, regulation 6(3)

Section RD 11(4) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 507(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 11(4): added (with effect on 1 April 2008), on 6 October 2009, by section 507(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 11 list of defined terms **amount**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 507(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 11 list of defined terms **schedular payment**: added (with effect on 1 April 2008), on 6 October 2009, by section 507(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 11 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 507(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Adjustments for certain PAYE income payments

RD 12 Multiple payments of salary or wages

When this section applies

(1) This section applies when an employee receives more than 1 payment of salary or wages in a week or part of a week that ends on a Saturday. The employment may relate to 1 or more employment situations.

When this section does not apply

(2) This section does not apply—

(a) when an employee leaves regular full-time employment before engaging in another regular full-time employment; or

(b) to salary or wages from employment as a casual agricultural employee, election day worker, or non-resident seasonal worker.

Treatment as 1 payment

(3) The total amount of tax for all payments of salary or wages is the amount that would be required to be withheld if all the payments were treated as 1 payment made by 1 employer for the week.

Defined in this Act: amount of tax, casual agricultural employee, election-day worker, employee, employer, employment, non-resident seasonal worker, pay, salary or wages

Compare: 2004 No 35 s NC 10

Section RD 12(2)(b): substituted (with effect on 1 April 2009), on 6 October 2009, by section 508(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 12 list of defined terms **non-resident seasonal worker**: inserted (with effect on 1 April 2009), on 6 October 2009, by section 508(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 13 Advance payments of salary or wages

When this section applies: increase in amount of tax

(1) This section applies when—

(a) an employee receives from an employer a payment of salary or wages referred to in section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes); and

(b) the amount of tax under schedule 2 (Basic tax rates for PAYE income payments) for all or part of the payment is increased; and

(c) the payment is made before the date of the increase.

When this section applies: becoming subject to PAYE rules

(2) This section also applies when all or part of a payment of salary or wages becomes subject to the PAYE rules, but the payment is made before the date on which it becomes subject to the rules.

Addition to amount of tax for next payment

(3) The amount of the difference caused by the increase referred to in subsection (1)(b) is added to the amount of tax for the next payment of salary or wages made by the employer to the employee.

Defined in this Act: amount of tax, employee, employer, pay, PAYE rules, salary or wages

Compare: 2004 No 35 s NC 11

Section RD 13(1)(a): substituted (with effect on 1 April 2008) on 6 October 2009, by section 509(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 13B Adjustments for payroll donations

When this section applies

(1) This section applies when an employee makes a payroll donation for a pay period for which they have a tax credit under section LD 4 (Tax credits for payroll donations).

Subtracting amount of tax credit

(2) The employer or PAYE intermediary must subtract the amount of the tax credit from the amount of tax for the employee's PAYE income payment for the pay period and record the information in the relevant employer monthly schedule.

Defined in this Act: employee, employer, employer monthly schedule, pay period, PAYE income payment, PAYE intermediary, payroll donation, tax credit

Section RD 13B: inserted, on 6 January 2010, by section 510 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 14 Changes to tax rates for salary or wages

When subsection (2) applies

(1) Subsection (2) applies when a change occurs to the amounts of tax for PAYE income payments set out in schedule 2 (Basic tax rates for PAYE income payments).

Determining amount of tax

(2) The amount of tax for a payment of salary or wages for the pay period in which the change occurs is determined as follows

(a) for a pay period of 1 month or less, the amount of tax for the full payment for the pay period is the altered amount:

(b) for a pay period of more than 1 month, the amount of tax is determined on the basis set out in schedule 2, clause 2, by—

(i) determining the proportionate parts of the payment before and after the change; and

(ii) calculating each part of the relevant amount of tax; and

(iii) adding together the relevant amounts of tax.

When subsection (4) applies

(3) Subsection (4) applies for a week when—

(a) a change occurs to the amounts of tax for PAYE income payments set out in schedule 2; and

(b) an employee receives more than 1 payment of salary or wages for the week as described in section RD 12.

Determining amount of tax

(4) The total amount of tax for all payments of salary or wages for the week in which the change occurs is the amount determined under section RD 12.

Later payment for earlier services

(5) The amount of tax for a payment of salary or wages made after the date of the change for a pay period ending before the date in relation to services provided before the date must be calculated using the basic amounts of tax for PAYE income payments applicable in the pay period or week.

Defined in this Act: amount of tax, employee, pay, pay period, PAYE income payment, salary or wages

Compare: 2004 No 35 s NC 12

RD 15 Payments of salary or wages in pay periods

Payment for part of period

(1) If an employee who is in regular full-time employment is paid salary or wages for part of a pay period, the payment is treated as a payment for a full pay period.

Payment on production basis

(2) If an employee who is paid on a production basis for work performed as a piece worker or out-worker is paid salary or wages, the payment is treated as payment for the period that runs from the date the work starts to the date of its completion.

Payments in several sums

(3) If a PAYE income payment for a pay period is paid in 2 or more separate sums, those sums must be added together to determine the amount of tax for the payment.

When impractical to make payments at same time

(4) Despite subsection (3), if it is impractical for an employer to pay an employee overtime pay and other salary or wages for a pay period at the same time, the employer may add the amount of the overtime pay of the employee to their salary or wages for a later pay period, but not their overtime pay if, for both pay periods,—

(a) the amounts of the employee's salary or wages are more or less the same; and

(b) the amounts of tax withheld from the employee's salary or wages are the same; and

(c) the employee has the same tax code.

Periods not coinciding

(5) For the purposes of subsection (4), if overtime pay is paid for a particular period that is the same length as a pay period but does not coincide with a pay period, it may be treated as overtime pay for the pay period in which the particular period ends.

Defined in this Act: amount of tax, employee, employer, employment, pay, pay period, PAYE income payment, salary or wages, tax code, tax withheld

Compare: 2004 No 35 s NC 2(2)–(4)

RD 16 Payments to private domestic workers

When this section applies

(1) This section applies to a person who is employed as a private domestic worker by another person and—

(a) the employer is the occupier, or 1 of the occupiers, of a house or premises used exclusively for residential purposes; and

(b) the employment—

(i) is for the performance of work in or about the house or premises, or a garden or grounds belonging to the house or premises; and

(ii) is not for a business carried on by the employer, or an occupation or calling of the employer; and

(iii) is not regular full-time employment.

No amount of tax withheld

(2) No amount of tax is required to be withheld for a PAYE income payment relating to the person's employment as a private domestic worker when sections RA 8 (Liability of persons receiving payments or benefits) and RD 4(2) apply.

Defined in this Act: amount of tax, business, employer, employment, PAYE income payment, private domestic worker

Compare: 2004 No 35 s NC 2(1)

RD 17 Payment of extra pay with other PAYE income payments

When this section applies

(1) This section applies when a person pays an amount of extra pay to an employee who also receives a PAYE income payment from the person, regardless of whether the extra pay is paid with or separately from a PAYE income payment. The amount of tax for the extra pay is based on the sum of—

(a) the amount of the extra pay; and

(b) the annualised value of all PAYE income payments made to the employee in the period that starts 4 weeks before the date of the payment of the extra pay and ends on the date of that payment.

Calculating annualised value

(1B) For the purposes of calculating the amount that is the annualised value referred to in subsection (1)(b), the amount of the extra pay referred to in subsection (1)(a) is excluded.

Rates applying

(2) For the sum of the amounts referred to in subsection (1) listed in the following paragraphs, the amount of tax for the extra pay that must be withheld is the amount determined using the basic amounts of tax for PAYE income payments set out in the relevant row of schedule 2, part B, table 1 (Basic tax rates for PAYE income payments):

(a) if the sum of the amounts is $14,000 or less, the amount determined by applying row 1:

(b) if the sum of the amounts is more than $14,000 but not more than $48,000, the amount determined by applying row 2:

(c) if the sum of the amounts is more than $48,000 but not more than $70,000, the amount determined by applying row 3:

(d) if the sum of the amounts is more than $70,000, the amount determined by applying row 4.

When secondary tax codes apply

(3) Despite subsection (2), if the person pays an amount of extra pay to an employee in relation to which the employee has notified the person that a secondary code under section 24B(3)(bb), (c), (d), or (e) of the Tax Administration Act 1994 applies, the rate under schedule 2, part B, table 1 applying to the extra pay is determined using the formula—

extra pay + annualised amount + low threshold amount.

Definition of items in formula

(4) In the formula,—

(a) **extra pay** is the amount of the employee's extra pay:

(b) **annualised amount** is the amount given by subsections (1)(b) and (1B):

(c) **low threshold amount** is, as applicable,—

(i) for secondary code SB, $0:

(ii) for secondary code S, $14,001:

(iii) for secondary code SH, $48,001:

(iv) for secondary code ST, $70,001.

Defined in this Act: amount, amount of tax, employee, extra pay, pay, PAYE income payment

Compare: 2004 No 35 s NC 2(5)

Section RD 17(1) heading: substituted (with effect on 1 April 2008), on 7 December 2009, by section 104(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(1): substituted (with effect on 1 April 2008), on 7 December 2009, by section 104(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 511(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 17(1B) heading: inserted (with effect on 1 April 2008), on 7 December 2009, by section 104(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(1B): inserted (with effect on 1 April 2008), on 7 December 2009, by section 104(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(2) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(2) heading: substituted, on 1 April 2009, by section 5(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 17(2) heading: substituted, on 1 October 2008, by section 15(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RD 17(2): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(2): substituted, on 1 April 2009, by section 5(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 17(2): substituted, on 1 October 2008, by section 15(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RD 17(3) heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(3) heading: substituted, on 1 October 2008, by section 15(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RD 17(3): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(3): substituted, on 1 October 2008, by section 15(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RD 17(4) heading: added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RD 17(4): added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 104(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RD 18 Schedular payments without notification

When this section applies

(1) This section applies when a person makes a schedular payment but the notification required under section 24L of the Tax Administration Act 1994 has not been provided to them.

When this section does not apply

(2) This section does not apply when a person other than a company incorporates a company to obtain a reduction in an amount of tax for a schedular payment.

Additional amount of tax

(3) The person must withhold, in addition to the amount calculated under section RD 10(3), an amount of tax for the schedular payment determined as follows:

(a) 5% of the amount of the schedular payment if—

(i) the person receiving the payment is a company that is a non-resident contractor; and

(ii) the non-resident contractor receives the payment other than as a result of a choice that is made for the purposes that include a purpose of defeating the intent and application of paragraph (b):

(b) 15% of the amount of the schedular payment in all other cases.

Non-application to non-resident entertainers

(4) This section does not apply if the schedular payment is made to a non-resident entertainer.

Defined in this Act: amount, amount of tax, company, non-resident contractor, non-resident entertainer, notify, pay, schedular payment

Compare: 2004 No 35 s NC 7(2)

Section RD 18(3) heading: substituted (with effect on 1 April 2008) on 6 October 2009, by section 512(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 18(3): substituted (with effect on 1 April 2008) on 6 October 2009, by section 512(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 18(4) heading: added (with effect on 1 April 2008) on 6 October 2009, by section 512(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 18(4): added (with effect on 1 April 2008) on 6 October 2009, by section 512(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 19 Schedular payments to non-resident entertainers

When this section applies

(1) This section applies when a non-resident entertainer derives income from an activity or performance connected with any

of the activities or performances described in the definition of **non-resident entertainer**.

Amounts withheld

[Repealed]

(2) *[Repealed]*

Amounts not withheld

(3) If the entertainer has received a schedular payment from which no amount of tax has been withheld, the entertainer must pay the amount of tax to the Commissioner by the 20th day of the month following that in which the payment was made, or by the date of their departure from New Zealand if that is earlier.

Defined in this Act: amount, amount of tax, Commissioner, income, income tax liability, New Zealand, non-resident entertainer, pay, schedular payment, tax year

Compare: Income Tax (Withholding Payments) Regulations 1979, regulations 10, 11

Section RD 19(2) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 513 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 19(2): repealed (with effect on 1 April 2008), on 6 October 2009, by section 513 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 20 Schedular payments to subcontractors

When this section applies

(1) This section applies when a contractor is paid a schedular payment for services provided under a contract, and a subcontractor has provided services under the contract.

Obligation to retain amount

(2) The PAYE rules apply to the contractor in relation to a payment made to the subcontractor in relation to the work carried out under the contract.

Defined in this Act: pay, PAYE rules, schedular payment

Compare: Income Tax (Withholding Payments) Regulations 1979, regulation 12

Paying amounts of tax

RD 21 When amounts of tax not withheld or payment insufficient

Employees' obligations

(1) If, for any reason, some or all of the amount of tax for a PAYE income payment is not withheld at the time it is paid to an employee, the employee must—

(a) provide an employer monthly schedule with the relevant details; and

(b) pay the amount of the deficiency.

When person exempt or not liable to pay

(2) Subsection (1)(b) does not apply if the employee is exempt from paying the amount or is not liable for the amount of tax.

When payment less than amount of tax

(3) If the amount of a PAYE income payment is less than the amount of tax for the payment, the employee must pay the amount of the deficiency to their employer or PAYE intermediary. If the employee does not pay the amount of the deficiency to their employer or PAYE intermediary, they must pay the amount to the Commissioner under section RD 4(2).

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer monthly schedule, pay, PAYE intermediary, PAYE income payment

Compare: 2004 No 35 s NC 5

RD 22 Returns for amounts of tax paid to Commissioner

Paying amount withheld with returns

(1) An employer or a PAYE intermediary who withholds an amount of tax from a PAYE income payment must pay the amount to the Commissioner under section RD 4 and provide an employer monthly schedule and a PAYE income payment form in relation to the amount.

General rule

(2) The employer or PAYE intermediary must provide the PAYE income payment form referred to in subsection (1) by—

(a) the 20th day of the month in which they withhold an amount of tax for a PAYE income payment in a first

payment period described in section RA 15(3) (Payment dates for interim and other tax payments):

(b) the 5th day of the month following that in which they withhold an amount of tax for a PAYE income payment in a second payment period described in section RA 15(3), or if the month is December, by the 15th day of January.

Employer monthly schedule

(2B) The employer or PAYE intermediary must provide the employer monthly schedule referred to in subsection (1) by the 5th day of the month following that in which they withhold an amount of tax for a PAYE income payment, or if the month is December, by the 15th day of January.

Returns when gross amounts of tax are less than $500,000

(3) Despite subsections (2) and (2B), an employer who meets the requirements of subsection (3B) must provide the employer monthly schedule and the PAYE income payment form by the 20th day of the month following that in which an amount of tax is withheld.

Requirements

(3B) For the purposes of subsection (3), the employer must—

(a) not be a new employer; and

(b) have gross amounts of tax of less than $500,000 withheld under section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes) for both—

(i) PAYE income payments:

(ii) employer's superannuation cash contributions.

New employers

(4) Despite subsections (2) and (2B), an employer who is a new employer must provide the employer monthly schedule and the PAYE income payment form by the 20th day of the month following that in which an amount of tax is withheld until their gross amounts of tax for PAYE income payments and employer's superannuation cash contributions payable for the tax year are more than $500,000.

Thresholds

(5) For the purposes of determining whether the threshold referred to in subsections (3) and (4) is reached, if the employer ends

their business and starts a new business, or operates 2 or more businesses at the same time, all amounts of tax withheld must be aggregated.

When business ended

(6) In addition to the requirements of subsections (2) to (4), if the employer stops carrying on a business in relation to which an amount of tax for a PAYE income payment has been withheld, they must notify the Commissioner of the cessation by the 15th day of the second month following the month in which the business is ended.

Single employer

(7) For the purposes of subsections (3) and (4), the following are treated as 1 employer:

(a) 2 or more companies if they were a group of companies at a time in the relevant tax year:

(b) all partners in a partnership:

(c) all persons in whom property has become vested, or to whom the control of property has passed in the case of—

(i) an estate of a deceased person; or

(ii) a trust; or

(iii) a company in liquidation; or

(iv) an assigned estate; or

(v) another fiduciary relationship.

Defined in this Act: amount of tax, business, Commissioner, company, employer, employer monthly schedule, employer's superannuation cash contribution, employer's superannuation contribution, first payment period, gross, group of companies, liquidation, notify, pay, PAYE income payment, PAYE income payment form, PAYE intermediary, second payment period, tax withheld, tax year

Compare: 2004 No 35 s NC 15(1), (5), (6)

Section RD 22 heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(2): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 127(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 22(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 514(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(2B) heading: inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 127(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 22(2B): inserted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 127(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 22(3) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(3) heading: amended (with effect on 1 April 2009), on 6 October 2009, by section 514(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(3) heading: amended, on 1 April 2009, by section 15(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 22(3): substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(3): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 127(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 22(3): amended, on 1 April 2009, by section 15(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 22(3B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 514(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(3B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 514(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(3B)(b): amended (with effect on 1 April 2009), on 6 October 2009, by section 514(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(4): substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(4): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 127(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 22(4): amended (with effect on 1 April 2009), on 6 October 2009, by section 514(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22(4): amended, on 1 April 2009, by section 15(c) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 22(6): substituted (with effect on 1 April 2008), on 6 October 2009, by section 514(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22 list of defined terms **employer monthly schedule**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 514(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 22 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 514(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 23 Bonds given by employers of certain non-resident employees

When this section applies

(1) This section applies if it cannot reasonably be determined at the time an employer or PAYE intermediary is required to withhold the amount of tax for a PAYE income payment whether the payment will be exempt income of an employee under either section CW 19 (Amounts derived during short-term visits) or a double tax agreement.

Providing bond

(2) The employer or PAYE intermediary may apply to the Commissioner to be released from their obligation to withhold the amount by providing a bond or other security for the amount that would be required to be withheld but for this section.

Consequences of acceptance of bond

(3) If the Commissioner accepts the bond or security referred to in subsection (2),—

(a) the employer or PAYE intermediary must not withhold the amount of tax for a PAYE income payment to the employee; and

(b) information concerning the employee must not be included in an employer monthly schedule; and

(c) the **no notification** rate referred to in section 24B(3)(h) of the Tax Administration Act 1994 must not be used in relation to the PAYE income payment.

When subsection (3) no longer applies

(4) If the employee later becomes liable to pay income tax because of an event provided for in an arrangement made under section BH 1 (Double tax agreements) or CW 19, the application of subsection (3) ends, and the employer or PAYE intermediary must withhold the amount of tax for a PAYE income payment made to the employee.

Employee's liability

(5) If the Commissioner considers that the employee is liable for income tax in relation to a PAYE income payment from which no amount of tax is withheld because of the application of subsection (3), the Commissioner must notify the employer or PAYE intermediary, as applicable. The employer or intermediary must then account for and pay the total amount of tax for all PAYE income payments that would have been due, or a lesser amount as the Commissioner determines.

Treatment of amount paid under subsection (5)

(6) An amount paid to the Commissioner under subsection (5) is treated as the amount of tax for a PAYE income payment made on the date of the Commissioner's notice. section 120U of the Tax Administration Act 1994 overrides this subsection.

Defined in this Act: amount, amount of tax, arrangement, Commissioner, double tax agreement, employee, employer, employer monthly schedule, exempt income, income tax, notify, pay, PAYE income payment, PAYE intermediary

Compare: 2004 No 35 s NC 18

Section RD 23(4): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

RD 24 Exemption certificates for non-resident contractors

When this section applies

(1) This section applies when—

(a) a non-resident contractor derives an amount from a contract activity or service that is not income, whether because of a double tax agreement or for another reason; or

(b) the contractor provides a bond or other security for the payment of any income tax payable on an amount derived by them from a contract activity or service; or

(c) the contractor has in the period of 24 months before the date of the application referred to in subsection (2) paid all income tax payable by them and complied with their obligations under the Inland Revenue Acts, and the Commissioner is satisfied that the contractor will continue to do this.

Exemption certificate

(2) The non-resident contractor may apply to the Commissioner to provide them with an exemption certificate under section 24M of the Tax Administration Act 1994 for a contract payment made to them or another person acting on their behalf in relation to a contract activity or service set out in the certificate for which no amount of tax is to be withheld.

Defined in this Act: amount, amount of tax, Commissioner, contract activity or service, contract payment, double tax agreement, exemption certificate, income, income tax, Inland Revenue Acts, non-resident contractor, pay

Compare: 2004 No 35 s NC 18(1), Income Tax (Withholding Payments) Regulations 1979, regulation 5(3)

Fringe benefit tax (FBT) rules and fringe benefits

Introductory provisions

RD 25 FBT rules and their application

Meaning

(1) The **FBT rules** means—

(a) sections CX 2 to CX 38 (which relate to fringe benefits); and

(b) sections GA 2, GB 31, and GB 32 (which relate to FBT); and

(c) sections RD 26 to RD 63; and

(d) schedules 1, part C (Basic tax rates: income tax, ESCT, RWT, and attributed fringe benefits) and 5 (Fringe benefit values for motor vehicles); and

(e) sections 46B to 46E, 93, Part 7, and section 139B of the Tax Administration Act 1994.

Application

(2) The FBT rules apply to an employer who provides a fringe benefit to their employee in connection with their employment.

Defined in this Act: employee, employer, employment, FBT, FBT rules, fringe benefit

Compare: 2004 No 35 s OB 1 "FBT rules"

RD 26 Liability for FBT

Liability

(1) An employer who provides a fringe benefit to an employee is liable to pay FBT under sections RD 27 to RD 57, choosing a method of payment described in subsection (2).

Payment options

(2) An employer must choose 1 of the following options for the payment of FBT:

(a) the single rate option, *see* section RD 58; or

(b) the alternate rate option, *see* section RD 59; or

(c) if eligible, the close company option, *see* section RD 60; or

(d) if eligible, the small business option, *see* section RD 61.

Election

(3) An employer may make an election under subsection (2)(a) or (b) by providing a return setting out the rate chosen.

Defined in this Act: business, close company, employee, employer, FBT, fringe benefit, pay

Compare: 2004 No 35 s ND 1(1)–(3)

Value of fringe benefits

RD 27 Determining fringe benefit values

What sections RD 28 to RD 53 do

(1) Sections RD 28 to RD 53 set out the rules for determining the value of a fringe benefit provided by an employer to an employee in connection with their employment. The taxable value of a fringe benefit when an employee pays an amount for receiving the benefit is dealt with in sections RD 54 to RD 57.

When value cannot be ascertained

(2) If, under sections RD 28, RD 29, and RD 33 to RD 41, the value of a fringe benefit cannot be ascertained, the value is the market value or otherwise as the Commissioner determines.

Meaning of market value

(3) In subsection (2), **market value** means the price, at the time at which the goods or services were provided to the employee, for which the goods or services would normally be sold in a sale—

(a) in the open market in New Zealand; and
(b) freely offered; and
(c) made on ordinary trade terms; and
(d) to a member of the public at arm's length.

Defined in this Act: amount, Commissioner, employee, employer, employment, fringe benefit, market value, New Zealand, pay

Compare: 2004 No 35 ss ND 1A(1), ND 1L

RD 28 Private use of motor vehicle: calculation methods

What this section does

(1) This section limits the way an employer may use a method for calculating the value of the benefit that they provide to an employee by making a motor vehicle available for the employee's private use.

Choosing method in first return

(2) When a person first files a return relating to a vehicle for the purposes of this section, they may calculate the value of the benefit using either of the valuation methods set out in schedule 5 (Fringe benefit values for motor vehicles).

Using method in first return

(3) The person must use the method chosen in the first return referred to in subsection (2) in calculating the value of the benefit for the length of time—

(a) starting after the end of the period of the first return; and
(b) continuing to the earliest of the following dates:
  (i) the date of the disposal of the vehicle:
  (ii) the date on which the vehicle ceases to be leased by the employer or an associated person without

a consecutive or successive lease of the vehicle by them:

(iii) the date that is 5 years after start of the period of the first return.

Returns after 5 years

(4) In a return relating to the vehicle for a period beginning 5 years or more after the start of the period of the first return, the person may calculate the value of the benefit using either of the valuation methods set out in schedule 5.

Cost price valuation method

(5) Despite subsections (3) and (4), the person must apply schedule 5, clause 1 or 2, using the cost price valuation method if—

(a) the vehicle is owned, leased, or rented by the employer or an associated person; and

(b) the employer or the associated person owned, leased, or rented the vehicle—

(i) during the period of the first return, if the period begins before 1 April 2006:

(ii) before 1 April 2006.

Exception: vehicle not subject to arrangement

(6) Subsection (5) does not apply if a first return for the vehicle is for a period that starts on or after 1 April 2006 and the vehicle is not the subject of an agreement or arrangement referred to in section CX 7 (Employer or associated person treated as having right to use vehicle under arrangement).

Exception: 5 years after first return

(7) Subsection (5) does not apply if the person owns the vehicle and a period of 5 years or more since the start of the period of the first return has elapsed.

Defined in this Act: arrangement, associated person, employee, employer, lease, motor vehicle, private use

Compare: 2004 No 35 s ND 1A(1)–(1D)

RD 29 Private use of motor vehicle: formulas

What this section does

(1) This section sets out the formulas for calculating the value of the benefit that an employer provides to an employee by making a motor vehicle available for their private use.

Quarterly payment

(2) If FBT is paid quarterly, the value of the benefit is calculated using the formula—

$$\frac{\text{days} \times \text{schedule 5 amount}}{90.}$$

Annual payment

(3) If FBT is paid on an annual basis, the value of the benefit is the total of the amounts calculated under subsection (2) for the 4 quarters in the applicable tax year.

Payment by income year

(4) If FBT is paid on an income year basis, the value of the benefit is calculated using the formula—

$$\frac{\text{days} \times \text{schedule 5 amount}}{365.}$$

Definition of items in formulas

(5) In the formula,—

(a) in subsection (2), **days** refers to the number of days in the quarter on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle, or 90, whichever is less:

(b) in subsection (4), **days** refers to the number of days in the income year on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle:

(c) in subsections (2) and (4), **schedule 5 amount** refers to the amount calculated under schedule 5 (Fringe benefit values for motor vehicles) as the value of the benefit that would have been received for unlimited private use of the vehicle in that quarter or income year, as applicable.

Test period

(6) To calculate the value of the benefit, an employer may choose to use a test period under section RD 31 to establish private use.

Defined in this Act: amount, employee, employer, FBT, income year, motor vehicle, private use, quarter, tax year, work-related vehicle

Compare: 2004 No 35 s ND 1A(2)–(6)

RD 30 Private use of motor vehicle: 24-hour period

When this section applies

(1) This section applies for the purposes of a calculation of the value of a benefit under section RD 29.

Meaning of day

(2) In section RD 29(5)(a) and (b), in relation to a motor vehicle and the item **days** in the formulas, a **day** is—

(a) a 24-hour period starting from a time in a day that a person who owns or leases the vehicle chooses; or

(b) a 24-hour period starting at midnight if paragraph (a) does not apply.

Choosing starting point and notifying Commissioner

(3) For the purposes of subsection (2)(a), the person must—

(a) choose a starting point for the day that is a whole number of an hour after midnight; and

(b) notify the Commissioner of their election when filing the next return relating to the vehicle.

Elections

(4) An election under subsection (2)(a)—

(a) is effective from the start of the quarter, income year, or tax year to which a return relates; and

(b) applies to all vehicles in relation to which the person files a return.

Hour applying for 2 income years

(5) If the person chooses under subsection (3)(a) a particular hour in the 24-hour period as the starting point of the day, that hour continues to apply to the use of the vehicle from the start of the relevant quarter, income year, or tax year, as applicable, for a minimum period of 2 income years.

When circumstances change

(6) An employer may ask the Commissioner to amend the starting point of the 24-hour period, or to treat the election as revoked, if the employer's circumstances have changed in a way that—

(a) is more than minor; and

(b) makes the starting point no longer relevant to the employer's business.

Defined in this Act: business, Commissioner, day, employer, income year, motor vehicle, notify, quarter, tax year

Compare: 2004 No 35 s ND 1AB

RD 31 Motor vehicle test period

Recording details for test period

(1) To establish the value of the benefit provided through a motor vehicle being made available to an employee for their private use, an employer may choose to record the details of the use of the vehicle by the employee for a test period.

Number used in calculations

(2) The number of days on which a vehicle is available for an employee's private use that is ascertained in the test period is the number used in the calculation in section RD 29(2). For the calculation in RD 29(4), the relevant number is the number of days ascertained in the test period multiplied by 4.

Quarter or 3 months for test period

(3) If FBT is paid quarterly or annually, the test period is a quarter. If FBT is paid on an income year basis, the test period is 3 consecutive months of an income year.

Period showing pattern of use

(4) The employer must—

(a) choose a test period that shows, or is likely to show, a pattern of use of the motor vehicle by the employee that fairly represents the use of the vehicle by the employee over the whole of the applicable term; and

(b) keep a record of the test period, including accurate details of the days in the period on which the vehicle is available for the employee's private use.

Work-related vehicles

(5) In subsection (4), a day on which the vehicle is a work-related vehicle is treated as a day on which the vehicle is not available for private use.

Term of 3 years

(6) The number of days of availability for private use ascertained in the test period applies for a term of 3 years. The term starts, as applicable, as follows:

(a) if FBT is paid quarterly, on the first day of the test period:

(b) if FBT is paid on an annual basis, on the first day of the tax year in which the test period occurs:

(c) if FBT is paid on an income year basis, on the first day of the income year in which the test period occurs.

Reduction of term

(7) The term referred to in subsection (6) is reduced if the number of days of actual private use of the motor vehicle is 20%, or more than 20%, higher than the number ascertained in the test period. In this case, the term ends on the last day of the applicable quarter, year, or income year. If the employer chooses to start another test period, the existing term ends just before the start of the new term.

When test period no longer representative

(8) If the Commissioner considers that the result ascertained in the test period does not, or does no longer, fairly represent the actual private use of the motor vehicle by the employee, the Commissioner may notify the employer that the term will end on a particular date. Following notification, the employer must not use that result again.

Defined in this Act: Commissioner, employee, employer, FBT, income year, motor vehicle, notify, private use, quarter, tax year, work-related vehicle

Compare: 2004 No 35 s ND 1B(1)–(6)

RD 32 Replacement motor vehicles

For the purposes of section RD 31, a replacement motor vehicle is treated in the same way as the vehicle it replaces if the result ascertained in the test period is likely to be fairly representative of the average availability for the private use of the vehicle during the term.

Defined in this Act: motor vehicle, private use

Compare: 2004 No 35 s ND 1B(7)

RD 33 Subsidised transport

Percentage of highest public fare

(1) The value of a benefit that an employer provides to their employee in subsidised transport is 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion. This subsection is overridden by subsection (2).

When benefit provided under arrangement

(2) Despite section CX 2(2) (Meaning of fringe benefit), if the fringe benefit is provided under an arrangement with a third person, the value of the benefit is determined under subsection (3).

Percentage or actual payment

(3) If a third person provides the employee with subsidised transport under an arrangement with their employer, the value of the benefit is the greatest of—

(a) 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion; and

(b) 25% of the highest fare the third person charges the public for the equivalent transport in terms of class, extent, and occasion, if the third person is a company in the same group of companies as the employer; and (c) the amount that the employer has paid or is liable to pay the person for the benefit provided.

GST

(4) In this section, for a registered person who may claim input tax for subsidised transport, **amount** means the GST-inclusive amount.

Defined in this Act: amount, arrangement, company, employee, employer, fringe benefit, group of companies, GST, input tax, pay, subsidised transport

Compare: 2004 No 35 s ND 1C

RD 34 Employment-related loans: value using prescribed interest rates

When this section applies

(1) This section applies when an employer provides a benefit to their employee in an employment-related loan and the em-

ployer does not choose to determine the value of the benefit under section RD 35.

Amount of interest or amount under financial arrangement

(2) The value of the benefit in a period is the amount by which the prescribed interest on the loan is more than—

(a) the amount of interest that accrued on the loan in the period; or

(b) when the loan is a financial arrangement and it is appropriate for the nature of the loan, the income that would have accrued to the employer's benefit in the period as calculated under the yield to maturity method.

Meaning of prescribed interest

(3) For the purposes of this section, **prescribed interest** means,—

(a) except as provided in paragraph (b), the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of that loan at the prescribed rate of interest:

(b) for loans made on or before 31 March 1985, the interest on which is not subject to review, the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of the loan at the non-concessionary rate of interest for—

(i) the tax year in which the agreement to make the loan was signed; or

(ii) if the agreement was not in writing, the year in which the loan was agreed to by all parties.

Defined in this Act: amount, employee, employer, employment-related loan, financial arrangement, income, interest, non-concessionary rate of interest, prescribed interest, quarter, tax year

Compare: 2004 No 35 ss ND 1D, ND 1G

RD 35 Employment-related loans: value using market interest rates

Choosing to use market interest rate

(1) An employer who is in the business of lending money to the public may choose to value a benefit provided to their em-

ployee in an employment-related loan using the market interest on the loan.

Value of benefit

(2) The value of the benefit referred to in subsection (1) in a period is the amount by which the market interest on the loan is more than—

(a) the amount of interest that accrued on the loan in the period; or

(b) when the loan is a financial arrangement and it is appropriate having regard to the nature of the loan, the income that would have accrued to the employer's benefit in the period as calculated under the yield to maturity method.

Using method for 2 income years

(3) Having made an election under subsection (1), the employer must use the method for the income year to which the election relates and for the next income year.

Notifying Commissioner of change to method

(4) An employer may not change the method of calculating the value of the benefit for an income year unless the employer notifies the Commissioner of the proposed change at least 1 year before the start of the income year in which the change is to occur.

Market interest

(5) In this section, **market interest** means the amount of interest calculated at the interest rate that would apply to a borrower belonging to a group of persons to whom a loan of the kind provided to the employee is offered when the group meets the following requirements:

(a) the group has a comparable credit risk to the group to which the employee belongs; and

(b) membership of the group arises from a factor or factors that do not include a connection between a member and the employer; and

(c) the group is sufficient in number to ensure a transaction on an arm's-length basis.

Calculating amount of interest

(6) For the purposes of subsection (5), the amount of interest is the amount accrued on the loan during the quarter or tax year

calculated on the daily balance of the loan at the rate referred to in the subsection.

Defined in this Act: amount, business, Commissioner, employee, employer, employment-related loan, financial arrangement, group of persons, income, income year, interest, market interest, notify, quarter, tax year

Compare: 2004 No 35 s ND 1DB

RD 36 Repayment of employment-related loans

Repayment at start of tax year

(1) For the purposes of sections RD 34 and RD 35, an amount of income of an employee applied in an income year to repay an employment-related loan provided to the employee is treated as applied towards repayment on the first day of the income year or, if the date of the advance of the loan falls after that day, the later date.

Limitation

(2) Subsection (1) applies only when an employee derives income that—

(a) is salary or wages, an extra pay, a dividend, or interest; and

(b) is payable to the employee without any amount of tax withheld under the PAYE rules, the RWT rules, or the NRWT rules; and

(c) is income of the employee in the tax year in which it is applied to repay the loan, or in an earlier income year.

Amounts derived and applied in different tax years

(3) Subsection (4) applies when an employee derives income that—

(a) is applied to repay an employment-related loan; and

(b) relates to an income year after the income year in which it is applied to repay the loan.

Treatment of amount

(4) The employee may treat the amount as derived in the earlier income year, but must notify the Commissioner of their decision within the time allowed to the employer for providing a return of income for the income year, or a longer time if the Commissioner allows.

Defined in this Act: amount, amount of tax, Commissioner, dividend, employee, employer, employment-related loan, extra pay, income, income year,

interest, notify, NRWT rules, pay, PAYE rules, return of income, RWT rules, salary or wages, tax year

Compare: 2004 No 35 s ND 1E

Section RD 36(2)(b): substituted (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 128(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 36 list of defined terms **amount of tax**: inserted (with effect on 1 April 2008), on 21 December 2010, by section 128(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 36 list of defined terms **non-resident passive income**: amended (with effect on 1 April 2008), on 21 December 2010, by section 128(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 36 list of defined terms **NRWT rules**: inserted (with effect on 1 April 2008), on 21 December 2010, by section 128(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 36 list of defined terms **resident passive income**: amended (with effect on 1 April 2008), on 21 December 2010, by section 128(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section RD 36 list of defined terms **RWT rules**: inserted (with effect on 1 April 2008), on 21 December 2010, by section 128(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

RD 37 Contributions to superannuation schemes

Amount of contribution

(1) The value of a benefit that an employer provides in contributing to a superannuation scheme for an employee is the amount of the contribution made by the employer.

GST

(2) In this section, for a registered person who may claim input tax for a contribution to a superannuation scheme, **amount** means the GST-inclusive amount.

Defined in this Act: amount, contribution, GST, employee, employer, input tax, superannuation scheme

Compare: 2004 No 35 s ND 1H

RD 38 Contributions to funds, trusts, and insurance premiums

Sickness, accident, or death benefit fund

(1) The value of the benefit that an employer provides in contributing to a sickness, accident, or death benefit fund for an employee is the amount of the contribution made by the employer.

Funeral trust

(2) The value of the benefit that an employer provides in contributing to a funeral trust for an employee is the amount of the contribution made by the employer.

Specified insurance premium

(3) The value of the benefit that an employer provides in paying an insurance premium described in section CX 16 (Contributions to life or health insurance) for an employee is the amount of the premium paid by the employer.

Insurance fund of friendly society

(4) The value of the benefit that an employer provides in contributing to an insurance fund of a friendly society for an employee is the amount of the contribution made by the employer.

Defined in this Act: amount, contribution, employee, employer, friendly society, sickness, accident, or death benefit fund, specified insurance premium

Compare: 2004 No 35 s ND 1I

RD 39 Benefits provided by charitable organisations

Value of benefit

(1) The value of a benefit under section CX 25(2) (Benefits provided by charitable organisations) that a charitable organisation provides in a short-term charge facility is the sum of—

(a) the amount that the organisation pays for or towards buying or hiring the goods and services obtained by the employee under the short-term charge facility:

(b) any interest incurred in relation to buying or hiring the goods and services:

(c) when the short-term charge facility is a credit card or charge card provided for an employee's use solely for purposes unconnected with the organisation or its operations, the associated account or service fee.

When subsections (3) and (4) apply

(2) Subsections (3) and (4) apply in a tax year to an employer that is a charitable organisation when—

(a) the employer provides a benefit to their employee in a short-term charge facility that is a fringe benefit under section CX 25(1); and

(b) the employer is required to pay FBT for the tax year on a quarterly basis; and

(c) the value of the benefit in the short-term charge facility in the first quarter of the tax year is no more than 5% of the employee's salary or wages for the tax year.

Employer's liability

(3) The employer's liability to pay FBT on a benefit provided in a quarter of the tax year depends on whether the taxable value of all the benefits (the **accumulated value**) that the employer provides to the employee in the period from the start of the tax year to the end of the quarter is more than 5% of the employee's salary or wages for the tax year (the **threshold value**).

Calculation of liability

(4) The employer is liable to pay FBT for a quarter of a tax year on the following amounts:

(a) zero, if the accumulated value for the quarter is no more than the threshold value:

(b) the accumulated value if the quarter is the first in the tax year for which the accumulated value is more than the threshold value:

(c) the taxable value of all the benefits provided in the quarter, if neither paragraph (a) or (b) applies.

Defined in this Act: amount, charitable organisation, employee, employer, FBT, fringe benefit, interest, quarter, salary or wages, short-term charge facility, tax year

Compare: 2004 No 35 ss ND 1IB, ND 8B

RD 40 Goods

Market value or cost

(1) The value of a fringe benefit that an employer provides to an employee in goods is determined as follows:

(a) when the person providing the goods manufactured, produced, or processed them, their market value:

(b) when the person providing the goods bought them, or paid for them to be bought, dealing at arm's length with the supplier of the goods, the cost of the goods to the person:

(c) if the person providing the goods is a company included in a group of companies, then, as the person chooses,

the value of the benefit under either paragraph (a) or (b), applying the provisions as if the group of companies were 1 company.

Sale in open market

(2) Despite subsection (1), if the value of the fringe benefit as determined under that subsection would be more than the amount that would have been paid to the employer for the purchase of the goods in a sale described in paragraphs (a) to (d), then the value is treated as that amount. The sale must be—

(a) at retail in the open market in New Zealand; and

(b) freely offered; and

(c) made on ordinary trade terms; and

(d) to a member of the public with whom the employer is at arm's length.

Some definitions

(3) In this section,—

cost, for a registered person who may claim input tax for the goods, means the GST-inclusive cost of the goods bought or the amount that the person paid for the goods

market value means the lowest price, at the time at which the goods were provided to the employee, for which identical goods were sold by the same person to an arm's length buyer, whether wholesaler, retailer, or the public, in the open market in New Zealand in a sale freely offered and made on ordinary trade terms

price, for a registered person who may claim input tax for goods that they manufacture, produce, or process, means the GST-inclusive price of those goods to that person.

Defined in this Act: amount, company, cost, employee, employer, group of companies, GST, identical goods, input tax, market value, New Zealand, pay, price, registered person

Compare: 2004 No 35 s ND 1J

RD 41 Services

Price, amount paid, or fee

(1) The value of a fringe benefit that an employer provides to an employee in services is,—

(a) when an employer normally provides the services as part of their business, the price charged by the employer—

(i) at the time they provided the services; and

(ii) for the same or similar services to the public in the open market in New Zealand; and

(iii) on ordinary trade or professional terms between buyers and sellers independent of each other:

(b) when an employer pays for the services to be provided, dealing at arm's length with the supplier of the services, the amount paid or payable:

(c) if neither paragraph (a) nor (b) applies, the price or fee that the employer or supplier providing the services would at that time have charged the public, had they provided the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms.

Exclusions

(2) This section does not apply to a service that consists of making available a motor vehicle for private use, providing an employment-related loan, or providing subsidised transport.

Services provided to group of employees

(3) For the purposes of this section, a person who provides services to an employee belonging to a group of employees is treated as providing the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms if the person provides the same or similar services to a group of persons that—

(a) negotiates the transaction on an arm's-length basis; and

(b) is comparable in number to the group of employees.

Some definitions

(4) In this section,—

amount, for a registered person who may claim input tax for that service, means the GST-inclusive amount

fee and **price**, for a registered person who may claim input tax for that service, means the GST-inclusive fee or price.

Defined in this Act: amount, business, employee, employer, employment-related loan, fee, fringe benefit, GST, input tax, motor vehicle, New Zealand, pay, price, private use, registered person, subsidised transport

Compare: 2004 No 35 s ND 1K

RD 42 Goods at staff discount

Goods discounted for employees

(1) This section applies when an employer sells goods in the normal course of their business to an employee when all the following apply:

(a) the retail price of identical goods is $200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and

(b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer normally provides to employees; and

(c) at the time of the sale, the staff discount is no more than 5% of the price of identical goods in the circumstances referred to in paragraph (a).

Cost of goods

(2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer.

Defined in this Act: business, cost, employee, employer, identical goods, New Zealand, price

Compare: 2004 No 35 s ND 1N

RD 43 Goods on special with staff discount

Sale of identical goods

(1) This section applies when an employer sells goods to an employee on a day when the employer is offering identical goods for sale in the normal course of their business at a special price and when all the following apply:

(a) the price of the identical goods is $200 or less to an arm's length buyer in the open market in New Zealand

in a sale freely offered and made on ordinary trade terms; and

(b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer offers to the employee in addition to any other discount; and

(c) just before or after the sale to the employee, a reasonable quantity of the identical goods is available in the open market in New Zealand; and

(d) the price is at least 95% of the cost of the goods to the employer, or at least 95% of the price on the day of the sale of the identical goods to the public in the open market in New Zealand, whichever is less.

Cost of goods

(2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer.

Defined in this Act: business, cost, employee, employer, identical goods, New Zealand, price

Compare: 2004 No 35 s ND 1O

RD 44 Goods sold by group companies

For the purposes of sections RD 42 and RD 43, if a company that is included in a group of companies sells goods to an employee of another company in the group, the sale is treated as if it were made directly from employer to employee.

Defined in this Act: company, employee, employer, group of companies

Compare: 2004 No 35 s ND 1P(2)

RD 45 Unclassified benefits

Liability limited

(1) An employer is liable to pay FBT on an unclassified benefit only within the limits described in this section.

Quarterly payment

(2) When FBT is paid quarterly, an employer is liable for FBT on an unclassified benefit provided to an employee in a quarter only if—

(a) the total taxable value of all unclassified benefits provided in the quarter by the employer to the employee is more than $300; or

(b) the total taxable value of all unclassified benefits provided in the last 4 quarters including the current quarter by the employer to all employees of the employer, whether accounted for on a quarterly or an income year basis, is more than $22,500.

Yearly payment

(3) When FBT is paid on either an annual basis or an income year basis, except when subsection (4) applies, an employer is liable for FBT on unclassified benefits provided to an employee in the tax year or income year only if—

(a) the total taxable value of all unclassified benefits provided in the tax year or income year by the employer to the employee is more than $1,200; or

(b) the total taxable value of all unclassified benefits provided in the tax year or income year by the employer to all employees of the employer is more than $22,500.

Period longer or shorter than income year

(4) When an employer accounts for FBT on an income year basis, and the period for which they have accounted under section RD 60 differs from an income year for the reasons described in subsection (5), an employer is liable for FBT on unclassified benefits provided in the period only if—

(a) the total taxable value of all unclassified benefits provided in the period by the employer to an employee is more than the figure that is the same fraction or multiple of $1,200 as the number of days in the period is a fraction or multiple of 365; or

(b) the total taxable value of all unclassified benefits provided in the period by the employer to all employees of the employer is more than the figure that is the same fraction or multiple of $22,500 as the number of days in the period is a fraction or multiple of 365.

Reasons for difference

(5) In subsection (4), the income year for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—

(a) started or ceased business during that income year; or

(b) chosen, with the agreement of the Commissioner, to file a return under this subpart for the income year ending with the date of the annual balance of their accounts.

Employer and associated persons

(6) In this section, **employer** includes a person associated with them at any time in the relevant period.

Defined in this Act: associated person, balance date, business, Commissioner, employee, employer, FBT, income year, pay, quarter, return of income, tax year, unclassified benefit

Compare: 2004 No 35 s ND 1Q

Section RD 45(2)(a): amended, on 1 April 2009, by section 16(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 45(2)(b): amended, on 1 April 2009, by section 16(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 45(3)(a): amended, on 1 April 2009, by section 16(c) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 45(3)(b): amended, on 1 April 2009, by section 16(d) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 45(4)(a): amended, on 1 April 2009, by section 16(e) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 45(4)(b): amended, on 1 April 2009, by section 16(f) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

RD 46 Adjustments for unclassified benefits on amalgamation

When employer ceases to exist

(1) This section applies when a company that is an employer ends its existence on amalgamation or when a new company is established on amalgamation. An adjustment is allowed for unclassified benefits in the period in which the amalgamation occurs.

Quarterly payment

(2) If the amalgamating company pays FBT quarterly, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of $22,500 referred to in section RD 45(2)(b) by an amount calculated using the formula—

$$\frac{\$22{,}500 \times \text{number of days in the quarter after amalgamation}}{\text{days in the quarter.}}$$

Adjustment in quarter of amalgamation

(3) If the amalgamated company pays FBT quarterly, and the amalgamated company is a new company established on amalgamation, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of $22,500 referred to in section RD 45(2)(b) by an amount calculated using the formula—

$$\frac{\$22{,}500 \times \text{number of days in the quarter before amalgamation}}{\text{days in the quarter.}}$$

Annual payment

(4) If the amalgamating company pays FBT annually, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of $22,500 referred to in section RD 45(2)(b) by an amount calculated using the formula—

$$\frac{\$22{,}500 \times \text{number of days in the year after amalgamation}}{365.}$$

Adjustment in year of amalgamation

(5) If the amalgamated company pays FBT annually, and the amalgamated company is a new company established on amalgamation, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of $22,500 referred to in section RD 45(2)(b) by an amount calculated using the formula—

$$\frac{\$22{,}500 \times \text{number of days in the year before amalgamation}}{365.}$$

Defined in this Act: amount, amalgamated company, amalgamating company, amalgamation, company, employer, FBT, pay, quarter, unclassified benefit, year

Compare: 2004 No 35 s ND 1R

Section RD 46(2): amended, on 1 April 2009, by section 17(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(2) formula: amended, on 1 April 2009, by section 17(a) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(3): amended, on 1 April 2009, by section 17(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(3) formula: amended, on 1 April 2009, by section 17(b) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(4): amended, on 1 April 2009, by section 17(c) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(4) formula: amended, on 1 April 2009, by section 17(c) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(5): amended, on 1 April 2009, by section 17(d) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 46(5) formula: amended, on 1 April 2009, by section 17(d) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Attributing fringe benefits to employees

RD 47 Attribution of certain fringe benefits

What this section applies to

(1) This section applies when an employer provides a fringe benefit by—

(a) making available a motor vehicle for an employee's private use under section CX 6 (Private use of motor vehicle):

(b) providing an employment-related loan to an employee under section CX 10 (Employment-related loans) but not a loan by a life insurer under section CX 11 (Employment-related loans: loans by life insurers):

(c) providing to an employee a benefit with a taxable value of $1,000 or more in a year for each of the following categories:

(i) subsidised transport under section CX 9 (Subsidised transport):

(ii) a contribution to a superannuation scheme under section CX 13 (Contributions to superannuation schemes):

(iii) a contribution to a sickness, accident, or death benefit fund under section CX 14 (Contributions to sickness, accident, or death benefit funds):

(iv) a contribution to a funeral trust under section CX 15 (Contributions to funeral trusts):

(v) the payment of a specified insurance premium or a contribution to an insurance fund of a friendly society under section CX 16 (Contributions to life or health insurance):

(d) providing unclassified benefits to an employee under section CX 2(1)(b)(ii) (Meaning of fringe benefit) with a total taxable value of $2,000 or more in a year.

Attributing fringe benefit to employee

(2) The employer must attribute the fringe benefit to the employee, calculating the FBT liability under section RD 50.

Defined in this Act: employee, employer, employment-related loan, FBT, friendly society, fringe benefit, life insurer, loan, motor vehicle, pay, private use, sickness, accident, or death benefit fund, specified insurance premium, subsidised transport, superannuation scheme, unclassified benefit

Compare: 2004 No 35 s ND 3(1), (1A)

RD 48 When attributed benefits provided to more than 1 employee

If an employer provides a fringe benefit to which section RD 47 applies to more than 1 employee, the employer must attribute the benefit to the employee who mainly uses or receives it in a quarter or income year, as applicable. If the employer cannot determine which employee mainly uses or receives the benefit, they must pool the benefit under section RD 53.

Defined in this Act: contribution, employee, employer, fringe benefit, income year, quarter

Compare: 2004 No 35 s ND 3(2)

RD 49 Application of thresholds to attributed benefits

When this section applies

(1) This section applies when the value of a fringe benefit described in section RD 47 is above or below the threshold referred to in that section.

Below threshold

(2) If the taxable value of a benefit under section RD 47(1)(c) and (d) is under the relevant threshold, the employer must either—

(a) attribute all fringe benefits with an annual taxable value under the relevant threshold that fall within the particular category; or

(b) pool the value of the benefit under section RD 53.

Exception for subsidised transport

(3) Despite section RD 47(1)(c)(i), if the employer provides subsidised transport under section CX 9 (Subsidised transport) with a taxable value over the threshold, they may pool the value of the benefit under section RD 53 if all their employees have the same or a similar entitlement to the fringe benefit.

Amending thresholds

(4) The Governor-General by Order in Council may determine the amount of the thresholds referred to in section RD 47, setting out the first tax year in which the threshold is to apply.

Defined in this Act: amount, employee, employer, fringe benefit, subsidised transport, tax year

Compare: 2004 No 35 ss ND 3(4)–(7), ND 4, ND 16

RD 50 Employer's liability for attributed benefits

When this section applies

(1) This section applies when an employer is required to attribute the value of a fringe benefit to an employee under sections RD 47 and RD 49.

Tax liability

(2) The employer's FBT liability in relation to the employee is the amount calculated using the formula—

tax on all-inclusive pay – tax on cash pay.

Definition of items in formula

(3) In the formula,—

(a) **tax on all-inclusive pay** is the amount determined at the rate set out in schedule 1, part C, table 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) on the amount of the employee's all-inclusive pay calculated using the formula in section RD 51(2):

(b) **tax on cash pay** is the amount calculated under section RD 51(3)(b) or (4)(b).

Exception for shareholder-employees and persons with attributed income

(4) If the employer has an exception for an employee under section RD 52 in a tax year, and the employer pays FBT at the rate of 42.86% of the taxable value of the attributed fringe benefits under RD 52(3)(a), the employer must deduct the FBT payable in the tax year from the result of the formula in subsection (2).

Further option

(5) Instead of calculating FBT under subsections (2) and (4), an employer may choose to pay FBT at the rate of 49.25% on the taxable value of the attributed fringe benefits.

Defined in this Act: amount, employee, employer, FBT, fringe benefit, pay, tax year

Compare: 2004 No 35 s ND 5(3)–(6)

Section RD 50(3)(a): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 50(4): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 64(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 50(4): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 64(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 50(5): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 64(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 50(5): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 64(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 50(5): amended, on 1 April 2009, by section 29(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

RD 51 Calculation of all-inclusive pay

When this section applies

(1) This section applies to determine the amount of an employee's all-inclusive pay for the purposes of section RD 50.

Calculation

(2) The amount of an employee's all-inclusive pay is calculated using the formula—

cash pay – tax on cash pay + taxable value of all fringe benefits.

Definition of items in formula for major shareholder

(3) If the employee is a major shareholder, the items in the formula are—

(a) **cash pay** is the cash pay of the employee for the income year in which the fringe benefit is attributed that is paid to the employee by the employer or a related employer, and includes—

(i) a dividend and interest derived by the employee from their employer; and

(ii) a dividend and interest derived by the employee from a related employer:

(b) **tax on cash pay** is the tax on the cash pay of the employee calculated using the basic rate of income tax set out in schedule 1, part A, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits),—

(i) treating the cash pay as if it were the only taxable income of the employee, and section RD 51(3)(b)(ii) is repealed.

(ii) taking into account a tax credit under sections LC 1 and LC 2 (which relate to tax credits for persons on low incomes), applying the sections as if the employee were resident in New Zealand for the whole income year:

(c) **taxable value of all fringe benefits** is—

(i) the taxable value of all fringe benefits attributed to the employee in the tax year; and

(ii) the taxable value of all fringe benefits attributed to a person associated with the employee in the

income year if the person does not receive the fringe benefits as an employee of the employer.

Definition of items in formula for person who is not major shareholder

(4) If the employee is not a major shareholder, the items in the formula are—

(a) **cash pay** is the cash pay of the employee for the tax year in which the fringe benefit is attributed that is paid to the employee by the employer or a related employer:

(b) **tax on cash pay** is the tax on the cash pay of the employee calculated using the basic rate of income tax set out in schedule 1, part A, clause 1,—

(i) treating the cash pay as if it were the only taxable income of the employee, and section RD 51(4)(b)(ii) is repealed.

(ii) taking into account a tax credit under sections LC 1 and LC 2, applying the sections as if the employee were resident in New Zealand for the whole tax year:

(c) **taxable value of all fringe benefits** is the taxable value of all fringe benefits attributed to the employee in the tax year.

Timing of amounts

(5) In this section, the cash pay of a shareholder-employee who derives an amount of pay referred to in paragraph (b) or (c) of the definition of **pay** in subsection (6) is treated as derived in the income year following the income year in which it was received or attributed.

Some definitions

(6) In this section,—

pay means—

(a) salary or wages; and

(b) income to which section RD 3(2) to (4) applies; and

(c) an amount attributed under section GB 29 (Attribution rule: calculation); and

(d) an extra pay; and

(e) a schedular payment

related employer means a branch or division of an employer, or a person associated with the employer.

Defined in this Act: amount, associated person, dividend, employee, employer, extra pay, FBT, fringe benefit, income, income tax, income year, interest, major shareholder, pay, related employer, resident in New Zealand, salary or wages, schedular payment, shareholder-employee, tax, tax credit, tax year, taxable income

Compare: 2004 No 35 ss ND 5(1), (2), ND 7, ND 7A

Section RD 51(3)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 515 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 51(3)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 51(3)(b)(i): amended (with effect from 1 April 2008), on 29 May 2008, by section 43(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RD 51(4)(b)(i): amended (with effect from 1 April 2008), on 29 May 2008, by section 43(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

RD 52 Calculation for certain employees when information lacking

When this section applies

(1) This section applies in relation to the following persons when an employer does not have sufficient information to complete a calculation under section RD 50 or RD 51:

(a) a shareholder-employee who derives salary or wages, or income to which section RD 3(2) to (4) applies; or

(b) an employee receiving attributed income under section GB 29 (Attribution rule: calculation) from a company or trust that is their employer.

Calculations under sections RD 50 and RD 51 not required

(2) Sections RD 50 and RD 51 do not apply in the tax year or income year, as applicable, in which the employer is required to attribute a fringe benefit to the employee.

Alternative rates

(3) The employer must either—

(a) pay FBT at the rate of 42.86% of the taxable value of the fringe benefits attributed for the tax year, and apply sections RD 50 and RD 51 to the benefits in the next tax year; or

(b) pay FBT at the rate of 49.25% of the taxable value of the fringe benefits attributed for the tax year.

Defined in this Act: company, employee, employer, FBT, fringe benefit, income, income year, pay, salary or wages, shareholder-employee, tax year

Compare: 2004 No 35 s ND 5A

Section RD 52(3)(a): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 65(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 52(3)(a): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 65(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 52(3)(b): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 65(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 52(3)(b): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 65(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 52(3)(b): amended, on 1 April 2009, by section 30(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

RD 53 Pooling non-attributed benefits

When this section applies

(1) This section applies in a tax year when an employer provides a fringe benefit that is—

(a) a benefit provided to a former employee; or

(b) an employment-related loan provided by a life insurer under section CX 11 (Employment-related loans: loans by life insurers); or

(c) a benefit to which section RD 48 applies that cannot be attributed to a particular employee; or

(d) an attributed benefit to which section RD 49(2) applies; or

(e) subsidised transport to which section RD 49(3) applies.

Pooling value

(2) The employer must pool the value of the benefits.

Final quarter pooling

(3) For the final quarter of the tax year, the employer must create 2 pools, 1 for each of the following groups of persons:

(a) the first pool is for an employee who is a major shareholder, or a person associated with an employee who

is a major shareholder (unless that person receives the fringe benefit as an employee of the employer):

(b) the second pool is for all other employees.

Final quarter calculation

(4) The employer must calculate FBT for the final quarter of the tax year on the annual taxable value of the pooled fringe benefits—

(a) at the rate of 49.25% for the first pool; and

(b) at the rate of 42.86% for the second pool.

Defined in this Act: associated person, employee, employer, employment-related loan, FBT, fringe benefit, group of persons, life insurer, major shareholder, quarter, subsidised transport, tax year

Compare: 2004 No 35 s ND 6

Section RD 53(4)(a): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 66(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 53(4)(a): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 66(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 53(4)(a): amended, on 1 April 2009, by section 31(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 53(4)(b): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 66(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 53(4)(b): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 66(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Taxable value of fringe benefits

RD 54 Value of and payments towards fringe benefits

Value of benefit

(1) The taxable value of a fringe benefit is the value of the benefit. Subsection (2) overrides this subsection.

Reduction for payment by employee

(2) If an employee pays an amount for receiving a fringe benefit, the value of the benefit is reduced by the amount paid.

When associate pays amount

(3) If section GB 32 (Benefits provided to employee's associates) applies, the value of the benefit is reduced when a person associated with the employee pays an amount for the benefit.

Exclusions

(4) This section does not apply to—

(a) an employment-related loan:

(b) a payment to acquire or improve an asset if receiving or using the asset does not constitute a fringe benefit.

Defined in this Act: amount, associated person, employee, employment-related loan, fringe benefit, pay

Compare: 2004 No 35 ss GC 15(3), (4), ND 1S

Section RD 54 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 516 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 55 Private use of motor vehicle: taxable value in cases of part ownership

If a fringe benefit is provided by making available a motor vehicle to an employee for their private use, and the vehicle is owned in part by the employee (or, if section GB 32 (Benefits provided to employee's associates) applies, a person associated with the employee), the taxable value of the fringe benefit is determined under section RD 56 or RD 57.

Defined in this Act: associated person, employee, fringe benefit, motor vehicle, private use

Compare: 2004 No 35 s ND 1T

RD 56 Private use of motor vehicle: when schedular value not used

When this section applies

(1) This section applies when the employer has not valued the motor vehicle using schedule 5, clause 9 (Fringe benefit values for motor vehicles).

Reduction

(2) In the calculation of the taxable value of the fringe benefit, the value of the benefit determined under sections RD 28 to RD 30 is reduced by an amount that is the applicable percentage of the cost (determined including GST under schedule 5, clause 8(a)) of the motor vehicle to the employee or the associated person as follows:

(a) if FBT is paid quarterly, 2.5%:

(b) if FBT is paid on an annual basis, 2.5% for each quarter in which the vehicle was part-owned by the employee or the associated person:

(c) if FBT is paid on an income year basis, 10%.

When period longer or shorter than income year

(3) In subsection (2)(c) and section RD 57(2)(c) and (3), if the period for which the employer accounts for FBT differs from a normal income year for the reasons described in subsection (4), the amount by which the taxable value of the fringe benefit is reduced is a percentage of the cost (determined including GST under schedule 5, clause 8(a)) of the motor vehicle to the employer or the associated person equal to the amount calculated using the formula—

$$\frac{10\% \times \text{number of days in period}}{365.}$$

Reasons for difference

(4) The period for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—

(a) started or ceased business during that income year; or

(b) chosen, with the agreement of the Commissioner, to provide a fringe benefit return for the income year ending with the date of the annual balance of their accounts.

When vehicle owned less than whole year

(5) If an employee has not been part-owner of the motor vehicle for the whole of the income year, or the period referred to in subsection (4), a reduction under this section is reduced by the proportion of the number of days of the income year or period for which the employee was not a part-owner to the total number of days of that income year or period.

Defined in this Act: amount, associated person, business, Commissioner, employee, employer, FBT, fringe benefit, GST, income year, motor vehicle, pay, quarter

Compare: 2004 No 35 s ND 1U

Section RD 56(1): amended, on 1 April 2008, by section 540(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 56(2): amended, on 1 April 2008, by section 540(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 56(3): amended, on 1 April 2008, by section 540(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RD 57 Private use of motor vehicle: when schedular value used

When this section applies

(1) This section applies when an employer has valued the motor vehicle using schedule 5, clause 9 (Fringe benefit values for motor vehicles).

Reduction

(2) In the calculation of the taxable value of the fringe benefit, the value of the benefit determined under sections RD 28 to RD 30 is reduced by an amount that is the applicable percentage of the cost, determined excluding GST, under schedule 5, clause 6(a) in the following way:

(a) when FBT is paid quarterly, by a percentage calculated using the formula—

2.5 + (2.5 × schedule 5 rate):

(b) when FBT is paid on an annual basis, by a percentage for each quarter in which the vehicle was part-owned by the employee or associated person calculated using the formula—

2.5 + (2.5 × schedule 5 rate):

(c) when FBT is paid on an income year basis, by a percentage calculated using the formula—

10 + (10 × schedule 5 rate).

Schedule 5 rate

(3) In the formulas, **schedule 5 rate** is the rate of GST specified in schedule 5, clause 6(b), (c), (d), or (e) for the employer and the relevant quarter and relevant income year, as applicable.

Defined in this Act: amount, associated person, employee, employer, FBT, fringe benefit, GST, income year, motor vehicle, pay, quarter

Compare: 2004 No 35 s ND 1V

Section RD 57(1): amended, on 1 April 2008, by section 541 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Options for payment of FBT

RD 58 Single rate option

Rate for all quarters

(1) An employer who chooses to pay their FBT liability under the single rate option must pay FBT at the rate of 49.25% of the taxable value of a fringe benefit for each of the 4 quarters of a tax year.

Replacing final quarter calculation

(2) Despite subsection (1), an employer may ask the Commissioner to replace the FBT liability determined for the final quarter under this section with an amount calculated under section RD 59(4). The employer must provide the information necessary for the calculation.

Defined in this Act: amount, Commissioner, employer, FBT, fringe benefit, pay, quarter, tax year

Compare: 2004 No 35 ss ND 1(2)(b), (4), ND 2(2)

Section RD 58(1): substituted, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 67(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 58(1): substituted (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 67(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 58(1): amended, on 1 April 2009, by section 6(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

RD 59 Alternate rate option

Election

(1) This section applies when an employer chooses to pay their FBT liability under the alternate rate option.

First three quarters

(2) The employer may pay FBT for any or all of the first 3 quarters of a tax year at 43% of the taxable value of a fringe benefit.

Alternate rate

(3) The employer must pay FBT at the rate of 49.25% of the taxable value of a fringe benefit for any of the first 3 quarters of a tax year for which they do not pay at the rate of 43% under subsection (2).

Final quarter

(4) For the final quarter of the tax year, the employer must calculate the total pay of each employee under sections RD 50 and RD 53 for the tax year and subtract the amount of FBT payable for the previous 3 quarters of the tax year.

Decision irrevocable

(5) The decision to use the alternate rate option cannot be changed after the return is filed.

Defined in this Act: amount, employee, employer, FBT, fringe benefit, pay, quarter, tax year

Compare: 2004 No 35 ss ND 1(2)(a), ND 2(1)–(4), ND 10(1)

Section RD 59(2): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 68(2)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 59(2): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 68(1)(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 59(3): substituted, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 68(2)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 59(3): substituted (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 68(1)(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 59(3): amended, on 1 April 2009, by section 7(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 59(3)(b): amended (with effect on 1 April 2010), on 7 September 2010, by section 113 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

RD 60 Close company option

When this section applies

(1) This section applies in an income year when an employer that is a close company provides a fringe benefit to a shareholder-employee if, in the preceding income year,—

(a) the gross amounts of tax for both PAYE income payments and employer's superannuation cash contributions withheld under section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes) for the tax year were no more than $500,000; or

(b) the only benefit provided by the employer was a fringe benefit—

(i) arising under section CX 6(1) (Private use of motor vehicle); and

(ii) limited to making available to shareholder-employees 1 vehicle or 2 vehicles for their private use; or

(c) the employer did not employ any employees.

Income year basis

(2) The employer may choose to pay their FBT liability on an income year basis, informing the Commissioner of their decision in writing or by telephone no later than—

(a) the last day of the first quarter of the relevant income year; or

(b) the last day of the quarter in which the employer first starts employing employees, if subsection (1)(c) applies.

Rate or calculation

(3) The employer must pay FBT on the taxable value of fringe benefits in the income year in which they make their election and in later income years either—

(a) at the rate of 49.25% of the taxable value of a fringe benefit; or

(b) by calculating for the relevant income year the total pay of each employee under sections RD 50 and RD 53.

Replacing rate with calculated liability

(4) Despite subsection (3), the employer may ask the Commissioner to replace the FBT liability determined under subsection (3)(a) with a calculation under subsection (3)(b). The employer must provide the information necessary for the calculation.

Part-periods

(5) If an income year for which an employer chooses to pay FBT on an income year basis does not start on the same day as the first day of a quarter, the employer must treat the period between the first day of the quarter in which the first day of the income year falls and the first day of the income year as if it were a quarter.

More than 1 business

(6) If an employer ceases business and starts a new business, or operates 2 or more businesses at the same time, the total of all amounts of tax withheld under section RA 5(1)(a) and (c) must be aggregated.

Defined in this Act: amount of tax, business, close company, Commissioner, employee, employer, employer's superannuation cash contribution, FBT, fringe benefit, gross, income year, pay, PAYE income payment, quarter, shareholder-employee, tax year

Compare: 2004 No 35 ss ND 1(2)(c), (5), ND 14, ND 15(7), (8)

Section RD 60(1): substituted, on 1 April 2009, by section 18(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 60(1)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 517(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 60(1)(a): amended (with effect on 1 April 2009), on 6 October 2009, by section 517(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 60(2)(b): amended, on 1 April 2009, by section 18(2) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 60(3)(a): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 69(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 60(3)(a): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 69(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 60(3)(a): amended, on 1 April 2009, by section 8(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 60(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 517(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 60 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 517(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 60 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 517(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 61 Small business option

When this section applies

(1) This section applies when an employer provides a fringe benefit to an employee who is not a shareholder-employee in a tax year if, for the preceding tax year,—

(a) the gross amounts of tax for both PAYE income payments and employer's superannuation cash contributions withheld under section RA 5(1)(a) and (c) (Tax obligations for employment-related taxes) for the tax year were no more than $500,000; or

(b) the employer did not employ any employees.

Annual basis

(2) The employer may choose to pay their FBT liability on an annual basis, informing the Commissioner of their decision in writing or by telephone no later than—

(a) 30 June in the relevant tax year; or

(b) the last day of the quarter in which the employer first starts employing employees, if subsection (1)(b) applies.

Rate or calculation

(3) The employer must pay FBT on the taxable value of fringe benefits in the tax year in which they make their election and in later tax years either—

(a) at the rate of 49.25% of the taxable value of a fringe benefit; or

(b) by calculating for the relevant tax year the total pay of each employee under sections RD 50 and RD 53.

Replacing rate with calculated amount

(4) Despite subsection (3), the employer may ask the Commissioner to replace the FBT liability determined under subsection (3)(a) with a calculation under subsection (3)(b). The employer must provide the information necessary for the calculation.

Quarters in year

(5) For the purposes of subsection (3), the tax year is treated as if it were 4 consecutive quarters.

More than 1 business

(6) If an employer ceases business and starts a new business, or operates 2 or more businesses at the same time, the total of all amounts of tax withheld under section RA 5(1)(a) and (c) must be aggregated.

Defined in this Act: amount of tax, business, Commissioner, employee, employer, employer's superannuation cash contribution, employer's superannuation contribution, FBT, fringe benefit, gross, pay, PAYE income payment, quarter, shareholder-employee, tax year

Compare: 2004 No 35 ss ND 1(2)(c), (4), (5), ND 13

Section RD 61(1)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 518(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 61(1)(a): amended (with effect on 1 April 2009), on 6 October 2009, by section 518(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 61(1)(a): amended, on 1 April 2009, by section 19 of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section RD 61(3)(a): amended, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 70(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 61(3)(a): amended (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 70(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section RD 61(3)(a): amended, on 1 April 2009, by section 9(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 61(6): amended (with effect on 1 April 2008), on 6 October 2009, by section 518(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 61 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 518(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 62 Changes in payment periods

No changes for simple or alternate rate options

(1) An employer's decision to pay FBT on a quarterly basis under the single rate option or the alternate rate option cannot be changed.

When requirements for yearly basis no longer met

(2) If an employer who has chosen for a tax year to pay FBT on an income year basis or on an annual basis no longer meets the relevant requirements of section RD 60(1) or RD 61(1),

the employer must pay their FBT liability for fringe benefits provided to employees on or after the first day of the tax year under the single rate option or the alternate rate option.

Choosing to change to quarterly basis

(3) An employer who has chosen for a tax year to pay FBT on an income year basis or on an annual basis, may choose at any time to pay FBT on a quarterly basis.

When change takes effect

(4) An employer who chooses to change their payment period under subsection (3) must pay their FBT liability on a quarterly basis for a fringe benefit provided from—

(a) the first day of the next tax year, if the employer previously paid on an annual basis; or

(b) the first day of the next income year of the employer, if the employer previously paid on an income year basis; or

(c) another date agreed by the employer and the Commissioner.

Choosing to change to income year basis

(5) If an employer who is eligible to use the close company option has been paying FBT on a quarterly basis, and chooses to change to payment on an income year basis, a calculation must be made under section RD 59 for the period—

(a) beginning immediately after the end of the last full tax year for which the employer pays FBT on a quarterly basis:

(b) ending immediately before the start of the first income year for which the election applies.

Part-periods

(6) If an employer changes their payment period from an income year to a quarter, and the day referred to in subsection (4)(b) is not the same day as the first day of a quarter, then for the purposes of the payment of FBT, the employer must treat the period between that day and the first day of the next quarter as if it were a quarter.

Defined in this Act: close company, Commissioner, employee, employer, FBT, income year, pay, quarter, tax year

Compare: 2004 No 35 ss ND 2(4), ND 14(2B), ND 15

RD 63 When employer stops employing staff

Who this section applies to

(1) This section applies in a tax year to an employer who stops employing staff and does not intend to replace them. But this section does not apply to an employer who continues to provide a fringe benefit to a former employee.

Treated as final quarter

(2) The employer must pay FBT under section RD 59, treating the quarter of the tax year in which the employment ended as if it were the final quarter.

Single rate option

(3) As an alternative to the application of section RD 50(2) or RD 53(3), the employer may choose to pay FBT under the single rate option—

(a) making the calculation in relation to the period from the start of the tax year to the date on which the employer stops employing staff; and

(b) taking into account any earlier payments of FBT made in relation to an employee.

Defined in this Act: employee, employer, FBT, fringe benefit, pay, quarter, tax year

Compare: 2004 No 35 s ND 8

Employer's superannuation contribution tax (ESCT) rules and employer's superannuation contributions

Introductory provisions

RD 64 ESCT rules and their application

Meaning

(1) The **ESCT rules** means—

(a) section CX 49 (Employer's superannuation contributions); and

(b) sections RD 65 to RD 71; and

(c) sections 15C to 15M, 24J to 24P, 47, 48, and Part 9 of the Tax Administration Act 1994.

Application

(2) The ESCT rules apply to an employer who makes an employer's superannuation contribution.

Defined in this Act: employer, employer's superannuation contribution, ESCT rules

Compare: 2004 No 35 ss NE 1, OB 1 **SSCWT rules**

RD 65 Employer's superannuation cash contributions

Contribution in money for benefit of employees

(1) An **employer's superannuation cash contribution** means an employer's superannuation contribution paid in money either to a superannuation fund or under the KiwiSaver Act 2006 to the Commissioner for later payment to a superannuation fund.

Determining amount of contribution

(2) The amount of an employer's superannuation cash contribution is the sum of—

(a) the amount of the contribution received by the superannuation fund or, for a contribution paid to the Commissioner under the KiwiSaver Act 2006, received by the Commissioner for payment to the superannuation fund; and

(b) the amount of tax withheld for the employer's superannuation contribution.

Payment of amount of tax

(3) An employer who makes an employer's superannuation cash contribution on behalf of an employee must pay to the Commissioner the amount of tax for the contribution. The amount is payable in 2 payment periods in a month as set out in section RA 15 (Payment dates for interim and other tax payments) unless they are an employer to whom section RD 22(3) applies. Subsection (4) overrides this subsection.

Contributions to KiwiSaver schemes and complying superannuation funds

(4) Subsection (3) and, as applicable, sections RD 67 to RD 69, do not apply to an employer's superannuation cash contribution (the **current contribution**) to the extent to which the current contribution is—

(a) for an employee described in sections 101C(a) to (c) of the KiwiSaver Act 2006; and

(b) for the employee's KiwiSaver scheme, or for their complying superannuation fund and subject to the complying fund rules; and

(c) no more than 2% of the payment of salary or wages to which the current contribution relates.

Formula: subsection (4)(b)(i)
[Repealed]

(5) *[Repealed]*

Formula: subsection (4)(b)(ii)
[Repealed]

(6) *[Repealed]*

Definition of items in formulas
[Repealed]

(7) *[Repealed]*

Contributions to complying superannuation funds
[Repealed]

(8) *[Repealed]*

Formula: subsection (8)(c)(i)
[Repealed]

(9) *[Repealed]*

Formula: subsection (8)(c)(ii)
[Repealed]

(10) *[Repealed]*

Definition of items in formulas
[Repealed]

(11) *[Repealed]*

When contribution paid
[Repealed]

(12) *[Repealed]*

Some definitions

(13) In this section,—

salary or wages has the meaning given in section 4 of the KiwiSaver Act 2006.

Defined in this Act: amount, amount of tax, Commissioner, complying fund calculation period, complying fund rules, complying superannuation fund, com-

pulsory employer contribution, employee, employer, employer's superannuation cash contribution, ESCT, KiwiSaver calculation period, KiwiSaver contribution, KiwiSaver scheme, pay, salary or wages, superannuation fund

Compare: 2004 No 35 ss NE 2(2), NE 3, NE 3B, NE 6, OB 1 **employer's superannuation contribution**, **specified superannuation contribution**

Section RD 65 heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 519(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 519(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(4) heading: substituted (with effect on 1 April 2009), on 6 October 2009, by section 519(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(4): substituted (with effect on 1 April 2009), on 6 October 2009, by section 519(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(4)(a): substituted, on 1 April 2009, by section 55(a) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(4)(b): substituted, on 1 April 2009, by section 55(a) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(5) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(5): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(6) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(6): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(7) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(7): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(7): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(8) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(8): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(8): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(9) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(9): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(10) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(10): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(11) heading: repealed, on 1 April 2009, pursuant to section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(11): repealed, on 1 April 2009, by section 55(b) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(11): amended (with effect on 1 April 2008), on 6 October 2009, by section 519(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(12) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 519(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(12): repealed (with effect on 1 April 2008), on 6 October 2009, by section 519(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65(13) **complying fund calculation period**: repealed, on 1 April 2009, by section 55(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(13) **KiwiSaver calculation period**: repealed, on 1 April 2009, by section 55(c) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65(13) **KiwiSaver calculation period**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 519(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65 list of defined terms **compulsory employer contribution**: inserted, on 1 April 2009, by section 55(d) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RD 65 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section

519(12) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 65 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 519(12) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 66 Complying fund rules

The complying fund rules, for a superannuation fund and an employee's superannuation accumulation, means rules that—

(a) meet all the requirements set out in schedule 28 (Requirements for complying fund rules); and

(b) do not detract from those requirements.

Defined in this Act: complying fund rules, employee's superannuation accumulation, superannuation fund

Compare: 2004 No 35 s OB 1 "complying fund rules"

Section RD 66: substituted, on 1 April 2008, by section 134 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Calculating amounts of tax

RD 67 Calculating amounts of tax for employer's superannuation cash contributions

The amount of tax for an employer's superannuation cash contribution is the amount determined under 1 of the following paragraphs, as applicable:

(a) if the employer chooses under section RD 69(1), the amount determined under schedule 1, part D, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits); or

(b) the amount determined under schedule 1, part D, clause 2.

Defined in this Act: amount, amount of tax, employer, employer's superannuation cash contribution

Compare: 2004 No 35 s NE 2

Section RD 67 heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 520(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 67: amended (with effect on 1 April 2008), on 6 October 2009, by section 520(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 67(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 520(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 67 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 520(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 67 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 520(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 68 Choosing to have amount treated as salary or wages

Amount treated as salary or wages

(1) With the agreement of their employer who makes an employer's superannuation cash contribution on their behalf, an employee may choose to have some or all of an employer's superannuation cash contribution made on their behalf treated as salary or wages under the PAYE rules.

Revoking election

(2) The employee's election is valid until revoked in writing.

Defined in this Act: employee, employer, employer's superannuation cash contribution, PAYE rules, salary or wages

Compare: 2004 No 35 s NE 2A(1), (2)

Section RD 68(1) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 521(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 68(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 521(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 68(2) heading: added (with effect on 1 April 2008), on 6 October 2009, by section 521(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 68(2): added (with effect on 1 April 2008), on 6 October 2009, by section 521(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 68 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 521(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 68 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 521(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 69 Choosing different rates for employer's superannuation cash contributions

ESCT rate threshold amounts

(1) An employer who makes an employer's superannuation cash contribution on behalf of an employee may choose to pay the amount of tax for the contribution at the rate set out in schedule 1, part D, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the ESCT rate threshold amount for the employee.

PAYE intermediaries

(2) For the purposes of subsection (1), an employer includes a PAYE intermediary.

Defined in this Act: amount of tax, employee, employer, employer's superannuation cash contribution, ESCT rate threshold amount, pay, PAYE intermediary, salary or wages

Compare: 2004 No 35 s NE 2B

Section RD 69 heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 522(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 69(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 522(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 69(1): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 69 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 522(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 69 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 522(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 70 Calculating amounts of tax on failure to withhold

When this section applies

(1) This section applies when an employer or PAYE intermediary does not withhold under section RD 65(3) an amount of tax for an employer's superannuation cash contribution.

Calculation of amount of tax

(2) The amount of tax is calculated using the formula—

$$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to fund} - \text{tax already p}$$

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) at the time the contribution was made:

(b) **contribution to fund** is the amount of the contribution received by the superannuation fund excluding the amount of tax:

(c) **tax already paid** is any amount of tax for the contribution that has already been paid.

Defined in this Act: amount, amount of tax, basic rate, employer, employer's superannuation cash contribution, pay, PAYE intermediary, superannuation fund

Compare: 2004 No 35 s NE 5

Section RD 70(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 523(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 70(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RD 70 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 523(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 70 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 523(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RD 71 Amounts of tax treated as paid to and received by superannuation funds

In determining whether an employer has met their obligation to pay a contribution to a superannuation fund—

(a) the employer or their PAYE intermediary is treated as having paid to the superannuation fund an amount of tax withheld under the ESCT rules or the PAYE rules, if applicable; and

(b) the fund is treated as having received the amount referred to under paragraph (a); and

(c) the payment referred to in paragraph (a) and the receipt referred to in paragraph (b) are treated as having occurred when the superannuation fund received the employer's superannuation cash contribution.

Defined in this Act: amount of tax, employer, employer's superannuation cash contribution, ESCT rules, pay, PAYE intermediary, PAYE rules, superannuation fund

Compare: 2004 No 35 s NE 6

Section RD 71(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 524(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 71(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 524(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 71 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 524(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 71 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 524(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Tax on certain withdrawals from superannuation funds
[Repealed]

Heading: repealed, on 1 April 2011, by section 114 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

RD 72 Recovery of tax paid by superannuation funds
[Repealed]

Section RD 72: repealed, on 1 April 2011, by section 114 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section RD 72(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart RE—Withholding tax on resident passive income (RWT)

Introductory provisions

RE 1 RWT rules and their application

Meaning

(1) The **RWT rules** means—

(a) this subpart; and

(b) sections LA 4, LA 6, and LB 3 (which relate to tax credits for RWT); and

(c) sections 15N, 25 to 28, 32E to 32L, 50 to 55, 78D, and 99, Part 9, sections 170 to 172, and 185 of the Tax Administration Act 1994.

Application

(2) The RWT rules apply to a person who pays an amount of resident passive income.

Defined in this Act: amount, pay, resident passive income, RWT rules

Compare: 2004 No 35 s OB 1 **RWT rules**

Section RE 1(1)(c): amended (with effect on 1 April 2008), on 7 December 2009, by section 105(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RE 2 Resident passive income

Interest, dividends, and certain distributions

(1) **Resident passive income** means an amount paid to a person to the extent to which it consists of—

(a) interest:

(b) a dividend:

(c) a taxable Maori authority distribution other than a retirement scheme contribution:

(d) a replacement payment paid to a person under a share-lending arrangement.

Exclusions and inclusions

(2) Subsections (3) to (5) override subsection (1).

Exclusions from interest

(3) The following amounts are excluded from interest under this section

(a) exempt interest:

(b) interest derived by a person who holds an RWT exemption certificate issued under section RE 27:
(c) interest that is non-resident passive income:
(d) interest derived from outside New Zealand by a non-resident:
(e) interest that is exempt income under section CW 27 (Certain income derived by transitional resident):
(f) interest paid by a company and derived by another company when both companies are part of the same group of companies at the time of the payment:
(g) interest paid to an intermediary—
  (i) by a client in relation to the operation of a tax pooling account; or
  (ii) by the Commissioner under section RP 18 (Deposits in tax pooling accounts):
(h) interest payable under section 120D or Part 7 of the Tax Administration Act 1994.

Inclusions in interest

(4) For the purposes of this section, the following amounts are treated as interest and not as a dividend:
(a) a dividend that a building society pays to a member in relation to a withdrawable share in the society:
(b) a dividend that a friendly society pays to its member in relation to a share in the society.

Exclusions from dividends

(5) The following amounts are excluded from a dividend under this section:
(a) a dividend that is exempt income—
  (i) through the application of any of sections CW 9 to CW 11 (which relate to income from equity); or
  (ii) under section CW 27 (Certain income derived by transitional resident); or
  (iii) under section CW 64 (Exemption under other Acts):
(b) an amount treated as a dividend under—
  (i) section CB 34(5)(a) (Amounts derived by members from mutual associations); or

(ii) sections GB 23 to GB 25 (which relate to excessive remuneration):

(bb) a dividend from a portfolio investment entity:

(c) an amount of attributed repatriation:

(d) a dividend derived by a person who holds an RWT exemption certificate issued under section RE 27:

(e) a dividend that is non-resident passive income:

(f) a dividend derived by a non-resident other than a dividend that has a source in New Zealand:

(g) a dividend paid by a company and derived by another company when both are part of the same group of companies at the time of the payment:

(h) a dividend that is excluded income under section CX 50B (Contributions to retirement savings schemes) or would be excluded income under that section in the absence of subsection (2)(a) and (b):

(i) a dividend other than a non-cash dividend that—

(i) has an imputation ratio, FDP ratio, or combined imputation and FDP ratio of 30/70 or more; and

(ii) is paid by a unit trust or group investment fund (or RWT proxy on their behalf) that has not withheld RWT from any earlier dividend:

(j) a dividend treated as derived by a person under section GB 1(3) (Arrangements involving dividend stripping).

Beneficiary income

(6) If a person derives an amount described in this section in their capacity as trustee and the amount is beneficiary income, the amount is treated as not derived by the trustee.

Trustees' RWT substitution payment

(7) A trustee may pay an amount of money (the **RWT substitution payment**) to the relevant beneficiary that is equal to or less than the amount of RWT withheld for an amount to which subsection (6) applies (the **RPI beneficiary income**).

Effect of RWT substitution payment

(8) The RWT substitution payment is treated as an amount of resident passive income that is beneficiary income, with the same nature as the RPI beneficiary income. There is no liability or

obligation to withhold RWT in relation to the RWT substitution payment.

Defined in this Act: amount, attributed repatriation, beneficiary, beneficiary income, building society, combined imputation and FDP ratio, Commissioner, company, dividend, excluded income, exempt income, exempt interest, friendly society, FDP ratio, group investment fund, group of companies, imputation ratio, interest, New Zealand, non-cash dividend, non-resident, non-resident passive income, pay, portfolio investment entity, replacement payment, resident passive income, RWT, RWT exemption certificate, RWT proxy, RWT substitution payment, share, share-lending arrangement, source in New Zealand, tax pooling account, taxable Maori authority distribution, trustee, unit trust, withdrawable share

Compare: 2004 No 35 s NF 1(2), (4), (5)

Section RE 2(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 525(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 2(1)(c): amended, on 1 April 2008, by section 542(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2(3)(c): amended (with effect on 1 April 2008), on 6 October 2009, by section 525(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 2(5)(bb): inserted (with effect from 1 April 2008), on 29 May 2008, by section 44(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RE 2(5)(f): amended, on 21 December 2010, by section 129(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RE 2(5)(g): amended, on 1 April 2008, by section 542(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2(5)(h): added, on 1 April 2008, by section 542(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2(5)(i): added, on 1 April 2008, by section 542(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2(5)(j): added (with effect on 1 April 2008), on 7 December 2009, by section 106(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 2(7) heading: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 124(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RE 2(7): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 124(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RE 2(8) heading: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section

124(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RE 2(8): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years if the trustee has taken a tax position in a tax return that is consistent with subsection (1)), by section 124(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RE 2 list of defined terms **beneficiary**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 124(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RE 2 list of defined terms **combined imputation and FDP ratio**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 129(2)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RE 2 list of defined terms **excluded income**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **FDP ratio**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **group investment fund**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **imputation ratio**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **non-cash dividend**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **portfolio investment entity**: inserted (with effect from 1 April 2008), on 29 May 2008, by section 44(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RE 2 list of defined terms **resident in New Zealand**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 525(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 2 list of defined terms **RWT**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **RWT proxy**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 2 list of defined terms **RWT substitution payment**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 124(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RE 2 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 129(2)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RE 2 list of defined terms **unit trust**: inserted, on 1 April 2008, by section 542(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Withholding obligations

RE 3 Obligation to withhold RWT

Obligation to withhold and pay

(1) A person to whom section RE 1(2) applies is liable to withhold resident withholding tax (RWT) and pay the amount to the Commissioner if they make the payment and—

(a) they have an obligation to withhold an amount of tax under section RE 4 and are not excluded under sections RE 5 and RE 6 from meeting the obligation:

(b) *[Repealed]*

(c) they are an RWT proxy in relation to the payment.

Non-cash dividends

(2) For the purposes of subsection (1), if the payment is a non-cash dividend, the person must calculate the amount of tax under section RE 14 and pay the amount to the Commissioner.

Defined in this Act: amount, amount of tax, Commissioner, non-cash dividend, pay, RWT, RWT proxy

Compare: 2004 No 35 s NF 2(1A), (1AB)

Section RE 3(1)(a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 526(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 3(1)(b): repealed (with effect on 1 April 2008), on 6 October 2009, by section 526(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RE 4 Persons who have withholding obligations

Requirements

(1) A person referred to in section RE 3(1)(a) must meet at least 1 requirement of each of subsections (2) and (3) in relation to a payment of resident passive income.

Requirement for person

(2) The person must be, at the time the payment is made,—

(a) resident in New Zealand; or

(b) if not resident in New Zealand,—

(i) carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand; and

(ii) not excluded under subsection (4).

Requirements for person and payment

(3) In addition to meeting a requirement of subsection (2), 1 of the following requirements must be met at the time the payment is made

(a) the person holds an RWT exemption certificate:

(b) the payment is made in whole or in part in carrying on a taxable activity, whether or not the person acts as agent or trustee for another person:

(c) the payment is a dividend:

(d) the payment is a taxable Maori authority distribution:

(e) the payment is a replacement payment under a share-lending arrangement.

When person not treated as resident or carrying on taxable activity

(4) For the purposes of subsection (2), a person who is not resident in New Zealand and is carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand, is treated as not meeting the requirements of the subsection if they establish that, at the time the payment is made,—

(a) either,—

(i) for interest or a dividend, the payment is attributable to or effectively connected with a fixed establishment of the person outside New Zealand; or

(ii) for a dividend, the company is not resident in New Zealand; and

(b) all amounts payable in relation to money lent or shares to which the payment relates are payable in a currency other than New Zealand currency.

Currency conversion

(5) A person who is required to withhold RWT in relation to a payment of resident passive income that is in a currency other

than New Zealand currency may withhold and pay the amount of the RWT in the foreign currency.

Conversion rates: credit

(6) For the purposes of subsection (5), in the calculation of the amount of RWT to be credited against income tax, the amount must be converted to New Zealand currency at the option of the person deriving the resident passive income at either—

(a) the close of trading spot exchange rate on the day the RWT is paid; or

(b) an exchange rate specified by the Commissioner for this purpose in relation to the month in which the RWT is paid.

Conversion rates: payment

(7) For the purposes of subsection (5), in the calculation of the amount of RWT to be paid to the Commissioner, the amount must be converted to New Zealand currency either at—

(a) the close of trading spot exchange rate on the first working day of the month after the month in which the day the RWT is withheld; or

(b) a conversion rate applying under section OB 60(6) (Imputation credits attached to dividends) if the resident passive income is a dividend and the person required to withhold RWT under subsection (5) is an Australian ICA company that chooses to use that rate.

Defined in this Act: amount, Australian ICA company, close of trading spot exchange rate, Commissioner, company, dividend, fixed establishment, income tax, interest, money lent, New Zealand, pay, replacement payment, resident in New Zealand, resident passive income, RWT, RWT exemption certificate, share, share-lending arrangement, taxable activity, taxable Maori authority distribution, trustee, working day

Compare: 2004 No 35 s NF 2(3), (4)

Section RE 4(6): amended (with effect on 30 June 2009), on 6 October 2009, by section 527(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 4 list of defined terms **FDP**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 527(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RE 5 No withholding obligation in certain circumstances

When this section applies

(1) This section applies when a person (**person A**)—

(a) pays an amount to another person (**person B**); or
(b) receives a payment while acting as agent or bare trustee for person B.

No obligation if person B exempt

(2) For the purposes of determining whether person A is required under section RE 4 to withhold RWT, the payment is treated as not consisting of resident passive income if person A has established that person B holds an RWT exemption certificate issued under section RE 27.

No obligation if person B transitional resident

(3) If person A receives an amount of resident passive income while acting as agent or bare trustee for person B, they are not required to withhold RWT in relation to the amount when—
(a) person B notifies person A that—
(i) they are a transitional resident for a period; and
(ii) an amount paid during the period from a particular source is exempt income of person B under section CW 27 (Certain income derived by transitional resident); and
(b) person A receives the payment during the period from the particular source; and
(c) person A has no reasonable grounds for believing that the payment is not exempt income of person B under section CW 27.

Defined in this Act: amount, exempt income, notify, pay, resident passive income, RWT, RWT exemption certificate, transitional resident, trustee

Compare: 2004 No 35 s NF 2(7), (7B)

RE 6 When obligation to withhold unreasonable

When this section applies

(1) This section applies when a person (**person A**) who is a person listed in a paragraph in section 32E(2)(a) to (h) of the Tax Administration Act 1994—
(a) receives an amount from another person (**person B**); or
(b) makes a payment at person B's request.

No obligation if unreasonable

(2) For the purposes of determining whether person A is required under section RE 4 to withhold RWT, the payment is treated

as not consisting of resident passive income of person B to the extent to which—

(a) person A could not reasonably be expected to be aware that the payment was resident passive income; or

(b) for an amount that is a redemption payment, person A could not reasonably be expected to be aware of the amount that consisted of resident passive income.

Defined in this Act: amount, pay, redemption payment, resident passive income, RWT

Compare: 2004 No 35 s NF 2(8)

RE 7 When resident passive income paid to trustees

Who this section applies to

(1) This section applies when—

(a) an amount is paid to a person (**person A**) who is acting as trustee for another person (**person B**) at the time; and

(b) some or all of the amount is resident passive income other than a replacement payment under a share-lending arrangement; and

(c) person A—

(i) does not hold an RWT exemption certificate at the time of the payment; and

(ii) is paid the amount in the conduct of a taxable activity carried on by them; and

(iii) is not a nominee to whom section RE 8 applies.

Obligation to withhold

(2) At the time the payment is made and to the extent to which it has not already been withheld, person A must withhold RWT for the payment and pay it to the Commissioner.

Relationship with section RE 9

(3) Section RE 9 overrides this section.

Defined in this Act: amount, Commissioner, nominee, pay, replacement payment, resident passive income, RWT, RWT exemption certificate, share-lending arrangement, taxable activity, trustee

Compare: 2004 No 35 s NF 3(1), (2)

RE 8 When resident passive income paid to nominees

Who this section applies to

(1) This section applies when—

(a) an amount is paid to a person (**person A**) who is a nominee for another person (**person B**) at the time; and

(b) some or all of the amount is resident passive income; and

(c) person A—

(i) holds an RWT exemption certificate at the time of the payment; or

(ii) is paid the amount in the conduct of a taxable activity carried on by them.

Obligation to withhold

(2) At the time the payment is received and to the extent to which it has not already been withheld, person A must withhold RWT for the payment and pay it to the Commissioner.

Relationship with section RE 9

(3) Section RE 9 overrides this section.

Defined in this Act: amount, Commissioner, nominee, pay, resident passive income, RWT, RWT exemption certificate, taxable activity

Compare: 2004 No 35 s NF 3(1)

RE 9 Agents' or trustees' obligations in relation to certain dividends

When this section applies

(1) This section applies when an agent or trustee is required to withhold RWT from certain dividends.

Dividends other than those having the nature of interest

(2) To the extent to which the resident passive income consists of a dividend other than a dividend treated as interest, an amount of tax that must be withheld under section RE 3 is treated as an amount to which the RWT rules apply.

Non-cash dividends

(3) To the extent to which the resident passive income consists of a non-cash dividend, the trustee or agent must pay to the Commissioner an amount equal to the amount of tax for the dividend as if it were the amount of tax required to be withheld and paid under the RWT rules.

Obligation of person paying not overridden

(4) This section does not override the obligation of the person who pays the resident passive income to the agent or trustee to withhold RWT for the payment under section RE 4.

Defined in this Act: amount, amount of tax, Commissioner, dividend, dividend treated as interest, non-cash dividend, pay, resident passive income, RWT, RWT rules, trustee

Compare: 2004 No 35 s NF 3(3)–(5)

Section RE 9(2): substituted (with effect on 30 June 2009), on 6 October 2009, by section 528(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 9 list of defined terms **FDP rules**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 528(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RE 10 Special rule relating to payments of interest

Threshold for amounts of interest

(1) This section applies to a person who—

(a) pays resident passive income consisting of interest; and

(b) either does not hold an RWT exemption certificate at the time of the payment, or is described in section 32E(2)(k) or (l) of the Tax Administration Act 1994 or holds a certificate under section 32I of that Act; and

(c) has paid an amount of resident passive income consisting of interest that totals less than $5,000 in the tax year before the tax year in which the payment is made; and

(d) would be liable to withhold RWT for the resident passive income in the absence of this section.

Minimum amount

(2) Despite section RE 4(3), the person is required to withhold the amount of tax for the payment only if the total resident passive income consisting of interest paid by the person in the tax year in which the payment is made is more than $5,000.

Defined in this Act: amount, amount of tax, interest, pay, resident passive income, RWT, RWT exemption certificate, tax year

Compare: 2004 No 35 s NF 2(5)

RE 10B Amounts withheld from distributions to holders of FIF attributing interests

When this section applies

(1) This section applies when—

(a) a distribution is made to a holder of an attributing interest in a FIF; and

(b) section CD 36 (Foreign investment fund income) or EX 59(2) (Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method) applies to the distribution; and

(c) an amount is withheld by the payer from the distribution because the payer has treated the distribution as resident passive income subject to the RWT rules.

Treatment of amount

(2) The amount withheld is treated as—

(a) RWT for the purposes of this subpart and subpart LA (General rules for tax credits), and sections LB 3 (Tax credits for resident withholding tax), and RM 1 to RM 10 (which relate to refunds); and

(b) tax paid in excess for the purposes of Part 10B of the Tax Administration Act 1994.

Treatment of distribution

(3) The distribution is treated as resident passive income for the purposes of the sections listed in subsection (2).

Refunds

(4) Subsection (2) does not apply if the payer or the holder applies under section RM 8(4) or (5) (Overpaid RWT or NRWT), as applicable, for a refund in relation to the amount withheld before the next 31 March after the date on which the amount of tax was withheld.

Defined in this Act: amount of tax, attributing interest, FIF, pay, resident passive income, RWT, tax

Section RE 10B: inserted (with effect on 1 April 2008), on 7 December 2009, by section 107(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RE 11 Notification by companies

When this section applies

(1) This section applies when a company that is not a trustee or a Maori authority is entitled to receive a payment of resident passive income other than a replacement payment under a share-lending arrangement.

Notification required

(2) The company must notify the person making the payment that they are a company.

Withholding rate

(3) The person making the payment must withhold RWT for the payment at the relevant rate set out in schedule 1, part D, clause 4 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for a payment made on or after the date of notification.

Consequence of failure to notify

(4) If the company does not notify the person making the payment, the person must apply the higher withholding rate set out in section RE 19(3).

Defined in this Act: company, Maori authority, notify, pay, replacement payment, resident passive income, RWT, share-lending arrangement, trustee

Compare: 2004 No 35 s NF 2B

Section RE 11(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 529(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 11(3): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Calculating amounts of tax

RE 12 Interest

When this section applies

(1) This section applies when a person makes a payment of resident passive income that consists of interest.

Calculation of amount of tax

(2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

(tax rate × (interest paid + foreign withholding tax)) – foreign withholding tax.

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 3 or 4 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **interest paid** is the interest paid before the amount of tax is determined:

(c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the interest paid.

Modification for 2009–10

(4) Despite subsection (3)(a), the amount of tax that the person must withhold and pay may, if the person chooses, be calculated, under subsection (3), using a **tax rate** of 0.38 if—

(a) the payment of resident passive income is made in the 2009–10 tax year; and

(b) the tax rate under subsection (3)(a) would be 0.39 in the absence of this subsection.

Modification for companies and portfolio investment entities for 2010–11 tax year

(5) Despite subsection (3)(a), the amount of tax that the person must withhold and pay may, if the person chooses, be calculated under subsection (3) using a **tax rate** of 0.30 if—

(a) the payment of resident passive income that consists of interest is made in the 2010–11 tax year to—

(i) a portfolio investment entity; or

(ii) a company that is not a trustee or a Maori authority; and

(b) the tax rate under subsection (3)(a) would be 0.33 in the absence of this subsection.

Defined in this Act: amount of tax, Commissioner, company, foreign withholding tax, income year, interest, Maori authority, pay, portfolio investment entity, resident passive income, trustee

Compare: 2004 No 35 s NF 2(1)(a)

Section RE 12(3)(a) **tax rate**: amended (with effect on 1 April 2008), on 6 October 2009, by section 530(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RE 12(3)(a) **tax rate**: amended (with effect from 1 April 2008), on 15 December 2008, by section 33(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RE 12(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 12(4): added, on 1 April 2009, by section 33(2) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section RE 12(5) heading: added, on 1 April 2010 (applying for the 2010–11 income year), by section 108(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 12(5) heading: amended (with effect on 1 April 2010), on 7 September 2010, by section 115(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section RE 12(5): added, on 1 April 2010 (applying for the 2010–11 income year), by section 108(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 12(5)(a): substituted (with effect on 1 April 2010), on 7 September 2010, by section 115(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section RE 12 list of defined terms **company**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 12 list of defined terms **income year**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 12 list of defined terms **Maori authority**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 115(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section RE 12 list of defined terms **portfolio investment entity**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 12 list of defined terms **trustee**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 115(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

RE 13 Dividends other than non-cash dividends

When this section applies

(1) This section applies when a person makes a payment of resident passive income that consists of a dividend other than a non-cash dividend.

Calculation of amount of tax

(2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

(tax rate × (dividend paid + tax paid or credit attached)) – tax paid or credit attached.

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 5 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:

(c) **tax paid or credit attached** is the total of the following amounts:

(i) if the dividend is paid in relation to shares issued by an imputation credit account (ICA) company, the amount of an imputation credit attached to the dividend:

(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:

(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Defined in this Act: amount, amount of tax, Commissioner, company, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, share

Compare: 2004 No 35 s NF 2(1)(b)

Section RE 13(3)(a) **tax rate**: amended (with effect from 1 April 2008), on 29 May 2008, by section 45 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RE 13(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 14 Non-cash dividends other than bonus issues in lieu

When this section applies

(1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than a bonus issue in lieu.

Calculation of amount of tax

(2) The amount of tax for the payment that the person must pay under subsection (4) to the Commissioner is calculated using the formula—

$$\frac{(\text{tax rate} \times \text{dividend paid})}{1 - \text{tax rate}} - \text{tax paid or credit attache}$$

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 5 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:

(c) **tax paid or credit attached** is the total of the following amounts:

(i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:

(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:

(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Treatment as if amount of tax withheld

(4) For the purposes of subsection (2), the person must pay to the Commissioner the amount calculated as if it were the amount of tax required to be withheld and paid under the RWT rules.

Defined in this Act: amount, amount of tax, bonus issue in lieu, Commissioner, company, FDP credit, foreign withholding tax, ICA company, imput-

ation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, RWT rules, share

Compare: 2004 No 35 s NF 2(1)(c), (2)

Section RE 14(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 15 Bonus issues in lieu

When this section applies

(1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is a bonus issue in lieu.

Calculation of amount of tax

(2) The amount of tax for the payment is calculated using the formula—

(tax rate × (alternative amount + tax paid or credit attached)) – tax paid or credit attached.

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 5 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **alternative amount** is the amount of money offered as an alternative to the bonus issue before the amount of tax is determined:

(c) **tax paid or credit attached** is the total of the following amounts:

(i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:

(ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:

(iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Defined in this Act: amount, amount of tax, bonus issue in lieu, company, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, pay, resident in New Zealand, resident passive income, share

Compare: 2004 No 35 s NF 2(1)(d)

Section RE 15(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 16 Taxable Maori authority distributions

When this section applies

(1) This section applies when a Maori authority makes a payment of resident passive income that consists of a taxable Maori authority distribution in the form of a sum of money or an amount of a credit in the balance of an account with the Maori authority.

Calculation of amount of tax

(2) The amount of tax for the payment that the Maori authority must withhold and pay to the Commissioner is calculated using the formula—

(tax rate × (distribution amount + credit attached)) – credit attached.

Non-cash amounts

(3) Despite subsection (2), if the resident passive income is not paid in cash, the amount of tax for the payment that the Maori authority must pay to the Commissioner is calculated using the formula—

$$\frac{(\text{tax rate} \times \text{distribution amount})}{1 - \text{tax rate}} - \text{credit attached.}$$

Definition of items in formulas

(4) In the formulas in subsections (2) and (3),—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 6 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **distribution amount** is the amount of the distribution before the amount of tax is determined:

(c) **credit attached** is the amount of the Maori authority credit attached to the distribution.

Defined in this Act: amount, amount of tax, Commissioner, Maori authority, Maori authority credit, pay, resident passive income, taxable Maori authority distribution

Compare: 2004 No 35 s NF 2(1)(e), (f)

Section RE 16(4)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 17 Replacement payments under share-lending arrangements

When this section applies

(1) This section applies when a person makes a payment of resident passive income that consists of a replacement payment under a share-lending arrangement.

Calculation of amount of tax

(2) The amount of tax for the payment is calculated using the formula—

$$\frac{\text{tax rate} \times \text{payment} + \text{credit attached} - \text{credit transferred}}{1 - \text{tax rate}} - \text{FDP credit transferred.}$$

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 5 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **payment** is the amount of the replacement payment excluding an imputation credit attached under section OB 64 (Replacement payments):

(c) **credit attached** is the amount of an imputation credit attached to the replacement payment under section OB 64:

(d) **credit transferred** is the amount of an imputation credit shown in a credit transfer notice relating to the replacement payment:

(e) **FDP credit transferred** is the amount of an FDP credit shown in a credit transfer notice relating to the replacement payment.

Defined in this Act: amount, amount of tax, credit transfer notice, FDP credit, imputation credit, pay, replacement payment, resident passive income, share-lending arrangement

Compare: 2004 No 35 s NF 2(1)(g)

Section RE 17(3)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 18 Payments made by RWT proxies

Calculation of amount of tax

(1) A person who is an RWT proxy for a person paying resident passive income that consists of a dividend must withhold an amount of tax for the payment calculated using the formula—

$$\frac{\text{tax rate} \times \text{amount paid}}{1 - \text{rate}}.$$

Definition of items in formula

(2) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 3 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **amount paid** is the amount of the dividend paid.

Defined in this Act: amount, amount of tax, dividend, pay, resident passive income, RWT proxy

Compare: 2004 No 35 s NF 2(1B)

Section RE 18(2)(a) **tax rate**: amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 116(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section RE 18(2)(a) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 19 Choosing other rates

When this section applies

(1) This section applies when a person (**person A**) is entitled to receive resident passive income other than a replacement payment under a share-lending arrangement.

Person choosing rate

(2) Person A may notify the person who is required to withhold the amount of tax for the payment to use 1 of the rates set out in schedule 1, part D, clause 3 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Company choosing rate

(3) Despite subsection (1), if person A is a company, they may notify the person making the payment to withhold the amount of tax for the payment at the rate set out in schedule 1, part D, clause 4.

Application of rate

(4) The rate chosen under subsection (2) or (3) applies to amounts of tax withheld from the date on which notice is given.

Defined in this Act: amount of tax, company, notify, pay, replacement payment, resident passive income, share-lending arrangement, tax withheld

Compare: 2004 No 35 ss NF 2A(1), (3), NF 2D(1), (3)

Section RE 19 heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 109(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 19(2): amended (with effect from 1 April 2008), on 29 May 2008, by section 46(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section RE 19(2): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RE 19(3): amended (with effect from 1 April 2008), on 29 May 2008, by section 46(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Paying amounts of tax

RE 20 Paying RWT

A person who is required under the RWT rules to withhold RWT must pay the amount of tax to the Commissioner under sections RA 15 and RA 16 (which relate to payment dates and the basis on which the payment dates are set).

Defined in this Act: amount of tax, Commissioner, pay, RWT, RWT rules

Compare: 2004 No 35 s NF 4(1), (2)

RE 21 Basis for payment of RWT

When this section applies

(1) Subsections (2) to (5) apply for the purposes of section RA 6(1) (Withholding and payment obligations for passive income) to a person who is required under the RWT rules to withhold RWT for resident passive income consisting of interest.

Interest of more than $500 in total

(2) If the person estimates for a tax year that they will be required to withhold more than $500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner on a monthly basis.

Interest of less than $500 in total

(3) If the person estimates for a tax year that they will be required to withhold less than $500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner in 2 instalments as described in section RA 15 (Payment dates for interim and other tax payments).

When subsection (5) applies

(4) Subsection (5) applies when the person has withheld more than $500 in total amounts of tax for a 2 month-period from the start of 1 month in a tax year to the end of the month following that month.

Total in 2-month period

(5) Despite subsections (2) and (3), the person must pay the total amount of tax to the Commissioner for the 2-month period by the 20th day of the month following the end of the period.

When subsection (7) applies

(6) Subsection (7) applies for the purposes of section RA 6(1) to a person who is required under the RWT rules to withhold RWT for resident passive income consisting of a dividend, a replacement payment, or a taxable Maori authority distribution.

Dividends, replacement payments, and taxable Maori authority distributions

(7) The person must pay the amount of tax to the Commissioner on a monthly basis.

Defined in this Act: amount of tax, Commissioner, dividend, interest, pay, replacement payment, resident passive income, RWT, RWT rules, tax year, taxable Maori authority distribution

Compare: 2004 No 35 s NF 4(1)–(5), (7), (8)

RE 22 When payment treated as non-resident passive income

When this section applies

(1) This section applies when—

(a) a person (**person A**) is required to pay an amount that would be treated as resident passive income in the absence of this section to another person (**person B**); and

(b) person A receives resident passive income as agent or trustee for person B.

No liability

(2) If person A concludes on reasonable grounds after making reasonable inquiries that an amount is non-resident passive income derived by person B, and person A has complied with their obligations under this Act and the Tax Administration Act 1994 in relation to paying non-resident withholding tax (NRWT) to the Commissioner, they have no liability under the RWT rules in relation to the amount.

Payment derived by non-resident

(3) For the purposes of determining person A's liability under the RWT rules, the amount is treated as derived by a non-resident.

Defined in this Act: amount, Commissioner, pay, non-resident, non-resident passive income, NRWT, resident passive income, RWT rules, trustee

Compare: 2004 No 35 s NF 5

Section RE 22(1)(a): substituted (with effect on 1 April 2008), on 7 December 2009, by section 110(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RE 22 list of defined terms **resident in New Zealand**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RE 23 When amount of tax treated as FDP credit

When this section applies

(1) This section applies when a company withholds RWT for resident passive income consisting of a dividend other than a dividend treated as interest.

FDP credit

(2) The amount is treated as an FDP credit attached to the dividend by the company which is treated as a FDPA company for the purposes of sections LE 6, LF 1, LF 3, LF 4, and LF 9 (which relate to the amount and treatment of FDP credits), and section 185 of the Tax Administration Act 1994.

Defined in this Act: company, dividend, dividend treated as interest, FDPA company, FDP credit, resident passive income, RWT

Compare: 2004 No 35 s NF 8(1)

Section RE 23(2): amended, on 1 April 2008, by section 543 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RE 24 When amount of tax treated as Maori authority credit

When this section applies

(1) This section applies when a Maori authority withholds an amount of tax for a taxable Maori authority distribution.

Maori authority credit

(2) The amount is treated as a Maori authority credit attached to the distribution by the Maori authority for the purposes of sections LO 1 to LO 4, OK 16, OK 19, and OK 20 (which relate to the amount and treatment of Maori authority credits).

Defined in this Act: amount of tax, Maori authority, Maori authority credit, taxable Maori authority distribution

Compare: 2004 No 35 s NF 8A(1)

RE 25 When amount of tax treated as imputation credit

When this section applies

(1) This section applies when a share user under a share-lending arrangement withholds under the RWT rules an amount of tax for a replacement payment.

Imputation credit

(2) The amount of tax withheld—

(a) is treated for the share supplier as an imputation credit attached to the replacement payment in addition to an imputation credit that the share user attached to the payment under section OB 64 (Replacement payments); and

(b) does not give rise under section LB 3 (Tax credits for resident withholding tax) to a tax credit or refund for the share supplier.

Defined in this Act: amount of tax, imputation credit, replacement payment, RWT rules, share-lending arrangement, share supplier, share user, tax credit

Compare: 2004 No 35 s NF 8B

RE 26 Payment by proxy

An RWT proxy who is required to withhold RWT in relation to a payment of resident passive income is treated as having withheld the amount from the payment at the time the payment is made.

Defined in this Act: amount, pay, resident passive income, RWT, RWT proxy

Compare: 2004 No 35 s NF 4(9)

RWT exemption certificates

RE 27 RWT exemption certificates

Application

(1) A person may apply to the Commissioner for an RWT exemption certificate if—

(a) they are a person listed in section 32E(2) of the Tax Administration Act 1994; and

(b) they meet the requirements of section 32G of that Act.

When certificate expires

(2) An RWT exemption certificate expires if—

(a) the holder loses the basis of their exemption; or

(b) the Commissioner cancels the certificate under section 32L of the Tax Administration Act 1994.

Notifying Commissioner

(3) If the holder of an RWT exemption certificate becomes aware they no longer meet the requirements, they must notify the

Commissioner under section 32K of the Tax Administration Act 1994.

Defined in this Act: Commissioner, notify, RWT exemption certificate

Compare: 2004 No 35 ss NF 9(1), NF 11(1), (2)

RE 28 When certificates expire

When this section applies

(1) This section applies in a month when a person's RWT exemption certification expires. But the section does not apply if the person continues to be required to withhold RWT in the course of carrying out a taxable activity.

Payment of outstanding amounts of tax

(2) The person must pay to the Commissioner all amounts of RWT withheld and not paid to the Commissioner by the 20th day of the month following the month in which the certificate expired.

Defined in this Act: amount, Commissioner, pay, RWT, RWT exemption certificate, taxable activity

Compare: 2004 No 35 s NF 4(6)

RE 29 Establishing whether person holds certificate

When this section applies

(1) This section applies for the purposes of section RE 5(2) to set out the ways available to person A to establish whether person B is a person holding an RWT exemption certificate.

Requirements

(2) Person A may establish that—

- (a) they have taken reasonable steps to confirm that person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; or
- (b) except in relation to a person listed in section 32E(2)(k) or (l) or to whom a certificate has been provided under section 32I, they have been given person B's tax file number and have been notified that person B holds an RWT exemption certificate; or
- (c) they have seen person B's certificate and have taken reasonable steps to confirm that person B is the person named in the certificate.

Additional requirements

(3) In addition to the requirements of subsection (2), the following requirements must be met in relation to person B's RWT exemption certificate:

(a) no notice of cancellation has been published in the *Gazette*—

(i) for interest, more than 5 working days before the date on which the money was lent:

(ii) for a dividend or a taxable Maori authority distribution, more than 5 working days before the date on which payment was made:

(b) person A has not been advised by the Commissioner or person B of a cancellation of a certificate more than 5 working days before the date on which payment is made:

(c) person A has no other grounds for believing that person B is not eligible for a certificate.

Later certificate

(4) For the purposes of subsection (3)(a) and (b), if a notice of cancellation has been published or if person A has been advised as described, the requirements are still met if—

(a) a certificate has been provided to person B and notified in the *Gazette* in the period that is after the notice of cancellation and more than 5 working days before the date on which the payment is made; or

(b) person A has seen a certificate provided to person B after the date of publication of the notice of cancellation.

When person B listed or income of particular type

(5) For the purposes of this section, person A has no ground for believing that the payment is income derived by a person other than person B when—

(a) person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; and

(b) the payment is not interest, a dividend, or a taxable Maori authority distribution derived by person B as trustee on behalf of a third person.

Defined in this Act: Commissioner, dividend, income, interest, notice, notify, pay, RWT exemption certificate, tax file number, taxable Maori authority distribution, trustee, working day

Compare: 2004 No 35 s NF 2(7)

RE 30 When unincorporated bodies hold certificates

When this section applies

(1) This section applies when—

(a) an unincorporated body that is carrying on a taxable activity holds an RWT exemption certificate; and

(b) the exemption relates to the carrying on of the taxable activity.

Treatment of payments made by unincorporated bodies

(2) For the purposes of the RWT rules, a payment that the body makes in the course of carrying on the taxable activity is treated as a payment made by the body and not by a member of the body. This subsection overrides subsection (7).

Treatment of payments to members of unincorporated bodies

(3) For the purposes of the RWT rules, a payment made to a member of the body in their capacity as a member and in the course of carrying on the taxable activity of the body is treated as a payment made to the body and not to the member.

Joint and several liability for amounts of tax

(4) Each member of the body is jointly and severally liable for the RWT that the body is required to pay for as long as the member remains part of the body.

Natural persons, partnerships, joint ventures, trustees

(5) For the purposes of subsection (4),—

(a) if the member is a natural person, their estate is liable after their death for an amount payable that remains unpaid:

(b) if the body is a partnership, joint venture, or the trustees of a trust, a member continues as a member until the date the Commissioner is notified of a change of membership.

Members and committees

(6) Subsection (7) applies to an unincorporated body other than a partnership, joint venture, or the trustees of a trust, when the business of the body is managed by the members or a committee of its members.

Responsibility of committee officers and members

(7) If something is required to be done under the RWT rules by or on behalf of the body, each member holding office as president, chair, treasurer, secretary, or a similar office is jointly and severally responsible. In default, each member holding office bears the responsibility. Action taken by 1 officer or committee member is sufficient.

Joint and several liability for actions required

(8) If something is required to be done under the RWT rules by or on behalf of the body, each member is jointly and severally liable to do it. However, action taken by 1 member is sufficient. Subsection (7) overrides this subsection.

Changes in membership

(9) A change in membership of the unincorporated body has no effect for the purposes of the RWT rules. Subsection (5)(b) overrides this subsection.

Some definitions

(10) In this section,—

member means a partner, joint venturer, a trustee, or a member of a body

Defined in this Act: amount, member, partner, partnership, pay, RWT, RWT exemption certificate, RWT rules, taxable activity, trustee

Compare: 2004 No 35 s NF 10

Section RE 30(10) **partnership** and **partner**: repealed, on 1 April 2008, by section 22(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Subpart RF—Withholding tax on non-resident passive income (NRWT)

Introductory provisions

RF 1 NRWT rules and their application

Meaning

(1) The **NRWT rules** means—

(a) this subpart; and
(b) section LB 5 (Tax credits for non-resident withholding tax); and
(c) sections LJ 1 to LJ 3, LJ 6, and LJ 7 (which relate to tax credits for foreign income tax); and
(d) sections LK 1 to LK 5, and LK 7 (which relate to tax credits related to attributed CFC income); and
(e) sections 32M, 49, 100, Part 9, and sections 165B and 185 of the Tax Administration Act 1994.

Application

(2) The NRWT rules apply to a person who makes a payment that consists of non-resident passive income.

What this section does not apply to

(3) This section does not apply to an amount referred to in section CC 1(2)(a) to (d) (Land) to which section CC 9 (Royalties) applies.

Exception: certain income from land

(4) Despite subsection (3), this section does apply to non-resident passive income that is an amount paid for—
(a) the exploitation of, or right to exploit, plant material or a naturally occurring material or mineral arising in or on the land:
(b) the removal of, or right to remove, plant material or a naturally occurring material or mineral arising in or on the land.

Defined in this Act: amount, non-resident passive income, NRWT rules, pay

Compare: 2004 No 35 s OB 1 **NRWT rules**

Section RF 1(3) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 111(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 1(3): added (with effect on 1 April 2008), on 7 December 2009, by section 111(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 1(4) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 111(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 1(4): added (with effect on 1 April 2008), on 7 December 2009, by section 111(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 1 list of defined terms **amount**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RF 2 Non-resident passive income

Interest, certain dividends, and royalties

(1) **Non-resident passive income** means income having a source in New Zealand that a non-resident derives and that consists of—

(a) a dividend other than an investment society dividend:

(b) a royalty:

(c) an investment society dividend when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand:

(d) interest when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand.

Exclusions

(2) The following amounts derived by a non-resident are excluded from non-resident passive income:

(a) an amount of exempt income:

(b) an amount of income to which section CV 17 (Non-resident film renters) applies:

(c) an amount of excluded income under sections CX 56B and CX 56C (which relate to attributed PIE income), as applicable.

When subsection (4) applies

(3) Subsection (4) applies in an income year when a person derives non-resident passive income consisting of—

(a) a dividend other than an investment society dividend:

(b) a royalty for the use, production, or reproduction of, or for the right to use, produce, or reproduce, a literary, dramatic, musical, or artistic work in which copyright subsists:

(c) interest or a royalty derived by a life insurer from a company resident in New Zealand when the interest or royalty is treated as arising as a result of the life insurer's election under section EY 49 (Non-resident life insurer becoming resident):

(d) interest or an investment society dividend when the person paying and the person deriving the interest or dividend are not associated persons.

Final withholding

(4) If the person is a filing taxpayer, the schedular income tax liability for the corresponding tax year under section BC 7 (Income tax liability of person with schedular income) for schedular income that is non-resident passive income is determined by the amount of tax required to be withheld under this Part.

Exception: minimum amount

(5) Despite subsection (4), if a person derives non-resident passive income consisting of interest, investment society dividends, or a royalty other than those described in subsection (3), the person's income tax liability for the corresponding tax year is the greater of—

(a) the sum of the total non-resident withholding tax (NRWT) for which they are liable and the amount that would be their income tax liability for the tax year if they had not derived non-resident passive income in the tax year:

(b) the amount that would be their income tax liability in the absence of this subsection.

Company deriving minimum amount

(6) For the purposes of subsection (5) for a company, if the total amount of non-resident passive income and other income derived by the company in the corresponding tax year is not more than $1,000, the income tax liability of the company for the tax year is the sum referred to in subsection (5)(a).

Application of financial arrangements rules

(7) The financial arrangements rules do not apply to the calculation of an amount of non-resident passive income.

Interest payable by Commissioner

(8) For interest payable under Part 7 of the Tax Administration Act 1994, NRWT withheld by the Commissioner is treated as paid on the date it is withheld. Sections 50, 55, 100, and Part 9

of that Act do not apply to the Commissioner and that interest, but the other provisions of the NRWT rules do apply.

Defined in this Act: amount, amount of tax, associated person, business, Commissioner, company, dividend, excluded income, exempt income, filing taxpayer, financial arrangements rules, fixed establishment, income, income tax liability, interest, investment society dividend, life insurer, New Zealand, non-resident, non-resident passive income, NRWT, NRWT rules, pay, resident in New Zealand, royalty, schedular income, schedular income tax liability, source in New Zealand, tax year

Compare: 2004 No 35 ss NG 1(2)–(4), NG 3, NG 4

Section RF 2(1): amended, on 21 December 2010, by section 130(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RF 2(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 531(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 2(2)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 531(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 2(2)(c): added (with effect on 1 April 2008), on 6 October 2009, by section 531(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 2(2)(c): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 130(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RF 2(2)(c): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 531(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 2(5): amended (with effect on 1 April 2008), on 6 October 2009, by section 531(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 2 list of defined terms **derived from New Zealand**: repealed, on 21 December 2010, by section 130(3)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Section RF 2 list of defined terms **excluded income**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 531(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 2 list of defined terms **source in New Zealand**: inserted, on 21 December 2010, by section 130(3)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Withholding obligations

RF 3 Obligation to withhold amounts of tax for non-resident passive income

Withholding amount of tax

(1) A person who makes a payment of non-resident passive income must withhold the amount of tax for the payment and pay it to the Commissioner. The obligation to withhold arises under section RA 6(2) (Withholding and payment obligations for passive income) at the time of payment.

Exclusion

(2) Despite subsection (1), no obligation to withhold NRWT arises in relation to an amount treated as a dividend under section GB 1(3) (Arrangements involving dividend stripping).

Defined in this Act: amount, amount of tax, Commissioner, dividend, non-resident passive income, NRWT, pay

Compare: 2004 No 35 s NG 8(1)

Section RF 3(1) heading: inserted (with effect on 1 April 2008), on 7 December 2009, by section 112(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 3(2) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 112(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 3(2): added (with effect on 1 April 2008), on 7 December 2009, by section 112(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 3 list of defined terms **amount**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 3 list of defined terms **dividend**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 3 list of defined terms **NRWT**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RF 4 Non-resident passive income received by agents and others

When this section applies

(1) This section applies when—

(a) an agent or other person in New Zealand receives a payment of non-resident passive income on behalf of a person entitled to the payment; and

(b) some or all of the amount of tax for the payment has not been withheld.

Obligation to withhold: agent or other person

(2) The agent or other person must withhold the amount of tax referred to in subsection (1)(b) for the payment and pay it to the Commissioner. The obligation to withhold arises at the time of receipt.

Notifying agent or other person

(3) If, in the circumstances described in subsection (1)(a), the person paying the non-resident passive income has withheld the amount of tax for the payment, they must notify the agent or other person of the amount withheld. Notification must be made at the time the payment is made.

Defined in this Act: amount of tax, Commissioner, New Zealand, non-resident passive income, notify, pay

Compare: 2004 No 35 s NG 8(2), (3)

RF 5 When amounts of tax already withheld

A person is not required to withhold NRWT when some or all of the payment consists of resident passive income to the extent to which the amount of tax has already been collected.

Defined in this Act: amount of tax, non-resident passive income, NRWT, pay, resident passive income

Compare: 2004 No 35 s NF 2(6)

RF 6 When amounts of tax not withheld or partly withheld

Person as filing taxpayer

(1) When a person is required under section RA 6(2) (Withholding and payment obligations for passive income) to withhold NRWT and does not withhold the full amount required under this Part, the person deriving the non-resident passive income is treated for this purpose as a filing taxpayer.

When amount treated as dividend

(1B) A person who derives non-resident passive income that is a dividend under section GB 1(3) (Arrangements involving dividend stripping) is treated as a filing taxpayer.

Debt payable

(2) The amount of tax referred to in subsection (1) as not withheld is a debt payable by the person to the Commissioner, and is treated as having become due under section RA 10 (When obligations not met).

Non-cash dividends

(3) Subsection (2) applies in relation to a non-cash dividend described in section RF 10 as if the amount equal to the amount of tax for the dividend were the amount payable.

Commissioner's powers to recover

(4) In recovering the amount, the Commissioner may take the steps the Commissioner thinks fit in relation to the person in default or liable to pay, whether or not they are the same person.

Defined in this Act: amount, amount of tax, Commissioner, filing taxpayer, non-cash dividend, non-resident passive income, NRWT, pay

Compare: 2004 No 35 s NG 13

Section RF 6(1B) heading: inserted (with effect on 1 April 2008), on 7 December 2009, by section 113(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 6(1B): inserted (with effect on 1 April 2008), on 7 December 2009, by section 113(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Calculating amounts of tax

RF 7 General rate for NRWT

When this section applies

(1) This section applies to a payment of non-resident passive income other than a payment to which sections RF 8 to RF 12 apply.

Calculation of amount of tax

(2) The amount of tax is calculated using the formula—

payment × 0.15.

Defined in this Act: amount of tax, non-resident passive income, NRWT, pay

Compare: 2004 No 35 s NG 2(1)(c)

RF 8 Certain dividends

When this section applies

(1) This section applies when a person makes a payment of non-resident passive income that consists of a dividend, except to the extent to which the payment is—

(a) an investment society dividend; or

(b) a supplementary dividend under subpart LP (Tax credits for supplementary dividends); or

(c) a conduit tax relief (CTR) additional dividend under subpart LQ (Tax credits of conduit tax relief companies); or

(d) a fully imputed dividend; or

(e) an amount of a dividend that is fully credited for FDP; or

(f) an amount of a dividend that is fully credited for conduit tax relief.

Calculation of amount of tax

(2) The amount of tax is calculated using the formula—

dividend payment × 0.3.

Defined in this Act: amount of tax, CTR additional dividend, dividend, FDP, fully credited for conduit tax relief, fully imputed, investment society dividend, non-resident passive income, pay, supplementary dividend

Compare: 2004 No 35 s NG 2(1)(a)

Section RF 8 list of defined terms **fully imputed**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 532 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RF 9 When dividends fully imputed or fully credited

When this section applies

(1) This section applies for the purposes of sections RF 8, RF 10, and RF 11B to determine the extent to which a dividend is fully imputed or fully credited for FDP or conduit tax relief.

Fully imputed

(2) The extent to which a dividend is fully imputed is calculated using the formula—

$$(\text{imputation credit amount}) \times \frac{1 - \text{tax rate}}{\text{tax rate}}.$$
$$+ \text{ supplementary dividend amount},$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **imputation credit amount** is the amount of an imputation credit attached to the dividend:

(b) **supplementary dividend amount** is the amount of a supplementary dividend payable under subpart LP (Tax credits for supplementary dividends) for the dividend:

(c) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2, (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the tax year in which the dividend is paid.

Fully credited for FDP

(4) The extent to which a dividend is fully credited for FDP is calculated using the formula—

$$\frac{\text{FDP credit amount}}{\text{tax rate}}.$$

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **FDP credit amount** is the amount of FDP credit attached to the dividend:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2.

Fully credited for conduit tax relief

(6) The extent to which a dividend is fully credited for conduit tax relief is calculated using the formula—

$$\text{CTR credit attached to dividend} \times \frac{(1 - \text{tax rate})}{\text{tax rate}}.$$

Definition of item in formula

(7) In the formula in subsection (6), **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 for the income year in which the dividend is paid.

Defined in this Act: amount, dividend, FDP, FDP credit, fully credited for conduit tax relief, imputation credit, income tax, pay, supplementary dividend, tax year

Compare: 2004 No 35 ss NG 2(3), (4), OB 1 **fully conduit tax relief credited**

Section RF 9(1): amended, on 1 February 2010, by section 114 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RF 9(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 533(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 9(3)(c) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RF 10 Non-cash dividends

When subsections (2) to (5) apply

(1) Subsections (2) to (5) apply when a person makes a payment of non-resident passive income that consists of a non-cash dividend to the extent to which the amount is not fully imputed."

When amount not taxable bonus issue

(2) The amount of tax, when the payment is not a taxable bonus issue, is calculated using the formula—

$$\frac{\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment} + \text{rate B} \times \text{amount paid.}$$

Definition of items in formula

(3) In the formula in subsection (2),—

(a) **rate A** is—

(i) for a CTR additional dividend paid under subpart LQ (Tax credits of conduit tax relief companies) or a dividend to the extent to which the amount of the dividend is fully credited for conduit tax relief as described in subsection (7), the rate set out in section RF 7; and

(ii) in any other case, the rate of tax set out in section RF 8:

(b) **dividend payment** is the amount of the dividend paid to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP, as described in section RF 9(2) and (4), disregarding the amount of tax to be withheld:

(c) **rate B** is the rate set out in section RF 7:

(d) **amount paid** is the amount of the dividend paid to the extent to which the amount of the dividend is fully cred-

ited for FDP, as described in section RF 9(4), disregarding the amount of tax to be withheld.

When amount taxable bonus issue

(4) The amount of tax, when the payment is a taxable bonus issue, is calculated using the formula—

(rate A × dividend payment) + (rate B × (amount paid + credit amount)).

Definition of items in formula

(5) In the formula in subsection (4),—

(a) **rate A** is the rate of tax set out in section RF 8:

(b) **dividend payment** is the amount of the dividend paid calculated under section CD 7(2) or CD 8(3) (which relate to bonus issues)—

(i) other than a dividend referred to in the item **bonus issue**:

(ii) to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP (as described in sections RF 9 and RF 14), before the amount of tax is withheld:

(c) **rate B** is the rate of tax set out in section RF 7:

(d) **amount paid** is the amount of the dividend calculated under section CD 7(2) or CD 8(3) together with the amount of an FDP credit attached to the dividend to the extent to which the amount of the dividend is fully credited for FDP, as described in section RF 9(4), before the amount of tax is withheld:

(e) **credit amount** is the amount of the dividend to the extent to which it is fully credited for conduit tax relief as described in subsection (7) together with a CTR additional dividend paid for the taxable bonus issue under subpart LQ.

Fully imputed non-cash dividends

(5B) When a payment of non-resident passive income consists of a non-cash dividend, the rate of NRWT payable on the amount is 0% to the extent to which the amount is fully imputed.

Amount treated as amount withheld and paid under NRWT rules

(6) A person who is liable under this section for NRWT must pay the amount to the Commissioner. The amount is treated as if it were an amount withheld and paid under the NRWT rules for the purposes of this Act and the Tax Administration Act 1994.

Amount part of dividend

(7) For the purposes of this section and sections OD 20 to OD 22 (which relate to CTR credits attached to dividends), an amount subtracted from a non-cash dividend to the extent it is fully credited for conduit tax relief is treated as part of the non-cash dividend.

Defined in this Act: amount, amount of tax, Commissioner, CTR additional dividend, dividend, FDP, FDP credit, fully credited for conduit tax relief, fully imputed, non-cash dividend, non-resident passive income, NRWT, NRWT rules, pay, tax, taxable bonus issue

Compare: 2004 No 35 ss NG 2(1)(b)(ii), NG 9

Section RF 10(1) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 534(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 10(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 534(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 10(2) formula: substituted (with effect on 1 April 2008), on 6 October 2009, by section 534(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 10(5B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 534(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 10(5B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 534(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 10 list of defined terms **fully imputed**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 534(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 10 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 534(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RF 11 Dividends paid to companies associated with non-residents

When this section applies

(1) This section applies when—

(a) a non-resident formerly held a share in a company (**company A**) resident in New Zealand; and

(b) while the non-resident held the share, company A was associated with the non-resident; and

(c) the non-resident has disposed of the share to another company (**company B**) that is resident in New Zealand and associated with the non-resident; and

(d) some or all of the price for which company B acquired the share remains after the acquisition unpaid or owing in any way to the non-resident, whether or not the amount is secured.

Dividend derived

(2) While an amount of the price remains unpaid or owing, a dividend paid to company B in relation to the share is treated as having been paid to the non-resident and as derived as a dividend by the non-resident at the time the dividend is paid.

Defined in this Act: amount, company, dividend, non-resident, pay, resident in New Zealand, share

Compare: 2004 No 35 s NG 14

Section RF 11 heading: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 535(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 11(1)(b): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 535(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 11(1)(c): substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 535(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 11 list of defined terms **control**: repealed, on 1 April 2010, by section 594 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RF 11B Certain dividends paid to certain non-residents

The rate of NRWT payable on a payment of non-resident passive income is 0% to the extent to which the payment is a fully imputed dividend paid to a non-resident by a company, if—

(a) the non-resident has a 10% or more direct voting interest in the company:

(b) the non-resident has less than a 10% direct voting interest in the company and, but for this section, the post-treaty tax rate for the dividend is less than 15%.

Defined in this Act: company, direct voting interest, dividend, non-resident, non-resident passive income, NRWT, pay, post-treaty tax rate

Section RF 11B: inserted, on 1 February 2010, by section 115 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RF 12 Interest paid by approved issuers or transitional residents

When this section applies

(1) This section applies in relation to an amount of non-resident passive income that consists of—

(a) interest that—

(i) is paid by an approved issuer under a registered security; and

(ii) is derived by a person not associated with the approved issuer; and

(iii) is not a payment to which section RF 12B applies:

(b) interest that—

(i) is paid by a transitional resident in relation to money borrowed by them while non-resident; and

(ii) is not paid in relation to a business carried on through a fixed establishment in New Zealand; and

(iii) is derived by a person not associated with the transitional resident; and

(iv) is not a payment to which section RF 12B applies.

Zero-rating

(2) The rate of NRWT payable on the amount is 0%.

Interest paid under registered securities

(3) For the purposes of the NRWT rules, an amount of interest is paid by an approved issuer under a registered security only if

it is treated as paid in relation to a registered security under section 86I of the Stamp and Cheque Duties Act 1971.

Defined in this Act: amount, approved issuer, associated person, business, company, fixed establishment, income, interest, life insurer, New Zealand, non-resident, non-resident passive income, NRWT, NRWT rules, pay, registered security, resident in New Zealand, transitional resident

Compare: 2004 No 35 s NG 2(1)(b)(i), (ib)

Section RF 12: substituted (with effect on 1 April 2008), on 6 October 2009, by section 536(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RF 12(3): amended (with effect on 1 April 2008), on 7 December 2009, by section 116 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RF 12B Interest derived jointly with residents

When payment derived jointly with resident

(1) If a person makes a payment of non-resident passive income that consists of interest derived by 2 or more persons jointly and at least 1 person deriving the interest is a New Zealand resident, the amount of tax for the payment is calculated using the formula—

$$(\text{tax rate} \times (\text{interest paid} + \text{foreign withholding tax})) - \text{foreign withholding tax}.$$

Definition of items in formula

(2) In the formula,—

(a) **tax rate** is the basic rate set out in schedule 1, part D, clause 3 or 4 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **interest paid** is the amount of interest paid before the amount of tax is determined:

(c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the amount of interest paid.

Treatment as filing taxpayer

(3) For the purposes of this section, the New Zealand resident referred to in subsection (1) is treated as a filing taxpayer.

Defined in this Act: amount, amount of tax, filing taxpayer, foreign withholding tax, interest, New Zealand resident, non-resident passive income, pay

Compare: 2004 No 35 s NG 2(1)(ab)

Section RF 12B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 536(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RF 12C Amount derived from non-resident life insurer becoming resident

When this section applies

(1) This section applies when an amount of non-resident passive income is—

(a) derived by a life insurer from a company resident in New Zealand; and

(b) treated as income as a result of the granting of the insurer's application under section EY 49 (Non-resident life insurer becoming resident).

Zero-rating

(2) The rate of NRWT payable on the amount is 0%.

Defined in this Act: amount, company, life insurer, New Zealand, non-resident passive income, NRWT, pay, resident in New Zealand

Compare: 2004 No 35 s NG 2(1)(b)(iii)

Section RF 12C: inserted (with effect on 1 April 2008), on 6 October 2009, by section 536(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Paying amounts of tax

RF 13 Basis for payment of amounts of tax for non-resident passive income

When this section applies

(1) This section applies when a person estimates for a tax year that they will not be required by the NRWT rules to withhold total NRWT of $500 or more.

Two instalments

(2) The person may pay to the Commissioner the amount withheld for the tax year in 2 instalments.

When threshold reached during tax year

(3) If the threshold amount of $500 is reached at a time in a tax year, the person must pay to the Commissioner—

(a) the amount of tax withheld from the start of the tax year to the end of the month in which the threshold is reached; and

(b) for the remainder of the tax year, the amount of tax on a monthly basis.

Defined in this Act: amount of tax, Commissioner, NRWT, NRWT rules, pay, tax withheld, tax year

Compare: 2004 No 35 s NG 11(1)–(3)

RF 14 Treatment of FDP credits

A person who is required under the NRWT rules to withhold NRWT for non-resident passive income consisting of a dividend is treated as having withheld the amount of tax to the extent of an amount of an FDP credit attached to the dividend.

Defined in this Act: amount of tax, dividend, FDP credit, non-resident passive income, NRWT, NRWT rules

Compare: 2004 No 35 s NG 2(2)

RF 15 Commissioner's power to vary amounts of tax

Special circumstances

(1) For the purposes of meeting the special circumstances of a case or class of cases, the Commissioner may—

(a) relieve a person from an obligation to withhold NRWT under section RA 6(2) (Withholding and payment obligations for passive income), RF 3, RF 4, or RF 10; or

(b) vary the amount of tax that a person must withhold under section RA 6(2).

Exclusion for certain payments of interest

(2) This section does not apply to an amount of tax for a payment of interest derived jointly with a person resident in New Zealand as described in section RF 12(1).

NRWT rules apply as if amended

(3) On the exercise of a power under subsection (1), the NRWT rules apply in the particular case as if they were amended in the way in which the power is exercised.

Defined in this Act: amount of tax, Commissioner, interest, NRWT, NRWT rules, pay, resident in New Zealand

Compare: 2004 No 35 s NG 10

RF 16 Relationship with RSCT rules

When this section applies

(1) This section applies when a retirement scheme contributor makes a retirement scheme contribution for a person who is non-resident and pays RSCT for the contribution.

NRWT

(2) The contributor is treated as having withheld from the contribution an amount of NRWT equal to the lesser of—

(a) the amount of RSCT paid:

(b) the NRWT payable in relation to the contribution.

Treatment of balance

(3) Section LB 6 (Tax credits for RSCT) applies to any balance of RSCT paid.

Defined in this Act: non-resident, NRWT, pay, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s NG 16B

Section RF 16: added, on 1 April 2008, by section 544 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart RG—Payments for foreign dividends (FDP)

[Repealed]

Subpart RG: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Introductory provisions

[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RG 1 FDP rules and their application

[Repealed]

Section RG(1): repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RG 2 Foreign dividends

[Repealed]

Section RG(2): repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Obligation to make payments
[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RG 3 Obligation to pay FDP

[Repealed]

Section RG 3: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Calculation of payments
[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RG 4 Calculating amount of FDP

[Repealed]

Section RG 4: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RG 4(2)(d)(i) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Adjustments to payments
[Repealed]

Heading: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RG 5 Credit balance in branch equivalent tax account

[Repealed]

Section RG 5: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RG 5(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 537(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RG 6 Using loss balances

[Repealed]

Section RG 6: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RG(6)(3)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 538(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RG 6(3)(b) **tax rate**: amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RG 7 Reduction of payments for conduit tax relief

[Repealed]

Section RG 7: repealed (with effect on 30 June 2009), on 6 October 2009, by section 540(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RG 7(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 539(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart RH—Withholding tax on retirement scheme contributions

Subpart RH: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RH 1 RSCT rules and their application

Meaning

(1) The **RSCT rules** means—

(a) this subpart; and

(b) section BE 1(5B) (Withholding liabilities); and

(c) section CX 50B (Contributions to retirement savings schemes); and

(d) section LB 6 (Tax credits for RSCT); and
(e) section LE 7B (Credit of RSCT for imputation credit); and
(f) section LO 2B (Credit of RSCT for Maori authority credit); and
(g) section MB 1(5B) (Adjustments for calculation of family scheme income); and
(h) section MB 6 (Treatment of distributions from retirement savings schemes); and—
(i) schedule 1, part D, clause 7; and
(j) sections 28C and 48B and Part 9 of the Tax Administration Act 1994.

Application

(2) (2) The RSCT rules apply to a retirement scheme contributor who makes a retirement scheme contribution.

Defined in this Act: retirement scheme contribution, retirement scheme contributor, RSCT rules

Compare: 2004 No 35 s OB 1 "RSCWT rules"

Section RH 1: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RH 2 Retirement scheme contributions

Contribution for benefit of members

(1) A **retirement scheme contribution** means a contribution in money by a retirement scheme contributor to a retirement savings scheme for the benefit of a person who is a member of, or who has an ownership interest in, the contributor.

Tax credits

(2) For the purposes of subsection (1), money includes an amount of an imputation credit or a Maori authority credit.

Determining amount of contribution

(3) The amount of a retirement scheme contribution is the sum of—
(a) the amount of the contribution received by the retirement savings scheme and not withheld under subsection (5) on behalf of the retirement scheme contributor; and
(b) the amount of tax for the retirement scheme contribution.

Payment of amount of tax

(4) A retirement scheme contributor who pays an amount that represents a retirement scheme contribution must withhold and pay to the Commissioner the amount of tax for the contribution. The amount is payable monthly under section RA 15 (Payment dates for interim and other tax payments).

Appointment of agent

(5) For the purposes of subsection (4), a contributor may appoint the retirement savings scheme as agent in relation to the calculation and payment of the amount of tax.

Defined in this Act: amount, amount of tax, Commissioner, imputation credit, Maori authority credit, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

Compare: 2004 No 35 ss NEB 1(2), NEB 2, NEB 3(1)(a), OB 1 "retirement scheme contribution"

Section RH 2: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RH 3 Retirement savings schemes

Requirements for entity

(1) An entity is a retirement savings scheme for a person if the entity—

(a) is a portfolio investment entity; and

(b) holds funds from a retirement scheme contribution for the person; and

(c) has rules (the **distribution rules**) governing the distribution by the entity of funds in which the person has an interest that—

(i) are approved by the Commissioner as fair and reasonable; and

(ii) meet the requirements of subsection (2).

Requirements for rules

(2) The rules must provide that—

(a) the availability of a distribution to the person is restricted before the person reaches an age of retirement set out in the rules:

(b) the person is not permitted to make a withdrawal before the age of retirement other than a withdrawal—

(i) to repay a student loan under the Student Loan Scheme Act 1992:
(ii) to pay fees and expenses related to tertiary education:
(iii) to buy a home if the person does not own one:
(iv) that the person would be permitted to make if the scheme were a KiwiSaver scheme under the KiwiSaver Act 2006:
(v) in circumstances set out in the distribution rules that have been approved under subsection (1)(c)(i):

(c) the entity may require the person to provide information to ensure that the requirements relating to a withdrawal are met.

Defined in this Act: Commissioner, income year, portfolio investment entity, retirement savings scheme, retirement scheme contribution, retirement scheme contributor

Compare: 2004 No 35 s NEB 5

Section RH 3: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RH 4 Retirement scheme contributors

An entity is a retirement scheme contributor for a person for an income year if—

(a) the entity is—
(i) the trustee of a widely-held trust that is a unit trust:
(ii) a company other than a close company:
(iii) a Maori authority; and

(b) the person is a unit holder, shareholder, or member of the entity:

(c) in or before the income year, the entity makes a payment intended to be a retirement scheme contribution for the person.

Defined in this Act: close company, company, income year, Maori authority, pay, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, shareholder, trustee, unit holder, unit trust, widely-held trust

Compare: 2004 No 35 s NEB 6

Section RH 4: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Calculating amounts of tax

Heading: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RH 5 Calculating amounts of tax for retirement scheme contribution

The amount of tax for a retirement scheme contribution is the amount determined under schedule 1, part D, clause 7 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits).

Defined in this Act: amount of tax, retirement scheme contribution

Compare: 2004 No 35 s NEB 1(1)

Section RH 5: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

RH 6 Calculating amounts of tax on failure to withhold

When this section applies

(1) This section applies when a retirement scheme contributor or retirement savings scheme does not withhold an amount of tax for a retirement scheme contribution under section RH 2(4).

Calculation of amount

(2) The amount is calculated using the formula—

$$\frac{\text{tax rate}}{1 - \text{tax rate}} \times \text{contribution to scheme} - \text{tax already paid.}$$

Definition of items in formula

(3) In the formula,—

(a) **tax rate** is the rate of RSCT for the person set out in schedule 1, part D, clause 7 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits):

(b) **contribution to scheme** is the amount of the retirement scheme contribution received by the retirement savings scheme excluding the amount of tax:

(c) **tax already paid** is any amount of tax for the contribution that has already been paid.

Defined in this Act: amount, amount of tax, retirement savings scheme, retirement scheme contribution, retirement scheme contributor, RSCT

Compare: 2004 No 35 s NEB 4(1)

Section RH 6: inserted, on 1 April 2008, by section 545 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Subpart RM—Refunds

Introductory provision

RM 1 What this subpart does

This subpart establishes and measures a person's entitlement to a refund for an overpayment under this Part or another Part of this Act, how the amount of the refund may be used, and the limits placed on the amount and use of a refund for—

(a) an imputation credit account (ICA) company:
(b) a company receiving a foreign dividend:
(c) a Maori authority:
(d) a policyholder credit account (PCA) person:
(e) a qualifying company:
(f) certain unit trusts and group investment funds.

Defined in this Act: amount, company, foreign dividend, group investment fund, ICA company, Maori authority, pay, PCA person, qualifying company, unit trust

Refunds for overpaid amounts

RM 2 Refunds for overpaid tax

Amount more than required

(1) The Commissioner must refund an amount of tax that a person has paid if—

(a) the amount is more than the tax required to be paid by the person under this Part; and
(b) the 4-year period for amendment of an assessment under section 108 of the Tax Administration Act 1994 has not ended.

Refundable credits

(1B) An amount of tax under subsection (1) includes an amount of a refundable tax credit to which section LA 5(5) (Treatment of remaining credits) applies.

Refunds arising from mistakes

(2) Section RM 6 overrides subsection (1).

Defined in this Act: amount of tax, assessment, Commissioner, pay, refundable tax credit, tax

Compare: 2004 No 35 s MD 1(1)

Section RM 2(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 541(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 2(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 541(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 2 list of defined terms **refundable tax credit**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 541(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RM 3 Refunds for overpaid FDP

If a company pays to the Commissioner FDP in relation to a foreign dividend paid to it, and the amount is more than the amount required to be paid under this Part, the Commissioner must refund the overpayment.

Defined in this Act: amount, Commissioner, company, foreign dividend, FDP, pay

Compare: 2004 No 35 s NH 4(1)

RM 4 Overpayment on amended assessment

Assessment increasing tax

(1) The Commissioner must refund an amount of tax that a person has paid if—

(a) the person paid the amount as a result of an amendment to an assessment increasing the amount of tax payable by the person; and

(b) the amount is more than the amount required to be paid by the person under this Part; and

(c) the 4-year period under section 108 of the Tax Administration Act 1994 beginning at the end of the

income year in which the assessment was amended has not ended.

Refunds arising from mistakes

(2) Section RM 6 overrides subsection (1).

Defined in this Act: amount, amount of tax, assessment, Commissioner, income year, pay

Compare: 2004 No 35 s MD 1(2)

RM 5 Overpayment on income statements

When this section applies

(1) This section applies when an income statement has been provided to a person and the result is that an amount of tax must be refunded to the person. For the purposes of this section, the amount of tax must be more than $200.

Refundable credits

(1B) An amount of tax under subsection (1) includes an amount of a refundable tax credit to which section LA 5(5) (Treatment of remaining credits) applies.

Refund on confirmation of correctness

(2) The Commissioner may refund the amount of tax only after the person has confirmed that the income statement is correct.

Threshold amount

(3) The Governor-General may make an Order in Council increasing the amount set out in subsection (1).

Defined in this Act: amount of tax, Commissioner, income statement, refundable tax credit

Compare: 2004 No 35 s MD 1(1A)

Section RM 5(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 542(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 5(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 542(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 5 list of defined terms **refundable tax credit**: added (with effect on 1 April 2008), on 6 October 2009, by section 542(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RM 6 Refunds after 4-year period ends

When this section applies

(1) This section applies when a person has overpaid either an amount of tax or FDP, and the 4-year period referred to in sections RM 2(1)(b) and RM 4(1)(c) has ended.

Refund

(2) The Commissioner may refund the amount or payment if the refund—

(a) arises as described in subsection (3); and

(b) is made in the way described in subsection (4).

Cause of refund

(3) The refund must arise from—

(a) a clear mistake by or simple oversight of the person; or

(b) the person's entitlement to a tax credit under subparts MA to MF and MZ (which relate to tax credits for families).

When refund made

(4) The refund must be made—

(a) within a period of 4 years that starts at the end of the 4-year period referred to in sections RM 2(1)(b) and RM 4(1)(c); and

(b) on an application—

(i) made by the person or on their behalf:

(ii) received by the Commissioner within the further period of 4 years described in paragraph (a).

Defined in this Act: amount of tax, Commissioner, FDP, pay, tax credit

Compare: 2004 No 35 ss MD 1(2B), NH 3(7)

RM 7 Refunds to PAYE intermediaries

When this section applies

(1) This section applies when a PAYE intermediary pays to the Commissioner an amount of tax for a PAYE income payment for an employer—

(a) relying on a payment made to the trust account of the intermediary—

(i) by the employer and later dishonoured; or

(ii) mistakenly by a person and later recovered from the intermediary:

(b) mistakenly from funds not provided by the employer for a purpose related to the PAYE income payment.

Refund to intermediary

(2) The Commissioner must refund the amount of tax to the intermediary.

Defined in this Act: amount of tax, Commissioner, employer, pay, PAYE intermediary, PAYE income payment

Compare: 2004 No 35 s NBA 7

RM 8 Overpaid RWT or NRWT

When this section applies

(1) This section applies when a person is required to withhold and pay to the Commissioner an amount of resident withholding tax (RWT) or non-resident withholding tax (NRWT), and the amount is more than the amount required to be paid under this Part.

Refund to person deriving payment or person withholding amount

(2) The Commissioner must refund the amount of the overpayment to—

(a) the person who derives the payment from which the amount of tax was withheld; or

(b) the person who withheld the amount if they have paid the amount of the overpayment to the person deriving the payment and not subtracted the amount under section RA 12(5) and (6) (Adjustment to correct errors: certain excess amounts).

When subsections (4) and (5) apply

(3) Subsections (4) and (5) apply when—

(a) a holder of an attributing interest in a FIF receives a distribution from which an amount of tax for resident passive income has been withheld; and

(b) section CD 36 (Foreign investment fund income) applies to the distribution.

Certain FIF income: application by holder

(4) The holder may apply for a refund if—

(a) they apply before the next 31 March after the date on which the amount was withheld, with supporting in-

formation to show that the threshold referred to in section CQ 5(1)(d) (When FIF income arises) has been exceeded for their corresponding income year; and

(b) the person making the distribution has not—

(i) paid them a refund of the amount; or

(ii) applied themselves under subsection (5) for a refund in relation to the amount; and

(c) they notify the person making the distribution of their application under this subsection.

Certain FIF income: application by payer

(5) The person making the distribution may apply for a refund if—

(a) they apply before the next 31 March after the date on which the amount was withheld, with supporting information to show the payment has been made to the holder without any subtraction permitted by section RA 12(5) and (6) (Adjustment to correct errors: certain excess amounts); and

(b) the holder has not applied for a refund under subsection (4) in relation to the amount; and

(c) they provide, in relation to the amount,—

(i) a statement that they will not include particulars in an RWT withholding reconciliation statement made under section 51 of the Tax Administration Act 1994; and

(ii) the disclosure information required by section 52 of that Act.

Use of refund

(6) An amount of a refund paid under subsection (4) or (5) may be used under section RM 10 to satisfy a liability under the Inland Revenue Acts.

Defined in this Act: amount, amount of tax, attributing interest, Commissioner, corresponding income year, FIF, Inland Revenue Acts, notify, NRWT, pay, resident passive income, RWT

Compare: 2004 No 35 ss MD 1(4)(b), (c), NF 7(1), (2), (5), NG 16(1), (1A)

Section RM 8(3) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(3): added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(4) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(4): added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(5) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(5): added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(6) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8(6): added (with effect on 1 April 2008), on 7 December 2009, by section 117(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8 list of defined terms **attributing interest**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8 list of defined terms **corresponding income year**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8 list of defined terms **FIF**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8 list of defined terms **Inland Revenue Acts**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8 list of defined terms **notify**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section RM 8 list of defined terms **resident passive income**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 126 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

RM 9 Calculations for attributed and non-attributed fringe benefits

When this section applies

(1) This section applies when an employer chooses to pay fringe benefit tax (FBT) under sections RD 47 to RD 53 (which relate to attributed fringe benefits and non-attributed fringe benefits).

Result of calculations

(2) If the result of the calculations of FBT on attributed fringe benefits or non-attributed fringe benefits is negative, the Commissioner must refund to the employer an amount equal to the deficiency.

Defined in this Act: amount, Commissioner, employer, FBT, pay

Compare: 2004 No 35 s ND 10(4)(a)

Use of refunds

RM 10 Using refund to satisfy tax liability

When this section applies

(1) This section applies when a person is entitled to a refund of an amount of tax under sections RM 2 and RM 4 to RM 6. An amount of tax under this section includes an amount of a refundable tax credit under section LA 5(5) (Treatment of remaining credits). Section LB 4 (Tax credits for families) may apply to adjust the amount available.

Request for particular application

(2) The person may ask under section 173T of the Tax Administration Act 1994 for the Commissioner to apply some or all of the amount on a particular date to satisfy a liability under the Inland Revenue Acts.

Commissioner applying refund

(3) If no request is made under subsection (2), the Commissioner may apply the amount of the refund to satisfy a liability that the person has under the Inland Revenue Acts.

Exclusion

(4) Despite subsection (3), the Commissioner must not apply the amount of a refund under section LA 7 (Remaining refundable credits: tax credits under social policy schemes) or RM 8 to satisfy a liability of the person.

Defined in this Act: amount, amount of tax, Commissioner, Inland Revenue Acts, refundable tax credit

Compare: 2004 No 35 ss MD 1(3), (3A), MD 1(4)

Section RM 10(1): substituted (with effect on 1 April 2008), on 6 October 2009, by section 543(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 10(1): amended (with effect on 1 April 2008), on 6 October 2009, by section 543(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 10(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 543(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RM 10(4): amended, on 1 April 2008, by section 546 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section RM 10 list of defined terms **refundable tax credit**: added (with effect on 1 April 2008), on 6 October 2009, by section 543(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RM 11 Using GST refund to pay instalment of provisional tax

When this section applies

(1) This section applies when a person who is liable to pay provisional tax has a goods and services tax (GST) refund in a taxable period as a result of the application of section 20(5) of the Goods and Services Tax Act 1985.

Using amount

(2) The person may choose to use the amount of the refund to pay some or all of an instalment of provisional tax that is payable on the same instalment date.

Reduction in amount

(3) If the Commissioner amends the assessment reducing the amount of the refund, the person's payment of provisional tax arising from the GST refund is the reassessed amount.

Defined in this Act: amount, assessment, Commissioner, GST, instalment date, pay, provisional tax, taxable period

Compare: 2004 No 35 s MB 11

RM 12 Reduction in provisional tax liability

When this section applies

(1) This section applies when the amount of provisional tax payable for a tax year is reduced by the person liable to pay the provisional tax, or by the Commissioner under section 119(2) of the Tax Administration Act 1994.

Reduction in amount of provisional tax payable

(2) If the person applies in writing for a refund of the amount of provisional tax already paid that is as a result of the reduction

more than the amount that would have been payable in relation to earlier instalment dates for the tax year, the Commissioner must—

(a) apply the overpayment as the person asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way that the Commissioner determines in payment of tax or another amount that is payable by them; and

(b) refund any balance of the overpayment.

Reduction in assessment

(3) If the person's residual income tax for the relevant tax year is no more than $2,500, and they apply in writing for the refund of an amount of provisional tax that has been determined under section RC 9 (Provisional tax payable in instalments) and already paid, other than on a final instalment, the Commissioner must—

(a) apply the amount as the person asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way the Commissioner determines in payment of tax or another amount that is payable by them; and

(b) refund any balance of the amount.

Treatment of amount refunded or credited

(4) When an overpayment or amount of provisional tax for a tax year has been applied or refunded under subsection (2) or (3)—

(a) a later instalment payable under section RC 10 or RC 11 (which relate to the methods used to calculate the amount of an instalment), as applicable, is calculated as if the total instalments previously payable were reduced by the amount of the overpayment or amount; and

(b) the overpayment or amount applied or refunded is, from the date of action taken by the Commissioner, treated as not being provisional tax paid for the tax year.

Defined in this Act: amount, Commissioner, instalment date, pay, provisional tax, residual income tax, tax, tax year

Compare: 2004 No 35 s MB 36

Limits on refunds and transfers

ICA companies

RM 13 Limits on refunds for ICA companies

When this section applies

(1) This section applies when an ICA company is entitled to—

(a) a refund of income tax under sections RM 2 and RM 4 to RM 6; or

(b) transfer an amount under section RC 32 (Wholly-owned groups of companies).

Amount of refund or transfer limited

(2) The amount of the refund or transfer must be no more than the credit balance of the ICA company in the imputation credit account at the latest of the following dates:

(a) the last day of the tax year that has just ended:

(b) the last day of a period for which the company is required to file a return under section 70(1) of the Tax Administration Act 1994:

(c) the last day of a period for which the company filed an annual ICA return under section 70(3) of that Act.

Time for filing returns

(3) Subsection (2) does not apply if the ICA company has an extension of time to file its annual ICA return for a tax year. In that case, the total amount refunded or transferred must be no more than the credit balance of the ICA company in its imputation credit account on the last day of the tax year to which the ICA return relates.

Defined in this Act: amount, annual ICA return, ICA company, imputation credit account, income tax, tax year

Compare: 2004 No 35 s MD 2(1), (1A)

RM 14 Limits on refunds when company stops being ICA company

When this section applies

(1) This section applies when a company stops being an ICA company and is entitled to have a refund or to make a transfer under section RM 13(1) for a tax year in which it was an ICA company.

Limit on amount of refund or transfer

(2) The total amount refunded or transferred must be no more than the final balance of the imputation credit account arising as a debit under section OB 56 (ICA final balance) just before the company stopped being an ICA company.

Defined in this Act: amount, company, ICA company, imputation credit account, tax year

Compare: 2004 No 35 s MD 2(2)

RM 15 Changes in credit balances

Credit balance reduced

(1) A credit balance is treated as reduced by the amount of a refund or transfer as described in sections RM 13 and RM 14 that is made earlier in the same tax year.

Credit balance increased

(2) A credit balance is treated as increased by an amount equal to a debit to the company's imputation credit account under section OB 41 (ICA debit for loss of shareholder continuity) arising after a credit is made to the company's imputation credit account for an amount that has satisfied the company's income tax liability for the tax year and before the date on which the credit balance is to be determined under sections RM 13 and RM 14.

Defined in this Act: amount, company, imputation credit account, income tax liability, tax year

Compare: 2004 No 35 s MD 2(3), (4)

RM 16 Treatment of amounts not refunded

When this section applies

(1) This section applies when, through the application of sections RM 13 and RM 14, an overpayment of income tax by a company is not refunded to the company or transferred within a wholly-owned group of companies.

Satisfying liabilities or retained

(2) The amount prevented from being a refund or transfer—

(a) is applied to satisfy an income tax or provisional tax liability of the company for the tax year of the entitlement; and

(b) may be used by the company to satisfy an income tax or provisional tax liability for a tax year other than the tax year of entitlement; and

(c) is retained in the company's tax account with the Commissioner to the extent to which paragraphs (a) and (b) do not apply, whether because the company is liquidated or for another reason.

Credit for provisional tax

(3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Relationship with section RZ 6

(4) Section RZ 6 (Limits on refunds: transitional dates) overrides subsection (2)(c).

Defined in this Act: amount, Commissioner, company, income tax, income tax liability, instalment date, liquidation, pay, provisional tax, residual income tax, tax account with the Commissioner, tax year, wholly-owned group of companies

Compare: 2004 No 35 s MD 2(5), (5A)

RM 17 Treatment of further income tax paid

When this section applies

(1) This section applies for the purposes of sections RM 2 and RM 4 to RM 6 when a company pays further income tax under sections OB 65 and OB 66 (which relate to further tax payable by ICA companies).

No refund

(2) The company is not entitled to a refund of the amount of further income tax paid which is treated as tax paid to satisfy an obligation yet to arise.

Defined in this Act: amount, company, further income tax, pay

Compare: 2004 No 35 s MD 2(6)

Companies receiving foreign dividends

RM 18 Limits on refunds related to foreign dividends

Maximum refund

(1) Despite section RM 3, if the overpayment described in that section relates to an earlier tax year, the refund must be no more than the relevant credit balance as follows:

- (a) for an FDPA company, the credit balance of the company's FDP account at the end of the tax year that is before the tax year in which the entitlement to the refund arises:
- (b) for an ICA company that is not an FDPA company, the credit balance of the company's imputation credit account at the end of the tax year that is before that in which the entitlement to the refund arises:
- (c) for a company described in paragraph (a) or (b) that ends its residence in New Zealand, the credit balance, just before the company stops being resident, of—
  - (i) the company's imputation credit account arising as a debit under section OC 15 (FDPA overpayment of FDP); or
  - (ii) the company's FDP account arising as a debit under section OC 26 (FDPA final balance).

Treatment of amount not refunded

(2) If the amount of a company's overpayment is not refunded because it is more than the maximum allowed under subsection (1), the amount may still be used to reduce FDP for a foreign dividend paid to the company.

Reductions in credit balances

(3) For the purposes of this section, a credit balance referred to in subsection (1) is treated as reduced by an earlier refund under this section paid to the company in the tax year in which the entitlement to the refund arises. The refund of income tax under sections RM 13 to RM 17 in the same tax year must be no more than the relevant credit balance.

Defined in this Act: amount, company, FDP, FDP account, FDPA company, foreign dividend, ICA company, imputation credit account, income tax, pay, resident in New Zealand, tax year

Compare: 2004 No 35 s NH 4(2), (3)

RM 19 Treatment of financial arrangements

When this section applies

(1) This section applies when a company is entitled to a refund of FDP under section CD 50(10) to (13) (Outstanding balances of financial arrangements).

Credit balance increased

(2) The amount of the company's credit balance under section RM 18(1) is treated as increased by the amount of a debit in the company's imputation credit account or FDP account arising under OB 41 or OC 24 (which relate to imputation debits and FDP debits for loss of shareholder continuity), as applicable, after the date on which the payment was made and before the date on which the credit balance is determined under section RM 18(1).

Defined in this Act: amount, company, FDP, FDP account, foreign dividend, imputation credit account, pay

Compare: 2004 No 35 s NH 4(4)(a)

RM 20 Treatment of amounts not refunded

When this section applies

(1) This section applies when, through the application of section RM 18(1), an overpayment is not refunded.

Satisfying liabilities or retained

(2) The amount prevented from being a refund is—

(a) applied to satisfy an income tax or provisional tax liability of the company for the tax year of an entitlement to a refund or FDP for a foreign dividend that is payable after the date on which the entitlement to the refund arises; and

(b) retained by the Commissioner to the extent to which paragraph (a) does not apply, whether because the company is liquidated or for another reason.

Credit for provisional tax

(3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated

under section 120KE(5) to (7) of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, Commissioner, company, foreign dividend, FDP, income tax liability, instalment date, liquidation, pay, provisional tax, residual income tax, tax year

Compare: 2004 No 35 s NH 4(4)(b)

RM 21 Refunds when loss balances used to reduce net income

When subsection (2) applies

(1) Subsection (2) applies when a company that is liable to pay FDP to the Commissioner has a loss balance that may be used under sections IA 2 to IA 9 (which relate to the treatment of tax losses) to reduce its net income for the income year in which the foreign dividend is paid.

Refund

(2) The company is entitled to a refund of an amount equal to the least of the following, as applicable:

(a) the amount of FDP that the company pays in the income year in which the foreign dividend is paid; or

(b) the amount of the loss balance multiplied by the basic rate of income tax set out in schedule 1, part A, clause 2 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) for the income year in which the foreign dividend is paid; or

(c) the credit balance of the company's FDP account at the end of the tax year that has just ended.

Group company's tax loss

(3) This section also applies, treating the group of companies as the company, when—

(a) a company (**group company A**) pays FDP to the Commissioner; and

(b) another company (**group company B**) that is part of the same group of companies as group company A, has a tax loss for the income year in which the foreign dividend is paid or an earlier income year that may be used under sections IA 2 to IA 9 to reduce the net income of group company A; and

(c) group company B makes the tax loss available so that group company A is able to get a refund of some or all of the payment.

Application and return requirements

(4) For this section to apply,—

(a) the company must apply to the Commissioner in writing; and

(b) the company must meet the return requirements of section 71B of the Tax Administration Act 1994 for the income year in which the dividend is paid; and

(c) if group company B's tax loss is used, group company B must make an election to use the tax loss in writing.

Reduction in tax loss

(5) When a refund is paid under this section, the amount of tax loss is reduced by an amount calculated using the formula—

$$\frac{\text{refund}}{\text{tax rate}}.$$

Definition of items in formula

(6) In the formula,—

(a) **refund** is the amount of the refund paid to group company A under this section:

(b) **tax rate** is the basic rate of income tax set out in schedule 1, part A, clause 2 for the income year that corresponds to the tax year referred to in subsection (2)(c).

Late payment penalties

(7) Group company A is entitled to a refund of a late payment penalty imposed under section 139B of the Tax Administration Act 1994 in relation to the failure to pay the amount that is refunded.

Defined in this Act: amount, Commissioner, company, corresponding income year, foreign dividend, FDP, FDP account, group of companies, income tax, income year, loss balance, net income, pay, tax loss, tax year

Compare: 2004 No 35 s NH 4(5), (6)

Section RM 21(2)(b): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Maori authorities

RM 22 Limits on refunds for Maori authorities

When this section applies

(1) This section applies when a Maori authority is entitled to a refund of income tax under sections RM 2 and RM 4 to RM 6.

Amount of refund limited

(2) The amount of the refund must be no more than the credit balance of the Maori authority in the Maori authority credit account at the latest of the following dates:

- (a) the last day of the tax year that has just ended:
- (b) the last day of a period for which the Maori authority is required to file a return under section 70B(1) of the Tax Administration Act 1994:
- (c) the last day of a period for which the Maori authority files a Maori authority credit account return under section 70B(3) of that Act.

Time for filing returns

(3) Subsection (2) does not apply if the Maori authority has an extension of time to file its Maori authority credit account return for a tax year, and files the return with the extended time. In that case, the total amount refunded must be no more than the credit balance of the Maori authority in its Maori authority credit account on the last day of the tax year to which the return relates.

Satisfying liabilities or retained

(4) If the Maori authority has a refund of income tax, and an amount paid in excess is not refunded because of the application of subsection (2) or section RM 23, the amount prevented from being a refund or transfer—

- (a) is used to satisfy an income tax or provisional tax liability of the Maori authority for the tax year of the entitlement; and
- (b) may be used by the Maori authority to satisfy an income tax or provisional tax liability for a tax year other than the tax year of entitlement; and
- (c) is retained in the authority's tax account with the Commissioner to the extent to which paragraphs (a) and (b) do not apply.

Credit for provisional tax

(5) Despite subsection (4), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Relationship with section RZ 6

(6) Section RZ 6 (Limits on refunds: transitional dates) overrides subsection (4)(b).

Defined in this Act: amount, income tax, income tax liability, instalment date, Maori authority, Maori authority credit account, Maori authority credit account return, provisional tax, residual income tax, tax account with the Commissioner, tax year

Compare: 2004 No 35 s MD 2B(1), (1B)

RM 23 Limits on refunds when Maori authority stops being Maori authority

When this section applies

(1) This section applies when a Maori authority stops being a Maori authority and is entitled to a refund under sections RM 2 or RM 4 to RM 6 for a tax year in which it maintained a Maori authority credit account.

Limit on amount of refund

(2) The amount refunded must be no more than the final balance of the Maori authority credit account arising as a debit under section OK 18 (MACA final balance) just before the Maori authority stopped being a Maori authority.

Defined in this Act: amount, Maori authority, Maori authority credit account, tax year

Compare: 2004 No 35 s MD 2B(2)

RM 24 Increase in credit balances

A credit balance is treated as increased by an amount equal to a debit to the Maori authority credit account under section OK 15 (MACA debit for loss of shareholder continuity) arising after the date of payment of instalment B set out in schedule 3, part A (Payment of provisional tax and terminal tax) for the authority's income year that corresponds to the tax year and

before the date on which the credit balance is to be determined under sections RM 22 and RM 23.

Defined in this Act: amount, corresponding income year, Maori authority credit account, pay, tax year

Compare: 2004 No 35 s MD 2B(3)

RM 25 Treatment of amounts not refunded

When this section applies

(1) This section applies when, through the application of sections RM 22 and RM 23, an overpayment of income tax by a Maori authority is not refunded to the authority.

Satisfying liabilities or retained

(2) The amount prevented from being a refund is—

(a) applied to satisfy an income tax or provisional tax liability of the Maori authority for the tax year of the entitlement; and

(b) retained by the Commissioner to the extent to which paragraph (a) does not apply.

Credit for provisional tax

(3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, Commissioner, income tax, income tax liability, instalment date, Maori authority, pay, provisional tax, residual income tax

Compare: 2004 No 35 s MD 2B(4), (4B)

RM 26 Treatment of further income tax paid

When this section applies

(1) This section applies for the purposes of sections RM 2 and RM 4 to RM 6 when a Maori authority pays further income tax under section OK 21 or OK 22 (which relate to further income tax for closing debit balance or when Maori authority stops being a Maori authority).

No refund

(2) The authority is not entitled to a refund of the amount of further income tax paid which is treated as tax paid to satisfy an obligation yet to arise.

Defined in this Act: amount, further income tax, Maori authority, pay, tax

Compare: 2004 No 35 s MD 2B(5)

RM 27 Application when no credits arise

Sections RM 22 to RM 26 do not apply in relation to an amount of tax paid for which no credit arises under section OK 2 (MACA payment of tax).

Defined in this Act: amount, amount of tax, pay

Compare: 2004 No 35 s MD 2B(6)

Persons with policyholder credit accounts

RM 28 Limits on refunds for PCA persons

When this section applies

(1) This section applies when a PCA person is entitled to a refund of income tax under sections RM 2 and RM 4 to RM 6.

Amount of refund limited

(2) The amount of the refund must be no more than the credit balance of the PCA person in the policyholder credit account at the latest of the following dates:

(a) the last day of the tax year that has just ended:

(b) the last day of a period for which the person is required to file a return under section 66(4) of the Tax Administration Act 1994:

(c) the last day of a period for which the person files an annual PCA return under section 66(5) of that Act.

Defined in this Act: amount, annual PCA return, income tax, PCA person, policyholder credit account, tax year

Compare: 2004 No 35 s MD 3(1)

RM 29 Limits on refunds when person no longer PCA person

When this section applies

(1) This section applies when a person stops being a PCA person and is entitled to a refund as described in section RM 28(1) for a tax year in which they were a PCA person.

Limit on amount of refund

(2) The amount refunded must be no more than the final balance of the policyholder credit account just before the person stopped being a PCA person.

Defined in this Act: amount, PCA person, PCA return, policyholder credit account, return, tax year

Compare: 2004 No 35 s MD 3(2)

RM 30 Changes in credit balances

A credit balance is treated as reduced by the amount of an earlier refund paid to the person during the same tax year within the limits imposed by sections RM 28 and RM 29.

Defined in this Act: amount, pay, tax year

Compare: 2004 No 35 s MD 3(3)

RM 31 Treatment of amounts not refunded

When this section applies

(1) This section applies when, through the application of sections RM 28 and RM 29, an overpayment of income tax by a PCA person is not refunded to the person.

Satisfying liabilities or retained

(2) The amount prevented from being a refund—

(a) is used to satisfy an income tax or provisional tax liability of the person for the tax year of the entitlement; and

(b) may be used by the person to satisfy an income tax or provisional tax liability for a tax year other than the tax year of entitlement; and

(c) retained in the person's tax account with the Commissioner to the extent to which paragraphs (a) and (b) do not apply.

Credit for provisional tax

(3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Relationship with section RZ 6

(4) Section RZ 6 (Limits on refunds: transitional dates) overrides subsection (2)(c).

Defined in this Act: amount, Commissioner, income tax, income tax liability, instalment date, pay, PCA person, provisional tax, residual income tax, tax account with the Commissioner, tax year

Compare: 2004 No 35 s MD 3(4)

Qualifying companies

RM 32 Application of sections RM 13 to RM 17 to qualifying companies

Sections RM 13 to RM 17 do not apply to an overpayment of tax by a qualifying company that may be refunded to or allocated by the company unless—

(a) the overpayment was made as part of or under an arrangement—

(i) to obtain a tax advantage of a kind referred to in section GB 35 (Imputation arrangements to obtain tax advantage); or

(ii) to avoid a tax liability of a shareholder under this Act; and

(b) the arrangement, or a part of it, was based on the company's ability to obtain a refund of tax that the company would have under those sections in the absence of this section.

Defined in this Act: arrangement, pay, qualifying company, shareholder, tax advantage

Compare: 2004 No 35 s MD 2(7)

Certain unit trusts and group investment funds

RM 33 Limits on refunds for certain unit trusts and group investment funds

When this section applies

(1) This section applies when a public unit trust or group investment fund—

(a) is entitled to a refund under sections RM 2 or RM 4 to RM 6; and

(b) goes into liquidation or chooses to become a portfolio investment entity; and

(c) at the time of the liquidation or election, has—

(i) a credit balance in its available subscribed capital (ASC) account on liquidation; and

(ii) a zero balance in its imputation credit account.

Calculating amount of refund

(2) The refund must be no more than an amount calculated using the formula—

ASC credit balance × maximum imputation ratio.

Definition of items in formula

(3) In the formula,—

(a) **ASC credit balance** is the credit balance in the ASC account of the public unit trust or group investment fund, as applicable:

(b) **maximum imputation ratio** is the maximum permitted ratio calculated under section OA 18(2) (Calculation of maximum permitted ratios), read as if the words "in which the dividend or distribution is paid" in subsection (3) were "in which the liquidation occurs or the election is made".

Defined in this Act: amount, ASC account, group investment fund, imputation credit account, liquidation, maximum permitted ratio, portfolio investment entity, public unit trust

Compare: 2004 No 35 s MD 2A

Subpart RP—Intermediaries

Introductory provision

RP 1 What this subpart does

This subpart establishes the obligations of PAYE intermediaries and tax pooling intermediaries in relation to the collection and payment of tax and the provision of information, and sets out the requirements for the operation of their respective accounts.

Defined in this Act: intermediary, pay, PAYE intermediary, tax

Compare: 2004 No 35 s MBA 1

PAYE intermediaries

Obligations and treatment of PAYE intermediaries

RP 2 PAYE intermediaries

Transferring obligations

(1) An employer may arrange to transfer their pay-as-you-earn (PAYE) and employer's superannuation contribution tax (ESCT) obligations to a person approved under section 15D or 15G of the Tax Administration Act 1994 as a PAYE intermediary or a listed PAYE intermediary.

Paying amounts of tax and filing returns

(2) A PAYE intermediary or listed PAYE intermediary must, on behalf of an employer who has transferred an obligation to them under subsection (1),—

(a) withhold and pay to the Commissioner the amount of tax for a payment under the PAYE rules and the ESCT rules; and

(b) file a return of income relating to the payment and the amount of tax for the payment.

When person no longer intermediary

(3) A person who stops being a PAYE intermediary or a listed PAYE intermediary for an employer has the rights and obligations under the PAYE rules and ESCT rules of a PAYE intermediary or listed PAYE intermediary, as applicable, in relation to funds that—

(a) the employer pays to the person as intermediary; and

(b) the person holds at the time they stop being an intermediary.

Defined in this Act: amount of tax, Commissioner, employer, ESCT, ESCT rules, listed PAYE intermediary, pay, PAYE, PAYE intermediary, PAYE rules, return of income

Compare: 2004 No 35 ss NBA 1, NBA 8, NBB 7(3)

RP 3 Requirements for listed PAYE intermediaries

For a period in which a person remains a listed PAYE intermediary, they must—

(a) continue to qualify under section 15D of the Tax Administration Act 1994 as a PAYE intermediary; and

(b) meet all the obligations under this subpart of a PAYE intermediary; and

(c) continue to meet the requirements of section 15F of the Tax Administration Act 1994; and

(d) operate technology systems to enable them to return by electronic means a subsidy claim form that contains a correct calculation of the amount of a subsidy under section RP 5 and section 15M of the Tax Administration Act 1994.

Defined in this Act: amount, listed PAYE intermediary, PAYE intermediary, subsidy claim form

Compare: 2004 No 35 s NBB 3

RP 4 Payment of subsidies to certain PAYE intermediaries

Requirements for payment of subsidy

(1) The Commissioner may pay a subsidy to a listed PAYE intermediary for a payroll service that they provide to an employer to whom section RD 22(3) or (4) (PAYE income payment forms for amounts of tax paid to Commissioner) applies if the listed PAYE intermediary—

(a) has a contract with the employer to provide the services; and

(b) has met their obligations under sections RP 13 to RP 16; and

(c) files a correct subsidy claim form under section 15M of the Tax Administration Act 1994.

Notification requirements

(2) If a subsidy under subsection (1) is paid to a listed PAYE intermediary, the Commissioner must notify the intermediary of the following matters within 14 days of the date of the payment:

(a) the amount of the subsidy paid in relation to each employer; and

(b) the period to which the subsidy relates; and

(c) other information that may be relevant to the payroll services provided as the Commissioner considers appropriate.

Calculating amount of subsidy

(3) The listed PAYE intermediary must calculate the amount of the subsidy in the manner provided by regulations made under this section.

Paying amount of subsidy

(4) The Commissioner must pay the amount of the subsidy within 30 days of receiving the last of—

(a) the employer monthly schedule to which the subsidy claim form relates:

(b) the payment of the amounts of tax for a PAYE income payment to which the subsidy claim form relates:

(c) the subsidy claim form.

Bank accounts

(5) The Commissioner must pay the subsidy to a bank account nominated by the listed PAYE intermediary for the purpose or, if an overpayment has been made to the listed PAYE intermediary, to the listed PAYE intermediary's bank account.

Prescribing amount of subsidy

(6) The Governor-General may from time to time by Order in Council prescribe the amount of the subsidy to be paid for an employee of an employer who contracts the services of a listed PAYE intermediary under section 15J of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer monthly schedule, listed PAYE intermediary, pay, PAYE income payment, subsidy claim form

Compare: 2004 No 35 ss NBB 1, NBB 6

RP 5 Subsidy claims

When this section applies

(1) This section applies when a listed PAYE intermediary files a subsidy claim form under section 15M of the Tax Administration Act 1994 and the Commissioner amends the details to correct an error.

Overpaid or underpaid amounts

(2) If an overpayment or underpayment results from the amendment, the intermediary or Commissioner, as applicable, must

pay the amount overpaid or underpaid within 30 days of the date of notice under section 15M(3) of that Act.

Using overpayment to pay subsidy

(3) Despite subsection (2), the Commissioner may choose to use the amount of an overpayment resulting from an amendment to pay a subsidy claim made after the end of the 14-day period referred to in section 15M(3) of that Act.

Defined in this Act: amount, Commissioner, listed PAYE intermediary, pay, subsidy claim form

Compare: 2004 No 35 s NBB 5(4), (5)

RP 6 Operation of PAYE intermediaries' trust accounts

Nature of account

(1) A PAYE intermediary's trust account must be named as a trust account and established at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989.

Deposits

(2) The deposits to the account consist of—

- (a) a payment of gross salary or wages paid by an employer:
- (b) an amount of employer's superannuation cash contribution paid by an employer:
- (c) an amount of tax for a payment of salary or wages required under the PAYE rules and ESCT rules, or made under section RP 12:
- (d) an amount of a refund made by the Commissioner under section RM 7 (Refunds to PAYE intermediaries):
- (e) interest on the amount of the funds in the trust account.

Withdrawals

(3) The withdrawals from the account consist of—

- (a) a payment of net salary or wages to an employee:
- (b) an amount of employer's superannuation cash contribution paid by an employer:
- (c) an amount of tax for a payment of salary or wages withheld under section RP 12:
- (d) a payment that an employer would be required to make but for the arrangement with the PAYE intermediary, in relation to an amount of tax for a payment of salary or

wages to an employee or an employer's superannuation cash contribution made on behalf of an employee:

(e) interest on the amount of the funds in the trust account.

Payments held on trust

(4) A payment relating to an employee that is credited to the trust account of a PAYE intermediary is held by the PAYE intermediary on trust for the benefit of the employee and the Commissioner according to their respective rights and obligations.

Interest

(5) Interest earned in the trust account of a PAYE intermediary by a payment that relates to an employee is held beneficially by the PAYE intermediary.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer's superannuation cash contribution, ESCT rules, gross, interest, pay, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 6

Section RP 6(2)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 544(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 6(3)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 544(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 6(3)(d): amended (with effect on 1 April 2008), on 6 October 2009, by section 544(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 6 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 544(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 6 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 544(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Employers' responsibilities

RP 7 General responsibilities of employers

When this section applies

(1) This section applies when an employer who meets the requirements of sections RP 8 to RP 11 arranges to transfer their PAYE obligations in relation to an employee and a pay period to a PAYE intermediary.

PAYE liabilities

(2) The employer is not liable under the PAYE rules in relation to the employee and the pay period. However, the employer remains liable for the payment to the employee of the salary or wages for the pay period.

ESCT liabilities

(3) If the PAYE intermediary assumes the employer's obligations under the ESCT rules, the employer is not liable under the ESCT rules in relation to the employee and the pay period. However, the employer remains liable for the payment to the employee of the employer's superannuation cash contribution made on the employee's behalf.

Defined in this Act: employee, employer, employer's superannuation cash contribution, ESCT rules, pay period, PAYE, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 4(2), (3)

Section RP 7(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 545(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 7 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 545(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 7 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 545(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RP 8 Information required from employers

An employer must—

(a) keep a record of—

(i) the gross salary or wages of an employee for a pay period; and

(ii) the amounts of tax withheld by the employer for the pay period; and

(iii) the amount of any payroll donations for the pay period; and

(iv) the amount of any tax credit under section LD 4 (Tax credits for payroll donations); and

(b) provide information a PAYE intermediary seeks in the time agreed by the employer and PAYE intermediary.

Defined in this Act: amount of tax, employee, employer, gross, pay period, PAYE intermediary, salary or wages, tax withheld

Compare: 2004 No 35 s NBA 4(1B)

Section RD 8(a)(iii): added, on 6 January 2010, by section 546 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RD 8(a)(iv): added, on 6 January 2010, by section 546 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RP 9 Authorised transfers from accounts

When this section applies

(1) This section applies when an employer has authorised the PAYE intermediary to direct the transfer of an amount from the employer's bank account to meet an obligation that the PAYE intermediary has on the employer's behalf in relation to an employee and a pay period.

Sufficient funds

(2) The employer must ensure, at a time fixed by the PAYE intermediary, that the bank account has sufficient funds available for the transfer.

Defined in this Act: amount, employee, employer, pay period, PAYE intermediary

Compare: 2004 No 35 s NBA 4(1)(a)

RP 10 When transfers from accounts not authorised

Employer to pay amount of tax to trust account

(1) If an employer has not authorised a PAYE intermediary to direct the transfer of funds as described in section RP 9, and the employer pays salary or wages directly to an employee for a pay period under RP 12, the employer must pay the amount of tax for the payment required under the PAYE rules and ESCT rules into the PAYE intermediary's trust account.

Employer to pay salary or wages to trust account

(2) If the employer has not authorised the PAYE intermediary to direct the transfer of funds as described in section RP 9, and subsection (1) does not apply, the employer must pay the

amount of the employee's gross salary or wages for the pay period into the PAYE intermediary's trust account. However, the employer may retain an amount lawfully owed to them by the employee before making the payment.

Defined in this Act: amount, amount of tax, employee, employer, ESCT rules, pay, pay period, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 4(1)(b)(i), (ii)

RP 11 Employer's superannuation cash contributions

If a PAYE intermediary has assumed the obligations of an employer under the ESCT rules in relation to an employee and a pay period, the employer must pay the amount of the employer's superannuation cash contribution made in the pay period on behalf of the employee into the PAYE intermediary's trust account.

Defined in this Act: amount, employee, employer, employer's superannuation cash contribution, ESCT rules, pay, pay period, PAYE intermediary

Compare: 2004 No 35 s NBA 4(1)(b)(iii)

Section RP 11 heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 547(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 11: amended (with effect on 1 April 2008), on 6 October 2009, by section 547(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 11 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 547(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 11 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 547(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RP 12 When payments made directly to employees

Despite sections RP 9 and RP 10, an employer may pay an employee's salary or wages directly to the employee in the following circumstances:

(a) the payment is made on a day in a pay period that is not the usual day for a payment of salary or wages for the pay period; and

(b) the payment is—

(i) an advance of the employee's salary or wages:

(ii) salary or wages owed to the employee for an earlier pay period:

(iii) a payment on the termination of the employee's employment; and

(c) the employer withholds for the salary or wages of the employee the amount of tax that would be required under the PAYE rules and the ESCT rules if the employer did not have an arrangement with a PAYE intermediary; and

(d) the employer pays the amount referred to in paragraph (c) in the way described in sections RP 9 to RP 11.

Defined in this Act: amount of tax, arrangement, employee, employer, employment, ESCT rules, pay, pay period, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 4(4)

PAYE intermediaries' responsibilities

RP 13 General responsibilities of PAYE intermediaries

When this section applies

(1) This section applies when a PAYE intermediary assumes the PAYE and ESCT obligations in relation to an employee and a pay period that an employer would have under those rules in the absence of section RP 2(1).

No liability as employer

(2) The PAYE intermediary does not become liable as an employer for the payment to the employee of the salary or wages for the pay period, or for the payment of an employer's superannuation cash contribution made on behalf of the employee.

Defined in this Act: employee, employer, employer's superannuation cash contribution, ESCT, pay, pay period, PAYE, PAYE intermediary, salary or wages

Compare: 2004 No 35 s NBA 5(1), (2)

Section RP 13(2): amended (with effect on 1 April 2008), on 6 October 2009, by section 548(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 13 list of defined terms **employer's superannuation cash contribution**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 548(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 13 list of defined terms **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 548(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RP 14 Collection, payment, and information requirements

A PAYE intermediary must—

(a) calculate and withhold the amount of tax for a payment of salary or wages, and pay the amount to the Commissioner by electronic means and in the format required; and

(ab) transfer the amount of any payroll donation to the relevant recipient within the period described in section 24Q of the Tax Administration Act 1994; and

(b) provide an employer monthly schedule to the Commissioner by electronic means and in the format required; and

(c) provide a PAYE income payment form to the Commissioner if required; and

(d) keep the records referred to in section 24 of the Tax Administration Act 1994.

Defined in this Act: amount of tax, Commissioner, employer monthly schedule, pay, PAYE income payment form, PAYE intermediary, salary or wages

Compare: 2004 No 35 s NBA 5(1)

Section RP 14(ab): inserted, on 6 January 2010, by section 549 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RP 15 When employers have authorised transfers from accounts

If a PAYE intermediary has been given an authorisation by an employer under section RP 2(1), the intermediary must direct that, at or before the time of the transfer of the payment of salary or wages, an amount equal to the amount of tax for the payment required under the PAYE rules and ESCT rules is transferred to—

(a) the Commissioner; or

(b) the trust account established by the PAYE intermediary and identified in the employer's notice under section 15J of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, employer, ESCT rules, notice, pay, PAYE intermediary, PAYE rules, salary or wages

Compare: 2004 No 35 s NBA 5(1B)

RP 16 Obligations for employer's superannuation contributions

When section RP 11 applies, the PAYE intermediary assumes the obligations under the ESCT rules in relation to the employee and the pay period that the employer would have in the absence of RP 2(1).

Defined in this Act: employee, employer, ESCT rules, pay period, PAYE intermediary

Compare: 2004 No 35 s NBA 5

Tax pooling intermediaries

RP 17 Tax pooling intermediaries

Meeting person A's obligations

(1) A person (**person A**) may ask a person who maintains a tax pooling account to act as a tax pooling intermediary between person A and the Commissioner in using funds in the tax pooling account to meet an obligation of person A to pay provisional tax, terminal tax, or an increase in an assessment of tax as described in section RP 17B(3).

Person A and group companies

(2) For the purposes of this section, if person A is a company in a group of companies, person A also includes the other companies that are in the group at the time—

(a) an amount is deposited in a tax pooling account under section RP 18; and

(b) as applicable,—

(i) is used or transferred under section RP 17B:

(ii) is transferred under section RP 19.

Defined in this Act: amount, Commissioner, company, group of companies, intermediary, provisional tax, tax pooling account

Compare: 2004 No 35 s MBA 2

Section RP 17: amended (with effect on 1 April 2009), on 6 October 2009, by section 550 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 17(1) heading: inserted, on 29 August 2011, by section 125(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17(2) heading: added, on 29 August 2011, by section 125(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17(2): added, on 29 August 2011, by section 125(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17 list of defined terms **amount**: inserted, on 29 August 2011, by section 125(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17 list of defined terms **company**: inserted, on 29 August 2011, by section 125(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17 list of defined terms **group of companies**: inserted, on 29 August 2011, by section 125(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

RP 17B Tax pooling accounts and their use

Meaning

(1) A **tax pooling account** means a trust account into which a tax pooling intermediary pays an amount that they receive from a person in their role as intermediary.

Use of funds in tax pooling accounts

(2) An amount held in a tax pooling account on behalf of a person may be refunded, transferred, sold, or used to satisfy a person's liability for terminal tax, provisional tax, or an increased amount of tax described in subsection (3).

When original liability increased

(3) For the purposes of this section, an increased amount of tax—

(a) arises when a person's previous assessed liability is increased after—

(i) the Commissioner amends an assessment under section 113 of the Tax Administration Act 1994:

(ii) the Commissioner makes a determination under section 119 of that Act:

(iii) an assessment is made because the Commissioner or the person is treated under section 89H of that Act as having accepted a proposed adjustment:

(iv) the person makes a voluntary disclosure:

(ab) also arises when a person has—

(i) before taking any action under subparagraph (ii), filed a return required to be provided for a tax type listed in subsection (8); and

(ii) has made a voluntary disclosure in relation to the return:

(ac) also arises when—

(i) before any assessment or adjustment under subparagraph (ii) is made, the person has filed a return required to be provided for a tax type listed in subsection (8); and

(ii) the Commissioner makes an assessment or adjustment increasing an amount previously payable:

(b) includes deferrable tax as defined in section 3(1) of the Tax Administration Act 1994 payable by the person:

(c) does not include the amount of the previous assessment or the amount that was previously payable under paragraph (ab) or (ac), as applicable.

Transfers for provisional tax or terminal tax

(4) A person who chooses to use funds in a tax pooling account to satisfy an obligation for provisional tax or terminal tax for a tax year may ask the tax pooling intermediary to arrange the transfer of an amount to their tax account with the Commissioner as follows:

(a) on or before the date that is 75 days after their terminal tax date for the tax year unless paragraph (b) or (c) applies:

(b) on or before the date that is 76 days after their terminal tax date for the tax year if—

(i) the person's balance date falls at the end of October, November, or December; and

(ii) the terminal tax date falls in a tax year that has a 29 February in it:

(c) if the amount is to be transferred from funds deposited on the person's behalf in the tax pooling account under section RP 18 and the person's return filing requirements have been met, at any time.

Group companies

(4B) For the purposes of subsection (4)(c), if the person is part of a group of companies, the person includes the other companies in the group at the time at which a deposit to the tax pooling account is made, or funds purchased or used, as applicable.

Transfer within 60 days for increased amounts

(5) If a person chooses to use funds in a tax pooling account to satisfy an obligation for an increased amount of tax as described in subsection (3)(a) to (ac), the tax pooling intermediary must ask the Commissioner within 60 days from the date on which the Commissioner issues the notice of assessment increasing the amount to transfer the amount to the person's tax account with the Commissioner.

Transfer within 60 days for deferrable tax

(6) If a person chooses to use funds in a tax pooling account to satisfy an obligation for deferrable tax under subsection (3)(b), the tax pooling intermediary must ask the Commissioner within 60 days from the date on which the court proceedings are finally determined to transfer the amount to the person's tax account with the Commissioner. For the purposes of this subsection, court proceedings include proceedings before the Taxation Review Authority.

Maximum amount of transfer

(7) The maximum amount that a person may ask a tax pooling intermediary to transfer to meet an obligation to pay tax is—

(a) for a transfer under subsection (4)(a) or (b), the amount payable:

(b) for a transfer under subsection (4)(c), the amount of the funds deposited by the person under section RP 18:

(c) for a transfer under subsection (5), the increased amount of tax payable:

(d) for a transfer under subsection (6), the amount of deferrable tax payable.

Extended meaning for increased amount of tax and deferrable tax

(8) For the purposes of sections RP 17 to RP 21, an increased amount of tax or deferrable tax includes an amount relating to—

(a) tax paid or payable under the PAYE rules, ESCT rules, RSCT rules, RWT rules, or NRWT rules:

(b) income tax, GST, FBT, further income tax, and imputation penalty tax payable under section 140B of the Tax Administration Act 1994.

When subsection (10) applies

(9) Subsection (10) applies when—

(a) a person is liable for an increased amount of tax that relates to income tax or resident withholding tax; and

(b) subsection (3)(ab)(ii) applies in relation to the amount; and

(c) the person has not filed the return required by subsection (3)(ab)(i) before the voluntary disclosure is made.

Commissioner's discretion to allow use of funds

(10) On application by the person, the Commissioner may agree in writing that they may use funds in a tax pooling account for the increased amount of tax if the Commissioner is satisfied that—

(a) the increased amount arises as a result of an event or circumstance beyond the person's control; and

(b) the person has a reasonable justification or excuse for not filing the return by the required date; and

(c) the person has an otherwise good compliance history for the 2 income years before the income year in which the voluntary disclosure referred to in subsection (3)(ab)(ii) is made.

Review

(11) After the expiry of 1 year, but before the expiry of 2 years, after the commencement of subsection (10), the Commissioner must—

(a) review the operation of subsections (9) and (10); and

(b) assess the impact of these subsections; and

(c) consider whether any amendments to the law are necessary or desirable and, in particular, whether these subsections are needed; and

(d) report the findings to the Minister of Revenue.

Defined in this Act: amount, amount of tax, assessment, balance date, Commissioner, corresponding income year, income tax, notice, pay, provisional tax, return of income, tax account with the Commissioner, tax pooling account, terminal tax

Section RP 17B: inserted, on 6 October 2009, by section 551 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 17B(3)(ab): inserted, on 29 August 2011, by section 126(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(3)(ac): inserted, on 29 August 2011, by section 126(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(3)(c): amended, on 29 August 2011, by section 126(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(4) heading: substituted, on 29 August 2011, pursuant to section 126(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(4): substituted, on 29 August 2011, by section 126(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(4B) heading: inserted, on 29 August 2011, by section 126(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(4B): inserted, on 29 August 2011, by section 126(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(5): amended, on 29 August 2011, by section 126(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(7) heading: added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(7): added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(8) heading: added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(8): added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(9) heading: added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(9): added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(10) heading: added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(10): added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(11) heading: added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B(11): added, on 29 August 2011, by section 126(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B list of defined terms **balance date**: inserted, on 29 August 2011, by section 126(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B list of defined terms **corresponding income year**: inserted, on 29 August 2011, by section 126(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B list of defined terms **income tax**: inserted, on 29 August 2011, by section 126(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 17B list of defined terms **return of income**: inserted, on 29 August 2011, by section 126(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

RP 18 Deposits in tax pooling accounts

When this section applies

(1) This section applies when a tax pooling intermediary makes a deposit in a tax pooling account on behalf of a person.

Deposit held in trust

(2) The intermediary holds the principal amount of the person's deposit in trust for the person until the amount is—

(a) credited to the person's tax account with the Commissioner:

(b) credited to another person's tax account with the Commissioner:

(c) refunded to the person:

(d) transferred at the person's request to another intermediary:

(e) transferred at the intermediary's request to another intermediary.

Effective date

(2B) For the purposes of this section and sections RP 17B and RP 19, a deposit that is transferred between intermediaries under subsection (2)(d) or (e) retains its pre-transfer date.

Notification required

(3) The intermediary must—

(a) notify the person, at or before the time the person pays an amount to the intermediary, that the payment does not satisfy an obligation of the person to make a payment to the Commissioner; and

(b) notify the Commissioner by electronic means, providing for each person who has contributed an amount as a deposit,—

(i) the person's name and tax file number; and

(ii) the amount of the person's contribution.

Confirming receipt of deposit and details

(4) On receiving the deposit and details described in subsection (3), the Commissioner must provide confirmation of receipt.

Refunding deposit

(5) If the details described in subsection (3) are not provided within 5 working days after a deposit is made, the Commissioner must refund the deposit.

Defined in this Act: amount, Commissioner, intermediary, notify, pay, tax account with the Commissioner, tax file number, tax pooling account, working day

Compare: 2004 No 35 ss MBA 3, MBA 4(3), MBA 5(1)–(4)

Section RP 18(2)(c): amended, on 6 October 2009, by section 552(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 18(2)(d): added, on 6 October 2009, by section 552(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 18(2)(e): added, on 6 October 2009, by section 552(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 18(2B) heading: inserted, on 6 October 2009, by section 552(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 18(2B): inserted, on 6 October 2009, by section 552(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 18(4) heading: substituted, on 6 October 2009, by section 552(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 18(4): substituted, on 6 October 2009, by section 552(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

RP 19 Transfers from tax pooling accounts

Transferring amounts

(1) A tax pooling intermediary may ask the Commissioner to transfer an amount in their tax pooling account to the tax account of a person who is their client or to another intermediary.

Treatment of transferred amounts

(1B) An amount transferred and credited to the tax account of a person is treated as follows:

(a) for an amount credited on or before the person's terminal tax date for a tax year, as income tax paid to meet a provisional tax obligation under the provisional tax rules:

(b) for an amount credited after the person's terminal tax date for a tax year,—

(i) first, as applied under section 120F of the Tax Administration Act 1994 to pay interest that the person is liable to pay; and

(ii) secondly, as income tax paid to meet the person's provisional tax obligation.

Credited on date of deposit or later

(2) The intermediary may ask the Commissioner that the amount of a transfer under subsection (1) is credited in the person's tax account or the account of another intermediary on the date on which the amount was deposited in the tax pooling account or on some later date.

Credit date

(3) The credit date for an amount transferred to a person's tax account is—

(a) for a transfer under section RP 17B(4)(a) or (b), the relevant instalment date set out in schedule 3, part A (Payment of provisional tax and terminal tax):

(b) for a transfer under section RP 17B(4)(c), the date on which the person deposited the funds in a tax pooling account:

(c) for a request made within the 60-day period referred to in section RP 17B(5) or (6), a date nominated that is no earlier than the original due date for the relevant period:

(d) in any other case, the date on which the Commissioner receives the request for the transfer.

Details

(4) For the purposes of this section, the intermediary must provide the following details to the Commissioner by electronic means:

(a) the date of the transfer and the credit date, if it is different; and

(b) the amount of the transfer; and

(c) the tax file number of the person for whom the amount is transferred.

Statement

(5) When an amount is transferred, the Commissioner must provide a statement showing the effect of the transfer to both the intermediary and the person for whom the transfer is made.

Defined in this Act: amount, Commissioner, income tax, intermediary, pay, provisional tax, provisional tax rules, tax file number, tax pooling account, tax year, terminal tax

Compare: 2004 No 35 s MBA 6(1)–(3)

Section RP 19(1) heading: substituted, on 6 October 2009, by section 553(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 19(1): substituted, on 6 October 2009, by section 553(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 19(1B) heading: inserted, on 6 October 2009, by section 553(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 19(1B): inserted, on 6 October 2009, by section 553(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 19(2): amended, on 6 October 2009, by section 553(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section RP 19(3): substituted, on 29 August 2011, by section 127 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

RP 19B Transfers for certain expected tax liabilities

Who this section applies to

(1) This section applies to a person who—

(a) expects to have an income tax or provisional tax liability for a tax year; and

(b) has acquired funds in a tax pooling account other than by depositing them on their own account; and

(c) has not yet filed a return of income in relation to the liability for the tax year.

Using funds

(2) The person may choose to use the funds towards the payment of the liability for the tax year on meeting all the requirements of this section.

Requirements at time of making request

(3) At the time of making the request, the person must—

(a) for an income tax liability, have met all their return filing requirements for earlier tax years:

(b) for a provisional tax liability, have met all their obligations under the provisional tax rules for the tax year.

Effective date of transfer

(4) The effective date that the person nominates for the transfer of funds must correspond to the relevant instalment date set out in schedule 3, part A (Payment of provisional tax and terminal tax).

Refunds

(5) If, as a result of a transfer under this section, excess tax arises for the person, the amount of excess tax is treated as follows:

(a) first, the amount is transferred to meet a liability for the person, as applicable, for—

(i) provisional tax or terminal tax under section RP 17B(4)(a) or (b):

(ii) an increased amount of tax under section RP 17B(5):

(iii) an obligation to pay deferrable tax under section RP 17B(6):

(b) second, the amount is transferred with an effective date that is no earlier than the date on which the Commissioner received the later request:

(c) third, the amount is refunded to the person.

Relationship with section RP 17B

(6) This section overrides section RP 17B(7)(a).

Defined in this Act: amount, Commissioner, instalment date, provisional tax, provisional tax rules, return of income, tax pooling account, tax year, terminal tax

Section RP 19B: inserted, on 29 August 2011, by section 128 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

RP 20 Declining, amending, or reversing transfers

When this section applies

(1) This section applies when a tax pooling intermediary asks to transfer an amount under section RP 19.

Tax avoidance

(2) The Commissioner may refuse to accept the request, or may reverse the transfer, if the request is made for the purpose or effect of tax avoidance.

Non-compliance

(2B) If the Commissioner considers that the request does not comply with sections RP 17 to RP 21, the Commissioner may—

(a) decline to process the request:

(b) amend the request:

(c) reverse the transfer.

Failure to provide details

(3) The Commissioner must refuse the transfer if—

(a) it relates to a deposit for which the details have not been provided under section RP 18(3) and the period of 5-working days has not expired:

(b) the details required under section RP 19(4) have not been provided.

Defined in this Act: amount, Commissioner, intermediary, tax avoidance, working day

Compare: 2004 No 35 s MBA 6(4)–(9)

Section RP 20 heading: substituted, on 29 August 2011, by section 129(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 20(2B) heading: inserted, on 29 August 2011, by section 129(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section RP 20(2B): inserted, on 29 August 2011, by section 129(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

RP 21 Refunds from tax pooling accounts

A tax pooling intermediary may ask the Commissioner to refund some or all of the balance in their tax pooling account.

Defined in this Act: Commissioner, intermediary, tax pooling account

Compare: 2004 No 35 s MBA 7

Subpart RZ—Terminating provisions

Provisional tax

RZ 1 Certain elections to become person with provisional tax liability

When this section applies

(1) This section applies when a person has a non-standard income year and has, between 10 October 2000 and the date on which the Taxation (Relief, Refunds, and Miscellaneous Provisions) Act 2002 received Royal asset, filed a return of income for the 1998–99 income year or a later income year on the basis that section MB 3(a) of the Income Tax Act 2004 (section MB 2A(1)(a)(i) before the enactment of that Act) applied.

Choosing to have provisional tax liability

(2) The person may choose to be a person with a provisional tax liability for the income year for which the return was filed if they have paid provisional tax of more than $2,500 on or before the date of instalment F for the income year corresponding to the tax year for which the return was filed.

Defined in this Act: corresponding income year, income year, non-standard income year, provisional tax, return of income, tax year

Compare: 2004 No 35 s MZ 8

RZ 2 Amount of provisional tax based on 1997–98 or earlier tax year

For the purposes of sections MB 4 and MB 5 other than section MB 5(3) and (4) of the Income Tax Act 2004 (which relate to the methods for calculating provisional tax), and for a person who is a New Zealand superannuitant for the 1997–98 tax year, the person's residual income tax for the tax year or for an earlier tax year is the amount that would have been their residual income tax if they—

(a) had not been liable to pay the New Zealand superannuitant surcharge; and

(b) had not paid any New Zealand superannuitant surcharge by way of surcharge deduction.

Defined in this Act: amount, New Zealand superannuitant, residual income tax, tax year

Compare: 2004 No 35 s MZ 9

RZ 3 Standard method: 2010–11 to 2012–13 income years

When this section applies

(1) This section applies to the calculation of a person's provisional tax liability, when section RC 5 (Methods for calculating provisional tax liability) applies,—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year and for instalments for the 2011–12 and 2012–13 income years, if the person is a new personal tax rate person:

(b) for instalments payable for the 2011–12 and 2012–13 income years, if the person is a new company tax rate person.

Standard method modified: for 5% uplift

(2) The standard method under section RC 5(2) is modified so that—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year, instead of using 105%, the amount of provisional tax payable is calculated using 95%, if the person is a new personal tax rate person:

(b) for the 2011–12 income year, instead of using 105%, the amount of provisional tax payable is calculated using—

(i) 95%, if the person is a new personal tax rate person; or

(ii) 100%, if the person is a new company tax rate person.

Standard method modified: for 10% uplift

(3) The standard method under section RC 5(3) is modified so that—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year, instead of using 110%, the amount of provisional tax payable is calculated using 95%, if the person is a new personal tax rate person:

(b) for the 2011–12 income year, instead of using 110%, the amount of provisional tax payable is calculated using—

(i) 95%, if the person is a new personal tax rate person; or

(ii) 105%, if the person is a new company tax rate person:

(c) for the 2012–13 income year, instead of using 110%, the amount of provisional tax payable is calculated using—

(i) 100%, if the person is a new personal tax rate person; or

(ii) 105%, if the person is a new company tax rate person.

Defined in this Act: amount, income year, new company tax rate person, new personal tax rate person, pay, provisional tax

Section RZ 3: substituted, on 1 October 2010, by section 29 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

RZ 4 GST ratio method: 2010–11 to 2013–14 income years

When this section applies

(1) This section applies to the calculation of a person's provisional tax liability, when section RC 8 (GST ratio method) applies and requires an amount of residual income tax or an assessment of income tax for the calculation of the GST ratio,—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year and for instalments for the 2011–12, 2012–13, and 2013–14 income years, if the person is a new personal tax rate person:

(b) for instalments payable for the 2011–12, 2012–13, and 2013–14 income years, if the person is a new company tax rate person.

(2) The GST ratio method under section RC 8 is modified so that—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year, and for the 2011–12 income year, if the person is a new personal tax rate person,—

(i) the amount of residual income tax or the amount of an assessment of income tax for the preceding year, as applicable, is reduced by multiplying the amount by 0.90:

(ii) the amount of residual income tax or the amount of an assessment of income tax for the tax year before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.85:

(iii) the amount of residual income tax or the amount of an assessment of income tax for the year that is 2 years before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.80:

(b) for instalments payable for the 2012–13 income year, if the person is a new personal tax rate person,—

(i) the amount of residual income tax or the amount of an assessment of income tax for the tax year before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.90:

(ii) the amount of residual income tax or the amount of an assessment of income tax for the year that is 2 years before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.85:

(c) for instalments payable for the 2013–14 income year, if the person is a new personal tax rate person, the amount of residual income tax or the amount of an assessment of income tax for the year that is 2 years before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.90:

(d) for instalments payable for the 2011–12 income year, if the person is a new company tax rate person,—

(i) the amount of residual income tax or the amount of an assessment of income tax for the preceding year, as applicable, is reduced by multiplying the amount by 0.95:

(ii) the amount of residual income tax or the amount of an assessment of income tax for the tax year before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.95:

(iii) the amount of residual income tax or the amount of an assessment of income tax for the year that is 2 years before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.95:

(e) for instalments payable for the 2012–13 income year, if the person is a new company tax rate person,—

(i) the amount of residual income tax or the amount of an assessment of income tax for the tax year before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.95:

(ii) the amount of residual income tax or the amount of an assessment of income tax for the year that is 2 years before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.95:

(f) for instalments payable for the 2013–14 income year, if the person is a new company tax rate person, the amount of residual income tax or the amount of an assessment of income tax for the year that is 2 years before the preceding year or the transitional year, as applicable, is reduced by multiplying the amount by 0.95.

Defined in this Act: amount, assessment, GST ratio, income tax, income year, new company tax rate person, new personal tax rate person, pay, provisional tax, residual income tax

Section RZ 4: substituted, on 1 October 2010, by section 29 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

RZ 5 Calculating amounts under standard method: 2010–11 to 2012–13 income years

When this section applies

(1) This section applies to the calculation of a person's provisional tax liability, when section RC 10 (Calculating amount of instalment under standard and estimation methods) applies,—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year and for instalments for the 2011–12 and 2012–13 income years, if the person is a new personal tax rate person:

(b) for instalments payable for the 2011–12 and 2012–13 income years, if the person is a new company tax rate person.

Calculation modified: for 5% uplift

(2) In the calculation of the amount of an instalment, in section RC 10(3)(a), subparagraph (i) is modified so that—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year, instead of using a 5% uplift, a 5% reduction is used, if the person is a new personal tax rate person:

(b) for the 2011–12 income year, instead of using a 5% uplift, the amount of provisional tax payable is calculated using—

(i) a 5% reduction, if the person is a new personal tax rate person; or

(ii) no uplift, if the person is a new company tax rate person.

Calculation modified: for 10% uplift

(3) In the calculation of the amount of an instalment, in section RC 10(3)(a), subparagraph (ii) is modified so that—

(a) for instalments payable on or after 1 October 2010 for the 2010–11 income year, instead of using a 10% uplift, a 5% reduction is used, if the person is a new personal tax rate person:

(b) for the 2011–12 income year, instead of using a 10% uplift, the amount of provisional tax payable is calculated using—

(i) a 5% reduction, if the person is a new personal tax rate person; or

(ii) a 5% uplift, if the person is a new company tax rate person:

(c) for the 2012–13 income year, instead of using a 10% uplift, the amount of provisional tax payable is calculated using—

(i) no uplift, if the person is a new personal tax rate person; or

(ii) a 5% uplift, if the person is a new company tax rate person.

Defined in this Act: amount, income year, new company tax rate person, new personal tax rate person, pay, provisional tax

Section RZ 5: substituted, on 1 October 2010, by section 29 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

RZ 5B Standard method: new personal tax rate persons from 1 October 2008 to end 2009–10 income year

[Repealed]

Section RZ 5B: repealed, on 1 October 2010, by section 29 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

RZ 5C GST ratio method: new personal tax rate persons from 1 October 2008 to end 2009–10 income year

[Repealed]

Section RZ 5C: repealed, on 1 October 2010, by section 29 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

RZ 5D Standard method or GST method: transition for Maori authorities

When this section applies

(1) This section applies when the provisional tax liability of a Maori authority is calculated for the 2011–12 and 2012–13 income years (the **transitional period**).

Application of modified sections RZ 3 to RZ 5

(2) Sections RZ 3 to RZ 5 apply for the transitional period to the Maori authority and the Maori authority's provisional tax liability as if—

- (a) the Maori authority were a new company tax rate person:
- (b) in section RZ 3,—
  - (i) in subsection (2)(b)(ii), 100% had been replaced by 95%:
  - (ii) in subsection (3)(b)(ii), 105% had been replaced by 100%:
  - (iii) in subsection (3)(c)(ii), 105% had been replaced by 100%:
- (c) in section RZ 4,—
  - (i) in subsection (2)(d), 0.95 had been replaced by 0.9 in each place where it appears:
  - (ii) in subsection (2)(e), 0.95 had been replaced by 0.9 in each place where it appears:
- (d) in section RZ 5,—

(i) in subsection (2)(b)(ii), a reference to no uplift had been replaced by a reference to a 5% reduction:

(ii) in subsection (3)(b)(ii), a reference to a 5% uplift had been replaced by a reference to no uplift:

(iii) in subsection (3)(c)(ii), a reference to a 5% uplift had been replaced by a reference to no uplift.

Defined in this Act: Maori authority, new company rate person provisional tax liability

Section RZ 5D: inserted (with effect on 1 October 2010), on 21 December 2010, by section 131 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Refunds

RZ 6 Limits on refunds: transitional dates

ICA companies

(1) If an imputation credit account (ICA) company has a refund of income tax, and an amount paid in excess is dealt with under section RM 16(2)(c) (Treatment of amounts not refunded), the amount may be used only for a tax year commencing after the 1988–89 tax year, whether that is before or after the year of that entitlement.

Maori authorities

(2) If a Maori authority has a refund of income tax, and an amount paid in excess is dealt with under section RM 22(4)(b) (Limits on refunds for Maori authorities), the amount may be used only for a tax year commencing after the 2004–05 tax year, whether that is before or after the year of that entitlement.

PCA persons

(3) If a policyholder credit account (PCA) person has a refund of income tax, and an amount paid in excess is dealt with under section RM 31(2)(c) (Treatment of amounts not refunded), the amount may be used only for a tax year commencing after the 1990–91 tax year, whether that is before or after the year of that entitlement.

Defined in this Act: amount, ICA company, income tax, Maori authority, PCA person, tax year

Compare: 2004 No 35 ss MD 2(5)(a)(ii), MD 3(4)(a)

Withdrawal income

RZ 7 Withdrawal income

When this section applies

(1) This section applies when a special home ownership account is closed in a tax year, and an amount is withdrawn on the closure other than an amount withdrawn under a withdrawal certificate.

Excluded income

(2) The amount withdrawn is treated as withdrawal income derived in the tax year by the person who operated the account and is excluded income of the person.

Amounts withdrawn under withdrawal certificates

(3) If an amount is withdrawn from a special home ownership account under a withdrawal certificate and the requirements relating to that account have not been met, the amount is treated as withdrawal income derived by the person who operated the account in the tax year in which the Commissioner is notified that the requirements were not met.

Maximum amount

(4) For the purposes of subsections (2) and (3), the amount of withdrawal income must be no more than $10,250 less the total amount withdrawn from the account under a withdrawal certificate.

Defined in this Act: amount, Commissioner, excluded income, notify, special home ownership account, tax year, withdrawal certificate, withdrawal income

Compare: 2004 No 35 s IZ 3

RZ 8 Payment and rate of withdrawal tax

When this section applies

(1) This section applies when a person withdraws an amount from a special home ownership account that they have with an authorised savings institution and derives withdrawal income under section RZ 7(2).

Withholding withdrawal tax

(2) The authorised savings institution must withhold the amount of withdrawal tax from the amount payable to the person.

Rate of withdrawal tax

(3) The rate of withdrawal tax on withdrawal income is 45% of the gross amount of the income.

Paying withdrawal tax

(4) The authorised savings institution must pay the amount of tax to the Commissioner no later than the 20th day of the month following the month in which it becomes liable to withhold the amount.

Institution's payment but failure to withhold

(5) If an authorised savings institution fails to withhold and pay the amount of withdrawal tax under subsection (2), and has paid an amount to the Commissioner under subsection (3), it may recover the amount from the person.

Person paying withdrawal tax

(6) A person who derives withdrawal income under section RZ 7(3) must pay to the Commissioner within the time allowed the amount of withdrawal tax payable for the income.

Defined in this Act: amount, amount of tax, authorised savings institution, Commissioner, gross, pay, special home ownership account, withdrawal income, withdrawal tax

Compare: 2004 No 35 ss IZ 1, IZ 2, IZ 4

RZ 9 Relief in certain cases

If the Commissioner is satisfied that an amount of withdrawal tax is more than the total tax credit allowed in relation to a person's account under section LZ 9(2) (Savings in special home ownership accounts), the Commissioner must reduce the amount of the withdrawal tax as is fair and reasonable in the circumstances.

Defined in this Act: amount, Commissioner, tax credit, withdrawal tax

Compare: 2004 No 35 s IZ 6

RZ 10 Recovery of amounts payable to Commissioner

An amount payable to the Commissioner under section RZ 8(3) or (5) is recoverable as if it were income tax imposed under section BB 1 (Imposition of income tax).

Defined in this Act: amount, Commissioner, income tax, pay

Compare: 2004 No 35 s IZ 5

RZ 11 Refunds for life insurers

The Commissioner must refund an amount of tax that a life insurer has paid to the extent to which—

(a) the tax paid gave rise to imputation credits; and

(b) for a tax year corresponding to an income year before the income year that includes 1 July 2010, the life insurer would be entitled to a refund under section RM 2(1) (Refunds for overpaid tax) or any provision corresponding to it in an earlier Act, treating section RM 2(1)(a) and any corresponding provision as modified so as to exclude the amount of the life insurer's policyholder base income tax liability from the tax required to be paid by them; and

(c) all other relevant requirements for a refund are met.

Defined in this Act: amount of tax, Commissioner, imputation credit, income year, life insurer, pay, policyholder base income tax liability, tax

Section RZ 11: added (with effect on 1 April 2008), on 6 October 2009, by section 556 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part Y
Definitions and related matters

Subpart YA—General definitions

YA 1 Definitions

In this Act, unless the context requires otherwise,—

abating WFF tax credit is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

absentee—

(a) means a person other than a person who is resident in New Zealand during any part of the tax year:

(b) is defined in section HD 18 (Agency in relation to absentees generally) for the purposes of subpart HD (Agents)

absolute value means the value irrespective of whether the value's sign is positive or negative

ACC means the Accident Compensation Corporation continued by section 259 of the Accident Compensation Act 2001

ACC levy or premium is defined in section EF 3(5) (Accident compensation levies and premiums) for the purposes of that section

acceptable property is defined in section GB 45(3) (Arrangements involving money not at risk) for the purposes of that section

accident compensation earnings-related payment means a payment included in salary or wages of the following kinds and under the following Acts

(a) under the Accident Compensation Act 1982, a payment of earnings related compensation, as defined in section 2, and of compensation under section 80(4), that are not payments of account made under section 88 in circumstances in which, at the time the payments are made, the nature of the compensation has not been determined:

(b) under the Accident Rehabilitation and Compensation Insurance Act 1992,—

  (i) a vocational rehabilitation allowance payable under section 25; and

  (ii) a payment of compensation for loss of earnings payable under any of sections 38, 39, and 43; and

  (iii) a payment of compensation for loss of potential earning capacity payable under section 45 or 46; and

  (iv) a payment of weekly compensation payable under any of sections 58, 59, and 60; and

  (v) a payment of continued compensation payable under section 138:

(c) under the Accident Insurance Act 1998,—

  (i) a payment or weekly compensation made by an insurer, as defined in that Act:

  (ii) a payment of compensation for loss of earnings, or loss of potential earning capacity in relation to a work-related personal injury, as defined in that Act, made by an insurer under a policy of personal accident or sickness insurance to which section 188(1)(a) (as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000) applies:

(d) under the Accident Compensation Act 2001, a payment of weekly compensation made by the Corporation, as defined in that Act

accident compensation payment is defined in section CF 1(2) (Benefits, pensions, compensation, and government grants) for the purposes of that section

accident compensation payment for attendant care is defined in section LB 6(3) (Tax credits for caregivers) for the purposes of that section

accident insurance contract is defined in section CW 34(2) (Compensation payments) for the purposes of that section

accommodation is defined in section CE 1(2) (Amounts derived in connection with employment) for the purposes of that section and section CX 28 (Accommodation)

account advantage—

(a) is defined in section GB 36(5) (Reconstruction of imputation arrangements to obtain tax advantage) for the purposes of that section:

(b) is defined in section GB 43(5) (Reconstruction of Maori authority credit arrangements to obtain tax advantage) for the purposes of that section

accounting period, for a foreign company, means—

(a) its accounting year; or

(b) the relevant period of other than 12 months, if a person's attributed CFC income or loss or FIF income or loss from the foreign company is allowed or required to be calculated on the basis of a period other than 12 months because of a change of residence of the foreign company

accounting profits method means the method of calculating FIF income or FIF loss in section EX 49 (Accounting profits method)

accounting year,—

(a) for any person, means a tax year or another 12 month period that ends with the date of the annual balance of the person's accounts:

(b) for a company, includes—

(i) a period, shorter than 12 months, that is the period for which accounts are prepared, includ-

ing under the international tax rules, because of the formation of the company or the termination of the company's existence; and

(ii) a period, shorter or longer than 12 months, that is the period for which accounts are prepared, including under the international tax rules, because of the company or a person under section EX 25 (Change of CFC's balance date) or EX 69 (Change of FIF's balance date) adopting a new accounting balance date

accrual accounting method is defined in section EG 2(4) (Adjustment for changes to accounting practice) for the purposes of that section

accrued entitlement, for a party to a financial arrangement at any time, means the party's rights under the arrangement at the time

accrued obligation, for a party to a financial arrangement at any time, means the party's obligations under the arrangement at the time

acquire, for depreciable property, includes—

(a) make:

(b) be granted, for a patent or plant variety rights:

(c) lodge, for a patent application or a plant variety rights application

acquisition is defined in section GC 14 (Definitions for sections GC 6 to GC 13) for the purposes of sections GC 6 to GC 13 (which relate to transfer pricing arrangements)

acquisition price is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

active service area is defined in section CW 24(2) (Deferred military pay for active service) for the purposes of that section

actuarial reserves is defined in section EZ 59 (Meaning of actuarial reserves)

actuarially determined, for an amount, means a requirement that is met when an actuary has calculated the amount using relevant actuarial standards and a proper and reasonable calculation methodology

actuary means a person who is—

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

(b) a Fellow of the Institute of Actuaries of Australia; or

(c) a Fellow of the Institute of Actuaries (of London); or

(d) the holder of an equivalent professional qualification approved by the Commissioner for the purposes of this definition

additional transport costs is defined in section CW 18(3) (Allowance for additional transport costs) for the purposes of that section

adjusted tax value—

(a) is defined in sections EE 55 to EE 60 (which relate to depreciation):

(b) for software acquired before 1 April 1993, is defined in section EZ 20 (Adjusted tax value for software acquired before 1 April 1993):

(c) is defined in paragraphs (a) and (b) and sections EE 21 to EE 24 (which relate to depreciation) for the purposes of section FO 16 (Amortising property)

adverse event deposit is defined in section EH 62 (Other definitions)

adverse event income equalisation account is defined in section EH 62 (Other definitions)

adverse event income equalisation scheme means the scheme referred to in section EH 1(2)(b) (Income equalisation schemes)

adverse event maximum deposit is defined in section EH 61 (Meaning of adverse event maximum deposit)

affected associate is defined in section GB 48(1) (Defined terms for sections GB 45 and GB 46) for the purposes of sections GB 45 and GB 46 (which relate to arrangements involving money not at risk)

agent means a person declared by this Act to be an agent for the purposes of income tax

agreement for the sale and purchase of property is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

agreement for the sale and purchase of property or services—

(a) means a financial arrangement that is a conditional or unconditional agreement to—

(i) acquire or dispose of property; or

(ii) obtain or supply services; and

(b) does not include a forward contract, a futures contract, an option, or a specified option

agricultural, horticultural, or viticultural company means a company that carries on a business that comprises or includes performing any work or rendering a service set out in schedule 4, part C, clause 1(b) (Rates of tax for schedular payments)

air transport from New Zealand is defined in section CW 56(3) (Non-resident aircraft operators) for the purposes of that section

airport is defined in section HR 7(2) (Meaning of airport operator's activities) for the purposes of that section

airport asset is defined in section HR 6(7) (Airport operator's assets) for the purposes of that section

airport authority is defined in section 2 of the Airport Authorities Act 1966

airport operator means the Crown, acting by and through the Minister of Transport, and any local authority that is an airport authority, in their respective capacities as joint venturers under a joint venture agreement

airport operator's activities is defined in section HR 7 (Meaning of airport operator's activities) for the purposes of sections HR 5 and HR 6 (which relate to airport operators)

amalgamated company means—

(a) the 1 company that results from and continues after an amalgamation and that may be 1 of the amalgamating companies or a new company:

(b) for an amalgamation of building societies, a building society described as **society B** in the definition of **amalgamation**, paragraph (b)

amalgamating company means—

(a) a company that amalgamates with 1 or more other companies under an amalgamation:

(b) for an amalgamation of building societies, a building society described as **society A** or as **society B** in the definition of **amalgamation**, paragraph (b)

amalgamation means—

(a) an amalgamation to which both of the following apply:
  (i) it occurs under Part 13 or 15 of the Companies Act 1993, or it occurs or occurred under a foreign law that has the same or similar effect to Part 13 or 15 of the Companies Act 1993; and
  (ii) it causes 2 or more companies to amalgamate and continue as 1 company:

(b) a transfer by a building society (**society A**) of all of its engagements to another building society (**society B**) under section 33 of the Building Societies Act 1965 if—
  (i) a notice of the transfer (the **notice**) is registered under section 34(3) of the Building Societies Act 1965; and
  (ii) society A's funds, property, and assets are transferred or assigned to society B, except to the extent required to settle its affairs before being removed from the register of building societies; and
  (iii) society A does not carry on business after the notice is registered, except to the extent required to settle its affairs before being removed from the register of building societies; and
  (iv) society A's liabilities are satisfied or assumed by society B; and
  (v) society A is or will be removed from the register of building societies as soon as practicable after the notice is registered

amalgamation rules means the provisions listed in section FO 2 (Amalgamation rules)

amortising property means property for which a person—

(a) is allowed a deduction for an amount of depreciation loss; or

(b) may make a deduction on account of amortisation of expenditure under section EZ 7 (Buying patent rights before 1 April 1993), EZ 8 (Premium paid on land leased

before 1 April 1993), or any other amortisation provision

amount—

(a) includes an amount in money's worth:

(b) in sections CB 24 (Disposal of timber or right to take timber), CB 25 (Disposal of land with standing timber), and CB 29 (Disposal of minerals), includes the amount treated as—

(i) the price paid or realised under section EB 24 (Apportionment on disposal of business assets that include trading stock):

(ii) the consideration under sections FB 6 and FB 7 (which relate to the disposal of timber on a settlement of relationship property):

(iii) the price realised under sections GC 1 and GC 2 (which relate to the disposal of trading stock for inadequate consideration):

(c) is defined in section EH 35(2) (Meaning of main maximum deposit) for the purposes of that section:

(d) is defined in section EH 78(3) (Meaning of thinning operations maximum deposit) for the purposes of that section:

(e) is defined in section GC 14 (Definitions for sections GC 6 to GC 13) for the purposes of sections GC 6 to GC 13 (which relate to transfer pricing arrangements):

(f) is defined in section RD 33(4) (Subsidised transport) for the purposes of that section:

(g) is defined in section RD 37(2) (Contributions to superannuation schemes) for the purposes of that section:

(h) is defined in section RD 41(4) (Services) for the purposes of that section

amount of all consideration is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

amount of tax, for a payment, includes the amount of tax that must be withheld and paid, or paid to the Commissioner under the PAYE rules, ESCT rules, RSCT rules, RWT rules, or NRWT rules

ancillary tax means—

(a) provisional tax:
(b) further income tax:
(c) imputation penalty tax:
(d) penalty tax for a Maori authority payable under section 140DB of the Tax Administration Act 1994:
(e) FDP:
(f) further FDP:
(g) FDP penalty tax:
(h) qualifying company election tax:
(i) PAYE:
(j) FBT:
(k) ESCT:
(kb) RSCT:
(l) RWT:
(m) NRWT:
(n) withdrawal tax

annual branch equivalent tax account return means the return to be filed with the Commissioner by a company under sections 77 and 78 of the Tax Administration Act 1994

annual FDPA return means the return to be filed with the Commissioner by a company under sections 71 and 72 of the Tax Administration Act 1994

annual gross income is defined in section BC 2 (Annual gross income)

annual ICA return means the return to be filed with the Commissioner by a company under section 69 of the Tax Administration Act 1994

annual income tax balance date is defined in section EG 1(10) (Election to use balance date used in foreign country) for the purposes of that section

annual PCA return means the return to be filed with the Commissioner by a company under section 66 of the Tax Administration Act 1994

annual rate is defined in section EE 61 (Meaning of annual rate)

annual rates means the rates of income tax fixed for a tax year by the annual taxing Act for that year

annual taxing Act means the provisions of any Act by which the rates of income tax are fixed for a tax year

annual total deduction is defined in section BC 3 (Annual total deduction)

approved issuer means a person for whom an approval under section 32M of the Tax Administration Act 1994 is in force

arm's length amount, for an arrangement that is a cross-border arrangement under section GC 6 (Purpose of rules and nature of arrangements) means an arm's length amount of consideration under section GC 13 (Calculation of arm's length amounts)

arrangement means an agreement, contract, plan, or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect

arrangement for assistance entered into by the government of New Zealand is defined in section CW 22(3) (Amounts derived by overseas experts and trainees in New Zealand by government arrangement) for the purposes of that section

arrangement property is defined in section GB 45(3) (Arrangements involving money not at risk) for the purposes of that section

ASC has the same meaning as **available subscribed capital**

ASC account means a memorandum account established by an ASC account company under section OF 1(2) (General rules for companies with ASC accounts)

ASC account company means a company that chooses under section OF 1(1) and OF 3 (which relate to ASCA companies) to become an ASCA company

ASC credit means a credit referred to in section OA 5(6) (Credits)

ASC debit means a debit referred to in section OA 6(6) (Debits)

ASCA means available subscribed capital account

assessable income is defined in section BD 1(5) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income)

assessment is defined in section 3(1) of the Tax Administration Act 1994

assessment period is defined in section GB 45(3) (Arrangements involving money not at risk) for the purposes of that section

asset—

(a) is defined in section CU 11 (Meaning of asset for sections CU 3 to CU 10) for the purposes of sections CU 3 to CU 10 (which relate to income from mining):

(b) is defined in section DU 8 (Meaning of asset for sections DU 1 to DU 7) for the purposes of sections DU 1 to DU 7 (which relate to deductions for mining)

asset base means a segregated or identifiable group of assets or proportion of a group of assets attributable to profit participation policies

associated, associated person, person associated, and other expressions indicating the association of persons with each other are defined in sections YB 1 to YB 16 (which relate to associated persons)

associated internal software developer is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)

associated mining operations is defined in section CU 29 (Other definitions)

associated non-attributing active CFC, for a CFC, means a person who is—

(a) associated with the CFC under section YB 2 (Two companies); and

(b) subject with the CFC to the laws of the same country or territory under which each company is liable to income tax on its income because of its domicile, residence, place of incorporation, or centre of management; and

(c) a non-attributing active CFC

association, in subpart HE (Mutual associations), and sections CB 33, CB 34, and DV 19, (which relate to mutual associations), means a body or association of persons, whether incorporated or not

association rebate is defined in section HE 3 (Association rebates) for the purposes of subpart HE (Mutual associations) and sections CB 34 and DV 19 (which relate to mutual associations)

attributable CFC amount is defined in section EX 20B (Attributable CFC amount)

attributed CFC income is defined in section CQ 2 (When attributed CFC income arises)

attributed CFC loss is defined in section DN 2 (When attributed CFC loss arises)

attributed CFC net loss, for a person and for an income year in which they have an attributed CFC loss, means the part of the loss that the person is denied as a deduction because of section DN 4 (Ring-fencing cap on deduction), but must instead deal with under Part I (Treatment of tax losses)

attributed PIE income means an amount of income attributed by a multi-rate PIE to an investor in the PIE under section HM 36 (Calculating amounts attributed to investors)

attributed PIE loss means an amount of loss attributed by a multi-rate PIE to an investor in the PIE under section HM 36 (Calculating amounts attributed to investors)

attributed repatriation is defined in section CD 45 (When does a person have attributed repatriation from a controlled foreign company?)

attributing interest means an attributing interest in a foreign investment fund as defined in sections EX 29 to EX 43 (which relate to attributing interests in FIFs)

attribution period, for a multi-rate PIE, means a period described in section HM 34 (Attribution periods)

Australian approved deposit fund means an approved deposit fund as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust)

Australian exempt public sector superannuation scheme means an exempt public sector superannuation scheme as defined in section 10 of the Superannuation Industry (Supervision) Act 1993 (Aust)

Australian financial year is defined in section CV 8(3) (Regulations: Australian wine producer rebate) for the purposes of that section

Australian ICA company means a company referred to in section OB 2(1) (Australian companies with imputation credit accounts)

Australian regulated superannuation fund means a regulated superannuation fund as defined in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust)

Australian retirement savings account means a retirement savings account as defined in section 8 of the Retirement Savings Accounts Act 1997 (Aust)

Australian wine producer rebate means a producer rebate (under A New Tax System (Wine Equalisation Tax) Act 1999 (Aust) and regulations made under that Act) that relates to wine exported from New Zealand on or after 1 July 2005

author is defined in section EI 3(6) (Assigning or granting copyright) for the purposes of that section

authorised savings institution means an authorised savings institution as defined in the Home Ownership Savings Act 1974

available capital distribution amount means the amount calculated for a share in a company under section CD 44 (Available capital distribution amount)

available subscribed capital means the amount calculated for a share in a company under section CD 43 (Available subscribed capital (ASC) amount)

available tax loss, for a person and their net income, means—

(a) a loss balance carried forward that, under Part I (Treatment of tax losses), is required to be subtracted from the net income:

(b) an amount of another company's tax loss that, under Part I, the person, if it is a company, is allowed to subtract from the net income

(c) an attributed CFC net loss or FIF net loss carried forward that, under subpart IQ (Attributed controlled foreign company net losses and foreign investment fund

net losses), is required to be subtracted from the net income:

(d) the amount of another company's attributed CFC net loss or FIF net loss that, under subpart IQ, is subtracted from the net income

balance date, for the purposes of section RC 10 (Calculating amount of instalment under standard and estimation methods) and subpart RC (Provisional tax), section RP 17B (Tax pooling accounts and their use), and schedule 3 (Payment of provisional tax and terminal tax) means the date of the annual balance of a person's financial statements for their tax year

balloted loan right is defined in section DV 10(3) (Building societies) for the purposes of that section

banking company means a person carrying on in New Zealand the business of banking

base amount is defined in section RC 8(2) (GST ratio method) for the purposes of that section

base premium for the 1998–99 premium year is defined in section EZ 30(3) (Base premium for 1998–99 premium year under Accident Insurance Act 1998) for the purposes of that section

basic tax rate, for a person,—

(a) means the basic rate of income tax for the person set out in schedule 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits) and schedule 2 (Basic tax rates for PAYE income payments); and

(b) in the case of a transitional year, resulting from a change in a person's balance date, has the meaning given in section 39(5) of the Tax Administration Act 1994

benchmark distribution means the first taxable Maori authority distribution by a Maori authority in a tax year

benchmark dividend, means the first dividend paid by a company in a tax year that is not 1 of the following kinds

(a) a dividend to which the company is not allowed by section OB 63 (Australian dividends) to attach an imputation credit:

(b) a distribution of a co-operative company for which the company has made an election under section OB 82 (When and how co-operative company makes election)

beneficial interest includes an interest that is contingent, discretionary or unvested

beneficiary is defined in section DX 1(5) (Testamentary annuities) for the purposes of that section

beneficiary income is defined in section HC 6 (Beneficiary income)

benefit is defined in section DB 45(4) (Bribes paid to public officials) for the purposes of that section

benefit fund PIE means a defined benefit fund that—

(a) meets the requirements of section HM 7 (Requirements); and

(b) chooses to become a PIE under section HM 71 (Choosing to become PIE); and

(c) has not chosen to cancel PIE status under section HM 29 (Choosing to cancel status); and

(d) does not attribute amounts to investors

best estimate assumptions means assumptions about the future that—

(a) are actuarially determined; and

(b) are made using professional judgement, training and experience; and

(c) are not deliberately overstated or understated

BETA has the same meaning as **branch equivalent tax account**

BETA company means a company that chooses under section OE 1(1) and OE 3 (which relate to companies with branch equivalent tax accounts) to become a BETA company

BETA person means a person who chooses under section OE 1(2) and OE 17 (which relate to persons with branch equivalent tax accounts) to become a BETA person

binding ruling is defined in section 3 of the Tax Administration Act 1994

bloodstock—

(a) means a horse that is a member of the standardbred or thoroughbred breed of horses; and

(b) includes a share or interest in such a horse

bonus issue means the issue of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue

bonus issue in lieu means a bonus issue made, on or after 1 October 1988, under an arrangement conferring on shareholders of a company an election whether to receive—

(a) a bonus issue; or
(b) money; or
(c) money's worth, other than money's worth that is a bonus issue

boutique investor class, for a portfolio investment entity, means an investor class of the entity if—

(a) the class does not have 20 or more members; and
(b) the entity has 1 or more other investor classes that include 20 or more persons; and
(c) no investor in the class described in paragraph (a), other than the manager or trustee of the entity, can control investment decisions relating to the class; and
(d) the investor interests of investors in all investor classes described in paragraph (a) of the entity add up to less than 10% of the total value of interests in the entity

branch equivalent company means, at any time for any person, a company that is at the time as that provision read immediately before being amended by section 161 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009—

(a) a controlled foreign company; or
(b) a company from which the person is deriving FIF income or incurring FIF loss that they calculate using the branch equivalent method, including income or loss under section EX 50(6) (Branch equivalent method)

branch equivalent income, for a foreign company and for an accounting period, means the amount of income for the accounting period calculated under section EX 21 (Branch equivalent income or loss: calculation rules)

branch equivalent loss, for a foreign company and for an accounting period, means the amount of loss for the accounting period calculated under section EX 21 (Branch equivalent income or loss: calculation rules) as that provision read immediately before being amended by section 161 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009

branch equivalent method means the method of calculating FIF income or FIF loss in section EX 50 (Branch equivalent method)

branch equivalent tax account means the account maintained by a BETA company under section OE 2 (Branch equivalent tax accounts of companies) or a BETA person under section OE 17(3) (Person choosing to become BETA person)

branch equivalent tax credit means a credit referred to in section OA 5(5) (Credits)

branch equivalent tax debit means a debit referred to in section OA 6(5) (Debits)

bribe is defined in section DB 45(4) (Bribes paid to public officials) for the purposes of that section

broodmare means a broodmare that is bloodstock

building, in subparts EE and EZ, does not include—

(a) a grandparented structure:

(b) commercial fit-out

building society is defined in section 2 of the Building Societies Act 1965

business—

(a) includes any profession, trade, or undertaking carried on for profit:

(b) includes the activities of—

(i) a statutory producer board:

(ii) an airport operator:

(c) is further defined in section DD 11 (Some definitions) for the purposes of subpart DD (Entertainment expenditure)

business contacts is defined in section DD 11 (Some definitions) for the purposes of subpart DD (Entertainment expenditure)

business premises is defined in section DD 11 (Some definitions) for the purposes of subpart DD (Entertainment expenditure)

business tool means an item that is used by an employee in the performance of their work duties and in the absence of section CX 21 (Business tools) would give rise to an unclassified benefit

business use, for a motor vehicle and for a person, means travel undertaken by the vehicle wholly in deriving the person's income

calculation method, for the calculation of FIF income or FIF loss, means any of the accounting profits method, the branch equivalent method, the comparative value method, the deemed rate of return method, the fair dividend rate method, and the cost method

calculation period, for a multi-rate PIE, means a period in which the entity calculates an amount under section HM 47 (Calculation of tax liability or tax credit of multi-rate PIEs) that—

(a) consists of 1 or more attribution periods:

(b) for a calculation under the quarterly calculation option, is a quarter:

(c) for a calculation under the exit calculation or provisional tax calculation options, is an income year:

(d) for a calculation under the exit calculation option when an exit period arises, is the exit period

cancellation, for a company and for a share, means the acquisition, redemption, or other cancellation of the whole share by the company, including on the liquidation of a company, and when a stapled debt security ceases to be a share

capital contribution —

(a) in sections CG 8, DB 64, and EE 48 (which relate to capital contributions), means an amount that—

(i) is paid by a person (the **payer**) to a person (the **recipient**) under an agreement between them that is not a contract of insurance; and

(ii) is paid by the payer other than in their capacity of settlor, partner, or shareholder of the recipient; and

(iii) is not income of the recipient, ignoring section CG 8; and

(iv) is paid, under the express terms and conditions of the agreement, as a contribution for depreciable property owned or to be acquired by the recipient:

(b) is defined in section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section

capital limitation is defined in section DA 2(1) (General limitations)

capital property is defined in section CD 44(18) (Available capital distribution amount) for the purposes of that section

car,—

(a) in section EZ 16 (Amount of depreciation loss for plant or machinery additional to section EZ 15 amount), and in the definition of **qualifying asset**,—

(i) means a motor vehicle designed exclusively or mainly to carry up to 9 people, including the driver; and

(ii) includes such a motor vehicle that has rear doors and collapsible rear seats; and

(iii) does not include a moped or a motorcycle:

(b) in the FBT rules, and in the definition of **work-related vehicle**,—

(i) means a motor vehicle designed exclusively or mainly to carry people:

(ii) includes such a motor vehicle that has rear doors or collapsible rear seats:

(iii) does not include a minibus, moped, motorcycle, or taxi

cash accounting method is defined in section EG 2(4) (Adjustment for changes to accounting practice) for the purposes of that section

cash basis person is defined in section EW 54 (Meaning of cash basis person)

casual agricultural employee means—

(a) a casual agricultural worker:

(b) a shearer:

(c) a shearing shed hand

casual agricultural worker means a person engaged on a day to day basis for a period of no more than 3 months as a casual seasonal worker for the exclusive purpose of doing seasonal agricultural, horticultural, market gardening, nursery, orchard, or tobacco farming work, or other seasonal work that, in the opinion of the Commissioner, is work of a like nature to those classes of work

category A income is defined in section HR 3(1) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

category B income is defined in section HR 3(3) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

CFC has the same meaning as **controlled foreign company**

charitable or other public benefit gift is defined in section LD 3 (Meaning of charitable or other public benefit gift)

charitable organisation—

(a) means, for a quarter or an income year, an association, fund, institution, organisation, society, or trust to which section LD 3(2) (Meaning of charitable or other public benefit gift) or schedule 32 (Recipients of charitable or other public benefit gifts) applies—

  (i) in the quarter; or

  (ii) in the income year, if fringe benefit tax is payable on an income year basis under section RD 60 (Close company option); and

(b) does not include a local authority, a public authority, or a university

charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement

of education or religion, or any other matter beneficial to the community, and—

(a) the purpose of a trust, society, or institution is charitable under this Act if the purpose would meet the public benefit requirement apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood:

(b) a marae has a charitable purpose if—

(i) the physical structure of the marae is situated on land that is a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (the Maori Land Act 1993); and

(ii) the funds of the marae are not used for a purpose other than the administration and maintenance of the land and of the physical structure of the marae, or not used for a purpose that is a charitable purpose other than under this paragraph

charitable trust is defined in section HC 13 (Charitable trusts) for the purposes of the trust rules

chief executive is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

chief executive of the administering department—

(a) means the chief executive, appointed under the State Sector Act 1988, of the department responsible for administering the Social Security Act 1964; and

(b) includes any person authorised to perform any of the functions of the chief executive

child in subparts MA to MF and MZ (which relate to tax credits for families), and in the definition of **dependent child**, means a person who is not in a marriage, civil union, or de facto relationship, and who—

(a) is aged 15 years or less; or

(b) is aged 16 or 17 years and is not financially independent; or

(c) is aged 18 years and is a person for whom a tax credit is allowed under section MD 1 (Abating WFF tax credit) or both sections MD 1 and ME 1 (Minimum family tax credit)

child tax credit is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

civil union partner, in subparts MA to MF and MZ (which relate to tax credits for families) and in sections LC 4 and LC 13 (which relate to tax credits for natural persons) and in the definitions of **entitlement period**, **full-time earner**, and **separated person**, does not include a separated person

claim, in the life insurance rules, is defined in section EY 7 (Meaning of claim)

claim of right means a belief that an act is lawful, although the belief may be based on ignorance, or mistake, of—

(a) fact; or

(b) any matter of law other than the enactment against which the offence is alleged to have been committed

class, in subpart EC (Valuation of livestock), and in the definition of **national average market value**,—

(a) means a category of livestock listed in schedule 17, column 2 (Types and classes of livestock); and

(b) when used of a particular type of livestock, means any of the categories listed for that particular type

class of policies means life insurance policies that have substantially the same terms and conditions, and that are priced by the life insurer using substantially the same assumptions

close company—

(a) means, at any time, a company to which 1 of the following applies:

(i) at the time there are 5 or fewer natural persons the total of whose voting interests in the company is more than 50% (treating all natural persons associated at the time as 1 natural person); or

(ii) at the time a market value circumstance exists for the company and there are 5 or fewer natural persons the total of whose market value interests in the company is more than 50% (treating all natural persons associated at the time as 1 natural person); and

(b) in section RD 3(2) to (4) (PAYE income payments), includes a company with 25 or fewer shareholders; and

(c) does not include a special corporate entity

close of trading spot exchange rate, for any foreign currency on any day, means the rate determined by applying the following paragraphs in order

(a) the rate of a spot contract for the purchase of New Zealand dollars using the foreign currency at any time on that day on a market approved, with the rate obtained from the sources of information approved, by the Commissioner in determination G6D made under section 64E of the Income Tax Act 1976 (or a determination issued in substitution for that determination); and

(b) if no such rate can be obtained for that day, then the rate on the next day on which it can be obtained and that is no later than 5 working days after the first day; and

(c) if no such rate of a spot contract can be obtained, the cross rate determined as at 3.00 pm New Zealand time on that day by applying the method outlined in paragraph 6(3)(c) of determination G6D made under section 64E of the Income Tax Act 1976 (or in the corresponding paragraph of a determination issued in substitution for that determination); and

(d) if no such rate can be obtained, the rate determined by applying the method set out in paragraph 6(2) of determination G9A made under section 64E of the Income Tax Act 1976 (or in the corresponding paragraph of a determination issued in substitution for that determination)

close relative is defined in section FC 1(2) (What this subpart does) for the purposes of subpart FC (Distribution, transmission, and gifts of property)

closely-held company means, at any time, a company to which 1 of the following applies

(a) at the time there are 5 or fewer persons the total of whose direct voting interests in the company is more than 50%, treating all persons associated at the time as 1 person; or

(b) at the time,—

(i) a market value circumstance exists for the company; and

(ii) there are 5 or fewer persons the total of whose direct market value interests in the company is more than 50%, treating all persons associated at the time as 1 person

closing stock, for a person and for an income year, means trading stock of the person at the end of the income year

combined imputation and CTR ratio means the ratio set out in section OD 22 (CTR credits and imputation credits attached to dividends)

combined imputation and FDP ratio means the ratio set out in section OC 29 (FDP credits and imputation credits attached to dividends)

combined tax and earner-related payment means, for a PAYE income payment, the total of—

(a) the amount of tax for the PAYE income payment required to be withheld and paid under the PAYE rules; and

(b) the amount withheld from the PAYE income payment under—

(i) section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992, on account of the earner's premium payable by employees under the Act; or

(ii) section 285 of the Accident Insurance Act 1998, on account of the earner's premium payable by employees under the Act; or

(iii) section 221 of the Accident Compensation Act 2001, on account of the earner's levy payable by employees under the Act

commencement of this Act, in sections ZA 3 (Transitional provisions), ZA 4 (Saving of binding rulings), ZA 5 (Saving of accrual determinations), and ZA 6 (Comparative tables of old and new provisions), means commencement under section A 2(2) (Commencement)

commercial bill—

(a) includes—

(i) a document creating or securing a legal or equitable security over goods, as defined in section 16 of the Personal Property Securities Act 1999, for the payment of money owing or to become owing, whether or not the document is registered under an Act; and

(ii) a bill of exchange, as defined in section 3 of the Bills of Exchange Act 1908; and

(iii) a promissory note, as defined in section 84 of the Bills of Exchange Act 1908, other than a banknote; and

(iv) a Treasury Bill; and

(v) a document or agreement that has substantially the same purpose or effect as an item referred to in any of subparagraphs (i) to (iv); and

(vi) a share or interest in an item referred to in any of subparagraphs (i) to (v); and

(b) does not include—

(i) a debenture or bond for the payment of a security issued by a body corporate; or

(ii) a security, whether legal or equitable, over an estate or interest in land

commercial building means a building that is not, in part or in whole, a dwelling, unless use as a dwelling is a secondary and minor use

commercial fit-out means an item to the extent to which it is—

(a) plant attached to a commercial building, but not used inside a dwelling within the commercial building:

(b) attached to, and non-structural in relation to, a building, if the item is not used for weatherproofing the building and—

(i) is not used in relation to, and is not part of, a dwelling within the building; or

(ii) is used in relation to, but is not part of, a dwelling within the building, and the building is a commercial building

commercial production means the production of petroleum—

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

(b) in commercial quantities; and

(c) on a continuing basis

Commissioner means the Commissioner of Inland Revenue as defined in section 3 of the Tax Administration Act 1994

common interest is defined in section YC 13(4) (Corporate spin-outs) for the purposes of that section

common market value interest—

(a) means the market value interest measured under section IC 3(4) (Common ownership: group of companies) for the purposes of that section and section IC 4:

(b) is defined in section YC 13(6) (Corporate spin-outs) for the purposes of that section

common span is defined in section IP 2(1) (Group companies' common span) for the purposes of subpart IP (Meeting requirements for part-years)

common voting interest—

(a) means the voting interest measured under section IC 3(3) (Common ownership: group of companies) for the purposes of that section and section IC 4:

(b) is defined in section YC 13(5) (Corporate spin-outs) for the purposes of that section

commonality period is defined in section IC 6(1) (Common ownership for period) for the purposes of Part I (Treatment of tax losses)

Commonwealth—

(a) means the British Commonwealth of Nations; and

(b) includes every territory for whose international relations the Government of any country of the Commonwealth is responsible

community trust is defined in section 4 of the Community Trusts Act 1999

company—

(a) means a body corporate or other entity that has a legal existence separate from that of its members, whether it is incorporated or created in New Zealand or elsewhere:

(ab) does not include a partnership:

(abb) does not include a look-through company, except in the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, the RSCT rules, and for the purposes of subpart FO (Amalgamation of companies):

(ac) includes a listed limited partnership:

(ad) includes a foreign corporate limited partnership:

(b) includes a unit trust:

(c) includes a group investment fund that is not a designated group investment fund, but only to the extent to which the fund results from investments made into it that are—

(i) not from a designated source, as defined in section HR 3(5) (Definitions for section HR 2: group investment funds); and

(ii) not made before 23 June 1983, including an amount treated as invested at that date under the definition of **pre-1983 investment** in section HR 3(8):

(d) includes an airport operator:

(e) includes a statutory producer board:

(f) includes a society registered under the Incorporated Societies Act 1908:

(g) includes a society registered under the Industrial and Provident Societies Act 1908:

(h) includes a friendly society:

(i) includes a building society:

(j) is further defined in section EX 30(7) (Direct income interests in FIFs) for the purposes of that section

company dividend statement means a statement required by section 67 of the Tax Administration Act 1994 to be completed and retained by a company for a dividend

comparative value method means the method of calculating FIF income or FIF loss in section EX 51 (Comparative value method)

compensation is defined in section LC 5(4) (Meaning of engaged in full-time work) for the purposes of that section

completed, for a film, means the completion of the film to—

(a) the stage of production at which the film has been completely edited, shot by shot, to its final length; or

(b) a production stage equivalent to that described in paragraph (a)

complying fund rules is defined in section RD 66 (Complying fund rules)

complying superannuation fund means a superannuation fund that is approved as a complying superannuation fund under section 35 of the Superannuation Schemes Act 1989

complying trust is defined in section HC 10 (Complying trusts)

compulsory employer contribution has the same meaning as in the KiwiSaver Act 2006

conduct is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

conduit company is a company that meets the requirements of section FF 2 (When interest apportionment rule applies)

consideration—

(aa) includes the amount owing under a stapled debt security when the security ceases to be a share, in section CD 43 (Available subscribed capital (ASC) amount):

(a) is defined in section EE 45 (Consideration for purposes of section EE 44) for the purposes of section EE 44 (Application of sections EE 48 to EE 52):

(b) means an amount determined under the financial arrangements rules in—

(i) the financial arrangements rules:

(ii) section EX 21(11) (Branch equivalent income or loss: calculation rules):

(iii) sections FO 12 to FO 15 (which relate to the treatment of financial arrangements on amalgamation):

(iv) sections FO 18 to FO 20 (which relate to companies that are parties to financial arrangements):

(v) section HC 31(4) (When existing trusts come into tax base)

consolidated BETA group is defined in section OP 97(1) (Branch equivalent tax accounts of consolidated BETA groups)

consolidated FDP group is defined in section OP 51(1) (FDP accounts of consolidated FDP groups)

consolidated group means, at any time, a consolidated group formed under section FM 35 (Forming consolidated group) as it is constituted at that time

consolidated imputation group means—

(a) an imputation group:

(b) a resident imputation subgroup:

(c) a consolidated group, no member of which is a member of an imputation group

consolidation rules means the provisions listed in section FM 2(2) (Consolidation rules)

contaminant means a contaminant as defined in section 2(1) of the Resource Management Act 1991

continental shelf is defined in the Continental Shelf Act 1964

continuity period—

(a) is defined in section IA 5(6) (Restrictions on companies' loss balances carried forward) for the purposes of that section:

(b) is defined in section LP 4(3) (Continuity rules for carrying credits forward) for the purposes of that section

continuity provisions means—

(a) section GB 3 (Arrangements for carrying forward loss balances: companies); and

(b) section GB 4 (Arrangements for grouping tax losses: companies); and

(c) sections IA 3 and IA 4 (which relate to the use of tax losses); and

(d) section IA 5 (Restrictions on companies' loss balances carried forward); and

(e) section IC 1 (Company A making tax loss available to company B); and

(f) section LP 3(4) (Use of remaining credits); and

(g) section OB 41 (ICA debit for loss of shareholder continuity); and
(h) section OC 24 (FDPA debit for loss of shareholder continuity); and
(i) section OE 10 (BETA credit for loss of shareholder continuity); and
(j) section OK 15 (MACA debit for loss of shareholder continuity)

contract activity or service, for a non-resident contractor, means—
(a) performing any work in New Zealand:
(b) rendering a service of any kind in New Zealand:
(c) providing the use of, or right to use, in New Zealand, any personal property or services of a person other than the non-resident contractor

contract of employment is defined in section DC 3B(3) (Payments to working owners) for the purposes of that section and the definition of **working owner**

contract of service is defined in section DC 4(5) (Payments to working partners) for the purposes of that section

contract payment, for a non-resident contractor, means any payment other than—
(a) a royalty; or
(b) a payment made to the non-resident contractor by or on behalf of a person who is not associated with the contractor to reimburse costs incurred by the contractor; or
(c) a payment referred to in schedule 4, part E (Rates of tax for schedular payments)

contribution, in the FBT rules, means a contribution made—
(a) directly; or
(b) indirectly by reimbursement through another person

control interest, for a foreign company, is defined in sections EX 2 (Four categories for calculating control interests) and EX 7 (Indirect control interests)

control interest category means 1 of the categories of control interest listed in section EX 2(2) (Four categories for calculating control interests)

controlled foreign company is defined in section EX 1 (Meaning of controlled foreign company)

controlled petroleum mining company means a company that is a petroleum miner if—

(a) 90% or more in value of its outstanding shares are held, directly or indirectly, by or for 5 or fewer persons; and

(b) the market value of a petroleum permit, including an asset of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset) attributable to the permit, held by the company is at least 75% of the value of its assets minus its liabilities, as shown in the company's audited financial statement or accounts prepared under generally accepted accounting practice

controlled petroleum mining entity means—

(a) a controlled petroleum mining company; or

(b) a controlled petroleum mining holding company; or

(c) a controlled petroleum mining trust; or

(d) a controlled petroleum mining holding trust

controlled petroleum mining holding company means a company if—

(a) 90% or more in value of its outstanding shares are held, directly or indirectly, by or for 5 or fewer persons; and

(b) the total market value of the following shares and trust interests held by the company is at least 75% of the value of its assets minus its liabilities, as set out in the company's audited financial statement or accounts prepared according to generally accepted accounting practice:

(i) shares in petroleum mining companies:

(ii) shares in petroleum mining holding companies:

(iii) trust interests in petroleum miners that are trusts:

(iv) trust interests in petroleum mining holding trusts

controlled petroleum mining holding trust means a trust that is a petroleum miner if—

(a) 90% or more in value of the trust is owned, directly or indirectly, by or for 5 or fewer persons; and

(b) the total market value of the following shares and trust interests held by the trust is at least 75% of the value of its assets minus its liabilities, as set out in the trust's

accounts prepared according to generally accepted accounting practice:

(i) trust interests in petroleum miners that are trusts:

(ii) trust interests in other petroleum mining holding trusts:

(iii) shares in petroleum miners that are companies:

(iv) shares in petroleum mining holding companies

controlled petroleum mining trust means a trust that is a petroleum miner if—

(a) 90% or more in value of the trust is owned, directly or indirectly, by or for 5 or fewer persons; and

(b) the market value of a petroleum permit, including an asset of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset) attributable to the permit, held by the trust is at least 75% of the value of its assets minus its liabilities, as shown in the trust's accounts prepared under generally accepted accounting practice

controlling shareholder is defined in section HD 15(9) (Asset stripping of companies) for the purposes of that section

convert, for a New Zealand emissions unit, means convert as defined in section 4(1) of the Climate Change Response Act 2002

convertible credit means a credit that a person is allowed under Part L (Tax credits and other credits)—

(a) for an imputation credit; or

(b) for FDP, if the person is not entitled to a refund of the credit under Part R (General collection rules)

convertible note means a document or a combination of documents that—

(a) is issued or given by a company; and

(b) creates or relates to money lent to the company, whether or not secured; and

(c) provides, whether exclusively or not,—

(i) for the holder to have a right to subscribe for shares or stock in the capital of the company or in the capital of another company; or

(ii) for the amount or any part of the amount, with or without interest and whether at par or otherwise,

to be converted into or repaid by the issue of shares in the company, whether the conversion or repayment by the issue of shares is mandatory or is at the option of the company or of the holder

co-operative company does not include a statutory producer board

copyright in a sound recording means the copyright in the version of the recording of which copies have been sold or offered for sale to the public

core acquisition price is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

corpus is defined in section HC 4 (Corpus of trust) for the purposes of the trust rules

corresponding income year, for a tax year, means an income year that ends in the period starting on 1 October in the tax year and ending on 30 September immediately after the tax year

cost,—

(a) in subpart EB (Valuation of trading stock (including dealer's livestock)), for trading stock, means costs incurred in the ordinary course of business to bring trading stock to its present location and condition, including purchase costs and costs of production, calculated under sections EB 6 to EB 8 (which relate to costs for standard valuations), EB 15 to EB 18 (which relate to costs for low-turnover traders), and EB 22 (Valuing closing stock consistently for low-turnover traders):

(b) is defined in section RD 40(3) (Goods) for the purposes of that section:

(c) in sections RD 42 and RD 43 (which relate to goods provided with staff discount), for a registered person who may claim input tax for the cost of the goods, means the GST-inclusive cost of the goods to the person

cost method means a method of calculating FIF income or FIF loss under section EX 56 (Cost method)

cost of timber, in sections DP 11, EJ 1, EW 2, EZ 44, FB 6, and FB 7(which relate to the disposal of timber),—

(a) means the amount of expenditure incurred by a person in relation to timber—

(i) before harvest, for a disposal of harvested timber:
(ii) before the disposal of the timber or the relevant right, for a disposal of standing timber or a disposal of a right to take timber, or another right referred to in section DP 11(4) (Cost of timber); and

(b) includes, for section DP 11,—
(i) expenditure on planning, planting, and growing the timber:
(ii) expenditure incurred in relation to the rights listed in section DP 11(4); and

(c) excludes—
(i) expenditure for which a deduction is allowed under a provision of this Act other than section DP 11:
(ii) expenditure to which section DB 46 (Avoiding, remedying, or mitigating effects of discharge of contaminant) applies:
(iii) an amount allowed as a deduction under section DQ 4 (Environmental restoration accounts scheme)

cost price,—

(a) in subpart EC (Valuation of livestock), does not include any amount of input tax in relation to the supply of livestock or trading stock to a person; and

(b) in section FZ 2 (Effect of specified lease on lessor and lessee), and in the definition of **specified lease**, and for a personal property lease asset, means the amount of expenditure of a capital nature that is incurred, in acquiring and installing the asset,—
(i) by the lessor; or
(ii) if the lessor under a lease acquires the asset as lessee under any other lease, by the person who is the lessor in the other lease; and

(c) as a qualification on paragraph (b), if, in carrying on a business in the income year in which the asset is acquired, the lessor acquires, manufactures, or assembles as trading stock, and distributes or sells, an asset of the same kind as the asset, the cost price for the asset is an

amount equal to the normal price for which, at the start of the lease period, the lessor would have sold an asset of the same kind as the asset to the lessee; and

(d) as another qualification on paragraph (b), if the lessor has used the asset in deriving income before the lease is entered into, the cost price of the asset is equal to the capital expenditure incurred by the lessor in acquiring the asset, reduced by the total of the amounts of depreciation loss for which the lessor has been allowed deductions for the asset; and

(e) as another qualification on paragraph (b), if, for an asset and a lease entered into on or after 29 October 1983, an amount cannot be determined under any of paragraphs (b) to (d), the cost price for the asset is an amount equal to the market price of the asset at the start of the term of the lease or, if there is no such market price or there are 2 or more, is an amount equal to the amount that, in the circumstances of the case, is reasonable, having regard to the nature of the asset and to the tenor of this definition

council-controlled organisation—

(a) means—

(i) an organisation that is a council-controlled trading organisation as defined in section 6 of the Local Government Act 2002, and is not a company:

(ii) a company that is a council-controlled organisation, under paragraph (a)(i) of the definition of **council-controlled organisation** in section 6(1) of the Local Government Act 2002:

(iii) an organisation that is a council-controlled organisation, under paragraph (b) of the definition of **council-controlled organisation** in section 6(1) of the Local Government Act 2002, and that has, in an organisation of a kind described in subparagraph (i) or (ii), control of at least 50% of the votes at any meeting of the members or the controlling body of the organisation, or the right to appoint at least 50% of the directors, man-

agers, or trustees of the organisation (however the positions are described):

(iv) an organisation that would be a council-controlled organisation of a kind described in paragraph (a) or (b) or (c) if it did not have an exemption granted under section 6(4)(i) of the Local Government Act 2002:

(v) the New Zealand Local Government Association Incorporated:

(vi) a company or organisation, as defined in section 6(2) of the Local Government Act 2002, that is subject to the control, directly or indirectly, of the New Zealand Local Government Association Incorporated:

(vii) New Zealand Local Government Insurance Corporation and any subsidiaries it has:

(viii) Watercare Services Limited and any subsidiaries it has: but

(b) does not include Auckland Transport (as established by section 38 of the Local Government (Auckland Council) Act 2009) or Auckland Regional Holdings (as established by section 18 of the Local Government (Auckland) Amendment Act 2004 or the New Zealand Local Government Funding Agency Limited

counted associate is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

cover review period is defined in section EY 30 (Transitional adjustments: life risk)

credit account continuity provisions means—

(a) section OB 41 (ICA debit for loss of shareholder continuity); and

(b) section OC 24 (FDPA debit for loss of shareholder continuity); and

(c) section OE 10 (BETA credit for loss of shareholder continuity)

credit card repayment insurance is defined in section EY 30 (Transitional adjustments: life risk)

credit of tax has the same meaning as **tax credit**

credit transfer notice means a credit transfer notice issued under section 30C of the Tax Administration Act 1994

creditable membership, for a person,—

(a) means membership of a KiwiSaver scheme or a complying superannuation fund; and

(b) includes the following periods:

(i) the period beginning on the first day of a month in which a KiwiSaver contribution for the person is first deducted or a contribution for the person is first received by the Commissioner and ending on the day on which securities are first allotted by the scheme for the person:

(ib) the period beginning on the day which the Commissioner nominates when requested by the person, in circumstances where, due to matters outside the control of the person, the first deduction of KiwiSaver contributions was delayed, and ending on the day on which securities are first allotted by the KiwiSaver scheme for the person:

(ii) the days in the month in which securities are first allotted by the scheme or fund for the person:

(iii) for the period beginning on 1 July 2007 and ending on the day on which securities are first allotted by the scheme for the person, and for a person who contributes to the scheme before 1 November 2007, the days in the month on which the scheme receives a valid application for membership from the person and the days remaining in the period

creditor workout, in relation to a financial arrangement, means—

(a) a compromise, as that term is defined in section 227 of the Companies Act 1993, in writing that, for the parties to the financial arrangement, is binding under Part 14, 15, or 15A of that Act, or is otherwise legally binding, to the extent to which the compromise does not cancel all of a debt:

(b) a suspension in part of the repayment of any deposit, the payment of any debt, or the discharge of any obligation,

under section 44 of the Corporations (Investigation and Management) Act 1989

Crown Research Institute is defined in section 2 of the Crown Research Institutes Act 1992

CTR means conduit tax relief

CTR account means the account referred to in section OA 2(1)(c) (Memorandum accounts)

CTR additional dividend means a dividend paid under section LQ 5 (CTR additional dividends)

CTR company means a company that chooses under sections OD 1(1) and OD 3 (which relate to CTR companies) to become a CTR company

CTR credit is a credit referred to in section OA 5(4) (Credits)

CTR debit is a debit referred to in section OA 6(4) (Debits)

CTR group member is defined in section YD 11 (Meaning of CTR group member)

CTR holding company is defined in section YD 10 (Meaning of CTR holding company)

CTR ratio means the ratio set out in section OD 20 (CTR credits attached to dividends)

CTRA means conduit tax relief account

current value is defined in section HR 3(4) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

date of transfer, in subpart FB (Transfers of relationship property), and in the definitions of **year of transfer**, for property transferred under a relationship agreement, means the date on which the property was transferred

date the deposit ends—

(a) is defined in section EH 36 (Other definitions) for the purposes of the main income equalisation scheme:

(b) is defined in section EH 62 (Other definitions) for the purposes of the adverse event income equalisation scheme:

(c) is defined in section EH 79 (Other definitions) for the purposes of the thinning operations income equalisation scheme

day is defined in section RD 30(2) (Private use of motor vehicle: 24-hour period) for the purposes of section RD 29 (Private use of motor vehicle: formulas)

de facto partner means a person who is party to a de facto relationship

debenture includes debenture stock

debenture holder includes the owner of debenture stock

debt security is defined in section FA 2B(4) (Stapled debt securities)

deductible foreign equity distribution means a distribution by a foreign company to a company, in relation to a share in the foreign company,—

(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the foreign company or on the income of a company in the same group as the foreign company:

(b) sourced directly or indirectly out of an amount paid to the foreign company in relation to a financial arrangement or share by another company if—

  (i) the foreign company is not liable for income tax imposed by a country or territory other than New Zealand on the amount paid to the foreign company; and

  (ii) the other company is allowed a deduction, in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the other company, for the amount paid to the foreign company

deductible output tax, in sections DB 2 (Goods and services tax) and EE 54 (Cost: GST) the sum of the following amounts, as applicable:

(a) an amount of output tax charged in relation to a supply of goods and services that the Goods and Services Tax Act 1985 treats a registered person as making under—

  (i) section 5(23) of that Act:

(ii) section 5B of that Act when they have no deduction for any input tax on the acquisition of the goods or services:

(iii) the old apportionment rules referred to in section 21H of that Act; and

(b) an amount that is the result of an apportionment of input tax made in relation to the supply under section 20(3C) to (3I) of that Act to the extent to which the person does not have a deduction from output tax for the full amount of input tax:

(c) an amount of output tax accounted for in relation to the supply under section 20(3J) of that Act:

(d) an amount of output tax that is the result of adjustment made in relation to the supply under sections 21 to 21H of that Act

deduction, for a person, means a deduction of the person under section BD 2 (Deductions)

deemed rate of return method means the method of calculating FIF income or FIF loss in section EX 55 (Deemed rate of return method)

deferred military pay is defined in section CW 24(2) (Deferred military pay for active service) for the purposes of that section

defined benefit fund means a superannuation scheme, registered under the Superannuation Schemes Act 1989, that must comply with section 15(1)(a) of that Act

dependent child, for a child and a person,—

(a) means a child—

(i) whose care is primarily the responsibility of the person; and

(ii) who is maintained as a member of that person's family; and

(iii) who is financially dependent on that person:

(b) does not include a child in relation to whom—

(i) a payment is made under section 363 of the Children, Young Persons, and Their Families Act 1989:

(ii) a benefit is being paid under section 28 or 29 of the Social Security Act 1964:

(c) despite paragraph (b)(i), includes a child or a young person, as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989,—

(i) of whom the person is a parent within the meaning of that Act; and

(ii) to whom section 361 of that Act applies; and

(iii) who, under section 362 of that Act, is placed in the charge of the person

deposit—

(a) is defined in section EH 36 (Other definitions) for the purposes of the main income equalisation scheme:

(b) is defined in section EH 62 (Other definitions) for the purposes of the adverse event income equalisation scheme:

(c) is defined in section EH 79 (Other definitions) for the purposes of the thinning operations income equalisation scheme

depreciable intangible property is defined in section EE 62 (Meaning of depreciable intangible property)

depreciable property is defined in sections EE 6 (What is depreciable property?) and EE 7 (What is not depreciable property?)

depreciation loss—

(a) means a loss that a person has in the circumstances set out in section EE 1(2) (What this subpart does); and

(b) includes a deduction for depreciation that a person was allowed under an earlier Act

depreciation method is defined in section EE 12 (Depreciation methods)

depreciation percentage means a percentage set by the Commissioner under section EC 33 (Determining depreciation percentages)

depreciation recovery income—

(a) means income that a person has in the circumstances set out in section EE 1(3) (What this subpart does); and

(b) includes income that a person had under the corresponding provision of an earlier Act

derivative instrument means a derivative as defined in NZIAS 39

derived from New Zealand*[Repealed]*
[Repealed]

designated group investment fund is defined in section HR 3(6) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

designated source investments is defined in section HR 3(7) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

designated sources is defined in section HR 3(5) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

development is defined in section DB 35 (Some definitions) for the purposes of that section and section DB 34 (Research or development)

development investments is defined in section LZ 5 (Some definitions) for the purposes of sections LZ 2 to LZ 4 (which relate to credits for certain development projects)

diminished value, for an income year, means the value established by subtracting from the amount of expenditure described in sections DO 4 and DO 5, DO 12, or DP 3 (which relate to certain businesses on land) the following amounts

(a) the total income derived under section CB 28(8) (Environmental restoration accounts) in relation to the expenditure; and

(b) the total amount allowed as a deduction for the expenditure to any person—

  (i) in an earlier income year under this Act or an earlier Act:

  (ii) in the income year under this Act, except an amount allowed in the income year under section DB 46, DO 5, DO 6, DO 12, or DP 3

diminishing value equivalent is defined in section EC 34(4) (General rule) for the purposes of that section

diminishing value method, for depreciation, is defined in section EE 67 (Other definitions)

diminishing value rate is defined in section EE 67 (Other definitions)

direct control interest is defined in section EX 5 (Direct control interests)

direct income interest—

(a) is defined in section EX 9 (Direct income interests) except for the FIF rules:

(b) is defined in section EX 30 (Direct income interests in FIFs) for the FIF rules

direct market value circumstance means a market value circumstance for a company other than a market value circumstance described in paragraph (g) of the definition of **market value circumstance**

direct market value interest means a market value interest of a person in a company other than a market value interest of the person in the company to the extent to which it is treated as arising only under YC 4(5) (Look-through rule for corporate shareholders)

direct voting interest means a voting interest of a person in a company other than a voting interest of the person in the company to the extent to which it is treated as arising only under section YC 4(2) (Look-through rule for corporate shareholders)

director—

(a) means—

(i) a person occupying the position of director, whatever title is used:

(ii) a person in accordance with whose directions or instructions the persons occupying the position of directors of a company are accustomed to act:

(iii) a person treated as being a director by any other provision of this Act:

(iv) in the case of an entity that does not have directors and that is treated as, or assumed to be, a company by a provision of this Act, any trustee, manager, or other person who acts in relation to the entity in the same way as a director would act, or in a similar way to that in which a director

would act, were the entity a company incorporated in New Zealand under the Companies Act 1993:

(b) is defined in section HD 15(9) (Asset stripping of companies) for the purposes of that section

disabled workshop payment is defined in section CW 33(2) (Allowances and benefits) for the purposes of that section

discontinuance profit means the amount calculated by a life insurer following the steps in section EY 36 (Discontinuance profit for income year)

discontinuance profit formula means the formula in section EY 37 (Discontinuance profit formula (existing policies)) or the formula in section EY 38 (Discontinuance profit formula (new policies))

discount payment date is defined in section EZ 30(3) (Base premium for 1998–99 premium year under Accident Insurance Act 1998) for the purposes of that section

dispose,—

(a) in sections CB 6 to CB 16, CB 18, CB 19, CB 21, and CB 22 (which relate to the disposal of land), for land, includes—
  (i) compulsory acquisition under any Act by the Crown, a local authority, or a public authority:
  (ii) if there is a mortgage secured on the land, a disposal by or for the mortgagee as a result of the mortgagor's defaulting under the mortgage:

(b) in sections CB 24 (Disposal of timber or right to take timber), CB 25 (Disposal of land with standing timber), DP 10 (Cost of acquiring timber or right to take timber: other cases), DP 11 (Cost of timber), and GC 2 (Disposals of timber rights or standing timber), includes—
  (i) to grant a licence or easement:
  (ii) to grant a right to take timber:
  (iii) to create a right to take timber:
  (iv) to create a forestry right, as defined in the Forestry Rights Registration Act 1983, other than a right in favour of the proprietor:

(c) in sections CB 29 (Disposal of minerals) and DB 30 (Cost of non-specified mineral), includes—

(i) to grant a licence or easement:
(ii) to grant a right to take minerals from land:

(d) is defined in section CE 2 (Value and timing of benefits under share purchase agreements) for the purposes of that section:

(e) in sections CT 1, DT 2 to DT 4, DT 8 to DT 11, DT 13, DT 19, DZ 6, EJ 15, EJ 16, EJ 17, EZ 3, and GB 20 (which relate to petroleum mining),—
(i) means to sell or transfer an asset, voluntarily or involuntarily; and
(ii) includes to lose or destroy an asset:

(f) for depreciable property, includes destroy, withdraw, or let lapse, but does not include the following:
(i) for a patent application, conclude the patent application because a patent is granted in relation to the patent application:
(ii) for a geothermal well, have the well stop being available for use because section EE 6(4) (What is depreciable property) no longer applies:

(g) in subpart FC (Distribution, transmission, and gifts of property) means a disposal of property in the manner provided for in that subpart:

(h) for a partner,—
(i) includes surrendering or extinguishing some or all of their partner's interests:
(ii) does not include when their partner's interests may be treated as disposed of by operation of law because another partner disposes of that partner's interests, unless section HG 4 (Disposal upon final dissolution) applies

disposition of property in the trust rules, and in the definition of **superannuation contribution**, but not for a unit trust,—

(a) means an assignment, conveyance, delivery, payment, settlement, transfer, or other alienation of property, whether at law or in equity; and

(b) without limiting the generality of paragraph (a), includes—
(i) the issue of shares in a company:
(ii) the creation of a trust:

(iii) the grant or creation of a charge, lease, licence, mortgage, power, servitude, or other estate, interest, or right, in or over property:

(iv) the abandonment, discharge, forfeiture, release, or surrender of a contract, debt, or thing in action, or of an estate, interest, power, or right in or over property; and for this purpose a debt, or any other estate, interest, or right, is treated as having been released or surrendered when it becomes irrecoverable or unenforceable by action or for any reason ceases to exist:

(v) the exercise of a general power of appointment in favour of a person other than the holder of the power; and

(c) includes a disposition as defined in paragraph (a) or (b) by will or intestacy; and

(d) does not include a disclaimer of an interest under a disposition made during life or by will; and

(e) does not include a disclaimer of an interest under an intestacy

distinctive work clothing is defined in section CX 30(2) (Distinctive work clothing) for the purposes of that section

distribution is defined in section HC 14 (Distributions from trusts) for the purposes of the trust rules

dividend—

(a) is defined in sections CD 3 to CD 20 (which relate to income from equity) for the purposes of this Act, except for the definition of **investment society dividend**:

(b) in the RWT rules, does not include any dividend of the kind listed in section RE 2(1)(b), (5) and (6) (Resident passive income):

(c) in the NRWT rules,—

(i) includes an FDP credit attached to the dividend; and

(ii) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) (Capital distri-

butions on liquidation or emigration) and CD 44; and

(iii) does not include the amount of any imputation credit attached to the dividend:

(d) in subpart LP (Tax credits for supplementary dividends),—

(i) includes an amount paid to a shareholder that is a company and a person associated with the company paying the amount, if the amount is excluded from dividend treatment generally only as a result of sections CD 26(2)(b) and CD 44; and

(ii) does not include any non-cash dividend; and

(iii) does not include any dividend derived by a life insurer from a company treated as resident in New Zealand because of the Commissioner granting an application under section EY 49 (Non-resident life insurer becoming resident):

(e) in sections FM 30, GB 38, OP 58, and OP 64 to OP 68 (which relate to consolidated groups), subpart OE (Branch equivalent tax accounts (BETA)), subpart OJ (Policyholder credit accounts (PCA)), in the FDP rules and the imputation rules, and in the definitions of **benchmark dividend**, **combined imputation and FDP ratio**, **company dividend statement**, **excess credit amount**, **FDP credit**, **FDP ratio**, **foreign dividend**, **imputation credit**, **imputation ratio**, **pay**, and **shareholder dividend statement**, does not include any amount treated as a dividend under section CB 34(5) (Amounts derived by members from mutual associations), GB 23 (Excessive remuneration to relatives), or GB 25 (Close company remuneration to shareholders, directors, or relatives):

(f) in sections FM 30, GB 38, OP 58, and OP 64 to OP 68 (which relate to consolidated groups), subpart OE (Branch equivalent tax accounts (BETA)), subpart OJ (Policyholder credit accounts (PCA)), in the FDP rules and the imputation rules, and in the definitions of **benchmark dividend**, **combined imputation and FDP ratio**, **company dividend statement**, **excess**

credit amount, **FDP credit**, **FDP ratio**, **imputation credit**, **imputation ratio**, **pay**, and **shareholder dividend statement**, does not include an amount treated as a dividend under section GB 1(3) (Arrangements involving dividend stripping)

dividend treated as interest means a dividend that is paid in relation to a share issued by a company that is at the time of payment—

(a) a company not resident in New Zealand; or

(b) a company whose constitution prohibits all of its income or property from being distributed to a proprietor, member, or shareholder of the company; or

(c) a company all the income of which is exempt income other than under section CW 9 (Dividend derived by company from overseas) or CW 10 (Dividend within New Zealand wholly-owned group); or

(d) a company that, in New Zealand, is engaged solely in the business of life insurance referred to in section EY 8(2)(c) (Meaning of life insurance) and is not a company that maintains an FDP account because of an election made under section OC 1 (General rules for companies with FDP accounts)

donee organisation means an entity described in section LD 3(2) (Meaning of charitable or other public benefit gift) or listed in schedule 32 (Recipients of charitable or other public benefit gifts)

double tax agreement is defined in section BH 1 (Double tax agreements)

dwelling—

(a) means any place used predominantly as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place; but

(b) does not include any of the following:

(i) a hospital:

(ii) a hotel, motel, inn, hostel, or boardinghouse:

(iii) a serviced apartment for which paid services in addition to the supply of accommodation are provided to a resident, and in relation to which a resident does not have quiet enjoyment, as that term

is used in section 38 of the Residential Tenancies Act 1986:

(iv) a convalescent home, nursing home, or hospice:

(v) a rest home or retirement village, except to the extent that, in relation to a relevant place, it is, or can reasonably be foreseen to be, occupied as a person's principal place of residence for independent living:

(vi) a camping ground

early balance date has the meaning given in section YE 1(6) (References to balance dates and years)

early life regime application day means, for a life insurer that chooses to apply the new life insurance rules, as provided in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, for an income year that includes 1 July 2010, the first day of that income year

early-payment discount is defined in section RC 40 (Some definitions) for the purposes of sections RC 37 to RC 39 (which relate to discounts of income tax)

economic rate is defined in section EE 67 (Other definitions)

education grant is defined in section CF 1(2) (Benefits, pensions, compensation, and government grants) for the purposes of that section

effective interest is defined in section HA 43 (Meaning of effective interest)

effective look-through interest is defined in section HB 1(5) (Look-through companies are transparent)

election day worker means a person to whom all the following apply

(a) the person is engaged as a Deputy Returning Officer, poll clerk, interpreter, or usher, or for any other purpose, for—

(i) an election or poll held under the provisions of the Electoral Act 1993 or the Local Electoral Act 2001 or the Local Restoration Polls Act 1990; or

(ii) an election or poll to which any of the provisions of the Electoral Act 1993 or the Local Electoral

Act 2001 or the Local Restoration Polls Act 1990 applies; or

(iii) an election or poll held simultaneously with and in the same premises as an election or poll referred to in subparagraph (i) or (ii); and

(b) the person is paid by the authority controlling the election or poll; and

(c) the person's payment is exclusively for work done or services rendered immediately before, on, or immediately after the day on which the election or poll is held

election expiry date is defined in section HC 30(5) (Treatment of foreign trusts when settlor becomes resident) for the purposes of that section

electronic format means the format and the electronic means by which a return or particulars that are filed electronically are provided

emergency call is defined in section CX 34 (Meaning of emergency call)

emergency event means an event that was declared by the Governor-General to be an emergency event by Order in Council under section 183ABA of the Tax Administration Act 1994

emigrating company is defined in section FL 1(1) (What this subpart does)

emissions unit means a unit as defined in section 4(1) of the Climate Change Response Act 2002

emissions unit shortfall year, for a person means an income year that—

(a) is an emissions unit shortfall year for the person under section ED 1B(9)(a) (Valuation of emissions units issued for zero price); and

(b) has not ceased to be an emissions unit shortfall year for the person under section ED 1B(10)(c)

employee—

(a) means a person who receives or is entitled to receive a PAYE income payment:

(ab) for the purposes of the FBT rules, includes a shareholder-employee who has chosen under section RD 3(3) to treat amounts paid to them in the income year in their

capacity as employee as income other than from a PAYE income payment:

(b) in sections CW 17, CW 17B, CW 17C, and CW 18 (which relate to expenditure, reimbursement, and allowances of employees) includes a person to whom section RD 3(2) to (4) (PAYE income payments) applies:

(c) in the FBT rules, and in the definition of **shareholder-employee** (paragraph (b)), does not include a person if the only PAYE income payment received or receivable is—

(i) a payment referred to in section RD 5(1)(b)(iii), (3), (6)(b) and (c) and (7) (Salary or wages):

(ii) a schedular payment referred to in schedule 4, parts A and I (Rates of tax for schedular payments) for which the person is liable for income tax under section BB 1 (Imposition of income tax):

(d) is defined in section DC 15 (Some definitions) for the purposes of sections DC 12 to DC 14 (which relate to share purchase schemes):

(db) does not include an owner of a look-through company or a person who has a look-through interest for a look-through company, unless the owner or person is a working owner:

(e) for an employer, means an employee of the employer

employee share loan is defined in section CX 35 (Meaning of employee share loan)

employee's superannuation accumulation means the total superannuation contributions, together with any return on them, to which the complying fund rules apply, and are—

(a) employer's superannuation cash contributions:

(b) the amount of a tax credit under section MK 3 (Payment of tax credits) that is treated as a Crown contribution for an employee under section MK 5 (Crown contributions for members):

(c) withheld from the employee's salary or wages

employer—

(a) means a person who pays or is liable to pay a PAYE income payment:

(b) includes,—

(i) for an unincorporated body of persons other than a partnership, the manager or other principal officer:

(ii) for a partnership, each partner:

(iib) a look-through company, to the extent that paragraph (db) of the definition of **employee** does not apply:

(iii) for the estate of a deceased person, a trust, a company in liquidation, an assigned estate, or for any other property vested or controlled in a fiduciary capacity, each person in whom the property has become vested or to whom control of the property has passed:

(iv) the Crown:

(c) in the FBT rules, does not include a person if the only PAYE income payment that they pay or are liable to pay is—

(i) a payment referred to in section RD 5(1)(b)(iii), (3), (6)(b) and (c), and (7) (Salary or wages):

(ii) a schedular payment referred to in schedule 4, parts A and I (Rates of tax for schedular payments):

(d) is defined in section RD 45(6) (Unclassified benefits) for the purposes of that section:

(e) for an employee, means the employer of the employee

employer contribution has the same meaning as in the KiwiSaver Act 2006

employer monthly schedule means a form that an employer must provide to the Commissioner in manual format or in electronic format, or that a PAYE intermediary must provide to the Commissioner in electronic format, showing—

(a) the name and tax file number of the employer; and

(b) the name of every person who was an employee of the employer at any time during the period to which the employer monthly schedule relates; and

(c) if supplied to the employer, the tax file number of each employee to whom paragraph (b) refers; and

(d) the tax code of each employee to whom a PAYE income payment that is not an extra pay is made; and

(e) for each employee in the month to which the schedule relates,—

(i) the amount of gross earnings:

(ii) the total amount of tax withheld:

(iii) the total amount of tax credits under section LD 4 (Tax credits for payroll donations):

(iv) the amount of earnings not liable to the earner premium; and

(f) if applicable, particulars of child support and student loan deductions made; and

(g) for each employee in the month to which the schedule relates, if applicable, the amount of total KiwiSaver contribution deductions made under Part 3, subpart 1 of the KiwiSaver Act 2006; and

(h) for each employee in the month to which the schedule relates, if applicable, the amount of employer's superannuation cash contributions, less any ESCT payable under the ESCT rules; and

(i) in the month in which an employee starts, the date on which they started to be an employee of the employer; and

(j) in the month in which an employee ceases, the date on which they ceased to be an employee of the employer; and

(k) the identity of each employee who received an extra pay at a rate less than the rate set out in schedule 2, part B, table 1, row 3 (Basic tax rates for PAYE income payments); and

(l) other particulars required by the Commissioner for a class of employer

employer-sourced superannuation savings means—

(a) employer's superannuation cash contributions under section RA 5(1)(c) (Tax obligations for employment-related taxes) made on or after 1 April 2000 other than—

(i) those that are treated as salary and wages under section RD 68 (Choosing to have amount treated as salary or wages); or

(ii) those on which ESCT has been paid at the rate set out in schedule 1, part A, clause 10(a) of the Income Tax Act 2004 before that clause was replaced by a new clause 10(a) on 1 April 2007; and

(b) any return on those employer's superannuation contributions; and

(c) reserves, that is, employer's superannuation cash contributions under section RA 5(1)(c) made on or after 1 April 2000 that do not vest in a member of the superannuation fund and any return on those employer's superannuation cash contributions, as follows:

(i) for a superannuation fund with 10 or more unassociated members, reserves that have been allocated to a member of the superannuation fund, other than those allocated to an account of the member's contributions for smoothing investment returns; or

(ii) for all other superannuation funds, reserves

employer's superannuation cash contribution is defined in section RD 65(1) (Employer's superannuation cash contributions)

employer's superannuation contribution means a superannuation contribution made by an employer for the benefit of 1 or more of their employees

employing company is defined in section DC 15 (Some definitions) for the purposes of sections DC 12 to DC 14 (which relate to share purchase schemes)

employment has a meaning corresponding to the meaning of**employee** , and—

(a) includes the activities performed by the Governor-General, a member of Parliament, or a judicial officer that give rise to an entitlement to receive a PAYE income payment for the activities:

(b) is defined in section ME 2(1) (Meaning of employment for this subpart) for the purposes of subpart ME (Minimum family tax credit) and the definition of **full-time earner**

employment income means an amount that is income under section CE 1 (Amounts derived in connection with employment)

employment limitation is defined in section DA 2(4) (General limitations)

employment-related loan means a loan that is a fringe benefit

end date is defined in section RA 15(3) (Payment dates for interim and other tax payments) for the purposes of that section

engaged in full-time work is defined in section LC 5 (Meaning of engaged in full-time work) for the purposes of section LC 4 (Tax credits for transitional circumstances)

entering owner—

(a) means a person who acquires an owner's interests for a look-through company:

(b) includes a person who already has owner's interests for a look-through company when they acquire another owner's interests

entering partner—

(a) means a person who acquires a partner's interests in a partnership:

(b) includes a person who is already a partner in the partnership when they acquire another partner's interests

entitlement period is defined in section MC 11(1) (Relationship periods and entitlement periods) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

environmental restoration account is defined in section EK 23(3) (Other definitions) for the purposes of subpart EK (Environmental restoration accounts)

equity instrument is defined in section EW 15I(3) (Mandatory use of yield to maturity method for some arrangements) for the purposes of that section

ESCT—

(a) means employer's superannuation contribution tax; and

(b) relates to an employer's superannuation cash contribution; and

(c) refers to an amount payable as income tax under the ESCT rules

ESCT rate threshold amount, for an employer's superannuation cash contribution, means—

(a) for an employee employed by an employer for the whole of a tax year immediately before the tax year in which the employer's superannuation contribution is paid, the total amount of—
  (i) salary or wages derived by the employee in the previous tax year; and
  (ii) the gross amount of employer's superannuation contributions before ESCT is withheld that the employer paid on behalf of the employee in the previous tax year; or

(b) if paragraph (a) does not apply, the total amount of
  (i) salary or wages that the employer estimates will be derived by the employee in the tax year in which the contribution is paid; and
  (ii) the gross amount of employer's superannuation contributions before ESCT is withheld that the employer estimates that they will pay on behalf of the employee in the tax year in which the contribution is paid

ESCT rules means the provisions listed in section RD 64 (ESCT rules and their application)

established activity is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

estate, for land,—

(a) means an estate in the land, whether legal or equitable, and whether vested or contingent, in possession, reversion, or remainder; and

(b) includes a right, whether direct or through a trustee or otherwise, to—
  (i) the possession of the land:
  (ii) the receipt of the rents or profits from the land:
  (iii) the proceeds of the disposal of the land; and

(c) does not include a mortgage

estimated residual market value,—

(a) for an item of depreciable property, is defined in section EE 67 (Other definitions):

(b) for high-priced livestock, means its market value at the end of its estimated useful life, estimated reasonably as at the date of acquisition and based upon an assumption of normal and reasonable maintenance over its estimated useful life

estimated useful life,—

(a) for an item of depreciable property, is defined in section EE 63 (Meaning of estimated useful life):

(b) for high-priced livestock, means the period over which the livestock might reasonably be expected to be useful in deriving income or carrying on a business in New Zealand, taking into account—

(i) the passage of time, likely wear and tear, exhaustion, and obsolescence; and

(ii) an assumption of normal and reasonable maintenance:

(c) for a listed horticultural plant, means the period of time over which the listed horticultural plant might reasonably be expected to be useful to a person in deriving income or in carrying on a business in New Zealand, with the expectation based on an assumption of normal and reasonable maintenance:

(d) for a type of pasture, means the period of time over which the pasture might reasonably be expected to be useful to a person in deriving income or carrying on a farming or agricultural business on land in New Zealand

excepted financial arrangement—

(a) is defined in section EW 5 (What is an excepted financial arrangement?) for the purposes of this Act except the old financial arrangements rules; and

(b) is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

excess credit amount means an amount calculated under sections OC 29(5) and OD 22(5) (which relate to dividends with both imputation credit and FDP credits or CTR credits attached) for a dividend with a combined imputation and FDP ratio or a combined imputation and CTR ratio

excess debt entity is defined in section FE 4 (Some definitions) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

excess debt outbound company is defined in section FE 4 (Some definitions) for the purposes of subpart FE (Interest apportionment)

excess expenditure—

(a) is defined in section CZ 8(2) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section:

(b) is defined in section DZ 5(6) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section

excess tax payment, for a company at a time, and for the purposes of Part O (Memorandum accounts), means the amount at the time by which a payment made by or on behalf of the company to the Commissioner for income tax or provisional tax is more than the liability at the time of the company to pay income tax and provisional tax

exchange variation is defined in section CZ 3(5) (Exchange variations on 8 August 1975) for the purposes of that section

excluded ancillary tax means—

(a) imputation penalty tax:

(b) FDP penalty tax:

(c) qualifying company election tax:

(d) *[Repealed]*

(e) withdrawal tax

excluded depreciable property is defined in section EE 64 (Meaning of excluded depreciable property)

excluded fixed rate security means a fixed rate share issued by a company or a debenture issued by a company, if it is a substituting debenture or stapled debt security and not a profit-related debenture, when the holder of the share or debenture does not have, because of it, any right to vote or participate in

any shareholder decision-making, except to the extent of any such right that—

(a) arises only in circumstances in which the position of the holder of the share or debenture may be altered to the holder's detriment; and

(b) is granted to the holder of the share or debenture for the purpose of assisting the holder to prevent the alteration; and

(c) at the time of the issue of the share or debenture, is not expected to arise

excluded income is defined in section BD 1(3) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income)

excluded option means, for a company, an option to acquire or dispose of a share in the company if—

(a) the directors of the company did not know and could not reasonably be expected to know that the option had been granted; or

(b) neither the grantor of the option nor any person associated with the grantor of the option at the time the option is granted holds a share in the company over which the option is granted at the time the option is granted, whether directly or indirectly, but this paragraph does not apply in a case in which the grantor of the option is the company; or

(c) the option is granted on arm's length terms, without the grant having a purpose or effect of defeating the intent and application of any provision of this Act whose application is dependent on the measurement of voting and market value interests, and the holder of the option does not have, because of it, any right to vote or participate in any shareholder decision-making, except to the extent of any such right that—

  (i) arises only in circumstances in which the position of the holder of the option in relation to it may be altered to the holder's detriment; and

  (ii) is granted to the holder of the option for the purpose of assisting the holder to prevent the alteration; and

(iii) at the time of the issue of the option, is not expected to arise; or

(d) the price payable to acquire the share on the exercise of the option is equal to or not materially different from the market value of the share at the date of exercise, and the holder of the option does not have, because of it, any right to vote or participate in any shareholder decision-making, except to the extent of any such right that—

(i) arises only in circumstances in which the position of the holder of the option in relation to it may be altered to the holder's detriment; and

(ii) is granted to the holder of the option for the purpose of assisting the holder to prevent the alteration; and

(iii) at the time of the issue of the option, is not expected to arise; or

(e) the share is an excluded fixed rate security, subject to section YC 20 (Credit account continuity provisions: excluded fixed rate securities) in the case of the credit amount continuity provisions; or

(f) the option—

(i) relates to a pre-1991 budget security; and

(ii) was itself granted before 8.00 pm New Zealand Standard Time on 30 July 1991 (the **specified time**), or was granted under a binding contract entered into before the specified time no term of which is altered at any time after the specified time; and

(iii) is not an option any term of which is altered at any time after the specified time (whether under a provision for roll-over or extension or under an option held at the specified time by the option holder or the grantor of the option, or both, or any other person, or otherwise), except when the term is altered under a binding contract entered into before the specified time no term of which is altered at any time after the specified time

excluded preference share is defined in section YC 18B (Corporate reorganisations not affecting economic ownership) for the purposes of that section

exempt income is defined in section BD 1(2) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income)

exempt income limitation is defined in section DA 2(3) (General limitations)

exempt interest means interest that is—

(a) payable for a debt entered into under generally accepted commercial practice for the purchase of goods or services, if the purchase is made in the ordinary course of the purchaser's taxable activity; or

(b) payable under a hire purchase agreement, the definition of which applies, for this purpose, as if it did not contain paragraph (g); or

(c) exempt income under section CW 8 (Money lent to government of New Zealand) or CW 64 (Exemption under other Acts); or

(d) payable under a specified lease or a finance lease; or

(e) payable for bonus bonds or Post Office bonus bonds (as each of those terms is defined in section 2 of the Post Office Bank Act 1987); or

(f) payable on an overpaid levy under section 173 of the Accident Compensation Act 2001; or

(g) payable by the Commissioner under section 84 of the KiwiSaver Act 2006

exemption certificate means a certificate provided by the Commissioner under section 24M of the Tax Administration Act 1994

existing business is defined in section EY 28 (Shareholder base other profit: profit participation policies that are existing business) for the purposes of that section and section EY 29 (Shareholder base other profit: profit participation policies that are new business)

existing farmer is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

existing privilege is defined in section 106 of the Crown Minerals Act 1991, and includes mining privilege and mining licence under the Mining Act 1971 and prospecting licence or mining licence under the Petroleum Act 1937

exit level, for a multi-rate PIE, means the relationship of the entity's tax liability to the value of the investor's interest described in section HM 62 (Exit levels for investors)

exit period, for an investor in a multi-rate PIE, means a period set out in section HM 63 (Exit periods)

expected life risk proportion is defined in section EY 25 (Premium smoothing reserving amount: non-participation policies not annuities) for the purposes of that section

expenditure—

(a) is defined in section DD 2(7) (Limitation rule) for the purposes of that section:

(b) is defined in section DW 1(2) (Airport operators) for the purposes of that section

expenditure on account of an employee is defined in section CE 5 (Meaning of expenditure on account of an employee)

exploration and development activities is defined in section CW 57(2) (Non-resident company involved in exploration and development activities) for the purposes of that section

exploration permit is defined in section 2 of the Crown Minerals Act 1991

exploratory material means anything acquired with exploratory well expenditure or prospecting expenditure

exploratory well means a well in a permit area, drilled for the purpose of—

(a) locating petroleum; or

(b) confirming the existence, non-existence, quantity, or composition of petroleum; or

(c) ascertaining whether petroleum is recoverable in commercial quantities

exploratory well expenditure—

(a) means expenditure incurred by a petroleum miner in planning, drilling, testing, completing, and abandoning an exploratory well; and

(b) does not include residual expenditure

extended return date is defined in section IC 9(3) (Date for payment and notice to Commissioner) for the purposes of Part I (Treatment of tax losses)

extra pay is defined in section RD 7 (Extra pay)

fair dividend rate method means the method of calculating FIF income or FIF loss under sections EX 52 (Fair dividend rate method: usual method) and EX 53 (Fair dividend rate method for unit-valuing funds and others by choice)

fair value method means a method under section EW 15D (IFRS financial reporting method) of calculating income or expenditure for an income year that takes into account movements in fair value as determined under IFRSs

family credit abatement is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

family scheme is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

family scheme income is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

family tax credit is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

farmer is defined in section EH 3(1)(a) (Persons to whom main income equalisation scheme applies) for the purposes of the main income equalisation scheme

farm-in expenditure means expenditure that a farm-in party under a farm-out arrangement agrees that they will incur

farm-out arrangement—

(a) means an arrangement between a petroleum miner (the **farm-out party**) and a person (the **farm-in party**) under which the farm-in party agrees that they will incur expenditure in doing work or paying for work done in or for the permit area of the farm-out party's petroleum permit, after the arrangement is made, and, in return, they—

(i) acquire an interest in the farm-out party's petroleum permit; or

(ii) receive a right or option to acquire an interest in the farm-out party's petroleum permit; or

(iii) become entitled in another way to acquire an interest in the farm-out party's petroleum permit; or

(iv) become entitled to a direct or indirect interest in petroleum from the permit area of the farm-out party's petroleum permit; or

(v) become entitled to a direct or indirect interest in the profits, however measured, from petroleum from the permit area of the farm-out party's petroleum permit; or

(vi) become entitled to a direct or indirect right to reimbursement from petroleum from the permit area of the farm-out party's petroleum permit; or

(vii) become entitled to a direct or indirect right to reimbursement from the profits, however measured, from petroleum from the permit area of the farm-out party's petroleum permit; or

(viii) become entitled to a rental, royalty, or other consideration of whatever nature calculated by reference to petroleum from the permit area of the farm-out party's petroleum permit; or

(ix) become entitled to a rental, royalty, or other consideration of whatever nature calculated by reference to the profits, however measured, from petroleum from the permit area of the farm-out party's petroleum permit:

(b) is defined in section CZ 8(2) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section:

(c) is defined in section DZ 5(6) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section

FBT has the same meaning as **fringe benefit tax**

FBT rules means the provisions listed in section RD 25 (FBT rules and their application), and **fringe benefit tax rules** has the same meaning

FDP means **foreign dividend payment** and refers to an amount payable under the FDP rules to the Commissioner in relation to a foreign dividend

FDP account means a memorandum account referred to in section OA 2(1)(b) (Memorandum accounts)

FDP credit is a credit referred to in section OA 5(3) (Credits)

FDP debit is a debit referred to in section OA 6(3) (Debits)

FDP penalty tax means tax payable under section 140C of the Tax Administration Act 1994

FDP ratio means the ratio set out in section OC 27 (FDP credits attached to dividends)

FDP reference period is defined in section OC 35(2) (Meaning of FDP reference period) for the purposes of sections OC 23, and OC 36 to OC 39 (which relate to FDP credits and debits)

FDP rules means—

(a) section GB 41 (FDPA arrangements for carrying amounts forward):

(b) sections LF 1, LF 5, and LF 8 to LF 10 (which relate to tax credits for FDP credits):

(c) subpart OC (Foreign dividend payment accounts (FDPA)):

(d) section YA 2(2)(d) to (f) (Meaning of income tax varied)

FDPA means foreign dividend payment account

FDPA company means a company that chooses under sections OC 1(1) and OC 3 (which relate to companies with FDP accounts) to maintain an FDP account

feature film means a film that—

(a) is produced mainly for exhibition in a cinema; and

(b) is exhibited in 35mm gauge; and

(c) has a continuous running time of no less than 75 minutes

fee is defined in section RD 41(4) (Services) for the purposes of that section

FIF means a foreign investment fund as defined in section EX 28 (Meaning of FIF)

FIF income is defined in section CQ 5 (When FIF income arises)

FIF loss is defined in section DN 6 (When FIF loss arises)

FIF net loss, for a person and for an income year in which the person has a FIF loss, means the part of the FIF loss for which the person is denied a deduction because of section DN 8 (Ring-fencing cap on deduction: branch equivalent method), but must instead deal with under Part I (Treatment of tax losses)

FIF rules means sections EX 28 to EX 72 (which relate to foreign investment funds)

fifteen percent capital reduction is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

fifteen percent interest reduction is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

filing taxpayer means a person, other than—

(a) a person who is a non-filing taxpayer for the applicable tax year:

(b) a person that is an unincorporated body of persons, if section 42 of the Tax Administration Act 1994 applies to require the members of the body to file separate returns of income for the applicable tax year

film, except in section CC 9 (Royalties),—

(a) means a recording on any medium from which a moving image may by any means be produced; and

(b) includes a part of any such recording

film income means income of a person under section CC 10 (Films)

film production expenditure—

(a) means—

(i) an expenditure or loss incurred in producing a film:

(ii) an amount of depreciation loss on property used in producing the film:

(iii) an amount of depreciation loss from disposing of depreciable property used in producing the film allowed under section EE 48 (Effect of disposal or event); and

(b) does not include an expenditure incurred—

(i) in acquiring an asset for which a deduction for an amount of depreciation loss is allowed:

(ii) in acquiring a film right after the film is completed:

(iii) directly in marketing or selling a film

film reimbursement scheme is defined in section DS 4 (Meaning of film reimbursement scheme)

film right means a right or interest, including a future or contingent right or interest, of any of the following kinds

(a) copyright in a film; or

(b) a licence relating to the copyright in a film; or

(c) an equitable right in the copyright in a film; or

(d) an equitable right in a licence relating to the copyright in a film; or

(e) any other right existing in or attaching to a film; or

(f) a right to income, or a share of income, from the rental, sale, use, or other exploitation of a film

final instalment, in relation to provisional tax, means the last instalment of provisional tax due in a transitional year

finance lease means a lease of a personal property lease asset entered into by a person on or after 20 May 1999 that—

(a) when the person enters the lease, involves or is part of an arrangement that involves—

(i) the transfer of the ownership of the asset to the lessee or an associate of the lessee during or at the end of the term of the lease:

(ii) the lessee or an associate of the lessee having the option of acquiring the asset for an amount that is likely to be substantially lower than the asset's market value on the date of acquisition:

(iii) a right of an associate of the lessee to acquire the asset, or a right of the lessor to require an associate of the lessee to acquire the asset, during the term of the lease under an arrangement that

does not entitle the associate to receive all of the personal property lease payments that may fall due after the acquisition:

(b) when the person enters the lease or from a later time, involves a term of the lease that is more than 75% of the asset's estimated useful life as defined in section EE 63 (Meaning of estimated useful life):

(c) the person enters on or after 20 June 2007 and is, or is part of, an arrangement that, when the person enters the lease or when a change in the terms of the arrangement changes the allocation or size of the risks and rewards incidental to ownership of the lease asset,—

(i) involves the use of the asset outside New Zealand for all or most of the term of the lease; and

(ii) involves income of any person who is not the lessor, arising from the use of the asset by any person, that is exempt income, or excluded income, or non-residents' foreign sourced income; and

(iii) is a finance lease under NZIAS 17 for the lessor, or for a company that is in the same group of companies as the lessor and derives assessable income from the arrangement, or is an arrangement under which persons who do not include the lessor bear substantially all the risks and rewards incidental to ownership of the lease asset, determined as at the time the person enters the lease and taking into account later changes to the arrangement

finance-related deduction means a deduction of a company that is part of a consolidated group, calculated as if the company were not part of the group and determined under section FM 3 (Liability of consolidated groups and group companies) for an amount, other than an amount that arises only from movement in currency exchange rates, of—

(a) interest incurred:

(b) expenditure under the financial arrangements rules or the old financial arrangements rules

financial arrangement—

(a) is defined in section EW 3 (What is a financial arrangement?) for the purposes of this Act except the old financial arrangements rules; and

(b) is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

financial arrangements rules is defined in section EW 1(2) (What this subpart does)

financial asset has the same meaning as in NZIAS 32

financial assistance is defined in section HC 36(5) (Trusts and minor beneficiary rule) for the purposes of that section

financial institution means a registered bank or an entity subject to the Deposit Takers (Credit Ratings) Regulations 2009 that must use IFRSs to prepare financial statements and to which section 15 of the Financial Reporting Act 1993 applies

financial institution special purpose vehicle means a company or a trustee of a trust that, ignoring section HR 9,—

(a) derives no exempt income; and

(b) has all of its financial arrangements that are its assets treated as a financial institution's financial arrangements for financial reporting purposes, but ignoring any current account balance that is incidental to the company's or trustees' sole purpose described in paragraph (e); and

(c) receives only funds that—

  (i) relate to financial arrangements described in paragraph (b):

  (ii) are incidental to the company's or trustees's sole purpose described in paragraph (e); and

(d) either—

  (i) operates to guarantee liabilities of the financial institution or of a company, incorporated in and resident in New Zealand, that is a member of a wholly-owned group of companies which includes the financial institution; or

  (ii) operates in relation to the company's or trustees' issue of residential mortgage backed securities; and

(e) has interests in financial arrangements only for the sole purpose of carrying out the company's or trustees' operations described in paragraph (d)(i) or (ii); and

(f) has financial statements that are prepared using IFRSs and are audited

financial risk is defined in section EY 12 (Meaning of life reinsurance)

financial statements is defined in section 8 of the Financial Reporting Act 1993, but the references in the definition to an entity and to a reporting entity are to be read as references to a person

financial value is defined in section FE 20(1) (Financial value and regulatory value) for the purposes of sections FE 7, FE 19, and FE 21 to FE 23 (which relate to a New Zealand banking group's equity threshold)

financially independent means—

(a) in full employment—

(i) under a contract of service or apprenticeship that requires a person to work, whether on time or piece rates, no less than an average of 30 hours each week; or

(ii) as the self-employment of a person in a business, manufacture, profession, trade, or undertaking carried on for pecuniary profit for not less than an average of 30 hours each week; or

(iii) for any number of hours that is regarded as full-time employment for the purpose of an agreement, award, or contract relating to the employment; or

(b) in receipt of a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998 (SR 1998/277) or any regulations in substitution for those regulations; or

(c) in receipt of payments under a Government-assisted scheme that the chief executive of the administering department considers analogous to a benefit payable under Part 1 of the Social Security Act 1964; or

(d) in receipt of a benefit, as defined in section 3 of the Social Security Act 1964, payable under Part 1 of the Act

first business day, in relation to provisional tax, means—

(a) the first day in an income year on which a person with a provisional tax liability derives income or incurs expenditure as a result of carrying on a taxable activity, if the person is not a natural person; and

(b) the day following the last day in an income year on which a person with a provisional tax liability derived income from employment, if the person is a natural person

first payment period means the period starting on the 1st day of a month and ending with the 15th day of the month

first publication is defined in section EI 3(6) (Assigning or granting copyright) for the purposes of that section

fisher is defined in section EH 3(1)(b) (Persons to whom main income equalisation scheme applies)

fishing boat is defined in section EJ 2(6) (Spreading forward of deductions for repairs to fishing boats) for the purposes of that section

fishing business—

(a) is defined in section EH 36 (Other definitions) for the purposes of this Act except the provision to which paragraph (b) refers:

(b) is defined in section EJ 2(6) (Spreading forward of deductions for repairs to fishing boats) for the purposes of that section

fishing quota emissions unit means an emissions unit—

(a) transferred, under an allocation plan made under section 74 of the Climate Change Response Act 2002, to a person as an owner of individual transferable quota as defined in section 2 of the Fisheries Act 1996; and

(b) held continuously by the person since the issue

fixed establishment—

(a) means a fixed place of business in which substantial business is carried on by a person; and

(b) includes—

(i) a branch, factory, shop, or workshop in which, in each case, substantial business is carried on; and
(ii) a mine, oil well, quarry, or other place of natural resources subject to exploitation; and
(iii) an agricultural, forestry, or pastoral property; and

(c) does not include—
(i) the use of facilities solely for the purpose of the delivery, display, or storage of goods or merchandise belonging to a business; or
(ii) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information or for advertising for business

fixed life intangible property is defined in section EE 67 (Other definitions)

fixed principal financial arrangement—

(a) means a financial arrangement other than a variable principal debt instrument:
(b) is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

fixed-rate foreign equity means an interest (the **equity**) in the capital of a foreign company held by a company (the **holder**) in relation to which the foreign company makes distributions—

(a) at a rate that is a specific fixed percentage of the amount subscribed for the issue of the equity; or
(b) at a rate that—
(i) is a percentage of the amount subscribed for the issue of the equity; and
(ii) has a fixed relationship to economic, commodity, industrial, or financial indices, to banking rates of interest, or to general commercial rates of interest; or
(c) at a rate that would be given by paragraph (a) or (b) but for variations due to—
(i) a fixed relationship to a rate of income tax:
(ii) compensation to the holder for default by the foreign company:
(iii) compensation to the holder for expenditure or loss related to the holding of the equity and suf-

fered by the holder or by a person associated with the holder; or

(d) equivalent to the payment of interest for money lent, having regard to—

(i) whether or not the equity is redeemable:

(ii) any security provided to the holder, including put or call options over the equity or an amount payable determined by reference to the amount of distributions payable:

(iii) the variability or lack of variability of the distributions payable

fixed-rate share,—

(a) in sections CD 22 (Returns of capital: off-market share cancellations), GC 8, and GC 14 (which relate to transfer pricing arrangements between associated persons), and in the definitions of **excluded fixed rate security** and **pre-1991 budget security**, means a share issued by a company if the only dividend payable on the share, disregarding any dividend payable on the issue of the share, and any imputation credits or FDP credits attached to any dividend, is payable at a rate that—

(i) is described in paragraph (b), (c), or (d); and

(ii) is not set with a purpose and does not have an effect of defeating the intent and application of any provision of this Act whose application is dependent on the measurement of voting and market value interests:

(b) for the purposes of paragraph (a)(i), the rate is a specific fixed percentage of the amount subscribed for the issue of the share:

(c) for the purposes of paragraph (a)(i), the rate is a percentage of the amount subscribed for the issue of the share that is determined by a fixed relationship to commodity, economic, financial, or industrial indices, or to banking rates or general commercial rates of interest:

(d) for the purposes of paragraph (a)(i), the rate is a percentage that could be of a kind referred to in paragraph (b) or (c) but for any variation in the rate of dividend that may occur only—

(i) by a fixed relationship to a rate of income tax; or

(ii) as may be necessary to compensate the shareholder for a default on the part of the paying company or expenditure or loss suffered by the shareholder, or a person associated with the shareholder, through holding the share; or

(iii) by a combination of the factors in subparagraphs (i) and (ii):

(e) *[Repealed]*

(f) in section FA 2B (Stapled debt securities), and the definitions of **proportional-stapling company** and **stapled debt security**, means—

(i) a share described in paragraph (a):

(ii) a share that would be a share described in paragraph (a) but for a dividend or a variation in the rate of dividend that may occur when the share is converted into another share (the **other share**) if the gain is attributable solely to a cause set out in paragraph (g):

(iii) a share for which the dividend payable is the equivalent of the payment of interest for money lent, having regard to the factors set out in paragraph (h):

(g) for the purposes of paragraph (f)(ii), the causes are—

(i) a change in value of the other share occurs in a period that starts no more than 30 days before the share is converted and ends when the share is converted, and the period was a term or condition of the share when the share was first issued:

(ii) a term or condition of the share that existed when the share was first issued, and the term or condition sets the gain at a fixed percentage equal to 5% or a lesser percentage of the amount subscribed for the share:

(h) for the purposes of paragraph (f)(iii), the factors are—

(i) whether or not the share is redeemable:

(ii) any security provided to the shareholder, including put or call options over the share or any

amount payable determined by reference to the amount of dividend payable:

(iii) the variability or lack of variability of the dividend payable:

(i) in section EX 46(10)(a) and subpart FE (Interest apportionment on thin capitalisation), means a share meeting the requirements of paragraph (f)(i) and (iii)

flat-owning company is defined in section CD 31(2) (Flat-owning companies) for the purposes of that section and section HA 6 (Corporate requirements)

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

foreign attributed income means a company's income for the income year that is—

(a) attributed CFC income:

(b) FIF income calculated under the accounting profits method or the branch equivalent method

foreign attributed loss offsets means all deductions or offsets a company is allowed in the income year that are—

(a) attributed CFC losses:

(b) FIF losses calculated under the accounting profits method or the branch equivalent method:

(c) attributed CFC net losses:

(d) FIF net losses calculated under the accounting profits method or the branch equivalent method

foreign company means a company that—

(a) is not resident in New Zealand; or

(b) is treated under a double tax agreement as not being resident in New Zealand

foreign corporate limited partnership means an entity or group of persons that—

(a) meets the definition of **overseas limited partnership** in section 4 of the Limited Partnerships Act 2008; and

(b) is treated as a separate legal entity under the laws (other than taxation laws) of the country, territory, or jurisdiction where it is established

foreign country is defined in section DB 45(4) (Bribes paid to public officials) for the purposes of that section

foreign exempt entity is defined in section CW 12(4) (Proceeds of share disposal by qualifying foreign equity investor) for the purposes of that section

foreign exempt partnership is defined in section CW 12(4) (Proceeds of share disposal by qualifying foreign equity investor) for the purposes of that section

foreign exempt person is defined in section CW 12(4) (Proceeds of share disposal by qualifying foreign equity investor) for the purposes of that section

foreign expenditure is defined in section EG 1(10) (Election to use balance date used in foreign country) for the purposes of that section

foreign income tax is defined in section LJ 3 (Meaning of foreign income tax) for the purposes of Part L (Tax credits and other credits)

foreign investment fund is defined in section EX 28 (Meaning of FIF)

foreign investment PIE means a multi-rate PIE that—

(a) meets the requirements of sections HM 55C to HM 55H (which relate to the particular requirements for and treatment of foreign investment PIEs); and

(b) chooses under section HM 71B (Choosing to become a foreign investment PIE) to become a foreign investment zero-rate PIE or a foreign investment variable-rate PIE

foreign investment variable-rate PIE means a foreign investment PIE that—

(a) meets the requirements of section HM 19C (Requirements for foreign investment variable-rate PIEs); and

(b) chooses under section HM 71B (Choosing to become a foreign investment PIE) to become a foreign investment variable-rate PIE

foreign investment vehicle means an entity that—

(a) has become a foreign investment vehicle under section HL 5(1) (Foreign investment vehicles); and

(b) has not ceased to be a foreign investment vehicle under section HL 5(2)

foreign investment zero-rate PIE means a foreign investment PIE that—

(a) meets the requirements of section HM 19B (Requirements for foreign investment variable-rate PIEs); and

(b) chooses under section HM 71B (Choosing to become a foreign investment PIE) to become a foreign investment zero-rate PIE

foreign non-dividend income means income that—

(a) does not have a source in New Zealand; and

(b) is not a dividend; and

(c) is not FIF income calculated under the fair dividend rate method

foreign PIE equivalent is defined in section HM 3 (Foreign PIE equivalents)

foreign public official is defined in section DB 45(4) (Bribes paid to public officials) for the purposes of that section

foreign source income is defined in section EG 1(10) (Election to use balance date used in foreign country) for the purposes of that section

foreign-sourced amount means an amount of income that is not treated as having a source in New Zealand under sections YD 4 (Classes of income treated as having New Zealand source) and YZ 1 (Source rule for interest)

foreign superannuation scheme means a superannuation scheme constituted outside New Zealand

foreign tax, in subpart LJ (Tax credits for foreign income tax), means tax, other than New Zealand tax, that is the subject of a double tax agreement

foreign trust is defined in section HC 11 (Foreign trusts)

foreign withholding tax means a tax, other than a New Zealand tax, that—

(a) is withheld from an amount of income; and

(b) is of substantially the same nature as NRWT

forest land emissions unit means a pre-1990 forest land emissions unit, a post-1989 forest land emissions unit, or a forest sink emissions unit

forest sink emissions unit means an emissions unit issued to a person in relation to a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person

forester is defined in section EH 3(1)(c) (Persons to whom main income equalisation scheme applies)

forestry assets is defined in section FC 6 (Forestry assets transferred to close relatives) for the purpose of that section

forestry business includes a PFSI forestry business

forestry company means a company that is incorporated, under an agreement between the Crown, the Maori owners, and a holding company of the company, for the purposes of—

(a) buying land partly from the Crown, partly from the Maori owners, and partly from a holding company of the company; and

(b) carrying on a forestry business on the land

formation loss, for a PIE, means an amount of tax loss or a loss balance arising from a period before the entity became a PIE as described in sections HM 66 to HM 70 (which relate to the treatment of formation losses)

forward contract,—

(a) in the financial arrangements rules, means—

(i) an agreement that is a conditional or an unconditional agreement to acquire or dispose of property, or obtain or supply services, if the agreement can be settled without the property being delivered or the services being performed:

(ii) an agreement that is a conditional or an unconditional agreement to acquire or dispose of foreign exchange or a financial arrangement:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

friendly society means a society or credit union or association of credit unions registered or treated as registered under the Friendly Societies and Credit Unions Act 1982

fringe benefit is defined in section CX 2 (Meaning of fringe benefit)

fringe benefit tax means fringe benefit tax payable under section RD 26 (Liability for FBT), and **FBT** has the same meaning

fringe benefit tax rules means the provisions listed in section RD 25 (FBT rules and their application) and **FBT rules** has the same meaning

full reinsurance is defined in section EY 12(2) (Meaning of life reinsurance)

full-time earner is defined in section MA 7 (Meaning of full-time earner for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

fully credited is defined in section CD 43(26) (Available subscribed capital (ASC) amount) for the purposes of that section

fully credited for conduit tax relief means the part of a dividend calculated using the formula in section RF 9(6) (When dividends fully imputed or fully credited)

fully imputed,—

(a) for the purposes of sections CB 26, EX 20B, RF 8, and RF 10 (which relate to distributions by PIEs and certain dividends), means the amount calculated under section RF 9(2) (When dividends fully imputed or fully credited):

(b) for the purposes of sections CW 15, HA 14, HA 16, and HA 19 (which relate to dividends paid by qualifying companies), means the amount calculated under section HA 15(2) (Fully imputed distributions)

fund provider, for a person and a KiwiSaver scheme or a complying superannuation fund of which they are a member, means the trustees of the scheme or fund

further FDP means an amount that a company may be liable to pay under sections OC 30 to OC 34 (which relate to further FDP payable by companies)

further income tax means an amount of tax by way of further income tax that a company may be liable to pay under—

(a) sections OB 65 to OB 70 (which relate to further tax payable by a company for a closing debit balance, or when the company stops being an ICA company):

(b) sections OK 21 or OK 22 (which relate to further tax payable by a Maori authority for a closing debit balance, or when it stops being a Maori authority)

futures contract means a forward contract traded on a recognised futures exchange

gaming-machine gambling means class 4 gambling, as defined in section 30 of the Gambling Act 2003, that utilises or involves a gaming machine

gaming-machine operator's licence means a class 4 operator's licence as defined in section 4 of the Gambling Act 2003

gaming-machine venue licence means a class 4 venue licence as defined in section 4 of the Gambling Act 2003

general insurance means insurance that is not life insurance

general limitation means a rule described in any of section DA 2(1) to (6) (General limitations)

general partner—

(a) means a general partner of a limited partnership:

(b) includes a general partner of an **overseas limited partnership** as defined in section 4 of the Limited Partnerships Act 2008

general permission is defined in section DA 1(1) (General permission)

general power of appointment—

(a) includes a power or authority that—

(i) is conferred by will or conferred by a settlement during life or created in any other manner; and

(ii) is exercisable orally or by instrument made during life or by will or by any other means; and

(iii) enables its holder, or would enable its holder if they were of full capacity, to obtain or appoint or dispose of any property, or to charge any sum or money on any property, as the holder thinks fit for their own benefit; and

(b) does not include a power or authority—

(i) exercisable by a person in a fiduciary capacity under a disposition not made by them; or

(ii) exercisable as a mortgagee

generally accepted accounting practice is defined in section 3 of the Financial Reporting Act 1993

geothermal energy proving period means, for a person's geothermal well that is not used to exploit geothermal energy, a period—

(a) starting with the completion or acquisition of the well; and

(b) other than the case of the person disposing of the well to another person, ending when the well for the foreseeable future is not intended, and cannot reasonably be expected, to be used or available for use in—

(i) deriving assessable income:

(ii) carrying on a business for the purposes of deriving assessable income

geothermal well means a bore or well solely for the purpose of investigating or exploiting geothermal energy in New Zealand

gifting settlor is defined in section EX 46(12) (Limits on choice of calculation methods)

goods, in sections CX 1 (Goods and services tax), DB 2 (Goods and services tax), and EA 3 (Prepayments), and in the definition of **services**, is defined in section 2 of the Goods and Services Tax Act 1985

government stock is defined in section DZ 11(3) (Film reimbursement scheme on or before 30 June 2001) for the purposes of that section

Government Superannuation Fund means the fund established under the Government Superannuation Fund Act 1956

grandparented consolidated company, for a company that is part of a consolidated group and for an income year (the **current income year**), means a company that before 17 May 2006 chose to form or join the consolidated group, when—

(a) the current income year is the 2005–06 or 2006–07 income year:

(b) the company carries on a business, and the total amount of the company's finance-related deductions allocated to the income year before the current income year (the **previous income year**) is—

(i) zero, because no deductions are allocated to the previous income year; or

(ii) less than 50% of the company's total deductions allocated to the previous income year, calculated as if the company were not part of the group and determined under section FM 3 (Liability of consolidated groups and group companies)

grandparented structure means, for a person, any item on the following list, if the person acquired the item, or entered into a binding contract for the purchase or construction of the item, on or before 30 July 2009:

(a) barns, including barns (drying):
(b) carparks (buildings):
(c) chemical works:
(d) fertiliser works:
(e) powder drying buildings:
(f) site huts

grandparenting income year is defined in section HA 5(5) (Elections to become qualifying company)

grandparenting start day is defined in section EY 30 (Transitional adjustments: life risk)

grant-related suspensory loan means a loan—

(a) that—
  (i) is made by a public authority; and
  (ii) is not a loan of the kind described in section CF 2(1) (Remission of specified suspensory loans); and
  (iii) includes the term that the liability of the borrower may be wholly or partly remitted; or
(b) that is made by the Rural Banking and Finance Corporation of New Zealand as an irrigation suspensory loan and designated as such; or
(c) that is made by the Rural Banking and Finance Corporation of New Zealand as a West Coast drainage suspensory loan and designated as such

grey list means the list of countries in schedule 24, part A (International tax rules: grey list countries)

grey list company means a company that is resident under section YD 3 (Country of residence of foreign companies) in a grey list country if either—

(a) the company is liable in the country to income tax on the company's income because the company—
  (i) is domiciled in the country:
  (ii) is resident in the country:
  (iii) is incorporated in the country:
  (iv) has its place of management in the country:

(b) the company is organised under the laws of the country and the country—
  (i) imposes on persons holding income interests in the company the liability for income tax on the company's income; and
  (ii) under the laws of the country, is the source of 80% or more of the income of the company

gross, for an amount, means without any deduction from the amount

gross gambling proceeds means gross proceeds, as defined in regulation 3(1) of the Gambling (Class 4 New Proceeds) Regulations 2004, plus prizes

group funding debt means the amount calculated under section FE 23 (Banking group's funding debt)

group investment fund means a group investment fund established under the—

(a) Public Trust Act 2001; or
(b) Trustee Companies Act 1967 ; or
(c) Public Trust Office Act 1957

group life master policy is defined in section EY 30 (Transitional adjustments: life risk)

group of companies is defined in section IC 3 (Common ownership: group of companies)

group of persons includes 1 person

GST means goods and services tax under the Goods and Services Tax Act 1985

GST charged means GST charged under section 8(1) of the Goods and Services Tax Act 1985

GST payable in sections CX 1 (Goods and services tax), DB 2 (Goods and services tax), and DB 3(3) (Determining tax liabilities), has the same meaning as **tax payable** in section 2 of the Goods and Services Tax Act 1985, but does not include interest payable under Part 7 of the Tax Administration Act 1994

GST ratio is defined in section RC 8(2) (GST ratio method)

guaranteed residual value means an amount to which both the following apply

(a) it is equal to the value of a personal property lease asset as agreed in the lease by the lessor and the lessee; and

(b) its receipt by the lessor, on the expiry of the term of the lease, is assured or guaranteed by the lessee

guardian is defined in section HC 36(5) (Trusts and minor beneficiary rule) for the purposes of that section

herd livestock means a type of specified livestock that a person—

(a) chooses to value under the herd scheme; and

(b) values for an income year under sections EC 14 to EC 21 (which relate to the herd scheme)

herd scheme—

(a) means the livestock valuation method described in sections EC 14 to EC 21 (which relate to the herd scheme); and

(b) includes the livestock valuation method set out in—

(i) sections EC 14 to EC 21 of the Income Tax Act 2004; and

(ii) sections EL 5 and EL 6 of the Income Tax Act 1994; and

(iii) section 86A of the Income Tax Act 1976 as in force before its repeal by section 21 of the Income Tax Amendment Act (No 2) 1993; and

(iv) section 86D of the Income Tax Act 1976

herd value means, for an animal that is herd livestock and for an income year, the national average market value of the livestock declared for the income year

herd value ratio means—

(a) the ratio calculated or recalculated under section EC 17 (Herd value ratio) or EC 18 (Inaccurate herd value ratio)

for herd livestock other than livestock on the Chatham Islands:

(b) the adjustment set by the Commissioner under section EC 19 (Chatham Islands adjustment to herd value) for herd livestock on the Chatham Islands

higher credit value—

(a) is defined in section GB 35(4) (Imputation arrangements to obtain tax advantage) for the purposes of that section:

(b) is defined in section GB 42(4) (Maori authority credit arrangements to obtain tax advantage) for the purposes of that section

high-priced livestock means an animal of a type set out in schedule 17, column 1 (Types and classes of livestock) to which both the following apply

(a) a person buys it for a purchase price that is at least—

(i) $500; and

(ii) 5 times the national average market value, in the income year of purchase or in the previous income year, whichever is greater, for the class in schedule 17, column 2 in which the livestock is able to be classified at the end of the income year of purchase; and

(b) at the time the person buys it,—

(i) it is capable of being used for breeding; or

(ii) it is expected to be capable of being used for breeding when it reaches maturity

hire purchase agreement—

(a) means—

(i) an agreement under which goods are let or hired with an option to purchase, however the agreement describes the payments, under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid:

(ii) an agreement for the purchase of goods by instalment payments, however the agreement describes the payments, under which the person who agrees to purchase the goods is given pos-

session of them before the total amount payable has been paid; and

(b) includes an agreement to sell goods at retail under which—

(i) the buyer grants security over the goods to the seller for some or all of the purchase price; and

(ii) the property in the goods passes to the buyer subject to the security, in which case the agreement is a hire purchase agreement made at the time the sale is made; and

(c) includes a sale and loan arrangement under which—

(i) a person lends money on the security of goods that have been bought or are to be bought at retail if some or all of the purchase price is paid out of the proceeds of the loan; and

(ii) the loan is made by the seller or by a third party, arranged by the seller, who is engaged in the business of lending money or who habitually lends money in the course of the third party's business, in which case the arrangement is a hire purchase agreement made at the time the loan is made; and

(d) does not include an agreement under which property in the goods passes absolutely to the person who agrees to purchase them at the time of the agreement or on or at any time before delivery of the goods, unless the agreement is of a kind described in paragraph (a) or (b); and

(e) does not include an agreement made otherwise than at retail; and

(f) does not include an agreement to the extent to which the property that is the subject of the agreement is livestock or bloodstock

hire purchase asset means the personal property that is the subject of a hire purchase agreement

hire purchase payment means a payment made under a hire purchase agreement

holder is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

holding company,—

(a) for a forestry company, means a company associated with the forestry company:

(b) for a mining company, is defined in section CU 29 (Other definitions)

home is defined in section LC 8 (Some definitions) for the purposes of section LC 7 (Meaning of housekeeper)

home ownership requirements means home ownership requirements as defined in the Home Ownership Savings Act 1974

home vendor mortgage is defined in section LZ 8 (Meaning of home vendor mortgage) for the purposes of sections LZ 6 and LZ 7 (which relate to credits for interest on home vendor mortgages)

honorarium is defined in section CW 62B (Voluntary activities) for the purposes of that section

household member is defined in section LC 8 (Some definitions) for the purposes of section LC 7 (Meaning of housekeeper)

housekeeper is defined in section LC 7 (Meaning of housekeeper) for the purposes of section LC 6 (Tax credits for housekeeping)

housekeeping payments is defined in section LC 8 (Some definitions) for the purposes of section LC 6 (Tax credits for housekeeping)

ICA means imputation credit account

ICA company means a company referred to in section OB 1(1) (General rules for companies with imputation credit accounts)

identical goods, for the purposes of the FBT rules, for any goods, means other goods that are the same in terms of physical characteristics, quality, and reputation, except for minor differences in appearance that do not affect the value of the goods

identical share means a share that confers the same rights and imposes the same obligations on a holder as an original share

IFRS means a New Zealand Equivalent to International Financial Reporting Standard, approved or issued under the Finan-

cial Reporting Act 1993, and as amended from time to time or an equivalent standard issued in its place

IFRS 4 means the IFRS, numbered NZ IFRS 4, that relates to insurance contracts

IFRSE means an International Financial Reporting Standard approved by the International Accounting Standards Board, as amended from time to time

impaired credit adjustment is defined in section EW 15D(3) (IFRS financial reporting method) for the purposes of that section.

implementation date is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

improvement, for an item of depreciable property, is defined in section EE 67 (Other definitions)

improvements, in sections CB 7 (Disposal: land acquired for purposes of business relating to land) and CB 11 (Disposal within 10 years of improvement: building business), means improvements to land that—

(a) are not minor; and

(b) are made—

(i) by a person erecting a building or otherwise; or

(ii) by an associated person erecting a building or otherwise

imputation additional tax means an amount of tax arising under section OB 71 (Imputation additional tax on leaving wholly-owned group) or OB 72 (Imputation additional tax on joining wholly-owned group)

imputation credit—

(a) means a credit referred to in section OA 5(2) (Credits):

(b) is further defined in section CD 16(4) (Certain dividends not increased by tax credits) for the purposes of that section:

(c) is further defined in section CD 17(4) (Credit transfer notice) for the purposes of that section

imputation credit account means the account referred to in section OA 2(1)(a) (Memorandum accounts)

imputation debit means a debit referred to in section OA 6(2) (Debits)

imputation group means, at a time, an imputation group formed under section FN 7 (Forming imputation groups)

imputation penalty tax means tax payable under section 140B of the Tax Administration Act 1994

imputation ratio means the ratio set out in section OB 60(3) (Imputation credits attached to dividends)

imputation rules means the provisions listed in section FN 2 (Imputation rules)

income, for a person, means income of the person under section BD 1(1) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income)

income derived from New Zealand*[Repealed]*
[Repealed]

income from employment—

(a) means salary or wages or an extra pay:

(b) in sections DA 2(4) (General limitations) and DE 1 (What this subpart does), excludes payments referred to in section RD 5(1)(b)(iii) (Salary or wages) to the extent to which those payments are made to 1 of the following:

  (i) a self-employed person, as defined in section 2 of that Act, under the Accident Compensation Act 1982; or

  (ii) an earner in relation to compensation for loss of earnings other than as an employee, as defined under regulations made under section 167 of that Act, under the Accident Rehabilitation and Compensation Insurance Act 1992; or

  (iii) a self-employed person, as defined in section 13 of that Act, under the Accident Insurance Act 1998, for compensation paid under schedule 1, part 2, clause 7 of that Act; or

  (iv) a self-employed person, as defined in section 6 of the Act, under the Accident Compensation Act 2001, for compensation paid under schedule 1, part 2, clause 32 of that Act:

(c) in sections DA 2(4) and DE 1, includes salary, wages, or other income to which section RD 3(2) to (4) (PAYE income payments) applies

(d) in section DA 2(4), includes excluded income derived by a person from employment

income from forestry is defined in section EH 34 (Meaning of income from forestry)

income from mining is defined in section CU 21 (Meaning of income from mining)

income from personal exertion is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

income interest,—

(a) for a foreign company, is defined in sections EX 8 to EX 13 (which relate to the calculation of a person's income interest):

(b) in subparts FE (Interest apportionment on thin capitalisation) and OE (Branch equivalent tax accounts (BETA)), and in the FDP rules and the imputation rules, means an income interest of 10% or greater under the rules in sections EX 14 to EX 17 (which relate to the 10% threshold and variations in the income interest level)

income statement means a statement issued by the Commissioner to a natural person that contains the information required by section 80E of the Tax Administration Act 1994

income tax means income tax imposed under section BB 1 (Imposition of income tax) except to the extent to which it has a different meaning under section YA 2 (Meaning of income tax varied)

income tax liability—

(a) means, for a person,—

(i) an income tax liability for the person and a tax year calculated under subpart BC (Calculating and satisfying income tax liabilities), if subparagraph (ii) does not apply; or

(ii) income tax for the person and a tax year calculated under subpart HM (Portfolio investment entities), if the person is a multi-rate PIE; and

(b) in sections EF 5 (Use of money interest payable by person) and EF 6 (Different tax years), includes circum-

stances in which a person has no tax to pay or is entitled to a refund of tax

income year means,—

(a) for a person who has elected, under section 38 of the Tax Administration Act 1994 and with the Commissioner's consent, to have a period not ending on 31 March, the elected period (which may be less than a year in some cases):

(b) for any other person, the tax year

income-tested benefit means any of the following benefits paid or payable under the Social Security Act 1964

(a) domestic purposes benefit:

(b) emergency benefit:

(c) independent youth benefit:

(d) invalids' benefit:

(e) sickness benefit:

(f) unemployment benefit:

(g) widows' benefit

increase in savings is defined in section LZ 12 (Meaning of increase in savings) for the purposes of sections LZ 9 to LZ 11 (which relate to credits for savings in special accounts)

independent living means occupancy of a place under an arrangement that—

(a) does not have a level of compulsory care:

(b) has a level of compulsory care that is merely incidental to the occupancy

indirect income interest is defined in section EX 10 (Indirect income interests)

initial period is defined in section FZ 3(4) (Income of lessor under specified lease) for the purposes of that section

initial provisional tax liability, means—

(a) for a person who is not a natural person, or a person who is a natural person and a trustee of a trust, a provisional tax liability for a tax year in which the person starts to derive income from a taxable activity, when they did not derive income from a taxable activity in any of the 4 previous tax years; and

(b) for a person who is a natural person and not a trustee of a trust, a provisional tax liability for a tax year when—

(i) they did not have residual income tax of more than $2,500 in any of the 4 previous tax years; and

(ii) they have residual income tax of $50,000 or more in the tax year; and

(iii) in the tax year, they stopped deriving income from employment and then started to derive income from a taxable activity

initial treatment is defined in section CU 29 (Other definitions)

Inland Revenue Acts means the Acts listed in the schedule of the Tax Administration Act 1994

input tax—

(a) is defined in section 3A of the Goods and Services Tax Act 1985; and

(b) includes, for a supply, GST levied on goods entered for home consumption under the Customs and Excise Act 1996

instalment, in sections FZ 2 to FZ 4 (which relate to specified leases), and in the definitions of **instalment period** and **outstanding balance**, means an amount payable by a lessee, under a lease, by way of—

(a) repayment of some or all of a loan that a lessor is treated as having advanced under section FZ 2(2) (Effect of specified lease on lessor and lessee); or

(b) payment of interest; or

(c) both

instalment date means a date for payment of provisional tax for a tax year that is the day and month specified for a person with a provisional tax liability in schedule 3, part A (Payment of provisional tax and terminal tax)

instalment period is defined in section FZ 3(4) (Income of lessor under specified lease) for the purposes of that section

institution is defined in section LC 8 (Some definitions) for the purposes of section LC 7 (Meaning of housekeeper)

insurance,—

(a) in section CR 3 (Income of non-resident general insurer) means insurance of a kind described in section CR 3(3):

(b) in section YD 8 (Apportionment of premiums derived by non-resident general insurers) means insurance of a kind described in section YD 8(4)(a)

insurance contract includes a cover note and a renewal of an insurance contract

insured person, in sections CR 3, HD 16, and YD 8 (which relate to non-resident general insurers),—

(a) in relation to general insurance as described in sections CR 3(3)(a) and YD 8(4)(a), means a person who is liable to pay a premium to an insurer for the insurance and is entitled by the payment of the premium to make a claim against the insurer:

(b) in relation to a guarantee against risk as described in sections CR 3(3)(b) and (c) and YD 8(4)(b) and (c), means a person who is liable to pay a premium to an insurer for the guarantee, whether or not the payment of the premium entitles the person to make a claim against the insurer

insurer—

(a) means a person who assumes liability under a contract of insurance:

(b) in sections CR 3, DW 3, HD 16, HD 17, and YD 8 (which relate to non-resident general insurers),—

(i) in relation to general insurance as described in sections CR 3(3)(a) and YD 8(4)(a), means a person who provides the insurance and to whom an insured person is liable to pay a premium:

(ii) in relation to a guarantee against risk as described in sections CR 3(3)(b) and (c) and YD 8(4)(b) and (c), means a person who provides the guarantee and to whom an insured person is liable to pay a premium

interest,—

(a) for a person's income,—

(i) means a payment made to the person by another person for money lent to any person, whether or not the payment is periodical and however it is described or calculated; and

(ii) does not include a redemption payment; and

(iii) does not include a repayment of money lent:

(b) for the RWT rules and the NRWT rules, includes a redemption payment:

(c) in sections DB 6 (Interest: not capital expenditure), DB 7 (Interest: most companies need no nexus with income), and DB 8 (Interest: money borrowed to acquire shares in group companies),—

(i) includes expenditure incurred under the financial arrangements rules or the old financial arrangements rules; and

(ii) does not include interest to which section DB 1(1)(e) (Taxes, other than GST, and penalties) applies:

(d) for land, has the same meaning as **estate**

interest instalment date means an instalment date—

(a) on which an instalment of provisional tax is due and payable under section RC 9 (Provisional tax payable in instalments); and

(b) after which, except in a case to which section 120KC(1) of the Tax Administration Act 1994 applies, an instalment amount that is overpaid or underpaid attracts use of money interest, a late payment penalty, or a shortfall penalty, as applicable

interested shareholder is defined in section HD 15(9) (Asset stripping of companies) for the purposes of that section

intermediary means a person described in section RP 2 or RP 17 (which relate to PAYE intermediaries and tax pooling intermediaries) for the purposes of subpart RP (Intermediaries)

internal software development is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)

internal software development controller is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)

internal software development group is defined in section LH 17 (Some definitions) for the purposes of subpart LH (Tax credits for expenditure on research and development)

international aircraft is defined in section EE 67 (Other definitions)

international organisation is defined in section CW 22(3) (Amounts derived by overseas experts and trainees in New Zealand by government arrangement) for the purposes of that section

international tax rules means—

(a) the following provisions:
- (i) section CD 21 (Attributed repatriations from controlled foreign companies):
- (ii) sections CD 45 to CD 52 (which relate to CFC attributed repatriation calculation rules):
- (iii) subpart CQ (Attributed income from foreign equity):
- (iv) section CZ 10 (Transitional relief for calculation of attributed repatriation dividends: 2 July 1992):
- (v) subpart DN (Attributed losses from foreign equity):
- (vi) subpart EX (Controlled foreign company and foreign investment fund rules):
- (vii) section FM 6(4) (Some general rules for treatment of consolidated groups):
- (viii) sections GB 7 to GB 16 (which relate to avoidance arrangements):
- (ix) section GC 4 (Disposals and acquisitions of FIF attributing interests):
- (x) subpart IQ (Attributed controlled foreign company net losses and foreign investment fund net losses):
- (xi) sections LK 1 to LK 7 (which relate to foreign tax credits and CFCs):
- (xii) section OE 5 (Treatment of attributed CFC income and FIF income in this subpart):
- (xiii) section YA 2 (Meaning of income tax varied):

(xiv) *[Repealed]*
(xv) *[Repealed]*
(xvi) section YD 3 (Country of residence of foreign companies); and

(b) section 61 of the Tax Administration Act 1994

investment activityis defined in section MB 3 (When person carries on 1 or more businesses or investment activities) for the purpose of that section

investment society dividend means—

(a) a dividend declared by a friendly society; or
(b) a dividend declared by a registered society as defined in 2 of the Industrial and Provident Societies Act 1908; or
(c) for a building society,—
  (i) a dividend declared by the society; or
  (ii) some tangible or intangible benefit that a member or a shareholder receives for disposing to the society of a share in the society; the benefit may or may not be relief from an obligation and may or may not be convertible into money

investor means,—

(a) for a group investment fund, a person who is entitled, by reason of the terms of the trust under which the group investment fund is established, to the income from the money, investments, and other property of the group investment fund:
(b) for a portfolio investment entity, is defined in section HM 4 (Who is an investor?)
(c) *[Repealed]*

investor class, for a portfolio investment entity, is defined in section HM 5 (What is an investor class?)

investor interest, for an investor in a portfolio investment entity, means an interest in the entity that gives the holder an entitlement to a distribution of proceeds from the entity's investments

in-work tax credit is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

issue,—

(a) for a financial arrangement, means the act of creating the financial arrangement:

(b) is defined in section YZ 1 (Source rule for interest) for the purposes of that section

issuer is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

joint venture agreement, for an airport operator,—

(a) means an agreement made between an airport authority and the Crown acting by and through the Minister of Transport under section 94 of the Civil Aviation Act 1990; and

(b) includes any other agreement of a similar nature made between the Crown and an airport authority, whether or not the airport authority was, at the time the agreement was made, an airport authority, and whether or not the agreement was made before the commencement of the Civil Aviation Act 1990

jurisdictional attributed income is defined in section IQ 2B(9) (Effect of attributed CFC net loss and some FIF net loss from before first affected year) for the purposes of that section and section LK 5B (Credits from tax year before first affected year)

jurisdictional BE income is defined in section IQ 2B(9) (Effect of attributed CFC net loss and some FIF net loss from before first affected year) for the purposes of that section and section LK 5B (Credits from tax year before first affected year)

jurisdictional income ratio is defined in section IQ 2B(9) (Effect of attributed CFC net loss and some FIF net loss from before first affected year) for the purposes of that section and section LK 5B (Credits from tax year before first affected year)

KiwiSaver contributions means a contribution required to be deducted under Part 3, subpart 1 of the KiwiSaver Act 2006

KiwiSaver scheme means a KiwiSaver scheme, as defined in section 4 of the KiwiSaver Act 2006

land—

(a) includes any estate or interest in land:

(b) includes an option to acquire land or an estate or interest in land:
(c) does not include a mortgage:
(d) is defined in section CB 19(3) (Business exclusion from sections CB 6 to CB 11) for the purposes of that section:
(e) is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section:
(f) in the definitions of **permit area**, **petroleum mining asset**, **prospecting expenditure**, and **residual expenditure**,—
  (i) means all land within the territorial limits of New Zealand; and
  (ii) includes land below the territorial sea of New Zealand or any other waters within the territorial limits of New Zealand; and
  (iii) includes the continental shelf; and
  (iv) includes the seabed and subsoil below any sea that is beyond the territorial sea of New Zealand but that, by New Zealand legislation and under international law, has been or may be designated as an area in which the rights of New Zealand relating to natural resources may be exercised

land investment company means a company that, in a tax year,—
(a) is not a portfolio investment entity; and
(b) on 80% or more of the days in the corresponding income year on which the company has property with a market value of $100,000 or more, owns property that—
  (i) consists of interests in land or shares in a land investment company that does not own, directly or indirectly, shares in the company; and
  (ii) has a market value of 90% or more of the market value of all the property of the company; and
(c) meets the requirements of section HM 12 (Income types)

land loss is defined in section HM 65(3) (Use of land losses of investor classes) for the purposes of that section

land provisions means the following provisions:

(a) sections CB 7 to CB 11 (which relate to certain land transactions), except CB 8 (Disposal: land used for landfill, if notice of election):

(b) section CB 15 (Transactions between associated persons):

(c) sections FB 3 to FB 5 (which relate to the transfer of land on a settlement of relationship property)

LAQC*[Repealed]*

[Repealed]

large budget film grant means a payment that—

(a) is in the nature of a large budget screen production grant or post-production digital and visual effects grant; and

(b) is made in relation to a film or television production; and

(c) is authorised by the New Zealand Film Commission in relation to a company that—

(i) is resident in New Zealand:

(ii) has a permanent establishment in New Zealand

late balance date has the meaning given in section YE 1(7) (References to balance dates and years)

lease—

(a) means a disposition that creates a leasehold estate:

(b) in sections DZ 9 (Premium paid on land leased before 1 April 1993) and EZ 8 (Premium paid on land leased before 1 April 1993),—

(i) means a disposition by which a leasehold estate is created; and

(ii) includes a licence:

(c) for the purposes of subpart EE (Depreciation), includes a licence to occupy:

(d) in sections EJ 10 (Personal property lease payments), EX 21(30) and (31) (Branch equivalent income or loss: calculation rules), FA 6 to FA 11 (which relate to finance leases), FZ 2 to FZ 4 (which relate to specified leases) and in the definitions of **cost price** (paragraphs (b) to (e)), **finance lease**, **guaranteed residual value**, **initial period**, **instalment**, **lessee** (paragraph (b)), **lessor** (paragraph (b)), **operating lease**, **outstanding**

balance, **personal property lease asset**, **specified lease**, and **term of the lease**,—

(i) means an agreement under which a lessor transfers to a lessee for the term of the lease a personal property lease asset or the right to possess a personal property lease asset in consideration for a personal property lease payment; and

(ii) includes a sublease; and

(iii) includes a licence to use intangible property; and

(iv) includes a hire or bailment; and

(v) includes a lease that is 2 or more consecutive or successive leases treated as 1 lease because the same personal property lease asset had been leased to the same lessee or an associated person of the lessee under the consecutive or successive leases and the Commissioner, having regard to the tenor of this paragraph, regards the consecutive or successive leases as 1 lease; and

(vi) does not include a hire purchase agreement, the definition of which applies, for this purpose, as if it did not contain paragraph (f); and

(vii) does not include an assignment of a hire purchase agreement, the definition of which applies, for this purpose, as if it did not contain paragraph (f):

(e) is defined in section GC 5(5) (Leases for inadequate rent) for the purposes of that section:

(f) in the financial arrangements rules, means—

(i) a lease as described in paragraph (d):

(ii) an arrangement that would be a lease as described in paragraph (d) if the arrangement did not relate to real property, livestock, or bloodstock

leasehold estate includes any estate, however created, other than a freehold estate

legal defeasance means a defeasance in which the release of a party to a financial arrangement or an excepted financial arrangement from the primary obligation of the financial arrangement or the excepted financial arrangement is—

(a) acknowledged formally by the creditor; or

(b) acknowledged formally by a duly appointed trustee or agent of the creditor; or
(c) established by legal judgment

legal expenses is defined in section DB 62 (Deduction for legal expenses) for the purposes of that section

legal life is defined in section EE 67 (Other definitions)

less than 10% holder is defined in section YC 15(3) (Directors' knowledge of failure to meet requirements of continuity provision) for the purposes of that section

lessee,—
(a) for a lease as described in paragraph (c) of the definition of **lease**, includes the holder of a licence to occupy:
(b) for a lease as described in paragraph (d) of the definition of **lease**,—
  (i) means a person who leases a personal property lease asset from a lessor; and
  (ii) includes a trustee or assignee of the person:
(c) for a hire purchase agreement, means the person who obtains the use of, or the right to use, the hire purchase asset under the agreement

lessor,—
(a) for a lease as described in paragraph (c) of the definition of **lease**, includes the grantor of a licence to occupy:
(b) for a lease as described in paragraph (d) of the definition of **lease**,—
  (i) means a person who assembles, manufactures, purchases, or otherwise acquires a personal property lease asset and leases it to a lessee; and
  (ii) includes a trustee or assignee of the person:
(c) for a hire purchase agreement,—
  (i) means the person who grants to the lessee the use of, or the right to use, a hire purchase asset under the agreement; and
  (ii) includes an assignee of the person in relation to the hire purchase agreement

levy, for a statutory producer board, means a sum payable by a member of the board under a power of the board to require or request the member to pay an amount of levy

licence-specific assets is defined in section DZ 5(6) (Farmout arrangements for petroleum mining before 16 December 1991) for the purposes of that section

life financial reinsurance is defined in section EY 12 (Meaning of life reinsurance)

life fund PIE means a separate identifiable fund forming part of a life insurer that—

(a) meets the requirements of section HM 7 (Requirements); and

(b) chooses to become a PIE under section HM 71 (Choosing to become PIE); and

(c) has not chosen to cancel PIE status under section HM 29 (Choosing to cancel status); and

(d) holds investment subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund

life insurance is defined in sections EY 8 (Meaning of life insurance) and EY 14 (Life insurance and life reinsurance: how sections relate)

Life Insurance Fund means a Life Insurance Fund as defined in section 15 of the Life Insurance Act 1908 and, for a life insurer, means the life insurer's Life Insurance Fund

life insurance policy—

(a) is defined in sections EY 9 (Meaning of life insurance policy) and EY 14 (Life insurance and life reinsurance: how sections relate); and

(b) when referred to in relation to a life insurer, means a life insurance policy under which the life insurer is the insurer

life insurance rules is defined in section EY 1(2) (What this subpart does)

life insured means—

(a) a human being on whose death or survival the payment of a benefit under a life insurance policy is contingent, including the payment of an annuity whose term is contingent on human life; and

(b) a human being to whom an annuity whose term is not contingent on human life is payable under a life insurance policy

life insurer—

(a) is defined in sections EY 10 (Meaning of life insurer) and EY 14 (Life insurance and life reinsurance: how sections relate):

(b) is defined in section CX 11(3) (Employment-related loans: loans by life insurers) for the purposes of that section:

(c) in section YC 17 (Demutualisation of insurers), and in the FBT rules, means a person carrying on a business of providing life insurance

life reinsurance is defined in sections EY 12 (Meaning of life reinsurance) and EY 14 (Life insurance and life reinsurance: how sections relate)

life reinsurance policy—

(a) is defined in sections EY 13 (Meaning of life reinsurance policy) and EY 14 (Life insurance and life reinsurance: how sections relate); and

(b) when referred to in relation to a life reinsurer, means a life reinsurance policy under which the life reinsurer is the reinsurer

life reinsurer is defined in sections EY 12(4) (Meaning of life reinsurance) and EY 14 (Life insurance and life reinsurance: how sections relate)

life risk means an actuarially determined risk contingent on human life

life risk component—

(a) means—

(i) for a premium paid under a life insurance policy, the amount of the premium that gives rise to income derived by the life insurer for providing services, including the bearing of life risk:

(ii) for a claim payable under a life insurance policy, the amount of the claim that gives rise to deductions for the life insurer for providing services, including the bearing of life risk:

(b) does not include an amount that is a savings component

limitation rule is defined in section DD 1(3) (Entertainment expenditure generally)

limited attribution company is a company that is—

(a) a building society:
(b) a co-operative company registered under Part 2 or 3 of the Co-operative Companies Act 1996:
(c) a listed company:
(d) a widely-held company:
(e) a foreign company that is not a closely-held company

limited non-transaction shares is defined in section CD 34B (Distributions to members of co-operative companies)

limited partner means a limited partner of a limited partnership or an **overseas limited partnership** as defined in section 4 of the Limited Partnerships Act 2008

limited partnership—

(a) means a limited partnership registered under the Limited Partnerships Act 2008; and
(b) includes an **overseas limited partnership** as defined in section 4 of that Act; and
(c) despite paragraph (a) or (b), does not include a listed limited partnership or a foreign corporate limited partnership

limited partnership deduction is defined in section HG 11(12) (Limitations on deductions by partners in limited partnerships) for the purposes of that section

limited-recourse amount is defined in section GB 48(2) (Defined terms for sections GB 45 and GB 46) for the purposes of sections GB 45 and GB 46 (which relate to arrangements involving money not at risk)

limited-recourse loan is defined in section GB 48(3) (Defined terms for sections GB 45 and GB 46) for the purposes of sections GB 45 and GB 46 (which relate to arrangements involving money not at risk)

lines trust means a trustee of a trust that—

(a) has had shares allocated or transferred to or vested in it, being shares in—

(i) an energy company as defined in section 2(1) of the Energy Companies Act 1992 under an approved establishment plan under that Act:
(ii) a company under section 76 of the Energy Companies Act 1992:
(iii) a company to which have been transferred assets and liabilities of the Crown under section 16 of the Southland Electricity Act 1993; and

(b) continues to hold shares described in paragraph (a)

liquidation, for a company,—

(a) includes—
(i) removal of the company from the register of companies under the Companies Act 1993; and
(ii) termination of the company's existence under any other procedure of New Zealand or foreign law; and

(b) includes, in references in this Act to anything occurring on liquidation, anything occurring—
(i) during the period that starts with a step that is legally necessary to achieve liquidation, including the appointment of a liquidator or a request of the kind referred to in section 318(1)(d) of the Companies Act 1993; and
(ii) for the purpose of enabling liquidation

listed company means, at any time, a company any shares in which are at that time quoted on an official list of a recognised exchange

listed horticultural plant, in sections DO 5 to DO 9 (which relate to deductions relating to horticultural plants),—

(a) means a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is of a type that is listed in a determination made by the Commissioner under section 91AAB of the Tax Administration Act 1994:

(b) does not include—
(i) a tree planted mainly for the purposes of timber production:
(ii) a tree or other similar plant planted mainly for the purposes of ornamentation:

(iii) a vine planted mainly for the purposes of producing grapes for wine production

listed limited partnership means an entity or group of persons that is listed on a recognised exchange, and that entity or group of persons—

(a) is a limited partnership registered under the Limited Partnerships Act 2008; or

(b) meets the definition of **overseas limited partnership** in section 4 of that Act

listed PAYE intermediary means a person which the Commissioner may list as an intermediary under section 15G of the Tax Administration Act 1994

listed PIE means a company that—

(a) is listed on a recognised exchange in New Zealand or meets the requirements of section HM 18 (Requirements for listed PIEs: unlisted companies); and

(b) meets the requirements of section HM 7 (Requirements); and

(c) chooses to become a PIE under section HM 71 (Choosing to become PIE); and

(d) has not chosen to cancel PIE status under section HM 29 (Choosing to cancel status); and

(e) is not a life fund PIE; and

(f) has not chosen under section HM 2(3) (What is a portfolio investment entity?) to become a multi-rate PIE

livestock on the Chatham Islands means livestock that are on hand on the Chatham Islands at the end of an income year

living alone payment means a living alone payment under—

(a) section 74U of the War Pensions Act 1954; or

(b) section 18A of the Social Welfare (Transitional Provisions) Act 1990; or

(c) section 13 of the New Zealand Superannuation and Retirement Income Act 2001

loan,—

(a) has the same meaning as **money lent**:

(b) in sections CD 27 (Property made available intragroup) and CD 39 (Calculation of amount of dividend when property made available) and in the FBT rules, includes

any amount that a person advances or gives as principal under a financial arrangement, but not an excepted financial arrangement:

(c) for a holding company and a mining company, is defined in section CU 29 (Other definitions):

(d) is defined in section CZ 3(5) (Exchange variations on 8 August 1975) for the purposes of that section

local authority—

(a) means a local authority as defined in the Local Government Act 2002:

(b) includes—

(i) the administering body, as defined in the Reserves Act 1977, of any reserve classified under the Act as a recreation reserve or a scenic reserve:

(ii) an airport authority, other than an airport company, as defined in the Airport Authorities Act 1966:

(iii) the Aotea Centre Board of Management established by the Auckland Aotea Centre Empowering Act 1985:

(iv) the council of the Auckland Institute and Museum constituted under the Charitable Trusts Act 1957:

(v) the Canterbury Museum Trust Board continued in existence by section 5(1) of the Canterbury Museum Trust Board Act 1993:

(vi) the Otago Museum Trust Board continued in existence by section 5(1) of the Otago Museum Trust Board Act 1996:

(vii) Auckland Transport (as established by section 38 of the Local Government (Auckland Council) Act 2009):

(viii) other than for the purposes of section CW 39(4) (Local authorities), Auckland Regional Holdings as established by section 18 of the Local Government (Auckland) Amendment Act 2004:

(ix) the New Zealand Local Government Funding Agency Limited while it is a council-controlled

organisation within the meaning of section 6(1) of the Local Government Act 2002

logbook term is defined in section DE 8 (Logbook term)

long-term bailment is defined in section EC 27 (Some definitions) for the purposes of subpart EC (Valuation of livestock)

look-through company means an entity—

(a) that is described in paragraph (a) of the definition of **company**; and

(b) that, treating the entity as a company for the purposes of this definition, is resident in New Zealand under section YD 2 (Residence of companies); and

(c) that is not treated under, or for the purposes of, a double tax agreement as not resident in New Zealand; and

(d) for which there are 5 or fewer look-through counted owners, treating look-through counted owners who are relatives, ignoring any later death or dissolution of marriage, union, or relationship, as 1 person; and

(e) for which all owners have only look-through interests; and

(f) that is not a flat-owning company; and

(g) for which an election under section HB 13 (Valid elections) has been received by the Commissioner

look-through company deduction is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies)

look-through counted owner means, for an entity, a person who—

(a) is a natural person that—

(i) is not a trustee; and

(ii) has a look-through interest for the entity:

(b) is a natural person who has derived, as beneficiary income of a trust, income that arose from a direct or indirect beneficial interest in a look-through interest for the entity for the current income year or 1 of the last 3 income years:

(c) is a trustee of a trust that—

(i) has a look-through interest for the entity or that has a direct or indirect beneficial interest in

a look-through interest for the entity, treating co-trustees as 1 person; and

(ii) has not distributed, as beneficiary income, all income that arose from a direct or indirect beneficial interest in a look-through interest for the entity for the current income year and all of the last 3 income years:

(d) is a natural person that has a voting interest or a market value interest in relation to a company that has derived, as beneficiary income from a trust, income that arose from a direct or indirect beneficial interest in a look-through interest for the entity for the current income year or 1 of the last 3 income years

look-through interest means a person's shares in an entity, or in a look-through company (**LTC**) treating the look-through company as a company for the purposes of this definition, if—

(a) every other shareholder in the entity or LTC has the same rights, proportionally, as the person to vote or participate in any decision-making concerning—

(i) the distributions to be made by the entity or LTC; and

(ii) the entity's or LTC's constitution; and

(iii) varying the capital of the entity or LTC; and

(iv) appointing or electing directors of the entity or LTC; and

(b) every other shareholder has the same rights, proportionally, as the person in relation to when the entity or LTC distributes its profits or its assets if the entity or LTC acquires, redeems, or cancels its shares, or reduces or returns its share capital, whether on liquidation or not; and

(c) the entity or LTC has only shareholders that are natural persons, or corporate trustees

loss—

(a) includes an amount of depreciation loss, except when any of paragraphs (b) to (d) applies:

(b) means an attributed CFC loss when used in the expression "attributed CFC income or loss":

(c) means a branch equivalent loss when used in the expression "branch equivalent income or loss":

(d) means a FIF loss when used in the expression "FIF income or loss"

loss balance, for a tax year,—

(a) means the sum of all tax loss components—

(i) arising in the tax year and included in the tax loss for the tax year under section IA 2(3) and (4) (Tax losses), to the extent not used under section IA 3(1) to (3) or IA 4(1)(a) (which relate to the first use and to particular losses):

(ii) arising in an earlier tax year and carried forward under section IA 3(4) to the tax year, to the extent not used under section IA 3(1) to (3) or IA 4(1)(a):

(b) does not include a tax loss component included in a company's loss balance at the end of the tax year if the requirements of section IA 5 (Restrictions on companies' loss balances carried forward), as modified by sections IZ 4 to IZ 6 (which relate to tax losses for tax years before 1992), have not been met

loss period is defined in section IQ 7(4) (When group membership lacking in loss period) for the purposes of that section

loss-attributing qualifying company*[Repealed]*
[Repealed]

low-turnover trader is defined in section EB 13(2) (Low-turnover valuation) for the purposes of subpart EB (Valuation of trading stock (including dealer's livestock))

lump sum payment is defined in section EI 3(6) (Assigning or granting copyright) for the purposes of that section

MACA means Maori authority credit account

main deposit is defined in section EH 36 (Other definitions)

main income equalisation account is defined in section EH 36 (Other definitions)

main income equalisation scheme means the scheme referred to in section EH 1(2)(a) (Income equalisation schemes)

main maximum deposit is defined in section EH 35 (Meaning of main maximum deposit)

major shareholder, for a close company, means any person who—

(a) owns, or has the right to acquire, at least 10% of the ordinary shares of the company:

(b) has the power to control, directly or indirectly, at least 10% of the ordinary shares of the company:

(c) owns, or has the right to acquire, at least 10% of the voting and market value interests in the company:

(d) has the power to control, directly or indirectly, at least 10% of the voting and market value interests in the company:

(e) has, in any other way, 10% or more of the control of the company

Maori authority means a person who has made an election under section HF 11 (Choosing to become Maori authority)

Maori authority credit, for a distribution by a Maori authority, means—

(a) a credit referred to in section OA 5(8) (Credits):

(b) the amount treated as attached to the distribution under section RE 24 (When amount of tax treated as Maori authority credit)

Maori authority credit account means the account referred to in section OA 2(1)(g) (Memorandum accounts)

Maori authority credit account return means a return that must be filed under section 70B of the Tax Administration Act 1994

Maori authority credit ratio means the ratio set out in section OK 19 (Maori authority credits attached to distributions)

Maori authority debit means a debit referred to in section OA 6(8) (Debits)

Maori authority rules means the provisions listed in section HF 1(2) (Maori authorities and the Maori authority rules)

Maori incorporation is defined in section 4 of the Maori Land Act 1993

Maori investment company means a company that is incorporated for the purpose of acquiring shares or debentures issued by a forestry company for unpaid purchase money for Maori land bought by the forestry company from the Maori owners

Maori land means Maori freehold land as defined in the Maori Land Act 1993

Maori owners—

(a) means the persons who have a beneficial interest in Maori land bought by a forestry company; and

(b) includes every trustee for a Maori owner, the Maori Trustee, and every Maori incorporation that has a beneficial interest in the land

market interest is defined in section RD 35(5) (Employment-related loans: value using market interest rates) for the purposes of that section

market value,—

(a) for a share or option quoted on the official list of a recognised exchange, at the time, means an amount equal to the middle market quotation at the time for a share or option having the same terms as the share or option to be valued, unless the quotation is not a fair reflection of the market value, having regard at the time to the matters referred to in paragraph (e) of the definition of **recognised exchange**:

(b) for a share or option not quoted on the official list of a recognised exchange at the time, means the amount that a willing purchaser would pay to acquire the share or option in an arm's length acquisition at the time and that is determined using a method that—

(i) conforms with commercially acceptable practice; and

(ii) may, in appropriate cases, have regard to the present value at the time of the company's anticipated income or cash flows and the realisable value at the time of the company's assets; and

(iii) results in a valuation that is fair and reasonable:

(c) in subpart EB (Valuation of trading stock (including dealer's livestock)), does not include any GST that would be charged on the disposal by a person of their trading stock if the disposal would be a taxable supply:

(d) is defined in section EX 70 (Market value of life policy and superannuation entitlements) for certain purposes

of sections EX 28 to EX 72 (which relate to the FIF rules):

(e) is defined in section RD 27(3) (Determining fringe benefit values) for the purposes of that section:

(f) is defined in section RD 40(3) (Goods) for the purposes of that section

market value circumstance, for a company at any time,—

(a) means an occasion or situation in which, at the time, the company has on issue a debenture—

(i) that is not an excluded fixed rate security or pre-1991 budget security; and

(ii) to which section FA 2 (Recharacterisation of certain debentures) or FA 2B (Stapled debt securities) applies:

(b) also means an occasion or situation in which, at the time,—

(i) the company has on issue a share that is not an excluded fixed rate security or a pre-1991 budget security; and

(ii) the payment of a dividend is guaranteed or secured to the holder by some person other than the company; and

(iii) the directors of the company know or could reasonably be expected to know at the time that the payment of a dividend is so guaranteed or secured:

(c) also means an occasion or situation in which, at the time, an option exists that—

(i) is not an excluded option; and

(ii) is to acquire a share in the company; and

(iii) is granted by the company or a person other than the company:

(d) also means an occasion or situation in which, at the time, an option exists that—

(i) is not an excluded option; and

(ii) is to require a person to acquire a share in the company:

(e) also means an occasion or situation in which, at the time, an arrangement or a series of related or connected arrangements exists that—

(i) relates to shares or options over shares in the company issued by the company or any other person; and

(ii) has a purpose or effect of defeating the intent and application of any provision of this Act whose application is dependent on the measurement of voting and market value interests:

(f) does not exist under any of paragraphs (a) to (e) if, at the time, no share in the company has a value higher than zero, except for an excluded fixed rate security or a pre-1991 budget security, and no option over a share in the company has a value higher than zero, except for an excluded option:

(g) also means an occasion or situation in which, at the time,—

(i) under any of paragraphs (a) to (e), a direct market value circumstance exists for another company (the **shareholder company**); and

(ii) the shareholder company is associated with the company; and

(iii) under section YC 4 (Look-through rule for corporate shareholders), any fraction of any market value interest held, or treated under section YC 4 as held, by the shareholder company in the company is treated as held by any other person

market value interest—

(a) means, for a person and a company and a time, the percentage market value interest that the person is treated as holding in the company at the time under sections YC 2 to YC 20 (which relate to the measurement of control and ownership interests):

(b) is further defined in section HA 44 (Measuring effective interests) for the purposes of subpart HA (Qualifying companies (QC) and loss-attributing qualifying companies (LAQC)) and the definition of **effective interest**

master fund means—

(a) a group investment fund that derives category A income; or

(b) a public unit trust

maturity,—

(a) in the financial arrangements rules, means,—

(i) for an agreement for the sale and purchase of property or services or an option, the date on which the agreement or option ends:

(ii) for any other financial arrangement, the date on which the last payment contingent on the financial arrangement is made:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

maximum account balance is defined in section EK 23 (Other definitions) for the purposes of subpart EK (Environmental restoration accounts)

maximum deficit debit is defined in section OC 36 (Meaning of maximum deficit debit) for the purposes of section OC 23 (FDPA breach of FDP ratio by PCA company)

maximum payment is defined in section EK 22 (Meaning of maximum payment) for the purposes of subpart EK (Environmental restoration accounts)

maximum permitted ratio, for an imputation credit, an FDP credit, a CTR credit, or a Maori authority credit, means a ratio calculated under section OA 18 (Calculation of maximum permitted ratios)

maximum pooling value is defined in section EE 65 (Meaning of maximum pooling value)

measurement period, for an income year of a reporting bank, means 1 of the measurement periods for the income year described in section FE 8 (Measurement dates) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

member,—

(a) in sections CD 33(1) (Payments corresponding to notional distributions of producer boards and co-operative companies) and OB 73 to OB 75 (which relate to imputation credit accounts of statutory producer boards),

and in the definitions of **levy** and **produce transactions**, for a statutory producer board and for an income year, means a person who—

(i) is resident in New Zealand; and

(ii) carries on in the year a farming or agricultural or other business in relation to which the board has special statutory functions; and

(iii) is liable to pay a levy to the board for the year or enters into produce transactions with the board during the year:

(b) *[Repealed]*

(c) in subpart HE (Mutual associations) in relation to a statutory producer board and to an income year, means a person who—

(i) is liable for the year to pay a levy to the statutory producer board; or

(ii) during the year, supplies produce or goods to the statutory producer board, in terms of the body's primary statutory functions:

(d) is defined in section RE 30(10) (When unincorporated bodies hold certificates) for the purposes of that section:

(e) in the Maori authority rules, means a person, or group of persons, who is—

(i) a shareholder of a Maori authority that is a company:

(ii) a beneficiary of a Maori authority that is the trustees of a trust

member credit contribution, for a person, means the total of the following amounts

(a) an amount of a superannuation contribution to the person's KiwiSaver scheme or complying superannuation fund that is subject to the KiwiSaver scheme rules or complying fund rules, as applicable, other than—

(i) an employer's superannuation cash contribution made for the person:

(ii) a contribution withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006:

(iib) Crown contribution (as that term is defined in the KiwiSaver Act 2006) for the person:

(iii) an amount accounted for under paragraph (b):

(b) an amount received and held for the person by the Commissioner that is an amount to which section 73, 74, or 75 of the KiwiSaver Act 2006 applies, other than—

(i) an employer's superannuation cash contribution made for the person:

(ii) an amount received and held by the Commissioner but not paid to the provider of the person's KiwiSaver scheme in the relevant member credit year unless the amount has not been paid because of the person's death or because of a refund under section 113 of the KiwiSaver Act 2006

member's contribution, in relation to a superannuation fund,—

(a) means a member's contribution to the fund; and

(b) includes any return on the contribution

memorandum account means an account listed in section OA 2(1) (Memorandum accounts)

mineral—

(a) means all minerals and metals; and

(b) includes clay, coal, gravel, kauri gum, precious stones, sand, and stone

minibus means a motor vehicle, designed wholly or mainly for the carriage of persons, the interior of which contains—

(a) 3 seats, each of which—

(i) is designed for the seating of 2 or more adult persons; and

(ii) is permanently fixed to the motor vehicle; and

(iii) is neither collapsible nor capable of being folded down; or

(b) more than 3 seats, of which not less than 3 are each—

(i) designed for the seating of 2 or more adult persons; and

(ii) permanently affixed to the motor vehicle; and

(iii) neither collapsible nor capable of being folded down

minimum family tax credit is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

minimum market value interest—

(a) is defined in section IA 5(6) (Restrictions on companies' loss balances carried forward) for the purposes of Part I (Treatment of tax losses):

(b) is defined in section LP 4(3) (Continuity rules for carrying credits forward) for the purposes of that section

minimum voting interest—

(a) is defined in section IA 5(6) (Restrictions on companies' loss balances carried forward) for the purposes of Part I (Treatment of tax losses):

(b) is defined in section LP 4(3) (Continuity rules for carrying credits forward) for the purposes of that section

mining company is defined in section CU 22 (Meaning of mining company)

mining development expenditure is defined in section CU 23 (Meaning of mining development expenditure)

mining exploration expenditure is defined in section CU 24 (Meaning of mining exploration expenditure)

mining holding company is defined in section CU 29 (Other definitions)

mining operations is defined in section CU 25 (Meaning of mining operations)

mining or prospecting right is defined in section CU 29 (Other definitions)

mining outgoing excess is defined in section DU 7(4) (Limit on deduction)

mining permit is defined in section 2 of the Crown Minerals Act 1991 and includes an existing privilege under paragraphs (a) and (b) of the definition of **existing privilege** in section 106 of that Act

mining permit area means an area, and may include more than 1 area, of—

(a) a mining permit; or

(b) an existing privilege referred to in paragraphs (a) and (b) of the definition of **existing privilege** in section 106 of the Crown Minerals Act 1991

mining prospecting information is defined in section CU 29 (Other definitions)

mining purposes is defined in section CU 29 (Other definitions)

mining share is defined in section CU 29 (Other definitions)

mining venture is defined in section CU 26 (Meaning of mining venture)

Minister means the Minister of Finance

minor is defined in section HC 35(3) (Beneficiary income of minors) for the purposes of that section and sections HC 36, HC 37, LE 4, and LF 2 (which relate to beneficiary minors)

money,—

(a) in section GB 48 (Defined terms for sections GB 45 and GB 46), in the financial arrangements rules, and in the definition of **security payment**, includes—
  (i) money's worth, whether or not convertible into money:
  (ii) the right to money, including the deferral or cancellation of some or all of an obligation to pay money:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

money lent means—

(a) an amount of money that a person lends in some way, including by depositing it in an account, whether or not the lending is secured or evidenced in writing:

(b) an amount of credit that a person gives, including by not enforcing a debt, whether or not the giving is secured or evidenced in writing:

(c) an amount of money that a person lends, or credit that a person gives, under an obligation or arrangement, whether or not secured or evidenced in writing:

(d) an amount of money that goes from a person (**person A**) to another person (**person B**) in consideration for person B's promise to pay person A an amount of money

and that is less than the amount that person B promises to pay person A. For the purposes of this paragraph,—

(i) money goes from person A when it is paid to person B:

(ii) person B's promise is not required to be secured or evidenced in writing:

(iii) person B includes any other person with whom person B is an associated person

monthly instalment plan is defined in section EZ 30(3) (Base premium for 1998–99 premium year under the Accident Insurance Act 1998) for the purposes of that section

mortgage means a mortgage, charge, or other security, whether legal or equitable

motor vehicle,—

(a) in subpart DE (Motor vehicle expenditure), means a motor vehicle that—

(i) is a road vehicle, whenever or however used; and

(ii) is not a trailer; and

(iii) is of the kind ordinarily used for the carriage of persons or the transport or delivery of goods or animals:

(b) in the FBT rules, and in the definition of **car**,—

(i) is defined in section 2(1) of the Land Transport Act 1998; and

(ii) does not include a vehicle the gross laden weight of which is more than 3500 kilograms

multi-rate PIE means a company, superannuation fund, or group investment fund that—

(a) meets the requirements of section HM 7 (Requirements); and

(b) chooses to become a PIE under section HM 71 (Choosing to become PIE); and

(c) has not chosen to cancel PIE status under section HM 29 (Choosing to cancel status); and

(d) is not a benefit fund PIE; and

(e) *[Repealed]*

mutual transaction means a transaction of the kind described in section HE 2 (Classes of mutual transaction) entered into

between an association and its members, or with members and other persons who are not members

national average market value, for a class of livestock and for an income year, means the national average market value determined under section EC 15 (Determining national average market values) for livestock of the class for the income year

national standard cost scheme means the livestock valuation method specified in section EC 22 (National standard cost scheme)

natural person is defined in section FE 4 (Some definitions) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

natural resource includes—

(a) land:
(b) water:
(c) air:
(d) soil or subsoil below land, water, or air:
(e) a mineral:
(f) a geographic or geological feature:
(g) a part of the electromagnetic spectrum:
(h) a form of energy:
(i) a living organism, whether naturally or artificially generated:
(j) an ecosystem:
(k) a right to or interest in an item referred to in any of the preceding paragraphs

net attributable CFC income, for a foreign company and for an accounting period, means the amount calculated for the accounting period under section EX 20C(1)(a) (Net attributable CFC income or loss)

net attributable CFC loss, for a foreign company and for an accounting period, means the amount calculated for the accounting period under section EX 20C(1)(b) (Net attributable CFC income or loss)

net family scheme income is defined in section ME 3 (Meaning of net family scheme income) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

net gambling proceeds means net proceeds as defined in section 4 of the Gambling Act 2003

net income means net income for a tax year calculated under section BC 4 (Net income and net loss)

net loss means a net loss for a tax year calculated under section BC 4 (Net income and net loss) and reduced by the amount extinguished by the Commissioner under section 177C(5) of the Tax Administration Act 1994

net mining loss is defined in section IS 1(3) (General treatment of mining companies' net losses) for the purposes of subpart IS (Mining companies' and petroleum miners' tax losses)

new asset is defined in section EZ 24 (Meaning of new asset)

new business is defined in section EY 29 (Shareholder base other profit: profit participation policies that are new business) for the purposes of that section

new company tax rate person,—

(a) means a person who uses a 28% basic tax rate for the 2011–12 income year or later income years:

(b) includes, for the purposes of subpart OZ (Terminating provisions), a multi-rate PIE:

(c) does not include, for the purposes of subpart RZ (Terminating provisions), a multi-rate PIE

new personal tax rate person means a person whose basic rate of income tax is calculated under schedule 1, part A, clause 1 for the 2010–11 income year or a later income year

new reporting standard is defined in section DB 35 (Some definitions) for the purposes of section DB 34 (Research or development)

new start grant means a grant of money that is—

(a) designated by the Minister of Agriculture as a new start grant; and

(b) paid by the Government of New Zealand to a person in relation to an emergency event

new tax rate person*[Repealed]*
[Repealed]

New Zealand includes—

(a) the continental shelf:

(b) the water and the air space above any part of the continental shelf that is beyond New Zealand's territorial sea, as defined in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977, if and to the extent to which—

(i) any exploration or exploitation in relation to the part, or any natural resource of the part, is or may be undertaken; and

(ii) the exploration or exploitation, or any related matter, involves, or would involve any activity on, in, or in relation to the water or air space

New Zealand banking group, for a registered bank, means the New Zealand banking group referred to in section FE 36 (Identifying members of New Zealand banking group) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

New Zealand business, in relation to a life insurer not resident in New Zealand, means the part of the business of the life insurer that consists of life insurance policies or life reinsurance policies offered or entered into in New Zealand

New Zealand emissions unit means a New Zealand unit as defined in section 4(1) of the Climate Change Response Act 2002

New Zealand net equity, for a New Zealand banking group is the amount referred to in section FE 21 (Banking group's New Zealand net equity) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

New Zealand-new asset is defined in section EZ 25 (Meaning of New Zealand-new asset)

New Zealand partnership means a partnership that—

(a) is a limited partnership registered under the Limited Partnerships Act 2008; or

(b) has 50% or more of its partners' interests in capital, by value, held by New Zealand residents; or

(c) has its centre of management in New Zealand ignoring section HG 2

New Zealand repatriation amount is defined in section CD 46 (New Zealand repatriation amount)

New Zealand resident—

(a) means a person resident in New Zealand under—

(i) section EY 49 (Non-resident life insurer becoming resident):

(ii) sections YD 1 to YD 3 (which relate to residence)

(b) is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

New Zealand superannuation—

(a) means New Zealand superannuation payable under Part 1 of the New Zealand Superannuation and Retirement Income Act 2001; and

(b) includes—

(i) a living alone payment payable to a New Zealand superannuitant under section 13 of the New Zealand Superannuation and Retirement Income Act 2001; and

(ii) an amount payable under section 70(3)(b) of the Social Security Act 1964; and

(iii) national superannuation payable, before 1 April 1994, under Part 1 of the Social Welfare (Transitional Provisions) Act 1990; and

(c) does not include—

(i) portable New Zealand superannuation; or

(ii) a supplement or benefit paid or payable under any of sections 61DB, 61DC, 61DD, 61DE, 61EA, 61G, and 69C of the Social Security Act 1964

New Zealand superannuitant, for a tax year,—

(a) means a person who receives New Zealand superannuation in the tax year; and

(b) does not include a person who receives New Zealand superannuation at a rate specified in—

(i) schedule 1, clause 2 of the New Zealand Superannuation and Retirement Income Act 2001; or

(ii) schedule 1, clause 2 of the Social Welfare (Transitional Provisions) Act 1990

New Zealand tax means income tax imposed by this Act or any earlier Act

Niue International Trust Fund means the trust governed by the Deed concerning the Niue International Trust Fund dated 25 October 2006 and signed by Her Majesty the Queen in right of New Zealand and the Governments of Niue and Australia

nominated company,—

(a) for a consolidated group, means the company described in section FM 34 (Nominated companies) for the time being nominated as agent of the group under section FM 35 (Forming consolidated group):

(b) for an imputation group, means the company described in section FN 6 (Nominated companies) for the time being nominated as agent of the group under section FN 7 (Forming imputation groups)

nominee, in sections RE 7 and RE 8 (which relate to resident passive income paid to trustees and nominees) means a person described in section YB 21(2) (Transparency of nominees)

non-attributing active CFC is defined in section EX 21B (Non-attributing active CFCs)

non-attributing Australian CFC is defined in section EX 22 (Non-attributing Australian CFCs)

non-cash dividend means a dividend to the extent to which it does not consist of—

(a) an unconditional payment in money; or

(b) an unconditional credit in money to the balance of a shareholder's current or other form of account with the company

non-complying trust is defined in section HC 12 (Non-complying trusts)

non-concessionary rate of interest, for an employment-related loan made on or before 31 March 1985, means the rate of interest declared by regulations to be the non-concessionary rate of interest for the period of 12 consecutive months, ending on 31 March, in which the loan was made

non-contingent fee means a fee that—

(a) is for services provided for a person becoming a party to a financial arrangement; and

(b) is payable whether or not the financial arrangement proceeds

non-discretionary trust is defined in section HC 16(8) (Ordering rule for distributions from non-complying and foreign trusts) for the purposes of that section

non-executive director is defined in section CD 20(4) (Benefits of shareholder-employees or directors)

non-filing taxpayer means—

(a) a person to whom section 33A(1) of the Tax Administration Act 1994 applies and to whom 1 of the following applies:
  (i) they do not receive an income statement for a tax year; or
  (ii) the Commissioner is not required to send them an income statement for a tax year; or
  (iii) the Commissioner is prohibited from sending them an income statement for a tax year; or

(b) a person whose only income having a source in New Zealand is schedular payments derived in the person's capacity as a non-resident entertainer and who chooses not to file a return for the relevant tax year; or

(c) a person who, in the relevant tax year, derives only non-resident passive income to which section RB 3 (Schedular income tax liability for filing taxpayers for non-resident passive income) applies

non-integral fee means a fee or transaction cost that, for the purposes of financial reporting under IFRSs, is not an integral part of the effective interest rate of a financial arrangement

non-Kyoto greenhouse gas unit means a unit that is—

(a) issued by reference to the sequestration, reduction, or avoidance of emission, of human-induced greenhouse gases; and

(b) verified to an internationally recognised standard; and

(c) not an emissions unit

non-listed horticultural plant, in section DO 4 (Improvements to farm land) and schedule 20, part A, item 8 (Expenditure on farming, horticultural, aquacultural, and forestry improvements)—

(a) means—

(i) a horticultural plant, tree, vine, bush, cane, or similar plant that is cultivated on land, that is not a listed horticultural plant:

(ii) a tree or other similar plant planted mainly for the purposes of ornamentation:

(b) does not include a tree planted mainly for the purposes of timber production

non-participating redeemable share is defined in section CD 22(9) (Returns of capital: off-market share cancellations)

non-refundable tax credit means—

(a) a tax credit under subpart LC (Tax credits for natural persons), excluding section LC 6 (Tax credits for housekeeping):

(ab) a tax credit under section LD 4 (Tax credits for payroll donations):

(b) a tax credit under subpart LJ (Tax credits for foreign income tax):

(c) a tax credit under subpart LK (Tax credits relating to attributed controlled foreign company income):

(d) a tax credit under subpart LQ (Tax credits of conduit tax relief companies):

(e) a tax credit under subpart LR (Tax credits for policyholder income):

(f) an amount in a person's branch equivalent tax account or policyholder credit account that the person chooses, under Part O (Memorandum accounts), to credit in payment of income tax:

(g) a tax credit under sections LS 3(3) and (4) and LS 4(3) and (4) (which relate to multi-rate PIEs and certain of their investors) and under section LS 1 (Tax credits for multi-rate PIEs) to the extent to which it arises under section HM 51 (Use of foreign tax credits by PIEs)

non-resident means a person who is not a New Zealand resident

non-resident aircraft operator is defined in section CW 56(3) (Non-resident aircraft operators) for the purposes of that section

non-resident company means a company that is not a New Zealand resident

non-resident contractor, in the PAYE rules, means a person who—

(a) is not resident in New Zealand under subpart YD (Residence and source in New Zealand); and

(b) undertakes under a contract, agreement, or arrangement (other than a contract of service or apprenticeship)—

(i) to perform services of any kind in New Zealand:

(ii) to supply the use, or right to use, in New Zealand any personal property or services of another person

non-resident crew member is defined in section CW 21(2) (Amounts derived by visiting crew of pleasure craft) for the purposes of that section

non-resident entertainer is defined in section CW 20(4) (Amounts derived by visiting entertainers including sportspersons) for the purposes of that section, and in the PAYE rules, means a person who—

(a) is not resident in New Zealand under subpart YD (Residence and source in New Zealand); and

(b) undertakes a Part F activity

(c) *[Repealed]*

non-resident investment company is defined in section LZ 5 (Some definitions) for the purposes of sections LZ 2 to LZ 4 (which relate to credits for certain development projects)

non-resident mining operator is defined in section CU 29 (Other definitions)

non-resident passive income is defined in section RF 2 (Non-resident passive income)

non-resident person is defined in section CW 22(3) (Amounts derived by overseas experts and trainees in New Zealand by government arrangement) for the purposes of that section

non-resident seasonal worker means a non-resident person employed under the recognised seasonal employment scheme to undertake work in New Zealand

non-resident taxpayer is defined in section HD 26(2) (Agency in relation to non-residents generally) for the purposes of sections HD 27 and HD 28 (which relate to employers and certain payments)

non-resident trader means a person who—

(a) is in New Zealand; and

(b) carries on business here without having a fixed and permanent place of business or home here

non-residents' foreign-sourced income is defined in section BD 1(4) (Income, exempt income, excluded income, non-residents' foreign-sourced income, and assessable income)

non-residents' foreign-sourced income limitation is defined in section DA 2(6) (General limitations)

non-specified livestock means livestock other than bloodstock, high-priced livestock, and specified livestock

non-standard accounting year has the meaning given in section YE 1(5) (References to balance dates and years)

non-standard balance date has the meaning given in section YE 1(5) (References to balance dates and years)

non-standard income year has the meaning given in section YE 1(5) (References to balance dates and years)

non-taxable bonus issue means a bonus issue that is not a taxable bonus issue

normal retiring age is defined in section DC 15 (Some definitions) for the purposes of sections DC 12 to DC 14 (which relate to share purchase schemes)

notice is defined in section 3(1) of the Tax Administration Act 1994

notice of entitlement means a notice issued under section 80KD(2) of the Tax Administration Act 1994

notice period is defined in section FM 38(6) (Notice requirements on forming or joining consolidated group) for the purposes of that section

notified investor rate, for a multi-rate PIE and an investor, means an investor rate notified under section HM 60 (Notified investor rates) or a notified investor rate under section HM 58 (Transition of rate for certain investors)

notified foreign investor means an investor in a foreign investment PIE who—

(a) meets the requirements of sections HM 55D(3) and (4) (Requirements for investors in foreign investment PIEs); and

(b) notifies the PIE under section HM 55D(2) that they wish to be treated as a notified foreign investor

notify means to give notice

notional offshore investment amount, for a reporting bank, is the amount referred to in section FE 22(2) (Notional offshore investment) for the purposes of FE 21(14) (Banking group's New Zealand net equity)

notional sale price is defined in section FA 10(2) (Treatment when lease ends: lessor acquiring asset) for the purposes of that section

novelty is defined in section LH 7(4) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)

NRWT means non-resident withholding tax and refers to an amount payable as income tax under the NRWT rules

NRWT rules means the provisions listed in section RF 1 (NRWT rules and their application)

NZIAS 2 means New Zealand Equivalent to International Accounting Standard 2, approved or issued under the Financial Reporting Act 1993 and as amended from time to time, or an equivalent standard issued in its place

NZIAS 8 means New Zealand Equivalent to International Accounting Standard 8, approved or issued under the Financial Reporting Act 1993 and as amended from time to time, or an equivalent standard issued in its place

NZIAS 17 means New Zealand Equivalent to International Accounting Standard 17, approved or issued under the Financial Reporting Act 1993 and as amended from time to time, or an equivalent standard issued in its place

NZIAS 23 means New Zealand Equivalent to International Accounting Standard 23, approved or issued under the Financial Reporting Act 1993 and as amended from time to time, or an equivalent standard issued in its place

NZIAS 32 means New Zealand Equivalent to International Accounting Standard 32, approved or issued under the Financial Reporting Act 1993 and as amended from time to time, or an equivalent standard issued in its place

NZIAS 39 means New Zealand Equivalent to International Accounting Standard 39, approved or issued under the Financial Reporting Act 1993 and as amended from time to time, or an equivalent standard issued in its place

NZIAS 41 is defined in section EB 6(3) (Cost) for the purposes of that section

offered or entered into in New Zealand, for an insurance contract, a reinsurance contract, and a life insurance policy, means a contract or policy offered or entered into in New Zealand, whether or not—

(a) the contract or policy is executed in New Zealand; or

(b) the insurer under the contract or policy—

(i) is resident in New Zealand; or

(ii) has a fixed establishment in New Zealand; or

(iii) has an agent in New Zealand

offered or was offered or entered into, in sections EY 12 (Meaning of life reinsurance) and EY 48 (Non-resident life insurers with life insurance policies in New Zealand), has the same meaning as **offered or entered into in New Zealand**

off-market cancellation means a share cancellation that is not an on-market cancellation

offshore permit area is defined in section CW 57 (Non-resident company involved in exploration and development activities) for the purposes of that section

old company tax rate means a 30% basic tax rate applying before the 2008–09 income year

old financial arrangements rules means—

(a) the following provisions:

(i) sections EZ 33 to EZ 52 (which relate to the old financial arrangements rules):

(ii) section FF 2 (Financial arrangements) of the Income Tax Act 2004, as that section was before the commencement of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999:

(iii) sections RA 11 and RA 12 (which relate to adjustments to correct errors); and

(b) the following provisions of the Tax Administration Act 1994:

(i) section 60 (as in force before the enactment of section 70 of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999):

(ii) section 90

old reporting standard is defined in section DB 35 (Some definitions) for the purposes of section DB 34 (Research or development)

on-market cancellation means an acquisition by a company of a share in the company if—

(a) the company acquires the share in a transaction occurring on a recognised exchange, through a broker or some other similar agent independent of the company; and

(b) before the transaction, no arrangement existed between the shareholder and the company for the company to acquire the share; and

(c) the acquisition is not a treasury stock acquisition to which section CD 25 (Treasury stock acquisitions) applies, but this paragraph does not limit the application of section CD 25(2) to (6); and

(d) it includes an acquisition of the company's shares on the recognised exchange that is undertaken by an associated person under an arrangement for the associate to acquire the shares in lieu of the company

onshore development is defined in section EJ 20 (Meaning of onshore development) for the purposes of section EJ 12 (Petroleum development expenditure)

operating lease means, except in section EW 15I(1)(b)(iib) (Mandatory use of yield to maturity method for some arrangements), a lease that—

(a) is not a finance lease; and

(b) is entered into on or after 20 May 1999

operational allowance is defined in section CW 23(4) (Income for military or police service in operational area) for the purposes of that section

operational area is defined in section CW 23(4) (Income for military or police service in operational area) for the purposes of that section

option, in sections FB 10 (Continuity provisions: shares and options), GB 5 (Arrangements involving trust beneficiaries), and YC 2, YC 3, YC 5, YC 8, and YC 9 (which relate to the measurement of control and ownership interests), and in the definitions of **excluded option, market value** (paragraphs (a) and (b)), **market value circumstance** (paragraphs (c) to (f)), **pre-1991 budget security, recognised exchange**, and **shareholder decision-making right**, includes an agreement for sale at a time when beneficial ownership of the property sold has not completely passed to the purchaser

ordering rule means the rule set out in section CD 23(1) (Ordering rule and slice rule) for calculating the amount of available subscribed capital per share

original share means a share in a company that is described as the original share in the definition of **returning share transfer**

other amortisation provision means a provision of this Act that has similar intent and application to sections EE 1 (What this subpart does), EZ 7 (Buying patent rights before 1 April 1993), and EZ 8 (Premium paid on land leased before 1 April 1993)

output tax is defined in section 2 of the Goods and Services Tax Act 1985

outstanding balance,—

(a) in section FA 10 (Treatment when lease ends: lessor acquiring asset), includes principal, interest, and penalties that are owing by the lessee to the lessor on the date that the lease is terminated

(b) is defined in section FZ 2(9) (Effect of specified lease on lessor and lessee) for the purposes of sections FZ 2 and FZ 3 (which relate to specified leases)

outstanding claims reserve means—

(a) for an insurer who uses IFRS 4, the amount of the insurer's outstanding claims liability for general insurance contracts, excluding contracts having premiums to which section CR 3 (Income of non-resident general in-

surer) applies, as that liability is measured under Appendix D, paragraphs 5.1 to 5.2.12 of IFRS 4 for the insurer's financial statements less the amount of reinsurance and non-reinsurance recoveries receivable, as measured for the financial statements:

(b) for a life insurer, the amount that would be the life insurer's outstanding claims reserve under section EY 24(3) and (4) (Outstanding claims reserving amount: non-participation policies not annuities) for general insurance contracts, excluding contracts having premiums to which section CR 3 applies, if section EY 24(3) and (4) were modified so as to apply to general insurance contracts and reinsurance contracts, instead of to life insurance policies and reinsurance contracts

overseas pension is defined in section CW 28(2) (Pensions) for the purposes of that section

overtime is defined in section CW 17C(4) (Payments for overtime meals and certain other allowances) for the purposes of that section

own,—

(a) for land, means to have an estate or interest in the land, alone or jointly or in common with any other person:

(b) for the ownership of depreciable property, is defined in sections EE 2 to EE 5 (which relate to depreciation)

ownership interest is defined in section YC 18(6) (Reverse takeovers) for the purposes of that section and section YC 18B (Corporate reorganisations not affecting economic ownership)

owner's interests means the relevant interests in rights and obligations and other property, status, and things that a person who has an effective look-through interest for a look-through company has as a result of applying section HB 1 (Look-through companies are transparent) or otherwise

paid work is defined in section LC 5(5) (Meaning of engaged in full-time work) for the purposes of that section

parental entitlement period means the period of time described in section MD 11(1)(b)(i) (Entitlement to parental tax credit)

parental tax credit is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

Part F activity is defined in schedule 4, part F, clause 7 (Rates of tax for schedular payments)

partial reinsurance is defined in section EY 12(3) (Meaning of life reinsurance)

participating share is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

partner, in relation to a partnership,—

(a) means a person who is a member of the partnership:

(b) includes—

(i) a limited partner of a limited partnership:

(ii) a general partner of a limited partnership:

(iii) a joint venturer or a co-owner, if they make the relevant choice to be treated as partnership:

partner's associate is defined in section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section

partner's interests means the relevant interests in rights and obligations and other property, status, and things that a partner has as a result of applying section HG 2 (Partnerships are transparent)

partnership means—

(a) a group of 2 or more persons who have, between themselves, the relationship described in section 4(1) of the Partnership Act 1908:

(b) a joint venture, if the joint venturers all choose to be treated as a partnership for the purposes of this Act and the Tax Administration Act 1994:

(c) co-owners of property, other than persons who are co-owners only because they are shareholders of the same company, or settlors, trustees, or beneficiaries of the same trust, if the co-owners all choose to be treated as a partnership for the purposes of this Act and the Tax Administration Act 1994:

(d) a limited partnership

partnership share means, for a particular right, obligation, or other property, status, or thing, the share that a partner has the partnership it

patent right means the right to do or authorise anything that would, but for the right, be an infringement of a patent

pay,—

(a) for an amount and a person, includes—
  (i) to distribute the amount to them:
  (ii) to credit them for the amount:
  (iii) to deal with the amount in their interest or on their behalf, in some other way:

(b) for a dividend that is a bonus issue, means to issue shares or to give credit for the shares comprising the bonus issue:

(bb) is defined in section LD 4(7) (Tax credits for payroll donations) for the purposes of that section and section LD 8(1) (Meaning and ranking of payroll donation) and for section 24Q of the Tax Administration Act 1994

(c) is defined in section RD 51(6) (Calculation of all-inclusive pay) for the purposes of that section

pay period, for an employee receiving regular payments of salary or wages, means the period for which any such payment is payable

PAYE means pay-as-you-earn and refers to an amount payable as income tax under the PAYE rules

PAYE income payment is defined in section RD 3 (PAYE income payments)

PAYE income payment form, for an employer, means a form authorised by the Commissioner that shows—

(a) the period to which the form relates; and
(b) the name of the employer; and
(c) the tax file number of the employer; and
(d) the total amounts of tax withheld and paid; and
(e) the total amount of child support payments; and
(f) the total amount of student loan payments; and
(g) the total KiwiSaver contribution deductions made under the KiwiSaver Act 2006, Part 3, subpart 1; and

(h) the amount of an employer's superannuation cash contribution and the amount of ESCT withheld and paid; and

(i) the amount of an employer's superannuation cash contribution and the amount of tax withheld and paid, other than that described in paragraph (h); and

(j) other similar information that the Commissioner may require

PAYE intermediary, for an employer, means—

(a) a person who—

(i) is accredited as a PAYE intermediary by the Commissioner under section 15D or 15G of the Tax Administration Act 1994; and

(ii) has entered an agreement with the employer, applying to employees of the employer, that has been approved by the Commissioner under section 15J of that Act; and

(iii) has entered into agreements that have been approved by the Commissioner under section 15J of that Act with not less than 10 employers:

(b) a person who—

(i) no longer meets the requirements of paragraph (a); and

(ii) has responsibilities under section RP 2(3) (PAYE intermediaries)

PAYE rules means the provisions listed in section RD 2(1) (PAYE rules and their application)

payer, in the RWT rules, means a person who makes a payment of resident passive income

payment relating to incapacity for work is defined in section CW 34(2) (Compensation payments) for the purposes of that section

payroll donation is defined in section LD 8 (Meaning and ranking of payroll donation)

PCA means policyholder credit account

PCA company means a company described in section OJ 1(1) (General rules for companies and other persons with policyholder credit accounts)

PCA person means a person who chooses under section OJ 1(2) and OJ 12 (which relate to persons with policyholder credit accounts) to maintain a policyholder credit account

penalties and interest is defined in section HD 15(9) (Asset stripping of companies) for the purposes of that section

pension is defined in section CF 1(2) (Benefits, pensions, compensation, and government grants) for the purposes of that section

period of restriction is defined in section DC 15(2) to (4) (Some definitions) for the purposes of sections DC 13 to DC 15 (which relate to share purchase schemes)

permit is defined in section 2 of the Crown Minerals Act 1991

permit area means the area of land covered by a petroleum permit

permit-specific asset is defined in section DZ 5(6) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section

permitted withdrawal means a withdrawal permitted under the KiwiSaver scheme rules as defined in section 4 of the KiwiSaver Act 2006 or under the complying fund rules

person—

(a) is defined in section EH 3(2) (Persons to whom main income equalisation scheme applies) for the purposes of the main income equalisation scheme:

(b) is defined in section EH 37(2) (Persons to whom adverse event income equalisation scheme applies) for the purposes of the adverse event income equalisation scheme:

(c) is defined in section EH 63(2) (Persons to whom thinning operations income equalisation scheme applies) for the purposes of the thinning operations income equalisation scheme

personal injury by accident is defined in section LC 5(4) (Meaning of engaged in full-time work) for the purposes of that section

personal property, in sections CB 4 (Personal property acquired for purpose of disposal) and CB 5 (Business of dealing in personal property) does not include land

personal property lease asset—

(a) means any personal property subject to a lease; and

(b) does not include any livestock or bloodstock

personal property lease payment means a payment made by a lessee to a lessor, in money or money's worth, in relation to, or in consideration for, a personal property lease asset

personal service rehabilitation payment, for a person, means an amount paid for the person's benefit—

(a) under section 81(3), 372, or 374 of the Accident Compensation Act 2001; and

(b) by the Accident Compensation Corporation or an employer that is an accredited employer as defined in section 181 of that Act; and

(c) in providing to a person—

(i) a key aspect of rehabilitation referred to in section 81(1)(b), (c), (e), or (g) (relating to attendant care, child care, home help, and training for independence) of that Act:

(ii) a key aspect of rehabilitation referred to in section 81(1)(h) (relating to transport for independence) of that Act to the extent provided by paragraph (a)(i) of the definition of **transport for independence** in schedule 1, clause 12 of that Act:

(iii) similar rehabilitation referred to in an earlier Act corresponding to that Act

petroleum is defined in section 2 of the Crown Minerals Act 1991

petroleum development expenditure—

(a) means expenditure incurred by a petroleum miner that—

(i) directly concerns a permit area; and

(ii) is for acquiring, constructing, or planning petroleum mining assets; and

(b) does not include—

(i) residual expenditure; or

(ii) petroleum exploration expenditure; or

(iii) other expenditure allowed as a deduction under any provision of this Act, other than a provision in subpart DT (Petroleum mining expenditure) or

DZ (Terminating provisions), and allocated to the income year in which the expenditure is incurred

petroleum exploration expenditure—

(a) means—

(i) exploratory well expenditure; and

(ii) prospecting expenditure; and

(iii) expenditure to acquire an existing privilege, a prospecting permit for petroleum, or an exploration permit for petroleum; and

(b) does not include—

(i) residual expenditure; or

(ii) expenditure that is required by section DT 6 (Expenditure on petroleum mining assets) to be treated as petroleum development expenditure

petroleum miner is defined in section CT 6 (Meaning of petroleum miner)

petroleum mining asset is defined in section CT 7 (Meaning of petroleum mining asset)

petroleum mining company means a company to which sections IZ 2 and IZ 3 (which relate to companies engaged in exploring for, searching for, or mining petroleum) apply

petroleum mining development is defined in section EJ 20 (Meaning of petroleum mining development) for the purposes of sections EJ 12 and EJ 12B (which relate to petroleum development expenditure)

petroleum mining development expenditure is defined in section DZ 3(4) (Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991) for the purposes of that section

petroleum mining operations is defined in section CT 6B (Meaning of petroleum mining operations)

petroleum mining permit is defined in section 2 of the Crown Minerals Act 1991

petroleum permit means—

(a) a prospecting permit:

(b) an exploration permit:

(c) a mining permit to the extent to which it remains current

petroleum-related depreciable property is defined in section EE 67 (Other definitions)

PFSI forestry business means the forestry activities carried on by a person who, as landowner, is subject to obligations under a forest sink covenant referred to in section 67X of the Forests Act 1949 in relation to the land specified in the covenant

PFSI forestry income, for a person, means the income from a PFSI forestry business—

(a) relating to a forest sink covenant entered into by the person; and

(b) derived by the person from—

(i) receiving an emissions unit under the covenant; or

(ii) entering into a transaction in relation to an emissions unit received under the covenant

physical cost of production is defined in section DZ 11(3) (Film reimbursement scheme on or before 30 June 2001) for the purposes of that section

PIE means a portfolio investment entity

PIE rules means—

(a) the following provisions:

(i) section BC 7(4) (Income tax liability of person with schedular income):

(ii) section CB 26 (Disposal of certain shares by portfolio investment entities):

(iii) section CP 1 (Attributed income of investors in multi-rate PIEs):

(iv) sections CX 55 to CX 57 (which relate to excluded income of investors in PIEs):

(v) sections DB 53 to DB 54B (which relate to losses of certain investors in PIEs):

(vb) section EX 20B(3)(o) (Attributable CFC amount):

(vi) subpart HM (Portfolio investment entities):

(vii) section IA 7(10) (Restrictions relating to ring-fenced tax losses):

(viii) IC 3(2B) to (2D) (Common ownership: group of companies):

(ix) subpart LS (Tax credits for multi-rate PIEs and investors):

(x) section OB 9B (ICA attributed PIE income with imputation credit):

(b) sections 28B, 28D, 31B, 31C, 33(1C), 38(1B), 57B, and 61(1C) of the Tax Administration Act 1994

plant does not include an item that is structural in relation to a building

plant variety rights means proprietary rights granted for a plant variety under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand

planting is defined in section DO 8 (Meaning of planting and plot) for the purposes of sections DO 5 to DO 8 (which relate to horticultural plants)

pleasure craft is defined in section CW 21(2) (Amounts derived by visiting crew of pleasure craft) for the purposes of that section

plot is defined in section DO 8 (Meaning of planting and plot) for the purposes of sections DO 5 to DO 8 (which relate to horticultural plants)

policy liabilities is defined in section EY 29(8) (Shareholder base other profit: profit participation policies that are new business) for the purposes of section EY 29

policyholder base means, for a life insurer, the base for policyholder base income and allowable deductions and to which income of a particular source or nature, and tax credits received are apportioned under section EY 4 (Apportionment of income of particular source or nature, and of tax credits)

policyholder base allowable deductions means policyholder base allowable deductions described in section EY 2(2) (Policyholder base)

policyholder base income means policyholder base income described in section EY 2(1) (Policyholder base)

policyholder unvested liabilities means benefits that are allocated to policyholders of profit participation policies but are not vested in a specific policyholder

pool is defined in section EE 67 (Other definitions)

pool method is defined in section EE 67 (Other definitions)

poolable property is defined in section EE 66 (Meaning of poolable property)

portable New Zealand superannuation means New Zealand superannuation paid or payable overseas under—

(a) section 26(2)(a) of the New Zealand Superannuation and Retirement Income Act 2001, or under section 26(2)(b) where the superannuitant is residing in a country to which section 26(1)(a) of that Act applies; or

(b) section 31 of the New Zealand Superannuation and Retirement Income Act 2001; or

(c) section 19 of the Social Welfare (Transitional Provisions) Act 1990

portable veteran's pension means a veteran's pension paid or payable overseas under—

(a) section 74J(2)(a) of the War Pensions Act 1954, or under section 74J(2)(b) where the pensioner is residing in a country to which section 74J(1)(a) of that Act applies; or

(b) section 74O of the War Pensions Act 1954; or

(c) section 19 of the Social Welfare (Transitional Provisions) Act 1990

portfolio investment means an investment of an entity in an item of property of a type to which section HM 11 (Investment types) refers

portfolio investment entity means—

(a) a multi-rate PIE:

(b) a listed PIE:

(c) a benefit fund PIE:

(d) a life fund PIE

portfolio investment-linked life fund means a separate identifiable fund forming part of a life insurer, that—

(a) holds investments subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund; and

(b) has become a portfolio investment entity under section HL 13 (Becoming portfolio investment entity); and

(c) has not ceased to be a portfolio investment entity under section HL 15 (Ceasing to be portfolio investment entity)

possession includes a use that is in fact or effect substantially exclusive

post-1989 forest land means post-1989 forest land as defined in section 4(1) of the Climate Change Response Act 2002

post-1989 forest land emissions unit, for a person, means an emissions unit transferred under section 64 of the Climate Change Response Act 2002 for growing trees on post-1989 forest land—

(a) to the person and held continuously by the person from the transfer:

(b) to another person (the **recipient**), who at the time of the transfer is a party to a forestry rights agreement as defined in the Forestry Rights Registration Act 1983 with the person, and—

(i) transferred by the recipient to the person, under a provision of the forestry rights agreement relating to the allocation of income or emissions units between the recipient and the person; and

(ii) held continuously by the person from the transfer by the recipient

post-treaty tax rate means the rate of tax, after taking into account the overriding effect of a relevant double tax agreement, if there is one, as provided by section BH 1 (Double tax agreements)

pre-1983 investments is defined in section HR 3(8) (Definitions for section HR 2: group investment funds) for the purposes of section HR 2 (Group investment funds)

pre-1990 forest land means pre-1990 forest land as defined in section 4(1) of the Climate Change Response Act 2002

pre-1990 forest land emissions unit, for a person, means an emissions unit transferred under Part 4, subpart 2 of the Climate Change Response Act 2002 in relation to pre-1990 forest land—

(a) to the person and held continuously by the person from the transfer:

(b) to another person (the **appointee**), as a person appointed under section 73 of that Act, and—

(i) transferred by the appointee to the person, as a future owner of the pre-1990 forest land at the time of the transfer to the appointee; and

(ii) held continuously by the person from the transfer by the appointee:

(c) to another person (the **recipient**), who at the time of the transfer is a party to a forestry rights agreement as defined in the Forestry Rights Registration Act 1983 with the person, and—

(i) transferred by the recipient to the person, under a provision of the forestry rights agreement relating to the allocation of income or emissions units between the recipient and the person; and

(ii) held continuously by the person from the transfer by the recipient

pre-1991 budget security means a fixed-rate share, or a debenture to which section FA 2 (Recharacterisation of certain debentures) applies, that—

(a) was itself issued by the company before 8.00 pm New Zealand Standard Time on 30 July 1991 (the **specified time**), or was issued under a binding contract entered into before the specified time no term of which is altered at any time after the specified time; and

(b) is not a share or debenture any term of which is altered at any time after the specified time, whether under a provision for roll-over or extension or under an option held at the specified time by the shareholder or debenture holder or the company or both or by any other person or otherwise, except when the term is altered under a binding contract entered into before the specified time no term of which is altered at any time after the specified time

pre-imputation income year means an income year that started before the 1987–88 income year

premium,—

(a) for life insurance,—

(i) means any consideration, however described, payable under a life insurance policy to a life insurer; and

(ii) does not include interest on an unpaid premium:

(iii) does not include consideration received by a life insurer for the transfer of life insurance business:

(b) in sections CR 3, HD 16, HD 17, and YD 8 (which relate to non-resident general insurers), for general insurance or guarantee against risk, means an amount payable in relation to the contract of insurance or guarantee, as applicable, entered into by the insured person:

(c) in section EZ 8 (Premium paid on land leased before 1 April 1993) and for the purposes of section DZ 9 (Premium paid on land leased before 1 April 1993),—

(i) includes a payment in the nature of a fine, a payment for goodwill attaching to the land, and a payment in consideration of the grant, transfer, or renewal of the lease; and

(ii) does not include rent

premium payback amount means an amount of life risk component premium refunded in accordance with the terms and conditions of the relevant life insurance policy or the discretion of the life insurer

prepaid expenditure means expenditure to which section EA 3 (Prepayments) applies

prescribed means—

(a) prescribed by regulations under this Act; or

(b) prescribed by the Commissioner

prescribed amount is defined in section DU 9(4) (Application of sections to resident mining operators)

prescribed interest is defined in section RD 34(3) (Employment-related loans: value using prescribed interest rates) for the purposes of that section

prescribed investor rate, for a multi-rate PIE and an investor, means an applicable tax rate set out in schedule 6, table 1 (Prescribed rates: PIE investments and retirement scheme contributions)

prescribed period is defined in section CU 29 (Other definitions)

prescribed proportion is defined in section CU 29 (Other definitions)

prescribed rate of interest means the rate of interest declared by regulations made under section RA 21(3) (Regulations) to be the rate applying to employment-related loans

present value (gross) means—

(a) a present value calculated using the risk-free rate of return as the discount rate, gross of tax; but

(b) face value, if the whole discount period is less than a year

present value (net) means—

(a) a present value calculated using the risk-free rate of return as the discount rate, net of tax; but

(b) face value, if the whole discount period is less than a year

price—

(a) is defined in section RD 40(3) (Goods) for the purposes of that section:

(b) is defined in section RD 41(4) (Services) for the purposes of that section:

(c) in sections RD 42 and RD 43 (which relate to goods provided with staff discount), for a registered person who may claim input tax for goods provided to an employee, means the GST-inclusive price

primary producer co-operative company is defined in section CZ 7(4) (Primary producer co-operative companies: 1987–88 income year) for the purposes of that section

principal caregiver is defined in section MC 10 (Principal caregiver) for the purposes of the child tax credit, WFF tax credit, in-work tax credit, and parental tax credit

private domestic worker means a person employed by any other person if—

(a) the employer is the occupier, or 1 of the occupiers, of a dwellinghouse or other premises used exclusively for residential purposes; and

(b) the employment is for the performance of work in or about the dwellinghouse or premises or the garden or grounds belonging to the dwellinghouse or premises; and

(c) the employment is not for a business carried on by the employer or an occupation or calling of the employer; and

(d) the employment is not regular full-time employment

private limitation is defined in section DA 2(2) (General limitations)

private or domestic agreement for the sale and purchase of property is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

private use is defined in section CX 36 (Meaning of private use)

pro rata cancellation, for shares of the same class in a company, means the cancellation of—

(a) all the shares in the class; or

(b) part only of the shares in the class if the cancellation does not alter any person's voting interest, or market value interest, if a market value circumstance exists at the time in relation to the company, in the company, determined as if no other class of shares existed; or

(c) part only of the shares in the class if the cancellation results from an offer from the company to all shareholders in the class and the resulting cancellation would have met paragraph (b) if each shareholder who received the offer accepted it in full

produce transactions,—

(a) in section CD 33 (Payments corresponding to notional distributions of producer boards and co-operative companies), subpart HE (Mutual associations), and sections OB 73 and OB 74 (which relate to imputation credit accounts of statutory producer boards), and in the definition of **member** (paragraph (a)), means transactions that—

(i) are between a statutory producer board and its members; and

(ii) involve the acceptance by the board from its members, in terms of the board's primary statutory functions, of produce that is trading stock or goods that are trading stock:

(b) in sections CD 33, OB 78, and OB 79 (which relate to imputation credit accounts of co-operative companies), and in the definition of **shareholder** (paragraph (c)), means transactions that—

(i) are between a co-operative company and its shareholders; and

(ii) involve the acceptance of produce that is trading stock or goods that are trading stock; and

(iii) are purchases or other acquisitions of the produce or goods by the company from its shareholders, if a principal activity of the company involves the acceptance of such produce or goods from its shareholders:

(c) in sections CD 33, OB 78, OB 79, and OB 82, and in the definition of **shareholder** (paragraph (c)), also means transactions that—

(i) are between a co-operative company and its shareholders; and

(ii) involve the supply of produce that is trading stock or goods that are trading stock; and

(iii) are sales or other disposals of the produce or goods by the company to its shareholders, if a principal activity of the company involves the supply of such produce or goods to its shareholders

producer board has the same meaning as **statutory producer board**

profit is defined in section DB 28(6) (Amount from land affected by change and not already in income) for the purposes of that section

profit participation policy—

(a) means a class of life insurance policy having—

(i) a segregated or identifiable asset base; and

(ii) policyholders who are entitled to a share of profits that is distributed to, or vested in, the pol-

icyholders from the asset base, and the policies provide for the entitlement; and

(iii) a fixed formula, expressed in terms of a proportion of a policyholder's share of profits from the asset base, that calculates a transfer to the benefit of the life insurer's shareholders from the profits of the asset base, and that fixed formula is consistently applied:

(b) includes a class of life insurance policy that substantially meets the requirements of paragraph (a) and that has a guarantee by the life insurer that capital invested will be returned or that a minimum return on capital will be paid, if—

(i) the life insurer has irrevocably chosen that the class be treated as a profit participation policy; and

(ii) the Commissioner receives a notice of the election before the start of the first income year to which it relates:

(c) does not include a life insurance policy that covers life risk and is—

(i) life reinsurance:

(ii) a multiple life policy, as defined in section EY 30(14) (Transitional adjustments: life risk):

(iii) a workplace group policy, as defined in section EY 30(15)

profit-related debenture is defined in section FA 2(4) (Recharacterisation of certain debentures)

profit-sharing arrangement means an arrangement under which—

(a) a person (**person A**) makes specified livestock available, without specifying a fee for doing so, to another person (**person B**) who carries on a business in which the livestock are used; and

(b) any return or compensation that person A receives for making the livestock available depends on the profits of the business; and

(c) person A participates in the profits and losses of the business; and

(d) if a partnership between person A and person B arises, person A is bound by the requirements of the Partnership Act 1908 for third parties

projected transactions shareholding is defined in section CD 34B(Distributions to members of co-operative companies)

property,—

(a) in subpart EE (Depreciation), includes consents granted in or after the 1996–97 tax year under the Resource Management Act 1991:

(ab) in subpart FB (Transfers of relationship property), is defined in section FB 1(4) (What this subpart does):

(ac) in subpart FC (Distribution, transmission, and gifts of property), is defined in section FC 1(2) (What this subpart does):

(b) in the financial arrangements rules, and in the definitions of **agreement for the sale and purchase**, **forward contract**, **right**, **short-term agreement for sale and purchase**, **short-term option**, and **specified option** does not include a financial arrangement or foreign exchange:

(c) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

proportional-stapling company means a company if—

(a) each share in the company that is not a stapled debt security and not a fixed-rate share (a **participating share**) is stapled to a stapled debt security; and

(b) for each participating share in the company, the amount payable for the issue of its stapled debt security is the same proportion of the available subscribed capital calculated under the slice rule of the participating share as it is for each other participating share

prospecting expenditure—

(a) means expenditure to identify land likely to contain exploitable petroleum deposits or occurrences; and

(b) includes prospecting for petroleum by electrical, geochemical, gravimetric, magnetic, radioactive, seismic, or other geological methods; and

(c) does not include residual expenditure

prospecting permit is defined in section 2 of the Crown Minerals Act 1991

protected family tax credit, for a person, means an amount of family scheme income derived in the way set out in section MD 14 (Person receiving protected family tax credit)

protective right is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

provisional rate is defined in section EE 67 (Other definitions)

provisional tax means an amount payable as provisional tax under the provisional tax rules

provisional tax rules means the provisions listed in section RC 2 (Provisional tax rules and their application)

PSR period is defined in section EY 23 (Reserving amounts for life insurers: non-participation policies)

public authority—

(a) means every department or instrument of the Executive Government of New Zealand; and

(b) includes the Public Trust and the Maori Trustee; and

(c) includes the Christmas Island Phosphate Commission, incorporated in Australia by the Christmas Island Agreement Act 1949 of the Parliament of Australia and continued under the Christmas Island Agreement Act 1958; and

(d) is further defined in section CW 38(6) (Public authorities) for the purposes of that section

public entertainer is defined in section CW 19(3) (Amounts derived during short-term visits) for the purposes of that section

public official is defined in section DB 45(4) (Bribes paid to public officials) for the purposes of that section

public unit trust means—

(a) a unit trust that offers securities to the public under the Securities Act 1978 and that has 100 or more unit holders, treating all associated persons as 1 person, who are—

(i) unit trust managers who hold units in the ordinary course of their activities in relation to the unit trust; or

(ii) persons with an interest of 25% or less in the unit trust, treating all associated persons as 1 person; or

(iii) persons with an interest of 25% or more in the unit trust, treating all associated persons as 1 person, if their interest is 25% or more because of unusual or temporary circumstances, such as the recent establishment or forthcoming termination of the unit trust, and if the unit trust would meet the requirements of any of paragraphs (b), (c), (d), and (e); or

(b) a unit trust whose unit holders are any 1 or more of the following:

(i) a public unit trust as described in paragraph (a) or this paragraph:

(ii) a group investment fund:

(iii) a life insurance company:

(iv) a superannuation fund:

(v) a unit trust manager, trustee, or person nominated by the manager or the trustee who holds units in the ordinary course of management activities in relation to the unit trust:

(vi) a person with an interest of 25% or less in the unit trust, treating all associated persons as 1 person, if the unit trust offers securities to the public under the Securities Act 1978:

(vii) a person with an interest of 25% or more in the unit trust, treating all associated persons as 1 person, if their interest is 25% or more because of unusual or temporary circumstances, such as the recent establishment or forthcoming termination of the unit trust, and if the unit trust would meet the requirements of any of paragraphs (a), (c), (d), and (e), and if the unit trust offers securities to the public under the Securities Act 1978; or

(c) a unit trust that has less than 100 unit holders if it could reasonably be regarded as a widely-held investment vehicle for direct investment by members of the public despite its number of unit holders or investors; or

(d) a unit trust that has less than 100 unit holders if it has less than 100 unit holders or investors because of unusual or temporary circumstances, such as its recent establishment or forthcoming termination, and if it would otherwise meet the requirements of any of paragraphs (a), (b), (c), and (e); or

(e) a unit trust that has less than 100 unit holders if it could reasonably be regarded as a vehicle mainly for investment by widely-held vehicles for direct investment that are 1 or more of the following:

(i) unit trusts; or

(ii) group investment funds; or

(iii) life insurance companies; or

(iv) superannuation funds

QCP transitional process is defined in section HZ 4B(7) (Qualifying companies: transition into partnership)

QCST transitional process is defined in section HZ 4D(4) (Qualifying companies: transition into sole traderships)

qualifying asset is defined in section EZ 28 (Meaning of qualifying asset)

qualifying capital value is defined in section EZ 26 (Meaning of qualifying capital value)

qualifying company is defined in section HA 2 (Meaning of qualifying company)

qualifying company election tax means the amount described in section HA 40 (Liability for qualifying company election tax)

qualifying debenture means—

(a) a debenture issued by a forestry company for unpaid purchase money for land bought by the forestry company from the Crown or the Maori owners or a holding company of the forestry company; or

(b) a debenture issued by a forestry company for capitalised interest derived from a debenture described in paragraph (a); or

(c) a debenture issued by a forestry company for money lent to the forestry company by a holding company for any of the following purposes:

(i) financing expenditure by the forestry company on planting or maintaining trees; or

(ii) meeting administrative overheads, rates, rent, insurance premiums, or other expenses of the same kind; or

(iii) paying interest on money borrowed for the purposes of the forestry business and employed as capital in the business; or

(d) a debenture issued by a forestry company for capitalised interest derived from a debenture described in paragraph (c); or

(e) a debenture issued by a forestry company for capitalised interest derived from a debenture described in paragraph (b) or (d); or

(f) a debenture issued by a Maori investment company to a shareholder of the company or a trustee for a shareholder

qualifying foreign equity investor is defined in section CW 12(4) (Proceeds of share disposal by qualifying foreign equity investor) for the purposes of that section

qualifying improvement is defined in section EZ 27 (Meaning of qualifying improvement)

qualifying resident foreign trustee is defined in section 3(1) of the Tax Administration Act 1994

qualifying share premium is defined in section CD 43(28) (Available subscribed capital (ASC) amount) for the purposes of that section

quarantined amount means the amount described in section LK 1(3) (Tax credits relating to attributed CFC income) for the purposes of Part L (Tax credits and other credits)

quarter means a period of 3 consecutive calendar months that ends with the last day of March, June, September, or December

ratio instalment date means an instalment date of a person who uses a GST ratio for a tax year, and is an instalment date for a payment in relation to which no amount of use of money interest or penalties apply other than a late payment penalty or a shortfall penalty

recognised exchange, at any time,—

(a) means a recognised exchange market in New Zealand or anywhere else in the world that at the time has the features described in paragraphs (c) to (e); and

(b) includes a recognised exchange market that at the time is approved for the purposes of this definition by the Commissioner, having had regard to the features described in paragraphs (c) to (e); and

(c) for the purposes of paragraphs (a) and (b), the first feature is that the exchange market brings together buyers and sellers of shares or options over shares; and

(d) for the purposes of paragraphs (a) and (b), the second feature is that the exchange market involves the listing of prices, whether by electronic media or other means, at which persons are willing to buy or sell shares or options; and

(e) for the purposes of paragraphs (a) and (b), the third feature is that the exchange market provides a medium for the determination of arm's length prices likely to prove fair and reasonable, having regard to—

  (i) the number of participants in the market or having access to the market; and

  (ii) the frequency of trading in the market; and

  (iii) the nature of trading in the market, including how prices are determined and transactions are effected; and

  (iv) the potential or demonstrated capacity of a person or persons significantly to influence the market; and

  (v) any significant barriers to entry to the market; and

  (vi) any discrimination on the basis of quantity bought and sold unless based on the risks involved, the transaction costs, or economies of scale

recognised seasonal employment scheme means the recognised seasonal employer policy published by the Department of Labour under section 13A of the Immigration Act 1987

redemption payment means the amount by which a payment made on the redemption of a commercial bill by the person who issued it is more than the money lent to the person, **issue**, in this definition, having the meaning given to it by section 2 of the Bills of Exchange Act 1908

reduced deficit debit is defined in section OC 38 (Meaning of reduced deficit debit) for the purposes of section OC 23 (FDPA breach of FDP ratio by PCA company)

redundancy payment means a PAYE income payment paid—

(a) to a person whose employment in a position is terminated because the position has become superfluous to the requirements of their employer; and

(b) in compensation for the loss of the person's employment

refundable tax credit means—

(a) a tax credit under subpart LB (Tax credits for payments, deductions, and family payments):

(b) a tax credit under subpart LF (Tax credits for foreign dividend payment (FDP) credits), excluding section LF 8 (Credits for persons who are non-resident or who receive exempt income):

(bb) a tax credit under subpart LH (Tax credits for expenditure on research and development)

(c) a tax credit under subpart LO (Tax credits for Maori authority credits):

(d) a tax credit under sections LS 2, LS 3(2), and LS 4(2) (which relate to multi-rate PIEs and certain of their investors):

(e) a tax credit under section LS 1 (Tax credits for multi-rate PIEs) to the extent to which it arises under section HM 53 or HM 55 (which relate to the use of tax credits other than foreign tax credits)

registered bank means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989

registered person is defined in section 2 of the Goods and Services Tax Act 1985

registered security is defined in section 86F of the Stamp and Cheque Duties Act 1971

regulatory value is defined in section FE 20(2) (Financial value and regulatory value) for the purposes of section FE 19 (Banking group's equity threshold)

reinsurance contract includes—

(a) a cover note:

(b) a renewal of a reinsurance contract

reinsurance grandparenting start day is defined in section EZ 62 (Reinsurance transition: life financial reinsurance may be life reinsurance)

reinvestment profit is defined in section CU 29 (Other definitions)

related activity is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

related by employment is defined in section EY 11(14) (Superannuation schemes providing life insurance) for the purposes of that section

related company is defined in section GC 5(5) (Leases for inadequate rent) for the purposes of that section

related employer is defined in section RD 51(6) (Calculation of all-inclusive pay) for the purposes of that section

related person is defined in section CZ 9B (Available capital distribution amount: 1988 to 2010) for the purposes of that section

relationship agreement, for a person, means—

(a) an agreement for the purpose of Part 6 of the Property (Relationships) Act 1976 that is made on or after 28 July 1983 by the person with another person:

(b) an order under section 25 of the Property (Relationships) Act 1976 that is made by a court on or after 28 July 1983 in relation to the person and another person

relationship period is defined in section MC 11(1) (Relationship periods and entitlement periods) for the purposes of sub-

parts MA to MF and MZ (which relate to tax credits for families)

relative,—

(a) for the purposes of only this Act, other than in section HC 36 (Trusts and minor beneficiary rule), means a person connected with another person by—

(i) being within the second degree of blood relationship to the other:

(ii) being in a marriage, civil union, or de facto relationship with the other:

(iii) being in a marriage, civil union, or de facto relationship with a person who is within the second degree of blood relationship to the other:

(iv) being adopted as a child of the other or as a child of a person who is within the first degree of relationship to the other:

(v) being the trustee of a trust under which a relative has benefited or is eligible to benefit:

(b) is defined in section HC 36(5) for the purposes of only that section

(c) for the purposes of the definition of **relative** in section 2 of the Securities Act 1978, means a person connected with another person by—

(i) being within the fourth degree of blood relationship to the other:

(ii) being in a marriage, civil union, or de facto relationship with the other:

(iii) being in a marriage, civil union, or de facto relationship with a person who is within the fourth degree of blood relationship to the other:

(iv) being adopted as a child of the other or as a child of a person who is within the third degree of relationship to the other:

(v) being the trustee of a trust under which a relative of the other person has benefited or is eligible to benefit

relevant balance date is defined in section GB 45 (Arrangements involving money not at risk) for the purposes of that section

relevant period is defined in section YC 13(3) (Corporate spin-outs) for the purposes of that section

relinquishment,—

(a) for a petroleum permit, means the abandonment, expiry, forfeiture, revocation, or surrender of the permit otherwise than for a replacement permit; and

(b) for an existing privilege applying to a mining licence under the Petroleum Act 1937, includes the expiry of the initial term without an extension of the initial term or an extension of a specified term

remaining deduction—

(a) is defined in section EJ 4(6) (Expenditure incurred in acquiring film rights in feature films) for the purposes of that section:

(b) is defined in section EJ 5(4) (Expenditure incurred in acquiring film rights in films other than feature films) for the purposes of that section:

(c) is defined in section EJ 8(5) (Film production expenditure for films other than New Zealand films) for the purposes of that section

removal or restoration operations, for a petroleum miner, means removing petroleum mining assets of the kind described in section CT 7(1)(b) or (c) (Meaning of petroleum mining asset), or restoring the site of petroleum mining operations, because of the relinquishment of the petroleum permit relating to the assets or the operations

rent is defined in section GC 5(5) (Leases for inadequate rent) for the purposes of that section

repairs, in sections CC 2 (Non-compliance with covenant for repair) and DB 21 (Amounts paid for non-compliance with covenant for repair), includes painting and general maintenance

replaced area fraction is defined in section DO 9 (Meaning of replaced area fraction and diminished value) for the purposes of sections DO 5 and DO 6 (which relate to horticultural plants)

replacement forest land emissions unit means an emissions unit acquired by a person if—

(a) the person has previously disposed of a post-1989 forest land emissions unit or forest sink emissions unit other than by—

(i) surrender under the Climate Change Response Act 2002:

(ii) transfer to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949; and

(b) the person has not since the disposal acquired another emissions unit that replaces the post-1989 forest land emissions unit or forest sink emissions unit

replacement payment, for a returning share transfer, means a payment to a person of an amount that is—

(a) economically equivalent to a dividend or part of a dividend for an original share:

(b) increased by an imputation credit attached to the payment

replacement permit—

(a) means a petroleum permit obtained in whole or part exchange for another petroleum permit over the same or part of the same area; and

(b) includes a sequential series of replacement permits to the extent to which each permit in the series replaces the previous permit in the series

replacement plant, in sections DO 6, DO 7, and DO 9 (which relate to horticultural plants) means a listed horticultural plant that replaces a listed horticultural plant, whether or not it is of the same type of listed horticultural plant

reporting bank is defined in section FE 4 (Some definitions) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

research is defined in section DB 35 (Some definitions) for the purposes of that section and section DB 34 (Research or development)

research and development activities is defined in section LH 7(1) (Research and development activities and related terms)

for the purposes of subpart LH (Tax credits for expenditure on research and development)

resident foreign trustee is defined in section 3(1) of the Tax Administration Act 1994

resident group member is defined in section IQ 2B(9) (Effect of attributed CFC net loss and some FIF net loss from before first affected year) for the purposes of that section and section LK 5B (Credits from tax year before first affected year)

resident imputation subgroup has the meaning given in section FN 8(2) (Trans-Tasman imputation groups and resident imputation subgroups)

resident in Australia, for a company, means being resident under section YD 2(1) (Residence of companies) if Australia were treated as being New Zealand for the purposes of that section

resident in New Zealand and **resident of New Zealand** have the same meaning as **New Zealand resident**

resident mining operator is defined in section CU 27 (Meaning of resident mining operator)

resident passive income—

(a) is defined in section RE 2(1) (Resident passive income); and

(b) unless the context otherwise requires, includes RWT required to be withheld under the RWT rules

residential mortgage backed security means a security that is backed by New Zealand-originated first mortgages on New Zealand residential property

residential purposes is defined in section CB 18(3) (Residential exclusion from section CB 14) for the purposes of that section

resident's restricted amalgamation is defined in section FO 3(1) (Resident's restricted amalgamations) for the purposes of the amalgamation rules

residual expenditure means—

(a) expenditure for which a person is allowed a deduction under section DB 33 (Scientific research):

(b) expenditure incurred for—

(i) an application fee payable to the Crown for a petroleum permit; or
(ii) insurance premiums, royalties paid under the Petroleum Act 1937 or the Crown Minerals Act 1991, land tax under the Land Tax Act 1976, or rates; or
(iii) a lease of land or buildings; or
(iv) a financial arrangement to which the old financial arrangements rules apply:

(c) interest

residual income tax, for a person and for a tax year, means the positive amount, if any, that remains after subtracting from the person's income tax liability for the tax year, the following amounts

(a) the amount of any credit allowed against the income tax liability for tax paid by—
(i) a trustee for the person as a beneficiary; or
(ii) an agent for the person as a principal:

(b) the amount of any credit allowed against the income tax liability under—
(i) section LB 1 (Tax credits for PAYE income payments):
(ii) section LB 3 (Tax credits for resident withholding tax):
(iii) section LB 5 (Tax credits for non-resident withholding tax):
(iiib) section LB 6 (Tax credits for RSCT):
(iiic) section LC 13 (Tax credits for independent earners):
(iv) section LE 1 (Tax credits for imputation credits):
(v) section LF 1 (Tax credits for FDP credits):
(vb) section LH 2 (Tax credits relating to expenditure on research and development):
(vi) section LJ 2 (Tax credits for foreign income tax):
(vii) section LK 1 (Tax credits relating to attributed CFC income):
(viii) section LK 6 (Use of tax credits by group companies):

(ix) section LO 1 (Tax credits for Maori authority credits):

(c) the amount of any credit allowed against the income tax liability arising under subpart LP (Tax credits for supplementary dividends), other than through section LP 3(3) (Use of remaining credits):

(d) the amount of a debit balance used to pay income tax under section OE 7 or OP 101 (which relate to the payment of tax by BETA companies or consolidated groups):

(e) the amount of a credit used to pay income tax under section OJ 8 or OJ 18 (which relate to the policyholder base)

resource consent means a resource consent as defined in section 2 of the Resource Management Act 1991

restitution is defined in section DB 44(3) (Restitution of stolen property) for the purposes of that section

retirement savings scheme for a person means an entity eligible under section RH 3 (Retirement savings schemes)

retirement scheme contribution is defined in section RH 2 (Retirement scheme contributions)

retirement scheme contributor means an entity eligible under section RH 4 (Retirement scheme contributors)

retirement scheme prescribed rate, for a person and a retirement scheme contribution made for the person at a time in an income year, means a rate set out in schedule 6, table 2 (Prescribed rates: PIE investments and retirement scheme contributions)

return, for a person's income, has the same meaning as **return of income**

return of income means a return of income required under section 33 of the Tax Administration Act 1994

returning share transfer means an arrangement—

(a) under which—

(i) a share (the **original share**) listed on an official list of a recognised exchange is transferred from a share supplier to a share user; and

(ii) it is conditionally or unconditionally agreed that the share user or an associated person pays a replacement payment to the share supplier or an associated person, if a dividend is payable on the original share; and

(iii) it is conditionally or unconditionally agreed that the original share or an identical share may be transferred from the share user to the share supplier or an associated person; and

(b) that is not a warrant or instalment receipt

revenue account property, for a person, means property that—

(a) is trading stock of the person:

(b) if disposed of for valuable consideration, would produce income for the person other than income under section EE 48 (Effect of disposal or event), FA 5 (Assets acquired or disposed of after deductions of payments under lease), or FA 9 (Treatment when lease ends: lessee acquiring asset):

(c) is an emissions unit of the person:

(d) is a non-Kyoto greenhouse gas unit

right, in sections EW 32 (Consideration for agreement for sale and purchase of property or services, hire purchase agreement, specified option, or finance lease) and EW 34 (Consideration in foreign currency), and in the definitions of **short-term agreement for sale and purchase** and **short-term option**,—

(a) means—

(i) a right to possess the property; or

(ii) a right to income derived from the property; or

(iii) a right to control or influence the disposal of income derived from the property; or

(iv) a right, directly or indirectly, to make a decision about the property; or

(v) a right, directly or indirectly, to influence a person making a decision about the property; or

(vi) any other right of a substantially similar nature; and

(b) does not include the mere right to enforce an agreement for the sale and purchase of property or services or a specified option

right in the specified property is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

right to take timber includes an easement or licence or right of taking profits or produce from the land to the extent to which the easement, licence, or right relates to timber

ring-fenced tax loss means an amount referred to in section IA 7 (Restrictions relating to ring-fenced tax losses)

rolling average value is defined in section EZ 4(5) (Valuation of livestock bailed or leased as at 2 September 1992) for the purposes of that section

routine government action is defined in section DB 45(4) (Bribes paid to public officials) for the purposes of that section

royalty is defined in section CC 9(2) and (3) (Royalties)

RSCT means retirement scheme contribution tax

RSCT rules is defined in section RH 1 (RSCT rules and their application)

RWT means resident withholding tax and refers to an amount payable as income tax under the RWT rules

RWT exemption certificate means a certificate described in section 32E of the Tax Administration Act 1994

RWT proxy is defined in section 15N of the Tax Administration Act 1994

RWT rules means the provisions listed in section RE 1(1) (RWT rules and their application)

RWT substitution payment means an RWT substitution payment described in section RE 2(7) (Resident passive income)

RWT withholding certificate means a form provided under section 25 of the Tax Administration Act 1994

salary or wages—

(a) is defined in section RD 5 (Salary or wages):

(b) is further defined in section RD 65(13) (Employer's superannuation contributions) and schedule 28, clause

7 (Requirements for complying fund rules) for the purposes of those sections

savings component means,—

(a) for a premium paid under a life insurance policy, the actuarially determined amount of the premium that is like the policyholder making an investment and is accounted for as increasing policyholder liabilities:

(b) for a claim payable under a life insurance policy, the actuarially determined amount of the claim that is like the policyholder withdrawing an investment and is accounted for as reducing policyholder liabilities

savings product policy means a life insurance policy, other than an annuity, that may or may not have a life risk component and that has or will have a surrender value which—

(a) is greater than zero; and

(b) does not arise wholly from the payback of a some or all of a policyholder's premiums relating to life risk

schedular income means income of any of the following types

(a) schedular policyholder base income:

(b) income derived from a mining venture by a non-resident mining operator:

(c) *[Repealed]*

(d) category A income derived by a trustee of a group investment fund:

(db) income derived by a multi-rate PIE:

(e) income derived by a portfolio tax rate entity:

(f) non-resident passive income of the kind referred to in section RF 2(3) (Non-resident passive income):

(g) income to which section YD 6 (Apportionment of income from sea transport) applies:

(h) income to which section YD 7 (Apportionment of film rental income) applies:

(i) income to which section YD 8 (Apportionment of premiums derived by non-resident general insurers) applies

schedular income tax liability means the amount determined under section BC 7 (Income tax liability of person with schedular income)

schedular payment is defined in section RD 8 (Schedular payments)

schedular policyholder base income means schedular policyholder base income described in section EY 2(3) (Policyholder base)

schedular taxable income, for a tax year and a person who has schedular income of a particular kind for the tax year, means the amount of taxable income that the person has in calculating the schedular income tax liability for the kind for the tax year

scientific or technological uncertainty is defined in section LH 7(3) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)

seal and abandonment means the seal and abandonment of an exploratory well when a petroleum miner files a statutory declaration with the Commissioner stating that the miner has no intention of utilising the well in petroleum mining operations or of applying for a petroleum mining permit in relation to the area in which the well is located

second payment period means the period starting on the 16th day of a month and ending with the last day of the month

section 200 is defined in section CZ 7(4) (Primary producer co-operative companies: 1987–88 income year) for the purposes of that section

secured amounts—

(a) is defined in section HB 11(12) (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section:

(b) is defined in section HG 11(12) (Limitation on deductions by partners in limited partnerships) for the purposes of that section

secured arrangement,—

(a) in the financial arrangements rules, and in the definitions of **security arrangement** and **security payment**, means an arrangement whose non-performance is secured against by a financial arrangement:

(b) is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

security arrangement,—

(a) except in the old financial arrangements rules, means a financial arrangement that secures a party against another person failing to perform the person's obligations under a secured arrangement:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

security payment,—

(a) in the financial arrangements rules, means money received by a party to a security arrangement to the extent to which—

(i) the money is received for a loss incurred because of non-performance of the secured arrangement; and

(ii) the money is income of the party:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

segment of foreign-sourced income is defined in section LJ 4 (Meaning of segment of foreign-sourced income) for the purposes of Part L (Tax credits and other credits)

selected period is defined in section MF 1(3) (Application for payment of tax credit by instalment) for the purposes of that section

self-assessed adverse event, for a person and a farming, agricultural, or fishing business of the person, means an event that—

(a) is 1 of the following:

(i) drought, fire, flood, or some other natural event:

(ii) disease or sickness of livestock; and

(b) materially affects the business; and

(c) is described, together with the effect on the business, by the person in a statutory declaration given to the Commissioner

separated person, in section LC 7 (Meaning of housekeeper), subparts MA to MF and MZ (which relate to tax credits for families), and in the definitions of **spouse** and **civil union partner**, means a person who is separated and living apart from their spouse or civil union partner, whether under an agreement for separation, or under a court order, or otherwise

services,—

(a) in sections CD 5 (What is a transfer of value?) and EA 3 (Prepayments), means anything that is not goods, money, or a chose in action:

(b) in sections CX 1 (Goods and services tax) and DB 2 (Goods and services tax), means anything that is not goods or money, as each of those terms is defined in section 2 of the Goods and Services Tax Act 1985

settlement, in section FE 2 (When this subpart applies) and subpart HC (Trusts), in the trust rules, and in the definitions of **complying trust, disposition of property, foreign trust**, and **general power of appointment**,—

(a) means—

(i) an act or failure to act on the part of a person that has the effect of making the person a settlor; or

(ii) a transaction or series of transactions that a person enters into and that has the effect of making the person a settlor; and

(b) includes a settlement that a person is treated as making because the person is treated as being a settlor of the settlement

settlement of relationship property is defined in section FB 1(3) (What this subpart does) for the purposes of subpart FB (Transfers of relationship property)

settlor,—

(a) is defined in section HC 27 (Who is a settlor?) for the purposes of section CW 59 (New Zealand companies operating in Niue), section MB 7 (Family scheme income of settlor of trust), subpart YB (Associated persons and nominees), the consolidation rules, the trust rules, and the definition of **settlement**:

(b) in sections HC 36 and HC 37 (which relate to minor beneficiaries), has the meaning given in paragraph (a), with the following qualifications:

(i) in section HC 27(2) if the transfer of value is the provision of financial assistance by way of a loan for less than market value, it means loans existing on or after 1 April 2002 for which the interest rate on the amount borrowed is at any time during

a tax year less than the interest rate set out in the Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations on 31 March of the previous tax year; and

(ii) in section HC 27(2) the transfer of value does not include the provision of financial assistance by way of a guarantee that was not called on or the provision of security that was not called on; and

(iii) in section HC 27(2) the transfer of value does not include services that are incidental to the operation of the trust, such as bookkeeping or accounting services or those provided in being a trustee:

(c) has the meaning given in paragraph (a) modified by section YB 10 (Who is a settlor?) for the purposes of sections YB 7 to YB 9 (which relate to associated persons)

share—

(a) includes any interest in the capital of a company:

(b) includes a debenture to which section FA 2 (Recharacterisation of certain debentures) applies:

(bb) includes a stapled debt security to which section FA 2B(2) (Stapled debt securities) applies:

(c) includes a unit in a unit trust:

(d) includes an investor's interest in a group investment fund if—

(i) the fund is not a designated group investment fund; and

(ii) the interest does not result from an investment from a designated source; and

(iii) the investor's interest does not result from an investment made in the fund on or before 22 June 1983, including an amount treated as invested at that date as **pre-1983 investments** under section HR 3(8) (Definitions for section HR 2: group investment funds):

(e) does not include a withdrawable share in a building society, except in the definitions of **investment society dividend** and **withdrawable share**:

(f) is further defined in section CE 6 (Meaning of share: when share acquired) for the purposes of sections CE 2 to CE 4 and CE 7 (which relate to share purchase agreements):

(g) is further defined in section DC 15 (Some definitions) for the purposes of sections DC 12 to DC 15 (which relate to share purchase schemes)

share-lending arrangement means an arrangement, entered into on or after 1 July 2006, that is a returning share transfer, and—

(a) the agreed term of the arrangement is 1 year or less; and

(b) the terms and conditions of the arrangement, including the share-lending collateral, are ordinary commercial terms and conditions consistent with those that would apply between parties negotiating at arm's length; and

(c) the amount of tax calculated under section RE 17 (Replacement payments under share-lending arrangements) for a replacement payment, if any, is paid; and

(d) the share user disposes of the original share or an identical share to the share supplier during the agreed term of the arrangement, or within a further period allowed by the Commissioner; and

(e) the share user—

(i) agrees to issue, and issues, a credit transfer notice in relation to a dividend paid for the original share:

(ii) establishes and maintains an imputation credit account, if a dividend is payable for the original share during the agreed term of the arrangement

share-lending collateral means an amount, or an adjustment to the amount, that—

(a) is related to the market value of an original share under a share-lending arrangement, and the amount is paid to a person,—

(i) by a share user or an associated person to secure the transfer of the original share to the share user:

(ii) by a share supplier or an associated person for the re-transfer of the original share or an identical share to them; and

(b) is not a replacement payment

share-lending right means, for a share supplier under a share-lending arrangement, a conditional or unconditional right to acquire the original share or an identical share under the share-lending arrangement

share purchase agreement is defined in sections CE 7 (Meaning of share purchase agreement) and CZ 1 (Share purchase agreement income before 19 July 1968) for the purposes of sections CE 1 to CE 4 (which relate to employment income) and HC 27(3B) (Who is a settlor?)

share purchase scheme is defined in sections CE 7 (Meaning of share purchase agreement) and CZ 1 (Share purchase agreement income before 19 July 1968) for the purposes of sections CE 1 to CE 4 (which relate to employment income) and section EX 38 (Exemption for employee share purchase scheme of grey list company)

share reorganisation, in the FIF rules and for a person and an attributing interest in a FIF, means an action of the FIF that causes an increase or reduction, other than for consideration, of the attributing interests held by persons, including the person, who hold attributing interests in the FIF immediately before the action

share supplier means a person, described as a share supplier, in the definition of **returning share transfer**, from whom a share user acquires an original share under a returning share transfer

share user means a person, described as a share user in the definition of **returning share transfer**, who acquires an original share under a returning share transfer

shareholder—

(a) includes—
  (i) a holder of a share; and
  (ii) a member of a company, whether the company's capital is divided into shares or not:

(b) does not include a holder of a withdrawable share in a building society, except in the definitions of **investment society dividend** and **withdrawable share**:

(c) in subparts HA (Qualifying companies (QC) and loss-attributing qualifying companies (LAQC)) and OE (Branch equivalent tax accounts (BETA)) and OJ (Policyholder credit accounts (PCA)), in the FDP rules and the imputation rules, and in the definition of **shareholder dividend statement**, includes a sharemilker (as defined in section 2 of the Sharemilking Agreements Act 1937), to the extent to which the sharemilker derives payment for produce transactions directly from a co-operative dairy or milk company

shareholder agreement, for a company,—

(a) includes an arrangement to which the shareholders of the company are parties, in their capacity as shareholders; but

(b) does not include an arrangement that is—

(i) the company's constitution:

(ii) the terms of a debt security:

(iii) the terms of the company's shares

shareholder base, for a life insurer, means the base for shareholder income and allowable deductions and to which income of a particular source or nature, and tax credits received are apportioned under section EY 4 (Apportionment of income of particular source or nature, and of tax credits)

shareholder base allowable deductions means shareholder base allowable deductions described in section EY 3(2) (Shareholder base)

shareholder base income means shareholder base income described in section EY 3(1) (Shareholder base)

shareholder decision-making right means a right, carried by a share issued by a company or an option over a share issued by a company, to vote or participate in any decision-making concerning—

(a) a dividend or other distribution to be paid or made by the company, whether on a liquidation of the company or otherwise, excluding decision-making undertaken by directors acting only in their capacity as directors; or

(b) the constitution of the company; or

(c) a variation in the capital of the company; or

(d) the appointment of a director of the company

shareholder dividend statement means a statement required by section 29 of the Tax Administration Act 1994 to be given by a company to a shareholder to whom is paid a dividend referred to in that section

shareholder-employee,—

(a) in sections EA 4 (Deferred payment of employment income) and EI 9 (Matching rule for employment income of shareholder-employee), means a person who receives or is entitled to receive salary, wages, or other income to which section RD 3(2) to (4) (PAYE income payments) applies:

(b) in the FBT rules and in section 177A of the Tax Administration Act 1994, means a person who is, in relation to a close company,—

  (i) a shareholder in and an employee of the company; and

  (ii) a person to whom section RD 3(2) to (4) applies:

(c) does not include an owner of a look-through company or a person who has a look-through interest for a look-through company

shareholder FDP ratio is defined in section OC 39 (Meaning of shareholder FDP ratio) for the purposes of sections OC 23 and OC 36 (which relate to FDP credits and debits)

shares of the same class means any 2 or more shares of a company—

(a) that carry the same shareholder decision-making rights; and

(b) that carry the same rights, in terms of priority, amount payable per share, and otherwise, to be paid profits distributed by the company and distributions of assets of the company on a cancellation of its shares; and

(c) for which either the owner, or the amount paid for the issue, of each share is the same if—

  (i) the company gives notice to the Commissioner in a form approved by the Commissioner, that the company chooses to treat the shares as a separate class; and

(ii) the company can at all times from the time of issue of each share identify and distinguish the share from any other shares in the company

shearer means a person who—

(a) undertakes the shearing of sheep, other than in the carrying on of a business by the person; and

(b) is not a person permanently employed on the premises where the shearing shed is situated

shearing shed hand means a person who—

(a) is employed in or about the shearing shed, other than in the carrying on of a business by the person; and

(b) is not—

(i) a shearer:

(ii) a wool classer:

(iii) a person permanently employed on the premises where the shearing shed is situated

short term agreement for the sale and purchase of property is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

short term trade credit is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

short-term agreement for sale and purchase means an agreement for the sale and purchase of property or services of 1 of the following classes

(a) an agreement under which settlement must take place or the services must be performed on or before the 93rd day after the date on which the agreement is entered into:

(b) if the date on which the agreement is entered into cannot be established, an agreement under which settlement must take place or the services must be performed on or before the 93rd day after the earlier of—

(i) the date on which the buyer first makes a payment to the seller; and

(ii) the date on which the first right in the property is transferred or the services are performed:

(c) if the agreement is continuous and the seller renders periodic invoices for the property or services, an agreement under which settlement must take place or the ser-

vices must be performed on or before the 93rd day after the date on which each invoice is rendered

short-term bailment is defined in section EC 27 (Some definitions) for the purposes of subpart EC (Valuation of livestock)

short-term charge facility is defined in section CX 25(3) (Benefits provided by charitable organisations) for the purposes of the FBT rules

short-term option,—

(a) in the financial arrangements rules, means a specified option of 1 of the following classes:
  (i) an option under which settlement must take place or the services must be performed on or before the 93rd day after the date on which the option is entered into:
  (ii) if the date on which the option is entered into cannot be established, an option under which settlement must take place or the services must be performed on or before the 93rd day after the earlier of the date on which the buyer first makes a payment to the seller and the date on which the first right in the property is transferred or the services are performed:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

shortfall penalty is defined in section 3(1) of the Tax Administration Act 1994

sickness, accident, or death benefit fund means a sickness, accident, or death benefit fund that is—

(a) established for the benefit of—
  (i) employees; or
  (ii) the members of an incorporated society; or
  (iii) the surviving spouses and dependants of those employees or members; and

(b) approved by the Commissioner

significant capital activity, in section DO 1(1)(g) (Enhancements to land, except trees) and schedule 20 (Expenditure on farming, horticultural, aquacultural, and forestry improve-

ments) and in relation to a farming or agricultural business on land in New Zealand,—

(a) means an activity that enables a change in the nature or character of a farming activity from that undertaken on the land immediately before the change; and

(b) excludes an activity that enables a change in the intensity of a farming practice employed in a farming activity on the land

significant financial hardship*[Repealed]*

[Repealed]

slice rule means the rule set out in section CD 23(3) (Ordering rule and slice rule) for calculating the amount of available subscribed capital per share

small-business person is defined in section RC 40 (Some definitions) for the purposes of subpart RC (Provisional tax)

small partnership means a partnership that is not a limited partnership and has 5 or less partners, none of whom are companies or partnerships

social assistance payment is defined in section MA 8 (Some definitions for family scheme) for the purposes of subparts MA to MF and MZ (which relate to tax credits for families)

social assistance suspensory loan is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

sound commercial reason is defined in section EW 26(7) (Change of spreading method) for the purposes of that section.

sound recording is defined in the Copyright Act 1994

source in New Zealand, for income, means a source described in section YD 4 (Classes of income treated as having New Zealand source) and section YZ 1 (Source rule for interest)

special account means a special home ownership account

special corporate entity means—

(a) a Crown Research Institute:

(b) a group investment fund:

(c) a Life Insurance Fund:

(d) an entity that has not issued shares and is engaged mainly in the business of providing life insurance or other insurance to the public:

(e) a local authority:
(f) a public authority:
(g) a State enterprise:
(h) a statutory producer board other than a body that derives only exempt income:
(i) any other statutory body that does not issue shares, if—
  (i) the statutory body is established by an Act of the Parliament of New Zealand or by a statute of the legislature, whether federal or state or provincial, of any territory outside New Zealand; and
  (ii) the Commissioner, having regard to the terms of the statute by which the body is established, is satisfied that it would be appropriate to treat the body as a special corporate entity for the purposes of those provisions of this Act whose application is dependent on the measurement of voting and market value interests:
(j) any body incorporated under the Incorporated Societies Act 1908, for an income year in which the body on no day in the income year has shares on issue to the members of the body

special excluded depreciable property is defined in section EE 67 (Other definitions)

special home ownership account means a special home ownership account operated by a person under Part 2 of the Home Ownership Savings Act 1974

special rate is defined in section EE 67 (Other definitions)

specified activity is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

specified activity net income is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

specified activity net loss is defined in section IZ 1(12) (Use of specified activity net losses) for the purposes of that section

specified base cost for 1983 income year property means the greater of—
(a) the cost price or acquisition value of the property; and

(b) the market value of the property on the last day of the 1982–83 income year

specified insurance premium is defined in section CX 16(3) (Contributions to life or health insurance)

specified lease means a lease of a personal property lease asset if—

(a) the lease is entered into in the period starting on 6 August 1982 and ending on 19 May 1999 and the lease has a guaranteed residual value, or has a term of the lease that is more than 36 consecutive months, or has a term of the lease that is the economic life of the asset because the Commissioner considers that the asset has an economic life of less than 36 months, and—

(i) the lessee becomes the owner of the asset at the end of the term of the lease:

(ii) the lessee has the option to repurchase the asset at the end of the term of the lease at a price that the Commissioner considers will be significantly lower than the market value of the asset at the end of the term of the lease:

(iii) the total of all personal property lease payments and the guaranteed residual value is more than or equal to, or to a small extent less than, the cost price of the asset:

(iv) the lessor and the lessee agree that the lessee is liable for the payment of all, or nearly all, expenditure incurred for the costs of repair and maintenance of the asset and any other incidental costs arising during the term of the lease for the use of the asset:

(b) the lease is entered into in the period starting on 6 August 1982 and ending on 19 May 1999 and the lessee acquires ownership of the asset by any means, whether from the lessor or another person:

(c) the lease is entered into in the period starting on 28 October 1983 and ending on 19 May 1999 and—

(i) a person other than the lessee acquires the asset; and

(ii) the lessee and the person who acquires the asset are associated

specified livestock—

(a) means an animal of a type specified in schedule 17, column 1 (Types and classes of livestock); and

(b) does not include an animal that is high-priced livestock, except as provided in section EC 37 (Bailment)

specified living allowance means—

(a) an income-tested benefit; or

(b) a veteran's pension; or

(c) New Zealand superannuation; or

(d) a basic grant or an independent circumstances grant, made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections; or

(e) compensation described in section RD 5(1)(b)(iii) (Salary or wages) if the compensation relates to a day forming part of a continuous period of eligibility for such compensation and the day falls after the earlier of—

(i) the day having the same date as the first day of the continuous period of eligibility for compensation and occurring in the third calendar month after that first day; and

(ii) the last day of the third calendar month after the first day of the continuous period of eligibility for compensation

specified mineral is defined in section CU 28 (Meaning of specified mineral)

specified option,—

(a) in the financial arrangements rules,—

(i) means an option to acquire or dispose of property or services; and

(ii) includes an agreement for the sale and purchase of property or services entered into as a result of the exercise of the option:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

specified period,—

(a) is defined in section EH 36 (Other definitions) for the purposes of the main income equalisation scheme:

(b) is defined in section EH 62 (Other definitions) for the purposes of the adverse event income equalisation scheme:

(c) is defined in section EH 79 (Other definitions) for the purposes of the thinning operations income equalisation scheme

spouse, in section LC 4 (Tax credits for transitional circumstances) and subparts MA to MF and MZ (which relate to tax credits for families), and in the definitions of **entitlement period**, **full-time earner**, and **separated person**, does not include a separated person

spreading method means a method listed in section EW 14(2) (What spreading methods do)

stallion means a stallion that is bloodstock

standard accounting year has the meaning given in section YE 1(4) (References to balance dates and years)

standard balance date has the meaning given in section YE 1(4) (References to balance dates and years)

standard-cost household service means a service that is a standard-cost household service under a determination made by the Commissioner under section 91AA of the Tax Administration Act 1994

standard dividend means a dividend derived from a company by a shareholder in the form of—

(a) money; or

(b) the release of an obligation to repay an amount lent; or

(c) a distribution of property of the company; or

(d) a taxable bonus issue

standard income year is defined in section YE 1(4) (References to balance dates and years)

standard value, for non-specified livestock, means the value set under section EC 29 (Determining standard values)

standing timber includes trees that would be standing timber if they were mature trees

stapled, for a debt security and a share, is defined in section FA 2B(5) (Stapled debt securities)

stapled debt security means a debt security that is stapled to a share, if the share is not a fixed-rate share

state enterprise means a person specified in schedule 36 (State enterprises)

statutory producer board means—

(a) a body specified in schedule 37 (Statutory producer boards):

(b) a marketing authority as defined in the Primary Products Marketing Act 1953 that is established by regulations made under that Act:

(c) a primary producer board or marketing board established by an Act

statutory trustee company is defined in section 2 of the Trustee Companies Act 1967

straight-line method, for depreciation, is defined in section EE 67 (Other definitions)

straight-line rate is defined in section EE 67 (Other definitions)

subsidised transport means the provision of transport or an entitlement to transport to an employee by the employer, or by a company (the **group company**) in the same group of companies as the employer, in a quarter, or an income year if section RD 60 (Close company option) applies, if—

(a) the employer or group company carries on a business consisting of, or including, transporting the public for hire or reward; and

(b) the employer or group company provides the transport or the entitlement to the employee in the course of transporting the public; and

(c) the transport or entitlement is not transport in a motor vehicle; and

(d) the amount, if any, the employee pays is less than the highest amount the employer or group company charges the public, in the quarter or income year in which the provision to the employee occurs, for transport that is equivalent in terms of class, extent, and occasion to the

transport or entitlement the employer or group company provides to the employee

subsidy claim form means a form that a listed PAYE intermediary must provide to the Commissioner in an electronic format prescribed by the Commissioner showing,—

(a) the tax file number of the listed PAYE intermediary; and

(b) the tax file number and name of each employer in relation to which a subsidy is claimed; and

(c) the tax file number and name of each employee of each employer in relation to whom a subsidy is claimed under sections RP 4 (Payment of subsidies to certain PAYE intermediaries) and 15M of the Tax Administration Act 1994; and

(d) the period to which the form relates; and

(e) the number of PAYE income payments made by the listed PAYE intermediary to each employee in the period to which the form relates; and

(f) the amount of subsidy that the listed PAYE intermediary claims for the period to which the form relates

substantial business assets is defined in section GB 28(6) (Interpretation of terms used in section GB 27) for the purposes of section GB 27 (Attribution rule for income from personal services)

substituting debenture is defined in section FA 2(5) (Recharacterisation of certain debentures)

superannuation category 1 scheme means a scheme or fund that was at the relevant time a superannuation category 1 scheme under the Income Tax Act 1976

superannuation category 2 scheme means a scheme or fund that was at the relevant time a category 2 scheme under the Income Tax Act 1976

superannuation category 3 scheme means a scheme or fund that was at the relevant time a superannuation category 3 scheme under the Income Tax Act 1976

superannuation contribution—

(a) means a disposition of property to or for the benefit of a superannuation scheme in consideration for which fully

adequate consideration in money or money' worth does not pass from the scheme to a person; and

(b) does not include a benefit that may pass from the scheme to a person under the terms of the scheme

superannuation fund—

(a) means a superannuation scheme registered under the Superannuation Schemes Act 1989 or a KiwiSaver scheme that is registered under the KiwiSaver Act 2006; and

(b) for a superannuation fund that is a trust, means the trustees of the fund

superannuation policy is defined in section DZ 2(3) (Life insurers acquiring property before 1 April 1988) for the purposes of that section and section EZ 1 (Life insurers acquiring property before 1 April 1988)

superannuation savings scheme means all the entitlements and tax credits arising under subpart MK (Tax credits for KiwiSaver schemes and complying superannuation funds)

superannuation scheme—

(a) means—

(i) a trust or unit trust established by its trust deed mainly for the purposes of providing retirement benefits to beneficiaries who are natural persons or paying benefits to superannuation funds; or

(ii) *[Repealed]*

(iii) a company that is not a unit trust, is not resident in New Zealand, and is established mainly for the purpose of providing retirement benefits to members or relatives of members who are natural persons; or

(iv) an arrangement constituted under an Act of the Parliament of New Zealand, other than the Social Security Act 1964, mainly for the purpose of providing retirement benefits to natural persons; or

(v) an arrangement constituted under the legislation of a country, territory, state, or local authority outside New Zealand mainly for the purpose of providing retirement benefits to natural persons; and

(b) for a superannuation scheme that is a trust, means the trustees of the scheme

supplement, for a provision in Part D (Deductions) means to allow a person a deduction without requiring them to satisfy the general permission

supplementary dividend, for a company and for a person deriving a dividend (the **first dividend**) from the company, means a dividend that—

(a) is paid by the company in the same income year as the first dividend; and
(b) is paid in relation to the first dividend; and
(c) is derived by the person; and
(d) is equal in amount to the tax credit calculated, for the first dividend, under section LP 2(2) (Tax credits for supplementary dividends)

supplementary dividend holding company in relation to a company (the **subsidiary**), means a company—

(a) that is resident in New Zealand; and
(b) that has notified the subsidiary within the previous 7 years that it is a supplementary dividend company, and has not revoked the notice; and
(c) that has a purpose, in maintaining the notice, of directly or indirectly enabling the payment of a supplementary dividend to a non-resident; and
(d) in which 1 or more voting interests are held by non-residents; and
(e) that derives dividends that are not excluded income or exempt income other than income under sections CW 9 to CW 11 (which relate to income from equity)

supply is defined in section GC 14 (Definitions for sections GC 6 to GC 13) for the purposes of sections GC 6, GC 9 and GC 10 (which relate to transfer pricing arrangements)

supporting asset base is defined in section EY 17 (Policyholder base income: profit participation policies)

surrender, for an emissions unit, means surrender as defined in section 4(1) of the Climate Change Response Act 2002

surrender value means the amount paid (the **surrender amount**) when a life insurance policy is cancelled before it

reaches the maturity or expiry date contracted for under the policy, excluding an amount that is the repayment of unexpired premiums. There is no netting off against the surrender amount of unpaid premiums, outstanding loans, or interest balances (the **debt obligations**) owed by an insured unless the policy is terminated by the insurer and the debt obligations are greater than the surrender amount

systematic, investigative, and experimental activities is defined in section LH 7(2) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)

tax means income tax, but in the provisions in which the term "income tax" has an extended or limited meaning, "tax" has a corresponding meaning

tax account with the Commissioner, for a person, means an account dealing with the person's transactions with the Commissioner in relation to income tax

tax advantage, in sections GB 35 and GB 36 (which relate to imputation arrangements to obtain a tax advantage), GB 42 and GB 43 (which relate to Maori authority credit arrangements to obtain a tax advantage) and sections OB 61, OC 28, OD 21, and OK 20 (which relate to memorandum accounts), means—

(a) the allowance, wholly or partly, of a tax credit under section LE 1 (Tax credits for imputation credits):

(b) the allowance, wholly or partly, of a tax credit under section LF 1 (Tax credits for FDP credits):

(c) the obtaining of a refund of FDP under section LF 8 (Credits for persons who are non-resident or who receive exempt income):

(d) the allowance, wholly or partly, of a tax credit under section LO 1 (Tax credits for Maori authority credits):

(e) the arising of a credit to an imputation credit account under sections OB 4 to OB 29 (which relate to credits arising to imputation credit accounts):

(f) the arising of a credit to an FDP account under sections OC 6 to OC 12 (which relate to credits arising to FDP accounts):

(g) the arising of a credit to a Maori authority credit account under sections OK 2 to OK 9 (which relate to credits arising to Maori authority credit accounts)

tax agent means a person—

(a) who prepares the annual returns required to be filed for 10 or more persons; and

(b) who—

(i) carries on a professional public practice; or

(ii) carries on any business in which annual returns required to be filed are prepared; or

(iii) is the Maori Trustee

tax avoidance includes—

(a) directly or indirectly altering the incidence of any income tax:

(b) directly or indirectly relieving a person from liability to pay income tax or from a potential or prospective liability to future income tax:

(c) directly or indirectly avoiding, postponing, or reducing any liability to income tax or any potential or prospective liability to future income tax

tax avoidance arrangement means an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly—

(a) has tax avoidance as its purpose or effect; or

(b) has tax avoidance as 1 of its purposes or effects, whether or not any other purpose or effect is referable to ordinary business or family dealings, if the tax avoidance purpose or effect is not merely incidental

tax-base property is defined in section FC 1(2) (What this subpart does) for the purposes of subpart FC (Distribution, transmission, and gifts of property)

tax charity is defined in section CW 41(5) for the purposes of that section and sections CW 42 and CW 43

tax code, for an employee, means the employee's tax code under section 24B of the Tax Administration Act 1994

tax credit—

(a) is defined in section LA 10 (Meaning of tax credit):

(b) is defined in section GA 1(7) (Commissioner's power to adjust) for the purposes of that section

tax credit advantage—

(a) is defined in section GB 36(5) (Reconstruction of imputation arrangements to obtain tax advantage) for the purposes of that section:

(b) is defined in section GB 43(5) (Reconstruction of Maori authority credit arrangements to obtain tax advantage) for the purposes of that section

tax file number means an identification number that the Commissioner has allocated to a person—

(a) generally for the purposes of this Act; or

(b) specifically for the purpose of the issue to the person of an RWT exemption certificate under section RE 27 (RWT exemption certificates)

tax loss means an amount described in section IA 2(1) (Tax losses) and includes unused tax loss components arising in the current tax year or in an earlier tax year

tax loss component is defined in section IA 2(7) (Tax losses)

tax pooling account is defined in section RP 17B (Tax pooling accounts and their use)

tax position means, for the purposes of sections HZ 4B and HZ 4D (which relate to the transition of a qualifying company into a partnership or sole tradership), a status, right, obligation, liability, asset, or other thing authorised or arising under, required or imposed by, or necessary to comply with an Inland Revenue Act, and includes tax assets and accounting positions in relation to an Inland Revenue Act, and debts payable to the Commissioner

tax withheld means an amount of tax—

(a) withheld from a PAYE income payment under the PAYE rules to the extent to which it is a tax credit under section LB 1 (Tax credits for PAYE income payments):

(b) withheld and paid to the Commissioner under the RWT and NRWT rules to the extent to which it is a tax credit under section LB 3 or LB 5 (which relate to tax credits for passive income):

(c) paid under regulations made under section 225 of the Tax Administration Act 1994

tax year—

(a) means a period starting on 1 April and ending on 31 March:

(b) is defined in section IW 1(6) (Shortfall penalties) for the purposes of that section

taxable activity,—

(a) in the provisional tax rules, the RWT rules, and the NRWT rules, is defined in section 6 of the Goods and Services Tax Act 1985, except that section 6(3)(d) does not apply:

(b) is defined in section DB 3(3) (Determining tax liabilities) for the purposes of that section

taxable bonus issue means—

(a) a bonus issue in lieu:

(b) a bonus issue that a company chooses to treat as a dividend under section CD 8 (Elections to make bonus issue into dividend):

(c) in the case of a bonus issue made before the enactment of this Act, a bonus issue that the company chose to treat as a dividend under a provision of an earlier Act corresponding to CD 8:

(d) a bonus issue that is a dividend under section CD 10 (Bonus issue by foreign unit trust instead of money or property)

taxable distribution, for a non-complying trust or a foreign trust, is defined in section HC 15 (Taxable distributions from non-complying and foreign trusts)

taxable income means taxable income for a tax year calculated under section BC 5 (Taxable income)

taxable Maori authority distribution is defined in section HF 7 (Taxable Maori authority distributions)

taxable period has the meaning given in section 2(1) of the Goods and Services Tax Act 1985

taxable supply has the meaning given in section 2(1) of the Goods and Services Tax Act 1985

taxation law, in sections EZ 52 (References to new rules include old rules), GZ 2 (Arrangements involving cancellation of conduit tax relief credits), ZA 3 (Transitional provisions), ZA 4 (Saving of binding rulings), and ZA 5 (Saving of accrual determinations), means—

(a) a provision that is a taxation law under section 91B of the Tax Administration Act 1994:

(b) a provision of the Income Tax Act 1994 or Income Tax Act 2004

taxi is defined in section 2(1) of the Land Transport Act 1998

taxicab*[Repealed]*

[Repealed]

taxpayer means a person who is, or may be, liable to perform or comply with an obligation imposed by this Act

technology is defined in section LH 7(5) (Research and development activities and related terms) for the purposes of subpart LH (Tax credits for expenditure on research and development)

telecommunications service means a service, relating to information of any kind including pictures, sound, and data, that is—

(a) the transmission, emission, or reception of such information in analogue or digital code by a technical system using any equipment, including a cable or satellite and associated equipment, for the transmission through any medium of energy in any form, including electric current or electromagnetic radiation:

(b) the transfer or assignment of the right to transmit, emit, or receive such information by a system referred to in paragraph (a):

(c) the provision of access to a global network for the transmission, emission, or reception of such information

temporary building means—

(a) *[Repealed]*

(b) a building that—

(i) is erected at a construction site; and

(ii) is to be demolished or removed on or before the completion of the construction; or

(c) a building that—

(i) was erected, and is used, to house specific plant or machinery; and

(ii) will have to be demolished to remove or replace the plant or machinery

ten percent capital reduction is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

term of the lease—

(a) means the period of time from the date on which a lease starts until it ends:

(b) if the term is indefinite, means the period of time during which the lessee is unable, under the lease, to terminate the lease without incurring a penalty:

(c) if 2 or more consecutive leases are treated under paragraph (d)(v) of the definition of **lease** as 1 lease of a personal property lease asset, the term of the lease runs from the start of the first term of the lease to the end of the last of the leases:

(d) is defined in section EZ 8(5) (Premium paid on land leased before 1 April 1993) for the purposes of that section

terminal tax means an amount calculated for a tax year under section BC 8 (Satisfaction of income tax liability)

terminal tax date, for a tax year and a person, means the date determined under section RA 13 (Payment dates for terminal tax) for the payment of terminal tax for the tax year; and if the person does not have terminal tax for the tax year, section RA 13 applies as if the person did have terminal tax for the tax year

terminating share means a share in a building society that is included in a group of shares, if the group is to terminate—

(a) at the end of a period specified on the issue of the shares; or

(b) on the attainment of a result specified on the issue of the shares

thinning operations is defined in section EH 79 (Other definitions)

thinning operations deposit is defined in section EH 79 (Other definitions)

thinning operations income equalisation account is defined in section EH 79 (Other definitions)

thinning operations income equalisation scheme means the scheme referred to in section EH 1(2)(c) (Income equalisation schemes)

thinning operations maximum deposit is defined in section EH 78 (Meaning of thinning operations maximum deposit)

timber—

(a) is defined in section DP 11(4) (Cost of timber) for the purposes of that section:

(b) includes standing timber in—

(i) section DP 11:

(ii) section EB 24 (Apportionment on disposal of business assets that include trading stock):

(iii) section FB 6 (Timber or right to take timber):

(iv) section GC 1 (Disposals of trading stock at below market value):

(v) the definition of **dispose**, paragraph (b):

(vi) the definition of **right to take timber**:

(vii) the definition of **trading stock**, paragraph (b)(iv)

time bar means the provisions of sections 108 and 108B of the Tax Administration Act 1994

time of emigration for an emigrating company, is the time at which the emigrating company becomes a non-resident for the purposes of subpart FL (Emigration of resident companies)

time of the sale, in sections DC 10 (Sale of business: transferred employment income obligations) and EA 4 (Deferred payment of employment income), means the date on which the agreement for sale of the business or part of the business is settled by the exchange of the seller's business or the part for the buyer's consideration

Tokelau International Trust Fund means the trust governed by the Deed concerning the Tokelau International Trust Fund dated 10 November 2004 and signed by Her Majesty the Queen in right of New Zealand and the Government of Tokelau

total group assets, for a New Zealand group, is defined in section FE 16 (Total group assets) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

total group debt, for a New Zealand group, is defined in section FE 15 (Total group debt) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

total tax credit, for a person, means the total amount of their tax credits under Part L (Tax credits and other credits)

total taxable supplies is defined in section RC 8(8) (GST ratio method) for the purposes of that section and sections RC 11, RC 16, RC 19, and RC 31 (which relate to the calculation and payment of provisional tax using the GST ratio method)

trade credit is defined in section EZ 48 (Definitions) for the purposes of the old financial arrangements rules

trading stock—

(a) is defined in section EB 2 (Meaning of trading stock) except for the provisions to which paragraphs (b) and (d) apply:

(b) in sections CG 6 (Receipts from insurance, indemnity, or compensation for trading stock), EB 24 (Apportionment on disposal of business assets that include trading stock), FB 13 (Trading stock), and GC 1 to GC 3 (which relate to the sale of trading stock for inadequate consideration),—

(i) includes anything produced or manufactured:

(ii) includes anything acquired for the purposes of manufacture or disposal:

(iii) includes livestock:

(iv) includes timber or a right to take timber:

(v) includes land whose disposal would produce income under any of sections CB 6 to CB 15 (which relate to income from land):

(vi) includes any thing for which expenditure is incurred and which would be trading stock if possession of it were taken:

(vii) does not include a financial arrangement to which the financial arrangements rules or the old financial arrangements rules apply:

(c) for the purposes of section GC 1 (Disposals of trading stock at below market value), has an expanded meaning as set out in section GC 1(4):

(d) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

trading transactions is defined in section CD 34B (Distributions to members of co-operative companies)

transaction shares is defined in section CD 34B (Distributions to members of co-operative companies)

transfer means, for the purposes of sections HZ 4B and HZ 4D (which relate to the transition of a qualifying company into a partnership or sole tradership), a sale, purchase, disposal, acquisition, cessation, assumption, discharge, assignment, vesting, divesting, gift, supply, or other transfer in relation to liabilities and assets, and associated legal rights and obligations

transfer amount is defined in section FB 19(3) (Leased assets) for the purposes of that section

transfer of value—

(a) is defined in section CD 5 (What is a transfer of value?):

(b) means a transfer that occurs when—

(i) person A provides money or money's worth to person B; and

(ii) if person B provides any money or money's worth to person A as part of the arrangement described in subparagraph (i), the market value of what person A provides is more than the market value of what person B provides; and

(c) includes the release of an obligation that person B has to pay money to person A, either by agreement or operation of law; and

(d) **transfers value** has a corresponding meaning

transfer pricing arrangement is defined in section GC 6(2) (Purpose of rules and nature of arrangements)

transferee—

(a) is defined in section DZ 5(6) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section:

(b) in subpart FB (Transfers of relationship property), for property transferred under a relationship agreement, means the person to whom the property is transferred under the agreement

transferor—

(a) is defined in section CZ 8(2) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section:

(b) is defined in section DZ 5(6) (Farm-out arrangements for petroleum mining before 16 December 1991) for the purposes of that section:

(c) in subpart FB (Transfers of relationship property), for property transferred under a relationship agreement, means the person from whom the property is transferred under the agreement

transitional period is defined in section OZ 7 (Memorandum accounts in transitional period) for the purposes of sections OZ 8 to OZ 15

transitional resident is defined in section HR 8(2) (Transitional residents)

transitional year, in relation to provisional tax, means the period for which a person files a return under section 39 of the Tax Administration Act 1994

trans-Tasman imputation group means the group described in section FN 8(1) (Trans-Tasman imputation groups and resident imputation subgroups)

trust, in the definitions of **superannuation scheme** and **unit trust**, has the meaning given by the Trustee Act 1956

trust rules means—

(a) *[Repealed]*

(b) sections DV 1 to DV 7 (which relate to superannuation funds):

(c) section DV 9 (Trusts):

(d) section GB 22 (Arrangements involving trust beneficiary income):

(e) subpart HC (Trusts):

(f) subpart HZ (Terminating provisions):

(g) sections LE 4, LE 5, LF 2, LF 3, and LO 2 (which relate to tax credits for beneficiary minors):

(h) sections 59 and 93B of the Tax Administration Act 1994

trustee,—

(a) for a trust,—

(i) means the trustee only in the capacity of trustee of the trust; and

(ii) includes all trustees, for the time being, of the trust:

(b) includes an executor and administrator:

(c) includes the Public Trust:

(d) includes the Maori Trustee:

(e) for a superannuation scheme that is a trust or that is treated by this Act as a trust, includes a person by whom the investments of the scheme, or a part of the scheme, are managed or controlled:

(f) is defined in section DC 15 (Some definitions) for the purposes of sections DC 12 to DC 15 (which relate to share purchase schemes)

trustee income is defined in section HC 7 (Trustee income)

turnover, in subpart EB (Valuation of trading stock (including dealer's livestock)) and section HG 6 (Disposal of trading stock),—

(a) means the total income that a business derives in an income year as a result of trading by that business; and

(b) does not include the value of closing stock

type, in subparts EC (Valuation of livestock) and FB (Transfers of relationship property), and in the definitions of **class** and **herd livestock**, means a category of livestock listed in schedule 17, column 1 (Types and classes of livestock)

ultimate owner of a company means a person—

(a) who has an ownership interest in the company calculated under section FE 2 (When this subpart applies); and

(b) in whom no ownership interest is held by a person who holds an ownership interest in the company of 50% or more

ultimate parent is the company described in section FE 34 (Identifying ultimate parent) for the purposes of subpart FE (Interest apportionment on thin capitalisation)

unclassified benefit is defined in section CX 37 (Meaning of unclassified benefit)

unit holder, for a unit trust, means a person who holds a beneficial interest in the property that is subject to the trust

unit trust—

(a) means a scheme or arrangement that is made for the purpose or has the effect of providing facilities for subscribers, purchasers, or contributors to participate, as beneficiaries under a trust, in income and capital gains arising from the property that is subject to the trust; and

(b) does not include—

(i) a trust for the benefit of debenture holders:

(ii) the Common Fund of Public Trust:

(iii) a group investment fund established by Public Trust:

(iv) the Common Fund of the Maori Trustee:

(v) a group investment fund established under the Trustee Companies Act 1967:

(vi) a friendly society registered under the Friendly Societies and Credit Unions Act 1982:

(vii) a superannuation fund:

(viii) an employee share purchase scheme:

(ix) a fund that meets the requirements of section CW 45 (Funeral trusts):

(x) any other trust of any specified kind that is declared by the Governor-General, by Order in Council, not to be a unit trust for the purposes of section HD 13 (Unit trusts)

unit trust manager is defined in section CD 16(4) (Certain dividends not increased by tax credits) for the purposes of that section

unlisted trust is defined in section CD 22(9) (Returns of capital: off-market share cancellations) for the purposes of that section

unlisted widely-held trust means a widely-held trust the units or interests in which are not quoted on the official list of a recognised exchange

unwind is defined in section HR 10 (What happens when vehicle stops being financial institution special purpose vehicle?)

valuation premiums is defined in section EY 29(7) (Shareholder base other profit: profit participation policies that are new business) for the purposes of that section

variable principal debt instrument,—

(a) in the financial arrangements rules, means a financial arrangement that contemplates that 1 party may, on demand or call,—

(i) advance further amounts to the other party; or

(ii) require the return of all amounts advanced to the other party, if the other party's rights and obligations under the financial arrangement are expressed in a foreign currency:

(b) in the old financial arrangements rules, is defined in section EZ 48 (Definitions)

venture investment agreement is defined in section CW 13(6) (Proceeds from share or option acquired under venture investment agreement)

Venture Investment Fund means the company called New Zealand Venture Investment Fund Limited that is listed in schedules 4, 5, and 6 of the Public Finance Act 1989

veteran's pension means a veteran's pension, other than a portable veteran's pension, paid or payable under—

(a) Part 6 of the War Pensions Act 1954; or

(b) section 70(3)(b) of the Social Security Act 1964; or

(c) Part 1 of the Social Welfare (Transitional Provisions) Act 1990

volunteer is defined in section CW 62B (Voluntary activities) for the purposes of that section

voting interest—

(a) means, for a person and a company and a time, the percentage voting interest that the person is treated as holding in the company at the time under sections YC 2 to

YC 20 (which relate to the measurement of control and ownership interests):

(b) in subpart HA (Qualifying companies (QC) and loss-attributing qualifying companies (LAQC)), and in the definition of **effective interest**, is described in section HA 44 (Measuring effective interests):

(c) in section YC 13(4) and (5) (Corporate spin-outs), means, for a person and a company and a time, the percentage voting interest that the person is treated as holding in the company under section YC 2 (Voting interests), as modified by section YC 13(7)

WFF tax credit means Working for Families tax credit and is defined in section MA 8 (Some definitions for family scheme)

wholly-owned group has the same meaning as **wholly-owned group of companies**

wholly-owned group of companies is defined in section IC 4(1) (Common ownership: wholly-owned groups of companies)

widely-held company means, at any time, a company that, at the time,—

(a) has no less than 25 shareholders (treating all associated shareholders as 1 person); and

(b) is not a closely-held company

widely-held GIF means a group investment fund that meets the requirements of—

(a) section HM 14(1) (Minimum number of investors), treating the group investment fund as having 1 investor class consisting of all investors in the fund:

(b) 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**, treating the group investment fund as a unit trust

widely-held superannuation fund means a superannuation fund that meets the requirements of—

(a) section HM 14(1) (Minimum number of investors), treating the superannuation fund as having 1 investor class consisting of all investors in the fund:

(b) 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**, treating the superannuation fund as a unit trust

widely-held trust means a unit trust or group investment fund to which 1 of the following applies

(a) it has at least 100 unit-holders or investors, treating all associated persons as 1 person; or

(b) paragraph (a) does not apply to it but it can still reasonably be regarded as a widely-held investment vehicle for direct investment by the public; or

(c) paragraph (a) does not apply to it but only because of unusual or temporary circumstances, such as the fact that it was recently established or is to be terminated; or

(d) paragraph (a) does not apply to it but it can reasonably be regarded as a vehicle mainly for investment by unit trusts, group investment funds, or superannuation funds that are widely-held vehicles for direct investment

wine is defined in section CV 8 (Regulations: Australian wine producer rebate) for the purposes of that section

withdrawable share—

(a) means a share in a building society—

(i) that bears a rate of dividend set on the issue of the share and that is redeemable at the end of a fixed term or at the option of the shareholder; or

(ii) that has been issued under section 31A of the Building Societies Act 1965; or

(iii) that is a terminating share; and

(b) does not include a share in a building society that is irredeemable, or redeemable only at the society's option, on which a dividend is declared and payable from the annual surplus revenue of the building society

withdrawal*[Repealed]*

[Repealed]

withdrawal certificate, for a special account that is a special home ownership account, means a withdrawal certificate as defined in the Home Ownership Savings Act 1974

withdrawal income means withdrawal income as determined under section RZ 7 (Withdrawal income)

withdrawal tax means withdrawal tax imposed by section RZ 8 (Payment and rate of withdrawal tax)

withholding tax limitation is defined in section DA 2(5) (General limitations)

working day means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) a day in the period starting on 25 December in a year and ending on 15 January (both dates inclusive) in the following year

working owner means a person who, in relation to a look-through company that is not wholly or mainly engaged in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land, ignoring section HB 1 (Look-through companies are transparent),—

(a) is an owner of the look-through company; and

(b) personally and actively performs duties that—

(i) are required to be performed in carrying on the business of the look-through company; and

(ii) are performed by the person during the currency of, and as required by, a contract of employment

workplace group policy is defined in section EY 30 (Transitional adjustments: life risk)

work-related relocation is defined in section CW 17B(4) (Relocation payments)

work-related vehicle is defined in section CX 38 (Meaning of work-related vehicle)

year means a 12-month period

year of payment*[Repealed]*
[Repealed]

year of transfer, for a relationship agreement, means the income year in which the date of transfer falls

zero-rated investor, for an investor in an investor class of a PIE, means an investor referred to in section HM 57 (Prescribed investor rates for certain investors: 0%).

Compare: 2004 No 35 s OB 1

Section YA 1 **1973 version provisions**: repealed, on 1 April 2010, by section 557(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **1988 version provisions**: repealed, on 1 April 2010, by section 557(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **1990 version provisions**: repealed, on 1 April 2010, by section 557(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **abating WFF tax credit**: inserted, on 1 April 2008, by section 550(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **ACC**: amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **accident compensation earnings-related payment** paragraph (d): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **accommodation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **actuarial reserves**: amended, on 1 July 2010, by section 557(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **actuarially determined**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **after-income tax earnings**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **after-income tax loss**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **agricultural, horticultural, or viticultural company**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(10) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **amalgamated company**: substituted (with effect on 30 September 2010), on 29 August 2011, by section 130(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **amalgamating company**: substituted (with effect on 30 September 2010), on 29 August 2011, by section 130(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **amalgamation**: substituted (with effect on 30 September 2010), on 29 August 2011, by section 130(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **amount of tax**: amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section

117(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **amount of tax**: amended, on 1 April 2008, by section 550(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **ancillary tax** paragraph (kb): inserted, on 1 April 2008, by section 550(4) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **arm's length amount**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **asset base**: inserted, on 1 July 2010, by section 557(12) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **associated, associated person, person associated**: substituted, on 1 April 2010, by section 557(13) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **associated internal software developer**: inserted, on 1 April 2008, by section 550(5) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **associated non-attributing active CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(14) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **associated non-attributing active CFC** paragraph (a): substituted, on 1 April 2010, by section 557(15) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **attributable CFC amount**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(16) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **attributed PIE income**: inserted, on 1 April 2010, by section 557(17) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **attributed PIE loss**: inserted, on 1 April 2010, by section 557(17) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **attribution period**: inserted, on 1 April 2010, by section 557(18) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **available tax loss** paragraph (c): added (with effect on 1 April 2008), on 29 August 2011, by section 130(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **available tax loss** paragraph (d): added (with effect on 1 April 2008), on 29 August 2011, by section 130(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **balance date**: amended, on 29 August 2011, by section 130(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **basic tax rate** paragraph (a): amended, on 1 April 2008, by section 562 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **basic tax rate** paragraph (a): amended, on 1 April 2008, by section 550(6) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **beneficial interest**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **benefit fund PIE** : inserted, on 1 April 2010, by section 557(19) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **best estimate assumptions**: inserted, on 1 July 2010, by section 557(20) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **boutique investor class**: inserted, on 1 April 2010, by section 557(21) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **boutique investor class** paragraph (d): amended (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 132(3) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **branch equivalent income**: amended (with effect on 30 June 2009), on 6 October 2009, by section 557(22) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **branch equivalent loss**: amended (with effect on 30 June 2009), on 6 October 2009, by section 557(23) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **building**: substituted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 132(4) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **calculation period**: inserted, on 1 April 2010, by section 557(24) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **cancellation**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(25) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **capital contribution**: substituted (with effect on 20 May 2010), on 28 May 2010, by section 96(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **capital contribution**: inserted, on 1 April 2008, by section 23(2) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **car**: amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section YA 1 **charitable or other public benefit gift**: amended (with effect on 1 April 2008), on 7 September 2010, by section 117(4) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **charitable or other public benefit gift**: amended, on 6 January 2010, by section 557(26) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **charitable organisation** paragraph (a): amended, on 1 April 2008, by section 550(7) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **charitable purpose** paragraph (b)(i): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **child**: amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 117(5) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **child** paragraph (c): amended, on 1 April 2008, by section 550(8) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **civil union partner**: amended, on 1 April 2009, by section 36(2) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **class of policies**: inserted, on 1 July 2010, by section 557(27) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **combined tax and earner-related payment** paragraph (b)(iii): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **commercial building**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 132(5) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **commercial fit-out**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 132(6) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **company** paragraph (ab): inserted, on 1 April 2008, by section 23(3) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **company** paragraph (abb): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(7) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **company** paragraph (ac): inserted, on 1 April 2008, by section 23(3) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **company** paragraph (ad): inserted, on 1 April 2008, by section 23(3) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **complying fund calculation period**: repealed, on 1 April 2009, by section 56(2) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **complying superannuation fund**: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section YA 1 **compulsory employer contribution**: inserted, on 1 April 2008, by section 135(2) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section YA 1 **consideration** paragraph (aa): inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(28) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **consolidated FDP group**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(29) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **continuity provisions** paragraph (i): substituted (with effect on 30 June 2009), on 6 October 2009, by section 557(30) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **contract of employment**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(8) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **control**: repealed, on 1 April 2010, by section 557(31) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **convert**: substituted (with effect on 1 January 2009), on 6 October 2009, by section 557(32) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **convert**: inserted, on 26 September 2008, by section 76(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **cost of timber**: substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **council-controlled organisation** paragraph (b): amended, on 2 December 2011, by section 14(1) of the Local Government Borrowing Act 2011 (2011 No 77).

Section YA 1 **council-controlled organisation** paragraph (b): amended, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

Section YA 1 **cover review period**: inserted, on 1 July 2010, by section 557(33) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **credit account continuity provisions** paragraph (c): substituted (with effect on 30 June 2009), on 6 October 2009, by section 557(34) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **credit card repayment insurance**: inserted, on 1 July 2010, by section 557(35) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **creditable membership**: inserted, on 1 April 2008, by section 135(3) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section YA 1 **creditable membership** paragraph (b)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(36)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **creditable membership** paragraph (b)(ib): inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(36)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **creditor workout**: substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **creditor workout**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(37) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **current accounting year**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(38) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **debt security**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(39) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **deductible foreign equity distribution**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(40) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **deductible output tax**: inserted, on 1 April 2011, by section 132(9) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **dependent child**: substituted, on 24 August 2010 (applying for the 2008–09 and later income years), by section 7(1) of the Taxation (Definitions of Dependent Child) Act 2010 (2010 No 104).

Section YA 1 **derivative instrument**: substituted (with effect on 30 June 2009), on 6 October 2009, by section 557(41) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **derivative instrument**: inserted, on 1 April 2008, by section 550(9) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **derived from New Zealand**: repealed, on 21 December 2010, by section 132(10) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **development**: amended, on 1 April 2008, by section 550(10) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **direct income interest**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(42) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **dispose** paragraph (g): amended, on 1 April 2008, by section 23(4) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **dispose** paragraph (h): added, on 1 April 2008, by section 23(4) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **district health board**: repealed, on 1 October 2009, by section 20(2) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **dividend** paragraph (a): substituted (with effect on 30 June 2009), on 6 October 2009, by section 557(43) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **dividend** paragraph (c)(ii): substituted, on 1 April 2010, by section 557(44)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **dividend** paragraph (d)(i): substituted, on 1 April 2010, by section 557(44)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **dividend** paragraph (f): added (with effect on 1 April 2008), on 7 December 2009, by section 118(4) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **donee organisation**: inserted, on 6 January 2010, by section 557(45) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **dwelling**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 132(11) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **early life regime application day**: inserted, on 1 July 2010, by section 557(46) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **effective look-through interest**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(12) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **emergency event**: inserted, on 6 October 2009, by section 557(47) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(48) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **emissions unit shortfall year**: inserted (with effect on 1 April 2010), on 21 December 2010 (applying for the 2010–11 and later income years), by section 132(13) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **employee** paragraph (ab): inserted (with effect on 1 April 2008), on 29 August 2011, by section 130(5) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **employee** paragraph (b): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(49) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employee** paragraph (c)(i): amended, on 1 April 2008, by section 550(12) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **employee** paragraph (c)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(50) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employee** paragraph (db): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(14) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **employee's superannuation accumulation** paragraph (a): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(51) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employee's superannuation accumulation** paragraph (a): substituted, on 1 April 2008, by section 135(4) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section YA 1 **employer** paragraph (b)(iib): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(15) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **employer** paragraph (c)(i): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(52)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer** paragraph (c)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(52)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer contribution**: inserted, on 1 April 2008, by section 135(5) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section YA 1 **employer monthly schedule** paragraph (h): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(54) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer monthly schedule** paragraph (e): substituted, on 6 January 2010, by section 557(53) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer monthly schedule** paragraph (k): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 118(5) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **employer-sourced superannuation savings** paragraph (a): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(55)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer-sourced superannuation savings** paragraph (c): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(55)(b)(i) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer-sourced superannuation savings** paragraph (c): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(55)(b)(ii) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer sponsored group policy**: repealed, on 1 July 2010, by section 118(6) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **employer sponsored group policy**: inserted, on 1 July 2010, by section 557(56) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer's superannuation cash contribution** : inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(57) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employer's superannuation contribution**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(57) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **employment**: amended, on 23 November 2010, by section 25 of the Governor-General Act 2010 (2010 No 122).

Section YA 1 **employment** paragraph (b): amended, on 1 April 2008, by section 550(13) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **entering owner**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(16) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **entering partner**: inserted, on 1 April 2008, by section 23(5) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **equity instrument**: inserted, on 1 April 2008, by section 550(14) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **ESCT**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(58) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **ESCT rate threshold amount**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(59) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **ETS unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(60) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **ETS unit**: inserted, on 26 September 2008, by section 76(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **excess debt outbound company** : inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(61) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **excluded ancillary tax** paragraph (d): repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(62) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **excluded fixed rate security**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(63) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **excluded preference share**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(64) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **exempt interest** paragraph (f): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **existing business**: inserted, on 1 July 2010, by section 557(65) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **exit level**: inserted, on 1 April 2010, by section 557(66) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **exit period**: inserted, on 1 April 2010, by section 557(66) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **expected life risk proportion**: inserted, on 1 July 2010, by section 557(67) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fair dividend rate method**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(68) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fair value method**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(69) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fair value method**: inserted, on 1 April 2008, by section 550(15) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **family assistance credit**: repealed, on 1 April 2008, by section 550(16) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **family plus**: repealed, on 1 April 2008, by section 550(17) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **family support**: repealed, on 1 April 2008, by section 550(18) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **FDP rules**: substituted (with effect on 30 June 2009), on 6 October 2009, by section 557(70) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **finance lease** paragraph (b): amended, on 1 April 2008, by section 550(19) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **finance lease** paragraph (c): added, on 1 April 2008, by section 550(19) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **financial asset**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(71) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **financial institution**: inserted (with effect on 1 June 2010), on 7 September 2010, by section 117(6) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **financial institution special purpose vehicle**: inserted (with effect on 1 June 2010), on 7 September 2010, by section 117(6) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **financial institution special purpose vehicle** paragraph (c): substituted, on 21 December 2010, by section 132(17)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **financial institution special purpose vehicle** paragraph (d)(ii): amended, on 21 December 2010, by section 132(17)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **financial risk**: inserted, on 1 July 2010, by section 557(72) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **financial statements**: substituted, on 1 April 2010, by section 557(73) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **first tracking date**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(74) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fishing quota emissions unit**: inserted (with effect on 1 July 2010), on 7 September 2010, by section 117(7) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **fixed-rate foreign equity**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(75) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fixed-rate share** paragraph (e): repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(76)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fixed-rate share** paragraph (f): substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(7) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **fixed-rate share** paragraph (f): added (with effect on 1 April 2008), on 6 October 2009, by section 557(76)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fixed-rate share** paragraph (g): substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(7) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **fixed-rate share** paragraph (g): added (with effect on 1 April 2008), on 6 October 2009, by section 557(76)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fixed-rate share** paragraph (h): added (with effect on 1 April 2008), on 7 December 2009, by section 118(7) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **fixed-rate share** paragraph (h)(iii): amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 130(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **fixed-rate share** paragraph (i): added (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 130(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section YA 1 **foreign corporate limited partnership**: inserted, on 1 April 2008, by section 23(6) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **foreign dividend**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(77) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **foreign dividend company**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(78) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **foreign dividend company net earnings**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(79) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **foreign group**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(80) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **foreign investment PIE**: inserted, on 29 August 2011, by section 130(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **foreign investment variable-rate PIE**: inserted, on 29 August 2011, by section 130(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **foreign investment zero-rate PIE**: inserted, on 29 August 2011, by section 130(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **foreign non-dividend income**: substituted, on 21 December 2010, by section 132(18) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **foreign PIE equivalent** : inserted, on 1 April 2010, by section 557(81) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **forest land emissions unit**: substituted (with effect on 1 January 2009), on 7 September 2010, by section 117(9) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(82) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **forest land unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(82) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **forest land unit**: inserted, on 26 September 2008, by section 76(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **forest sink emissions unit**: inserted (with effect on 1 January 2009), on 7 September 2010, by section 117(9) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 118(8) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **formation loss**: inserted, on 1 April 2010, by section 557(83) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **fully imputed**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(84) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **general insurance contract**: repealed (with effect on 1 April 2008), on 7 September 2010, by section 117(10) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **general insurance contract**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(85) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **general partner**: inserted, on 1 April 2008, by section 23(7) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **gifting settlor**: inserted, on 1 April 2008, by section 550(21) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **government screen production payment**: repealed (with effect on 1 January 2010), on 7 September 2010, by section 117(11) of the Taxa-

tion (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **government screen production payment**: inserted, on 6 October 2009, by section 557(86) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **grandparented structure**: inserted (with effect on 30 July 2009), on 28 May 2010, by section 96(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **grandparenting income year**: inserted, on 1 April 2011, by section 132(19) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **grandparenting start day**: inserted, on 1 July 2010, by section 557(87) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **grey list company**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(88) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **grey list dividend**: repealed (with effect on 30 June 2008), on 6 October 2009, by section 557(89) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **group life master policy**: inserted, on 1 July 2010, by section 557(90) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **group of companies**: amended, on 1 April 2008, by section 550(22) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **holding company** paragraph (a): substituted, on 1 April 2010, by section 557(91) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **honorarium**: inserted (with effect on 1 April 2009), on 6 October 2009, by section 557(92) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **honorarium**: amended (with effect on 1 April 2009), on 7 September 2010, by section 117(12) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **IFRS**: inserted, on 1 April 2008, by section 550(23) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **IFRS**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **IFRS 4**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(93) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **IFRSE**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(94) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **impaired credit adjustment**: inserted, on 1 April 2008, by section 550(23) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **income from employment** paragraph (b)(iv): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **income derived from New Zealand**: repealed, on 21 December 2010, by section 132(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **income from employment** paragraph (d): added (with effect on 1 April 2008), on 6 October 2009, by section 557(95) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **income interest** paragraph (b): amended (with effect on 30 June 2009), on 6 October 2009, by section 557(96) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **income tax liability** paragraph (a)(ii): substituted, on 1 April 2010, by section 557(97) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **independent living**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 132(21) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **industry research co-operative**: repealed, on 1 October 2009, by section 20(3) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **initial provisional tax liability** paragraph (b)(ii): amended, on 1 April 2009, by section 22(2) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section YA 1 **internal software development**: inserted, on 1 April 2008, by section 550(25) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **internal software development controller**: inserted, on 1 April 2008, by section 550(25) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **internal software development group**: inserted, on 1 April 2008, by section 550(25) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **international tax rules** paragraph (a)(xiii): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(98) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **international tax rules** paragraph (a)(xiv): repealed, on 1 April 2010, by section 557(100) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **international tax rules** paragraph (a)(xv): repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(99) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **international tax rules** paragraph (b): amended, on 1 April 2010, by section 557(101) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **investment activity**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 96(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **investor** paragraph (b): substituted, on 1 April 2010, by section 557(102) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **investor** paragraph (c): repealed, on 1 April 2008, by section 550(26) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **investor class**: inserted, on 1 April 2010, by section 557(103) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **investor interest**: inserted, on 1 April 2010, by section 557(103) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **in-work payment**: repealed, on 1 April 2008, by section 550(27) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **in-work tax credit**: inserted, on 1 April 2008, by section 550(27) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **jurisdictional attributed income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(104) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **jurisdictional attributed income**: amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 130(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **jurisdictional BE income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(104) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **jurisdictional BE income**: amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 130(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **jurisdictional income ratio**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(104) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **jurisdictional income ratio**: amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1

July 2009), by section 130(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **KiwiSaver calculation period**: repealed, on 1 April 2009, by section 56(3) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **Kyoto unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(105) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **Kyoto unit**: inserted, on 26 September 2008, by section 76(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **land investment company**: substituted (with effect on 1 April 2010), on 21 December 2010, (applying for the 2010–11 and later income years) by section 132(22) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **land investment company** paragraph (c): amended (with effect on 1 April 2010), on 29 August 2011 (applying for the 2010–11 and later income years), by section 130(9) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **land loss**: inserted, on 1 April 2010, by section 557(106) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **land provisions**: inserted, on 1 April 2010, by section 557(107) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **LAQC**: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(23) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **large budget film grant**: inserted (with effect on 1 January 2010), on 7 September 2010, by section 117(14) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **large budget screen production grant**: repealed, on 1 January 2010, by section 557(108) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **lease** paragraph (d)(vi): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(9) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **lease** paragraph (d)(vii): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(9) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **lease** paragraph (f)(i): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(109) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **lease** paragraph (f)(ii): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(10) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **legal expenses**: inserted, on 1 April 2009, by section 22(1) of the Taxation (Business Tax Measures) Act 2009 (2009 No 5).

Section YA 1 **lessee** paragraph (a): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(11)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **lessee** paragraph (b): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(11)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **lessor** paragraph (a): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(12)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **lessor** paragraph (b): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(12)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **life financial reinsurance**: inserted, on 1 January 2010, by section 557(110) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **life fund PIE** : inserted, on 1 April 2010, by section 557(111) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **life risk**: inserted, on 1 July 2010, by section 557(112) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **life risk component**: inserted, on 1 July 2010, by section 557(113) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **limited non-transaction shares**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 117(15) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **limited partner**: inserted, on 1 April 2008, by section 23(8) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **limited partnership**: inserted, on 1 April 2008, by section 23(8) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **limited partnership deduction**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(114) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **limited partnership net deduction**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(114) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **limited partnership net deduction**: inserted, on 1 April 2008, by section 23(8) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **lines trust**: inserted, on 1 April 2010, by section 557(115) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **listed limited partnership**: inserted, on 1 April 2008, by section 23(9) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **listed PIE** : inserted, on 1 April 2010, by section 557(116) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **listed research provider**: repealed, on 1 October 2009, by section 20(4) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **loan** paragraph (b): amended (with effect on 30 June 2009), on 6 October 2009, by section 557(117) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **local authority** paragraph (b)(vii): substituted, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

Section YA 1 **local authority** paragraph (b)(ix): added, on 2 December 2011, by section 14(2) of the Local Government Borrowing Act 2011 (2011 No 77).

Section YA 1 **look-through company**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(24) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **look-through company deduction**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(25) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **look-through counted owner**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(26) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **look-through interest**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(27) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **loss-attributing qualifying company**: repealed, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(28) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **loss balance**: substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(13) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **major shareholder** paragraph (c): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 130(10) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **major shareholder** paragraph (d): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 130(10) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **market value circumstance** paragraph (a)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(118) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **member** paragraph (b): repealed, on 1 April 2011, by section 117(16) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **member credit contribution**: inserted, on 1 April 2008, by section 135(6) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section YA 1 **member credit contribution** paragraph (a)(i): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(119)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **member credit contribution** paragraph (a)(iib): inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(119)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **member credit contribution** paragraph (b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(119)(c) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **minimum family tax credit**: inserted, on 1 April 2008, by section 550(29) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **monthly instalment plan**: amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **mortality profit**: repealed, on 1 July 2010, by section 557(120) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **mortality profit formula**: repealed, on 1 July 2010, by section 557(120) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **multi-rate PIE** : inserted, on 1 April 2010, by section 557(121) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **multi-rate PIE** paragraph (e): repealed, on 1 July 2010, by section 557(122) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **net attributable CFC income**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(123) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **net attributable CFC loss**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(123) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **net family scheme income**: amended, on 1 April 2008, by section 550(30) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **net mining loss**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 118(14) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **new business**: inserted, on 1 July 2010, by section 557(124) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **new company tax rate person**: inserted, on 1 October 2010, by section 30(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **new personal tax rate person**: substituted, on 1 October 2010, by section 30(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **new personal tax rate person**: inserted (with effect from 1 April 2008), on 29 May 2008, by section 48(2) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section YA 1 **new reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 118(15) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **new start grant**: substituted, on 6 October 2009, by section 557(125) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **new tax rate person**: repealed, on 1 October 2010, by section 30(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **New Zealand emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(127) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **New Zealand partnership**: inserted, on 1 April 2008, by section 23(10) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **New Zealand unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(127) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **New Zealand unit**: inserted, on 26 September 2008, by section 76(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **Niue International Trust Fund**: inserted, on 1 April 2008, by section 550(32) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **non-attributing active CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(128) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-attributing Australian CFC**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(128) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-creditable dividend**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(129) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-filing taxpayer** paragraph (b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(130) of the Taxation

(International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-filing taxpayer** paragraph (b): amended, on 21 December 2010, by section 132(29) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **non-integral fee**: inserted, on 1 April 2008, by section 550(33) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **non-Kyoto greenhouse gas unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(131) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-Kyoto greenhouse gas unit** paragraph (a): amended (with effect on 1 January 2009), on 7 September 2010, by section 117(18) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **non-refundable tax credit** paragraph (ab): inserted, on 6 January 2010, by section 557(132) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-refundable tax credit** paragraph (g): substituted, on 1 April 2010, by section 557(133) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-resident entertainer** paragraph (b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(134) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-resident entertainer** paragraph (c): repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(134) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-resident seasonal worker**: inserted, on 6 October 2009, by section 557(135) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **non-resident seasonal worker**: repealed (with effect on 6 October 2009), on 21 December 2010, by section 132(31) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **notified foreign investor**: inserted, on 29 August 2011, by section 130(11) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **notified investor rate**: inserted, on 1 April 2010, by section 557(136) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **notified investor rate**: amended, on 1 October 2010, by section 30(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **novelty**: inserted, on 1 April 2008, by section 550(34) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **NZIAS 2**: inserted, on 1 April 2008, by section 550(35) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **NZIAS 2**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **NZIAS 8**: inserted, on 1 April 2008, by section 550(35) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **NZIAS 8**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **NZIAS 17**: inserted, on 1 April 2008, by section 550(35) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **NZIAS 17**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **NZIAS 23**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(137) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **NZIAS 23**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **NZIAS 32**: inserted, on 1 April 2008, by section 550(35) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **NZIAS 32**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **NZIAS 39**: inserted, on 1 April 2008, by section 550(35) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **NZIAS 39**: amended, on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

Section YA 1 **NZIAS 41**: inserted, on 1 April 2008, by section 550(35) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **offshore development**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(138) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **old company tax rate**: inserted, on 1 April 2008, by section 550(36) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **old company tax rate**: amended, on 1 October 2010, by section 30(5) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **old reporting standard**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 118(16) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **onshore development**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(139) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **operating lease**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(140) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **outstanding claims reserve**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(141) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **outstanding claims reserve** paragraph (a): amended (with effect on 1 April 2008), on 21 December 2010, by section 132(32) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **overseas eligible expenditure**: repealed, on 1 October 2009, by section 20(5) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **overtime**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(142) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **ownership interest**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(143) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **owner's interests**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(33) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **Part F activity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(144) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **partner**: substituted, on 1 April 2008, by section 23(11) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **partner's associate**: inserted, on 1 April 2008, by section 23(11) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **partner's interests**: inserted, on 1 April 2008, by section 23(11) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **partnership**: substituted, on 1 April 2008, by section 23(11) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **partnership share**: inserted, on 1 April 2008, by section 23(11) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **partnership share**: amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **pay** paragraph (bb): inserted, on 6 January 2010, by section 557(145) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **PAYE income payment**: amended (with effect on 4 September 2010), on 24 May 2011, by section 11(2) of the Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24).

Section YA 1 **PAYE income payment form** paragraph (g): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **PAYE income payment form** paragraph (h): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(146)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **PAYE income payment form** paragraph (i): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(146)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **payroll donation**: inserted, on 6 January 2010, by section 557(147) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **personal service rehabilitation payment**: inserted, on 1 April 2008, by section 550(38) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **personal service rehabilitation payment** paragraph (a): substituted (with effect on 1 July 2008), on 6 October 2009, by section 557(148)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **personal service rehabilitation payment** paragraph (a): amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **personal service rehabilitation payment** paragraph (c): substituted (with effect on 1 July 2008), on 6 October 2009, by section 557(148)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **petroleum mining development**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(149) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **petroleum mining operations**: substituted, on 1 April 2008, by section 550(39) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **PFSI forestry business**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 118(17) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **PFSI forestry income**: inserted (with effect on 1 April 2008), on 7 December 2009, by section 118(17) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **PIE**: inserted, on 1 April 2010, by section 557(150) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **PIE rules**: inserted, on 1 April 2010, by section 557(150) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **PIE rules** paragraph (a)(v): amended, on 29 August 2011, by section 130(12)(a) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **PIE rules** paragraph (a)(vb): inserted, on 29 August 2011, by section 130(12)(b) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **PIE rules** paragraph (a)(vii): amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 118(18) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **PIE rules** paragraph (a)(viii): amended, on 29 August 2011, by section 130(12)(c) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **PIE rules** paragraph (b): amended, on 29 August 2011, by section 130(12)(d) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **plant**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 132(34) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **policy liabilities**: inserted, on 1 July 2010, by section 557(151) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder base**: substituted, on 1 July 2010, by section 557(152) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder base allowable deductions**: inserted, on 1 July 2010, by section 557(152) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder base income**: inserted, on 1 July 2010, by section 557(152) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder base income tax liability**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder credit**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder credit account**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder debit**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder FDP ratio**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder income**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder income formula**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder net loss**: repealed, on 1 July 2010, by section 557(153) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **policyholder unvested liabilities**: inserted, on 1 July 2010, by section 118(19) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **portable New Zealand superannuation**: substituted, on 5 January 2010, by section 118(20) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **portable veteran's pension**: substituted, on 5 January 2010, by section 118(20) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **portfolio allocation period**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio calculation period**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio class fraction**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio class investment value**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio class net income**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio class net loss**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio class taxable income**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio class taxable loss**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio defined benefit fund**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio entity formation loss**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio entity investment**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio entity tax liability**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investment**: inserted, on 1 April 2010, by section 557(155) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investment entity**: substituted, on 1 April 2010, by section 557(155) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investment-linked life fund**: inserted, on 1 July 2008, by section 550(42) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **portfolio investor allocated income**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor allocated loss**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor class**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor exit period**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor interest**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor interest fraction**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor proxy**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor rate**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor rate** paragraph (b): substituted, on 29 May 2008, by section 48(3)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section YA 1 **portfolio investor rate** paragraph (b)(ii): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(156) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio investor rate** paragraph (b)(iii): added (with effect on 1 April 2008), on 6 October 2009, by section 557(156) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio land company**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio listed company**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **portfolio tax rate entity**: repealed, on 1 April 2010, by section 557(154) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **post-1989 forest land**: substituted (with effect on 1 January 2009), on 6 October 2009, by section 557(159) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **post-1989 forest land**: inserted, on 26 September 2008, by section 76(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **post-1989 forest land emissions unit**: substituted (with effect on 1 April 2010), on 7 September 2010, by section 117(19) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **post-1989 forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(159) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **post-1989 forest land unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(159) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **post-1989 forest land unit**: inserted, on 26 September 2008, by section 76(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **post-treaty tax rate**: inserted, on 1 February 2010, by section 118(21) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **pre-1990 forest land**: substituted (with effect on 1 January 2009), on 6 October 2009, by section 557(160) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **pre-1990 forest land**: inserted, on 26 September 2008, by section 76(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **pre-1990 forest land emissions unit**: substituted (with effect on 1 April 2010), on 7 September 2010, by section 117(20) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **pre-1990 forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(160) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **pre-1990 forest land unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(160) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **pre-1990 forest land unit**: inserted, on 26 September 2008, by section 76(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **premium** paragraph (a)(iii): added, on 1 July 2010, by section 557(161) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **premium loading**: repealed, on 1 July 2010, by section 557(162) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **premium loading formula**: repealed, on 1 July 2010, by section 557(162) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **premium payback amount**: inserted, on 1 July 2010, by section 557(163) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **prescribed investor rate**: inserted, on 1 April 2010, by section 557(167) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **prescribed investor rate**: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 118(22) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **present value (gross)**: inserted, on 1 July 2010, by section 557(168) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **present value (net)**: inserted, on 1 July 2010, by section 557(168) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **principal caregiver**: amended, on 1 April 2008, by section 550(49) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **profit participation policy**: inserted, on 1 July 2010, by section 557(169) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **profit participation policy** paragraph (b)(ii): amended (with effect on 1 July 2010), on 21 December 2010, by section 132(35) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **profit participation policy** paragraph (c): added (with effect on 1 July 2010), on 21 December 2010, by section 132(35) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **profit-related debenture**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(170) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **projected transactions shareholding**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 117(21) of the Taxation (Annual

Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **property** paragraph (ab): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(36) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **property** paragraph (ac): inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(36) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **proportional-stapling company**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(171) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **protected family support**: repealed, on 1 April 2008, by section 550(50) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **protected family tax credit**: inserted, on 1 April 2008, by section 550(50) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **PSR period**: inserted, on 1 July 2010, by section 557(172) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **public authority** paragraph (b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **qualifying event**: repealed, on 6 October 2009, by section 557(173) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **QCP transitional process**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(37) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **QCST transitional process**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(38) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **recognised seasonal employment scheme**: inserted, on 6 October 2009, by section 557(174) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **redundancy payment**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(175) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **redundancy payment**: inserted, on 1 April 2008, by section 550(51) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **refundable tax credit** paragraph (a): amended, on 1 April 2008, by section 550(52) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **refundable tax credit** paragraph (bb): inserted, on 1 April 2008, by section 550(52) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **refundable tax credit** paragraph (d): substituted, on 1 April 2010, by section 557(177) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **refundable tax credit** paragraph (e): substituted, on 1 April 2010, by section 557(177) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **registered as a charitable entity**: repealed, on 1 July 2008, by section 48(4) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section YA 1 **reinsurance grandparenting start day**: inserted, on 1 July 2010, by section 557(178) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **related person**: substituted, on 1 April 2010, by section 557(179) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **relative**: substituted, on 1 April 2010, by section 557(180) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **relative** paragraph (a): amended, on 1 April 2010, by section 118(23)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **relative** paragraph (b): amended, on 1 April 2010, by section 118(23)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **relative** paragraph (c): added, on 1 April 2010, by section 118(23)(c) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **replacement ETS unit**: repealed (with effect on 1 January 2009), on 6 October 2009, by section 557(181) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **replacement ETS unit**: inserted, on 26 September 2008, by section 76(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **replacement forest land emissions unit**: inserted (with effect on 1 January 2009), on 6 October 2009, by section 557(181) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **replacement forest land emissions unit** paragraph (a): substituted (with effect on 1 January 2009), on 7 September 2010, by section 117(22)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **replacement forest land emissions unit** paragraph (b): amended (with effect on 1 January 2009), on 7 September 2010, by section 117(22)(b) of

the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **reporting standard**: repealed (with effect on 1 April 2008), on 7 December 2009, by section 118(24) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **reporting standard**: amended, on 1 April 2008, by section 550(53) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **required interest**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(182) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **research**: amended, on 1 April 2008, by section 550(54) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **research and development activities**: inserted, on 1 April 2008, by section 550(55) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **research and development project**: repealed, on 1 October 2009, by section 20(6) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **resident group member**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(183) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **resident group member**: amended (with effect on 30 June 2009), on 29 August 2011 (applying for income years beginning on or after 1 July 2009), by section 130(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **resident in Australia**: amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **residential mortgage backed security**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(184) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **residual income tax** paragraph (b)(iiib): inserted, on 1 April 2008, by section 550(56) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **residual income tax** paragraph (b)(iiic): inserted (with effect on 1 April 2009), on 21 December 2010, by section 132(39) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **residual income tax** paragraph (b)(vb): inserted, on 1 April 2008, by section 550(56) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **retained earnings**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(185) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **retirement savings scheme**: inserted, on 1 April 2008, by section 550(57) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **retirement scheme contribution**: inserted, on 1 April 2008, by section 550(57) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **retirement scheme contributor**: inserted, on 1 April 2008, by section 550(57) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **retirement scheme prescribed rate**: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 118(25) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **retirement scheme prescribed rate**: inserted, on 1 April 2008, by section 550(57) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **revenue account property**: substituted (with effect on 1 January 2009), on 6 October 2009, by section 557(186) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **revenue account property** paragraph (c): amended (with effect on 1 January 2009), on 29 August 2011, by section 130(14) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **revenue account property** paragraph (d): added (with effect on 1 January 2009), on 29 August 2011, by section 130(14) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **revenue account property** paragraph (b): amended (with effect on 1 January 2009), on 7 September 2010, by section 117(24) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **revenue account property** paragraph (b): amended, on 26 September 2008, by section 76(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **revenue account property** paragraph (c): added, on 26 September 2008, by section 76(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **RMBS special purpose vehicle**: repealed (with effect on 1 June 2010), on 7 September 2010, by section 117(25) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **RMBS special purpose vehicle**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(187) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **RMBS special purpose vehicle**: amended (with effect on 1 April 2008), on 7 December 2009, by section 118(26)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **RMBS special purpose vehicle** paragraph (c): amended (with effect on 1 April 2008), on 7 December 2009, by section 118(26)(b) of the Tax-

ation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **RSCT**: inserted, on 1 April 2008, by section 550(58) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **RSCT rules**: inserted, on 1 April 2008, by section 550(58) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **RWT proxy**: amended (with effect on 1 April 2008), on 7 December 2009, by section 118(27) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **RWT substitution payment**: inserted (with effect on 1 April 2008), on 29 August 2011, by section 130(15) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **salary or wages** paragraph (b): amended (with effect on 1 April 2009), on 6 October 2009, by section 557(188) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **savings component**: inserted, on 1 July 2010, by section 557(189) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **savings product policy**: substituted, on 1 July 2010, by section 118(28) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **savings product policy**: inserted, on 1 July 2010, by section 557(189) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **savings product policy** paragraph (b): amended (with effect on 1 July 2010), on 7 September 2010, by section 117(26) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **schedular income** paragraph (a): substituted, on 1 July 2010, by section 557(190) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **schedular income** paragraph (c): repealed (with effect on 1 April 2008), on 6 October 2009, by section 557(191) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **schedular income** paragraph (db): inserted, on 1 April 2010, by section 557(192) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **schedular income** paragraph (f): amended (with effect on 1 April 2008), on 6 October 2009, by section 557(193) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **schedular policyholder base income**: inserted, on 1 July 2010, by section 557(194) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **scientific or technological uncertainty**: inserted, on 1 April 2008, by section 550(59) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **secured amounts**: substituted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(40) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **settlor**: amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(41) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **settlor** paragraph (c): added, on 1 April 2010, by section 557(196) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **share** paragraph (bb): inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(197) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **share purchase agreement**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(198) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **share purchase agreement**: amended (with effect on 1 April 2008), on 7 December 2009, by section 118(29) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **share reorganisation**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(199) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **shareholder** paragraph (c): amended, on 1 April 2008, by section 550(60) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **shareholder agreement**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(200) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **shareholder base**: inserted, on 1 July 2010, by section 557(201) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **shareholder base allowable deductions**: inserted, on 1 July 2010, by section 557(201) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **shareholder base income**: inserted, on 1 July 2010, by section 557(201) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **shareholder-employee** paragraph (b)(ii): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(42) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **shareholder-employee** paragraph (c): added, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(42) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **significant financial hardship**: repealed, on 1 April 2011, by section 117(27) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **small partnership**: inserted, on 1 April 2008, by section 23(13) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **sound commercial reason**: inserted, on 1 April 2008, by section 550(61) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **source in New Zealand**:amended, on 21 December 2010, by section 132(43) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **special excluded depreciable property**: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 96(7) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **stapled**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(202) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **stapled debt security**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(202) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **starting date**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(203) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **subsidy claim form** paragraph (b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **subsidy claim form** paragraph (f): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YA 1 **substituting debenture**: amended (with effect on 1 April 2008), on 6 October 2009, by section 557(204) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **superannuation scheme** paragraph (ii): repealed, on 1 April 2008, by section 135(7) of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Section YA 1 **supporting asset base**: inserted, on 1 July 2010, by section 557(205) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **surrender**: substituted (with effect on 1 January 2009), on 6 October 2009, by section 557(206) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **surrender**: inserted, on 26 September 2008, by section 76(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section YA 1 **surrender value**: inserted, on 1 July 2010, by section 557(207) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **systematic, investigative, and experimental activities**: inserted, on 1 April 2008, by section 550(62) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **tax charity**: inserted, on 1 July 2008, by section 48(5) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Section YA 1 **tax loss**: substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(31) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **tax pooling account**: substituted (with effect on 1 April 2009), on 6 October 2009, by section 557(209) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **tax position**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(44) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **tax withheld**: substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(210) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **taxable distribution**: amended (with effect on 1 April 2008), on 7 December 2009, by section 118(32) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **taxation law**: substituted (with effect on 30 June 2009), on 6 October 2009, by section 557(208) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **taxi**: inserted, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section YA 1 **taxicab**: repealed, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section YA 1 **technology**: inserted, on 1 April 2008, by section 550(63) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **telecommunications service**: inserted (with effect on 30 June 2009), on 6 October 2009, by section 557(211) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **temporary building** paragraph (a): repealed, on 1 April 2011 (applying for the 2011–12 and later income years), by section 96(9) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Section YA 1 **tertiary institution**: repealed, on 1 October 2009, by section 20(7) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Section YA 1 **timber**: substituted (with effect on 1 April 2008), on 7 December 2009, by section 118(33) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **Tokelau International Trust Fund**: inserted, on 1 April 2008, by section 550(65) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **tracking account**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(212) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **tracking associate**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(213) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **trading stock** paragraph (b): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 117(28)(a) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **trading stock** paragraph (c): amended (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 117(28)(b) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **trading stock** paragraph (c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 557(214)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **trading transaction**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 117(29) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **transaction shares**: inserted (with effect on 1 April 2010), on 7 September 2010, by section 117(29) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **transfer**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(45) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **transfer of value** paragraph (b)(ii): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 132(46) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **transitional period**: inserted, on 1 April 2008, by section 550(66) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **trust rules** paragraph (a): repealed, on 1 April 2011, by section 117(30) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **turnover**: amended, on 1 April 2008, by section 23(14) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YA 1 **UFTC**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(215) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **UFTC accounting period**: repealed (with effect on 30 June 2009), on 6 October 2009, by section 557(216) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **unwind**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(217) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **unwind**: amended (with effect on 1 June 2010), on 7 September 2010, by section 117(31) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **valuation premiums**: inserted, on 1 July 2010, by section 557(218) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **venture investment agreement**: amended, on 1 April 2008, by section 550(67) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **volunteer**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(219) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **WFF tax credit**: inserted, on 1 April 2008, by section 550(68) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Section YA 1 **widely-held GIF**: substituted, on 1 April 2010, by section 557(220) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **widely-held superannuation fund**: substituted, on 1 April 2010, by section 557(221) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **withdrawal**: repealed, on 1 April 2011, by section 117(32) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YA 1 **working owner**: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 132(47) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 1 **work-related relocation**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 557(222) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **workplace group policy**: inserted, on 1 July 2010, by section 118(34) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **year of payment**: repealed, on 1 April 2011, by section 118(35) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **zero-rated investor**: added, on 1 April 2010, by section 557(223) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 1 **zero-rated investor**: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 118(36) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YA 1 **zero-rated portfolio investor**: repealed, on 1 April 2010, by section 557(223) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YA 2 Meaning of income tax varied

DTA and time bar provisions: ancillary tax

(1) The term **income tax** includes ancillary tax in—

(a) section BB 3(2) (Overriding effect of certain matters):

(b) section BH 1 (Double tax agreements):

(c) sections 107A to 108B of the Tax Administration Act 1994.

DTA provisions: tax recovery agreements

(2) The term **income tax** includes a tax that is prescribed in a tax recovery agreement made under Part 10A of the Tax Administration Act 1994 in—

(a) section BB 3(2):

(b) section BH 1.

General tax avoidance provisions: ancillary tax

(3) The term **income tax** includes ancillary tax, but not excluded ancillary tax, in—

(a) section BB 3(1):

(b) sections BG 1 (Tax avoidance) and GA 1 (Commissioner's power to adjust):

(c) the definition of **tax avoidance**.

Modified application of section GA 1

(4) When section GA 1 is applied in the case of an ancillary tax,—

(a) the words **taxable income** in section GA 1(2) are treated as replaced by the words "liability to the ancillary tax"; and

(b) the following paragraph is treated as added to section GA 1(5): "(e) an amount subject to the ancillary tax".

Tax of other countries

(5) The term **income tax**, when specifically used in relation to tax of another country, whether imposed by a central, state, or local government,—

(a) means a tax of substantially the same nature as income tax imposed under section BB 1 (Imposition of income tax); and

(b) includes a tax, imposed as a collection mechanism for the foreign tax, that is of substantially the same nature as provisional tax, pay-as-you-earn (PAYE), resi-

dent withholding tax (RWT), or non-resident withholding tax (NRWT).

UFTC rules

[Repealed]

(6) *[Repealed]*

FDP, imputation, and BETA rules

(7) The term **income tax**, in relation to tax that has been paid by a person, includes provisional tax in—

(a) the FDP rules:

(b) the imputation rules:

(c) subpart OE (Branch equivalent tax accounts (BETA)).

Defined in this Act: after-income tax earnings, ancillary tax, BETA, double tax agreement, excluded ancillary tax, FDP rules, fixed-rate share, imputation rules, income tax, NRWT, PAYE, provisional tax, RWT, tax, tax avoidance, taxable income

Compare: 2004 No 35 ss HG 12(2), IZ 7, MB 12, ME 9(6), MI 10(5), MI 21(5), MK 8(6), NC 20(1), ND 1W(2), NE 7(2), NF 13, NG 17(2), NH 3(7), OB 6

Section YA 2(5): amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 133(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YA 2(6) heading: repealed (with effect on 30 June 2009), on 6 October 2009, pursuant to section 558(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YA 2(6): repealed (with effect on 30 June 2009), on 6 October 2009, by section 558(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YA 3 Treatment of qualifying company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax *[Repealed]*

Section YA 3: repealed (with effect on 1 April 2008), on 6 October 2009, by section 559 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Table Y1 Associated person rules

Table Y1: repealed, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart YB—Associated persons and nominees

Associated persons

Heading: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 1 What this subpart does

Associated person rules and nominee rules

(1) This subpart sets out the rules that—

(a) define when 2 persons are associated persons; and

(b) determine how nominees are treated.

Other references

(2) If a rule in this subpart states that 2 persons are associated persons for 1 or more provisions in this Act, a reference in the relevant provision to persons who are associated with each other includes those persons.

Tests

(3) The tests of association are categorised as follows:

(a) two companies, *see* section YB 2:

(b) a company and a person other than a company, *see* section YB 3:

(c) two relatives, *see* section YB 4:

(d) a person and a trustee for a relative, *see* section YB 5:

(e) a trustee and a beneficiary, *see* section YB 6:

(f) trustees with a common settlor, *see* section YB 7:

(g) a trustee and a settlor, *see* section YB 8:

(h) a settlor and a beneficiary, *see* section YB 9:

(i) a trustee and a person with a power of appointment or removal, *see* section YB 11:

(j) a partnership and a partner, *see* section YB 12:

(k) two persons who are each associated with the same third person, *see* section YB 14.

Application

(4) The sections in this subpart relating to associated persons apply for the purposes of the whole Act unless a section expressly states otherwise.

Loss-attributing qualifying companies and shareholders

(5) A special rule provides that a shareholder in a loss-attributing qualifying company and that LAQC are treated as associated persons for the purposes of section DS 4 (Meaning of film reimbursement scheme), *see* section DS 4(5).

Low-turnover traders

(6) A special rule applies for the purposes of subpart EB (Valuation of trading stock (including dealer's livestock)) to determine when a low-turnover trader is associated with a company, *see* section EB 13(2) (Low-turnover valuation).

Control interests in foreign companies

(7) A special rule applies for the purposes of section EX 3 (Control interests: total of direct, indirect, and associated person interests) to determine when a New Zealand resident is associated with a non-resident relative, *see* section EX 4(1) (Limits to requirement to include associated person interests).

Supplementary dividend holding companies

[Repealed]

(8) *[Repealed]*

Defined in this Act: associated person, company, loss-attributing qualifying company, low-turnover trader, New Zealand resident, nominee, non-resident, relative, settlor, shareholder, supplementary dividend holding company, trustee

Section YB 1: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YB 1(8) heading: repealed, on 1 April 2011, pursuant to section 119 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YB 1(8): repealed, on 1 April 2011, by section 119 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

YB 2 Two companies

Common voting interests

(1) Two companies are associated persons if a group of persons exists whose total voting interests in each company are 50% or more.

Common market value interests

(2) Two companies are associated persons if—

(a) a market value circumstance exists for either company; and

(b) a group of persons exists whose total market value interests in each company are 50% or more.

Common control by other means

(3) Two companies are associated persons if a group of persons exists who control both companies by any other means.

General aggregation rule

(4) For the purposes of subsections (1) to (3), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4 to YB 14, person A is treated as holding anything held by person B.

Aggregation rule for land provisions

(5) For the purposes of subsections (1) to (3), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4(1)(b) and (2) to (4), YB 7, YB 8, and YB 10 to YB 14, person A is treated as holding anything held by person B.

Exception for certain government entities

(6) Subsection (3) does not apply to 2 companies if either or both are—

(a) a state enterprise:

(b) a Crown Research Institute:

(c) a Crown health enterprise:

(d) a company that is part of the same group of companies as an entity referred to in any of paragraphs (a) to (c).

Exception for international tax rules

(7) In the international tax rules, 2 companies are not associated persons if 1, but not both, is a non-resident.

Exception for managed funds

(8) For the purposes of the land provisions, 2 companies are not associated persons if 1 is a portfolio investment entity or an entity that qualifies for PIE status.

Defined in this Act: associated person, company, Crown Research Institute, group of companies, group of persons, international tax rules, land provisions, market value circumstance, market value interest, non-resident, PIE, portfolio investment entity, state enterprise, voting interest

Section YB 2: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 3 Company and person other than company

Company and 25% voting interest holder

(1) A company and a person other than a company are associated persons if the person has a voting interest in the company of 25% or more.

Company and 25% market value interest holder

(2) A company and a person other than a company are associated persons if—

(a) a market value circumstance exists for the company; and

(b) the person has a market value interest in the company of 25% or more.

General aggregation rule

(3) For the purposes of subsections (1) and (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4 to YB 14, person A is treated as holding anything held by person B.

Aggregation rule for land provisions

(4) For the purposes of subsections (1) and (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 4(1)(b) and (2) to (4), YB 7, YB 8, and YB 10 to YB 14, person A is treated as holding anything held by person B.

Person other than company

(5) In this section, a person other than a company includes a company acting in its capacity as a trustee of a trust.

Defined in this Act: associated person, company, land provisions, market value circumstance, market value interest, voting interest

Section YB 3: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 4 Two relatives

Degree of relationship

(1) Two persons are associated persons if —

(a) they are within 2 degrees of blood relationship:

(b) they are married, in a civil union, or in a de facto relationship:

(c) 1 person is within 2 degrees of blood relationship to the other person's spouse, civil union partner, or de facto partner.

Exception: blood relationships

(2) For the purposes of the land provisions and sections EB 13 (Low turnover valuation) and EC 5 (Transfer of livestock because of self-assessed adverse event), subsection (1)(a) and (c) does not apply, and persons are associated persons because of a blood relationship only if 1 is the infant child of the other.

Treatment of adoption

(3) For the purposes of this section, a child by adoption is treated as a natural child of the adoptive parents and not as a natural child of the birth parents.

Exception

(4) A person is not associated with another person under this section if the person cannot reasonably be expected to know that—

(a) the other person exists:

(b) the person is within 2 degrees of blood relationship to the other person.

Defined in this Act: associated person, land provisions

Section YB 4: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 5 Person and trustee for relative

Association

(1) Two persons (**person A** and **person B**) are associated persons if person A is the trustee of a trust under which a person associated under section YB 4 with person B has benefited or is eligible to benefit.

Land provisions

(2) This section does not apply for the purposes of the land provisions.

Defined in this Act: associated person, land provisions, trustee

Section YB 5: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 6 Trustee and beneficiary

Association

(1) A trustee of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

Land provisions

(2) This section does not apply for the purposes of the land provisions.

Defined in this Act: associated person, land provisions

Section YB 6: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 7 Two trustees with common settlor

Association

(1) A trustee of a trust and a trustee of another trust are associated persons if the same person is a settlor of both trusts.

Treatment of spouses and partners

(2) For the purposes of this section, 2 persons who are married, in a civil union, or in a de facto relationship are treated as the same single person.

Defined in this Act: associated person, settlor, trustee

Section YB 7: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 8 Trustee and settlor

Association

(1) A trustee of a trust and a settlor of the trust are associated persons.

Exclusion

(2) This section does not apply if the trust is a charitable trust.

Defined in this Act: associated person, charitable trust, settlor, trustee

Section YB 8: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 9 Settlor and beneficiary

Association

(1) A settlor of a trust and a person who has benefited or is eligible to benefit under the trust are associated persons.

Land provisions

(2) This section does not apply for the purposes of the land provisions.

Defined in this Act: associated person, land provisions, settlor, trustee

Section YB 9: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 10 Who is a settlor?

For the purposes of sections YB 7 to YB 9, **settlor** has the meaning set out in section HC 27 (Who is a settlor?) but does not include a person who provides services to a trust for less than market value.

Defined in this Act: settlor

Section YB 10: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 11 Trustee and person with power of appointment or removal

A trustee of a trust and a person who has a power of appointment or of removal of the trustee are associated persons.

Defined in this Act: associated person, trustee

Section YB 11: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 12 Partnership and partner

Association

(1) A partnership and a partner in the partnership are associated persons.

Limited partnerships

(2) Subsection (1) does not apply if the partner is a limited partner. Instead a limited partnership and a limited partner are associated persons if the limited partner has a partnership share of 25% or more in a right, obligation, or other property, status, or thing of the limited partnership.

Limited partnerships: general aggregation rule

(3) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2 to YB 11 and YB 14, person A is treated as holding anything held by person B.

Limited partnerships: aggregation rule for land provisions

(4) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2, YB 3, YB 4(1)(b) and (2) to (4), YB 7, YB 8, YB 10, YB 11, and YB 14, person A is treated as holding anything held by person B.

Defined in this Act: associated person, limited partner, limited partnership, partnership, share

Section YB 12: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 13 Look-through companies and owners of interests

Association

(1) A look-through company and a person who has a look-through interest for the look-through company (an **owner**) and who is a director or employee for the look-through company are associated persons.

Some owners

(2) If subsection (1) does not apply to a look-through company and an owner, then they are associated persons if the owner has effective look-through interests of 25% or more in a right, obli-

gation, or other property status, or thing of the look-through company.

Some owners: general aggregation rule

(3) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2 to YB 11 and YB 14, person A is treated as holding anything held by person B.

Some owners: aggregation rule for land provisions

(4) For the purposes of subsection (2), if a person (**person A**) and another person (**person B**) are associated under any of sections YB 2, YB 3, YB 4(1)(b) and (2) to (4), YB 7, YB 8, YB 10, YB 11, and YB 14, person A is treated as holding anything held by person B.

Defined in this Act: associated person, director, effective look-through interest, employee, look-through company, look-through interest

Section YB 13: inserted, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 134(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

YB 14 Tripartite relationship

Test

(1) Two persons (**person A** and **person B**) are associated persons if—

(a) person B is associated with a third person (**person C**) under any of sections YB 2 to YB 13; and

(b) person C is associated with person A under any of sections YB 2 to YB 13, excluding the section under which person B is associated with person C.

Exception: companies tests

(2) Subsection (1) does not apply if—

(a) person B is associated with person C under section YB 2; and

(b) person C is associated with person A under section YB 3.

Association for purposes of research and development tax credits

(3) Subsection (1) does not apply in relation to the association of a company and a person, for the purposes of section LH 1(2) (Who this subpart applies to).

Defined in this Act: associated person, company, tax credit

Section YB 14: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YB 14(1)(a): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 135(1)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YB 14(1)(a): amended, on 1 April 2010, by section 120 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YB 14(1)(b): amended, on 1 April 2011 (applying for income years beginning on or after 1 April 2011), by section 135(1)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section YB 14(1)(b): amended, on 1 April 2010, by section 120 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

YB 15 Exceptions for employee trusts

Beneficiaries

(1) Section YB 6(1) does not apply if—

(a) the trust is only for the benefit of employees of an employer; and

(b) neither the beneficiary nor any person associated with the beneficiary directly or indirectly controls the trust.

Non-corporate settlors

(2) For a settlor that is not a company, sections YB 7, YB 8, and YB 9(1) do not apply if—

(a) the settlor settles property on the terms of the trust only for the benefit of employees of the settlor; and

(b) neither the settlor nor any person associated with the settlor directly or indirectly controls the trust.

Corporate settlors

(3) For a settlor that is a company, sections YB 7, YB 8, and YB 9(1) do not apply if—

(a) the settlor settles property on the terms of the trust only for the benefit of its employees; and

(b) none of the following directly or indirectly controls the trust:
  (i) the settlor:
  (ii) a person associated with the settlor:
  (iii) an executive of the settlor:
  (iv) a director of the settlor:
  (v) a person holding a direct voting interest of 25% or more in the settlor:
  (vi) if a market value circumstance exists for the settlor, a person holding a direct market value interest of 25% or more in the settlor.

Persons with power of appointment or removal

(4) Section YB 11 does not apply if—
  (a) the trust is only for the benefit of employees of an employer; and
  (b) neither the person (**person A**) who has a power of appointment or of removal of a trustee nor a person associated with person A directly or indirectly controls the trust.

Defined in this Act: associated person, company, direct voting interest, employee, employer, market value circumstance, market value interest, settlor

Section YB 15: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 16 Exceptions for certain trusts and charitable organisations

Trustee and beneficiary and trustee for relative tests: certain trusts

(1) Sections YB 5 and YB 6(1) do not apply to a trustee and another person if the trust is—
  (a) a lines trust established under the Energy Companies Act 1992:
  (b) an approved unit trust referred to in clause 2 of the Income Tax Act (Exempt Unit Trusts) Order 1990.

Trustee and beneficiary and settlor and beneficiary tests: charitable organisation

(2) Sections YB 6(1) and YB 9(1) do not apply to a trustee and a beneficiary or a settlor and a beneficiary if the beneficiary is a charitable organisation.

Defined in this Act: charitable organisation, lines trust, unit trust

Section YB 16: substituted, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 17 Partnerships: partnership and associate of partner

[Repealed]

Section YB 17: repealed, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 18 Persons habitually acting together: 1988 version provisions

[Repealed]

Section YB 18: repealed, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 19 Person and controlled non-profit organisation: 1990 version provisions

[Repealed]

Section YB 19: repealed, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YB 20 Some definitions

[Repealed]

Section YB 20: repealed, on 1 April 2010, by section 563(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Nominees

YB 21 Transparency of nominees

Treatment of nominee

(1) In this Act, unless the context otherwise requires, if a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored.

Who is a nominee?

(2) A person holds or does something as a nominee for another person if the person acts on the other person's behalf. However, a trustee is a nominee only if the trustee is a bare trustee.

Nominal settlements

(3) A person making a nominal settlement at the request of another person is treated for the purposes of this Act as a nominee in relation to the settlement.

Defined in this Act: trustee

Compare: 2004 No 35 ss HH 1(1), OD 9

Section YB 21(3) heading: added (with effect on 1 April 2008), on 7 December 2009, by section 121(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YB 21(3): added (with effect on 1 April 2008), on 7 December 2009, by section 121(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section YB 21 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 564 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Subpart YC—Measurement of company ownership

Subpart YC heading: substituted, on 1 April 2010, by section 565 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Control
[Repealed]

Heading: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 566(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YC 1 Meaning of control

[Repealed]

Section YC 1: repealed, on 1 April 2010 (applying for the 2010–11 and later income years), by section 566(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Voting and market value interests

YC 2 Voting interests

Percentage of shareholder decision-making rights

(1) A person's voting interest in a company equals the percentage of the total shareholder decision-making rights for the company carried by shares or options held by the person.

When decision-making rights vary

(2) Despite subsection (1), if the percentage of shareholder decision-making rights for a company carried by shares or options held by any person differs as between the types of decision-making listed in the definition of **shareholder decision-making right**, the person's voting interest in the company equals the average of those differing percentages.

Defined in this Act: company, share, shareholder decision-making right, voting interest

Compare: 2004 No 35 s OD 3(1), (2)

YC 3 Market value interests

Percentage of market value

(1) A person's market value interest in a company equals the percentage of the total market value of shares and options over shares in the company that the market value of shares and options over shares in the company held by the person represents.

Adjustments for options

(2) For the purposes of subsection (1), the market value of any share in a company that is subject to an option is calculated having regard to the terms of the option.

Defined in this Act: company, market value, market value interest, option, share

Compare: 2004 No 35 s OD 4(1), (2)

YC 4 Look-through rule for corporate shareholders

When subsection (2) applies

(1) Subsection (2) applies if a company (the **shareholder company**) is or is treated as having, whether under subsection (2) or otherwise, a voting interest in another company (the **issuing company**).

Voting interest attributed to shareholders

(2) Each person (the **shareholder**) who has a voting interest in the shareholder company is treated as having (to be added to any other percentage voting interest in the issuing company which the shareholder has) their portion of the shareholder company's voting interest in the issuing company and the shareholder company is treated as not having that portion.

Calculation of shareholder's portion

(3) The shareholder's portion of the voting interest is calculated by multiplying the shareholder company's voting interest in the issuing company by the shareholder's voting interest in the shareholder company.

When subsection (5) applies

(4) Subsection (5) applies if a company (the **shareholder company**) is or is treated as having, whether under subsection (5) or otherwise, a market value interest in another company (the **issuing company**).

Attributing market value interest to shareholders

(5) Each person (the **shareholder**) who has a market value interest in the shareholder company is treated as having their portion of the shareholder company's market value interest in the issuing company and the shareholder company is treated as not having that portion. The shareholder's portion is added to any other percentage market value interest in the issuing company which the shareholder has at that time.

Calculation of shareholder's portion

(6) The shareholder's portion of the market value interest is calculated by multiplying the shareholder company's market value interest in the issuing company by the shareholder's market value interest in the shareholder company.

When subsection (8) applies

(7) Subsection (8) applies if,—

(a) in the case of a company (the **first company**), no direct market value circumstance exists; but

(b) it is necessary to determine the direct market value interest of a person in the first company in order to apply subsection (5) in relation to an issuing company, whether that issuing company is the first company or any other company, because a direct market value circumstance exists for some other relevant company.

Direct market value interest equal to direct voting interest

(8) The direct market value interest of the person in the first company is equal to the direct voting interest of the person in the first company.

Defined in this Act: company, direct market value circumstance, direct market value interest, direct voting interest, director, market value interest, voting interest

Compare: 2004 No 35 ss OD 3(3)(d), OD 4(3)(d), (4)

Section YC 4 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 567 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YC 5 Treatment of special corporate entities

When this section applies

(1) This section applies for the purposes of sections YC 2 to YC 6 to a company that is a special corporate entity.

Company treated as issuing shares

(2) If no shares have been issued by the special corporate entity, it is treated as having issued shares that carry all shareholder decision-making rights and all other rights of ownership in relation to the special corporate entity.

Who is treated as shareholder?

(3) The shares are treated as held by—

(a) the members for the time being of the special corporate entity, if any:

(b) the directors for the time being of the special corporate entity, if no members exist:

(c) in the case of a public authority or state enterprise that has neither members nor directors, the Minister of the

Crown for the time being who performs a director's functions.

Persons also treated as holding related rights

(4) The persons treated under subsection (3) as holding the shares are also treated as holding—

(a) any options over the shares; and

(b) any rights derived from the shares and options, including any interests treated as held under section YC 4.

Shareholders treated as notional single person existing with entity

(5) The members, directors, or Ministers are treated as holding their shares and related rights—

(a) in their capacity as members, directors, or Ministers; and

(b) as a notional single person that—

(i) exists as long as the special corporate entity exists; and

(ii) holds nothing other than shares and related rights concerning the entity.

Defined in this Act: company, director, public authority, share, special corporate entity, state enterprise

Compare: 2004 No 35 ss OD 3(3)(a), OD 4(3)(a)

YC 6 Disregarding certain securities

When this section applies

(1) This section applies for the purposes of sections YC 2 to YC 5 if—

(a) a company has issued an excluded fixed rate security:

(b) an excluded option has been granted in relation to a share in a company:

(c) a company has issued a pre-1991 budget security.

Security treated as not issued or granted

(2) The excluded fixed rate security, excluded option, or pre-1991 budget security is treated as never having been issued or granted.

Holder treated as not holding security

(3) The holder of the excluded fixed rate security, excluded option, or pre-1991 budget security is treated as never having held it.

Credit account continuity provisions: excluded fixed return securities counted

(4) This section is overridden by section YC 20.

Defined in this Act: company, excluded fixed rate security, excluded option, pre-1991 budget security, share

Compare: 2004 No 35 ss OD 3(3)(c), OD 4(3)(c)

Section YC 6(4): amended (with effect on 1 April 2008), on 6 October 2009, by section 568(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Voting and market value interests: modifications for continuity provisions

YC 7 When sections YC 8 to YC 19 apply

Sections YC 8 to YC 19 apply to modify sections YC 2 to YC 6 when the continuity provisions are applied.

Defined in this Act: continuity provisions

Compare: 2004 No 35 s OD 5(1)

YC 8 Death of share or option holder

If a person acquires a share or option over a share on the death of a person (the **deceased person**), as a beneficiary or trustee under the will or intestacy, the person is treated as—

(a) having acquired the share or option on the date the deceased person acquired it; and

(b) having held it until the person in fact acquired it.

Defined in this Act: company, share, trustee

Compare: 2004 No 35 s OD 5(2)

YC 9 Shares or options held by trustees

Trustees treated as notional single person

(1) All the trustees of a trust holding a share or an option over a share in a company under the trust are treated as the same notional single person that is—

(a) not a company; and

(b) separate and distinct from the trustees in their capacities other than as trustees of the trust.

Exception to subsection (1)

(2) Subsection (1) does not apply if any of the following has a purpose or effect of defeating the intent and application of a continuity provision:

(a) the establishment of the trust:

(b) the termination of the trust:

(c) a change in the trustees of the trust.

Change in ownership of corporate trustee

(3) Subsection (4) applies if—

(a) any share in a company (the **first company**) or option over a share in the first company is held by a trustee; and

(b) the trustee is a company other than—

(i) Public Trust:

(ii) any company in which Public Trust holds all voting and market value interests:

(iii) a statutory trustee company; and

(c) any share in the trustee or option over a share in the trustee is disposed of, issued, or granted; and

(d) to the extent to which the disposal, issue, or grant changes the beneficial ownership of the share or option over a share in the first company, unless it can be shown not to have a purpose or effect of defeating the intent and application of any of the continuity provisions.

Trustee treated as disposing of share or option

(4) The trustee is treated as having disposed of the share or option in the first company, at the time of the disposal, issue, or grant, to an unrelated person and having immediately reacquired the share or option.

Avoidance

(5) Section GB 5 (Arrangements involving trust beneficiaries) may apply to treat a share or option held by a trustee as being disposed of at the time of a change in trust beneficiaries.

Defined in this Act: company, continuity provision, market value interest, share, statutory trustee company, trustee, voting interest

Compare: 2004 No 35 s OD 5(3), (4)

YC 10 Shareholders holding less than 10% direct interests

When this section applies

(1) This section applies when—

(a) a person has a direct voting interest or direct market value interest of less than 10% in a company (the **issuing company**), calculated before YC 4, as modified by section YC 11, is applied:

(b) the person is not a company that is associated with the issuing company.

Person's interest treated as held by notional single person

(2) The person's direct voting or market value interest is treated as held by a notional single person that—

(a) is not a company; and

(b) exists as long as the issuing company exists; and

(c) holds all interests in the issuing company to which this section applies; and

(d) holds nothing other than voting or market value interests in the company.

Overriding look-through rule for corporate shareholders

(3) This section overrides section YC 4.

Defined in this Act: associated person, company, direct market value interest, direct voting interest, market value interest, shareholder, voting interest

Compare: 2004 No 35 s OD 5(5)

YC 11 No look-through rule for companies in certain cases

When this section applies

(1) This section applies when a company (the **shareholder company**) has, before section YC 4 is applied to that interest, a voting interest or market value interest in another company (the **issuing company**) and either subsection (2) or (3) applies.

First case: limited attribution company holding less than 50%

(2) The shareholder company—

(a) is a limited attribution company; and

(b) the voting interest or market value interest, when added to any interests which the shareholder company is treated as having under section YC 4, as modified by this section and section YC 10, is less than 50%.

Second case: shareholder not associated and would be attributed less than 10%

(3) A person (the **shareholder**), who holds a voting or market value interest in the shareholder company, to whom the relevant portion of the voting interest or market value interest in the issuing company would be attributed under section YC 4, assuming section YC 10 does not then apply to the portion,—

(a) is not associated with the issuing company; and

(b) the relevant portion, before adding any other voting or market value interest which the shareholder has or is treated as having, is less than 10%.

Overriding look-through rule

(4) Section YC 4 does not apply to the voting or market value interest of the shareholder company.

Defined in this Act: associated person, company, co-operative company, double tax agreement, limited attribution company, market value interest, shareholder, voting interest

Compare: 2004 No 35 s OD 5(6)

Section YC 11(3): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 131(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

YC 12 Public unit trusts

When this section applies

(1) This section applies in relation to a public unit trust if the public unit trust chooses to apply it.

Unit holders treated as notional single person

(2) The unit holders' shares in the unit trust are treated as held by a notional single person that—

(a) is not a company; and

(b) exists as long as the unit trust exists; and

(c) holds nothing other than the shares in the unit trust.

Treatment of balances carried forward into 2001–02 tax year

(3) Subsection (4) applies if—

(a) a public unit trust exists on the first day of the 2001–02 tax year; and

(b) the public unit trust chose to apply section OD 5(5B) of the Income Tax Act 1994 from the first day of the tax year.

Notional single person treated as always existing

(4) The notional single person is treated as having accumulated and as having always existed in relation to the balances, at the start of the 2001–02 tax year, of the unit trust's—

(a) imputation credit account:

(b) foreign dividend payment (FDP) account:

(c) loss balances.

Defined in this Act: company, FDP account, imputation credit account, loss balance, public unit trust, share, shareholder, tax year, unit trust

Compare: 2004 No 35 s OD 4(5A)–(5C)

YC 13 Corporate spin-outs

When this section applies

(1) This section applies if—

(a) a share in a company (the **spun-out company**) is transferred or issued to a shareholder in another company (the **original parent**); and

(b) before the transfer or issue, the original parent is treated, under section YC 11(3), as holding a voting interest or market value interest in another company (the **spun-out subsidiary**); and

(c) before the transfer or issue, the original parent is treated as holding an interest in the spun-out company that is a voting interest of more than 50% or, if a market value circumstance exists, a market value interest of more than 50%, both calculated as if section YC 4 did not apply to treat the original parent's interests in the spun-out company as being held by others; and

(d) at the time of the transfer or issue, the original parent is a limited attribution company; and

(e) after the transfer or issue, the spun-out company is treated under section YC 11(3) as holding the voting interest or market value interest in the spun-out subsidiary; and

(f) after the transfer or issue, the spun-out company is, at all times during the relevant period described in subsection (3), a limited attribution company.

Overriding look-through rule for spun-out company

(2) Section YC 4 is overridden and the spun-out company is treated as holding the voting interest or market value interest in the spun-out subsidiary—

(a) for the period before the transfer or issue that the original parent was treated as holding the interest; and

(b) for the purposes of applying the continuity provisions from the date of the transfer or issue; and

(c) to the extent to which, immediately after the transfer or issue, a group of persons exists who hold common interests in the original parent and the spun-out company, calculated on the assumption that the only voting interests and market value interests in those companies are those treated as held by those companies under section YC 11(3).

Meaning of relevant period

(3) In subsection (1)(f), **relevant period** means—

(a) in relation to the offset of a loss under Part I (Treatment of tax losses), the period from the date of the transfer or issue until the last day of the period in which the loss is offset:

(b) in relation to a credit subject to a continuity provision, the period from the date of the transfer or issue until the date the credit is cancelled by a subsequent debit.

Meaning of common interest

(4) In subsection (2)(c), **common interest** means—

(a) if a market value circumstance does not exist for the original parent or the spun-out company, the common voting interest described in subsection (5):

(b) if a market value circumstance exists for the original parent but not the spun-out company, the lower of—

(i) the common voting interest described in subsection (5); and

(ii) the market value interest in the original parent:

(c) if a market value circumstance exists for the spun-out company but not the original parent, the lower of—

(i) the common voting interest described in subsection (5); and

(ii) the market value interest in the spun-out company:

(d) if a market value circumstance exists for the original parent and the spun-out company, the lower of the common voting interest described in subsection (5) and the common market value interest described in subsection (6).

Meaning of common voting interest

(5) In subsection (4), **common voting interest**, for a person in relation to the original parent and the spun-out company, means—

(a) the percentage voting interest of the person in each company, if the percentages are the same:

(b) the lower of the percentage voting interests of the person in the companies, if the percentages differ.

Meaning of common market value interest

(6) In subsection (4), **common market value interest**, for a person in relation to the original parent and the spun-out company, means—

(a) the percentage market value interest of the person in each company, if the percentages are the same:

(b) the lower of the percentage market value interests of the person in the companies, if the percentages differ.

Common interests: look-through rules partially overridden

(7) For the purposes of measuring common interests, neither section YB 21 (Transparency of nominees) nor YC 4 apply to treat a nominee's or company's voting interest or market value interest in the original parent or the spun-out company to be held by another person, if the interest the other person would be treated as holding would be less than 10%.

Defined in this Act: common interest, common market value interest, common voting interest, company, continuity provision, group of persons, limited attribution company, market value circumstance, market value interest, relevant period, share, shareholder, voting interest

Compare: 2004 No 35 s OD 5(6A)–(6F)

Section YC 13(1)(c): substituted (with effect on 1 May 2011), on 29 August 2011, by section 132 of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

YC 14 Disregarding concessionary rules

When this section applies

(1) As the provisions of sections YC 10 to YC 13 are intended to have concessionary effect, subsection (2) applies if—

(a) at a time, for a company and a continuity provision, the requirements of the provision are not met; but

(b) the requirements would have been met but for the application to a particular extent of sections YC 10 to YC 13.

Requirements of continuity provision treated as met

(2) The requirements of the continuity provision are treated as met at the time.

Defined in this Act: company, continuity provision

Compare: 2004 No 35 s OD 5(7)

YC 15 Directors' knowledge of failure to meet requirements of continuity provision

When this section applies

(1) This section applies if—

(a) for a company at a time, the requirements of a continuity provision would not have been met but for the application of section YC 10, YC 11, or both; and

(b) the failure, but for that concessionary application, to meet the requirements would have occurred in the absence of transactions of the following types:

(i) the sale of shares in a company in the ordinary course of trading on a recognised exchange between less than 10% holders:

(ii) the cancellation of shares in a unit trust, that falls within paragraph (a), (b), or (c) of the definition of **widely-held trust**, held by less than 10% holders:

(iii) the cancellation of shares in a unit trust, that falls within paragraph (a), (b), or (c) of the definition of **widely-held trust**, which were acquired from less than 10% holders by the manager or trustee of the unit trust in the ordinary course of their activities in relation to the unit trust:

(iv) the transfer of shares in a company other than in the ordinary course of trading on a recognised exchange between persons, each of which is not a company associated with the company and has a direct voting interest or direct market value interest of less than 5%, calculated before the application of section YC 4 as modified by section YC 11:

(v) the issue, redemption, or cancellation by a company, or the transfer to or from the company, or the transfer to an employee of the company from a trustee of a trust with no beneficiary other than the company and the company's employees, of shares in the company, or options over shares in the company, that in total for the company's income year would be a direct voting interest or direct market value interest of less than 5% if held by a single person; and

(c) the directors of the company know or could reasonably be expected to know, without making enquiries specifically for the purposes of applying the continuity provisions, that the requirements of the continuity provision would not have been met but for that concessionary application.

Requirements of continuity provision treated as not met

(2) The requirements of the continuity provision are treated as not met at the time.

Meaning of less than 10% holder

(3) In this section, **less than 10% holder** means a person whose direct voting interest or direct market value interest is, at all relevant times, an interest to which YC 10 applies.

Defined in this Act: company, continuity provision, director, less than 10% holder, recognised exchange, share, trustee, unit trust, widely-held trust

Compare: 2004 No 35 s OD 5(8)

Section YC 15(1)(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 133(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YC 15(1)(b)(iii): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 133(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YC 15(1)(b)(iv): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 133(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YC 15(1)(b)(iv): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 133(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YC 15(1)(b)(v): added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 133(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Section YC 15(1)(b)(v): substituted (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 133(4) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

YC 16 Disregarding market value changes

When this section applies

(1) This section applies if—

(a) for a company at a time, the requirements of a continuity provision are not met; and

(b) the requirements would have been met but for a change in the market value interest of 1 or more persons; and

(c) the change is solely attributable to—

(i) a change in the market value of the tangible and intangible assets of the company:

(ii) a change in the market value of any 1 or more shares in the company that is not attributable to any change in the terms of those shares:

(iii) a combination of those factors.

Requirements of continuity provision treated as met

(2) The requirements of the continuity provision are treated as met at the time.

Defined in this Act: company, continuity provision, market value, market value interest, share

Compare: 2004 No 35 s OD 5(9)

YC 17 Demutualisation of insurers

When this section applies

(1) This section applies if an insurer stops being a special corporate entity as a result of demutualisation.

Former member acquiring voting or market value interest

(2) Subsection (3) applies if—

(a) a person acquires a voting interest or a market value interest in an insurer on the demutualisation of the insurer; and

(b) immediately before the demutualisation, the person was a member of the insurer; and

(c) the interest is acquired solely as a result of that membership.

When person treated as holding interest

(3) With effect from the date of the acquisition but subject to section YC 10, the person is treated as having held the voting interest or market value interest at all times during the period in which the insurer was a special corporate entity.

Trustee for former member acquiring voting or market value interest

(4) Subsection (5) applies if—

(a) a person acquires a voting interest or a market value interest in a life insurer on the demutualisation of the life insurer; and

(b) the person is the trustee of a trust for the benefit of persons who were members of the life insurer immediately before the demutualisation; and

(c) the trust was established before the demutualisation process—

(i) as an interim holding vehicle pending distribution to the members of all shares held by the trust:

(ii) to exercise voting rights on behalf of the members in relation to any holding company established before the demutualisation process which holds all the shares in the life insurer; and

(d) the Commissioner considers that the trust falls within paragraphs (b) and (c), and has notified the trustee.

When trustee treated as holding interest

(5) With effect from the date of the acquisition, the trustee is treated as having held the voting interest or market value interest at all times during the period in which the life insurer was a special corporate entity.

Application of section YC 10 to interests of former members

(6) Subsection (7) applies if—

(a) subsection (5) applies; and

(b) the notional single person referred to in section YC 10 acquires a voting interest or market value interest in the life insurer on—

(i) the distribution by the trustee of the shares from the trust:

(ii) the issue of shares by the holding company; and

(c) the person referred to in section YC 10(1), whose direct voting interest or direct market value interest is treated under YC 10 as that of the notional single person resulting in the notional single person's interest in the life insurer,—

(i) was a member of the life insurer immediately before the demutualisation, or is a trustee of a trust for the members; and

(ii) acquired the direct voting interest or direct market value interest as a result of the membership.

When notional single person treated as holding interest

(7) With effect from the date of the acquisition, the notional single person is treated as having existed and having held the voting interest or market value interest at all times during—

(a) the period in which the life insurer was a special corporate entity; and

(b) the period of the trust before the acquisition by the notional single person.

Community trust acquiring voting or market value interest

(8) Subsection (9) applies if—

(a) a person acquires a voting interest or a market value interest in an insurer on and solely as a result of the demutualisation of the insurer; and

(b) the person is the trustee of a community trust for the benefit of some or all of a community which generally includes persons who were members of the insurer immediately before the demutualisation; and

(c) the Commissioner considers that the trust falls within paragraph (b) and has notified the trustee.

When trustee treated as holding interest

(9) With effect from the date of the acquisition, the trustee is treated as having held the voting interest or market value interest at all times during the period in which the insurer was a special corporate entity.

Net losses of years before 1992–93

(10) Subsection (11) applies if—

(a) an insurer undergoes demutualisation; and

(b) the insurer, or another company that is part of the same group of companies (the **loss company**), had a net loss in a tax year before the 1992–93 tax year; and

(c) the loss company carried the loss forward to the 1992–93 tax year under the Income Tax Act 1976; and

(d) the loss has not been offset against net income for any period before demutualisation.

Net loss treated as for 1992–93 tax year

(11) Despite section IZ 5 (Companies' tax losses for tax years before 1991–92 tax year) for the purposes of Part I (Treatment of tax losses), with effect from the date on which the insurer stops being a special corporate entity on the demutualisation, the loss is treated as having arisen on the first day of the loss company's 1992–93 tax year and not to have arisen in the earlier tax year.

Credit account credits arising before 1 April 2002

(12) Subsection (13) applies if—

(a) an insurer undergoes demutualisation; and

(b) the insurer or another company that is part of the same group of companies has, at the time of the commencement of the process of demutualisation, a credit that arose before 1 April 1992 in—

(i) its imputation credit account:

(ii) its FDP account:

(iii) its branch equivalent tax account.

Credit treated as arising on 1 April 1992

(13) Despite section OZ 4 (Terminating modifications to debits for loss of shareholder continuity), for the purposes of Part O (Memorandum accounts), with effect from the date on which the insurer stops being a special corporate entity on the de-

mutualisation, the credit is treated as having first arisen in the account on 1 April 1992 and not when it actually arose.

Defined in this Act: branch equivalent tax account, community trust, company, direct market value interest, direct voting interest, FDP account, imputation credit account, insurer, life insurer, market value interest, net income, net loss, share, special corporate entity, tax year, trustee, voting interest

Compare: 2004 No 35 s OD 5A

YC 18 Reverse takeovers

When subsections (2) and (3) apply

(1) Subsections (2) and (3) apply if—

(a) a limited attribution company (the **initial parent**) is treated under section YC 11(3) as holding all ownership interests in another company (the **subsidiary**); and

(b) a change in the ownership of the initial parent occurs, or the initial parent ends its existence on an amalgamation (the **changeover**); and

(c) immediately after the changeover, another limited attribution company (the **new parent**) is treated under section YC 11(3) as holding all ownership interests in the subsidiary; and

(d) immediately after the changeover, all or part of the ownership interests in the new parent are treated under section YC 11(3) as being held by persons (the **initial owners**) who were treated as holding ownership interests in the initial parent immediately before the changeover; and

(e) in the case of each initial owner, the percentage ownership interest in the initial parent that the initial owner holds immediately before the changeover is the same as the percentage ownership interest in the new parent that the initial owner holds immediately after the changeover.

Loss balance continuity

(2) If the initial owners hold a total of 49% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of Part I (Treatment of tax losses) as—

(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and

(b) having held the ownership interests for the period for which the ownership interests were treated as held by the initial parent.

Credit account continuity

(3) If the initial owners hold a total of 66% or more of the ownership interests in the new parent immediately after the changeover, the new parent is treated for the purposes of subparts OB, OC, and OP (which relate to imputation credit accounts and FDP credit accounts) as—

(a) holding, immediately after the changeover, the ownership interests in the subsidiary that the initial parent held immediately before the changeover; and

(b) having held the ownership interests for the period for which the ownership interests were treated as held by the initial parent.

When subsection (5) applies

(4) As the provisions of this section are intended to have concessionary effect, subsection (5) applies if—

(a) at a time, for a company and a continuity provision, the requirements of the provision are not met; but

(b) the requirements would have been met but for the application to a particular extent of subsections (2) and (3).

Requirements met

(5) The requirements of the continuity provision are treated as met at the time.

Meaning of ownership interest

(6) In this section, **ownership interest**, for a company means—

(a) a voting interest in the company as determined under section YC 4(2):

(b) a market value interest in the company as determined under section YC 4(5).

Limited application to changeovers before 3 April 2006

(7) Subsections (2) and (3) apply for a person for a changeover occurring before 3 April 2006 only if, before that date, the person files a return of income on the basis that the requirements

of a continuity provision are satisfied in relation to the company and the changeover.

Defined in this Act: amalgamation, company, continuity provisions, limited attribution company, market value interest, ownership interest, return of income, voting interest

Compare: 2004 No 35 s OD 5AA

Section YC 18(6)(a): amended (with effect on 1 April 2008), on 6 October 2009, by section 569(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YC 18(6)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 569(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YC 18 list of defined terms **market value circumstance**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 569(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YC 18B Corporate reorganisations not affecting economic ownership

When subsection (3) applies

(1) Subsection (3) applies if a company (the **initial parent**) enters into an arrangement described in subsection (2).

Description of arrangement

(2) The description of the arrangement for the purposes of subsection (1) is as follows:

(a) the initial parent is a limited attribution company that is treated under section YC 11(3) and (4) as holding ownership interests in another company before the arrangement is entered into; and

(b) the ownership of the initial parent is reorganised so that another company (the **new parent**) is a limited attribution company that is treated under section YC 11(3) and (4) as holding ownership interests in the initial parent after the arrangement is implemented; and

(c) the percentage ownership interests (the **final percentage**) that a person receives in the new parent is the same as their percentage ownership interests (the **inital percentage**) in the initial parent that they cease to hold as a result of the arrangement. For the purposes of this paragraph, a difference between the initial and final percent-

ages is ignored if the difference is caused by a transfer or non-transfer of ownership interests that—

(i) facilitates the arrangement, and the relevant ownership interests have a market value that is merely nominal relative to the value of the ownership interests in the new parent:

(ii) is the direct result of impossibility or impracticability caused by securities law requirements; and

(d) a person holding ownership interests in the initial parent before the arrangement is entered into does not receive a dividend, gift, or other direct benefit as a result of the arrangement. For the purposes of this paragraph,—

(i) ownership interests in the initial parent for which paragraph (c)(ii) applies are excluded from a person's holding of ownership interests:

(ii) ownership interests in the new parent are excluded from being a dividend, gift, or other direct benefit.

Loss balance and credit account continuity

(3) For the purposes of the tests of ownership and control in Part I and subparts LP, OA, OB, OC, OE, and OP (which relate to loss balances, tax credits, and memorandum accounts), starting from when the initial parent is first treated under section YC 11(3) and (4) as holding the ownership interests in another company, the new parent is treated as—

(a) existing and having the shareholders it has immediately after the arrangement's implementation:

(b) holding the ownership interests that the initial parent is treated under section YC 11(3) and (4) as holding:

(c) holding all ownership interests in the initial parent.

Effect of subsection (3)

(4) Subsection (3) does not prevent a change in shareholders, the holdings of ownership interests, or other circumstances, after the implementation of the arrangement from having an effect on the application of the continuity provisions and the provisions described in subsection (3) after the implementation of the arrangement.

Definitions

(5) In this section,—

(a) **ownership interest** has the same meaning as in section YC 18(6), except that for the purposes of this section, excluded preference shares are ignored:

(b) **excluded preference share** means a share that is disregarded, under section 703–37 of the Income Tax Assessment Act 1997 (Aust), in determining whether a company can be a subsidiary member of a consolidated group for the purposes of that Act.

Defined in this Act: Defined in this Act: arrangement, company, continuity provision, dividend, excluded preference share, limited attribution company, ownership interest, share, shareholder

Section YC 18B: inserted (with effect on 1 April 2008), on 6 October 2009, by section 570 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YC 19 Legislative conversion of foreign company of proprietors

When this section applies

(1) This section applies if—

(a) a company of proprietors is established by a statute of a legislature outside New Zealand; and

(b) the company of proprietors becomes a limited liability company as a result of another statute.

Proprietor acquiring voting or market value interest

(2) Subsection (3) applies if—

(a) a person acquires a voting interest or a market value interest in a company on the conversion of a company of proprietors; and

(b) immediately before the conversion, the person was a proprietor of the company of proprietors and the person acquired the interest solely as a result of being a proprietor.

Company and person treated as always having held interest

(3) With effect from the date of acquisition but subject to section YC 10,—

(a) the company of proprietors is treated as having been a company with shareholders at all times before the conversion; and

(b) the person is treated as having held the voting interest or market value interest at all times before the conversion.

Defined in this Act: company, market value interest, New Zealand, shareholder, voting interest

Compare: 2004 No 35 s OD 5B

YC 20 Credit account continuity provisions: excluded fixed rate securities

When this section applies

(1) This section applies for the purposes of the credit account continuity provisions.

Counting excluded fixed rate securities

(2) Section YC 6 applies as if—

(a) section YC 6(1)(a) were omitted; and

(b) each other reference to "excluded fixed rate security" were omitted.

Relationship with section YA 1

(3) Section YA 1 (Definitions) applies as if—

(a) paragraph (e) of the definition of **excluded option** were omitted; and

(b) in paragraphs (a), (b), and (f) of the definition of **market value circumstance**, the words "an excluded fixed rate security" were replaced by "a".

Defined in this Act: credit account continuity provisions, excluded fixed rate security

Compare: 2004 No 35 s OD 6

Subpart YD—Residence and source in New Zealand

Residence

YD 1 Residence of natural persons

What this section does

(1) This section contains the rules for determining when a person who is not a company is a New Zealand resident for the purposes of this Act.

Permanent place of abode in New Zealand

(2) Despite anything else in this section, a person is a New Zealand resident if they have a permanent place of abode in New Zealand, even if they also have a permanent place of abode elsewhere.

183 days in New Zealand

(3) A person is a New Zealand resident if they are personally present in New Zealand for more than 183 days in total in a 12-month period.

Person treated as resident from first of 183 days

(4) If subsection (3) applies, the person is treated as resident from the first of the 183 days until the person is treated under subsection (5) as ceasing to be a New Zealand resident.

Ending residence: 325 days outside New Zealand

(5) A person treated as a New Zealand resident only under subsection (3) stops being a New Zealand resident if they are personally absent from New Zealand for more than 325 days in total in a 12-month period.

Person treated as non-resident from first of 325 days

(6) The person is treated as not resident from the first of the 325 days until they are treated again as resident under this section.

Government servants

(7) Despite subsection (5), a person who is personally absent from New Zealand in the service, in any capacity, of the New Zealand Government is treated as a New Zealand resident during the absence.

Presence for part-days

(8) For the purposes of this section, a person personally present in New Zealand for part of a day is treated as—

(a) present in New Zealand for the whole day; and

(b) not absent from New Zealand for any part of the day.

Special concession for transitional residents
[Repealed]

(9) *[Repealed]*

No application for preceding 12 months

[Repealed]

(10) *[Repealed]*

Treatment of non-resident seasonal workers

(11) Despite subsection (3), a non-resident seasonal worker is treated for the duration of their employment under the recognised seasonal employment scheme as a non-resident.

Defined in this Act: company, New Zealand resident, non-resident seasonal worker, recognised seasonal employment scheme

Compare: 2004 No 35 s OE 1

Section YD 1(9) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 571(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1(9): repealed (with effect on 1 April 2008), on 6 October 2009, by section 571(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1(10) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 571(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1(10): repealed (with effect on 1 April 2008), on 6 October 2009, by section 571(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1(11) heading: added (with effect on 1 April 2009), on 6 October 2009, by section 571(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1(11): added (with effect on 1 April 2009), on 6 October 2009, by section 571(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1 list of defined terms **transitional resident**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 571(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1 list of defined terms **non-resident seasonal worker**: added (with effect on 1 April 2009), on 6 October 2009, by section 571(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 1 list of defined terms **recognised seasonal employment scheme**: added (with effect on 1 April 2009), on 6 October 2009, by section 571(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YD 2 Residence of companies

Four bases for residence

(1) A company is a New Zealand resident for the purposes of this Act if—

(a) it is incorporated in New Zealand:
(b) its head office is in New Zealand:
(c) its centre of management is in New Zealand:
(d) its directors, in their capacity as directors, exercise control of the company in New Zealand, even if the directors' decision-making also occurs outside New Zealand.

International tax rules

(2) Despite subsection (1), for the purpose of the international tax rules, a company is treated as remaining resident in New Zealand if it becomes a foreign company but is resident in New Zealand again within 183 days afterwards.

Cook Islands National Superannuation Fund trustee

(3) Despite subsection (1), the trustee of the Cook Islands National Superannuation Fund, established by the Cook Islands National Superannuation Fund Deed under the Cook Islands National Superannuation Scheme Act 2000 (Cook Islands), is not a New Zealand resident.

Defined in this Act: company, director, foreign company, New Zealand resident

Compare: 2004 No 35 ss GC 9(6), OE 2(1), (1B)

YD 3 Country of residence of foreign companies

When this section applies

(1) This section applies for the purposes of the international tax rules to determine the country in which a foreign company is treated as resident for an accounting period.

Liability to income tax

(2) The company is treated as resident in a country if, at any time during the accounting period, it is liable to income tax in the country because any of the following is located in the country—
(a) its domicile:
(b) its residence:
(c) its place of management:
(d) any other criterion of a similar nature.

Further rule: first application

(3) Subsection (4) applies if the application of subsection (2) for an accounting period means that—
(a) the company is resident in 2 or more countries:

(b) the company is not resident in any country.

Applying New Zealand rules

(4) The company is treated as resident in the country in which—

(a) it is incorporated:

(b) it has its head office:

(c) it has its centre of management:

(d) its directors, in their capacity as directors, exercise control of the company, even if the directors' decision-making also occurs outside the country.

Further rule: second application

(5) The company is treated as resident in the country in which its centre of management is located for the accounting period if no 1 country of residence is identified under subsection (4).

Final rule

(6) The Commissioner must determine the country of residence if no 1 country of residence is identified under subsection (5).

Defined in this Act: accounting period, Commissioner, company, director, foreign company, international tax rules

Compare: 2004 No 35 s OE 2(2)–(6)

Section YD 3(4)(b): amended (with effect on 1 April 2008), on 6 October 2009, by section 572(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YD 3B Crown

For the purposes of this Act and for the avoidance of doubt, Her Majesty the Queen in right of New Zealand is regarded as resident in New Zealand.

Defined in this Act: New Zealand, resident in New Zealand

Section YD 3B: inserted (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 134(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Source

YD 4 Classes of income treated as having New Zealand source

What this section does

(1) This section lists the types of income that are treated as having a source in New Zealand for the purposes of this Act.

Business in New Zealand

(2) Income derived from a business has a source in New Zealand if—

(a) the business is wholly carried on in New Zealand:

(b) the business is partly carried on in New Zealand, to the extent to which the income is apportioned to a New Zealand source under section YD 5.

Contracts made or performed in New Zealand

(3) Income derived by a person from a contract has a source in New Zealand if the contract is—

(a) made in New Zealand, except to the extent to which the person wholly or partly performs the contract outside New Zealand, and the income is apportioned to a source outside New Zealand under YD 5:

(b) made outside New Zealand but the person wholly or partly performs the contract here, to the extent to which the income is apportioned to a New Zealand source under section YD 5.

Personal services in New Zealand

(4) An amount that is income under section CE 1 (Amounts derived in connection with employment) has a source in New Zealand if the amount is earned in New Zealand, even if the employer is not a New Zealand resident.

Accident compensation payments

(5) An accident compensation payment as defined in section CF 1(2) (Benefits, pensions, compensation, and government grants) has a source in New Zealand.

Pensions

(6) The following amounts have a source in New Zealand:

(a) a pension or annuity payable by the government of New Zealand:

(b) a pension or annuity payable out of a superannuation scheme established in New Zealand:

(c) a gratuitous payment, within the definition of **pension** in section CF 1(2), if the services are provided in New Zealand.

Income from land owned in New Zealand

(7) Income derived by a person as the owner of land in New Zealand has a source in New Zealand.

Income from use in New Zealand of personal property

(8) Income, other than a royalty, derived as consideration for the use of, or right to use, personal property in New Zealand has a source in New Zealand if the income is—

(a) paid by a New Zealand resident:

(b) paid by a non-resident, and for which the non-resident is allowed a deduction.

Royalties

(9) A royalty has a source in New Zealand if it is—

(a) paid by a New Zealand resident and not made in connection with a business they carry on outside New Zealand through a fixed establishment outside New Zealand:

(b) paid by a non-resident, and for which the non-resident is allowed a deduction.

Dividends

(10) Income derived from shares in, or membership of, a company resident in New Zealand has a source in New Zealand.

Income from debt instruments

(11) The following amounts have a source in New Zealand—

(a) interest or a redemption payment derived from money lent in New Zealand:

(b) interest or a redemption payment derived from money lent outside New Zealand—

(i) to a New Zealand resident, unless the money is used by them for the purposes of a business they carry on outside New Zealand through a fixed establishment outside New Zealand:

(ii) to a non-resident, if the money is used by them for the purposes of a business they carry on in New Zealand through a fixed establishment in New Zealand:

(c) income from securities issued by the government of New Zealand:

(d) income derived from debentures issued by a local authority or public authority:

(e) income derived from a mortgage of land in New Zealand.

Income from disposal of New Zealand property

(12) Income derived from the disposal of property situated in New Zealand has a source in New Zealand.

Beneficiary income

(13) Income derived by a beneficiary from a trust has a source in New Zealand to the extent to which the income of the trust fund has a source in New Zealand.

Income from air transport

(14) Income derived from transporting people or property by air has a source in New Zealand if the transportation leaves from New Zealand.

Income from sea transport

(15) Income derived from transporting people or property by sea has a source in New Zealand if the transportation leaves from New Zealand to the extent to which the income is apportioned to a New Zealand source under section YD 6.

Non-resident general insurers

(16) A premium for general insurance paid to a non-resident general insurer of the type described in section YD 8 has a source in New Zealand to the extent set out in section YD 8(2).

Non-resident life insurers: policies in New Zealand

(17) Income of a non-resident life insurer calculated under section EY 48 (Non-resident life insurers with life insurance policies in New Zealand) has a source in New Zealand.

Income from New Zealand partnerships

(17B) Income has a source in New Zealand if, treating all of the partners of a New Zealand partnership as resident in New Zealand, the income is treated as having a source in New Zealand under another provision of this section. The application of the other provisions of this section is unaffected if this subsection does not apply.

Any other source in New Zealand

(18) Income derived directly or indirectly from any other source in New Zealand has a source in New Zealand.

Defined in this Act: accident compensation payment, amount, business, company, debentures, deduction, dispose, employer, fixed establishment, general insurance, income, interest, life insurer, local authority, money lent, New Zealand, New Zealand partnership, New Zealand resident, non-resident, partner, pay, pension, public authority, redemption payment, royalty, share, source in New Zealand, superannuation scheme

Compare: 2004 No 35 ss FB 2(2)

Section YD 4(17B) heading: inserted, on 1 April 2008, by section 26(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YD 4(17B): inserted, on 1 April 2008, by section 26(1) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YD 4 list of defined terms **New Zealand partnership**: inserted, on 1 April 2008, by section 26(2) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YD 4 list of defined terms **partner**: inserted, on 1 April 2008, by section 26(2) of the Taxation (Limited Partnerships) Act 2008 (2008 No 2).

Section YD 4 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 573 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YD 5 Apportionment of income derived partly in New Zealand

When this section applies

(1) This section applies when—

(a) a person carries on business partly in New Zealand and partly outside New Zealand; or

(b) a contract is made in New Zealand and is performed, in whole or in part, by a person outside New Zealand; or

(c) a contract is made outside New Zealand and is performed, in whole or in part, by a person in New Zealand.

Relationship with source rules

(1B) This section does not apply to limit the effect of—

(a) any of the source rules in section YD 4 other than those in section YD 4(2) and (3); or

(b) the source rules in section YD 4(2) and (3) to the extent to which the income referred to is also income referred to in any source rule other than those in section YD 4(2) and (3).

Apportionment

(2) The amount of income derived from the business or under the contract, and the amount of expenditure incurred in deriving the income, must be apportioned between New Zealand and sources outside New Zealand to the extent necessary to achieve the result in subsection (3).

Necessary effect of apportionment

(3) The result of the apportionment, to the extent consistent with subsection (2), must be that the person's net income or net loss, in relation to the business or contract, is the same as a separate and independent person would have if they were carrying out only the person's activities in New Zealand and dealing at arm's length.

Defined in this Act: amount, business, gross, income, net loss, New Zealand

Compare: 2004 No 35 s FB 2(1A)

Section YD 5(1B) heading: inserted (with effect on 1 April 2008), on 6 October 2009, by section 574(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 5(1B): inserted (with effect on 1 April 2008), on 6 October 2009, by section 574(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 5(3): amended (with effect on 1 April 2008), on 6 October 2009, by section 574(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YD 5 compare note: amended (with effect on 1 April 2008), on 6 October 2009, by section 574(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YD 6 Apportionment of income from sea transport

When this section applies

(1) This section applies when a non-resident derives an amount of income from transporting people or property by sea from New Zealand to a destination outside New Zealand.

Five percent from source in New Zealand

(2) Five percent of the amount is treated as having a source in New Zealand and the remainder of the amount is treated as not having a source in New Zealand.

Reduction by Commissioner

(3) Despite subsection (2), the Commissioner may reduce the amount that is treated as having a source in New Zealand to

the extent to which the country in which the non-resident is resident would treat an amount derived by a New Zealand resident from sea transport from that country as—

(a) not having a source in that country:

(b) otherwise as exempt from income tax in that country.

No deduction

(4) The non-resident is denied a deduction under section DW 3 (Non-resident general insurers, shippers, and film renters) for expenditure or loss incurred.

Intervening stop in New Zealand

(5) The transport of people or property from a port in New Zealand is treated as transport to a place outside New Zealand even if the ship calls at another New Zealand port before leaving New Zealand.

Defined in this Act: amount, Commissioner, income, income tax, New Zealand resident, non-resident

Compare: 2004 No 35 ss FC 18, FC 19

YD 7 Apportionment of film rental income

When this section applies

(1) This section applies if a non-resident person derives an amount that would be treated as having a source in New Zealand under section YD 4 from 1 or more of the following activities

(a) renting, exhibiting, or issuing a film or making other arrangements for its exhibition:

(b) selling or hiring film containers, cinematographic or photographic materials, or equipment or accessories relating to a film:

(c) selling or hiring advertising materials relating to a film.

Income and exempt income

(2) Despite section YD 4, 10% of the amount is treated as having a source in New Zealand and the remainder of the amount is treated as not having a source in New Zealand.

Agreement with other non-resident

(3) If the non-resident person is required under an agreement with another non-resident person (**person A**) to pay person A an amount that is a film rent, royalty, commission, or that arises from an amount derived by the non-resident person from the

activities, the amount paid to person A is treated as not having a source in New Zealand.

No deduction

(4) The non-resident is denied a deduction under section DW 3 (Non-resident general insurers, shippers, and film renters) for expenditure or loss incurred.

Insignificant proportion

(5) This section does not apply to a non-resident person if the amounts derived by them for the activities are an insignificant proportion of the total amounts derived by them from a business carried on in New Zealand or elsewhere.

Defined in this Act: amount, arrangement, business, exempt income, film, income, New Zealand, non-resident, royalty, source in New Zealand

Compare: 2004 No 35 s FC 21

YD 8 Apportionment of premiums derived by non-resident general insurers

When this section applies

(1) This section applies if—

(a) a premium is paid under a contract of insurance; and

(b) the insurance is of 1 of the types listed in subsection (4); and

(c) when the insurer derives the premium, they are a non-resident; and

(d) the premium is not attributable to a business of the insurer which they carry on in New Zealand through a fixed establishment in New Zealand; and

(e) the premium is treated as connected with New Zealand under any of the tests of connection in subsection (5); and

(f) subsection (6) does not apply to override subsection (5).

Ten percent of premium from source in New Zealand

(2) Ten percent of the gross premium is treated as having a source in New Zealand and the remainder of the gross premium is treated as not having a source in New Zealand.

Special rules

(3) The following provisions apply in relation to taxation of the 10% amount

(a) the insurer is denied a deduction for expenditure or loss incurred, under section DW 3 (Non-resident general insurers, shippers, and film renters):

(b) sections HD 16 (Non-resident general insurers) and HD 17 (Agent paying premiums to residents of Switzerland) apply to impose certain obligations in relation to payment of income tax and provision of tax returns and other information.

Types of insurance

(4) The types of insurance referred to in subsection (1)(b) are—

(a) general insurance:

(b) a guarantee against risk given by an insurer to an insured person if—

(i) the insured person is liable to pay a premium to the insurer for the guarantee; and

(ii) the insured person is associated with the insurer:

(c) a guarantee against risk given by an insurer to an insured person if—

(i) the insured person is liable to pay a premium to the insurer for the guarantee; and

(ii) the risk arises from money lent to the insured person; and

(iii) the amounts the insured person is liable to pay for the money are significantly less than they would otherwise have been because of the guarantee; and

(iv) the effect of the guarantee on the amounts payable is more than an incidental effect, or comes about as more than an incidental purpose, of the insurer's giving the guarantee.

Connection with New Zealand

(5) The premium is connected with New Zealand if—

(a) the insurance contract from which the premium is derived is offered or entered into in New Zealand:

(b) the insured person is resident in New Zealand:

(c) the insured person is a non-resident but enters into the insurance contract for the purposes of a business they carry on in New Zealand through a fixed establishment in New Zealand.

No connection if all risk offshore

(6) Despite subsection (5), the premium is treated as not connected with New Zealand if—

(a) all risk covered by the premium is located outside New Zealand; and

(b) the insurer deriving the premium is not associated with the insured person.

Defined in this Act: business, fixed establishment, general insurance, insurance, insurance contract, insured person, insurer, pay, source in New Zealand

Compare: 2004 No 35 ss FC 13, FC 14(1)

Conduit tax relief companies: special residence rules

YD 9 Residence of CTR company shareholders

When these sections apply

(1) The rules in this section and sections YD 10 and YD 11 apply only for the purposes of applying the conduit tax relief provisions in sections LQ 3 to LQ 5, OD 16, OD 22, RG 7, YD 10(3) and YD 11(4) (which relate to credits and payments for conduit tax relief).

Associated CFC or non-complying trust treated as resident

(2) A non-resident is treated as resident in New Zealand if the non-resident is—

(a) associated with the conduit tax relief (CTR) company; and

(b) a controlled foreign company (CFC) or the trustee of a non-complying trust.

CTR holding companies and group members treated as non-resident

(3) A company resident in New Zealand holding shares in a CTR company is treated as not resident in New Zealand if it is—

(a) a CTR holding company for the CTR company; or

(b) a CTR group member for the CTR company, but only to the extent described in subsection (4).

Limitation to treatment of group member as non-resident

(4) A CTR group member is treated as not resident in New Zealand for the percentage of its direct voting interest, direct market value interest, and entitlement to derive dividends that

is equal to the total percentage of direct voting interests, or direct market value interests if market value circumstances exist, referred to in section YD 11(4).

Defined in this Act: associated person, CFC, company, CTR company, CTR group member, CTR holding company, direct market value interest, direct voting interest, dividend, market value circumstance, non-complying trust, non-resident, resident in New Zealand, share, trustee

Compare: 2004 No 35 s OE 8

YD 10 Meaning of CTR holding company

What is a CTR holding company?

(1) A company is a **CTR holding company**, in relation to a CTR company in which it holds shares, if the requirements of subsections (2) to (5) are each met.

CTR company

(2) The company must itself be a CTR company.

Direct ownership by single non-resident

(3) A single person not resident in New Zealand must have—

(a) 100% of the direct voting interests in the CTR holding company; and

(b) 100% of the direct market value interests in the CTR holding company, if a direct market value circumstance exists at the relevant time for the CTR holding company.

Owning 10% or more of CTR company

(4) The company must itself have—

(a) a 10% or greater direct voting interest in the CTR company; and

(b) a 10% or greater direct market value interest in the CTR company, if a direct market value circumstance exists at the relevant time for the CTR company.

Notice to CTR company

(5) The company must have previously given, and have not revoked, a notice to the CTR company that it is to be a CTR holding company for the CTR company.

Nominal shareholding

(6) In the application of subsection (3), a nominal shareholding held by a person solely to comply with company law requirements is disregarded.

CFC or non-complying trust

(7) Despite subsection (3), a company is not a CTR holding company if the single person is a CFC or the trustee of a non-complying trust.

Defined in this Act: CFC, company, CTR company, CTR holding company, direct market value circumstance, direct market value interest, direct voting interest, non-complying trust, resident in New Zealand, share, trustee

Compare: 2004 No 35 s OE 7(1), (2)

YD 11 Meaning of CTR group member

What is a CTR group member?

(1) A company resident in New Zealand is a **CTR group member**, in relation to a CTR company in which it holds shares, if the requirements of subsections (2) to (4) are each met.

CTR company

(2) The company must itself be a CTR company.

Direct ownership of CTR company

(3) The company must have, in the CTR company,—

(a) a 100% direct voting interest; and

(b) a 100% direct market value interest, if a market value circumstance exists at the time for the CTR company.

Direct or indirect interest in group member

(4) One or more non-residents have a direct voting interest, or a direct market value interest if a market value circumstance exists at the time for the group member, in—

(a) the CTR group member:

(b) another member of the same wholly-owned group of companies that—

(i) is resident in New Zealand; and

(ii) has a 100% voting interest and, if a market value circumstance exists, a 100% market value interest, in the CTR company.

Nominal shareholding

(5) For the purposes of subsections (3) and (4), a nominal shareholding held by a person solely to comply with company law requirements is disregarded.

No application of look-through rules

(6) In the application of subsection (4)(b), the look-through rules in section YC 4(2) and (5) (Look-through rule for corporate shareholders) do not apply to treat the other member's interests as held by others.

Associated CFC or non-complying trust treated as resident

(7) For the purposes of subsection (4), a non-resident is treated as resident in New Zealand if the non-resident is—

(a) associated with the company or the CTR company; and

(b) a CFC or the trustee of a non-complying trust.

Defined in this Act: associated person, CFC, company, CTR company, CTR group member, direct market value interest, direct voting interest, market value circumstance, non-complying trust, non-resident, resident in New Zealand, share, trustee

Compare: 2004 No 35 s OE 7(3)–(5)

Subpart YE—References to balance dates and years

YE 1 References to balance dates and years

When this section applies

(1) This section applies for the purposes of the Act unless the context requires otherwise.

Tax year identified by 2 years

(2) A reference to a tax year that is identified by a reference, in full or short form, to 2 years is a reference to the tax year that—

(a) starts on 1 April in the earlier of those years; and

(b) ends on 31 March in the later of those years.

Income year identified by 2 years

(3) A reference to an income year that is identified by a reference, in full or short form, to 2 years is a reference to the corresponding income year for the tax year that a reference to the same 2 years would identify.

Standard balance date or accounting years

(4) A reference to a person with a standard balance date, a standard accounting year, or a standard income year is a reference to a person who files a return of income under section 33 of the Tax Administration Act 1994 for a tax year on the basis of a corresponding income year also ending on 31 March.

Non-standard balance date, accounting year, or income year

(5) A reference to a person with a non-standard balance date, non-standard accounting year, or non-standard income year is a reference to a person who has approval under section 38 of the Tax Administration Act 1994 to file a return of income for a tax year on the basis of a corresponding income year ending other than 31 March. Unless the context requires otherwise, the non-standard year is the accounting year that corresponds to the tax year for which the reference is made.

Early balance date

(6) A reference to a person with an early balance date is a reference to a person who has approval under section 38 of the Tax Administration Act 1994 to file a return of income for a tax year on the basis of a corresponding income year that ends in a date between 1 October and the following 31 March, both days inclusive. Unless the context requires otherwise, the year with the early balance date is the accounting year that corresponds with the tax year for which the reference is made.

Late balance date

(7) A reference to a person with a late balance date is a reference to a person who has approval under section 38 of the Tax Administration Act 1994 to file a return of income for a tax year on the basis of a corresponding income year that ends in a date between 1 April and the following 30 September, both days inclusive. Unless the context otherwise requires, the year with the late balance date is the accounting year that corresponds with the tax year in relation to which the reference is made.

Defined in this Act: accounting year, corresponding income year, early balance date, income year, late balance date, non-standard accounting year, non-standard balance date, non-standard income year, return of income, standard accounting year, standard balance date, standard income year

Compare: 2004 No 35 s OF 1

Subpart YF—Currency conversion

YF 1 General rules for currency conversion

When this section applies

(1) This section applies when—

(a) an amount is paid or payable in a currency other than New Zealand currency; and

(b) a provision in this Act requires the amount to be taken into account in New Zealand currency, whether expressly or by necessary implication; and

(c) this Act does not contain a specific currency conversion rule that requires the conversion of the amount into New Zealand currency under a method other than those in this section.

Use of spot exchange rate

(2) The amount must be converted into New Zealand currency by applying the close of trading spot exchange rate on the date at which the amount is required to be measured or calculated.

Alternative use of monthly average rates

(3) Despite subsection (2), the amount may be converted into New Zealand currency by applying the average of the close of trading spot exchange rates for the 15th day of each complete month that falls in the relevant period if—

(a) the Commissioner allows it:

(b) a provision in this Act specifically allows it.

Particular cases in which monthly average rate permitted [Repealed]

(4) *[Repealed]*

General conversion rates and calculation methods approved by Commissioner

(5) Despite subsection (2), the amount may be converted into New Zealand currency by applying a rate—

(a) set by the Commissioner for general use for the purposes of this section:

(b) calculated using a method approved by the Commissioner for general use for the purposes of this section.

Specific conversion rates and calculation methods approved by Commissioner

(6) Despite subsection (2), a person may convert the amount into New Zealand currency by applying a rate—

(a) approved by the Commissioner for use in the circumstances of the person:

(b) calculated using a method approved by the Commissioner for use in the circumstances of the person.

Defined in this Act: amount, close of trading spot exchange rate, Commissioner, New Zealand, pay

Section YF 1(1)(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 575(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YF 1(3) heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 575(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YF 1(3)(b): substituted (with effect on 1 April 2008), on 6 October 2009, by section 575(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YF 1(4) heading: repealed (with effect on 1 April 2008), on 6 October 2009, pursuant to section 575(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YF 1(4): repealed (with effect on 1 April 2008), on 6 October 2009, by section 575(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section YF 1(5) heading: added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YF 1(5): added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YF 1(6) heading: added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Section YF 1(6): added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 118(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

YF 2 Other rules for currency conversion: approved alternatives

When this section applies

(1) This section applies when—

(a) a provision other than section YF 1 provides a rate or method for currency conversion; and

(b) for the purposes of the provision, a person is required to convert an amount expressed in a currency other than New Zealand currency.

Representative rates

(2) The Commissioner may set a representative conversion rate that the person may use, instead of the rate or method referred to in subsection (1)(a), in converting the amount into New Zealand currency.

Defined in this Act: amount, Commissioner, New Zealand

Section YF 2: added (with effect on 1 April 2008), on 7 September 2010 (applying for the 2008–09 and later income years), by section 119(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Subpart YZ—Terminating provisions

YZ 1 Source rule for interest

Application from 29 July 1983

(1) Section YD 4(11)(a) and (b) (Classes of income treated as having New Zealand source) applies to—

(a) interest derived from money lent under a binding contract entered into on or after 29 July 1983:

(b) a redemption payment made on a commercial bill if—

(i) it was issued on or after 29 July 1983; and

(ii) it was not issued under a binding contract entered into before that date.

Meaning of issue

(2) In this section, **issue** has the meaning given in section 2 of the Bills of Exchange Act 1908.

Defined in this Act: commercial bill, interest, money lent, redemption payment

Compare: 2004 No 35 s OE 4(1A)

YZ 2 Saving of effect of section 394L(4A) of Income Tax Act 1976

Section 394L(4A) of the Income Tax Act 1976 continues to apply in the same manner as it applied immediately before the repeal of that Act by the Income Tax Act 1994.

Compare: 2004 No 35 s YA 5B

Section YZ 2: added (with effect on 1 April 2008), on 6 October 2009, by section 576(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

YZ 3 Saving effect of section DF 5 of Income Tax Act 1994

When this section applies

(1) This section applies when a person—

(a) has made a payment to which section DC 1 (Lump sum payments on retirement) would otherwise apply in the absence of this section; and

(b) has allocated the deduction for the payment to an income year relying on the wording used in section DF 5 (Retiring allowances payable to employees) of the Income Tax Act 1994; and

(c) has taken the tax position for the allocation on or before 22 February 2011.

Savings provision

(2) Despite the express wording used in section DC 1, section DF 5 continues to apply for the person in relation to the tax position in the same manner as it applied immediately before the repeal of the Income Tax Act 1994 by the Income Tax Act 2004.

Defined in this Act: deduction, income year, pay

Section YZ 3: added (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 135(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Part Z
Repeals, amendments, and savings

ZA 1 Repeals

Schedule 48

(1) The enactments listed in schedule 48 (Enactments repealed) are repealed.

Repeals effective only for 2008–09 income year and later

(2) However, unless the context requires otherwise, the repeals listed in schedule 48 apply only in relation to the tax on income derived in the 2008–09 income year and later income years.

Defined in this Act: income, income year, tax

Compare: 2004 No 35 s YA 1

ZA 2 Consequential amendments to other enactments

Schedules 49 and 50

(1) The enactments listed in schedules 49 (Enactments amended) and 50 (Amendments to the Tax Administration Act 1994) are amended in the manner indicated in the schedule.

Amendments effective only for 2008–09 income year and later

(2) However, unless the context requires otherwise, the amendments to the Tax Administration Act 1994 apply only in relation to the tax on income derived in the 2008–09 income year and later income years.

Defined in this Act: income, income year, tax

Compare: 2004 No 35 s YA 2

ZA 3 Transitional provisions

When reference to this Act includes earlier Act

(1) A reference in an enactment or document to this Act, or to a provision of it, is to be interpreted as a reference to the Income Tax Act 2004, or the Income Tax Act 1994, or the Income Tax Act 1976, or to the corresponding provision of the earlier Act, to the extent necessary to reflect sensibly the intent of the enactment or document.

When reference to earlier Act includes this Act

(2) A reference in an enactment or document to the Income Tax Act 2004, or the Income Tax Act 1994, or the Income Tax Act 1976, or to a provision of that earlier Act, is to be interpreted as a reference to this Act, or to the corresponding provision in this Act, to the extent necessary to reflect sensibly the intent of the enactment or document.

Intention of new law

(3) The provisions of this Act, including any amendments made by this Act to the Tax Administration Act 1994, are the provi-

sions of the Income Tax Act 2004 in rewritten form, and are intended to have the same effect as the corresponding provisions of the Income Tax Act 2004. Subsection (5) overrides this subsection.

Using old law as interpretation guide

(4) Unless a limit in subsection (5) applies, in circumstances where the meaning of a taxation law that comes into force at the commencement of this Act (the **new law**) is unclear or gives rise to absurdity—

(a) the wording of a taxation law that is repealed by section ZA 1 and that corresponds to the new law (the **old law**) must be used to determine the correct meaning of the new law; and

(b) it can be assumed that a corresponding old law provision exists for each new law provision.

Limits to subsections (3) and (4)

(5) Subsections (3) and (4) do not apply in the case of—

(a) a new law listed in schedule 51 (Identified changes in legislation); or

(b) a new law that is amended after the commencement of this Act, with effect from the date on which the amendment comes into force.

Defined in this Act: taxation law

Compare: 2004 No 35 s YA 3

ZA 4 Saving of binding rulings

When, and extent to which, this section applies

(1) This section applies when, and to the extent to which,—

(a) either—

(i) an applicant has applied for a private ruling, a product ruling, or a status ruling, before the beginning of the 2008–09 income year on an arrangement that is entered into, or that the applicant seriously contemplates will be entered into before the commencement of this Act; or

(ii) a public ruling is issued before the beginning of the 2008–09 income year; and

(b) the binding ruling is about—

(i) a taxation law that is repealed by section ZA 1 (the **old law**); or

(ii) a taxation law in the Income Tax Act 1994 that preceded and corresponded to the old law; and

(c) a new taxation law that corresponds to the old law (the **new law**) comes into force at the commencement of this Act; and

(d) in the absence of this section, the commencement of this Act would mean that the binding ruling would cease to apply because of section 91G of the Tax Administration Act 1994.

Ruling about new law

(2) The binding ruling is treated as if it were made about the new law, so that the effect of the ruling at the commencement of this Act is the same as its effect before the commencement.

No confirmation rulings

(3) To the extent to which a binding ruling continued by subsection (2) exists and applies to an arrangement, or to a person and an arrangement, the Commissioner must not make a binding ruling on how—

(a) the new law applies to the arrangement or to the person and the arrangement; or

(b) this subsection applies to the arrangement or to the person and the arrangement.

Defined in this Act: arrangement, binding ruling, commencement of this Act, Commissioner, taxation law

Compare: 2004 No 35 s YA 4

ZA 5 Saving of accrual determinations

When, and extent to which, this section applies

(1) This section applies when—

(a) a determination has been made before the beginning of the 2008–09 income year under—

(i) section 90 or 90AC of the Tax Administration Act 1994; or

(ii) section 64E of the Income Tax Act 1976; and

(b) the determination has not been cancelled before the beginning of the 2008–09 income year; and

(c) the determination is about—

(i) a taxation law that is repealed by section ZA 1 (the **old law**); or

(ii) a taxation law in the Income Tax Act 1994 or the Income Tax Act 1976 that preceded and corresponded to the old law; and

(d) a new taxation law that corresponds to the old law (the **new law**) comes into force at the commencement of this Act; and

(e) in the absence of this section, the commencement of this Act would mean that that determination would cease to apply because the taxation law to which it applied had ceased to exist.

Determination about new law

(2) The determination is treated as if it were made about the new law, so that the effect of the determination at the commencement of this Act is the same as its effect before the commencement.

No confirmation determinations

(3) To the extent to which a determination continued by subsection (2) applies, the Commissioner must not make a determination on how the new law applies.

Defined in this Act: commencement of this Act, Commissioner, taxation law

Compare: 2004 No 35 s YA 5

ZA 6 Comparative tables of old and new provisions

Schedule 52

(1) Schedule 52 (Comparative tables of old and rewritten provisions) sets out corresponding provisions in the Income Tax Act 2004, the Income Tax Act 1994, the Tax Administration Act 1994, and this Act at the commencement of this Act.

Parts of schedule

(2) The schedule has the following 4 parts

(a) part A lists each provision in the Income Tax Act 2004 and—

(i) indicates the corresponding provision in this Act; or

(ii) indicates the corresponding provision in the Tax Administration Act 1994; or

(iii) indicates the corresponding provision in the Goods and Services Tax Act 1985; or

(iv) states that the provision has been omitted:

(b) part B lists each provision in this Act and the corresponding provision in the Income Tax Act 2004 and, as applicable, in Parts A to E of the Income Tax Act 1994, or states that the provision is new:

(c) part C lists the provisions that this Act inserts in the Tax Administration Act 1994 and—

(i) indicates the corresponding provision in the Income Tax Act 2004; or

(ii) states that the provision is new:

(d) part D lists each term defined in this Act and its location in this Act, and—

(i) indicates the source of the term in the Income Tax Act 2004; or

(ii) states that the term is new.

Purpose of schedule

(3) The schedule is provided to assist readers to identify corresponding provisions but must not be interpreted as a definitive guide to the correspondence of provisions.

Defined in this Act: commencement of this Act

Compare: 2004 No 35 s YA 6

Schedule 1
Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits

Schedule 1 heading: amended, on 1 April 2008, by section 554(1) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Part A
Basic income tax rates

1 Taxable income: general

To the extent to which a person does not have a basic rate under clauses 2 to 9, the basic rate of income tax for the person on

Part A—*continued*

each dollar of the person's taxable income is calculated using the formula—

$$\frac{\text{tax under table 1}}{\text{taxable income}}$$

(a) **tax under table 1** means the total tax, calculated for each dollar in the person's taxable income, using table 1:

(b) **taxable income** means the number of dollars in the person's taxable income.

Table 1

Row	Range of dollar in taxable income	Tax rate
1	$0 – $14,000	0.105
2	$14,001 – $48,000	0.175
3	$48,001 – $70,000	0.300
4	$70,001 upwards	0.330

How to use this table:
Find the range in the second column for each dollar in the person's taxable income, and apply the relevant rate for the dollar in the third column.

Schedule 1 Part A clause 1: amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 136(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 1 Part A table 1: substituted, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 71(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part A table 1: substituted (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 71(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part A table 1: substituted, on 1 April 2009, by section 10(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 1 Part A table 1: substituted (with effect from 1 April 2008), on 29 May 2008, by section 7(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Part A—*continued*

2 Taxable income: companies

To the extent to which a company does not have a basic rate under clauses 3 to 9, the basic rate of income tax for the company on each dollar of the company's taxable income is 0.28.

Schedule 1 Part A clause 2: amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 136(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 1 Part A clause 2: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 97(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

3 Taxable income: trustees

To the extent to which a trustee does not have a basic rate under clause 4, 5 or 6, the basic rate of income tax for the trustee on each dollar of the trustee's taxable income is 0.33.

4 Taxable distribution: non-complying trust

The basic rate of income tax on each dollar of a taxable distribution made by a non-complying trust is 0.45.

5 Schedular taxable income: category A income

The basic rate of income tax for a trustee on each dollar of the trustee's schedular taxable income that is for category A income is 0.28.

Schedule 1 Part A clause 5: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 97(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

6 Taxable income: trustees of certain funds

To the extent to which a trustee does not have a basic rate under clause 4 or 5, the basic rate of income tax on each dollar of taxable income is 0.28 if the income is of a trustee of—

(a) an approved unit trust to which the Income Tax Act (Exempt Unit Trusts) Order 1990 applies:

(b) a widely-held GIF:

(c) a widely-held superannuation fund.

Schedule 1 clause 6 heading: inserted, on 1 April 2008, by section 554(2) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Part A—*continued*

Schedule 1 Part A clause 6: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 97(3) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

7 Taxable income: Maori authorities

The basic rate of income tax for a Maori authority on each dollar of the Maori authority's taxable income is 0.175.

Schedule 1 Part A clause 7: amended, on 1 April 2011, by section 136(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

8 Schedular taxable income: schedular policyholder base income

The basic rate of income tax for a person on each dollar of the person's schedular taxable income that is for schedular policyholder base income is 0.28.

Schedule 1 part A clause 8 heading: amended, on 1 July 2010, by section 577(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 1 Part A clause 8: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 97(4) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 part A clause 8: amended, on 1 July 2010, by section 577(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

9 Taxable income: New Zealand Superannuation Fund

The basic rate of income tax on each dollar of taxable income derived by the Crown through the New Zealand Superannuation Fund is the rate applying to companies set out in clause 2.

Schedule 1 Part A clause 9: added (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 136(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Part B
Low income amount
[Repealed]

Schedule 1 Part B: repealed (with effect from 1 April 2008), on 29 May 2008, by section 50(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Part C
Basic rates for attributed fringe benefits

Table 1

Row	Range of dollar in all-inclusive pay	Tax rate
1	$0 – $12,530	0.1173
2	$12,531 – $40,580	0.2121
3	$40,581 – $55,980	0.4286
4	$55,981 upwards	0.4925

How to use this table:
Find the range in the second column for each dollar in the person's all-inclusive pay under section RD 51, and apply the relevant rate for the dollar in the third column.

Schedule 1 Part C table 1: substituted, on 1 April 2011 (applying for the 2011–12 income year and later income years), by section 72(2) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part C table 1: substituted (with effect on 1 April 2010), on 28 May 2010 (applying for the 2010–11 income year and later income years), by section 72(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part C table 1: substituted, on 1 April 2009, by section 11(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 1 Part C table 1: substituted (with effect from 1 April 2008), on 29 May 2008, by section 8(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Part D
Basic rates for withholding

Basic rates for ESCT

1 Amount of tax for section RD 67(a)

If section RD 67(a) applies, the amount of tax is determined by applying the relevant rate given by table 1 to each dollar of an employer's superannuation contribution.

Table 1

Row	ESCT rate threshold amount	Tax rate
1	$0 – $16,800	0.105

Part D—*continued*

Row	ESCT rate threshold amount	Tax rate
2	$16,801 – $57,600	0.175
3	$57,601 – $84,000	0.300
4	$84,001 upwards	0.330

How to use this table:
Find the range in the second column for the last dollar of the amount of salary or wages under section RD 69(1), and apply the relevant rate in the third column.

Schedule 1 Part D table 1: substituted, on 1 October 2010, by section 31 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 1: substituted, on 1 April 2009, by section 12(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 1 Part D table 1: substituted, on 1 October 2008, by section 16(1) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 1 Part D table 1: amended (with effect from 1 April 2008), on 29 May 2008, by section 50(2)(c) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 1 Part D table 1 row 2: amended (with effect from 1 April 2008), on 29 May 2008, by section 50(2)(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 1 Part D table 1 row 3: amended (with effect from 1 April 2008), on 29 May 2008, by section 50(2)(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

2 Amount of tax for section RD 67(b)

If section RD 67(b) applies, the amount of tax is determined by applying the rate of 0.33 to each dollar of an employer's superannuation contribution.

Basic Rates for RWT

3 Interest: general

If clause 4 does not apply does not apply, the payment rate for a payment of resident passive income that consists of interest is set out in table 2.

Part D—*continued*

Table 2

Row	Conditions	Payment rate
1	The payer of the interest has not been supplied with the tax file number of a person who is paid the interest.	0.330
2	The payer of the interest— (a) has been supplied with the tax file number of a person who opens a new account after 31 March 2010 and who is paid the interest; and (b) has not received a payment rate election from the recipient of the interest: (c) is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994.	0.330
3	The payer of the interest— (a) has been supplied with the tax file number of a person who is paid the interest; and (b) has received a payment rate election from the recipient of the interest— (i) before 1 October 2010, choosing the 0.390 or 0.380 payment rate, and the payer is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994: (ii) on or after 1 October 2010, choosing the 0.330 payment rate.	0.330
4	The payer of the interest— (a) has been supplied with the tax file number of a person who is paid the interest; and (b) has received a payment rate election from the recipient of the interest— (i) before 1 October 2010, choosing the 0.330 payment rate, and the payer is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994:	

Part D—*continued*

Row	Conditions	Payment rate
	(ii) on or after 1 October 2010, choosing the 0.300 payment rate.	0.300
5	The payer of the interest— (a) has been supplied with the tax file number of a person who has not opened a new account after 31 March 2010 and who is paid the interest; and (b) has not received a payment rate election from the recipient of the interest; and (c) is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994.	0.175
6	The payer of the interest— (a) has been supplied with the tax file number of a person who is paid the interest; and (b) has received a payment rate election from the recipient of the interest— (i) before 1 October 2010, choosing the 0.195 or 0.210 payment rate, and the payer is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994: (ii) on or after 1 October 2010, choosing the 0.175 payment rate.	0.175
7	The payer of the interest— (a) has been supplied with the tax file number of a person, other than a trustee, who is paid the interest; and (b) has received a payment rate election from the recipient of the interest— (i) before 1 October 2010, choosing the 0.125 payment rate, and the payer is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994:	

Part D—*continued*

Row	Conditions	Payment rate
	(ii) on or after 1 October 2010, choosing the 0.105 payment rate; and	
	(c) the recipient has a reasonable expectation at the time of the election that their income for the income year will be $14,000 or less.	0.105
8	The payer of the interest—	
	(a) has been supplied with the tax file number of a person who is paid the interest as a trustee of a testamentary trust to which section HC 37 applies; and	
	(b) has received a payment rate election from the recipient of the interest—	
	(i) before 1 October 2010, choosing the 0.125 payment rate, and the payer of the interest is not required to use a rate notified by the Commissioner under section 25A of the Tax Administration Act 1994:	
	(ii) on or after 1 October 2010, choosing the 0.105 payment rate.	0.105

How to use this table:
Find the applicable condition in the second column, in order to find the relevant rate to apply, in the third column.

Schedule 1 Part D clause 3: amended (with effect on 1 April 2008), on 7 December 2009, by section 122(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D clause 3: amended (with effect from 1 April 2008), on 29 May 2008, by section 50(3) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 1 Part D table 2: substituted, on 1 October 2010, by section 32 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 2: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 122(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D table 2 item 3B: inserted (with effect on 1 April 2010), on 7 September 2010, by section 120(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Part D—*continued*

4 Interest: most companies

The payment rate for a payment of resident passive income that consists of interest is set out in table 3 if the recipient of the payment is a company that is not a trustee or a Maori authority. However, this restriction does not apply if the trustee is a portfolio investment entity.

Table 3

Row	Conditions	Payment rate
1	The payer of the interest— (a) has been supplied with the tax file number of a person who is paid interest; and (b) has not received a payment rate election from the recipient of the interest, ignoring the receipt of an election for the 0.33 payment rate before 1 October 2010 (if any).	0.28
2	The payer of the interest— (a) has been supplied with the tax file number of a person who is paid interest; and (b) has received a payment rate election from the recipient of the interest, choosing the 0.28 payment rate.	0.28
3	The payer of the interest— (a) has been supplied with the tax file number of a person who is paid interest; and (b) has received a payment rate election from the recipient of the interest,— (i) on or after 1 October 2010, choosing the 0.33 payment rate: (ii) before 1 October 2010, choosing the 0.39 or 0.38 payment rate.	0.33
4	The payer of the interest has not been supplied with the tax file number of a person who is paid the interest.	0.33

How to use this table

Part D—*continued*

Find the applicable condition, in the second column, in order to find the relevant rate to apply, in the third column.

Schedule 1 Part D clause 4: substituted (with effect on 1 April 2010), on 7 September 2010, by section 120(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 1 Part D clause 4: amended (with effect on 1 April 2008), on 7 December 2009, by section 122(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D table 3: substituted (with effect on 1 April 2010), on 7 September 2010, by section 120(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 1 Part D table 3 row 1: substituted, on 1 April 2011, by section 98 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 3 row 2: substituted, on 1 April 2011, by section 98 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 3 row 3: substituted, on 1 October 2010, by section 33 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 3 row 3(b)(i): amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 136(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 1 Part D table 3 row 3(b)(ii): amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 136(6) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 1 Part D table 3 row 3: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 122(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D table 3 row 4: substituted, on 1 October 2010, by section 33 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 3 row 4: amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 136(7) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 1 Part D table 3 row 4: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 122(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Part D—*continued*

5 Dividends and replacement payments

The payment rate for a payment of resident passive income that consists of a dividend, or a replacement payment under a share-lending arrangement, is 0.33.

Schedule 1 Part D clause 5: amended (with effect on 1 April 2008), on 7 December 2009, by section 122(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

6 Taxable Maori authority distributions

The payment rate for a payment of resident passive income that consists of a taxable Maori authority distribution is set out in table 4.

Table 4

Row	Conditions	Payment rate
1	The Maori authority makes a taxable Maori authority distribution and does not meet the condition for the 0.33 payment rate in row 2.	0.175
2	The Maori authority: (a) makes a taxable Maori authority distribution that is more than $200; and (b) does not have a record of the tax file number of the member to whom the distribution is made.	0.33

How to use this table

Find the applicable condition, in the middle column, in order to find the relevant rate to apply, in the right column.

Part D—*continued*

Schedule 1 Part D clause 6: amended (with effect on 1 April 2008), on 7 December 2009, by section 122(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D table 4 row 1: amended (with effect on 1 October 2010), on 29 August 2011, by section 136(8) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 1 Part D table 4 row 1: amended, on 1 April 2011, by section 136(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 1 Part D table 4 row 1: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 122(5)(a) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D table 4 row 2: amended, on 1 October 2010, by section 34 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 4 row 2: amended, on 1 April 2010 (applying for the 2010–11 and later income years), by section 122(5)(b) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Basic rates for RSCT

Schedule 1 Part D heading: added, on 1 April 2008, by section 554(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

7 Retirement scheme contributions

The payment rate for an amount of a retirement scheme contribution made by a retirement scheme contributor for a person is set out in table 5.

Table 5

Row	Conditions	Payment rate
1	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 12.5 or 10.5 cents in the dollar is the person's retirement scheme prescribed rate; and (b) has been supplied with the tax file number of the person.	0.105
2	The person is a non-resident and a distribution of no more than $200 is made to them by a retirement scheme contributor that is a Maori authority.	0.105

Part D—*continued*

Row	Conditions	Payment rate
3	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 21 or 17.5 cents in the dollar is equal to or greater than the person's retirement scheme prescribed rate; and (b) has been supplied with the tax file number of the person.	0.175
4	The person responsible for withholding RSCT— (a) has been notified under section 28C of the Tax Administration Act 1994 that 33 or 30 cents in the dollar is equal to or greater than the person's retirement scheme prescribed rate; and (b) has been supplied with the tax file number of the person.	0.300
5	When none of rows 1 to 4 apply.	0.330
How to use this table: Find the applicable condition in the second column, in order to find the relevant rate to apply, in the third column.		

Schedule 1 Part D clause 7: added, on 1 April 2008, by section 554(3) of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 1 Part D table 5: substituted, on 1 October 2010, by section 35 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 1 Part D table 5: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 122(6) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 1 Part D clause 7 table 5 row 4: amended (with effect from 1 April 2008), on 29 May 2008, by section 50(4) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Part E
Shoulder references

The shoulder references for this schedule are the following sections: CB 28, CD 53, CS 1, EK 8, EK 12, EK 23, EX 20, EX 50, EY 43, FE 22, FM 28, HA 15, HA 24, HC 22, HC 34, HF 1, HL 29, LC 1,

Part E—*continued*

LC 2, LE 2, LJ 5, LP 8, LP 10, OA 18, OB 19, OB 42, OB 46, OB 69, OB 73, OB 75, OB 78, OB 80, OC 36, OC 38, OE 7, OE 8, OP 100, OP 102, RD 50, RD 51, RD 66, RD 67, RD 69, RD 70, RD 72, RE 11–RE 19, RF 9, RF 12, RM 21, YA 1..

Schedule 1 Part E: amended (with effect on 30 June 2009), on 6 October 2009, by section 577(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 2

ss RD 9–RD 11, RD 13, RD 14, RD 17, YA 1

Basic tax rates for PAYE income payments

Part A
Salary or wages

1 "M", "ME", and "ML" tax codes: payments for weekly pay periods

The basic tax rate amount for a payment of salary or wages is set by applying the Commissioner's weekly PAYE table to the amount, using the employee's tax code, if—

(a) the payment is for a weekly pay period (including the case of section RD 3 applying); and

(b) the employee has notified their employer that the employee's tax code is "M", "ME", or "ML" under section 24B(3) of the Tax Administration Act 1994.

Schedule 2 Part A clause 1 heading: amended, on 1 April 2009, by section 37(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 2 Part A clause 1(b): amended, on 1 April 2009, by section 37(2) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

2 "M", "ME", and "ML" tax codes: payments for pay periods longer than a week

If an employee has notified their employer that the employee's tax code is "M", "ME", or "ML" under section 24B(3) of the Tax Administration Act 1994, and the payment of salary or

Part A—*continued*

wages is for a pay period longer than a week, then the basic tax rate amount for the payment is calculated using the formula—

$$\left[\frac{\text{total payment}}{\text{weekly portion of the payment}}\right] \times \text{weekly PAYE table amount.}$$

(a) **total payment** means the payment of salary or wages to which this clause applies:

(b) **weekly portion of the payment** means the portion of the payment that is attributable to the part of the pay period that is for a week if it is assumed that the payment accrued at a uniform daily rate throughout the pay period:

(c) **weekly PAYE table amount** means the amount that results from applying the Commissioner's weekly PAYE table to the weekly portion of the payment (described in paragraph (b)) using the employee's tax code, as if the weekly portion is a payment for a weekly pay period.

Schedule 2 Part A clause 2 heading: amended, on 1 April 2009, by section 37(3) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 2 Part A clause 2: amended, on 1 April 2009, by section 37(4) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 2 Part A clause 2 formula: substituted (with effect on 1 April 2008), on 7 December 2009, by section 123(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

3 "No notification" tax code

If an employee's tax code under section 24B(3) of the Tax Administration Act 1994 is "no notification", the basic tax rate amount for a payment of salary or wages is set by applying the rate of 0.45 for each dollar of the payment.

4 "S" tax code

If an employee has notified their employer that the employee's tax code is "S" under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment of secondary

Part A—*continued*

employment earnings is set by applying the rate of 0.175 for each dollar of the payment.

Schedule 2 Part A clause 4: amended, on 1 October 2010, by section 36(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

5 "SH" tax code

If an employee has notified their employer that the employee's tax code is "SH" under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment of secondary employment earnings is set by applying the rate of 0.300 for each dollar of the payment.

Schedule 2 Part A clause 5: amended, on 1 October 2010, by section 36(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

6 "ST" tax code

If an employee has notified their employer that the employee's tax code is "ST" under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment of secondary employment earnings is set by applying the rate of 0.330 for each dollar of the payment.

Schedule 2 Part A clause 6: amended, on 1 October 2010, by section 36(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 2 Part A clause 6: amended, on 1 April 2009, by section 13(1) of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

7 "CAE" or "EDW" tax code

If an employee has notified their employer that the employee's tax code is "CAE" or "EDW" under section 24B(3) of the Tax Administration Act 1994, the basic tax rate amount for a payment for employment as a casual agricultural worker or an election day worker (as applicable) is set by applying the rate of 0.175 for each dollar of the payment.

Schedule 2 Part A clause 7: amended, on 1 October 2010, by section 36(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

8 "NSW" tax code

If an employee has notified their employer that the employee's tax code is "NSW" under section 24B(3) of the Tax Adminis-

Part A—*continued*

tration Act 1994, the basic tax rate amount for a payment for employment as a non-resident seasonal worker is set by applying the rate of 0.105 for each dollar of the payment.

Schedule 2 Part A clause 8: added, on 6 October 2009, by section 578 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 2 Part A clause 8: amended, on 1 April 2011 (applying for the 2011–12 and later income years), by section 137(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

9 "SB" tax code

If an employee has notified their employer that the employee's tax code is "SB" under section 24B(3)(bb) of the Tax Administration Act 1994, the basic tax rate amount for a payment of secondary employment earnings is set by applying the rate of 0.105 for each dollar of the payment.

Schedule 2 Part A clause 9: added, on 1 April 2010 (applying for the 2010–11 and later income years), by section 123(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 2 Part A clause 9: amended, on 1 October 2010, by section 36(e) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Part B
Extra pays

Table 1

Row	Condition	Tax rate
1	Section RD 17(2)(a) applies and the sum is $14,000 or less.	0.105
2	Section RD 10(2)(a) or RD 17(2)(b) applies.	0.175
3	Section RD 10(2)(b) or RD 17(2)(c) applies.	0.300
4	Section RD 10(2)(c) or RD 17(2)(d) applies.	0.330

How to use this table:
Find the applicable condition in the second column, in order to find the relevant rate to apply, in the third column.

Part B—*continued*

Schedule 2 Part B table 1: substituted, on 1 October 2010, by section 37 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 2 Part B table 1: substituted, on 1 April 2010 (applying for the 2010–11 and later income years), by section 123(3) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 3

ss EF 3, RA 13, RA 14, RC 1, RC 21, RC 25, RM 24, YA 1

Payment of provisional tax and terminal tax

A
Dates for payment of provisional tax and terminal tax

Month of balance date	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**
October	28 Jan	28 Mar	28 May	28 Jul	28 Sep	28 Nov	Sep	Nov
November	28 Feb	7 May	28 Jun	28 Aug	28 Oct	15 Jan	Oct	Dec
December	28 Mar	28 May	28 Jul	28 Sep	28 Nov	28 Jan	Nov	Jan
January	7 May	28 Jun	28 Aug	28 Oct	15 Jan	28 Feb	Dec	Feb
February	28 May	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	Jan	Mar

A—*continued*

Month of balance date	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**
March	28 Jun	28 Aug	28 Oct	15 Jan	28 Feb	7 May	Feb	Apr
April	28 Jul	28 Sep	28 Nov	28 Jan	28 Mar	28 May	Feb	Apr
May	28 Aug	28 Oct	15 Jan	28 Feb	7 May	28 Jun	Feb	Apr
June	28 Sep	28 Nov	28 Jan	28 Mar	28 May	28 Jul	Feb	Apr
July	28 Oct	15 Jan	28 Feb	7 May	28 Jun	28 Aug	Feb	Apr
August	28 Nov	28 Jan	28 Mar	28 May	28 Jul	28 Sep	Feb	Apr
September	15 Jan	28 Feb	7 May	28 Jun	28 Aug	28 Oct	Feb	Apr

For the purposes of this schedule, **balance date**, in relation to provisional tax or terminal tax payable by a person for a tax year to which an income year corresponds, means —

(a) if neither of paragraphs (b) and (c) apply, the person's annual balance date for their accounts for the income year:

(b) if the person has an income year that coincides with the tax year or is not required to provide a return of income for the tax year, 31 March:

(c) if the person is a non-resident company that does not have a fixed establishment in New Zealand, 31 March.

B
Months for payment under sections RC 9 and RC 22 to RC 25

Monthly and 2-monthly non-ratio and non-GST provisional taxpayers

Transitional year length	**New instalment months**	
0–4 mths	1	month following final month
5–8 mths	2	5th month, month following final month
9–12 mths	3	5th, 9th months, month following final month
13–16 mths	4	5th, 9th, 13th months, month following final month
17–20 mths	5	5th, 9th, 13th, 17th months, month following final month
21–24 mths	6	5th, 9th, 13th, 17th, 21st months, month following final month

6-monthly non-ratio provisional taxpayers

Transitional year length	**New instalment months**	
0–6 mths	1	month following final month
7–12 mths	2	7th month, month following final month
13–18 mths	3	7th, 13th months, month following final month
19–24 mths	4	7th, 13th, 19th months, month following final month

B—*continued*

GST ratio provisional taxpayers

Transi-tional year length	**New instalment months**	
0–2 mths	1	month following final month
3–4 mths	2	3rd month, month following final month
5–6 mths	3	3rd, 5th months, month following final month
7–8 mths	4	3rd, 5th, 7th months, month following final month
9–10 mths	5	3rd, 5th, 7th, 9th months, month following final month
11–12 mths	6	3rd, 5th, 7th, 9th, 11th months, month following final month
13–14 mths	7	3rd, 5th, 7th, 9th, 11th, 13th months, month following final month
15–16 mths	8	3rd, 5th, 7th, 9th, 11th, 13th, 15th months, month following final month
17–18 mths	9	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th months, month following final month
19–20 mths	10	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th months, month following final month
21–22 mths	11	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th, 21st months, month following final month
23–24 mths	12	3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th, 21st , 23rd months, month following final month

B—*continued*

For the purposes of counting months under this schedule, the number is reckoned as set out in section RC 21(5).

Schedule 4

ss RD 8, YA 1

Rates of tax for schedular payments

Part A
Payments to non-resident contractors

1

A contract payment that relates to a non-resident contractor's contract activity or service has a 0.15 rate of tax for each dollar of the payment, if the payment is—

(a) to the non-resident contractor:

(b) to an agent of the non-resident contractor:

(c) to a person acting on behalf of the non-resident contractor.

Part B
Payments of company directors' fees, examiners' fees, honoraria, and other payments

1

A payment of a company director's fee, or an examiner's fee, or an honorarium, has a 0.33 rate of tax for each dollar of the payment.

1B

A payment has a 0.33 rate of tax for each dollar of the payment, if it is for work or services performed by—

(a) a local government elected representative:

(b) an official of a community organisation, society, or club:

(c) a chair or member of a committee, board, or council:

Part B—*continued*

(d) an official, chair, or member of a body or organisation similar to one described in paragraph (b) or (c).

2

In this part, **examiner's fee** means fees or remuneration for work or services that relate to examining an examination candidate, if the work or services have the following nature:

(a) setting an examination paper or question:
(b) marking a candidate's answer:
(c) examining a candidate orally:
(d) examining a candidate's practical work or performance.

Schedule 4 Part B heading: amended (with effect on 1 April 2008), on 7 September 2010, by section 121(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 4 Part B clause 1B: inserted (with effect on 1 April 2008), on 7 September 2010, by section 121(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Part C
Payments for work or services relating to primary production

1

A payment for work or services referred to in the following paragraphs has a 0.15 rate of tax for each dollar of the payment:

(a) farming contract work:
(b) cultivation contract work:
(c) shearing:
(d) droving:
(e) *[Repealed]*
(f) forestry or bush work (including bush felling, road and tramway work, removal of timber, undergrowth cutting, burning, or clearing):
(g) planting or cutting flax:
(h) work described in section DO 1 or DO 2 that is related to land that is used or intended to be used for farming or agriculture.

Part C—*continued*

Schedule 4 Part C clause 1(b): substituted, on 1 April 2010, by section 579(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 4 Part C clause 1(e): repealed, on 1 April 2010, by section 579(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

2

In this part,—

cultivation contract work—

(a) means work or services provided under a contract or arrangement—
  (i) for the supply of labour, or substantially for the supply of labour; and
  (ii) on or in connection with land that is used or intended to be used for the cultivation of fruit crops, vegetables, orchards, or vineyards:

(b) excludes work or services provided by—
  (i) a post-harvest facility:
  (ii) a management entity under a formal management agreement under which the entity is responsible for payment for the work or services provided

farming contract work means work that is related to land that is used or intended to be used for farming or agriculture, if the work has the following nature

(a) firewood cutting, or post or rail splitting:
(b) cutting down trees incidental to work under paragraph (a):
(c) grass or grass seed cutting:
(d) hedge cutting:
(e) planting trees:
(f) planting or cutting flax:
(g) threshing, chaffcutting, hay making, hay baling, or harvesting or gathering crops

Schedule 4 Part C clause 2 **cultivation contract work**: substituted (with effect on 1 April 2010), on 7 September 2010, by section 121(3) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Part C—*continued*

Schedule 4 Part C clause 2 **cultivation contract work**: added, on 1 April 2010, by section 579(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 4 Part C clause 2 **horticultural contract work**: repealed, on 1 April 2010, by section 579(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part D
Payments for commercial cleaning and maintenance work, or for general contracting

1

A payment for commercial cleaning or maintenance work has a 0.20 rate of tax for each dollar of the payment.

2

A payment for work or services referred to in the following paragraphs has a 0.15 rate of tax for each dollar of the payment:

(a) mail delivery or collection:
(b) transporting school children:
(c) milk delivery:
(d) refuse removal:
(e) caretaking or acting as a guard:
(f) street or road cleaning.

3

In this part,—

commercial cleaning or maintenance work means work or services that are related to schedular commercial land, if the work or services have the following nature

(a) cleaning all or part of premises:
(b) cleaning or laundering plant, vehicles, furniture, furnishings, fittings, or equipment:
(c) gardening (including grass cutting and hedge cutting):
(d) destroying vermin:
(e) destroying weeds

Part D—*continued*

schedular commercial land means land that—

(a) is not used for farming or agriculture purposes:

(b) is not a dwellinghouse:

(c) is not premises that are used exclusively for residential purposes.

Part E
Payments for labour-only building work, or for labour-only fishing boat operating

1

A payment for labour-only building work, or for labour-only fishing boat work, has a 0.20 rate of tax for each dollar of the payment.

2

In this part,—

labour-only fishing boat work means work or services under a contract, arrangement, or agreement for profit-sharing which is exclusively or substantially for the supply of labour in connection with operating or maintaining a fishing boat that is required to be registered under section 103 of the Fisheries Act 1996

labour-only building work means work or services under a contract or arrangement which is exclusively or substantially for the supply of labour in connection with a building or a construction (including pre-fabrication and pre-cutting for the relevant building or construction), if the work or services have the following nature

(a) work or services that, customarily, may form part of the work or services of a carpenter under a building contract:

(b) work or services connected with roof-fixing, steel-fixing, erecting fences, or laying concrete, bricks, blocks, tiles, slabs, or stones, if the relevant building or construction is not land that is used or intended to be used for farming or agriculture:

Part E—*continued*

(c) work or services connected with hanging wallpaper, hanging decorative wall coverings or furnishings, or painting or decorating (including plastering):

(d) work or services connected with installing fibrous plaster, wallboard, insulating material, interior tiles, interior lining, floor tiles, carpet, linoleum, or floor coverings.

Part F
Payments for activities related to sports, media, entertainment, and public speaking

Schedule 2 Part F heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 579(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

1

A payment of a media contribution fee, or of a promotional appearance fee, has a 0.25 rate of tax for each dollar of the payment.

2

A payment that relates to media production work has a 0.20 rate of tax for each dollar of the payment, if part A of this schedule, and clauses 4 and 5 of this part do not apply to the payment.

3

A payment of a modelling fee has a 0.20 rate of tax for each dollar of the payment.

4

A payment for services connected with a non-resident entertainer providing or performing a Part F activity has a 0.20 rate of tax for each dollar of the payment, if the payment is—

(a) to the non-resident entertainer:

(b) to an agent of the non-resident entertainer:

Part F—*continued*

(c) to a person acting on behalf of the non-resident entertainer.

Schedule 2 Part F clause 4: amended (with effect on 1 April 2008), on 6 October 2009, by section 579(4) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

5

A payment for services connected with a New Zealand resident providing or performing a Part F activity has a 0.20 rate for each dollar of the payment, if clause 6 does not apply to the payment and it is—

(a) to the New Zealand resident:

(b) to an agent of the resident:

(c) to a person acting on behalf of the resident.

Schedule 2 Part F clause 5: amended (with effect on 1 April 2008), on 6 October 2009, by section 579(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

6

A payment for services connected with a New Zealand resident providing or performing a Part F activity has a 0.15 rate for each dollar of the payment, if the payment relates to shares of riding or driving fees and it is—

(a) to the New Zealand resident, and the resident is an apprentice jockey or an apprentice driver:

(b) to an agent of the apprentice jockey or apprentice driver:

(c) to a person acting on behalf of the apprentice jockey or apprentice driver.

Schedule 2 Part F clause 6: amended (with effect on 1 April 2008), on 6 October 2009, by section 579(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

7

In this part,—

media contribution fee means fees or remuneration, paid to a contributor, that relate to a contribution for television, radio, theatre, stage, or printed media

Part F—*continued*

media production work means work or services that relate to television, videos, or films, if the work or services have the following nature

(a) on-set and off-set pre-production work or services:

(b) on-set and off-set production work or services:

(c) on-set and off-set post-production work or services

modelling fee means fees or remuneration that relate to modelling, including a personal attendance for any promotional purpose, for photography, for supplying personal photographs, or for supplying personal endorsements or statements

Part F activity means an activity or performance—

(a) connected with—

(i) a sporting event or competition:

(ii) making speeches or giving lectures or talks for any purpose:

(iii) acting, singing, playing music, dancing, or entertaining generally, for any purpose and whether alone or not; and

(b) undertaken by a person who meets the requirements of any of the following paragraphs:

(i) they are not fully or partly sponsored under a cultural programme of an overseas government or the Government of New Zealand:

(ii) they are not an official representative of a body that administers a game or sport in an overseas country:

(iii) they are not undertaking an activity or performance under a programme of a foundation, trust, or organisation outside New Zealand which exists for the promotion of a cultural activity and is not carried on for individual profit of the member or shareholder:

(iv) if they are an employee, officer, or principal of a company, firm, or other person, includes the company, firm, or other person

Part F—*continued*

promotional appearance fee means fees or remuneration that relate to a personal attendance for exhibiting or demonstrating goods

Schedule 2 Part F clause 7 **Part F activity**: inserted (with effect on 1 April 2008), on 6 October 2009, by section 579(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 2 Part F clause 7 **schedular entertainment activities**: repealed (with effect on 1 April 2008), on 6 October 2009, by section 579(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part G
Sales commission

1

A payment of commission or remuneration to an insurance agent or sub-agent, or to a salesperson has a 0.20 rate of tax for each dollar of the payment.

Part H
Payments to purchase natural products

1

A payment that relates to a purchase of schedular natural products has a 0.25 rate of tax for each dollar of the payment, if the payment is made to the seller and it is not an exempt natural products payment.

2

A payment that relates to a purchase of game has a 0.25 rate of tax for each dollar of the payment, if the payment is made to the seller.

3

In this part,—

Part H—*continued*

exempt natural products payment means a payment that relates to the purchase of schedular natural products, if the payment is made—

(a) to a natural products dealer:

(b) on a purchase that occurs after a disposal by a natural products dealer:

(c) to an auctioneer or a dealer acting as agent for the seller:

(d) at retail, in a shop

game means all or part of a wild deer, wild pig, or wild goat, whether dead or alive

natural products dealer means a person who—

(a) is registered under any Act or regulation as a broker, dealer, or trader in relation to schedular natural products:

(b) holds a natural product dealer certificate, issued by the Commissioner under section 44D of the Tax Administration Act 1994:

(c) holds an unrevoked certificate from the Commissioner showing that the person would be a licensed dealer for purposes of the Income Tax (Withholding Payments) Regulations 1979 if those regulations had not been revoked by this Act

schedular natural products means—

(a) greenstone (nephrite):

(b) eel:

(c) whitebait:

(d) sphagnum moss.

Part I
Personal service rehabilitation payments

Schedule 4 Part I: added, on 1 April 2008, by section 556 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Part I—*continued*

1

A personal service rehabilitation payment for a person under the Accident Compensation Act 2001 has a 0.105 rate of tax for each dollar of the payment.

Schedule 4 Part 1 clause 1: amended, on 21 December 2010, by section 189 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Schedule 4 Part I clause 1: amended, on 1 October 2010, by section 38 of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 4 Part I clause 1: amended, on 1 October 2008, by section 51 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 5

ss GB 31, RD 28, RD 29, RD 56, RD 57

Fringe benefit values for motor vehicles

1

The following paragraphs apply to determine the value of the benefit that an employee has for a quarter, tax year, or income year when section RD 60 applies, if in the quarter, tax year, or income year, a motor vehicle is provided by a person for the private use of an employee, or is made available for their private use:

(a) if the vehicle is owned by the person, jointly or otherwise,—

  (i) on the basis of the cost price of the vehicle to the person: for a quarter, 5% of the cost price, and for a tax year or income year, 20% of the cost price:

  (ii) subject to clause 10, on the basis of the tax value of the vehicle to the person: for a quarter, 9% of the tax value, and for a tax year or income year, 36% of the tax value:

(b) if the vehicle is leased or rented by the person from another person, whether they are associated or not,—

  (i) on the basis of the cost price of the vehicle to its owner at the time the benefit is provided to the

employee: for a quarter, 5% of the cost price, and for a tax year or income year, 20% of the cost price:

(ii) subject to clause 10, on the basis of the tax value of the vehicle to its owner at the time the benefit is provided to the employee: for a quarter, 9% of the tax value, and for a tax year or income year, 36% of the tax value.

2

If a motor vehicle to which this schedule applies is 1 of a number of motor vehicles, each of which is available for private use as described in clause 1, the value of the benefit is determined as follows:

(a) if the employee mainly uses the same vehicle, clause 1 applies to that vehicle:

(b) if paragraph (a) does not apply, and the employee is employed in a business engaged in the selling of motor vehicles, and the vehicles available for use are trading stock of the business, clause 1 applies to the quotient obtained by dividing the sum of either the cost price of the vehicles or their tax value, by the total number of those vehicles:

(c) if paragraphs (a) and (b) do not apply, clause 1 applies to the highest value of any vehicle used by the employee.

3

In this schedule, a motor vehicle's tax value in a quarter, tax year, or income year is—

(a) the value of the vehicle as determined under subpart EE for the beginning of the tax year or income year, if paragraphs (b) and (c) do not apply; or

(b) the cost price of the vehicle, if the vehicle is acquired after the beginning of the tax year or income year, and paragraph (c) does not apply; or

(c) determined under clause 4 if, in the period of 2 years before the vehicle's acquisition by the person (**person A**) providing it to the employee, the vehicle is owned

by person A or by a person (**person B**) associated with them.

Schedule 5 clause 3(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 5 clause 3(c): substituted (with effect on 1 April 2008), on 6 October 2009, by section 580(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

4

For the purposes of clause 3(c), the tax value of the vehicle is the value it would have under subpart EE at the beginning of the tax year or income year, or at the time of acquisition in the year, treating the cost of the vehicle on acquisition as the amount determined under—

(a) clause 5, if—

(i) the cost price was last used by person A or person B for the vehicle under clause 1:

(ii) clause 1 did not apply to the vehicle in the 2-year period referred to in clause 3(c) and neither person A nor person B has used the tax value for the vehicle under clause 1:

(b) clause 6, if person A did not own the vehicle and person B last used the tax value of the vehicle under clause 1:

(c) clause 7, if person A owned the vehicle and the tax value was last used for the vehicle under clause 1.

5

The highest of the following amounts is the relevant amount for clause 4(a):

(a) the highest cost of the vehicle to person A on an acquisition of it by them:

(b) the highest cost of the vehicle to person B on an acquisition of it by them.

6

The highest of the following amounts is the relevant amount for clause 4(b):

(a) the tax value of the vehicle under this schedule for person B, immediately before the last disposal of the vehicle by them:
(b) the cost of the vehicle to person A on acquisition.

7

The highest of the following amounts is the relevant amount for clause 4(c):

(a) the tax value of the vehicle under this schedule for whichever of person A or person B last used tax value for the vehicle under clause 1, immediately before the last disposal of the vehicle by that person:
(b) the cost of the vehicle to person A on the last acquisition of it by them.

8

To determine the value of a benefit under clause 1—

(a) any GST paid on the acquisition of a vehicle by the owner or lessor of the vehicle is—
    (i) included in the cost price of the motor vehicle or in the calculation of the motor vehicle's tax value:
    (ii) not reduced by an amount of input tax on the supply of the vehicle to the owner or lessor:
(b) if, in the period of 2 years before the vehicle's acquisition by the person providing it to the employee, the vehicle is owned by the person or by someone associated with them, the cost price is treated as being the highest one of the cost prices paid for the vehicle by the person or an associate since its manufacture:
(c) subject to paragraph (b), the cost price of the vehicle is treated as being equal to the vehicle's market value if,—
    (i) the cost to the person who acquires the vehicle is zero; or
    (ii) the cost price is unable to be established to the satisfaction of the Commissioner by the person who acquires the vehicle; or
    (iii) at the time the vehicle is acquired, the cost price to the person who acquires the vehicle is less

than the market value because of an arrangement between that person and an associated person, and that arrangement has the purpose of defeating the intent and application of the FBT rules.

9

Despite clause 8(a), a person who in a quarter, tax year, or income year provides a benefit that is valued under clause 1 may choose to value the vehicle on the basis of its cost price exclusive of GST or its tax value calculated exclusive of GST using clause 1 as modified by clause 10.

10

The following paragraphs apply to a person who values a vehicle on the basis of its cost price exclusive of GST or its tax value calculated exclusive of GST:

(a) the terms 'cost price' and 'tax value' in clause 1 do not include an amount of GST payable:

(b) the references to 5% in clause 1 are treated as if they were references to a percentage calculated using the formula—

5 + (5 × rate of GST applying on last day of relevant quarter):

(c) the references to 9% in clause 1 are treated as if they were references to a percentage calculated using the formula—

9 + (9 × rate of GST applying on last day of relevant quarter):

(d) the references to 20% in clause 1 are treated as if they were references to a percentage calculated using the formula—

20 + (20 × rate of GST applying on last day of relevant tax year or corresponding income year):

(e) the references to 36% in clause 1 are treated as if they were references to a percentage calculated using the formula—

36 + (36 × rate of GST applying on last day of relevant tax year or corresponding income year).

11

When a vehicle is leased or rented to the person after it has been leased or rented to another person (the **other person**), the cost price of a vehicle is its market value at the time it is first leased or rented to the person if—

(a) the person is not associated with the other person; and

(b) the person is not associated with the lessor or owner of the vehicle; and

(c) the employee is not the lessor or owner of the vehicle; and

(d) the employee is not associated with the lessor or owner of the vehicle.

12

If the vehicle is leased or rented by the person from another person and the lessee requests that the lessor disclose the cost price or tax value of the vehicle for the lessor, the lessor must disclose to the lessee the information requested.

13

The minimum tax value of a motor vehicle to which this schedule applies is $8,333.

Schedule 6

ss CX 50B, HM 56

Prescribed rates: PIE investments and retirement scheme contributions

Schedule 6: inserted, on 1 April 2010 (applying to income years beginning on or after 1 April 2010), by section 124(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

1 PIE investments

The prescribed investor rate for a person who is an investor in a multi-rate PIE is set out in table 1.

Table 1

Row	Conditions	Prescribed rate

1	For a natural person who is resident in New Zealand, other than a person described in row 4 or 6.	0.280
2	For a non-resident person other than a person described in row 7B or 9.	0.280
3	For a person who—	
	(a) is resident in New Zealand and who derives income for the relevant tax year as a trustee of a trust other than a trust with income that is exempt income under section CW 41 or CW 42; and	
	(b) notifies this rate for the relevant tax year.	0.280
4	For a natural person who is resident in New Zealand and is not a person described in row 6 and who, in either of the 2 income years before the relevant tax year, derives—	
	(a) $48,000 or less in taxable income; and	
	(b) $70,000 or less in the sum of their taxable income and attributed PIE income after subtracting any attributable PIE loss.	0.175
5	For a person who—	
	(a) is resident in New Zealand and derives income for the relevant tax year as a trustee of a trust other than a trust with income that is exempt income under section CW 41 or CW 42; and	
	(b) notifies this rate for the relevant tax year.	0.175
6	For a natural person who is resident in New Zealand and who, in either of the 2 income years before the relevant tax year, derives—	
	(a) $14,000 or less in taxable income; and	
	(b) $48,000 or less in the sum of their taxable income and attributed PIE income after subtracting any attributable PIE loss.	0.105
7	For a person who—	

	(a) is resident in New Zealand and derives income for the relevant tax year as a trustee of a testamentary trust to which section HC 37 applies other than a trust with income that is exempt income under section CW 41 or CW 42; and	
	(b) notifies this rate for the relevant tax year.	0.105
7B	For a non-resident person who is a notified foreign investor in a foreign investment variable-rate PIE, *see* **table 1B** for the applicable rate for the amount of income.	variable
8	For a person who is a zero-rated investor.	0.000
9	For a non-resident person who is a notified foreign investor in a foreign investment zero-rate PIE.	0.000
10	For a transitional resident who is an investor in a foreign investment zero-rate PIE.	0.000

How to use this table

Find the applicable condition, in the second column, in order to find the relevant rate to apply, in the third column.

Schedule 6 table 1: substituted (with effect on 1 April 2010), on 7 September 2010, by section 122 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 6 table 1 row 1: amended, on 1 October 2010, by section 39(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 1 row 2: substituted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 137(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 6 table 1 row 3: amended, on 1 October 2010, by section 39(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 1 row 4: amended, on 1 October 2010, by section 39(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 1 row 5: amended, on 1 October 2010, by section 39(e) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 1 row 6: amended, on 1 October 2010, by section 39(f) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 1 row 7: amended, on 1 October 2010, by section 39(g) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 1 row 7B: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 137(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 6 table 1 row 9: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 137(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 6 table 1 row 10: added, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 137(2) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

1B Foreign investment variable-rate PIEs and notified foreign investors

A foreign investment variable-rate PIE must apply the prescribed investor rates set out in table 1B in relation to income attributed to notified foreign investors in the PIE.

Table 1B

Row	Amounts	Prescribed rate
1	To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who does not reside in a country with which New Zealand has a double tax agreement.	0.3000
2	An amount other than an amount referred to in rows 1, and 3 to 5, that has a source in New Zealand.	0.2800
3	To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who resides in a country with which New Zealand has a double tax agreement.	0.1500
4	Interest derived under a financial arrangement, being an amount referred to in the definition of **interest**, paragraph (a) or (b), that has a source in New Zealand and is calculated under subpart EW.	0.0144

5	A fully imputed dividend derived from a company resident in New Zealand.	0.0000
6	A foreign-sourced amount.	0.0000
7	An amount derived under a financial arrangement that has a source in New Zealand other than an amount of interest referred to in row 4.	0.0000

Schedule 6 clause 1B: inserted, on 29 August 2011 (applying for the 2012–13 and later income years for a foreign investment variable-rate PIE and a notified foreign investor in the PIE), by section 137(3) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

2 Retirement scheme contributions

The retirement scheme prescribed rate for a person in relation to a retirement scheme contribution made for them is set out in table 2.

Table 2

Row	Conditions	Prescribed rate
1	For a person other than a person described in any of rows 2 to 7.	0.330
2	For a person who, in either of the 2 income years before the income year in which the contribution is made, derives more than $48,000 but not more than $70,000 in taxable income.	0.300
3	For a person who is not a person described in row 2 and who, in either of the 2 income years before the income year in which the contribution is made, derives more than $14,000 but not more than $48,000 in taxable income.	0.175
4	For a person who is not a person described in row 2 or 3 and who, in either of the 2 income years before the income year in which the contribution is made, derives taxable income of $14,000 or less.	0.105

Table 2

Row	Conditions	Prescribed rate
5	For a non-resident person to whom a distribution of no more than $200 is made by a retirement scheme contributor that is a Maori authority.	0.105
6	For a non-resident person who supplies a retirement scheme contributor that is a Maori authority with a notice under section 28C of the Tax Administration Act 1994.	0.105
7	For a non-resident person in relation to a contribution that consists of non-resident passive income.	0.000

How to use this table

Find the applicable condition in the second column, in order to find the relevant rate to apply, in the third column.

Schedule 6 table 2 row 1: amended, on 1 October 2010, by section 40(a) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 2 row 2: amended, on 1 October 2010, by section 40(b) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 2 row 3: amended, on 1 October 2010, by section 40(c) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 2 row 4: amended, on 1 October 2010, by section 40(d) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 2 row 5: amended, on 1 October 2010, by section 40(e) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 6 table 2 row 6: amended, on 1 October 2010, by section 40(f) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Schedule 10

ss EE 40, EE 41, EZ 14, EZ 15

Straight-line equivalents of diminishing value rates of depreciation

Column 1	*Column 2*
Diminishing value depreciation rate	**Straight-line equivalent**
(%)	**(%)**
1	1
2	1.5
2.5	2
3	2.5
4	3
5	3.5
6	4
7	5
7.5	5.5
8	6
9.5	6.5
10	7
11	7.5
12	8
13	8.5
13.5	9

Column 1	*Column 2*
Diminishing value depreciation rate	**Straight-line equivalent**
(%)	**(%)**
14	9.5
15	10
16	10.5
16.5	11
17	11.5
17.5	12
18	12.5
19	13
20	13.5
20.5	14
21	14.5
21.5	15
22	15.5
23	16
24	16.5
24.5	17
25	17.5
26	18
27	18.5
27.5	19

Column 1 **Diminishing value depreciation rate** **(%)**	*Column 2* **Straight-line equivalent** **(%)**
28	19.5
28.5	20
29	20.5
30	21
31	22
32	22.5
32.5	23
33	24
34	24.5
34.5	25
35	25.5
36	26
37	27
38	27.5
39	28
39.5	29
40	30
41	31
42	32
43	32.5

Column 1 **Diminishing value depreciation rate** **(%)**	*Column 2* **Straight-line equivalent** **(%)**
44	33
45	33.5
45.5	34
46	34.5
46.5	35
47	35.5
47.5	36
48	36.5
48.5	37
49	39
50	40
50.5	41
51	42
52	43
53	44
54	45
55	45.5
56	46
57	47
58	47.5

Column 1 **Diminishing value depreciation rate** **(%)**	*Column 2* **Straight-line equivalent** **(%)**
60	48
61	49
62	50
63	51
63.5	63.5
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78

Column 1	*Column 2*
Diminishing value depreciation rate	**Straight-line equivalent**
(%)	**(%)**
79	79
80	80
81	81
82	82
100	100

Schedule 11

ss EE 27, EE 28

New banded rates of depreciation

Other assets (excluding fixed life intangible property, excluded depreciable property, and buildings)		**Buildings**	
Column 1	**Column 2**	**Column 3**	**Column 4**
DV rate	**Straight-line rate**	**DV rate**	**Straight-line rate**
(%)	**(%)**	**(%)**	**(%)**
100	100	0	0
67	67	0	0
50	40	0	0
40	30	0	0

Other assets (excluding fixed life intangible property, excluded depreciable property, and buildings)		Buildings	
Column 1	**Column 2**	**Column 3**	**Column 4**
DV rate	**Straight-line rate**	**DV rate**	**Straight-line rate**
(%)	**(%)**	**(%)**	**(%)**
30	21	0	0
25	17.5	0	0
20	13.5	0	0
16	10.5	13.5	8
13	8.5	11	6.5
10	7	8.5	5
8	6	6.5	4
6	4	4.5	3
4	3	3	2
2	1.5	1.3	1

Schedule 12

ss DB 46, EC 34, EC 35, EE 30, EZ 23

Old banded rates of depreciation

Column 1 **Diminishing value depreciation rate** **(%)**	*Column 2* **Straight-line equivalent** **(%)**
2	1.5
4	3
6	4
7.5	5.5
9.5	6.5
12	8
15	10
18	12.5
22	15.5
26	18
33	24
40	30
50	40
63.5	63.5
100	100

Schedule 13

s EE 7

Depreciable land improvements

1	airport runways
2	bores and wells
3	bridges
4	chimneys
5	culverts
6	dams
7	fences
8	hardstanding
9	reservoirs
10	retaining walls
11	roads
12	spillways
13	swimming pools
14	tanks
15	tunnels
16	wharves
17	pipes
18	purpose-built surfaces for outdoor sports facilities

Schedule 13: amended (with effect on 1 April 2008), on 6 October 2009, by section 581(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 13: amended (with effect on 1 April 2008), on 6 October 2009, by section 581(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 14

ss DZ 11, EE 43, EE 2, EZ 12

Depreciable intangible property

Schedule 14 heading: amended, on 1 April 2008, by section 557 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

1 the right to use a copyright

2 the right to use a design or model, plan, secret formula or process, or other like property or right

3 a patent or the right to use a patent

4 a patent application with a complete specification lodged on or after 1 April 2005

5 the right to use land

6 the right to use plant or machinery

7 the copyright in software, the right to use the copyright in software, or the right to use software

8 the right to use a trademark

9 management rights and licence rights created under the Radiocommunications Act 1989

10 a consent granted under the Resource Management Act 1991 to do something that otherwise would contravene sections 12 to 15 of that Act (other than a consent for a reclamation), being a consent granted in or after the 1996–97 tax year

11 the copyright in a sound recording, if the copyright was produced or purchased by the taxpayer on or after 1 July 1997, and copies of the recording have been sold or offered for sale to the public

12 plant variety rights granted under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand

13 a right to use plant variety rights granted under the Plant Variety Rights Act 1987 or a similar right under the laws of a country or territory other than New Zealand

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Schedule 17

ss EC 15, YA 1

Types and classes of livestock

Column 1	*Column 2*
Types of livestock	**Classes of livestock**
Beef cattle	*Beef breeds and beef crosses*
	Rising 1 year heifers
	Rising 2 year heifers
	Mixed-age cows
	Rising 1 year steers and bulls
	Rising 2 year steers and bulls
	Rising 3 year and older steers and bulls
	Breeding bulls
Dairy cattle	*Friesian and related breeds*
	Rising 1 year heifers
	Rising 2 year heifers
	Mixed-age cows
	Rising 1 year steers and bulls

Column 1 **Types of livestock**	*Column 2* **Classes of livestock**
	Rising 2 year steers and bulls
	Rising 3 year and older steers and bulls
	Breeding bulls
	Jersey and other dairy breeds
	Rising 1 year heifers
	Rising 2 year heifers
	Mixed-age cows
	Rising 1 year steers and bulls
	Rising 2 year and older steers and bulls
	Breeding bulls
Deer	*Red deer*
	Rising 1 year hinds
	Rising 2 year hinds
	Mixed-age hinds
	Rising 1 year stags
	Rising 2 year and older stags (non-breeding)
	Breeding stags
	Wapiti, elk, and related crossbreeds
	Rising 1 year hinds
	Rising 2 year hinds
	Mixed-age hinds

Column 1 **Types of livestock**	*Column 2* **Classes of livestock**
	Rising 1 year stags
	Rising 2 year and older stags (non-breeding)
	Breeding stags
	Other breeds
	Rising 1 year hinds
	Rising 2 year hinds
	Mixed-age hinds
	Rising 1 year stags
	Rising 2 year and older stags (non-breeding)
	Breeding stags
Goats	*Angora and angora crosses (mohair producing)*
	Rising 1 year does
	Mixed-age does
	Rising 1 year bucks (non-breeding)/wethers
	Bucks (non-breeding)/wethers over 1 year
	Breeding bucks
	Other fibre and meat producing goats (cashmere or cashgora producing)
	Rising 1 year does
	Mixed-age does

Column 1	*Column 2*
Types of livestock	**Classes of livestock**
	Rising 1 year bucks (non-breeding)/wethers
	Bucks (non-breeding)/wethers over 1 year
	Breeding bucks
	Milking (dairy) goats
	Rising 1 year does
	Does over 1 year
	Breeding bucks
	Other dairy goats
Pigs	Breeding sows less than 1 year of age
	Breeding sows over 1 year of age
	Breeding boars
	Weaners less than 10 weeks of age (excluding sucklings)
	Growing pigs 10 to 17 weeks of age (porkers/baconers)
	Growing pigs over 17 weeks of age (baconers)
Sheep	Ewe hoggets
	Ram and wether hoggets
	Two-tooth ewes
	Mixed-age ewes (rising 3 year and rising 4 year ewes)
	Rising 5 year and older ewes

Column 1 **Types of livestock**	*Column 2* **Classes of livestock**
	Mixed-age wethers
	Breeding rams

Schedule 18

ss EC 23, EC 24

Categories of livestock for which national standard costs to be declared

Column 1 **Types of livestock**	*Column 2* **Categories for which national standard costs be declared**	*Column 3* **Types of costs to be to declared**
Beef cattle	Rising 1 year	Breeding, rearing, and growing
	Rising 2 year	Rearing and growing
	Rising 3 year male non-breeding cattle (all breeds)	Rearing and growing
Dairy cattle	Purchased bobby calves	Rearing and growing
	Rising 1 year	Breeding, rearing, and growing
	Rising 2 year	Rearing and growing

Column 1 **Types of livestock**	*Column 2* **Categories for which national standard costs be declared**	*Column 3* **Types of costs to be to declared**
Deer	Rising 1 year	Breeding, rearing, and growing
	Rising 2 year	Rearing and growing
Goats (dairy)	Rising 1 year	Breeding, rearing, and growing
	Rising 2 year	Rearing and growing
Goats (meat and fibre)	Rising 1 year	Breeding, rearing, and growing
	Rising 2 year	Rearing and growing
Pigs	Weaners to 10 weeks	Breeding, rearing, and of age growing
	Growing pigs 10 to 17 weeks of age	Rearing and growing
Sheep	Rising 1 year	Breeding, rearing, and growing
	Rising 2 year	Rearing and growing

Schedule 19

ss CB 28, DB 46, EK 2, EK 11, EK 12, EK 20, EK 23

Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant

A
Expenditure relating to activity or improvement to land

1

expenditure on investigating and testing locations and methods, before a decision is made to use a location or method, for an activity or improvement that is intended to avoid, remedy, or mitigate future detrimental effects on the environment from the discharge of a contaminant

2

expenditure, in the construction of an improvement on land in New Zealand, incurred in order to avoid or mitigate future detrimental effects on the environment from the discharge of a contaminant

3

expenditure on screen planting, on land in New Zealand, incurred in association with the construction of an improvement to the land that is intended to avoid, or mitigate future detrimental effects on the environment from the discharge of a contaminant

4

expenditure on riparian planting, on land in New Zealand, incurred in order to avoid or mitigate future detrimental effects on the environment from the discharge of a contaminant

A—*continued*

expenditure on an activity that is intended to avoid or mitigate the future discharge of a contaminant

B
Expenditure relating to monitoring, remedies, and mitigation

1

expenditure related to monitoring the discharge of a contaminant

2

expenditure related to monitoring detrimental effects on the environment from the discharge of a contaminant

3

expenditure, incurred after the discharge of a contaminant, on avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant

4

expenditure, incurred after the discharge of a contaminant, on removing an improvement to land in New Zealand for the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant

5

expenditure, incurred after the discharge of a contaminant, on the installation of impermeable surfaces on land in New Zealand with the purpose of avoiding, remedying, or mitigating detrimental effects on the environment from the discharged contaminant

B—*continued*

6 expenditure, incurred after the discharge of a contaminant, on replanting land in New Zealand in association with expenditure to avoid, remedy, or mitigate detrimental effects on the environment from the discharged contaminant

7 expenditure, incurred in the cessation of a business, on disposing of a stored substance that is a potential contaminant in a way that avoids detrimental effects on the environment

C
Excluded expenditure

1 expenditure related to land reclamation

2 expenditure relating to dredging, other than dredging for the principal purpose of remedying or mitigating detrimental effects on the environment from a discharged contaminant

3 expenditure related to the acquisition of land

Schedule 20

ss DO 4, DO 5, DO 11, DO 12, DO 13, DP 3, DZ 17, DZ 18, YA 1

Expenditure on farming, horticultural, aquacultural, and forestry improvements

Improvement	Percentage of diminished value of improvement

		allowed as deduction
	Part A	
	Farming	
1	unless clause 2 applies, preparation of the land for farming or agriculture, including cultivation and grassing	6
2	regrassing and fertilising all types of pasture in the course of a significant capital activity that relates to a type of pasture with an estimated useful life of more than 1 year	45
3	draining of swamp or low-lying lands	6
4	construction of access roads or tracks to or on the land	6
5	construction of dams, stopbanks, irrigation or stream diversion channels, or other improvements for the purpose of conserving or conveying water for use on the land or for preventing or combating soil erosion, other than planting or maintaining trees, whether or not on the land, for the purpose of providing shelter to the land	6
6	construction of earthworks, ponds, settling tanks, or other similar improvements mainly for the purpose of the treatment of waste products in order to prevent or combat pollution of the environment	6

	Improvement	Percentage of diminished value of improvement allowed as deduction
7	sinking of bores or wells for the purpose of supplying water for use on the land	6
8	construction of aeroplane landing strips to facilitate aerial topdressing of the land	6
9	planting of non-listed horticultural plants on the land (see section 44C of the Tax Administration Act 1994)	12
10	erection on the land of electric power lines or telephone lines	12
11	construction on the land of feeding platforms, feeding yards, plunge sheep dips, or self-feeding ensilage pits	12
12	construction on the land of supporting frames for growing crops	12
13	construction on the land of structures for shelter purposes	12

Part B

Freshwater fish farming

1	drilling of water bores	6
2	draining of land or the excavating of sites for ponds, races, or tanks	6

	Improvement	Percentage of diminished value of improvement allowed as deduction
3	construction of ponds, races, settling ponds, sluices, or tanks of impervious materials to conduct or contain waters	6
4	supply and installation of pipes for water reticulation	6
5	construction of access paths, embankments, service paths, walkways, or walls	6
6	construction of effluent ponds	6
7	supply and installation of baffles or screens for the containing or excluding of fish	12
8	construction of fencing on the fish farm	12

Part C

Mussel farming

1	acquisition, preparation, and mooring of pontoons or rafts or other floating structures for collecting spat	24
2	acquisition, mooring, and outfitting of moored floating platforms or longlines from which the collected spat is suspended for subsequent growth	24

	Improvement	Percentage of diminished value of improvement allowed as deduction
3	collecting and depositing of shell or other suitable material on the sea bed to create spatting surfaces	24

Part D

Rock oyster farming

1	acquisition and preparation of spatting sticks	24
2	construction and erection of posts, rails, or other structures for the holding of spatting sticks during spat catching and maturing	24
3	construction of fences (including breakwater fences)	24

Part E

Scallop farming

1	acquisition, preparation, and mooring of floating structures for collecting spat	24
2	acquisition, mooring, and outfitting of longlines from which the collected spat is suspended for subsequent growth	24

Part F

Sea-cage salmon farming

	Improvement	Percentage of diminished value of improvement allowed as deduction
1	acquisition, preparation, and mooring of pontoons or rafts or other floating structures for securing or protecting cages or other containment vessels	24
2	acquisition, preparation, and placing of equipment or structures, including cages, nets, tanks, or other vessels, for the containment of live salmon	24
3	acquisition and placing of buoys and ropes used in the breeding or maturing of salmon	24
	Part G	
	Forestry	
1	felling, clearing, destruction, or removal of timber, stumps, scrub, or undergrowth on the land in the preparation of the land for the planting of trees on the land	6
2	eradication or extermination, to enable the planting of trees on the land, of animal or vegetable pests on the land	6
3	destruction, to enable the planting of trees on the land, of weeds or plants detrimental to the land	6

	Improvement	Percentage of diminished value of improvement allowed as deduction
4	draining of swamp or low-lying lands in the preparation of the land for the planting of trees on the land	6
5	construction of roads to or on the land (including any culverts or bridges necessary for the construction), when the roads are formed and wholly or mainly metalled or sealed	6
6	construction of roads to or on the land (including any culverts or bridges necessary for the construction), when the roads— (a) are not access tracks to which section DP 1(1)(h) applies; and (b) are 1 of the following: (i) roads that are formed and partially metalled or sealed; or (ii) roads that are not metalled or sealed	24
7	construction of dams, stopbanks, irrigation or stream diversion channels, or other improvements for the purpose of conserving or conveying water for use on the land or for preventing or combating soil erosion	6
8	repair of flood or erosion damage	6

	Improvement	Percentage of diminished value of improvement allowed as deduction
9	sinking of bores or wells for the purpose of supplying water for use on the land	6
10	construction of aeroplane landing strips to facilitate aerial topdressing or disease control work or firefighting on the land	6
11	construction on the land of fences, including the purchase of wire or wire netting for the purpose of making new or existing fences rabbit-proof	12
12	erection on the land of electric power lines or telephone lines	12

Schedule 20 Part G clause 6(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 20: amended (with effect on 1 April 2008), on 6 October 2009, by section 582(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 20: amended (with effect on 1 April 2008), on 6 October 2009, by section 582(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 21

LH 3(1), LH 5(3), (4), LH 7(2), LH 8

Expenditure and activities related to research and development

[Repealed]

Schedule 21: repealed, on 1 October 2009, by section 22 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 21: amended (with effect on 1 April 2008), on 6 October 2009, by section 583(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 21: amended (with effect on 1 April 2008), on 6 October 2009, by section 583(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 24

ss DZ 11, YA 1

International tax rules: grey list countries

Schedule 24 heading: amended (with effect on 30 June 2009), on 6 October 2009, by section 584 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

A
Grey list countries

1 Australia, excluding the Territory of Norfolk Island

2 Canada

3 Federal Republic of Germany

4 Japan

5 United Kingdom of Great Britain and Northern Ireland

6 United States of America, excluding its possessions and territories

7 Norway

8 Kingdom of Spain

B
Features of the taxation law of countries specified in Part A

1 Any exemption from income tax for income derived from business activities carried on outside the country.

2 In the case of Australia, any special allowances, reliefs, or exemptions with respect to offshore banking units.

3 In the case of Canada, any special allowances, reliefs, or exemptions with respect to international banking centres.

4 In the case of the Federal Republic of Germany, any special allowances, reliefs, or exemptions with respect to regional located investment in the former German Democratic Republic or in West Berlin.

5 In the case of the United Kingdom of Great Britain and Northern Ireland, any special allowances, reliefs, or exemptions with respect to activities carried on in enterprise zones.

6 In the case of Canada, any special allowances, reliefs, or exemptions provided to non-resident owned investment corporations pursuant to section 133 of the Income Tax Act (Canada).

7 In the case of the Kingdom of Spain, any special allowances, reliefs, or exemptions with respect to activities that are carried on in, or by an enterprise registered in, the following:

(a) Canary Islands:
(b) Ceuta:
(c) Melilla:
(d) Alava:
(e) Guipúzcoa:
(f) Vizcaya:
(g) Navarra.

Schedule 25

ss CQ 5, DN 6, EX 28, EX 29, EX 31, EX 32, EX 35–EX 39, EX 46, EZ 32

Foreign investment funds

Schedule 25 heading: amended (with effect on 1 April 2008), on 6 October 2009, by section 585(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part A
Entities treated as foreign investment funds

Part B
Foreign entities to which the FIF exemptions do not apply

Schedule 25 Part B heading: substituted (with effect on 1 April 2008), on 6 October 2009, by section 585(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part C
Foreign entities for which accounting profits method may not be used

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Schedule 26

s LZ 1

Low tax jurisdictions or territories

A
All companies resident in following countries or territories

1 Andorra
2 Angola
3 Anguilla
4 Antigua and Barbuda
32 Luxembourg
33 Macau
34 Madeira
35 Maldives

A—*continued*

5	Bahamas	36	Marshall Islands
6	Bahrain	37	Monaco
7	Barbados	38	Montserrat
8	Bermuda	39	Nauru
9	British Channel Islands	40	Netherlands Antilles
10	British Virgin Islands		and/or Aruba
11	Campione	41	Nevis
12	Cayman Island	42	New Caledonia
13	Cook Islands	43	Norfolk Island
14	Costa Rica	44	Oman
15	Cyprus	45	Palau
16	Djibouti	46	Panama
17	Dominica	47	Puerto Rico
18	Ecuador	48	Saint Helena
19	French Polynesia	49	Saint Kitts
20	Greece	50	Saint Lucia
21	Grenada	51	Saint Vincent
22	Gibraltar	52	San Marino
23	Guatemala	53	Seychelles
24	Hong Kong	54	Solomon Islands
25	Isle of Man	55	Sri Lanka
26	Jamaica	56	Switzerland

A—*continued*

27	Jordan	57	Turks and Caicos Islands
28	Kuwait	58	United Arab Emirates
29	Lebanon	59	Uruguay
30	Liberia	60	Vanuatu
31	Liechtenstein	61	Venezuela

B
Specified companies resident in following countries or territories

1	Belgium	(a)	companies that are regarded as Foreign Sales Corporations by the United States of America and which therefore qualify for reduced Belgian taxation:
		(b)	companies approved under Royal Decree No 187 of 30 December 1982 as Co-ordination Centres (as defined by the original Royal Decree or by subsequent amending laws)
2	Brunei	(a)	companies deriving income from sources outside Brunei
3	Ireland	(a)	companies obtaining relief or exemption from tax under Part 5 of the Corporation Tax Act 1976 or section 43 of the Finance Act 1980 (profits from trading within Shannon Airport):

B—*continued*

		(b) companies obtaining relief or exemption from tax under Part 4 of the Corporation Tax Act 1976 or section 42 of the Finance Act 1980 (profits from exporting certain goods):
		(c) companies certified by the Minister of Finance to provide international financial services or to carry on any other activities in the Custom House Docks area:
		(d) companies deriving income or profits from goods manufactured in Ireland:
		(e) companies deriving income or capital gains from the following operations:
		(i) life assurance business with policyholders and annuitants who reside outside Ireland:
		(ii) the management of the investments of 1 or more unit trusts where all the unit holders are resident outside Ireland:
		(f) companies obtaining initial allowances or accelerated writing down allowances for qualifying assets of financial-type operations carried out in the Shannon Free Airport Zone or any designated urban renewal area:
		(g) companies undertaking administrative or liaison activities
4	Fiji	(a) companies obtaining relief or exemption from tax under the tax free zone or tax free factory scheme

B—*continued*

5	Kenya	(a)	companies having income granted exemption from tax under paragraph 11, schedule 1 of the Income Tax Act 1973
6	Malaysia	(a)	companies exempt from tax in relation to shipping:
		(b)	companies subject to tax at 5% in relation to inward reinsurance:
		(c)	companies obtaining relief or exemption from tax under the Labuan Offshore Business Activity Tax Act 1990:
		(d)	companies obtaining relief or exemption from tax under the Offshore Banking Act 1990:
		(e)	companies obtaining relief or exemption from tax under the Offshore Companies Act 1990:
		(f)	companies obtaining relief or exemption from tax under the Offshore Insurance Act 1990:
		(g)	companies obtaining relief or exemption from tax under the Labuan Trust Companies Act 1990:
		(h)	companies obtaining relief or exemption from tax under the Promotion of Investments (Criteria for the Grant of Pioneer Status to a Small-Scale Company) Order 1990
7	Malta	(a)	companies obtaining relief or exemption from tax under the Malta International Business Activities Act 1988:

B—*continued*

		(b)	companies obtaining relief or exemption from tax under the Offshore Trusts Act 1988:
		(c)	companies obtaining relief or exemption from tax under the Malta Freeports Act 1989:
		(d)	companies obtaining relief or exemption from tax under the Merchant Shipping Act 1973
8	Netherlands	(a)	companies exempt from tax under the Decree for the Avoidance of Double Taxation 1965 for foreign source business profits:
		(b)	companies that have obtained a participation exemption under article 13 or 18 of the Corporate Income Tax Act 1969:
		(c)	companies that are regarded as Foreign Sales Corporations by the United States of America:
		(d)	companies that have obtained an advance ruling from the Ministry of Finance in relation to income earned with respect to inter-company loans
9	Philippines	(a)	companies that are regional headquarters companies:
		(b)	companies that operate as an Offshore Banking Unit or a Foreign Currency Deposit Unit:

B—*continued*

		(c)	companies that receive interest on deposits with a Foreign Currency Unit, or other interest subject to reduced rates of tax under the National Internal Revenue Code
10	Singapore	(a)	companies subject to the concessionary rate of tax for insurance and reinsurance of risks outside Singapore:
		(b)	companies that operate Asian Currency Units which have income—
			(i) taxed at a concessionary rate by virtue of section 43A, 43B, or 43C of the Income Tax Act; or
			(ii) exempted from tax under the Income Tax (Income Arising from Syndicated Offshore Loans) Regulations 1984:
		(c)	companies that are exempt from tax on the income of a shipping enterprise:
		(d)	companies that derive any income to which section 43E of the Income Tax Act applies (headquarters companies):
		(e)	companies that are incorporated in Singapore but not managed and controlled from Singapore and that derive any income from sources outside Singapore

B—*continued*

11	Samoa	(a) companies that by virtue of section 28(a) of the Off-Shore Banking Act 1987 are exempt from income tax in relation to an offshore banking business conducted within Samoa:
		(b) companies that by virtue of section 28(b) of the Off-Shore Banking Act 1987 are exempt from income tax in relation to dividends or earnings or interest derived in relation to shares or securities of a licensee under that Act

Schedule 26 Part B clause 3(f): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 26 Part B clause 11(a): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 26 Part B clause 11(b): amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 27

ss LJ 1, LK 2

Countries and types of income with unrecognised tax

Schedule 27 heading: amended (with effect on 30 June 2009), on 6 October 2009, by section 586 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Country or territory	Types of income

Schedule 28

RD 66

Requirements for complying fund rules

Schedule 28: inserted, on 1 April 2008, by section 136 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

KiwiSaver rules

1 The first requirement is that the rules are the same, though modified as necessary, as the rules for KiwiSaver schemes set out in—

(a) sections 101G and 196 of the KiwiSaver Act 2006; and

(b) schedule 1, clauses 2, 4(1) to (4), 7, 9, and 17 of that Act.

Withdrawals

2 The second requirement is that the rules—

(a) allow a withdrawal in some or all of the circumstances described in regulations made under section 229(1) of the KiwiSaver Act 2006 and the rules for KiwiSaver schemes in schedule 1, clauses 8 and 10 to 14 of the KiwiSaver Act 2006, modified as necessary, or in none of those circumstances; and

(b) do not allow a withdrawal under any circumstances other than those described in paragraph (a) or clause 1; and

(c) require the trustees, if the employee asks, to pay any withdrawal allowed under this clause and clause 1 as a lump sum, as if the withdrawal were a permitted withdrawal to which schedule 1, clause 5 of the KiwiSaver Act 2006 applies, modified as necessary.

Transfers

3 The third requirement is that the rules require—

(a) a transfer, if the employee asks, of some or all of an employee's superannuation accumulation to another complying superannuation fund or to a KiwiSaver scheme, and for the latter when the requirements of the KiwiSaver Act 2006 are met; and

(b) that the complying fund rules apply to an employee's superannuation accumulation if it is transferred to another complying superannuation fund under paragraph (a); and

(c) a transfer of an employee's superannuation accumulation to a KiwiSaver scheme, if the employee does not ask for a transfer under paragraphs (a) and (b), and the employee—

(i) is no longer eligible to be a member of their complying superannuation fund:

(ii) may not remain a member for any reason, but this paragraph does not apply to a transfer under paragraphs (a), (b), and (d), or a withdrawal of some or all of an employee's superannuation accumulation under these rules; and

(d) a transfer of an employee's superannuation accumulation to a KiwiSaver scheme, if the FMA revokes approval of the superannuation fund as a complying superannuation fund and the accumulation is not transferred to another complying superannuation fund and is not subject to these rules.

Notification

4 The fourth requirement is that the rules require that—

(a) the Commissioner is notified if the employee's superannuation accumulation must be transferred under clause 3(c) and (d):

(b) the fund provider is notified if the employee's superannuation accumulation is transferred to another complying superannuation fund under clause 3(a).

Notification details

5 For the purposes of clause 4,—

(a) notification under clause 4(a) must include the name, address, and tax file number of the employee, the name and address of their employer, and the name and tax file number of the employee's complying superannuation fund:

(b) notification under clause 4(b) must include—

(i) notice of any written evidence given to the old fund provider under section MK 2(2):

(ii) the amount of tax credits received by the old fund provider under subpart MK:

(iii) information held by the old fund provider that would be relevant to the new provider in mak-

ing a claim under section 68C of the Tax Administration Act 1994, such as information about the periods for which claims have already been made.

Age restriction

6 The fifth requirement is that the rules prevent a person over the qualification age for New Zealand superannuation from joining.

Minimum contributions

7 The sixth requirement is that the rules require, as a minimum, contributions to be deducted for an employee at the rate of 2% of gross **salary or wages** (as defined in section 4 of the KiwiSaver Act 2006).

Funding benefits

8 The seventh requirement is that the rules require that an employee's superannuation accumulation is used to fund benefits that are calculated only by reference to the amount of the accumulation.

Continuation as member

9 The eighth requirement is that the rules commit an employee to continue to be a member unless otherwise provided by clauses 1 to 8.

Schedule 28: amended, on 1 May 2011, by section 85(1) of the Financial Markets Authority Act 2011 (2011 No 5).

Schedule 28: amended (with effect on 1 April 2009), on 6 October 2009, by section 587 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 28: amended, on 1 April 2009, by section 57 of the Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105).

Schedule 29

ss HM 21, HM 22

Portfolio investment entities: listed investors

Schedule 29: inserted, on 1 April 2010, by section 588 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Part A

1 A PIE or an entity that qualifies for PIE status.
2 A foreign PIE equivalent.
3 A life insurer.
4 The New Zealand Superannuation Fund.
5 The Accident Compensation Corporation, or a Crown entity subsidiary of the Corporation.
6 The Earthquake Commission.
7 Auckland Council.
8 A boutique investor class, treating interests combined under section HM 16 as held by 1 person.
9 A community trust.

Schedule 29 Part A item 7: amended (with effect on 1 November 2010), on 21 December 2010, by section 138 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Schedule 29 Part A item 9: added (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 123(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Part B

1 A superannuation fund established under the proposal for the restructuring of the National Provident Fund required by the National Provident Fund Restructuring Act 1990.
2 The fund established by the Government Superannuation Fund Act 1956.
3 A public unit trust.
4 *[Repealed]*
5 A superannuation fund that—
  (i) was in existence before 17 May 2006; and
  (ii) would, if treated as a unit trust, meet the requirements of 1 or more of paragraphs (a) and (c) to (e) of the definition of **public unit trust**; and
  (iii) has no investor, other than its manager or trustee, who can control its investment decisions.

Schedule 29 Part B item 4: repealed (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 123(2) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 31

ss MF 3, MF 7

Annualised equivalent amount for Part M

Column 1 **Annual amount, calculated in accordance with section MF 3(2)(a)**	*Column 2* **Annualised equivalent amount for section MF 3(2)(b)**
	$
Amount does not exceed $36,827	36,827
Amount exceeds $36,827 but does not exceed $38,000	38,000
Amount exceeds $38,000 but does not exceed $39,500	39,500
Amount exceeds $39,500 but does not exceed $41,000	41,000
Amount exceeds $41,000 but does not exceed $42,500	42,500
Amount exceeds $42,500 but does not exceed $44,000	44,000
Amount exceeds $44,000 but does not exceed $45,500	45,500
Amount exceeds $45,500 but does not exceed $47,000	47,000
Amount exceeds $47,000 but does not exceed $48,500	48,500

Column 1 **Annual amount, calculated in accordance with section MF 3(2)(a)**	*Column 2* **Annualised equivalent amount for section MF 3(2)(b)**
	$
Amount exceeds $48,500 but does not exceed $50,000	50,000
Amount exceeds $50,000 but does not exceed $51,500	51,500
Amount exceeds $51,500 but does not exceed $53,000	53,000
Amount exceeds $53,000 but does not exceed $54,500	54,500
Amount exceeds $54,500 but does not exceed $56,000	56,000
Amount exceeds $56,000 but does not exceed $57,500	57,500
Amount exceeds $57,500 but does not exceed $59,000	59,000
Amount exceeds $59,000 but does not exceed $60,500	60,500
Amount exceeds $60,500 but does not exceed $62,000	62,000
Amount exceeds $62,000 but does not exceed $63,500	63,500

Column 1 **Annual amount, calculated in accordance with section MF 3(2)(a)**	*Column 2* **Annualised equivalent amount for section MF 3(2)(b)**
	$
Amount exceeds $63,500 but does not exceed $65,000	65,000
Amount exceeds $65,000 but does not exceed $66,500	66,500
Amount exceeds $66,500 but does not exceed $68,000	68,000
Amount exceeds $68,000 but does not exceed $69,500	69,500
Amount exceeds $69,500 but does not exceed $71,000	71,000
Amount exceeds $71,000 but does not exceed $72,500	72,500
Amount exceeds $72,500 but does not exceed $74,000	74,000
Amount exceeds $74,000 but does not exceed $75,500	75,500
Amount exceeds $75,500 but does not exceed $77,000	77,000
Amount exceeds $77,000 but does not exceed $78,500	78,500

Column 1 **Annual amount, calculated in accordance with section MF 3(2)(a)**	*Column 2* **Annualised equivalent amount for section MF 3(2)(b)**
	$
Amount exceeds $78,500 but does not exceed $80,000	80,000
Amount exceeds $80,000 but does not exceed $81,500	81,500
Amount exceeds $81,500 but does not exceed $83,000	83,000
Amount exceeds $83,000 but does not exceed $84,500	84,500
Amount exceeds $84,500 but does not exceed $86,000	86,000
Amount exceeds $86,000 but does not exceed $87,500	87,500
Amount exceeds $87,500 but does not exceed $89,000	89,000
Amount exceeds $89,000 but does not exceed $90,500	90,500
Amount exceeds $90,500 but does not exceed $92,000	92,000
Amount exceeds $92,000 but does not exceed $93,500	93,500

Column 1 **Annual amount, calculated in accordance with section MF 3(2)(a)**	*Column 2* **Annualised equivalent amount for section MF 3(2)(b)**
	$
Amount exceeds $93,500 but does not exceed $95,000	95,000
Amount exceeds $95,000 but does not exceed $96,500	96,500
Amount exceeds $96,500 but does not exceed $98,000	98,000
Amount exceeds $98,000 but does not exceed $99,500	99,500
Amount exceeds $99,500 but does not exceed $101,000	101,000
Amount exceeds $101,000 but does not exceed $102,500	102,500
Amount exceeds $102,500 but does not exceed $104,000	104,000
Amount exceeds $104,000 but does not exceed $105,500	105,500
Amount exceeds $105,500 but does not exceed $107,000	107,000
Amount exceeds $107,000 but does not exceed $108,500	108,500

Column 1 **Annual amount, calculated in accordance with section MF 3(2)(a)**	*Column 2* **Annualised equivalent amount for section MF 3(2)(b)**
	$
Amount exceeds $108,500 but does not exceed $110,000	110,000
Amount exceeds $110,000 but does not exceed $111,500	111,500
Amount exceeds $111,500 but does not exceed $113,000	113,000
Amount exceeds $113,000 but does not exceed $114,500	114,500
Amount exceeds $114,500 but does not exceed $116,000	116,000
Amount exceeds $116,000 but does not exceed $117,500	117,500
Amount exceeds $117,500 but does not exceed $119,000	119,000
Amount exceeds $119,000 but does not exceed $120,500	120,500
Amount exceeds $120,500	the number of dollars of the annual amount

Schedule 31: amended, on 1 October 2008, by section 52(a) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 31: amended, on 1 October 2008, by section 52(b) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 31: amended, on 1 October 2008, by section 52(c) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 31: amended, on 1 October 2008, by section 52(d) of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36).

Schedule 32

ss DB 41, DV 12, LD 3, YA 1

Recipients of charitable or other public benefit gifts

Adventist Development and Relief Agency
African Enterprise (New Zealand) Aid and Development Fund
Akha Rescue Ministry Charitable Trust
Alhay Buhay Foundation Trust
Amnesty International
Bangladesh Flood Appeal Trust
Books for Africa
Caritas Aotearoa-New Zealand
Channel 2 Cyclone Aid for Samoa
Cheboche Area Trust Incorporated
Childfund New Zealand Limited
Children on the Edge (NZ) Trust
Christian Blind Mission International (New Zealand)
Christian World Service
Community Action Overseas (Oxfam NZ)
CORSO (Incorporated)
Cry for the World Foundation New Zealand Humanitarian Aid Fund
Cure Kids
Cyclone Ofa Relief Fund
Cyclone Val Relief Fund
DIPS'N Charitable Trust (International)
Educational Aid for International Development Trust Board

Four Sherpa Trust
Global Hope
Greater Mekong Subregion Tertiary Education Consortium Trust
Habitat for Humanity New Zealand Limited
Hamlin Charitable Fistula Hospitals Trust
Help a Child Foundation New Zealand
Hope Foundation Development Trust
Hope International Charitable Trust
Ingwavuma Orphan Trust Fund of New Zealand
International Christian Aid (ICA)
Karunai Illam Trust
Kyrgyzstan New Zealand Rural Trust
L Women of Africa Fund
Limbs 4 All Charitable Trust
Medicine Mondiale
Mission Without Borders (NZ), Humanitarian Aid Account
Mobility Equipment for the Needs of Disabled Trust
Nelson Mandela Trust (New Zealand)
New Zealand Disaster Assistance Response Team Trust
New Zealand Jesuits in India Trust
New Zealand Sports Foundation (Incorporated)
New Zealand Viet Nam Health Trust
Open Home Foundation International Trust
Operation Hope (Aid Ship to Africa)
Operation Restore Hope Charitable Trust
Operation Vanuatu Charitable Trust
Partners Relief and Development NZ
Plan New Zealand
"Raphael" (The Ryder-Cheshire Foundations of New Zealand)
Register of Engineers for Disaster Relief New Zealand
Sampoerna Foundation Limited
Save the Children New Zealand (and its branches)
Sport and Recreation New Zealand
St Stanislas Charitable Trust of New Zealand

Surf Aid International Incorporated
Te Tuao Tawahi: Volunteer Service Abroad Incorporated
Tender Trust
The Band Aid Box
The Bouganville Library Trust
The Branch Foundation
The Commonwealth Foundation
The Destitute Children's Home, Pokhara, Charitable Trust
The Evangelical Alliance Relief Fund (TEAR Fund)
The Fred Hollows Foundation (NZ)
The Food Bank of New Zealand
The Hillary Himalayan Foundation
The Leprosy Mission New Zealand Incorporated
The Mutima Charitable Trust
The New Zealand Council of the Ramabai Mukti Mission Trust Board
The New Zealand Rotary Clubs Charitable Trust
The New Zealand Society for the Intellectually Handicapped (Incorporated)
The Norman Kirk Memorial Trust Fund
The Pacific Leprosy Foundation
The Palestine Children's Relief Fund Charitable Trust
The Red Cross Society Incorporated
The Serious Road Trip Charitable Trust
The Sir Edmund Hillary Trust
The Sir Walter Nash Vietnam Appeal
The United Nations International Children's Emergency Fund (UNICEF)
The Winston Churchill Memorial Trust
The World Swim for Malaria Foundation (New Zealand)
Together for Uganda
Triyog Himalaya Trust
UNHCR (United Nations High Commissioner for Refugees)
Valehead Community Health Centre Trust
Water for Survival

Waterharvest Trust

World Vision of New Zealand (Incorporated)

Zonta International District 16 (New Zealand) Charitable Trust

Schedule 32: amended, on 1 April 2011 (applying for the 2011–12 to 2018–19 tax years), by section 139(1)(b) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 32: amended, on 1 April 2011, by section 139(1)(c) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 32: amended, on 1 April 2011 (applying for the 2011–12 to 2016–17 tax years), by section 139(1)(d) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 32: amended, on 6 October 2009, by section 589(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 32: amended, on 6 October 2009, by section 589(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 32 **Childfund New Zealand Limited**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Christian Children's Fund of New Zealand Limited (CCFNZ)**: repealed, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Cure Kids**: inserted (with effect on 1 April 2010), on 7 September 2010 (applying for the 2010–11 and later income years), by section 124(1) of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109).

Schedule 32 **Hamlin Charitable Fistula Hospitals Trust**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Hope Foundation Development Trust**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Hope International Charitable Trust**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Limbs 4 All Charitable Trust**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **New Zealand Disaster Assistance Response Team Trust**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Operation Restore Hope Charitable Trust**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 32 **Te Tuao Tawahi: Volunteer Service Abroad Incorporated**: inserted, on 21 December 2010, by section 139(1)(a) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Schedule 32 **The Volunteer Service Abroad (Incorporated)**: repealed, on 21 December 2010, by section 139(1)(e) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Schedule 32 **The World Swim for Malaria Foundation (New Zealand)**: inserted, on 1 April 2008, by section 559 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 36

s YA 1

State enterprises

Agriquality New Zealand Limited
Airways Corporation of New Zealand Limited
Asure New Zealand Limited
Crown Forestry Management Limited
Electricity Corporation of New Zealand Limited
Genesis Power Limited
Government Property Services Limited
Housing New Zealand Corporation
Housing New Zealand Limited
Landcorp Farming Limited
Learning Media Limited
Meridian Energy Limited
Meteorological Service of New Zealand Limited
Mighty River Power Limited
New Zealand Post Limited
Quotable Value Limited
Radio New Zealand Limited
Solid Energy of New Zealand Limited
Television New Zealand Limited
Terralink NZ Limited
Timberlands West Coast Limited
Transpower New Zealand Limited
Works and Development Services Corporation (NZ)

Schedule 37

s YA 1

Statutory producer boards

New Zealand Horticulture Export Authority

New Zealand Meat Board

New Zealand Pork Industry Board

Schedule 38

s MB 1

Acts exempting income from tax: income included in family scheme income

Schedule 38: inserted, on 1 April 2011, by section 140 of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

1 Arbitration (International Investment Disputes) Act 1979

2 Consular Privileges and Immunities Act 1971

3 Diplomatic Privileges and Immunities Act 1968

4 International Finance Agreements Act 1961

5 Pitcairn Trials Act 2002

Schedule 39

s EE 67

Items for purposes of definition of special excluded depreciable property

Schedule 39: inserted, on 1 April 2011 (applying for the 2011–12 and later income years), by section 99(1) of the Taxation (Budget Measures) Act 2010 (2010 No 27).

Carports (hired out to householders)

Portable huts

Cool-stores and freezing chambers

Slaughterhouses on farms

Fowl houses

Plastic hothouses and PVC tunnel houses

Glasshouses

Buildings affected by acid

Milking sheds
Roofed livestock yards
Wintering barns and simple loafing barns
Milk powder buildings
Temporary buildings
Fish processing buildings
Tannery buildings affected by acid

Schedule 39: amended (with effect on 1 April 2011), on 29 August 2011 (applying for the 2011–12 and later income years), by section 139(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 48

s ZA 1

Enactments repealed

Public Acts repealed

Income Tax Act 2004 (2004 No 35)

Regulations revoked

Income Tax (Withholding Payments) Regulations 1979 (SR 1979/259)

Schedule 49

s ZA 2

Enactments amended

Schedule 49: amended (with effect on 1 April 2008), on 6 October 2009, by section 590(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 49: amended (with effect on 1 April 2008), on 6 October 2009, by section 590(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Public Acts

Animal Products Act 1999 (1999 No 93)

Sections 22(1)(c) and 54(3)(a): "section OE 1 or section OE 2 of the Income Tax Act 2004" is replaced by "section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007" in each place where it appears.

Carter Observatory Act 1938 (1938 No 9)

Section 22(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Charities Act 2005 (2005 No 39)

Section 13(2)(a)(i): "section CW 34 of the Income Tax Act 2004" is replaced by "section CW 41 of the Income Tax Act 2007".

Section 13(2)(a)(ii): "section CW 35 of the Income Tax Act 2004" is replaced by "section CW 42 of the Income Tax Act 2007".

Section 13(3): "section CW 34 or section CW 35 of the Income Tax Act 2004" is replaced by "section CW 41 or CW 42 of the Income Tax Act 2007".

Section 20(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Example after section 30(2): "section KC 5 of the Income Tax Act 2004" is replaced by "subpart LD of the Income Tax Act 2007" in each place where it appears.

Section 47(a)(ii): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 73(2): "section KC 5 of the Income Tax Act 2004" is replaced by "subpart LD of the Income Tax Act 2007".

Child Support Act 1991 (1991 No 142)

Section 2, definitions of **employee** and **employer**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 2, definition of **income from employment**: "section OB 1 of the Income Tax Act 2004, and includes a payment made to a speci-

fied office holder (as defined in section OB 1 of the Income Tax Act 2004)" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **source deduction payment**: replace by the following:

" **source deduction payment** means a PAYE income payment (as defined in section RD 3 of the Income Tax Act 2007)".

Section 2, definition of **withholding income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 14(1)(ea): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 29(1)(b), definitions of **tax year** and **taxable income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 30(5), definitions of **gross married rate of invalid's benefit**, **gross married rate of unemployment benefit**, and **gross single rate of invalid's benefit**: "section NC 6(1D) of the Income Tax Act 2004" is replaced by "RD 11(3) of the Income Tax Act 2007" in each place where it appears.

Sections 40(3)(ba)(ii), 44(1), 44A(1)(b), and 45(3)(a) to (c): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 55(1)(da): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 77: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 89B, definition of **income**, paragraph (a): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 89B, definition of **income**, paragraph (b): "and the Income Tax Act 2004" is inserted after "Income Tax Act 1994".

Section 90(1)(ca): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 165(1) and (3): "section OB 1 of the Income Tax Act 2004" is replaced by "YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 165(1): "the amount of any tax deduction made therefrom under the PAYE rules of the Income Tax Act 2004" is replaced by "the amount of any tax withheld or deducted under the PAYE rules of the Income Tax Act 2007".

Section 166(2): "the amount of any tax deductions made under the PAYE rules of the Income Tax Act 2004" is replaced by "the amount of any tax withheld under the PAYE rules of the Income Tax Act 2007".

Section 166(3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 216(5): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Companies Act 1993 (1993 No 105)

Schedule 7, clause 5, paragraphs (b) to (d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Companies (Bondholders Incorporation) Act 1934–35 (1934–35 No 39)

Section 37: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Consumer Guarantees Act 1993 (1993 No 91)

Section 5(1)(c)(i): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Co-operative Companies Act 1996 (1996 No 24)

Section 24(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Sections 71(7) and 71A(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Dairy Industry Restructuring Act 2001 (2001 No 51)

Sections 151(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 152, words before paragraph (a): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 152(c) and (e): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 152(e): "section OB 1" is replaced by "section YA 1".

Section 154(2): "sections OD 3(3) and OD 4(3) of the Income Tax Act 2004" is replaced by "sections YC 4 and YC 5 of the Income Tax Act 2007".

Section 154(3): "sections IF 4 and IF 6 and subpart IG of the Income Tax Act 2004" is replaced by "subpart IE of the Income Tax Act 2007 and the provisions relevant to section IA 6 of that Act".

Section 154(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 155(2) to (4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 156(1), (2), (3) and (6): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 156(3): "section CW 35(5)(b)" is replaced by "section CW 42(5)(b)".

Section 156(3)(a)(i): section CB 4(1)(g) is replaced by "section CB 5(1)(g)" in each place where it appears.

Section 156(3)(c): "section CW 43" is replaced by "section CW 51".

Section 157(1) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Disabled Persons Employment Promotion Repeal Act 2007 (2007 No 11)

Section 9: "and section CW 33(1)(d) of the Income Tax Act 2007" is inserted after "Income Tax Act 2004".

Earthquake Commission Act 1993 (1993 No 84)

Section 10(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Education Act 1989 (1989 No 80)

Sections 205(2)(a), 218(2)(a), 219(2)(a), 244(2)(a), 294(2)(a), 298(2)(a), and 300(2)(a): "section IF 1(1)(a) of the Income Tax Act 2004" is replaced by "section IA 5(2) of the Income Tax Act 2007" in each place where it appears.

Sections 205(2)(b), 218(2)(b), 219(2)(b), 244(2)(b), 294(2)(b), 298(2)(b), and 300(2)(b): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of the Income Tax Act 2007" in each place where it appears.

Sections 205(2)(c), 218(2)(c), 219(2)(c), 244(2)(c), 294(2)(c), 298(2)(c), and 300(2)(c): "section ME 5(1)(i) of the Income Tax Act 2004, or in a taxpayer's dividend withholding payment account under section MG 5(1)(i) of that Act, or in a taxpayer's branch equivalent tax account under section MF 4(3)(d) of that Act" is replaced by "section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act" in each place where it appears.

Section 307A(1), definition of **tax file number**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Electricity Industry Reform Act 1998 (1998 No 88)

Section 60(d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 63(1): "Section FD 10(9) of the Income Tax Act 2004" is replaced by "FM 22 of the Income Tax Act 2007".

Section 66(1) and (2): "sections CB 3 and CB 4 of the Income Tax Act 2004" is replaced by "sections CB 4 and CB 5 of the Income Tax Act 2007" in each place where it appears.

Section 67(1): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Energy Companies Act 1992 (1992 No 56)

Section 54(2), words before paragraph (a): "sections IE 1, IF 1, IG 2(1) and IG 2(2)(e) of the Income Tax Act 2004" is replaced by "section IA 5 of the Income Tax Act 2007".

Section 54(2), words after paragraph (b): "deemed by the Income Tax Act 2004 to hold" is replaced by "treated by the Income Tax Act 2007 as holding".

Section 54(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 62(2) and (3): "sections IE 1, IF 1, IG 2(1) and IG 2(2)(e) of the Income Tax Act 2004" is replaced by "section IA 5 of the Income Tax Act 2007" in each place where it appears.

Section 62(2): "deemed by the Income Tax Act 2004 to hold" is replaced by "treated by the Income Tax Act 2007 as holding".

Section 62(3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 62(5): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Energy Resources Levy Act 1976 (1976 No 71)

Section 17(3): "Income Tax Act 2004 or the Tax Administration Act 1994, the provisions of section MH 1 of the Income Tax Act 2004" is replaced by "Income Tax Act 2007 or the Tax Administration Act 1994, the provisions of section RA 7 of the Income Tax Act 2007".

Section 27: "Income Tax Act 2004, section HK 11" is replaced by "Income Tax Act 2007, section HD 15".

Estate and Gift Duties Act 1968 (1968 No 35)

Section 74A: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 74B: "defined in the Income Tax Act 2004" is replaced by "defined in the Income Tax Act 2007".

Section 74B: "Income Tax Act 2004, or would constitute such a dividend but for the application of section CD 19" is replaced by "that Act, or would constitute such a dividend but for the application of section CD 27".

Sections 74C(1): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 74D: "section CD 24B of the Income Tax Act 2004" is replaced by "section CD 34 of the Income Tax Act 2007".

Section 75(1)(b)(ii) and (c)(ii), and (2): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 75(1)(e): "**Income Tax Act 2004**" is replaced by "**Income Tax Act 2007**".

Section 75B, heading: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 75B(1)(a): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 75B(1)(c): "Income Tax Act 2004" is replaced by "that Act".

Fencing of Swimming Pools Act 1987 (1987 No 178)

Section 2, definition of **owner**, paragraph (a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Finance Act 1987 (1987 No 200)

Section 6(2): "Neither of subsection (1) nor subsection (6) of section IF 1 of the Income Tax Act 2004 applies" is replaced by "Sections IA 5 and IZ 5 of the Income Tax Act 2007 do not apply".

Section 6(3): "Income Tax Act 2004, no deduction shall be made under section IG 2(2)" is replaced by "Income Tax Act 2007, no deduction shall be made under section IC 5".

Section 6(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Finance Act 1988 (1988 No 107)

Section 7: "fringe benefit tax (within the meaning of the Income Tax Act 2004)" is replaced by "FBT (within the meaning of the Income Tax Act 2007)".

Finance Act (No 2) 1988 (1988 No 128)

Section 23: replace by the following:

"**23 Amendment to Income Tax Act 2007**

The Income Tax Act 2007 is amended by omitting from schedule 36 the item 'Crown Forestry Management Limited'".

Finance Act 1991 (1991 No 93)

Section 26: replace by the following:

"**26 Amendment to Income Tax Act 2007**

The Income Tax Act 2007 is amended by omitting from schedule 36 the item 'Timberlands West Coast Limited'".

Fisheries Act 1996 (1996 No 88)

Section 59(10)(c): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 59(10)(d): "section OD 7 of the Income Tax Act 2004, except that paragraph (e) of the definition of **market value circumstance** in section OB 1" is replaced by "subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions), except that paragraph (e) of the definition of **market value circumstance** in section YA 1".

Goods and Services Tax Act 1985 (1985 No 141)

Section 2, definition of **hire purchase agreement**: "section OB 1 of the Income Tax Act 2004; but includes an agreement that would be a hire purchase agreement but for the exclusion in paragraph (g)" is replaced by "section YA 1 of the Income Tax Act 2007; but includes an agreement that would be a hire purchase agreement but for the exclusion in paragraph (f)".

Section 2, definitions of **income year**, **New Zealand**, **provisional tax**, **tax file number**, and **tax year**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 2, the definition of **resident**: "sections OE 1 and OE 2(1) of the Income Tax Act 2004" is replaced by "sections YD 1 and YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007".

Section 2A(2), (3)(a) to (c), and (7): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Sections 5(6E)(b)(ii) " section OB 1 of the Income Tax Act 2004 " is replaced by "section YA 1 of the Income Tax Act 2007".

Section 10(3)(c), (3C), and (3D): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 10(7)(a): "sections CX 18, and ND 1S to ND 1V of the Income Tax Act 2004" is replaced by "sections CX 27, and RD 54 to RD 57 of the Income Tax Act 2007".

Section 10(15C): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of the Income Tax Act 2007" in each place where it appears.

Section 11A(1)(r): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of the Income Tax Act 2007".

Section 15B(2): "schedule 13, part A of the Income Tax Act 2004" is replaced by "schedule 3, part A of the Income Tax Act 2007".

Section 15D(4): "Sections MB 26 and MB 27 of the Income Tax Act 2004" is replaced by "RC 27 of the Income Tax Act 2007".

Section 15E(3)(b): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 19D(2): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 20A(1), definitions of **taxable income**, **tax year**, and **taxpayer**: "taxpayer have the same meaning as in section OB 1 of the Income Tax Act 2004" is replaced by "**taxpayer** have the same meanings as in section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 21I(1) and (4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 21I(5): "section CW 13 or CW 14 of the Income Tax Act 2004" is replaced by "section CW 17 or CW 18 of the Income Tax Act 2007".

Section 23A(1): "sections ND 9, ND 10, ND 13 and ND 14 of the Income Tax Act 2004" is replaced by "sections RA 15, and RD 59 to RD 62 of the Income Tax Act 2007 and sections 46B to 46D of the Tax Administration Act 1994".

Section 23A(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 23A(1) and (2): "fringe benefit tax" is replaced by "FBT" in each place where it appears.

Section 48A(1): "section OB 1 of the Income Tax Act 1994" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 55(1): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of the Income Tax Act 2007".

Section 61: "Section HK 11 of the Income Tax Act 2004" is replaced by "Section HD 15 of the Income Tax Act 2007".

Section 61A: "Section OB1 of the Income Tax Act 2004" is replaced by"Section YA 1 of the Income Tax Act 2007".

Government Superannuation Fund Act 1956 (1956 No 47)

Section 15D(2): "section HJ 1 of the Income Tax Act 2004" is replaced by "section HR 4 of the Income Tax Act 2007".

Government Superannuation Fund Amendment Act 1990 (1990 No 30)

Section 10(1)(b) and (3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 32(1)(b): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 33(1)(b) and (3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Health and Safety in Employment Act 1992 (1992 No 96)

Section 59(2)(c): "section OB 2(2) of the Income Tax Act 2004" is replaced by "section RD 3(2) to (4) of the Income Tax Act 2007".

Health Sector (Transfers) Act 1993 (1993 No 23)

Section 8(4): "sections CB 5 to CB 21 or EE 37 to EE 44 of the Income Tax Act 2004" is replaced by "sections CB 6 to CB 23 or EE 44 to EE 52 of the Income Tax Act 2007".

Section 8(5): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 8(6): "sections EE 34 to EE 36 of the Income Tax Act 2004" is replaced by "sections EE 41 to EE 43 of the Income Tax Act 2007".

Home Ownership Savings Act 1974 (1974 No 51)

Section 14A(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 14D(5): "a rebate is allowable under section KG 1(1) of the Income Tax Act 2004" is replaced by "tax credit is allowed under section LZ 9 of the Income Tax Act 2007".

Section 14L(b): "subpart ID of the Income Tax Act 2004" is replaced by "sections RZ 7 to RZ 10 of the Income Tax Act 2007".

Section 14M(1), words before paragraph (a): "subpart ID of the Income Tax Act 2004" is replaced by "sections RZ 7 to RZ 10 of the Income Tax Act 2007".

Hop Industry Restructuring Act 2003 (2003 No 16)

Section 11: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 11(2)(b): "OD 5(5)" is replaced by "YC 10".

Section 11(3): "OB 1" is replaced by "YA 1".

Housing Corporation Act 1974 (1974 No 19)

Section 56(2)(a): "subparagraphs (v) and (vi) of section FE 6(5)(a) and subparagraphs (iv) and (v) of section FE 7(1)(a) of the Income Tax Act 2004" is replaced by "section FO 12(1)(b) and (d) of the Income Tax Act 2007".

Housing Restructuring and Tenancy Matters Act 1992 (1992 No 76)

Section 42(1), definition of **standard tax**: "section NC 8 of the Income Tax Act 2004" is replaced by "section 24B of the Tax Administration Act 1994".

Section 46(2)(c) and (3)(b): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007" in each place where it appears.

Schedule 2, clauses 5, 9(c), and 10(a)(ii): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007" in each place where it appears.

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Section 6, definition of **close company**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 6, definition of **employee**, paragraph (a): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 6, definition of **employee**, paragraph (b): "section OB 2(2) of the Income Tax Act 2004" is replaced by "section RD 3(2) to (4) of the Income Tax Act 2007".

Section 6, definition of **employer**, paragraph (a): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 6, definition of **employer**, paragraph (a)(ii): "section OB 2(2) of the Income Tax Act 2004" is replaced by "section RD 3(2) to (4) of the Income Tax Act 2007".

Section 6, definition of **employer**, paragraph (b): "paragraph (b)(ix) or (xi) to (xvi) of the definition of salary or wages in section OB 1 of the Income Tax Act 2004" is replaced by "section RD 5(1)(b)(iii), (6)(b), or (c) of the Income Tax Act 2007".

Section 6, after the definition of **partner**: insert the following:

" **PAYE income payment has** the same meaning as in section RD 3(1) of the Income Tax Act 2007".

Section 6, definition of **private domestic worker**: "section NC 16 of the Income Tax Act 2004" is replaced by "section RD 4 of the Income Tax Act 2007".

Section 6, definition of **source deduction payment**: omit.

Section 6, definition of **tax year**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 9(1): "source deduction payments" is replaced by "PAYE income payments".

Sections 10(2) and (4)(c): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 11(1)(a): "withholding payment" is replaced by "schedular payment".

Section 11(1)(c): "section GD 3 of the Income Tax Act 2004" is replaced by "sections CD 11, CW 63, DB 58, GB 23, and GB 24 of the Income Tax Act 2007".

Section 11(1)(d): "section GD 5 of the Income Tax Act 2004" is replaced by "section GB 25 of the Income Tax Act 2007".

Section 11(1)(h)(i): after "Income Tax Act 2004" insert "or section DC 2 of the Income Tax Act 2007".

Section 11(1)(h)(ii): after "Income Tax Act 2004" insert "or section DC 3 of the Income Tax Act 2007".

Section 11(1)(h)(iii): "section FF 17 of the Income Tax Act 2004" is replaced by "sections FB 11 and FB 12 of the Income Tax Act 2007".

Section 11(2): "**withholding payment** have the same meanings as in section OB 1 of the Income Tax Act 2004" is replaced by "**schedular payment** have the same meanings as in section YA 1 of the Income Tax Act 2007".

Section 14(2)(a) and (3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 15(2)(a): "source deduction payments" is replaced by "PAYE income payments".

Section 15(2)(b): "source deduction payments under section OB 2(2) of the Income Tax Act 2004" is replaced by "PAYE income payments under section RD 3(2) to (4) of the Income Tax Act 2007".

Section 99(b): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 169A(1)(a): "section IE 1 of the Income Tax Act 2004" is replaced by "sections IA 1 to IA 4, IA 7(9) and IA 9 of the Income Tax Act 2007".

Section 169A(1)(b): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 169A(1)(b): "section HG 16 of the Income Tax Act 2004" is replaced by "sections HA 20, HA 24, HA 26, HA 27, and IA 7(2) of the Income Tax Act 2007".

Section 193(5)(b): "section MC 1 of the Income Tax Act 2004" is replaced by "section RA 3 of the Income Tax Act 2007".

Section 193(9)(a): "section NC 2(1) of the Income Tax Act 2004" is replaced by "section RD 16 of the Income Tax Act 2007".

Section 193(9)(c): "section OB 2(2) of the Income Tax Act 2004" is replaced by "section RD 3(2) to (4) of the Income Tax Act 2007".

Section 204(1)(b): " 'loss attributing qualifying company' (as defined in section OB 1 of the Income Tax Act 2004)" is replaced by "**loss-attributing qualifying company** (as defined in section YA 1 of the Income Tax Act 2007)".

Section 221(3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 236(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 246(1), (3) and (4): "section OB 2(2) of the Income Tax Act 2004" is replaced by "section RD 3(2) to (4) of the Income Tax Act 2007" in each place where it appears.

Section 316(6): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Schedule 1, clause 30: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Schedule 4, clause 1, words before paragraph (a): "the PAYE rules of the Income Tax Act 2004" is replaced by "the PAYE rules of the Income Tax Act 2007".

Schedule 4, clause 1(a): "source deduction payment (or, as the case may require, salary or wages)" is replaced by "PAYE income payment (or, as the case may require, salary or wages under section RD 5 of the Income Tax Act 2007)".

Schedule 4, clause 1(c): "a tax deduction, which tax deduction" is replaced by "an amount of tax, which amount".

Schedule 4, clause 1(db): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Schedule 4, clause 2: "tax deduction made" is replaced by "amount of tax withheld".

Schedule 4, clause 3: "section NC 4 of the Income Tax Act 2004" is replaced by "section RD 6 of the Income Tax Act 2007".

Schedule 4, clause 4(a): "the amount of any tax deduction" is replaced by "any amount of tax".

Schedule 4, clause 4(b): "tax deductions" is replaced by "amounts of tax".

Schedule 4, clause 4(b): "a tax deduction" is replaced by "an amount of tax withheld and".

Schedule 4, clause 5: "section NC 16 of the Income Tax Act 2004" is replaced by "section RD 4 of the Income Tax Act 2007".

Schedule 4, clause 7(b): "section MC 1 of the Income Tax Act 2004" is replaced by "section RA 3 of the Income Tax Act 2007".

Schedule 4, clause 8: "section KC 2 of the Income Tax Act 2004" is replaced by "section LC 3 of the Income Tax Act 2007".

Schedule 4, clause 8: "makes a tax deduction" is replaced by "withholds an amount of tax".

Schedule 4, clause 9: "sections LD 1(2), LD 1(3), NC 2(1), NC 6, NC 7, NC 8, NC 9, NC 13, and NC 14 of the Income Tax Act 2004" is replaced by "sections LA 3, LA 6, RA 2, RD 10, RD 11, RD 16, RD 18 of the Income Tax Act 2007 and sections 24B to 24P of the Tax Administration Act 1994".

Schedule 4, clause 14: "combined tax and earner levy deduction" is replaced by "combined tax and earner-related payment".

Schedule 4, clause 22: is replaced by the following:

"(22) For the purposes of this schedule, **combined tax and earner-related payment, Commissioner, employee, employer, income tax, PAYE intermediary, PAYE income payment, salary or wages**, and **shareholder-employee** have the same meanings as in the Income Tax Act 2007".

Insolvency Act 2006 (2006 No 55)

Section 182(1): "section OD 1 of the Income Tax Act 2004" is replaced by "section YC 1 of the Income Tax Act 2007".

Section 274(5)(b) to (d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Insurance Companies Deposits Act 1953 (1953 No 50)

Section 22A, definition of **New Zealand person**: "section OE 1 of the Income Tax Act 2004" is replaced by "section YD 1 of the Income Tax Act 2007".

Investment Advisers (Disclosure) Act 1996 (1996 No 104)

Section 2(3)(a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Kiwifruit Industry Restructuring Act 1999 (1999 No 95)

Section 23(1), (2), (3), (4), and (6): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 23(2)(b): "OD 5(5)" is replaced by "YC 10".

Section 23(3): "OB 1" is replaced by "YA 1".

Section 23(4): "HF 1(9)" is replaced by "HE 3".

KiwiSaver Act 2006 (2006 No 40)

Section 4, definition of **employer monthly schedule**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 4, definition of **employment**: replace by the following:

" **employment** means employment (including the activities referred to in paragraph (a) of the definition of that term in section YA 1 of the Income Tax Act 2007) for which salary or wages is payable

" **ESCT rules** has the same meaning as in section YA 1 of the Income Tax Act 2007".

Section 4, definition of **pay period**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007)".

Section 4, definition of **PAYE period**: "has the same meaning as in section NC 15(8) of the Income Tax Act 2004" is replaced by "means, as the case may require, the **first payment period** or the **second payment period**, (as those terms are defined in the Income Tax Act 2007)".

Section 4, definition of **PAYE rules**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 4, definition of **remittance certificate**: "has the same meaning as in section OB 1 of the Income Tax Act 2004" is replaced by "means a PAYE payment form as defined in section YA 1 of the Income Tax Act 2007".

Section 4, definition of **salary or wages**: "paragraphs (a) to (c) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004" is replaced by "section RD 5(1)(a) to (c) of the Income Tax Act 2007".

Section 4, definition of **salary or wages**, paragraph (a): "subparagraphs (iv), (v), (viii), (ix), or (xi) of paragraph (b) of that definition" is replaced by "sections RD 5(4), (6)(a) to (c), and RD 68".

Section 4, definition of **salary or wages**, paragraph (b): "section OB 1 of the Income Tax Act 2004" is replaced by "section RD 7 of the Income Tax Act 2007".

Section 4, definition of **SSCWT rules**: repeal.

Section 4, definition of **tax file number**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 6(2)(a): "a New Zealand resident (within the meaning of sections OE 1 and OE 2 of the Income Tax Act 2004)" is replaced by "a New Zealand resident (within the meaning of sections YD 1 or YD 2 (excluding section YD 2(2) of the Income Tax Act 2007)".

Section 6(2)(b): "carries on a business from a fixed establishment in New Zealand (within the meaning of section OB 1 of the Income Tax Act 2004)" is replaced by "carries on a business from a fixed establishment in New Zealand (within the meaning of section YA 1 of the Income Tax Act 2007)".

Section 12(1)(a) and (2)(a): "casual agricultural worker within the meaning of section OB 1 of the Income Tax Act 2004" is replaced by "casual agricultural worker within the meaning of section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 14(1)(a) and (b): replace by the following:

"(a) if the person is an employee only because they are in receipt of payments of salary or wages of a type referred to in any of the following sections in the Income Tax Act 2007:

"(i) section RD 5(1)(b)(iii) (which relates to certain ACC payments):

"(ii) section RD 5(3) (which relates to payments to working partners):

"(iii) section RD 5(7) (which relates to parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987):

"(b) if the new employment is as an election day worker or a private domestic worker as those terms are defined in section YA 1 of the Income Tax Act 2007:.".

Section 17(5): "section NC 15 of the Income Tax Act 2004" is replaced by "sections RA 5, RA 20, RD 2(3), RD 4(1), and RD 22 of the Income Tax Act 2007 and sections 24J and 24P of the Tax Administration Act 1994".

Section 23(2): "section NC 15 of the Income Tax Act 2004" is replaced by "sections RA 5, RA 20, RD 2(3), RD 4(1), and RD 22 of the Income Tax Act 2007 and sections 24J and 24P of the Tax Administration Act 1994".

Section 26(1)(d): "specified superannuation contribution withholding tax payable under the SSCWT rules" is replaced by "ESCT payable under the ESCT rules".

Section 34(4): "section NC 15 of the Income Tax Act 2004" is replaced by "sections RA 5, RA 20, RD 2(3), RD 4(1), and RD 22 of the Income Tax Act 2007 and sections 24J and 24P of the Tax Administration Act 1994".

Section 63: "section OB 1 of the Income Tax Act 2004) who is acting under subpart NBA of Part N of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007) who is acting under sections RP 1 to RP 16 of that Act".

Section 65(2): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 66(b)(i): "a specified superannuation contribution within the meaning of section OB 1 of the Income Tax Act 2004" is replaced by "an employer's superannuation contribution within the meaning of section YA 1 of the Income Tax Act 2007".

Section 67(1)(b): "tax deductions" is replaced by "amounts of tax withheld".

Section 67(3)(a): "sections BC 1, LD 1, NC 2(1), NC 2(5), NC 6, NC 7, NC 8, NC 8A, NC 9, NC 13, and NC 14 of the Income Tax Act 2004" is replaced by "sections BC 1, LA 6, RA 2, RD 9 to RD 11, RD 16, RD 17, and RD 18 of the Income Tax Act 2007 and sections 24B to 24P of the Tax Administration Act 1994".

Section 67(4): "tax deduction made" is replaced by "amount of tax withheld".

Section 67(5): "tax deductions required to be made" is replaced by "amounts of tax required to be withheld".

Section 69(1)(b): "section NC 15 of the Income Tax Act 2004" is replaced by "section RA 15 of the Income Tax Act 2007".

Section 73(b): "employer monthly schedule delivered under section NC 15 of the Income Tax Act 2004" is replaced by "employer monthly schedule delivered under section RD 4 of the Income Tax Act 2007".

Section 78: "pay the deduction to the Commissioner under section NC 15 of the Income Tax Act 2004" is replaced by "pay the deduction to the Commissioner under section RD 4 of the Income Tax Act 2007".

Section 86, definition of **lowest tax rate**: replace by the following:

" **lowest tax rate** is the tax rate in schedule 1, part A, table 1, row 1, column 2 of the Income Tax Act 2007.".

Section 91: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 93(1): "a specified superannuation contribution within the meaning of section OB 1 of the Income Tax Act 2004" is replaced by "an employer's superannuation contribution within the meaning of section YA 1 of the Income Tax Act 2007".

Section 93(2): "remittance certificate" is replaced by "PAYE payment form".

Section 93(3): "section NC 15 of the Income Tax Act 2004" is replaced by "section RD 4 of the Income Tax Act 2007".

Section 93(3): "of tax deductions, as if the contribution were a tax deduction" is replaced by "of amounts of tax withheld, as if the contribution were an amount of tax".

Section 93(4): "section NC 15" is replaced by "section RD 4".

Section 96(2): "specified superannuation contribution withholding tax payable under the SSCWT rules" is replaced by "ESCT payable under the ESCT rules".

Section 98(2): "specified superannuation contribution withholding tax payable under the SSCWT rules" is replaced by "ESCT payable under the ESCT rules".

Section 98(3)(a): "combined tax and earner premium deductions (within the meaning of the Income Tax Act 2004)" is replaced by

"combined tax and earner-related payments (within the meaning of the Income Tax Act 2007)".

Section 99(2): "specified superannuation contribution withholding tax payable under the SSCWT rules" is replaced by "ESCT payable under the ESCT rules".

Section 144(3)(a): "definition of **settlement** in section OB 1 of the Income Tax Act 2004" is replaced by "definition of **settlement** in section YA 1 of the Income Tax Act 2007".

Section 215(4)(a): "tax deductions payable and specified superannuation contribution withholding tax payable" is replaced by "tax deductions or withholdings payable and ESCT payable".

Section 215(4)(b): "specified superannuation contribution withholding tax" is replaced by "ESCT".

Section 227(a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Legal Services Act 2000 (2000 No 42)

Schedule 1, clause 2(1)(e): "subparts MA to MF and MZ of the Income Tax Act 2007 or" is inserted before "subpart KD of the Income Tax Act 2004".

Local Government Act 1974 (1974 No 66)

Section 707ZZZS(2)(b): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 707ZZZT: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 707ZZZT(b): "sections IG 1 and IG 2" is replaced by "section IA 6".

Local Government Amendment Act 1989 (1989 No 1)

Section 29A: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Local Government Act 2002 (2002 No 84)

Schedule 3, clause 69(6): "**Income Tax Act 2004**" is replaced by "**Income Tax Act 2007**".

Schedule 9, clause 6, heading: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Schedule 9, clause 6(1) and (2): "sections CB 5 to CB 21 of the Income Tax Act 2004" is replaced by "sections CB 6 to CB 23 of the Income Tax Act 2007" in each place where it appears.

Schedule 9, clause 6(3): "sections EE 34(1) to (3) and EZ 11 of the Income Tax Act 2004" is replaced by "sections EE 41(1) to (3) and EZ 12 of the Income Tax Act 2007".

Local Government (Auckland) Amendment Act 2004 (2004 No 57)

Section 30(5): "section YA 1 of the Income Tax Act 2007 and in" is inserted before "section OB 1 of the Income Tax Act 1994".

Maori Reserved Land Amendment Act 1997 (1997 No 101)

Section 22(2): "section CW 28(1)(g) of the Income Tax Act 2004" is replaced by "section CW 34(1)(g) of the Income Tax Act 2007".

Maori Trust Boards Act 1955 (1955 No 37)

Section 24B(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 41A(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Misuse of Drugs Amendment Act 2005 (2005 No 81)

Section 31, definition of **manufacturer**: "section OD 7 of the Income Tax Act 2004" is replaced by "subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)".

Motor Vehicle Sales Act 2003 (2003 No 12)

Section 6(1), in the definition of **hire purchase agreement**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

National Provident Fund Restructuring Act 1990 (1990 No 126)

Section 25(1)(c): "section EZ 45 of the Income Tax Act 2004" is replaced by "section EZ 48 of the Income Tax Act 2007".

Section 35(2)(a): "section IF 1(1)(a) of the Income Tax Act 2004" is replaced by "section IA 5(2) of the Income Tax Act 2007".

Section 35(2)(b): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of the Income Tax Act 2007".

Section 35(2)(c): "dividend withholding payment account, or branch equivalent tax account under section ME 5 or section MF 4 or section MG 5 of the Income Tax Act 2004" is replaced by "FDP account, or branch equivalent tax account under section OA 6(2), (3), or (5), as described in table O2, table O4, or table O8 of the Income Tax Act 2007".

National Provident Fund Restructuring Amendment Act 1997 (1997 No 83)

Schedule 2, clause 8(a): "section IF 1(1)(a) of the Income Tax Act 2004" is replaced by "section IA 5(2) of the Income Tax Act 2007".

Schedule 2, clause 8(b): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of that Act".

Schedule 2, clause 8(c): "dividend withholding payment account, or branch equivalent tax account under section ME 5 or section MF 4 or section MG 5 of the Income Tax Act 2004" is replaced by "FDP account, or branch equivalent tax account under under section OA 6(2), (3), or (5), as described in table O2, table O4, or table O8 of that Act".

Schedule 2, clause 9(a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

New Zealand Superannuation and Retirement Income Act 2001 (2001 No 84)

Section 5(1), definition of **net cost**: "any tax deduction made or required to be made under the PAYE rules in the Income Tax Act 2004" is replaced by "any amount of tax deducted or withheld, or required to be deducted or withheld under the PAYE rules in the Income Tax Act 2007".

Section 15(1), definition of **standard tax**: "section NC 8 of the Income Tax Act 2004" is replaced by "section 24B of the Tax Administration Act 1994".

Section 43, item **net cost** in formula: "any tax deduction made or required to be made under the PAYE rules in the Income Tax Act 2004" is replaced by "any amount of tax deducted or withheld, or required to be deducted or withheld under the PAYE rules in the Income Tax Act 2007".

Section 76(1) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 76(4): "section ME 1 of the Income Tax Act 2004" is replaced by "section OB 1 of the Income Tax Act 2007".

Schedule 1: "section NC 8 of the Income Tax Act 2004" is replaced by "section 24B of the Tax Administration Act 1994".

New Zealand Tourism Board Act 1991 (1991 No 110)

Schedule 1, clause 21: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Parental Leave and Employment Protection Act 1987 (1987 No 129)

Section 71C, definition of **net income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Perpetuities Act 1964 (1964 No 47)

Section 19(1): "section DC 6 of the Income Tax Act 2004" is replaced by "section DC 7 of that Act".

Section 19(1) and (1A): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 19(1A): "section OB 1" is replaced by "section YA 1".

Petroleum Sector Reform Act 1988 (1988 No 95)

Section 3, heading and provisions: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Port Companies Act 1988 (1988 No 91)

Section 38(4)(a): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Privacy Act 1993 (1993 No 28)

Section 6, principle 12(2): "section OD 7 of the Income Tax Act 2004" is replaced by "subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)".

Section 103(1B): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007".

Public Audit Act 2001 (2001 No 10)

Section 43: "sections CW 31 and CW 32 of the Income Tax Act 2004" is replaced by "sections CW 38 and CW 39 of the Income Tax Act 2007".

Public Service Investment Society Management Act (No 2) 1979 (1979 No 9)

Section 2(2): "section OD 1 of the Income Tax Act 2004" is replaced by "section YC 1 of the Income Tax Act 2007".

Radiocommunications Act 1989 (1989 No 148)

Sections 153(2) and 161(2): "section OD 7 of the Income Tax Act 2004" is replaced by "subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)" in each place where it appears.

Rates Rebate Act 1973 (1973 No 5)

Section 2(1), definition of **income**, paragraphs (c) and (d)(vi): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 2(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Securities Act 1978 (1978 No 103)

Section 2, definition of **associated persons** or **persons associated with each other**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 2, definition of **convertible note**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **relative**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 5(1)(h): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Sentencing Act 2002 (2002 No 9)

Section 127(1), definition of **hire purchase agreement**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Smoke-free Environments Act 1990 (1990 No 108)

Section 2(1), definition of **manufacturer**: "section OD 7 of the Income Tax Act 2004" is replaced by "subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)".

Social Security Act 1964 (1964 No 136)

Section 3(1), definition of **income**, paragraph (f)(xviii): "subparts MA to MF and MZ of the Income Tax Act 2007 or" is inserted before "subpart KD of the Income Tax Act 2004".

Section 3(1), definition of **income tax**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 3(3)(c)(i): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(3)(c)(ii): "section OE 1 or section OE 2(1) of the Income Tax Act 2004" is replaced by "section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007".

Section 11A(10): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 61G(7), definition of **tax credit**: "subparts MA to MF and MZ of the Income Tax Act 2007 or" is inserted before "subpart KD of the Income Tax Act 2004".

Section 70(4): "section CW 23 of the Income Tax Act 2004" is replaced by "section CW 28 of the Income Tax Act 2007".

Section 80B, definition of **income**, paragraph (b): "tax deduction on any of those benefits under the fourth proviso to section NC 6(1) of the Income Tax Act 2004" is replaced by "tax withheld or deducted for any of those benefits under section RD 11(3) of the Income Tax Act 2007".

Section 82A(5): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 83(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 83A(4)(b)(iii): replace by the following:

"(iii) the Income Tax Act 2004, be considered to be income of the person; or

"(iv) the Income Tax Act 2007, be considered to be income of the person."

Section 83A(6), definition of **income-tested benefit**: after "Income Tax Act 2004" insert "or section YA 1 of the Income Tax Act 2007".

Section 83A(6), definition of **source deduction payment**: add "and includes a PAYE income payment, as that term is defined in section RD 3 of the Income Tax Act 2007 (if applicable)".

Section 83A(6), definition of **specified provision**, paragraph (d): replace by the following:

"(d) section NC 6(1D) of the Income Tax Act 2004; or

"(e) section RD 11(3) of the Income Tax Act 2007."

Section 86G(2): "tax deductions that would be required to be made in accordance with the PAYE rules of the Income Tax Act 2004" is replaced by "amount of tax required to be withheld or deducted in accordance with the PAYE rules of the Income Tax Act 2007".

Section 132H(2)(i): "loss-attributing qualifying companies (within the meaning of the Income Tax Act 2004)" is replaced by "loss attributing qualifying companies (within the meaning of the Income Tax Act 2007)".

Schedule 18, clause 1, definition of **base rate**, paragraphs (b) and (d): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007" in each place where it appears.

Schedule 18, clause 1, definition of **base rate**, paragraphs (e)(ii) and (g)(ii): "subparts MA to MF and MZ of the Income Tax Act 2007 or" is inserted before "subpart KD of the Income Tax Act 2004".

Schedule 22, clause 2: "deducted pursuant to tax code 'G' (as specified in section NC 8 of the Income Tax Act 2004)" is replaced by "withheld pursuant to tax code 'M' (as specified in section 24B(3) of the Tax Administration Act 1994)".

Stamp and Cheque Duties Act 1971 (1971 No 51)

Section 86F, definition of **approved issuer**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 86F, definition of **interest**: "paragraphs (a) and (c) of the definition of **interest** in section OB 1 of the Income Tax Act 2004" is replaced by "paragraphs (a) and (b) of the definition of **interest** in section YA 1 of the Income Tax Act 2007".

Section 86F, definition of **money lent**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 86F, definition of **paid and payment**: "paragraph (c) of the definition of **pay** in section OB 1 of the Income Tax Act 2004" is replaced by "paragraph (c) of the definition of **pay** in section YA 1 of the Income Tax Act 2007".

Section 86I: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 86L(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

State Insurance Act 1990 (1990 No 36)

Section 13(5): "section MD 2 of the Income Tax Act 2004" is replaced by "section RM 13 to RM 17 of the Income Tax Act 2007".

Section 13(6): "section ME 5 of the Income Tax Act 2004" is replaced by "section OA 6(2), as described in table 02 of the Income Tax Act 2007".

Section 13(7): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

State-Owned Enterprises Act 1986 (1986 No 124)

Section 10A(2)(c): "Schedule 18 of the Income Tax Act 2004" is replaced by "schedule 36 of the Income Tax Act 2007".

Section 12(2)(d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

State-Owned Enterprises Amendment Act 1996 (1996 No 82)

Section 6, heading and provision: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 6: "Schedule 18" is replaced by "schedule 36".

State-Owned Enterprises (AgriQuality Limited and Asure New Zealand Limited) Act 2007 (2007 No 21)

Section 8(1)(a): "Schedule 18 of the Income Tax Act 2004" is replaced by "Schedule 36 of the Income Tax Act 2006".

State-Owned Enterprises (Meteorological Service of New Zealand Limited and Vehicle Testing New Zealand Limited) Amendment Act 1999 (1999 No 65)

Section 3(9): "Income Tax Act 2004 is amended by omitting from Schedule 18" is replaced by "Income Tax Act 2007 is amended by omitting from schedule 36".

Student Loan Scheme Act 1992 (1992 No 141)

Section 2, definition of **employee**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **employer**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **extra emolument** by: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **gross income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **income-tested benefit**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **net income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **non-resident**: "section OE 1 of the Income Tax Act 2004" is replaced by "section YD 1 of the Income Tax Act 2007".

Section 2, definition of **PAYE intermediary**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **primary employment earnings**: "section OB 1 of the Income Tax Act 2004" is replaced by "section 3(1) of the Tax Administration Act 1994".

Section 2, definition of **resident**: "section OE 1 of the Income Tax Act 2004" is replaced by "section YD 1 of the Income Tax Act 2007".

Section 2, definition of **salary or wages**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 2, definition of **secondary employment earnings**: "section OB 1 of the Income Tax Act 2004" is replaced by "section 3(1) of the Tax Administration Act 1994".

Section 2, definition of **tax year**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 14A(2): "section OE 4 of the Income Tax Act 2004" is replaced by "section YD 4 of the Income Tax Act 2007."

Section 15(5): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007."

Section 16, heading: "**Income Tax Act 2004**" is replaced by "**Income Tax Act 2007**".

Section 16: "section KB 2 and paragraph (b) of the definition of **applicable basic tax rate** in section OB 1 of the Income Tax Act 2004" is replaced by "section LC 10 and paragraph (b) of the definition of **basic tax rate** in section YA 1 of the Income Tax Act 2007".

Section 17(2): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 17B: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 18(2)(b): "section NC 8(1) of the Income Tax Act 2004" is replaced by "section 24B(3) of the Tax Administration Act 1994".

Section 19(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 21(2) and (3): "section NC 14 of the Income Tax Act 2004" is replaced by "section 24F of the Tax Administration Act 1994" in each place where it appears.

Section 25, heading: "**Income Tax Act 2004**" is replaced by "**Income Tax Act 2007**".

Section 25(1): "section OB 1" is replaced by "section YA 1".

Section 25(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 25(1)(b): "tax deductions" is replaced by "withholding or deducting an amount of tax".

Section 25(2): "sections BC 1, LD 1(2) and (3), NC 2(1), NC 6, NC 7, NC 16, and NC 17 of the Income Tax Act 2004" is replaced by "sections BC 1, LD 1(2) and (3), RC 2(1), RC 6, RC 7, RC 16, and RC 17 of the Income Tax Act 2007".

Section 25(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 27(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 28(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 28(2)(b): "provisional taxpayer" is replaced by "provisional taxpayer or a person liable to pay provisional tax".

Section 28(3)(a): "sections MB 2(3) and MB 4(3)(a) of the Income Tax Act 2004 (which determine the amount of provisional tax payable) and section LD 7" is replaced by "sections RC 3 and RC 5(2) of the Income Tax Act 2007 and section LB 2".

Section 28(3)(b): "section MB 4(3)(b) of the Income Tax Act 2004" is replaced by "section RC 5(3) of the Income Tax Act 2007".

Section 28(3)(c): "section MB 7 of the Income Tax Act 2004" is replaced by "section RC 8 of the Income Tax Act 2007".

Section 28(3)(d): "section MB 8(3)(a)(i) and (ii) and (b)(i) of the Income Tax Act 2004 (which provide for exceptions to the requirements of section MB 8(2)" is replaced by "section RC 9(4)(a)(i) and (ii) and (b)(i) of the Income Tax Act 2007 (which provide for exceptions to the requirements of section RC 9(3)".

Section 28(3)(e): "section MB 8(4) of the Income Tax Act 2004" is replaced by "section RC 9(5) of the Income Tax Act 2007".

Section 28(3)(f): "sections MB 10, MB 15, MB 17, MB 18, MB 23, and MB 32 of the Income Tax Act 2004" is replaced by "sections RC 11, RC 16 to RC 19, RC 24, and RC 31 of the Income Tax Act 2007".

Section 30(1): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 38AH(c)(i): "source deduction payment, as defined in section OB 2(1) of the Income Tax Act 2004" is replaced by "PAYE income payment as defined in section RD 3(1) of the Income Tax Act 2007".

Section 44(3), definition of **due date**, paragraphs (a) and (b): "schedule 13 of the Income Tax Act 2004" is replaced by "schedule 3 of the Income Tax Act 2007" in each place where it appears.

Section 44A(3)(a) and (b): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 44A(4)(b): "schedule 13, part A, of the Income Tax Act 2004" is replaced by "schedule 3, part A of the Income Tax Act 2007".

Section 55B(4): "Section NC 14 of the Income Tax Act 2004" is replaced by "section 24F of the Tax Administration Act 1994".

Superannuation Schemes Act 1989 (1989 No 10)

Section 23(1): "section GD 8 of the Income Tax Act 2004" is replaced by "section EY 11 of the Income Tax Act 2007".

Section 30(a): "section GD 8 of the Income Tax Act 2004" is replaced by "section EY 11 of the Income Tax Act 2007".

Takeovers Act 1993 (1993 No 107)

Section 44L, definition of **associated person**, paragraph (a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Tarawera Forest Act 1967 (1967 No 45)

Section 16, heading: "**Income Tax Act 1976**" is replaced by "**Income Tax Act 2007**".

Section 16: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Taxation Review Authorities Act 1994 (1994 No 165)

Section 3(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 17(4), definition of **widely-held company**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Te Arawa Lakes Settlement Act 2006 (2006 No 43)

Section 84(2), definitions of **market value** and **voting interest**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Trustee Companies Management Act 1975 (1975 No 25)

Section 2(2): "section OD 1 of the Income Tax Act 2004" is replaced by "section YC 1 of the Income Tax Act 2007".

Tutae-Ka-Wetoweto Forest Act 2001 (2001 No 48)

Section 10: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Unit Trusts Act 1960 (1960 No 99)

Section 2(1), definition of **unit trust**, paragraph (g): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(4): "section OD 1 of the Income Tax Act 2004" is replaced by "section YC 1 of the Income Tax Act 2007".

Section 6A(b): "section OD 1 of the Income Tax Act 2004" is replaced by "section YC 1 of the Income Tax Act 2007".

Section 6C(b): "section OD 1 of the Income Tax Act 2004" is replaced by "section YC 1 of the Income Tax Act 2007".

War Pensions Act 1954 (1954 No 54)

Section 67(1), definition of **employment income**, paragraph (a)(i): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 67(1), definition of **employment income**, paragraph (a)(ii): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 67(1), definition of **employment income**, paragraph (b): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 74C(1), definition of **standard tax**: "section NC 8 of the Income Tax Act 2004" is replaced by "section 24B of the Tax Administration Act 1994".

Wool Industry Restructuring Act 2003 (2003 No 40)

Section 36(1)(b) and (c): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 36(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 36(2)(b) and (4)(b): "section OD 5(5)" is replaced by "section YC 10".

Section 36(3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 36(4), (5) and (6): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 37: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 38(1) and (2): "section OC 3 of the Income Tax Act 2004" is replaced by "section CV 5 of the Income Tax Act 2007" in each place where it appears.

Section 39(2) and (3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Schedule 49 **KiwiSaver Act 2006** section 153(d): item repealed (with effect from 1 November 2007), on 19 December 2007, by section 137 of the Taxation (KiwiSaver) Act 2007 (2007 No 110).

Private Acts

ANZ Banking Group (New Zealand) Act 1979 (1979 No 1)

Section 7(4): "section OE 4(1)(m) of the Income Tax Act 2004" is replaced by "section YD 4(11)(a) of the Income Tax Act 2007."

Countrywide Banking Corporation Limited Act 1994 (1994 No 1)

Section 9(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Museum of Transport and Technology Act 2000 (2000 No 1)

Section 19(4): "sections EE 41 to EE 44 of the Income Tax Act 2004" is replaced by "sections EE 48 to EE 52 of the Income Tax Act 2007".

National Bank of New Zealand Limited Act 1994 (1994 No 3)

Section 9(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Public Service Investment Society Limited Act 1998 (1998 No 3)

Section 13(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Southland Flood Relief Committee Empowering Act 1992 (1992 No 1)

Section 8: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Sydenham Money Club Act 2001 (2001 No 2)

Section 18(2) and (3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Te Runanga O Ngai Tahu Act 1996 (1996 No 1)

Section 30(1)(c): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 31(3)(c): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Tower Corporation Act 1990 (1990 No 2)

Section 26(2)(a): "section IF 1(1)(a) of the Income Tax Act 2004" is replaced by "section IA 5(2) of the Income Tax Act 2007".

Section 26(2)(b): "section IG 1 of the Income Tax Act 2004" is replaced by "section IA 6 of the Income Tax Act 2007".

In section 26(2)(c), replace "FDP account under table 04" by "FDP account under section OA 6(3) as described in table 04", and replace "branch equivalent tax account under table 08" by "branch equivalent tax account under section OA 6(5) as described in table 08".

Section 26(5): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Local Acts

Auckland War Memorial Museum Act 1996 (1996 No 4)

Section 21(4): "sections EE 37 to EE 44 of the Income Tax Act 2004" is replaced by "sections EE 44 to EE 52 of the Income Tax Act 2007".

Section 21(5): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Hawke's Bay Crematorium Act 1944 (1944 No 7)

Section 5(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Hawke's Bay Regional Council (Surplus Funds Distribution) Empowering Act 1999 (1999 No 4)

Section 5(2): "section ME 8 of the Income Tax Act 2004" is replaced by "sections OB 60 and OB 61 of the Income Tax Act 2007".

Selwyn Plantation Board Empowering Act 1992 (1992 No 4)

Section 17, heading: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 17(1): "sections CB 5 to CB 21 of the Income Tax Act 2004" is replaced by "sections CB 6 to CB 23 of the Income Tax Act 2007".

Section 17(2), (4), and (5): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Westpac New Zealand Act 2006 (2006 No 3)

Section 4, definition of **Inland Revenue Acts**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 18(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 18(1)(c) and (d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 18(1)(e): "EW 43, and GD 11 of the Income Tax Act 2004" is replaced by "EW 42, and GB 21 of the Income Tax Act 2007".

Section 18(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 18(3): "section DB 23 of the Income Tax Act 2004" is replaced by "section DB 31 of the Income Tax Act 2007".

Section 19(1), (2), (3), (6)(c), (7), (8), (9), and (10): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 19(1)(a)(ii): "section DB 41" is replaced by "section DB 50".

Section 19(4): "DB 41 of the Income Tax Act 2004" is replaced by "section DB 50 of the Income Tax Act 2007".

Section 19(7)(b): "sections EE 37 to EE 44" is replaced by "sections EE 44 to EE 49, and EE 51 and EE 52".

Section 19(12): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulations

Animal Products (Regulated Control Scheme—Bivalve Molluscan Shellfish) Regulations 2006 (SR 2006/38)

Regulation 38(1)(b): "section OE 1 or section OE 2 of the Income Tax Act 2004" is replaced by "section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007".

Animal Products (Regulated Control Scheme— Limited Processing Fishing Vessels) Regulations 2001 (SR 2001/334)

Regulation 34(1)(c): "section OE 1 or section OE 2 of the Income Tax Act 2004" is replaced by "section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007".

Cooperative Dairy Companies Income Tax Regulations 1955 (SR 1955/55)

Regulation 2, definition of **available subscribed capital per share**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 2, definition of **gross income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Cooperative Milk Marketing Companies Income Tax Regulations 1960 (SR 1960/1)

Regulation 2, definition of **available subscribed capital per share**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 2, definition of **gross income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Cooperative Pig Marketing Companies Income Tax Regulations 1964 (SR 1964/37)

Regulation 2, definition of **available subscribed capital per share**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 2, definition of **gross income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Financial Reporting Order 1994 (SR 1994/134)

Clause 4, item headed *Depreciation*, paragraph (a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Clause 4, item headed *Specified leases*: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Clause 4, item headed *Specified leases*, paragraph (a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Fishing Industry Board (Dissolution) Regulations 2002 (SR 2002/211)

Regulation 5B(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Forestry Encouragement Grants Regulations 1983 (SR 1983/37)

Regulation 2, definition of **Maori authority**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Schedule 1, clause 3: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Health Entitlement Cards Regulations 1993 (SR 1993/169)

Regulation 2, definition of **family credit income**, paragraph (a): "section KD 1 of the Income Tax Act 2004" is replaced by "subpart MB of the Income Tax Act 2007".

Regulation 2, in the definition of **family credit income**, paragraph (b): " 'subpart KD credit' and any 'family tax credit' (as those terms are defined in section OB 1 of the Income Tax Act 2004" is replaced by "family assistance credit and any family tax credit (as that term is defined in section YA 1 of the Income Tax Act 2007".

Regulation 2, definition of **net income**: "net income as defined in section OB 1 of the Income Tax Act 2004" is replaced by "net income as defined in section YA 1 of the Income Tax Act 2007".

Regulation 2, definition of **net income**, paragraph (d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Regulation 2, definition of **net income**, paragraph (e)(i): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 2, definition of **net income**, paragraph (e)(ii): "section OE 1 or section OE 2 of the Income Tax Act 2004" is replaced by

"section YD 1 or YD 2 (excluding section YD 2(2)) of the Income Tax Act 2007".

Regulation 2, definition of Part KD credit is replaced by:

" **family assistance credit** means a credit of tax identified in Part M of the Income Tax Act 2007, excluding any family tax credit".

Regulation 2, definition of **tax year**: "section OB l1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 8: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Regulation 8: "subpart KD" is replaced by "subparts MA to MF and MZ" in each place where it appears.

Regulation 8: "subpart KD credit" is replaced by "family assistance credit" in each place where it appears.

Income Tax Act (Exempt Unit Trusts) Order 1990 (SR 1990/254)

Clause 2: "section HE 1 of the Income Tax Act 2004" is replaced by "section HD 13 of the Income Tax Act 2007".

Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995 (SR 1995/57)

Regulation 2: "section EH 41 of the Income Tax Act 2004" is replaced by "section EH 40 of the Income Tax Act 2007".

Income Tax (Calculation of Interest on Fringe Benefit Tax) Regulations 1993 (SR 1993/144)

Regulation 2, heading and provisions: "fringe benefit tax" is replaced by "FBT" in each place where it appears.

Regulation 2(a): "section ND 13 of the Income Tax Act 2004" is replaced by "section RD 61 of the Income Tax Act 2007".

Regulation 2(b): "section ND 14 of the Income Tax Act 2004" is replaced by "section RD 60 of the Income Tax Act 2007".

Regulation 4: "fringe benefit tax" is replaced by "FBT".

Regulation 5(1) and (2): "section ND 13 of the Income Tax Act 2004" is replaced by "section RD 61 of the Income Tax Act 2007"in each place where it appears.

Regulation 5(1)(a) and (2)(a): "fringe benefit tax" is replaced by "FBT" in each place where it appears.

Regulation 6(1), item b: "fringe benefit tax" is replaced by "FBT".

Regulation 6: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Regulation 6: "ND 13" is replaced by "RD 61".

Regulation 6: "ND 14" is replaced by "RD 60" in each place where it appears.

Regulation 7: "fringe benefit tax" is replaced by "FBT".

Income Tax (Cook Islands Development Projects) Order 1986 (SR 1986/27)

In clause 3: "section CW 47 of the Income Tax Act 2004" is replaced by "section CW 59 of the Income Tax Act 2007".

Income Tax (Depreciation Determinations) Regulations 1993 (SR 1993/232)

Regulation 2: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Income Tax (Refund of Excess Tax) Order 2003 (SR 2003/74)

Clause 3, heading: "section MD 1(1A) of the Income Tax Act 2004" is replaced by "section RM 5 of the Income Tax Act 2007".

Clause 3: "section MD 1(1A) of the Income Tax Act 2004" is replaced by "section RM 5 of the Income Tax Act 2007".

Income Tax (Social Assistance Suspensory Loans) Order 1995 (SR 1995/79)

In clause 2: "sections EW 47 and EZ 35 of the Income Tax Act 2004" is replaced by "sections EW 45 and EZ 38 of the Income Tax Act 2007".

Injury Prevention, Rehabilitation, and Compensation (Earners' Levy) Regulations 2006 (SR 2006/16)
[Repealed]

Injury Prevention, Rehabilitation, and Compensation (Earners' Levy) Regulations 2007 (SR 2007/71)
Regulation 3, definition of **tax year**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Injury Prevention, Rehabilitation, and Compensation (Self-Employed Work Account Levies) Regulations 2006 (SR 2006/62)
[Repealed]

Injury Prevention, Rehabilitation, and Compensation (Work Account Levies) Regulations 2007 (SR 2007/70)
Regulation 3, definition of **tax year**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Parental Leave and Employment Protection Regulations 2002 (SR 2002/98)
Regulation 8(1)(d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Securities Act (Telecom Corporation of New Zealand Limited) Exemption Notice 2001 (SR 2001/286)
Clause 4(1), definition of **control**: "section OD 1(1) of the Income Tax Act 2004" is replaced by "section YC 1(1) of the Income Tax Act 2007".

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)
Regulation 13, **example 1**, item 1 and **example 2**, item 1: "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007".

Schedule 1, clause 3(b): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007".

Schedule 1, clause 3(b)(i): "section KD 6 or section 7 of that Act" is replaced by "section 80KI to 80KU of the Tax Administration Act 1994".

Schedule 3, part 1, clause 1(b): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007"

Securities Regulations 1983 (SR 1983/121)

Regulation 2(1), definition of **associated persons** or **persons associated with each other**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Student Allowances Regulations 1998 (SR 1998/277)

Regulation 2(1), definition of **foreign-sourced amount**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 2(1), definition of **personal income**, paragraph (d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Regulation 2(1), definition of **taxable income**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Regulation 2(1), definition of **tax year**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Superannuation Schemes (Fees) Regulations 1992 (SR 1992/284)

Schedule, part 2, clause 1: "section GD 8 of the Income Tax Act 2004" is replaced by "section EY 11 of the Income Tax Act 2007".

Tax Administration (Binding Rulings) Regulations 1999 (SR 1999/236)

Regulation 3(1A)(a): "section FB 2 of the Income Tax Act 2004" is replaced by "section YD 5 of the Income Tax Act 2007".

Regulation 3(1A)(b): "section GD 13" is replaced by "sections GC 6 to GC 14".

Taxation (Abated Interim Payments of Part KD Credit) Regulations 2002 (SR 2002/52)

Regulation 1: "Subpart KD" is replaced by "subparts MA to MF and MZ".

Regulation 3, heading and subclause (1): "section KD 6(1)(b) of the Income Tax Act 2004" is replaced by "section 80KN(1)(b) of the Tax Administration Act 1994".

Taxation (Australian Wine Equalisation Tax Rebate) Regulations 2006 (SR 2006/105)

Regulation 4, definition of **Australian financial year**: "section CV 4(3) of the Income Tax Act 2004" is replaced by "section CV 8(3) of the Income Tax Act 2007".

Regulation 4, definition of **Australian wine producer rebate**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Taxation Review Authorities Regulations 1998 (SR 1998/460)

Schedule, form 1: "the Income Tax Act 1994, the Income Tax Act 2004" is replaced by "the Income Tax Act 2004, the Income Tax Act 2007".

Taxation (Use of Money Interest Rates) Regulations 1998 (SR 1998/105)

Regulation 1(2)(a): after "2004", insert "or the Income Tax Act 2007".

Taxation (Use of Money Interest Rates Setting Process) Regulations 1997 (SR 1997/7)

Regulation 1(2)(a): after "2004", insert "or the Income Tax Act 2007".

Telecommunications (Information Disclosure) Regulation 1999 (SR 1999/383)

Regulation 2, definition of **subvention payment**: "section IG 1 of the Income Tax Act 2004" is replaced by "sections IA 6 and IC 1 to IC 6 of the Income Tax Act 2007".

Schedule 49 **Goods and Services Tax Act 1985** section 2, definitions of **income year** (and following): item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Goods and Services Tax Act 1985** section 20A(1): item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Injury Prevention, Rehabilitation, and Compensation Act 2001** section 6, definition of **private domestic worker**: item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Injury Prevention, Rehabilitation, and Compensation Act 2001** section 11(1)(h)(iii): item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Injury Prevention, Rehabilitation, and Compensation (Earners' Levy) Regulations 2006**: item repealed, on 1 April 2008, by section 560 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 49 **Injury Prevention, Rehabilitation, and Compensation (Earners' Levy) Regulations 2007**: item inserted, on 1 April 2008, by section 560 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 49 **Injury Prevention, Rehabilitation, and Compensation (Self-Employed Work Account Levies) Regulations 2006**: item repealed, on 1 April 2008, by section 560 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 49 **Injury Prevention, Rehabilitation, and Compensation (Work Account Levies) Regulations 2007**: item inserted, on 1 April 2008, by section 560 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 49 **Insolvency Act 2006** section 274(5)(b) to (d): item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **National Provident Fund Restructuring Amendment Act 1997** schedule 2, clause 8(c): item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Te Arawa Lakes Settlement Act 2006** section 84(2): item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Hawke's Bay Regional Council (Surplus Funds Distribution) Empowering Act 1999** section 5(2): item amended (with effect on 1 April 2008), on 29 August

2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 49 **Taxation (Abated Interim Payments of Part KD Credit) Regulations 2002** regulation 1: item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 50

s ZA 2

Amendments to Tax Administration Act 1994

Tax Administration Act 1994 (1994 No 166)

Section 2

Section 2(4): "the Income Tax Act 2007", is inserted before "the Income Tax Act 2004".

Section 3

Section 3(1), definition of **accounting period**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **activities undertaken as an airport operator**: "**activities as an airport operator** in section OC 1(6) of the Income Tax Act 2004" is replaced by "**airport operator activities** in section HR 7 of the Income Tax Act 2007".

Section 3(1), definition of **assessment**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 3(1), definition of **authorised savings institution**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **base amount**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **basis of exemption**: "has the meaning given by section NF 9(2) of the Income Tax Act 2004" is replaced by "is the basis of exemption referred to in section 32E(2)".

Section 3(1), definition of **certificate of exemption**: repeal.

Section 3(1), definition of **combined tax and earner premium deduction** or **combined tax and earner levy deduction**: replace by the following:

" **combined tax and earner-related payment**—

"(a) unless paragraph (b) applies, has the same meaning as in section YA 1 of the Income Tax Act 2007:

"(b) is defined in section 167(4) of this Act for the purposes of that section".

Section 3(1), definition of **commercial production**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **consideration**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **contract payment**: "regulation 2(1) of the Income Tax (Withholding Payments) Regulations 1979" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **co-operative company**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **disposition**: "paragraph (d) of the definition of **dispose** in section OB 1 of the Income Tax Act 2004" is replaced by "paragraph (e) of the definition of **dispose** in section YA 1 of the Income Tax Act 2007".

Section 3(1), after the definition of **disqualifying penalty**: insert the following:

" **dividend treated as interest**, in sections 25 and 51 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **employer**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **exploratory well**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **exploratory well expenditure**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **family certificate of entitlement**: "certificate" is replaced by "notice" in each place where it appears.

Section 3(1), definition of **family certificate of entitlement**: "section KD 5 of the Income Tax Act 2004 in respect of the estimated entitlement of that person to a credit of tax allowable under section KD 2 or, as the case may be, sections KD 2 and KD 3 of that Act" is replaced by "section 80KD for the estimated entitlement of the person to a tax credit under the family scheme in subparts MA to MF and MZ of the Income Tax Act 2007".

Section 3(1), definition of **first PAYE period**: replace by the following:

" **first payment period**, in section 47 and 173 of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **fringe benefit**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 3(1), definition of **gift-exempt body**, paragraph (a): "any of the paragraphs of section KC 5(1) of the Income Tax Act 2004" is replaced by "schedule 32 of the Income Tax Act 2007".

Section 3(1), definition of **gift-exempt body**, paragraph (b): "a certificate of exemption in accordance with section NF 9 of that Act as a result of an application made in which application the basis for exemption claimed is that set out in subsection (1)(i) or subsection (1)(j) of that section" is replaced by "an RWT exemption certificate under section 32E as a result of an application made claiming the basis for exemption set out in section 32E(2)(k) or (l)".

Section 3(1), definition of **gift-exempt body**, paragraph (b): "such a certificate of exemption" is replaced by "the certificate".

Section 3(1), definition of **government agency**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 3(1), definition of **GST ratio**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **instalment date**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **interest instalment date**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **life insurer**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), after the definition of **life insurer**: insert the following:

" **Maori authority distribution penalty tax** means tax payable under section 140CB".

Section 3(1), after the definition of **Minister**: insert the following:

" **new provisional taxpayer** means a person who has an initial provisional tax liability as described in section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **PAYE period**: "has the same meaning as in section NC 15(8) of the Income Tax Act 2004" is replaced by "means **first payment period** or **second payment period**, as applicable".

Section 3(1), definition of **payment**: "paragraph (g) of the definition of **pay** in section OB 1 of the Income Tax Act 2004" is replaced by "paragraph (a) of the definition of **pay** in section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **permit area**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **petroleum mining operations**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **policyholder net loss**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **prescribed**: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 3(1), after the definition of **prescribed**: insert the following:

" **primary employment earnings**, for an employee and for a pay period, means a PAYE income payment that is not a schedular payment or an extra pay, when the payment meets 1 of the following requirements

"(a) the payment is derived by the employee in the pay period from 1 employer:

"(b) the payment is the largest payment derived by the employee in the pay period, if the employee derives payments in the period from 2 or more employers:

"(c) the payment is derived in the pay period and is of the same amount as another payment that the employee chooses, if the employee derives payments in the period from 2 or more employers and 2 or more of the payments are of the same amount".

Section 3(1), definition of **property**: "paragraph (d) of the definition of that term in section OB 1 of the Income Tax Act 2004" is replaced by "paragraph (b) of the definition of that term in section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **provisional taxpayer**: replace by the following:

" **provisional taxpayer** means a person who is liable to pay provisional tax under section RC 3 of the Income Tax Act 2007".

Section 3(1), definition of **qualifying person**: "section 84(6) for the purposes of that section" is replaced by "sections 83(7), 84(6), and 85G(6) for the purposes of those sections".

Section 3(1), definition of **qualifying resident foreign trustee**, paragraph (b)(i): "section OE 1 of the Income Tax Act 2004" is replaced by "section YD 1 of the Income Tax Act 2007".

Section 3(1), definition of **ratio instalment date**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), before the definition of **record**: insert the following:

" **reconciliation statement** means a reconciliation statement under section 49".

Section 3(1), definition of **relinquishment**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **resident foreign trustee**, paragraph (b): "section OE 1 or section OE 2 of the Income Tax Act 2004" is replaced by "section YD 1, YD 2, or YD 3 (excluding section YD 2(2)) of the Income Tax Act 2007".

Section 3(1), definition of **residual income tax**, paragraph (b): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), after the definition of **return period**: insert the following:

" **RWT exemption certificate** has the same meaning as in section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **second PAYE period**: replace by the following:

" **second payment period**, in sections 47 and 173(1)(b) of this Act, has the same meaning as in section YA 1 of the Income Tax Act 2007

" **secondary employment earnings**, for an employee and for a pay period, means a PAYE income payment that—

"(a) is derived by the employee in the pay period from an employer; and

"(b) is not—

"(i) a payment of primary employment earnings; or

"(ii) a schedular payment; or

"(iii) an extra pay".

Section 3(1), definition of **settlement**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(1), definition of **settlor**: "has the same meaning as in paragraphs (a) and (b) of the definition of that term in section OB 1 of the Income Tax Act 2004" is replaced by "is defined in section HC 27 of the Income Tax Act 2007".

Section 3(1), definition of **special account**: repeal.

Section 3(1), after the definition of **shortfall penalty**: insert the following:

" **special tax code certificate** means a special tax code certificate under section 24F".

Section 3(1), definition of **specified dividends**: repeal.

Section 3(1), definition of **tax**, paragraphs (a)(iii)(A) and (d)(iii)(A): "a dividend withholding payment" is replaced by "FDP" in each place where it appears.

Section 3(1), definition of **tax**, paragraphs (a)(xi) and (ca)(iii): "rebate" is replaced by "tax credit" in each place where it appears.

Section 3(1), definition of **tax**, paragraph (a)(xiii): "section NBB 6 of the Income Tax Act 2004" is replaced by "section RP 4 of the Income Tax Act 2007".

Section 3(1), definition of **tax**, paragraph (ab): "section CV 4 of the Income Tax Act 2004" is replaced by "section CV 8 of the Income Tax Act 2007".

Section 3(1), definition of **tax**, after paragraph (ca): insert the following:

"(cb) for the purposes of sections 156 to 165, includes a combined tax and earner-related payment:".

Section 3(1), after the definition of **tax agent**: insert the following:

" **tax code certificate** means a tax code certificate under section 24I(2)

" **tax code notification** means a tax code notification under section 24I(1)".

Section 3(1), definition of **tax deduction**: repeal.

Section 3(1), definition of **tax position**, paragraph (h): replace by the following:

"(h) the availability of a tax loss component or loss balance, or the use of a tax loss component or loss balance:".

Section 3(1), definition of **tax position**, paragraph (j): replace by the following:

"(j) the balance of a tax account or memorandum account of any type or description, or a debit or credit to such an account:".

Section 3(1), definition of **tax position**, paragraph (n): "rebate" is replaced by "tax credit".

Section 3(1), definition of **tax position**, paragraph (o): "section NBB 6 of the Income Tax Act 2004" is replaced by "section RP 4 of the Income Tax Act 2007".

Section 3(1), definition of **withdrawal tax**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 3(2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 4A

Section 4A(1)(b)(ii): replace by the following:

"(ii) paying, deducting, or withholding, or not paying, not deducting, or not withholding, an amount of tax; or".

Section 4A(2)(a) to (bb): replace by the following:

"(a) a company is deemed to withhold FDP when a foreign dividend is paid to the company:

"(b) an amount of tax is deemed to be withheld when payment is made of the net amount of a PAYE income payment:

"(bb) a contribution deduction under the KiwiSaver Act 2006 is deemed to be made when payment is made of the net amount of a PAYE income payment:".

Section 4A(2)(c) and (d): "of a deduction" is replaced by "withheld or deducted" in each place where it appears.

Section 4A(3), words before paragraph (a): replace by the following:

"(3) References in this Act to tax liabilities for withholding or deducting an amount of tax, or making or accounting for amounts deducted or amounts withheld, under the PAYE rules, to the extent necessary, are also to be construed as including references to liabilities for withholding, deducting, making, or accounting for,—".

Section 4A(4), words before paragraph (a): "Where a taxpayer required to provide a return under any of sections NC 15, NF 4, NG 11, and NH 3 of the Income Tax Act 2004" is replaced by "When a taxpayer has an obligation under any of sections RA 5, RA 6, RA 10, RA 15 to RA 19, RD 2, RD 4, RD 22, RE 20, RE 21, RF 13, RG 3, or RG 6 of the Income Tax Act 2007".

Section 4B

Section 4B(1): "section CV 4 of the Income Tax Act 2004" is replaced by "section CV 8 of the Income Tax Act 2007".

Section 14C

Section 14C(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 17

Section 17(1C)(a)(ii): "section OD 7, interpreted as if **relative** had the meaning set out in paragraph (b) of the definition in section OB 1, or OD 8(3) of the Income Tax Act 2004" is replaced by "subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990

version provisions), interpreted as if **relative** had the meaning set out in paragraph (b) of the definition in section YA 1, or the rules for the 1988 version provisions of that Act".

Section 22

Section 22(1)(c)(iii) and (iv): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 22(1)(c)(v): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 22(2)(c): "SSCWT rules apply and who makes any specified superannuation contribution" is replaced by "ESCT rules apply and who makes an employer's superannuation contribution".

Section 22(2)(f): replace by the following:

"(f) is a company that is an ICA company, a FDPA company, a BETA company, a BETA person, a PCA company, or a PCA person:".

Section 22(2)(j): "foreign withholding payment dividend" is replaced by "foreign dividend".

Section 22(2)(k) and (kb): replace by the following:

"(k) every credit and debit to the person's memorandum accounts (other than a CTR account and an ASC account), and the amount of a credit attached to a dividend or distribution paid by the person:".

Section 22(2)(l): "specified superannuation contribution" is replaced by "employer's superannuation contribution" in each place where it appears.

Section 22(2), words after the paragraphs: "(for paragraphs (k) and (kb)) imputation year" is replaced by "(for paragraph (k)) the tax or income year (as applicable)".

Section 22(3) and (6)(b): "deducted" is replaced by "withheld or deducted" in each place where it appears.

Section 22(7)(c): replace by the following:

"(c) accounts (whether contained in a manual, mechanical, or electronic format) to be maintained under the imputation rules, the FDP rules, or section OA 3 for accounts under subparts OE and OJ, and sections OP 97 to OP 108 of the Income Tax Act 2007,

and any statement to be retained under section 31 or 71 of this Act:"

Section 22A

Section 22A, heading, and subsections (1) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 22B

Section 22B(1): "section EW 46 or EZ 36" is replaced by "section EW 44 or EZ 39 of the Income Tax Act 2007".

Section 24

Section 24(1): replace by the following:

"(1) An employer who makes a PAYE income payment to an employee must keep a proper record relating to the employee, showing the amount of the PAYE income payment before tax and the amount of the tax withheld from it, and must enter those amounts in the record at the time of making the PAYE income payment."

Section 24(2): "source deduction payments, tax deduction certificates, tax code declarations" is replaced by "PAYE income payments, withholding certificates, tax code notifications".

Section 24(2): "Income Tax Act 2004 to deliver to the Commissioner or to any other person the signed tax deduction certificates, tax code declarations" is replaced by "Income Tax Act 2007 to deliver to the Commissioner or to any other person the signed withholding certificates, tax code notifications".

Section 24(2), proviso: "tax code declarations," is replaced by "tax code notifications,"

New sections 24B to 24P

After section 24: insert the following:

"**PAYE tax codes**

"**24B PAYE tax codes**

"(1) This section applies for the purposes of the PAYE rules to provide an employee with a tax code for a PAYE income payment. Subsection (2) overrides this subsection.

"(2) Subsection (1) does not apply to the following amounts:

"(a) an extra pay:

"(b) a schedular payment:

"(c) a payment of an income-tested benefit.

"(3) An employee must notify their employer that their tax code is 1 of the following:

"(a) 'M' for primary employment earnings when the employee is not entitled to a tax credit under section LC 4 of the Income Tax Act 2007:

"(b) 'ML' for primary employment earnings when the employee is entitled to a tax credit under section LC 4 of the Income Tax Act 2007:

"(c) 'S' for secondary employment earnings for an employee whose annual income is not more than $38,000:

"(d) 'SH' for secondary employment earnings for an employee whose annual income is more than $38,000 but is not more than $60,000:

"(e) 'ST' for secondary employment earnings for an employee whose annual income is more than $60,000:

"(f) 'CAE' for salary or wages for employment as a casual agricultural employee:

"(g) 'EDW' for salary or wages for employment as an election day worker:

"(h) 'no notification' when the employee has not provided their employer with a tax code notification or a tax code certificate.

"(4) If another Act requires an employer to withhold the amount of tax for a PAYE income payment to an employee and pay the amount to the Commissioner, the tax code may be combined with another code applying under that Act.

"Compare: 2004 No 35 s NC 8(1), (1AA)

"**24C Tax code for payment that includes income-tested benefit**

If an employee receives a PAYE income payment of an income-tested benefit and a PAYE income payment that does not consist of an income-tested benefit, the tax code 'S' applies to the payment that does not consist of an income-tested benefit.

"Compare: 2004 No 35 s NC 8(1) proviso

"**24D Tax code for parental leave payment**

The tax code applying to an employee's parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is their tax code before the parental leave from their employment started unless the employee provides a further tax code notification.

"Compare: 2004 No 35 s NC 8(9A)

"**24E Tax code for employment as private domestic worker**

An employee who wishes to have a tax code for their employment as a private domestic worker may provide their tax code notification to the Commissioner.

"Compare: 2004 No 35 s NC 8(12)

"**24F Special tax code certificates**

"(1) The Commissioner may provide an employee with a special tax code certificate, whether because the employee has 2 or more employments, or is entitled to have a net loss carried forward, or wishes to have a reduction applying to the amount of tax withheld under section 24H(1), or for another reason.

"(2) The special tax code may—

"(a) set out a tax code to apply to a payment of salary or wages to an employee by 1 or more of their employers for a period referred to in the certificate:

"(b) require that no amount of tax is withheld from, or a particular rate of tax applies to, a proportion of a PAYE income payment of the employee, as if it were the whole payment.

"(3) The Commissioner must calculate, for the PAYE income payments and period referred to in the certificate, and set out in the certificate, the amount of tax for the payments or the rate of tax applying to them, having regard to the amount of tax for

the payments that would be required under sections RD 9 to RD 11 of the Income Tax Act 2007.

"(4) When an employee provides a special tax code certificate to their employer, the provisions of the certificate override anything in the Income Tax Act 2004 and this Act other than the employee's duties under sections RA 8, RA 10, and RD 4(2) of the Income Tax Act 2007.

"(5) An employee's entitlement under subparts MA to MF and MZ of the Income Tax Act 2007 is not taken into account in setting a tax code for a special tax code certificate.

"(6) The Commissioner may cancel a special tax code certificate at any time, and on notification of the cancellation, the employee must return the certificate to the Commissioner within a period of 7 days.

"Compare: 2004 No 35 s NC 14

"**24G Use of incorrect tax codes**

"(1) This section applies when the Commissioner considers that an employer or PAYE intermediary has used an incorrect tax code in relation to a PAYE income payment to an employee.

"(2) The Commissioner may notify the employer or PAYE intermediary of the incorrect code and provide the tax code that should apply to the PAYE income payment.

"(3) The employer or PAYE intermediary must use the tax code provided by the Commissioner in relation to a PAYE income payment made to the employee after the date of notification. But the tax code does not apply if the employee notifies their employer that their circumstances have changed and, as a result, a different tax code should apply.

"Compare: 2004 No 35 s NC 12A(1)–(3)

"**24H When entitlement to use tax code ends**

"(1) This section applies when an employee is no longer entitled to use a certain tax code.

"(2) The tax code does not apply to a PAYE income payment made to the employee after the date on which the entitlement ends, unless the payment is salary or wages for a current pay period.

"(3) The employee must notify their employer that their entitlement has ended within the period of 4 days after the date on which they became aware that they are no longer entitled to use the tax code. If the employee provides the notification to the Commissioner, they must notify the Commissioner similarly.

"(4) For the purposes of subsection (3), the employee must give the reason why the tax code no longer applies and the date on which entitlement ended.

"(5) If the employee provides their employer with a tax code notification or tax code certificate within the period of 7 days after the date on which they become aware that they are no longer entitled to use a tax code, the tax code in the notification or certificate applies from the date on which the entitlement to use the earlier code ends.

"(6) When an employee's entitlement to use a certain tax code ends, their employer is not liable for withholding a reduced amount of tax for a payment if they have not received notice that the entitlement has ended.

"(7) An employee is not entitled to use the tax code 'ML' in a tax year if the employee knows or expects, or should have known or expected, that they will not be entitled to a tax credit under section LC 4 of the Income Tax Act 2007.

"Compare: 2004 No 35 ss NC 8(7), (8), NC 9

"**24I PAYE tax code notification and certificate**

"(1) An employee who wishes to have the amount of tax for a PAYE income payment reduced may notify their employer of the applicable tax code. This subsection applies separately for each employment situation.

"(2) If an employee finds it difficult or impractical to notify their employer as described in subsection (1), they may notify the Commissioner who must then provide a tax code certificate to the employer setting out the applicable tax code. The employee may give the certificate to their employer.

"(3) The tax code notified or set out in a tax code certificate applies to a PAYE income payment made to an employee by their employer from—

"(a) the first day of a pay period to which the payment relates up to the date on which the employee is no longer entitled to use the particular tax code if—

"(i) the employer has no earlier tax code for the employee; or

"(ii) the notification or certificate changes an earlier tax code for the employee and is provided before the date on which the employer calculates their payroll for the period:

"(b) the first day of the pay period following that to which the payment relates if the notification or certificate changes an earlier tax code for the employee and is provided after the date on which the employer calculates their payroll for the period.

"(4) A tax code notification must provide for an employee's statement of their entitlement under the Immigration Act 1987 to work for their employer.

"(5) A tax code notification or tax code certificate delivered to an employer before the start of the tax year but expressed to relate to the tax year, is treated as if it is delivered on 1 April in the tax year.

"Compare: 2004 No 35 ss NC 8(2)–(4), (11), NC 8A

"**PAYE certificates, notification, and applications**

"**24J Proof of payment**

"(1) An employer or PAYE intermediary who is required to withhold and pay to the Commissioner an amount of tax for a PAYE income payment must provide a PAYE payment form to the Commissioner by the applicable due date set out in section RA 15 of the Income Tax Act 2007.

"(2) If the PAYE payment form is not provided electronically, it must be signed by the employer or PAYE intermediary, as applicable.

"(3) The Commissioner may release an employer or a class of employers, or a PAYE intermediary or a class of PAYE intermediaries, from the requirement to provide a PAYE payment form

if the information is contained in an employer monthly schedule.

"Compare: 2004 No 35 s NC 15(1), (2), (2B)

"**24K Certain information required in returns**

"(1) This section applies for the purposes of sections RE 23 and RE 24 of the Income Tax Act 2007 when—

"(a) an amount of tax for resident passive income paid in a tax year by a company is treated as an FDP credit:

"(b) an amount of tax for a taxable Maori authority distribution is treated as a Maori authority credit attached to the distribution.

"(2) The company paying the dividend and withholding the amount of tax under section RA 6(1) of that Act must provide to the Commissioner information in relation to the amount of tax in—

"(a) its annual FDPA return under section 71; or

"(b) if paragraph (a) does not apply, its annual ICA return under section 69.

"(3) For the purposes of subsection (2) and the payment of the dividend, the company must provide to the Commissioner information in relation to the dividend in—

"(a) its dividend statement under section 67 if it is an ICA company; or

"(b) if paragraph (a) does not apply, a form approved by the Commissioner, containing the information set out in section 67(a) to (c) and (f) and filed no later than 31 May after the end of the tax year.

"(4) The Maori authority making the distribution and withholding the amount of tax under section RA 6(1) of the Income Tax Act 2007 must provide to the Commissioner information in relation to the amount of tax in its annual Maori authority credit account return.

"(5) For the purposes of subsection (4) and the making of the distribution, the Maori authority must provide to the Commissioner information in relation to the distribution in the distribution statement prepared under section 68B.

"Compare: 2004 No 35 ss NF 8(2)–(4), NF 8A

"**24L Schedular notification**

"(1) This section applies to a person who is entitled to receive a schedular payment described in section RD 8 of the Income Tax Act 2007.

"(2) Before the person receives the schedular payment, they must notify the person making the payment of the applicable schedular tax code.

"(3) The notification referred to in subsection (2) must be in a form authorised by the Commissioner.

"Compare: 2004 No 35 s NC 7(1)

"**24M Exemption certificates for schedular payments**

"(1) The Commissioner may provide a person who is entitled to receive a schedular payment with an exemption certificate setting out the payments for a period for which no amount of tax is to be withheld.

"(2) Subsection (1) does not apply to a payment to a non-resident entertainer.

"(3) The Commissioner may cancel an exemption certificate at any time.

"(4) If the Commissioner cancels an exemption certificate, the person who was provided the certificate must return it within 7 days of the date of cancellation.

"(5) An exemption certificate must not be altered or be used to cause a person making a schedular payment not to withhold an amount of tax for the payment.

"Compare: SR 1979/259 regulation 5, Income Tax (Withholding Payments) Regulations

"**24N Special tax rate certificates for schedular payments**

"(1) The Commissioner may provide a person who is entitled to receive a schedular payment with a special tax rate certificate setting out the amount of tax for the payment, or the rate applying to the payment or a part of each payment as if it were the whole payment.

"(2) Subsection (1) does not apply to a payment to a non-resident entertainer.

"(3) The Commissioner may cancel a special tax rate certificate at any time. The Commissioner must give notice of the cancellation.

"(4) If the Commissioner cancels a special tax rate certificate, the person who was provided the certificate must return it within 7 days of the date of notification of the cancellation.

"(5) A special tax rate certificate must not be altered or be used to cause a person making a schedular payment not to withhold an amount of tax for the payment.

"Compare: SR 1979/259 regulation 6A, Income Tax (Withholding Payments) Regulations

"24O Certain information required from agricultural, horticultural, or viticultural employers

"(1) This section applies when an agricultural, horticultural, or viticultural employer makes a schedular payment for work done or services rendered in a class set out in schedule 4, part C, clause 1(b) of the Income Tax Act 2007.

"(2) If the employer is required to provide an employer monthly schedule to the Commissioner for a particular period, and no amount of tax for the payment is required to be made because an exemption certificate or special tax rate certificate has been provided under section 24M or 24N, as applicable, the employer must include in the schedule the information set out in subsection (4).

"(3) If the employer is not required to provide an employer monthly schedule for a month, the employer must provide the information set out in subsection (4) in relation to the payment by the 20th day of the month following that in which the payment is made.

"(4) The information referred to in subsections (2) and (3) is—

"(a) the name and tax file number of the employer; and

"(b) the name of the person who received the payment; and

"(c) the tax file number of the person who received the payment if the employer has been supplied the number; and

"(d) the gross amount of the payment; and

"(e) the date of the payment; and

"(f) the number of an exemption certificate or special tax rate certificate provided to the person who received the payment if the employer has been supplied the number.

"Compare: SR 1979/259 regulation 12A, Income Tax (Withholding Payments) Regulations

"**24P Variation of requirements**

The Commissioner may vary the requirements set out in sections 24B, 24H, and 24I for a person or a class of persons.

"Compare: 2004 No 35 ss NC 7(3), NC 8(10), NC 15(3) ".

Section 25

Section 25, heading and subsection (1): replace by the following:

"**25 RWT withholding certificates**

"(1) Subsection (1B) applies when a person withholds RWT for resident passive income paid to or derived by any other person that is—

"(a) interest; or

"(b) a dividend treated as interest; or

"(c) a dividend to which section RE 9(2) of the Income Tax Act 2007 applies.

"(1B) The person must prepare an RWT withholding certificate that contains the information set out in subsection (6)."

Section 25(2), (6)(a), (7), and (9): "resident withholding income" is replaced by "resident passive income" in each place where it appears.

Section 25(2)(a) and (b): "that resident withholding tax deduction certificate" is replaced by "the RWT withholding certificate" in each place where it appears.

Section 25(2), (3), and (10): "a resident withholding tax deduction certificate" is replaced by "an RWT withholding certificate" in each place where it appears.

Section 25(8): "Every resident withholding tax deduction certificate shall" is replaced by "An RWT withholding certificate must".

Section 25(9): "resident withholding tax deduction certificate" is replaced by "RWT withholding certificate".

Section 25(2), (2)(a) and (b), and (9): "(in the case of a deduction of resident withholding tax made in accordance with section NF 3 of

the Income Tax Act 2004)" is replaced by "(as applicable)" in each place where it appears.

Section 25(3): "any deduction of resident withholding tax made during that year if the financial arrangement in relation to which the deduction of resident withholding tax was made" is replaced by "RWT withheld during that year for resident passive income that relates to a financial arrangement, if the financial arrangement".

Section 25(3): "tax deduction certificate" is replaced by "withholding certificate".

Section 25(4)(a): "make any resident withholding tax deductions" is replaced by "withhold RWT".

Section 25(4) and (5): "a valid certificate of exemption" is replaced by "an RWT exemption certificate" in each place where it appears.

Section 25(4) and (5): "any resident withholding tax deduction certificates" is replaced by "an RWT withholding certificate" in each place where it appears.

Section 25(5): "make resident withholding tax deductions" is replaced by "withhold RWT".

Section 25(6) and (6A): replace by the following:

"(6) An RWT withholding certificate must include the following:

"(a) a statement as to whether the resident passive income is interest, a dividend treated as interest, or a dividend to which section RE 9(2) of the Income Tax Act 2007 applies:

"(b) the date on which the RWT was withheld, or if there is more than 1 instance, the year in which the amounts were withheld:

"(c) the amount of resident passive income and the amount of RWT withheld:

"(d) the basic tax rate that applied to the resident passive income.

"(6B) The Commissioner may prescribe a formula for determining the average basic tax rate that is to be applied to resident passive income."

Section 25(7): "a resident withholding tax certificate with respect to any interest from which the person has in any tax year made a deduction of resident withholding tax" is replaced by "an RWT withholding

certificate relating to any interest from which the person has in a tax year withheld RWT".

Section 25(7)(b): replace by the following:

"(b) the RWT withheld was from resident passive income that is interest, and the amount was required to be withheld by the person under section RE 7 or RE 8 of the Income Tax Act 2007, and the total amount of the resident passive income, being interest, paid by the person in that tax year to the recipient of the interest is no more than $50,—".

Section 25(11): replace by the following:

"(11) In this section, a dividend that is resident passive income paid by an RWT proxy as described in section RE 3(1)(c) of the Income Tax Act 2007 is treated as being interest."

Section 26

Section 26, heading: "**purposes of resident withholding tax**" is replaced by "**RWT purposes**".

Section 26(1): "to make payments of resident withholding tax in relation to resident withholding income paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section NF 3 of the Income Tax Act 2004)" is replaced by "to pay RWT for resident passive income paid to or derived (as applicable)".

Section 26(1): "each such amount of resident withholding income" is replaced by "each amount of resident passive income".

Section 26(1)(a) to (d): replace by the following:

"(a) the amount of the resident passive income before withholding RWT:

"(b) the amount of RWT withheld:

"(c) the date on which the RWT was required to be withheld:

"(d) the full name and last known address of the recipient of the payment or the person deriving the resident passive income, as applicable:".

Section 26(2): "in accordance with the Income Tax Act 2004 to pay resident withholding tax in relation to any amount paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section NF 3 of that Act)" is replaced by "under the Income Tax Act 2007 to pay RWT for an amount of resident passive income paid to or derived (as applicable)".

Section 26(2): "a valid certificate of exemption issued under section NF 9(1)(i) and (j)" is replaced by "an RWT exemption certificate given under section RE 27".

Section 26(2)(a): "a resident withholding tax payment" is replaced by "the payment of RWT".

Section 26(3) and (3)(a): "specified dividends" is replaced by "dividends treated as interest" in each place where it appears.

Section 27

Section 27(1): "resident withholding income in respect of which a resident withholding tax payment is required to be made" is replaced by "resident passive income from which RWT must be withheld".

Section 28

Section 28: replace by the following:

"**28 Recipient of resident passive income to provide tax file number when RWT not withheld**

A person who receives from a payment of resident passive income, that is interest, must provide their tax file number to the payer within 10 working days of receiving a request by notice from the payer, if no requirement to withhold RWT arises because—

"(a) the payment was not made by the payer in the course of, or furtherance of, a taxable activity:

"(b) section RE 10 of the Income Tax Act 2007 applies."

Section 29

Section 29(1): "(not being a specified dividend) from which resident withholding tax has been deducted, or a dividend with an imputation credit or a dividend withholding payment credit attached or a conduit tax relief credit attached" is replaced by "(not being a dividend treated as interest) from which RWT has been withheld, or a dividend with an imputation credit, an FDP credit, or a CTR credit attached".

Section 29(1)(d) and (e): replace by the following:

"(d) the amount of RWT withheld, if any:

"(e) the amount of NRWT withheld, if any:".

Section 29(1)(i): "a dividend withholding payment credit" is replaced by "an FDP credit".

Section 29(1)(ia): "conduit tax relief credit" is replaced by "CTR credit".

Section 29(1B): "Australian imputation credit account company" is replaced by "Australian ICA company".

Section 29(1C)(b): "date of the emigration time, if the company is treated under section FCB 2 of the Income Tax Act 2004" is replaced by "time of emigration, if the company is treated under section FL 2 of the Income Tax Act 2007".

Section 30

Section 30, heading and paragraphs (a), (b), and (c): "dividend withholding payment credit" is replaced by "FDP credit" in each place where it appears.

Section 30, words before paragraph (a): "a dividend withholding payment account company" is replaced by "an FDPA company".

Section 30: "a dividend withholding payment credit" is replaced by "an FDP credit".

Section 30, words before paragraph (a): "section MG 6 of the Income Tax Act 2004" is replaced by "section OC 27 of the Income Tax Act 2007".

Section 30A

Section 30A, heading and subsection: "conduit tax relief credit" is replaced by "CTR credit" in each place where it appears.

Section 30A, words before paragraph (a): "conduit tax relief company" is replaced by "CTR company".

Section 30A, words before paragraph (a): "section MI 7 of the Income Tax Act 2004" is replaced by "section OD 20 of the Income Tax Act 2007".

Section 30A(b) and (c)(ii): "conduit tax relief additional dividend" is replaced by "CTR additional dividend" in each place where it appears.

Section 30A(b): "section LG 1 of the Income Tax Act 2004" is replaced by "section LQ 5 of the Income Tax Act 2007".

Section 30B

Section 30B(e): "deduction of resident withholding tax" is replaced by "RWT is withheld".

Section 30B(f): "section ME 6B of the Income Tax Act 2004" is replaced by "section OB 64 of the Income Tax Act 2007".

Section 30B(g): "deduction of resident withholding tax" is replaced by "amount of RWT withheld".

Section 30B(g): "section NF 8B of the Income Tax Act 2004" is replaced by "section RE 25 of the Income Tax Act 2007".

Section 30C

Section 30C(2)(b) and (c): "dividend withholding payment credit" is replaced by "FDP credit" in each place where it appears.

Section 31

Section 31(1)(e): "section NF 8B of the Income Tax Act 2004" is replaced by "section RE 24 of the Income Tax Act 2007".

Section 32A

Section 32A(1) and (4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 32A(1): "specified superannuation contributions" is replaced by "employer's superannuation contributions".

Section 32B

Section 32B, heading and subsections (1)(m) and (4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 32B(1)(a), (c), (k), and (l): "specified superannuation contributions" is replaced by "employer's superannuation contributions" in each place where it appears.

Section 32B(1)(b): replace by the following:

"(b) the amount of employer's superannuation contributions for which ESCT has been withheld at the rate specified in schedule 1, part D, clause 1 of the Income Tax Act 2007:"

Section 32B(1)(c): "section NE 2A of the Income Tax Act 2004" is replaced by "section RD 68 of the Income Tax Act 2007".

Section 32C

Section 32C(1)(a) and (d), and (4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears. Section 32C(1)(b): "employer contributions to superannuation savings" is replaced by "employer-sourced superannuation savings".

Section 32D

Section 32D, heading and subsection (1): "qualifying unit" is replaced by "public unit" in each place where it appears.

New sections 32E to 32N

After section 32D: insert the following:

"**Resident passive income**

"**32E Applications for RWT exemption certificates**

"(1) A person listed in subsection (2) may apply to the Commissioner for an RWT exemption certificate.

"(2) The persons are—

"(a) a registered bank:

"(b) a building society:

"(c) the Public Trust or a company that would be a member of the same wholly-owned group of companies as the Public Trust, if it were a company for the purposes of this Act:

"(d) the Maori Trustee:

"(e) a statutory trustee company:

"(eb) a portfolio investment entity:

"(f) a person whose main business is—

"(i) borrowing money or accepting deposits, or receiving credit or selling a credit instrument; and

"(ii) lending money or granting credit, or buying or discounting a credit instrument:

"(g) a person that is

"(i) a nominee company subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006 and operated by a barrister and solicitor or an incorporated law firm; or

"(ii) a broker's nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply:

"(h) a practitioner within the meaning of the Lawyers and Conveyancers Act 2006 or incorporated firm within the meaning of that Act in relation to the operation of their trust account which is an account maintained under section 112 of that Act:

"(i) a person—

"(i) who has met their obligation to file a return of income under the Inland Revenue Acts within the time allowed; and

"(ii) whose annual gross income for the tax year in which they last filed a return of income is more than $2,000,000:

"(j) a person in an accounting year who reasonably believes their annual gross income for the tax year that corresponds to the next accounting year will be more than $2,000,000:

"(k) a person who derives in a tax year an amount that is exempt income under sections CW 38(2), CW 39(2), CW 40 to CW 52, and CW 63 of the Income Tax Act 2007 in relation to their activities in the capacity in which they derive the exempt income:

"(l) a person to whom section DV 8 of the Income Tax Act 2007 applies and who would, but for that section, have net income of an amount less than the amount set out in the section for their most recently ended accounting year.

"(3) The person must apply in writing to the Commissioner, and the application must—

"(a) state the basis of exemption under subsection (2); and

"(b) include a declaration by the person or an officer authorised by them that they come within the basis of exemption.

"(4) The person must provide further information in relation to the application as the Commissioner requires.

"Compare: 2004 No 35 s NF 9(1)–(3)

"**32F Calculation of annual gross income when threshold met**

For the purposes of section 32E(2)(i), when the person is part of a group of companies, the person's annual gross income is determined by—

"(a) including the total annual gross income in the tax year of other group companies; and

"(b) excluding an amount of assessable income derived by the company or another company in the same group from a transaction or series of related or connected transactions with another company in the group.

"Compare: 2004 No 35 s NF 9(8), (10)

"**32G Evidence of annual gross income and consequences of failure to meet threshold**

"(1) This section applies when a person's application for an RWT exemption certificate is based on their meeting the requirements in section 32E(2)(j).

"(2) The person must provide evidence to satisfy the Commissioner of their annual gross income for the accounting year. They must provide the evidence within the 3-month period after the end of the accounting year.

"(3) For the purposes of subsection (2), the Commissioner may require further evidence, and also for the purposes of section 32L.

"(4) If the person's annual gross income for the tax year referred to in section 32E(2)(j) is less than $2,000,000, they are liable for late payment penalties in relation to an amount received or derived by them that would have been withheld under the RWT rules, had they not held an RWT exemption certificate. Section 139B applies to the person as if—

"(a) they had failed to withhold an amount of tax; and

"(b) the default occurred on each day on which they received or derived a payment from which RWT would otherwise have been withheld.

"(5) In the calculation of estimated annual gross income of a company that anticipates that it will be part of a group of companies for the tax year referred to in section 32E(2)(j), the estimated annual gross income of all other group companies is included.

"(6) Despite subsection (5), in the calculation of the annual gross income of a company for the purposes of this section, an amount of income derived by them or another company in the same group of companies from a transaction or series of related or connected transactions with another company in the group is excluded.

"(7) Despite subsections (2) and (4), the Commissioner may provide an RWT exemption certificate to, or allow it to be retained by, a person who does not meet the requirements of section 32E(2)(j) if the Commissioner considers that the failure is solely a consequence of extraordinary circumstances that are—

"(a) beyond the person's reasonable control; and

"(b) unlikely to be repeated in later accounting years.

"(8) For the purposes of subsection (6), the Commissioner may remit some or all of a late payment penalty if the Commissioner considers that the failure is solely a consequence of extraordinary circumstances that the person could not reasonably be expected to have foreseen.

"Compare: 2004 No 35 s NF 9(6), (7), (9)–(11)

"32H Providing RWT exemption certificate when person meets requirements

"(1) This section applies when the Commissioner has received an application for an RWT exemption certificate from a person who meets the requirements of section 32E.

"(2) The Commissioner must provide the certificate to the person, setting out the person's tax file number. The certificate is valid from the starting date set out in the certificate.

"(3) The Commissioner may determine that a person's application should have an end date, and this date must be set out in the certificate.

"(4) The Commissioner may provide a replacement certificate if an original certificate is lost or destroyed.

"Compare: 2004 No 35 s NF 9(4), (5)

"**32I Providing RWT exemption certificate to person who does not meet requirements**

"(1) Despite section 32H, the Commissioner may provide an RWT exemption certificate for a period to a person who does not meet the requirements in section 32E(2) if the person—

"(a) will, or is likely to, have for the period, total deductions under the Income Tax Act 2007 that are not less than the total amount of assessable income of the person for the period; or

"(b) would have, or would likely have, in a part of a tax year that falls in the period, total tax credits under section LB 3 of the Income Tax Act 2007 for resident passive income that are more than the income tax liability of the person for the tax year by an amount not less than $500.

"(2) Despite subsection (1), the Commissioner may not provide an RWT exemption certificate to a person unless they have applied in writing as described in section 32E(3), and include in the application a set of budgeted accounts with details, for the period, of the person's projected—

"(a) total amount of assessable income:

"(b) total deductions:

"(c) tax credits for resident passive income:

"(d) income tax liability.

"(3) For the purposes of subsection (2), the Commissioner may require the person to provide further information.

"(4) A certificate provided under this section is cancelled under section 32L at the expiry date set out in the certificate.

"(5) If a person provided with a certificate under this section notifies another person that they hold the certificate, the notification must include a copy of the certificate.

"Compare: 2004 No 35 s NF 9(12)–(14)

"**32J RWT exemption certificates for unincorporated bodies**

"(1) This section applies when the Commissioner provides an RWT exemption certificate to an unincorporated body under section RE 30 of the Income Tax Act 2007.

"(2) The certificate must name the body as the holder. If the body is a trustee, the certificate must name the trust as the holder.

"(3) No member of the body can be provided with an RWT exemption certificate in relation to the taxable activity carried on by the body.

"(4) For the purposes of the RWT rules, a notice to the body as holder is treated as served on the body and on each member of the body.

"Compare: 2004 No 35 s NF 10(1)(a), (d), (3)

"**32K Failing to meet basis of exemption**

"(1) This section applies when a holder of an RWT exemption certificate no longer meets the requirements on which their exemption is based.

"(2) If the holder becomes aware that they no longer meet the requirements, they must notify the Commissioner within a period of 5 days after the day on which they became aware, and they must deliver the certificate to the Commissioner.

"(3) The Commissioner may ask the holder to provide the full name and last known address of all persons to whom they have shown the certificate for the purposes of obtaining an exemption from withholding the amount of tax from a payment of resident passive income. The person must respond to the Commissioner's request within 5 days.

"Compare: 2004 No 35 s NF 11(1)

"**32L Cancellation of RWT exemption certificates**

"(1) The Commissioner may cancel a person's RWT exemption certificate at any time, and notify any person of the fact of the cancellation, when—

"(a) the Commissioner reasonably believes the person no longer meets the requirements on which their exemption is based; or

"(b) the person did not meet the requirements on which their exemption was based and obtained the certificate through misleading information; or

"(c) the person should not have been provided with the certificate; or

"(d) the person's exemption was based on a ground set out in section 32E(2)(i) or (j), and the evidence provided under section 32G—

"(i) shows the person did not meet the threshold; or
"(ii) is unsatisfactory; or
"(iii) is materially incorrect or misleading; or

"(e) the person is liable for income tax that remains unpaid by the due date for payment.

"(2) If the Commissioner cancels a certificate under subsection (1), the Commissioner must notify the person who must deliver the certificate to the Commissioner within a period of 5 days after the date of notification. The person must also comply with a request under section 32K(3) if asked by the Commissioner.

"(3) Despite subsection (1), if the Commissioner considers that a person referred to in subsection (1)(a) to (d) is a person to whom section 32G applies and who has a further basis of exemption apart from that set out in the certificate, the Commissioner must not cancel the certificate except to provide a substitute certificate that has immediate effect.

"(4) A person who receives a notice under subsection (2) must, within a period of 5 days after the date of receipt, notify all persons to whom they have shown the certificate for the purposes of obtaining an exemption under the RWT rules and from whom they expect to receive further payments of resident passive income of the cancellation.

"(5) The Commissioner must publish in the *Gazette*—

"(a) on or before 30 June in each tax year—
"(i) a list of all certificates cancelled in the previous tax year, other than a certificate held by a person before cancellation that was later reissued to the person; and
"(ii) a list of all certificates provided during the previous tax year to a person who had previously held a certificate, other than a certificate provided to a person who previously held a certificate that was cancelled; and

"(b) in April, July, October, and January (the **month of publication**)—
"(i) a list of all certificates cancelled during the 3-month period immediately before the month of publication, other than a certificate held by a

person before cancellation that was later reissued to the person in the 3-month period; and

"(ii) a list of all certificates provided during the 3-month period immediately before the month of publication to a person who had previously held a certificate, other than a certificate provided to a person who previously in the 3-month period held a certificate that was cancelled.

"(6) The Commissioner may publish a list referred to in subsection (5) by electronic means at any time after the publication referred to in that subsection.

"(7) A person who is required to deliver an RWT exemption certificate to the Commissioner must deliver all original certificates provided to them by the Commissioner.

"(8) An RWT exemption certificate ceases to be valid on the 5th working day after the date of publication in the *Gazette* referred to in subsection (5). For a person who is notified of a cancellation by the Commissioner or by the previous holder of a certificate, a certificate ceases to be valid after a period of 5 working days from the date of notification.

"Compare: 2004 No 35 s NF 11(2)–(9)

"**Non-resident passive income**

"**32M Persons with approved issuer status**

"(1) A person who borrows, or has borrowed, or will borrow money, may apply to the Commissioner to have approved issuer status for the purposes of the NRWT rules.

"(2) On making an application under subsection (1), the person is an approved issuer from the date of the application unless the Commissioner—

"(a) considers that they have been responsible for serious default or neglect in complying with their obligations under the Inland Revenue Acts in the 2-year period leading up to the date of application; and

"(b) notifies the person within 20 working days after the date of receiving the application that the application is declined.

"(3) The Commissioner may revoke a person's approved issuer status at a particular time if—

"(a) the Commissioner considers that the person has been responsible for serious default or neglect in complying with their obligations under the Inland Revenue Acts in the 2-year period leading up to that time; or

"(b) the person asks for revocation of the status.

"(4) The Commissioner must notify the person of a revocation under subsection (3).

"(5) Despite subsection (3), the person continues to have approved issuer status for the purposes of the NRWT rules and Part 6B of the Stamp and Cheque Duties Act 1971 in relation to a payment of interest made after the date of revocation for money lent to the person under a registered security while the person was an approved issuer and before the date of the revocation.

"Compare: 2004 No 35 ss NG 5–NG 7

"**Foreign dividends**

"**32N Information requirements when payments for foreign dividends reduced**

"(1) This section applies when a company pays FDP for a foreign dividend, and the amount is reduced under section RG 5(2) of the Income Tax Act 2007 by an amount of foreign withholding tax paid in relation to the dividend.

"(2) Before the reduction is made, the company must provide the Commissioner with all the information necessary to determine the amount of the foreign withholding tax.

"(3) The company must provide the information within the time allowed by the Commissioner in a case or class of cases, having regard to the period set out in section 78B.

"(4) If the company does not provide the information required under this section, the Commissioner may recover an amount equal to the amount of the foreign withholding tax as if it were income tax payable by the company.

"Compare: 2004 No 35 ss NH 2(4), NH 3(6) ".

Section 33

Section 33(1B): "section CW 34 or CW 35 of the Income Tax Act 2004" is replaced by "section CW 41 or CW 42 of the Income Tax Act 2007".

Section 33: add the following:

"(4) The nominated company for a consolidated group is treated as a taxpayer for the purposes of this section. A company that is a member of a consolidated group in a tax year must not provide a separate return for a tax year, but this restriction applies only to a tax year, or a part of a tax year, in which the company is part of the group."

Section 33A

Section 33A(1)(b)(iv): replace by the following:

"(iv) interest or a dividend that is resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies (other than interest for which an RWT withholding certificate did not have to be prepared under section 25(7)), from which RWT has been withheld at a rate other than that specified in—

"(A) schedule 1, part D, table 1, row 3 of the Income Tax Act 2007 if that person's annual gross income is more than $38,000 but not more than $60,000; or

"(B) schedule 1, part D, table 1, row 4 or 5 of the Income Tax Act 2007 if that person's annual gross income is more than $60,000; and".

Section 33A(1)(b)(v)(A): "schedule 19, clause 8(b) of the Income Tax Act 2004" is replaced by "schedule 2, part B, table 1, row 2 of the Income Tax Act 2007".

Section 33A(1)(b)(v)(B): "schedule 19, clause 8(c) of the Income Tax Act 2004" is replaced by "schedule 2, part B, table 1, row 3 of the Income Tax Act 2007".

Section 33A(1)(b)(vi)(A): "schedule 19, clause 5A of the Income Tax Act 2004" is replaced by "schedule 2, part A, clause 5 of the Income Tax Act 2007".

Section 33A(1)(b)(vi)(B): "schedule 19, clause 5B of the Income Tax Act 2004" is replaced by "schedule 2, part A, clause 6 of the Income Tax Act 2007".

Section 33A(1)(b)(x)(B): replace by the following:

"(B) was not resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies; and".

Section 33A(1)(c): replace by the following:

"(c) does not receive income from employment from which an amount of tax is withheld or deducted and the amount is determined in whole or in part by a special tax code certificate issued under section 24F; and".

Section 33A(1)(d) and (e): "family certificate of entitlement" is replaced by "family notice of entitlement" in each place where it appears.

Section 33A(1)(f): "department for the time being responsible for the administration of the Social Security Act 1964 a subpart KD credit under section KD 2 of the Income Tax Act 2004 for which the amount of family credit abatement under that section is greater than nil" is replaced by "administering department a family assistance credit for which the amount of family credit abatement under section MD 13 of the Income Tax Act 2007 is greater than zero".

Section 33A(2)(cb) to (m): replace by the following:

"(d) received total income of more than $200 that included—

"(i) a schedular payment, not being an amount or proportion of a schedular payment for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007:

"(ii) beneficiary income; or

"(e) has a tax loss or tax loss component, other than a tax loss component under section LE 2 of the Income Tax Act 2007; or

"(f) has a loss balance; or

"(g) has carried forward to the income year a tax credit under section LE 3 of the Income Tax Act 2007; or

"(h) held an RWT exemption certificate under section 32E at any time in the tax year; or".

Section 36

Section 36(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 36A

Section 36A, heading and subsection (2): "remittance certificate" is replaced by "PAYE payment form" in each place where it appears.

Section 36BB

Section 36BB, heading: "under subpart MBA of the Income Tax Act 2004" is replaced by "for tax pooling intermediaries".

Section 36BB: "subpart MBA of the Income Tax Act 2004" is replaced by "sections RP 17 to RP 21 of the Income Tax Act 2007, and sections 15N to 15S".

Section 36BC

Section 36BC, heading and subsection: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 39

Section 39: add the following:

"(5) For the tax year corresponding to the income year or years in which the change of balance date occurs, the basic tax rate for the purposes of the Income Tax Act 2007 and this Act is the rate that would apply if the person's taxable income for the tax year were calculated using the formula —

$$\frac{365}{\text{income year days} \times \text{taxable income}}.$$

"(6) In the formula,—

"(a) **income year days** is the total days in the income year or years that correspond to the tax year:

"(b) **taxable income** is the person's taxable income for the tax year."

Section 39B

Section 39B(2)(b): "sections MB 19 to MB 23, as relevant, and schedule 13, part B of the Income Tax Act 2004" is replaced by "sections RC 20 to RC 25, as relevant, and schedule 3, part B of the Income Tax Act 2007".

Section 39B(4)(b): "sections MB 20 to MB 23, as relevant, and schedule 13, part B of the Income Tax Act 2004" is replaced by

"sections RC 21 to RC 25, as relevant, and schedule 3, part B of the Income Tax Act 2007".

Section 41

Section 41, heading, and subsections (3)(b) and (4)(a): "subpart KD credit" is replaced by "family assistance credit" in each place where it appears.

Section 41(1) and (3)(a): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007" in each place where it appears.

Section 41(3)(a): "family certificate of entitlement" is replaced by "family notice of entitlement".

After section 41(5): insert the following:

"(6) A person who is eligible for a tax credit under subparts MA to MF and MZ of the Income Tax Act 2007 in an income year, or would be eligible if their spouse, civil union partner, or de facto partner were not a transitional resident, and who would otherwise be a transitional resident in an income year may apply not to be a transitional resident under section HR 8(4) of that Act.

"(7) A notice of election under section HR 8(4) must be—

"(a) in a form acceptable to the Commissioner; and

"(b) be received by the Commissioner on or before the latest of the following:

"(i) the date by which section 37 would require the person to provide a return of income for the 2006–07 tax year, if required:

"(ii) the date by which section 37 would require the person to provide a return of income for the tax year corresponding to the first income year affected by the election, if required:

"(iii) the date allowed by the Commissioner on application.

"(8) An application under subsection (7)(b)(iii) for an extension of time to make an election is treated as if it were an application under section 37 in relation to a return of income for the later of the tax years referred to in subsection (7)(b)(i) and (ii)."

Section 41A

Section 41A: replace by the following:

"**41A Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts**

"(1) A person who has a tax credit under section LC 7 or subpart LD of the Income Tax Act 2007 may apply to the Commissioner for 1 or more refunds.

"(2) The total amount refunded, including a refund made on an application under subsection (7), must be no more than the annual amount of the tax credits.

"(3) The sum of the housekeeping payments under section LC 7 of that Act and charitable or other public benefit gifts under subpart LD of that Act made by a person must be no more than their taxable income in the tax year in which the payment or gift, or both, is made.

"(4) If subsection (3) applies, the Commissioner must reduce, in equal portions, the total amount of housekeeping payments and charitable or other public benefit gifts so that the total is no more than the person's taxable income in the tax year in which the payment or gift, or both, is made.

"(5) An application under subsection (1) must be made in the manner required by the Commissioner, be signed by the person, and be accompanied by any information the Commissioner requires, including—

"(a) the amount of a housekeeping payment under section LC 7 of that Act; and

"(b) the amount of a charitable or other public benefit gift to which subpart LD of that Act applies.

"(6) A taxpayer with a standard balance date or an early balance date may apply for a refund for a tax year after 1 April that follows the end of the taxpayer's income year. A taxpayer with a late balance date may apply for a refund for a tax year on or after the first day of the taxpayer's next accounting year.

"(7) Despite subsection (6), the Commissioner may, in special circumstances, accept an application for a refund before the end of the tax year to which the application relates.

"(8) For the purpose of subsection (7), special circumstances include—

"(a) the person leaving New Zealand, permanently or for a significant length of time:

"(b) a trustee of a deceased person's estate wishing to wind up the estate.

"(9) Despite subsection (1), the Commissioner must not refund the amount of a tax credit unless the requirements of subsections (2) and (3) are met.

"(10) When the Commissioner has considered an application, the Commissioner must notify the person of the amount of the tax credit under section LC 7 or subpart LD of that Act and of the amount of refund allowed.

"(11) A tax credit may not be refunded to an absentee, a company, a public authority, a Maori authority, an unincorporated body, or a trustee liable for income tax under sections HC 16, HC 32, or HZ 2 of that Act.

"(12) A refund under subsection (1) must be paid as if it were tax paid in excess.

"(13) A refund under subsection (1), to the extent to which it is more than the correct amount of refund, is recoverable as an excess tax credit under section 142D.

"(14) Part 7 does not apply to a refund or an excess refund made under this section.

"(15) Part 9 applies to applications made under this section."

Section 43A

Section 43A(2)(d)(iii) and (6)(b)(i): "dividend withholding payment" is replaced by "FDP" in each place where it appears.

Section 43A(4) and (5): "imputation year" is replaced by "tax year" in each place where it appears.

Section 43A(6)(b)(i): "net loss available" is replaced by "loss balance".

Section 43A(6)(b)(iii): "net loss" is replaced by "tax loss or loss balance".

Section 43A(7): "imputation return" is replaced by "annual ICA return".

Section 44A

Section 44A, heading, and subsections (1)(a) to (d) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 44B

Section 44B(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 44C

Section 44C(1): replace by the following:

"(1) The question whether trees are ornamental or incidental arises under the following provisions of the Income Tax Act 2007:

"(a) section CB 25:

"(b) section EB 24:

"(c) sections FB 6 and FB 7:

"(d) sections GC 1 and GC 2."

Section 44C(3): "section OB 1 of the Income Tax Act 2004 and under schedule 7, part A, item 8 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007 and under schedule 20, part A, item 8 of that Act".

New section 44D

After section 44C: insert the following:

"**44D Natural product dealer certificate**

"(1) For the purposes of schedule 4, part H of the Income Tax Act 2007, the Commissioner may issue a natural product dealer certificate to a person who applies in writing.

"(2) The certificate may be issued for any period of time, and is revoked when a notice ordering revocation is received by the Commissioner, if the person revokes the certificate, or by the person, if the Commissioner revokes the certificate."

Section 46

Section 46(5)(f): "paid under subpart KD of the Income Tax Act 2004" is replaced by "paid under subparts MA to MF and MZ of the Income Tax Act 2007".

Section 46(7): "section OB 2(2) of the Income Tax Act 2004, be a source deduction payment" is replaced by "section RD 3(2) to (4) of the Income Tax Act 2007, be a PAYE income payment".

Section 46A

Section 46A(5), definition of **child tax credit**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 46A(5), definition of **weekly compensation**: "paragraph (b)(ix) or (x) of the definition of **salary or wages** in section OB 1 of the Income Tax Act 2004" is replaced by "section RD 5(6)(b) and (7) of the Income Tax Act 2007".

New sections 46B to 46E

After section 46A: insert the following:

"**Fringe benefits**

"**46B FBT returns for quarters**

"(1) This section applies to an employer who pays their FBT liability under the single rate option or the alternate rate option. The employer chooses the relevant option by providing a return stipulating the selected rate.

"(2) For each quarter of a tax year, the employer must provide a return that—

"(a) sets out the details of the fringe benefits received by each of their employees in the quarter; and

"(b) includes a calculation of the amount of FBT payable on the taxable value of the fringe benefits in the quarter.

"(3) The returns must be provided, and the employer is liable to pay the amount of FBT, by the following dates:

"(a) for a return for each of the first 3 quarters of a tax year, 20 days after the end of the quarter:

"(b) for a return for the final quarter of a tax year, 31 May after the end of the quarter, unless subsection (4)(a) applies.

"(4) If an employer chooses to pay FBT under sections RD 50 and RD 53 of the Income Tax Act 2007, and the result of the calculation is—

"(a) a negative number, the employer is entitled to a refund of the overpayment:

"(b) a positive number, the employer must pay the difference.

"(5) If no fringe benefit has been provided during a quarter, the employer must still provide a return under subsection (3). However, the Commissioner may relieve an employer of this obligation.

"(6) If an employer stops employing staff in a tax year as described in section RD 63 of that Act, they must provide a return within 2 months after the end of the quarter in which the employment ceased. For this purpose, subsections (3) and (4), and paragraph (d) of the definition of **date interest starts** apply to the employer.

"Compare: 2004 No 35 ss ND 2(3), ND 9(2), (3), ND 10(2)–(5), ND 11, ND 12

"**46C FBT returns for years**

"(1) This section applies to an employer who pays their FBT liability under the close company option or the small business option. The employer chooses the relevant option by notifying the Commissioner.

"(2) The employer must provide a return that—

"(a) sets out the details of the fringe benefits received by each of their employees in the tax year or income year, as applicable; and

"(b) includes a calculation of the amount of FBT payable on the taxable value of the fringe benefits in the tax year or income year, as applicable.

"(3) For an employer who chooses to pay under the close company option, the return must be provided no later than the employer's terminal tax date for the relevant income year. The employer is liable to pay the amount calculated by the terminal tax date.

"(4) For an employer who chooses to pay under the small business option, the return must be provided no later than 31 May after the end of the relevant tax year. The employer is liable to pay the amount calculated by 31 May.

"Compare: 2004 No 35 ss ND 13(5), (6), ND 14(5), (6)

"**46D FBT returns: changes in payment periods**

"(1) This section applies when an employer chooses to pay income tax on an income year basis under the close company option, and the first day of the relevant income year is not the same day as the first day of a quarter.

"(2) The employer must provide a return and pay FBT under section 46B, treating the period between the first day of the quarter in which the income year starts and the first day of the income year as if it were a quarter.

"Compare: 2004 No 35 s ND 15(7), (8)

"**46E FBT returns: information for calculations**

"(1) This section applies for the purposes of sections RD 58(2), RD 60(4), and RD 61(4) of the Income Tax Act 2007 when an employer asks the Commissioner to replace the FBT liability determined under a set rate with a calculated amount.

"(2) The employer must provide the information within 2 months after notifying the Commissioner that an assessment for the final quarter or year has been made.

"Compare: 2004 No 35 s ND 1(6) ".

Section 47

Section 47: replace by the following:

"**47 ESCT statements provided by employers**

"(1) This section applies when an employer or PAYE intermediary withholds in a period an amount of ESCT from an employer's superannuation contribution.

"(2) The employer or PAYE intermediary must deliver to the Commissioner a PAYE payment form showing the amount of employer's superannuation contribution, the amount of ESCT relating to the contribution, and any other particulars required by the Commissioner as follows:

"(a) when the employer or PAYE intermediary has withheld the ESCT during the first payment period, no later than the 20th of the month during which the ESCT was withheld:

"(b) when the employer or PAYE intermediary has withheld the ESCT during the second payment period, no later

than the 5th of the month following the month in which the ESCT was withheld:

"(c) despite paragraphs (a) and (b), if the employer or PAYE intermediary is required to pay an amount of tax to the Commissioner under section RD 4(1)(a) of the Income Tax Act 2007, no later than the 20th of the following month in which the amount was withheld."

Section 48

Section 48(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 49

Section 49, heading and subsection (1): replace by the following:

"**49 NRWT withholding certificates and annual reconciliations**

"(1) Subsection (1B) applies when a person in a year—

"(a) withholds, or is required by the NRWT rules to withhold, NRWT for non-resident passive income paid to or derived by any other person; or

"(b) pays to, or is required to pay to, the Commissioner under section RF 10 of the Income Tax Act 2007 NRWT for non-resident passive income that is a dividend.

"(1B) The person must prepare and provide to the Commissioner, no later than 31 May in the following year, in the form approved by the Commissioner, —

"(a) an NRWT withholding certificate for all NRWT withheld or paid in relation to each recipient during the year; and

"(b) an annual reconciliation statement for all NRWT withheld or paid during the year.".

Section 49(2): "non-resident withholding tax deduction certificate" is replaced by "NRWT withholding certificate".

Section 49(2)(a): "making the deduction or payment" is replaced by "withholding or paying the NRWT".

Section 49(2)(d) to (g): replace by the following:

"(d) the year in which the NRWT to which the certificate relates was withheld:

"(e) the type of non-resident passive income to which the certificate relates:

"(f) the amount of NRWT withheld and the amount of non-resident passive income to which it relates:

"(g) the amount of NRWT paid:".

Section 49(4)(a): "make any deductions on account of non-resident withholding tax" is replaced by "withhold NRWT".

Section 49(4), words after the paragraphs, and subsection (4B)(a): "non-resident withholding tax deduction certificates" is replaced by "NRWT withholding certificates" in each place where it appears.

Section 49(4B): "section FCB 2 of the Income Tax Act 2004" is replaced by "section FL 2(1) of the Income Tax Act 2007".

Section 49(4B) and (4C)(c): "date of the emigration time" is replaced by "time of emigration" in each place where it appears.

Section 49(4C): "tax deduction certificates" is replaced by "withholding certificates".

Section 50

Section 50, heading and subsection: "resident withholding tax" is replaced by "RWT" in each place where it appears.

Section 51

Section 51, heading and subsection (1): replace by the following:

"**51 RWT withholding reconciliation statements**

"(1) Subsection (1B) applies when a person withholds (or is required by the RWT rules to withhold, but fails to do so) RWT for resident passive income paid to or derived by another person that is—

"(a) interest; or

"(b) a dividend treated as interest; or

"(c) a dividend to which section RE 9(2) of the Income Tax Act 2007 applies.

"(1B) The person must provide to the Commissioner, in the form prescribed by the Commissioner, the information that the Commissioner may require in relation to the RWT."

Section 51(2), words before paragraph (a): "a deduction of resident withholding tax" is replaced by "RWT withheld".

Section 51(2)(d) to (g): replace by the following:

"(d) whether the resident passive income is interest, a dividend treated as interest, or a dividend to which section RE 9(2) of the Income Tax Act 2007 applies; and

"(e) the date on which the RWT was withheld, or if more than 1 amount is withheld, the year in which the amounts were withheld; and

"(f) the amount of resident passive income and the amount of RWT withheld; and

"(g) the tax rate for RWT that applied to the resident passive income; and".

Section 51(2A): "If the person has paid interest or specified dividends to another person (the **recipient**) and has not deducted resident withholding tax because the recipient holds a valid certificate of exemption" is replaced by "If the person has paid interest, a dividend treated as interest, or a dividend to which section RE 9(2) of the Income Tax Act 2007 applies to another person (the **recipient**) and has not withheld RWT because the person holds an RWT exemption certificate".

Section 51(2A)(b) and (c): replace by the following:

"(b) the total interest, dividends treated as interest, or dividends to which section RE 9(2) of the Income Tax Act 2007 applies that are paid to the recipient; and

"(c) the recipient's tax file number, unless the recipient is, at the time of payment, a person to whom any of section 32E(2)(a) to (c) applies; and".

Section 51(4)(a) and (5): "a valid certificate of exemption" is replaced by "an RWT exemption certificate" in each place where it appears.

Section 51(4)(a): "deduct resident withholding tax" is replaced by "withhold RWT".

Section 51(5): "make resident withholding tax deductions" is replaced by "withhold RWT".

Section 51(5B): "section FCB 2 of the Income Tax Act 2004" is replaced by "section FL 2(1) of the Income Tax Act 2007".

Section 51(5B): "emigration time" is replaced by "time of emigration".

Section 51(5C)(c): "date of the emigration time" is replaced by "time of emigration".

Section 51(7): "is resident withholding income under section NF 2(1A)(b) of the Income Tax Act 2004" is replaced by "to which section RE 3(c) of the Income Tax Act 2007 applies".

Section 52

Section 52, heading, words before paragraph (a), and paragraphs (a) to (c): replace by the following:

"**52 Disclosure of interest payments when no requirement to withhold RWT**

A person who in a year pays an amount of resident passive income that is interest, —

"(a) for which RWT is required to be withheld because—

"(i) the payment was not made by the person in the course of or furtherance of a taxable activity; or

"(ii) section RE 10 of the Income Tax Act 2007 applies; and

"(b) that is allowed as a deduction for the purposes of the Income Tax Act 2007; and

"(c) that is paid to a person other than a person who holds an RWT exemption certificate,—".

Section 52(e): "resident withholding income" is replaced by "resident passive income".

Section 53

Section 53(1)(a) and (c): "a certificate of exemption" is replaced by "an RWT exemption certificate" in each place where it appears.

Section 53(1)(b)(iv): "a valid certificate of exemption" is replaced by "an RWT exemption certificate".

Section 53(1)(c): "resident withholding tax" is replaced by "RWT".

Section 53(1)(d): "no deduction of resident withholding tax has been made under section NF 2(8) of the Income Tax Act 2004" is replaced by "RWT has not been withheld under section RE 6 of the Income Tax Act 2007".

Section 54

Section 54, heading: "**resident withholding income**" is replaced by "**resident passive income**".

Section 54(1): "to make a deduction of resident withholding tax in respect of any amount of resident withholding income paid to or derived (in the case of a deduction of resident withholding tax made in accordance with section NF 3 of the Income Tax Act 2004)" is replaced by "to withhold RWT for an amount of resident passive income paid to or derived (as applicable)".

Section 54(1)(b): replace by the following:

"(b) the total resident passive income of the recipient in the tax year for which RWT was required to be withheld by the payer:".

Section 56

Section 56(a) and (b): "special account" is replaced by "special home ownership account operated by a person under Part 2 of the Home Ownership Savings Act 1974" in each place where it appears.

Section 59

Section 59(2): "section HH 1(1) of the Income Tax Act 2004" is replaced by "sections HC 27(4) and YB 21 of the Income Tax Act 2007".

Section 59(4) and (5): "HH 7 of the Income Tax Act 2004" is replaced by "93B" in each place where it appears.

Section 61

Section 61(1)(b) and proviso: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 64

Section 64: "a determination in respect of a notional distribution under section ME 35(1)(b) of the Income Tax Act 2004" is replaced by "an election in relation to a notional distribution under section OB 79 of the Income Tax Act 2007".

Section 64(b): "section CD 24(2) of the Income Tax Act 2004"is replaced by "section CD 33(2) of the Income Tax Act 2007".

Section 65

Section 65: "section CX 36 or DT 13 of the Income Tax Act 2004" is replaced by "section CX 42 or DT 13 of the Income Tax Act 2007".

Section 66

Section 66, heading: "**policyholder credit account persons**" is replaced by "**PCA persons**".

Section 66(1), (4), and (5): "policyholder credit account person" is replaced by "PCA person" in each place where it appears.

Section 66(1), (4), and (5): "policyholder credit account return" is replaced by "PCA return" in each place where it appears.

Section 66(2)(b): "section ME 23 of the Income Tax Act 2004" is replaced by "sections OJ 12 to OJ 18 of the Income Tax Act 2007".

Section 67

Section 67, heading and subsection (1): "imputation credit account company" is replaced by "ICA company" in each place where it appears.

Section 67(1)(c): "section CD 6 or CD 7 of the Income Tax Act 2004" is replaced by "section CD 7 or CD 8 of the Income Tax Act 2007".

Section 67(1)(eb): "Australian imputation credit account company" is replaced by "Australian ICA company".

Section 67(2): "imputation year corresponding with that income year" is replaced by "tax year".

Section 68

Section 68, heading: "**dividend withholding payment credit**" is replaced by "**FDP credit**".

Section 68, words before paragraph (a): "a dividend withholding payment account company" is replaced by "an FDPA company".

Section 68, words before paragraph (a): "a dividend withholding payment credit" is replaced by "an FDP credit".

Section 68(a): "dividend withholding payment credits" is replaced by "FDP credits".

Section 68(b): "dividend withholding payment ratio" is replaced by "FDP ratio".

Section 68(c): "combined imputation and dividend withholding payment ratio" is replaced by "combined imputation and FDP ratio".

Section 68A

Section 68A: replace by the following:

"**68A Statement when CTR credit attached to dividend**

If a CTR company attaches a CTR credit to a dividend, the company must include the following information in the company dividend statement required by section 67:

"(a) the CTR additional dividend paid under section LQ 5 of the Income Tax Act 2007:

"(b) the FDP ratio, calculated as if the credit were an FDP credit:

"(c) the combined imputation and FDP ratio, calculated as if the credit were an FDP credit, if an imputation credit has been attached to the dividend."

Section 68B

Section 68B(1)(d): "base ratio" is replaced by "Maori authority credit ratio".

Section 69

Section 69: replace by the following:

"**69 Annual ICA return**

"(1) An imputation credit account (ICA) company must provide to the Commissioner an annual ICA return in the prescribed form for a tax year, showing —

"(a) the opening balance and closing balance of the imputation credit account for the tax year:

"(b) the amount and source of all credits and debits that have arisen during the tax year as described in sections OA 5(2) and OA 6(2) of the Income Tax Act 2007:

"(c) the amount of any further income tax payable for the tax year under sections OB 65 to OB 67 of that Act:

"(d) the amount of any imputation penalty tax payable for the tax year:

"(e) when the company is a branch equivalent tax account (BETA) company,—

"(i) the opening balance and closing balance of the company's branch equivalent tax account for the tax year:

"(ii) the amount and source of all credits and debits to the company's branch equivalent tax account for the tax year that have arisen as described in sections OA 5(5)(a) and OA 6(5)(a) of that Act:

"(f) when the company is a conduit tax relief (CTR) company for the tax year,—

"(i) the opening and closing balances of the company's CTR account for the tax year:

"(ii) the amount and source of all credits and debits that have arisen in the company's CTR account as described in sections OA 5(4) and OA 6(4) of that Act:

"(g) when the company is a policyholder credit account (PCA) company,—

"(i) the opening balance and closing balance of the company's policyholder credit account for the tax year:

"(ii) the amount and source of all credits and debits to the company's policyholder credit account for the tax year that have arisen as described in sections OA 5(7)(a) and OA 6(7)(a) of that Act:

"(h) when the company is a public unit trust or a group investment fund that derives category A income —

"(i) the opening and closing balances of the trust's or fund's ASC account for the tax year:

"(ii) the amount and source of all credits and debits that have arisen in the trust's or fund's ASC account as described in sections OA 5(6) and OA 6(6) of that Act:

"(i) further information as may be prescribed or required by the Commissioner.

"(2) The annual ICA return required for the tax year by subsection (1) must be provided to the Commissioner no later than—

"(a) the last day of the July that follows the end of the tax year, if the ICA company is an Australian ICA company that is not required to file a return of income for the tax year:

"(b) if paragraph (a) does not apply, the last day on which the ICA company is permitted under section 37 to file a return of income for the tax year."

Section 69B

Section 69B(1): "the imputation year that corresponds with" is omitted.

Section 69B(2)(a) to (d): "imputation year" is replaced by "tax year" in each place where it appears.

Section 69B(2)(b): "sections MK 4 and MK 5 of the Income Tax Act 2004" is replaced by "sections OK 2 to OK 18 of the Income Tax Act 2007".

Section 69B(2)(c): "section MK 8 of the Income Tax Act 2004" is replaced by "sections OK 21 and OK 22 of that Act".

Section 70

Section 70, heading and subsections (1), (3), and (4): "imputation return" is replaced by "annual ICA return" in each place where it appears.

Section 70(1), (2), (2B), and (3): "imputation credit account company" is replaced by "ICA company" in each place where it appears.

Section 70(2B) and (4): "an imputation year" is replaced by "a tax year" in each place where it appears.

Section 70(2), (2B), and (3): "imputation year" is replaced by "tax year" in each place where it appears.

Section 70(2B): "section ME 5(2)(eb) or ME 12(2)(da) of the Income Tax Act 2004" is replaced by "section OB 34, OB 35, OP 32, or OP 33 of the Income Tax Act 2007".

Section 70(2B)(b): "section MD 2 of the Income Tax Act 2004" is replaced by "sections RM 13 to RM 17, RM 32, and RZ 6 of the Income Tax Act 2007".

Section 70B

Section 70B(2), (3) and (4): "an imputation year" is replaced by "a tax year" in each place where it appears.

Section 70B(2) and (3): "the imputation year" is replaced by "the tax year".

Section 71

Section 71: replace by the following:

"**71 Annual FDPA return**

A foreign dividend payment (FDPA) company must, not later than the time allowed under section 37 for providing a return of income for an income year, provide to the Commissioner an annual FDPA return in the prescribed form for the tax year corresponding to the income year, showing—

"(a) the opening and closing balances of the FDP account for the tax year:

"(b) the amount and source of all credits and debits that have arisen during the tax year as described in sections OA 5(3) and OA 6(3) of the Income Tax Act 2007:

"(c) the amount of FDP payable for the tax year under sections OC 30 to OC 32 of that Act:

"(d) the amount of FDP penalty tax payable for the tax year:

"(e) whether the company has chosen under section OC 4(1) of that Act to stop being an FDPA company:

"(f) the amount and source of every foreign dividend paid to the company during the year, and the amount of FDP paid for the foreign dividend:

"(g) further information as may be prescribed or required by the Commissioner.

"**Foreign dividends**

"**71B Return requirements for refunds: foreign dividends**

"(1) This section applies for the purposes of section RM 21(3) of the Income Tax Act 2007 when a loss balance is used to reduce a company's net income for an income year in which a foreign dividend is paid.

"(2) The company described in section RM 21(1) of that Act must —

"(a) file a return of income under section 33 for the income year in which the tax loss arose; and

"(b) file a return of income under section 33 for the current income year; and

"(c) apply to the Commissioner for the refund of the FDP.

"(3) The company described as group company B in section RM 21(2) of that Act must—

"(a) file a return of income under section 33 for the income year in which the tax loss arose; and

"(b) notify the Commissioner that payment of some or all of the FDP is satisfied by reducing the tax loss.

"Compare: 2004 No 35 s NH 4(5)(b), (c) ".

Section 72

Section 72, heading: "**Dividend withholding payment account**" is replaced by "**Annual FDPA**".

Section 72(1) and (2): "a dividend withholding payment account return" is replaced by "an FDPA return" in each place where it appears.

Section 72(1) and (2): "a dividend withholding payment account company" is replaced by "an FDPA company" in each place where it appears.

Section 72(2): "imputation year" is replaced by "tax year" in each place where it appears.

Section 72(3): "an imputation year" is replaced by "a tax year".

Section 73

Section 73, heading: "**Dividend withholding payment account**" is replaced by "**Annual FDPA**".

Section 73(b): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 74

Section 74, heading and subsection (2): "imputation return" is replaced by "ICA return" in each place where it appears.

Section 74(1)(b): "imputation credit account company" is replaced by "ICA company".

Section 74(1)(c): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 74(2): "an imputation year if the group has no liability to make a payment under section ME 14(3) of the Income Tax Act 2004 for the imputation year" is replaced by "a tax year if the group has

no liability to make a payment under section OP 6 of the Income Tax Act 2007 for the tax year".

Section 77

Section 77, heading and subsection: "imputation return" is replaced by "ICA return" in each place where it appears.

Section 77: "section MF 1(1) of the Income Tax Act 2004 after the end of the imputation year" is replaced by "section OE 3 of the Income Tax Act 2007 after the end of the tax year".

Section 77, words after the paragraphs: "imputation year" are replaced by "tax year".

Section 78

Section 78, heading: "**branch equivalent tax account persons**" is replaced by "**BETA persons**".

Section 78(1), (4), and (5): "branch equivalent tax account" is replaced by "BETA" in each place where it appears.

Section 78(2)(b): "in accordance with section MF 13 of the Income Tax Act 2004" is replaced by "as described in sections OA 5(5) and OA 6(5) of the Income Tax Act 2007".

New sections 78B to 78F

After section 78: insert the following:

"**78B Applications for tax credits**

"(1) A taxpayer who has a tax credit under section LJ 2 or LK 1 of the Income Tax Act 2007 must apply for the credit within 4 years after the end of the tax year in which the taxpayer would have the credit in the absence of this section. The Commissioner may extend this 4-year period by another period of up to 2 years.

"(2) The taxpayer must provide with the application under subsection (1) information that is necessary to determine the amount of the credit.

"Compare: 2004 No 35 s LC 13(1)

"**78C Disclosure when changes occur**

A taxpayer must provide to the Commissioner, as soon as possible, all relevant information if —

"(a) an amount referred to in section LJ 6 of the Income Tax Act 2007 is changed; and

"(b) the change occurs after the taxpayer has made an application under section 78B.

"Compare: 2004 No 35 s LC 13(2)

"**78D Evidential requirements for tax credits**

A taxpayer who has a tax credit under section LB 3 or subparts LE, LF, or LO of the Income Tax Act 2007, must provide the Commissioner with sufficient evidence of the credit, including, as applicable—

"(a) for an imputation credit, a shareholder dividend statement:

"(b) for an FDP credit, a shareholder dividend statement for the FDP credit:

"(c) for a credit for RWT, an RWT withholding certificate for the amount of RWT:

"(d) for a Maori authority credit, a Maori authority distribution statement for the credit:

"(e) any other information that the Commissioner may require.

"Compare: 2004 No 35 ss LB 2(4), LD 3(4), LD 3A(5), LD 8(3), LD 9(4)

"**78E Information for underlying foreign credits**

"(1) For the purposes of section LL 2 of the Income Tax Act 2007, a taxpayer must have available to provide, if asked,—

"(a) a copy of a receipt issued by the relevant revenue authority evidencing payment of the relevant tax; or

"(b) a copy of a foreign return of income that is of substantially the same nature as a return of income under the Inland Revenue Acts, when the return of income has been provided to the relevant revenue authority and shows the relevant tax as payable; or

"(c) a copy of a demand, statement of account, or a similar document issued by the relevant revenue authority, seeking payment of the relevant tax.

"(2) Subsection (1) does not apply if the Commissioner is satisfied on the basis of evidence such as an auditor's certificate that the relevant tax is paid or payable.

"Compare: 2004 No 35 s LF 6(4)

"**78F Time for providing information in relation to underlying foreign credits**

A taxpayer who has a tax credit for an amount of underlying foreign tax must provide to the Commissioner information that is necessary to verify a calculation of their credit under subpart LL of the Income Tax Act 2007 within —

"(a) 4 years after the end of the accounting year in which the person may first use the credit under section LA 2 of the Income Tax Act 2007; and

"(b) a further time that the Commissioner may allow, having regard to the time allowed for applications under section 78B.

"Compare: 2004 No 35 s LF 6(6) ".

Section 79

Section 79: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 80

Section 80: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 80C

Section 80C(1A): "resident withholding income that had insufficient resident withholding tax deducted" is replaced by "resident passive income from which insufficient RWT was withheld".

Section 80D

Section 80D(1)(c)(iii): "section NC 16 of the Income Tax Act 2004 to furnish the Commissioner with an employer monthly schedule relating to a source deduction payment" is replaced by "section RD 4(2) of the Income Tax Act 2007 to provide to the Commissioner an employer monthly schedule relating to a PAYE income payment".

Section 80E

Section 80E(2)(c): "source deductions or withholding deductions" is replaced by "tax withheld for PAYE income payments and other income".

Section 80E(2)(ea): "certificate of entitlement has been issued under section KD 5 of the Income Tax Act 2004" is replaced by "notice of entitlement has been given under section 80KD".

Section 80F

Section 80F(5): "RWT deduction certificate" is replaced by "RWT withholding certificate".

Section 80H

Section 80H(3)(c) and (d): "section MD 1(1A) of the Income Tax Act 2004" is replaced by "section RM 5 of the Income Tax Act 2007" in each place where it appears.

New Part 3B

After section 80I: insert the following:

3B
"Credits of Tax

"**Applying for payment by instalment**

"**80KA Applications for payment of tax credit by instalment**

"(1) This section applies to applications made under section MF 1 of the Income Tax Act 2007.

"(2) An application by a person who wants to be paid their tax credit (other than a parental tax credit) by instalment must be made before the selected period starts.

"(3) A person who wants to be paid their parental tax credit by instalment must apply no later than 3 months after the date of the dependent child's birth.

"(4) If a person referred to in subsection (3) applies more than 3 months after the date of the dependent child's birth, the person may receive the parental tax credit only after taking into account their end of year assessment under subpart LA of the Income Tax Act 2007 for the tax year in which the birth occurs.

3B—*continued*

"(5) If the 3-month period described in subsection (3) spans 2 tax years and the whole of the selected period falls in the first tax year, the selected period is treated as falling in the second tax year if all instalments are paid to the person in the second tax year.

"Compare: 2004 No 35 s KD 5(1B)–(1C)

"**80KB Contents of application**

"(1) An application referred to in section 80KA must—

"(a) be in a form prescribed by the Commissioner; and

"(b) be signed by the person and any other person who, at the time at which the application is made, expects to be, in the selected period, their spouse, civil union partner, or de facto partner; and

"(c) give, for each person who signed the application (the **signatory**), a complete statement of—

"(i) the family scheme income that is expected to be attributable to the tax year; and

"(ii) the family scheme income that is expected to be attributable to the selected period; and

"(d) choose whether the instalments should be paid weekly or fortnightly; and

"(e) contain any other information required by the Commissioner; and

"(f) be accompanied by the information described in subsection (2).

"(2) The application under subsection (1) must be accompanied by,—

"(a) for a signatory who expects to derive income from employment, evidence of the amount of income from employment derived by them in the period of 1 month immediately before the date on which the application is made:

"(b) for a signatory who expects to derive income from a business,—

"(i) a copy of the financial statements of the business for the tax year or corresponding income year

3B—*continued*

immediately before the tax year that contains the selected period; or

"(ii) if the financial statements referred to in subparagraph (i) have not been completed, a copy of the financial statements for the business for the tax year or corresponding income year that is before the year immediately before the tax year that contains the selected period; or

"(iii) a set of budgeted accounts of the business for the tax year or corresponding income year that contains the selected period; or

"(iv) other evidence in relation to the business for the tax year or corresponding income year that contains the selected period:

"(c) unless paragraph (d) applies, the tax file number of each child for whom an entitlement to a tax credit arises:

"(d) in the case of a child that has died or is given up for adoption, a birth certificate or other evidence verifying the birth or existence of the child for whom an entitlement to a tax credit arises.

"(3) Subsection (2)(a) does not apply if the Commissioner considers that the Commissioner has enough evidence of a signatory's income from employment.

"(4) Subsection (2)(d) does not apply to an application made by a person who is an adoptive parent, as that term is defined in the Adoption Act 1955.

"Compare: 2004 No 35 s KD 5(2)–(2AB)

"**80KC When tax file number of child does not accompany application**

"(1) Subsection (2) applies when—

"(a) an application referred to in section 80KA is not accompanied by the tax file number of each child for whom an entitlement to a tax credit arises; and

"(b) the Commissioner has enough other evidence of the person's entitlement.

"(2) The Commissioner must—

3B—*continued*

"(a) provide the person with a notice of entitlement; and

"(b) pay to the person instalments of a tax credit under section MA 1 or, as applicable, sections MB 1 and ME 1 of the Income Tax Act 2007 for a period of 56 days.

"(3) Subsection (4) applies when the person or their spouse, civil union partner, or de facto partner does not provide the tax file number of a child for whom an entitlement to a tax credit arises within the 56-day period.

"(4) The Commissioner must stop paying the tax credit for the child until the tax file number is provided.

"Compare: 2004 No 35 s KD 5(3), (3A)

"**80KD What Commissioner must do on receipt of application**

"(1) This section applies when the Commissioner receives an application that complies with section 80KB.

"(2) The Commissioner must do the following:

"(a) determine under sections MD 1, or MD 1 and ME 1 of the Income Tax Act 2007, as applicable, the estimated amount of tax credit to which the person would be entitled for the selected period; and

"(b) calculate under section MF 3 of that Act the amount that, if the Commissioner gave a person a notice of entitlement for the whole selected period, would be the interim instalment of the tax credit that would be set out in the notice; and

"(c) for all or some of the selected period, give the person a notice (the **notice of entitlement**) setting out—

"(i) the amount of the instalment of the tax credit to which the person is entitled; and

"(ii) the amount after abatement contributed by the family support to the instalment; and

"(iii) the amount of credit after abatement contributed by the in-work payment to the instalment; and

"(iv) the amount after abatement contributed by the child tax credit to the instalment; and

"(v) the amount after abatement contributed by the parental tax credit to the instalment; and

3B—*continued*

"(vi) the amount contributed by the family tax credit to the instalment.

"(3) The Commissioner must keep a copy of every notice of entitlement that is given under this section.

"Compare: 2004 No 35 s KD 5(4), (5)(a)

"**Notices of entitlement**

"**80KE Notices of entitlement**

A notice of entitlement issued under section 80KD—

"(a) is not transferable; and

"(b) is subject to the terms and conditions set out in it by the Commissioner.

"Compare: 2004 No 35 s KD 5(11)

"**80KF Effect of giving notice of entitlement**

"(1) If a notice of entitlement has been given to a person, the Commissioner must pay the person instalments of tax credit under section 80KN.

"(2) A person continues to be entitled to a tax credit under section MC 2 or, as applicable, sections MA 1 and ME 1 of the Income Tax Act 2007 for relationship periods after the relationship period for which an application was made, until the Commissioner cancels the notice under section 80KH.

"Compare: 2004 No 35 s KD 5(2A), (5)(b), (7)

"**80KG Notifying Commissioner of events affecting notice of entitlement**

"(1) Subsection (2) applies when—

"(a) a person has been given a notice of entitlement; and

"(b) 1 or more of the events described in subsection (3) occur within the period starting on the date of the notice of entitlement and ending on the last day of the selected period.

"(2) The person must notify the Commissioner immediately if an event of the kind described in subsection (3) occurs that may result in the person losing their entitlement.

3B—*continued*

"(3) The events include—

"(a) the person or their spouse, civil union partner, or de facto partner stops being the principal caregiver of a child, and the person expects that they will not resume the role of principal caregiver for a period of more than 56 consecutive days; or

"(b) the person starts or stops being a spouse, civil union partner, or de facto partner; or

"(c) any other event of a kind set out in the notice of entitlement for the purposes of this subsection.

"(4) Subsection (5) applies when—

"(a) a notice of entitlement has been issued to a person; and

"(b) 1 or more of the events described in subsection (6) occur.

"(5) The person may notify the Commissioner if an event of the kind described in subsection (6) occurs that may change a person's entitlement.

"(6) The events include —

"(a) the person or their spouse, civil union partner, or de facto partner becomes the principal caregiver of any child; or

"(b) something happens that the person thinks may affect their entitlement to the tax credit specified in the notice of entitlement; or

"(c) the notice of entitlement is lost or destroyed.

"Compare: 2004 No 35 s KD 5(9)

"**80KH Cancellation of notice of entitlement**

"(1) This section applies when the Commissioner—

"(a) is notified under section 80KG; or

"(b) considers that a notice of entitlement given to a person no longer applies; or

"(c) is advised by the chief executive of the administering department, under sections 84 or 85G, that the person is also receiving a tax credit from the chief executive or will receive a tax credit from the chief executive.

"(2) The Commissioner may, on notifying the person,—

3B—*continued*

"(a) cancel the notice of entitlement; or

"(b) provide a replacement notice of entitlement for the same relationship period or a different relationship period, or provide a supplement to the notice of entitlement, as appropriate, having regard to information in the Commissioner's possession.

"Compare: 2004 No 35 s KD 5(10), (12)

"**Payments to holders of notices of entitlement**

"**80KI Payment of tax credit by instalment by Commissioner**

"(1) This section applies when the Commissioner has given a notice of entitlement to a person.

"(2) In the period described in subsection (3), the Commissioner must pay to the person the instalments of the tax credit set out in the notice of entitlement.

"(3) The period —

"(a) starts on the day stated in the notice of entitlement; and

"(b) ends with the earlier of —

"(i) the day on which the notice of entitlement is cancelled by the Commissioner; or

"(ii) the end date stated in the notice of entitlement.

"(4) The Commissioner may choose the days on which the instalments are paid.

"Compare: 2004 No 35 s KD 7(1)

"**80KJ Delay in providing notice of entitlement**

"(1) This section applies when the Commissioner thinks that the time taken to provide a notice of entitlement has been unduly delayed.

"(2) The Commissioner may pay the instalments of the tax credit that the Commissioner thinks should be paid, having regard to the circumstances of the case.

"Compare: 2004 No 35 s KD 7(3)

3B—*continued*

"**80KK Payment by instalment of family support (without abatement)**

"(1) This section applies when the Commissioner considers, on the basis of information provided under section 85G by the chief executive, that a person is entitled to family support.

"(2) In the period described in subsection (3), the Commissioner must pay to the person the family support by instalment and without abatement.

"(3) The period—

"(a) starts on the day following the day that the chief executive says is the last day that the person is entitled to—

"(i) an income-tested benefit, an orphan's benefit, or an unsupported child's benefit paid or payable under the Social Security Act 1964; or

"(ii) a family assistance credit paid under section 80KN; and

"(b) ends on the earlier of—

"(i) the day before the first day stated in a notice of entitlement that is provided later:

"(ii) a period of not more than 56 days, starting on the first day referred to in paragraph (a).

"(4) Subsection (5) applies when the chief executive pays the family support for part of the 56-day period referred to in subsection (3)(b)(ii).

"(5) The period referred to in subsection (3)(b)(ii) is reduced by the period for which the chief executive paid the family support.

"Compare: 2004 No 35 s KD 7(2B), (2C)

"**80KL Payment of instalments into accounts**

"(1) Unless the Commissioner in a particular case otherwise determines, it is a condition of the receipt of tax credits paid by instalments by the Commissioner that—

"(a) the person, or the person and their spouse, civil union partner, or de facto partner,—

"(i) gives the Commissioner the details of an existing bank account held by the person (whether alone

3B—*continued*

or jointly with their spouse, civil union partner, or de facto partner); or

"(ii) opens a bank account (if they do not have one), and gives the Commissioner details of that account; and

"(b) the existing account or, as applicable, the opened account is an account held as described in subsection (2).

"(2) The account must be held with —

"(a) a registered bank within the meaning of that term in section 2 of the Reserve Bank of New Zealand Act 1989; or

"(b) a building society, in respect of any deposits with the building society; or

"(c) the Public Service Investment Society Limited; or

"(d) a credit union within the meaning of that term in section 2 of the Friendly Societies and Credit Unions Act 1982.

"(3) The Commissioner must pay every instalment of tax credit into the account.

"Compare: 2004 No 35 s KD 7(4)

"**80KM Summary of instalments paid**

"(1) This section applies when the Commissioner pays to a person instalments of the tax credit shown in the notice of entitlement given to the person.

"(2) The Commissioner must give the person—

"(a) a summary showing the total of all the tax credits paid by instalments under the person's notice of entitlement for the tax year; and

"(b) any other information prescribed by the Commissioner.

"(3) The Commissioner must provide the summary—

"(a) for a non-filing taxpayer, on or before 20 May next following the last day of the tax year in which the payment is made; and

"(b) for a filing taxpayer, on the same date that the Commissioner issues the person with an income statement for the tax year in which the payment is made.

"Compare: 2004 No 35 s KD 7(2), (2A)

3B—*continued*

"**Payments of tax credit by chief executive**

"**80KN Payment of tax credit by chief executive**

"(1) This section applies when—

"(a) in a tax year, the chief executive of the administering department pays to a person an income-tested benefit; and

"(b) the chief executive is satisfied that—

"(i) the person is entitled to receive a family assistance credit for which the amount of the family credit abatement is zero; or

"(ii) the chief executive is authorised by an Order in Council made under section 225A to pay the person a family assistance credit for which the family credit abatement is more than zero.

"(2) When paying the income-tested benefit, the chief executive must pay to the person the family assistance credit that the chief executive considers that the person is entitled to at the time of the payment.

"Compare: 2004 No 35 s KD 6(1)

"**80KO Determining family assistance credit**

In determining the amount of family assistance credit that is payable under section 80KN, the chief executive must—

"(a) use the method set out in section MF 3 of the Income Tax Act 2007, if required to calculate the amount of the family credit abatement; and

"(b) take into account the rate of family support and the family credit abatement given by sections MD 3 and MD 13 of that Act.

"Compare: 2004 No 35 s KD 6(1A)

"**80KP When entitlement to income-tested benefit ends**

"(1) This section applies for the purposes of section 80KN when—

"(a) a person's entitlement to an income-tested benefit ends; and

"(b) they apply to the chief executive to have the payment of their family support continued.

3B—*continued*

"(2) The chief executive must continue to pay the family support to the person for a period determined by the chief executive in consultation with the Commissioner. The amount is determined as if the person were still being paid an income-tested benefit during this period.

"Compare: 2004 No 35 s KD 6(1B)

"**80KQ No authority to pay family assistance credit**

"(1) This section applies when the chief executive is not satisfied that they are authorised to pay the family assistance credit to the person under the section.

"(2) The chief executive may ask the Commissioner to accept from the person their application for a notice of entitlement.

"Compare: 2004 No 35 s KD 6(1C)

"**80KR Request by chief executive to stop payment of family assistance credit**

"(1) This section applies when—

"(a) the chief executive has made a request under section 80KQ(2); but

"(b) the chief executive is satisfied that they are authorised to pay the person the family assistance credit.

"(2) The chief executive may ask the Commissioner to stop paying the person under their notice of entitlement.

"Compare: 2004 No 35 s KD 6(1D)

"**80KS Request by person to stop or re-start payment of tax credit**

"(1) Subsection (2) applies, despite section 80KN or 80KP, when a person notifies the chief executive not to pay them the tax credit.

"(2) The chief executive must, as soon as practicable, stop paying the person the tax credit.

"(3) Subsection (4) applies when a person cancels their notification under subsection (1).

3B—*continued*

"(4) The chief executive must, as soon as practicable, start paying the person the tax credit again.

"Compare: 2004 No 35 s KD 6(2), (3)

"**80KT Details of payments of tax credits**

"(1) This section applies when the chief executive pays under section 80KN a tax credit to a person.

"(2) The chief executive must, for each month in which a payment is made, give the Commissioner details of the payment in an employer monthly schedule.

"(3) The chief executive must, not later than 20 April next following the last day of the tax year in which the payment is made, give the person—

"(a) a summary—

"(i) signed by the chief executive; and

"(ii) in a form authorised by the Commissioner; and

"(iii) showing the total of all of the tax credits paid; and

"(b) any other information required by the Commissioner.

"(4) The chief executive must, not later than 31 May in the tax year in which the summary is provided under subsection (3), give the Commissioner—

"(a) a copy of every summary given by the chief executive under subsection (3)(a); and

"(b) any other information required by the Commissioner.

"Compare: 2004 No 35 s KD 6(4)

"**When Commissioner takes over payment of tax credit from chief executive**

"**80KU Payment of tax credit taken over by Commissioner**

"(1) This section applies when—

"(a) in a tax year, the chief executive stops paying a person an amount of tax credit with an income-tested benefit; and

"(b) the person applies to the Commissioner for payment of family assistance credit, family tax credit, or family support; and

3B—*continued*

"(c) the Commissioner determines that the person is entitled to the tax credit under section MD 1 of the Income Tax Act 2007 for the period described in subsection (3).

"(2) For the period described in subsection (3), the Commissioner may pay to the person the arrears of the tax credits, other than the in-work payment and the parental tax credit.

"(3) The period—

"(a) starts on the later of—

"(i) the first day of the tax year; and

"(ii) the day following that on which the chief executive stops paying the amount to the person; and

"(b) ends on the day before the first day stated in a notice of entitlement that is later given to the person.

"Compare: 2004 No 35 s KD 7(3A), (3B), (3C)

"**80KV Statement of family scheme income**

"(1) This section applies to a person to whom the Commissioner has given a notice of entitlement for a tax year.

"(2) The person must, in the time within which they are required to file their return of income for the tax year, give the Commissioner a statement setting out—

"(a) a complete statement of their family scheme income signed by the person; and

"(b) a complete statement of the family scheme income for the tax year of their spouse, civil union partner, or de facto partner signed by that person.

"Compare: 2004 No 35 s KD 4(5)

"**80KW Effect of extra instalment on entitlement to tax credit**

"(1) This section applies to a person who—

"(a) is entitled to a family assistance credit or family tax credit for the whole or part of a tax year; and

"(b) receives in the tax year—

"(i) a payment under section 80KI of an instalment of the credit for each period of a week or a fortnight in the tax year; or

3B—*continued*

"(ii) payments under section 80KN of instalments of the credit in the tax year and no payment under section 80KI in the tax year; and

"(c) as a consequence of the year not being divided into an exact number of fortnights or weeks,—

"(i) receives in the tax year 27 instalments corresponding to a period of a fortnight; or

"(ii) may have received in the tax year 53 instalments corresponding to a period of a week.

"(2) Subsection (3) applies—

"(a) for the purposes of section MF 6 of the Income Tax Act 2007; and

"(b) when a person has received payments under section 80KI for the whole of a tax year.

"(3) The person is entitled to a tax credit for the tax year of an amount calculated using the formula —

$$\text{tax credit} + \left(\left(\text{final instalment tax} - \text{parental credit}\right) \times \frac{13}{14}\right)$$

"(4) In the formula in subsection (3),—

"(a) **tax credit** is the amount of the tax credit for the tax year calculated for the person under—

"(i) section MD 1 of the Income Tax Act 2007, if the person is entitled to a family assistance credit:

"(ii) section ME 1 of that Act, if the person is entitled to the family tax credit:

"(b) **final instalment** is the amount of the final instalment received by the person in the tax year:

"(c) **parental tax credit** is the amount of any parental tax credit that is included in the final instalment received by the person in the tax year.

"(5) Subsection (6) applies—

"(a) for the purposes of section MF 6 of the Income Tax Act 2007; and

"(b) when a person has received payments under section 80KN for the whole of a tax year.

3B—*continued*

"(6) The person is entitled to a tax credit for the tax year equal to an amount calculated using the formula—

$$\text{tax credit} + \frac{\text{total amount of instalments}}{53.}$$

"(7) In the formula in subsection (6),—

"(a) **tax credit** is the amount of the tax credit for the tax year calculated for the person under—

"(i) section MD 1 of the Income Tax Act 2007, if the person is entitled to a family assistance credit:

"(ii) section ME 1 of that Act, if the person is entitled to the family tax credit:

"(b) **total amount of instalments** is the total amount of the instalments received by the person in the tax year.

"Compare: 2004 No 35 s KD 7A ".

Section 81

Section 81(4)(lb): "section MBA 5 of the Income Tax Act 2004" is replaced by "section RP 18 of the Income Tax Act 2007".

Section 81(4)(lb): "associated" is replaced by "connected" in each place where it appears.

Section 83

Section 83(2): "subpart KD credit" is replaced by "family assistance credit".

Section 83(7), after the definition of **entitlement card**: add the following:

" **qualifying person** means a person qualifying for an entitlement under section MC 2 of the Income Tax Act 2007."

Section 84

Section 84(1)(a) and (4): "subpart KD credit" is replaced by "family assistance credit" in each place where it appears.

Section 84(6), before the definition of **qualifying person**: insert the following:

" **family assistance credit** means an interim instalment of a family assistance credit".

Section 84(6), definition of **qualifying person**: replace by the following:

" **qualifying person** means a person who meets the requirements of sections MC 3 to MC 6(a) of the Income Tax Act 2007, and includes a person entitled to a tax credit under section MD 10 or ME 1 of that Act".

Section 84(6), definition of **subpart KD credit**: repeal.

Section 85F

Section 85F(3), definitions of **company** and **large budget screen production grant**: "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007" in each place where it appears.

Section 85G

Section 85G(1)(a), (4)(a) and (b): "subpart KD credit" is replaced by "family assistance credit" in each place where it appears.

Section 85G(1)(a): "a specified benefit, or as the case may be, cease to be entitled to": omit.

Section 85G(1)(a): "section KD 6(1) of the Income Tax Act 2004" is replaced by "section 80KN".

Section 85G(1)(b): "section KD 2 or sections KD 2 and KD 3" is replaced by "sections MD 1, or MD 1 and ME 1".

Section 85G(1)(c): "section KD 5(10)" is replaced by "section 80KH".

Section 85G(4): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007".

Section 85G(6), before the definition of **qualifying person**: insert the following:

" **family assistance credit** means an interim instalment of a family assistance credit".

Section 85G(6), definition of **qualifying person**: replace by the following:

" **qualifying person** means a person who meets the requirements in sections MC 3 to MC 6(a) of the Income Tax Act 2007, and includes a person entitled to a tax credit under section MD 10 or ME 1 of that Act".

Section 85G(6), definitions of **specified benefit** and **subpart KD credit**: repeal.

Section 85I

Section 85I(3): "section KD 2AB(1) of the Income Tax Act 2004" is replaced by "section MD 11 of the Income Tax Act 2007".

Section 89C

Section 89C(i): replace by the following:

"(i) the assessment is made following the failure by a taxpayer to withhold or deduct an amount required to be withheld or deducted by a tax law or to account for an amount withheld or deducted in the manner required by a tax law; or".

Section 89C(m): "rebate of income tax under subpart KD of the Income Tax Act 2004" is replaced by "tax credit identified in subparts MA to MF and MZ of the Income Tax Act 2007".

Section 89N

Section 89N(1)(c)(iii) and (v): "section OD 8(3) of the Income Tax Act 2004" is replaced by "the 1988 version provisions in subpart YB of the Income Tax Act 2007" in each place where it appears.

Section 90

Section 90(1)(a): "section EZ 32(2) (except the proviso) of the Income Tax Act 2004" is replaced by "section EZ 35(2) (except the proviso) of the Income Tax Act 2007".

Section 90(1)(b): "section EZ 32(3) of the Income Tax Act 2004" is replaced by "section EZ 35(3) of that Act".

Section 90(1)(c): "section EZ 32(6) (except the proviso) of the Income Tax Act 2004" is replaced by "section EZ 35(6) (except the proviso) of that Act".

Section 90(1)(c): "section EZ 32(2)" is replaced by "section EZ 35(2)".

Section 90(1)(d): "section EZ 32 of the Income Tax Act 2004" is replaced by "section EZ 35 of that Act".

Section 90(1)(e): "section EZ 32(7) of the Income Tax Act 2004" is replaced by "section EZ 35(7) of that Act".

Section 90(1)(f): "section EZ 32(8) of the Income Tax Act 2004" is replaced by "section EZ 35(8) of that Act".

Section 90(1)(j): "section FD 10(4) of the Income Tax Act 2004" is replaced by "sections FM 18 to FM 20 of that Act".

Section 90(1)(j): "section EZ 35" is replaced by "section EZ 38".

Section 90(1), proviso: "section EZ 32(2) or (6) of the Income Tax Act 2004" is replaced by "section EZ 35(2) or (6) of that Act".

Section 90AA

Section 90AA(1) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 90AC

Section 90AC, words before paragraph (a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 90AC(1)(a) to (g), (i) and (k): "Income Tax Act 2004" is replaced by "that Act" in each place where it appears.

Section 90AC(1)(j): "section FD 10(4) of the Income Tax Act 2004" is replaced by "sections FM 18 to FM 20 of that Act".

Section 90AC(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

New sections 90AF and 90AG

After section 90AE: insert the following:

"**90AF Imputation arrangement to obtain tax advantage**

"(1) If an arrangement to obtain a tax advantage arises as described in section GB 35 of the Income Tax Act 2007, the Commissioner may make any of the following determinations:

"(a) a determination whether the arrangement results in an account advantage, a tax credit advantage, or both:

"(b) a determination whether a streaming arrangement as described in section GB 35(3) of that Act is subject to section GB 36(1) or (2) of that Act:

"(c) a determination of the amount of the imputation credit or FDP credit that is subject to the arrangement:

"(d) a determination of the tax year in which the arrangement commenced, being the year in which the first reasonably identifiable step in the arrangement took place.

"(2) The Commissioner must give notice of any determination under subsection (1) to the company whose account is affected by the arrangement, as soon as is convenient.

"(3) The notice may be included in—

"(a) a notice of assessment under section 111(1); or

"(b) a determination under section 104B.

"(4) Failure to comply with subsection (2) does not invalidate the determination.

"**90AG Maori authority arrangements to obtain tax advantage**

"(1) If an arrangement to obtain a tax advantage arises as described in section GB 42 of the Income Tax Act 2007, the Commissioner may make any of the following determinations:

"(a) a determination whether the arrangement results in an account advantage, a tax credit advantage, or both:

"(b) a determination whether a streaming arrangement as described in section GB 42(3) of that Act is subject to section GB 43(1) or (2) of that Act:

"(c) a determination of the amount of the Maori authority credit that is subject to the arrangement:

"(d) a determination of the tax year in which the arrangement commenced, being the year in which the first reasonably identifiable step in the arrangement took place.

"(2) The Commissioner must give notice of any determination under subsection (1) to the Maori authority whose account is affected by the arrangement, as soon as is convenient.

"(3) The notice may be included in—

"(a) a notice of assessment under section 111(1); or

"(b) a determination under section 104B.

"(4) Failure to comply with subsection (2) does not invalidate the determination."

Section 90A

Section 90A(1) and (2): "subpart FG of the Income Tax Act 2004" is replaced by "subpart FE of the Income Tax Act 2007" in each place where it appears.

Section 91

Section 91(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 91AA

Section 91AA(2)(a): "section CW 49 of the Income Tax Act 2004" is replaced by "section CW 61 of the Income Tax Act 2007".

Section 91AAB

Section 91AAB(1): "sections DO 4B to DO 4E of the Income Tax Act 2004" is replaced by "sections DO 5 to DO 9 of the Income Tax Act 2007".

Section 91AAB(1)(b): "schedule 11, column 1 of the Income Tax Act 2004" is replaced by "schedule 12, column 1 of that Act".

Section 91AAC

Section 91AAC heading and subsection (1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 91AAD

Section 91AAD(1), (5) and (6): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 91AAE

Section 91AAE(1) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 91AAF

Section 91AAF(1) and (4)(b): "section EE 25B, EE 25C, EE 25E, or EZ 21B of the Income Tax Act 2004" is replaced by "section EE 27, EE 28, EE 30, or EZ 23 of the Income Tax Act 2007" in each place where it appears.

Section 91AAF(5): "section EE 25B, EE 25C, or EE 25E of the Income Tax Act 2004" is replaced by "section EE 27, EE 28, or EE 30 of the Income Tax Act 2007".

Section 91AAG

Section 91AAG(3)(a): "section EE 25B" is replaced by "section EE 27 of the Income Tax Act 2007".

Section 91AAG(3)(b): "section EE 25C" is replaced by "section EE 28 of that Act".

Section 91AAG(3)(c): "section EE 25E" is replaced by "section EE 30 of that Act".

Section 91AAG(4)(b): "schedule 11 or schedule 11B of the Income Tax Act 2004" is replaced by "schedule 11 or 12 of the Income Tax Act 2007".

Section 91AAH

Section 91AAH(2)(a): "schedule 11 of the Income Tax Act 2004" is replaced by "schedule 12 of the Income Tax Act 2007".

Section 91AAN

Section 91AAN(1): "section DB 37 of the Income Tax Act 2004" is replaced by "section DB 46 of the Income Tax Act 2007".

Section 91AAN(2): "schedule 6B, part A of the Income Tax Act 2004" is replaced by "schedule 19, part A of the Income Tax Act 2007".

Section 91AAN(2): "section DB 37(4)(c) of that Act" is replaced by "section DB 46(4)(c) of that Act".

Section 91AAN(2)(a): "column 1 of schedule 11 of the Income Tax Act 2004" is replaced by "schedule 12, column 1 of that Act".

Section 91AAN(2)(b): "column 2 of schedule 11 of the Income Tax Act 2004" is replaced by "schedule 12, column 2 of that Act".

Section 91AAN(3)(b): "schedule 6B of the Income Tax Act 2004" is replaced by "schedule 19 of the Income Tax Act 2007".

Section 91C

Section 91C(1)(eb): "except to the extent to which the matter in question is or could be" is replaced by "on an application to which section ZA 4(1)(a)(i) of the Income Tax Act 2007 applies, except to the extent to which the matter in question is or could be".

Section 91C(1)(eb): insert the following:

"(ec) the Income Tax Act 2007, except to the extent to which the matter in question is or could be the subject of a determination of the Commissioner under—

"(i) sections 90 or 90AC in relation to a financial arrangement; or

"(ii) section 90A in relation to the extent to which a financial arrangement provides funds to a party under the arrangement; or

"(iii) section 91 in relation to petroleum mining; or

"(iv) section 91AAD or 91AAE in relation to livestock; or

"(v) any of sections 91AAF to 91AAM in relation to depreciation; or

"(vi) section EA 3(8) of the Income Tax Act 2007 in relation to accrual expenditure; or"

Section 91C(1)(f)(ii): "regulation 5(1A) of the Income Tax (Withholding Payments) Regulations 1979 (which relates to exemption certificates for non-resident contractors) or any successor to that regulation" is replaced by "section RD 24 of the Income Tax Act 2007".

Section 91E

Section 91E(4A): "section FB 2 or GD 13 of the Income Tax Act 2004" is replaced by "sections GC 6 to GC 14 or YD 5 of the Income Tax Act 2007".

Section 92

Section 92(5)(a): "rebate of income tax allowed under subpart KD of the Income Tax Act 2004" is replaced by "tax credit identified in subparts MA to MF and MZ of the Income Tax Act 2007".

Section 92(5)(b): "rebate" is replaced by "tax credit".

Section 92: add the following:

"(7) The nominated company for a consolidated group is treated as a taxpayer for the purposes of this section. A company that is part of a consolidated group in a tax year must not make a separate assessment for a tax year, but this restriction applies only to a tax year, or part of a tax year, in which the company is part of the group."

New sections 92AA and 92AB

Section 92AA: replace by the following:

"**92AA Assessment for tax credits under Part M of Income Tax Act 2007**

The Commissioner must make an income tax assessment for a tax year for a taxpayer who has a tax credit identified in Part M of the Income Tax Act 2007 for the year.

"**92AB Assessments of liabilities of shareholders of qualifying companies**

"(1) The Commissioner may assess the liability of a shareholder who has agreed under section HA 8 of the Income Tax Act 2007 to be personally liable for their share of the income tax payable by a qualifying company.

"(2) A person assessed under subsection (1) is liable as agent for the company.

"(3) The Commissioner may reduce a person's agreed liability if, in the relevant income year, —

"(a) they first acquire shares in the company; or

"(b) they dispose of all their shares in the company.

"(4) To reduce a person's liability under subsection (3),—

"(a) the Commissioner must be satisfied that the reduction is appropriate; and

"(b) the person must provide adequate accounts and other relevant information to show that the company's income tax liability attributable to the part of the income year in which they were a shareholder is proportionately smaller than the liability attributable to the full income year.

"(5) An assessment of the company or the person does not prevent an assessment of the other.
"Compare: 2004 No 35 s HG 8(1), (2) ".

Section 93

Section 93, heading, subsections (1), and (2)(a) and (b): "fringe benefit tax" is replaced by "FBT" in each place where it appears.

Section 93(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

New sections 93B and 93C

After section 93: insert the following:

"**93B Trustee income: Commissioner's power to assess**

"(1) This section applies when a person—
- "(a) fails to disclose details of a trust under section 59; or
- "(b) fails to provide information that the Commissioner has asked for under section 17 in relation to a trust; or
- "(c) is unable to obtain sufficient information to calculate the amount of trustee income in an income year.

"(2) The Commissioner may determine in a fair and reasonable manner the amount of trustee income for the income year.
"Compare: 2004 No 35 s HH 7

"**93C Foreign tax credits: Commissioner's power to amend assessments**

"(1) This section applies when a person is entitled to a tax credit under section LK 1 of the Income Tax Act 2007 and—
- "(a) the amount of the credit cannot be determined before the time by which the person must file a return of income for an income year; and
- "(b) the person asks the Commissioner for an amended assessment within 4 years after the end of the income year.

"(2) The Commissioner must amend the assessment for the income year to reflect the amount of the credit.
"Compare: 2004 No 35 s LC 4(1C) ".

Section 94

Section 94(1): "section HG 12 of the Income Tax Act 2004" is replaced by "section HA 42 of the Income Tax Act 2007".

Section 94(3): replace by the following:

"(3) An assessment made under subsection (1) is subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 2007, and Part 8A of this Act applies accordingly."

Section 95

Section 95(1): "section IZ 2 of the Income Tax Act 2004" is replaced by "section RZ 9 of the Income Tax Act 2007".

Section 95(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 97

Section 97(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 97B

Section 97B(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 98

Section 98, heading, subsections (1), and (2)(a) and (b): "specified superannuation contribution withholding tax" is replaced by "ESCT" in each place where it appears.

Section 98(1): "section NE 2 of the Income Tax Act 2004, make an assessment of the amount of the specified superannuation contribution" is replaced by "section RD 67 of the Income Tax Act 2007, make an assessment of the amount of the employer's superannuation contribution".

Section 98(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 99

Section 99, heading: "**resident withholding tax deductions**" is replaced by "**RWT**".

Section 99(2)(a): "resident withholding income" is replaced by "resident passive income".

Section 99(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 100

Section 100, heading, subsections (1), and (3)(a) and (b): "non-resident withholding tax" is replaced by "NRWT" in each place where it appears.

Section 100(1): "section NG 2 of the Income Tax Act 2004" is replaced by "section RF 3 of the Income Tax Act 2007".

Section 100(1): "non-resident withholding income" is replaced by "non-resident passive income".

Section 100(2): "subpart NG of the Income Tax Act 2004" is replaced by "subpart RF of the Income Tax Act 2007".

Section 100(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 101

Section 101(1) and (3): "section ME 9 of the Income Tax Act 2004" is replaced by "sections OB 65 to OB 67 of the Income Tax Act 2007" in each place where it appears.

Section 101B

Section 101B heading and subsections (1), (2), and (3): "additional income tax" is replaced by "imputation additional tax" in each place where it appears.

Section 101B(1) and (3): "section ME 9C of the Income Tax Act 2004" is replaced by "section OB 72 of the Income Tax Act 2007" in each place where it appears.

Section 102

Section 102, heading and subsections (1), and (2)(a) and (b): "dividend withholding payment" is replaced by "FDP" in each place where it appears.

Section 102(1): "section NH 1 of the Income Tax Act 2004" is replaced by "section RG 3 of the Income Tax Act 2007".

Section 102(1)(a): "foreign withholding payment dividend" is replaced by "foreign dividend".

Section 102(3): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 103

Section 103, heading and subsections (1), and (3)(a) and (b): "further dividend withholding payment" is replaced by "further FDP" in each place where it appears.

Section 103(1): "section MG 9 of the Income Tax Act 2004" is replaced by "sections OC 30 to OC 32 of the Income Tax Act 2007".

Section 103A

Section 103A, heading and subsections (1), (2), and (4)(b): "dividend withholding payment" is replaced by "FDP" in each place where it appears.

Section 103A(1): "section MI 10 of the Income Tax Act 2004" is replaced by "section OD 23 of the Income Tax Act 2007".

Section 103A(4)(a): "deduct a dividend withholding payment" is replaced by "pay FDP".

Section 104

Section 104, heading and subsections (1), (2), and (3)(a) and (b): "dividend withholding payment" is replaced by "FDP" in each place where it appears.

Section 104(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

New section 104B

After section 104: insert the following:

"**104B Determination of credits and debits in memorandum accounts**

"(1) In this section,—

" **credit date** means the credit date recorded when a memorandum credit arises in a memorandum account

" **debit date** means the debit date recorded when a memorandum debit arises in a memorandum account

" **memorandum account person** means a company, person, consolidated imputation group, or consolidated group (including the nominated company for a consolidated group) that maintains a memorandum account.

"(2) The Commissioner may determine that a memorandum account is corrected by—

"(a) adjusting the amount of a credit or debit recorded in the account; or

"(b) changing a credit date or a debit date recorded in the account.

"(3) Notice of the determination must be given to the memorandum account person affected by the determination as soon as is convenient after the determination has been made.

"(4) Notice of the determination may be included in a notice of assessment.

"(5) Failure to give the notice of determination does not invalidate the determination.

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

"(7) The memorandum account person must record those changes that are necessary or appropriate to ensure that all memorandum accounts of the person correctly reflect the determination.

"(8) Subsections (6) and (7) do not apply to the extent to which it is established in proceedings under a challenge that the determination is not correct.

"Compare: 2004 No 35 ss ME 20, ME 40, MF 6, MG 12, MI 12, MJ 8, MK 9

".

Section 108

Section 108, after subsection (3): insert the following:

"(3B) The Commissioner may amend an assessment or a determination to give effect to section LA 6(3) of the Income Tax Act 2007 despite the time bar."

Section 113B

Section 113B(1)(c): "section CD 30(2) of the Income Tax Act 2004" is replaced by "CD 41(2) of the Income Tax Act 2007".

Section 113B(2): "dividend withholding payment credit" is replaced by "FDP credit".

Section 113C

Section 113C(1)(a): "section CD 13 of the Income Tax Act 2004" is replaced by "section CD 21 of the Income Tax Act 2007".

Section 113C(1)(d)(i): "section CD 28(13) of the Income Tax Act 2004" is replaced by "section CD 39(13) of that Act".

Section 113C(1)(d)(ii): "section CD 39(11) of the Income Tax Act 2004" is replaced by "section CD 50(11) of that Act".

Section 113C(2): "sections CD 28(13) and CD 39(11) of the Income Tax Act 2004" is replaced by "sections CD 39(13) and CD 50(11) of the Income Tax Act 2007".

Section 119

Section 119(1)(d): "section MB 6 of the Income Tax Act 2004" is replaced by "section RC 7 of the Income Tax Act 2007".

Section 119(1)(e): "sections MB 6(5) and MB 17(5) of the Income Tax Act 2004" is replaced by "sections RC 7 and RC 18(5) of that Act".

Section 119(2)(b): "sections HK 26(2), HK 26(3), LC 1, LC 4, and LC 5 of the Income Tax Act 2004" is replaced by "sections HD 29(3), LJ 1, LK 1, and LK 6 of the Income Tax Act 2007".

Section 120A

Section 120A(3): "deducts resident withholding tax or non-resident withholding tax" is replaced by "withholds RWT or NRWT".

Section 120C

Section 120C(1), definition of **date interest starts**, paragraphs (b) and (d): "fringe benefit tax" is replaced by "FBT" in each place where it appears.

Section 120C(1), definition of **date interest starts**, paragraph (b)(v)(A): "section MB 17(2) or MB 17(3), as applicable" is replaced by "section RC 18(3) of the Income Tax Act 2007".

Section 120C(1), definition of **date interest starts**, paragraph (e): "subpart MBA of the Income Tax Act 2004" is replaced by "sections RP 17 to RP 21 of the Income Tax Act 2007".

Section 120C(1), definition of **date interest starts**, paragraph (e): "section MBA 5(3)" is replaced by "section RP 18(5) of that Act".

Section 120C(1), definition of **date interest starts**, paragraph (f)(i): "section MB 5" is replaced by "section RC 6".

Section 120C(1), definition of **date interest starts**, paragraph (f)(ii): "section MC 1" is replaced by "section RA 13".

Section 120C(1), definition of **tax paid**, paragraphs (b) and (c): "subpart MBA of the Income Tax Act 2004" is replaced by "sections RP 17 to RP 21 of the Income Tax Act 2007" in each place where it appears.

Section 120C(1), definition of **tax payable**: "a deduction of tax that must be made" is replaced by "an amount of tax that must be withheld or deducted".

Section 120D

Section 120D(4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 120EA

Section 120EA: "section EY 42(1) of the Income Tax Act 2004" is replaced by "section EY 43(1) of the Income Tax Act 2007".

Section 120KB

Section 120KB(2): "section MB 8 of the Income Tax Act 2004" is replaced by "section RC 9 of the Income Tax Act 2007".

Section 120KB(3): "section MB 7 of the Income Tax Act 2004" is replaced by "section RC 8 of the Income Tax Act 2007".

Section 120KB(4): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 120KB(4)(a): "section KD 4(2)(c) of the Income Tax Act 2004" is replaced by "section MF 6(2) of that Act".

Section 120KB(4)(b): "section KD 4(2)(d) of the Income Tax Act 2004" is replaced by "section LA 4(1) of that Act".

Section 120KC

Section 120KC(1)(a): "section MB 8(8)(a) of the Income Tax Act 2004" is replaced by "section RC 9(9)(a) of the Income Tax Act 2007".

Section 120KC(1)(b): "section MB 8(8)(b)" is replaced by "section RC 9(9)(b) of that Act".

Section 120KC(1)(c): "section MB 8(8)(c)" is replaced by "section RC 9(9)(c) of that Act".

Section 120KC(2): "schedule 13, part A of the Income Tax Act 2004" is replaced by "schedule 3, part A of the Income Tax Act 2007".

Section 120KD

Section 120KD(1) and (2): "schedule 13, part B of the Income Tax Act 2004" is replaced by "schedule 3, part B of the Income Tax Act 2007" in each place where it appears.

Section 120KD(1): "sections MB 20 to MB 23 of the Income Tax Act 2004" is replaced by "sections RC 21 to RC 24 of the Income Tax Act 2007".

Section 120KE

Section 120KE(1)(c): "section MB 6 of the Income Tax Act 2004" is replaced by "section RC 7 of the Income Tax Act 2007".

Section 120KE(1)(d): "section MB 7 of the Income Tax Act 2004" is replaced by "section RC 8 of that Act".

Section 120KE(1)(e): "a valid certificate of exemption under section NF 9(12) of the Income Tax Act 2004" is replaced by "an RWT exemption certificate under section 32I".

Section 120KE(2): "section MB 8(2) or (4) or MB 20" is replaced by "section RC 9(3) or (5), or RC 21 of the Income Tax Act 2007".

Section 120KE(5): "section MB 17 of the Income Tax Act 2004" is replaced by "section RC 18 of the Income Tax Act 2007".

Section 120KE(8): "schedule 13, part A of the Income Tax Act 2004" is replaced by "schedule 3, part A of the Income Tax Act 2007".

Section 120M

Section 120M(a): "section MD 2 of the Income Tax Act 2004" is replaced by "sections RM 13 to RM 17, RM 32, and RZ 6 of the Income Tax Act 2007".

Section 120M(b): "section MB 37 of the Income Tax Act 2004" is replaced by "section RC 35 of the Income Tax Act 2007".

Section 120O

Section 120O(a): "sections NC 15(1)(b) or NC 15(1)(i) of the Income Tax Act 2004" is replaced by "sections RA 5 and RD 4 of the Income Tax Act 2007".

Section 120O(b): "sections NC 15(1)(c) or NC 15(1)(i) of the Income Tax Act 2004" is replaced by "sections RA 5 and RD 23(3) of that Act".

Section 120O(c): "section NF 4 of the Income Tax Act 2004" is replaced by "sections RA 6, RE 20, and RE 21 of that Act".

Section 120O(d): "section NG 11 of the Income Tax Act 2004" is replaced by "sections RA 6 and RF 13 of that Act".

Section 120O(e): "section NH 3 of the Income Tax Act 2004" is replaced by "sections RA 6 and RG 3 of that Act".

Section 120OB

Section 120OB(1)(a): "section NBA 4(1) of the Income Tax Act 2004" is replaced by "sections RP 9 to RP 11 of the Income Tax Act 2007".

Section 120OB(1)(b): "section NBA 4(1B)(b) of the Income Tax Act 2004" is replaced by "section RP 8(b) of that Act".

Section 120OB(2), definition of **tax paid**, paragraph (a): "in respect of a deduction of tax that must be made" is replaced by "for an amount of tax that must be withheld or deducted".

Section 120OB(2), definition of **tax payable**: "a deduction of tax that at the time is due to be made" is replaced by "an amount of tax that at the time is due to be withheld or deducted".

Section 120OD

Section 120OD(1): "subpart MBA of the Income Tax Act 2004" is replaced by "sections RP 17 to RP 21 of the Income Tax Act 2007".

New section 120OE

After section 120OD: insert the following:

"**120OE Interest paid on deposits in tax pooling accounts**

"(1) Interest paid by the Commissioner on an amount deposited in a tax pooling intermediary's tax pooling account accrues to the benefit of the intermediary from the date of the deposit.

"(2) The interest referred to in subsection (1) is payable to the intermediary on the date the amount is credited to another account with the Commissioner, or on the date the amount is refunded to the intermediary.

"(3) A deposit in a tax pooling account is treated as tax paid by the intermediary for the purposes of calculating use of money interest, but for no other purpose.

"(4) Subsection (5) applies when a payment is made either by a tax pooling intermediary to their client, or by a client to their tax pooling intermediary, and the payment represents a difference between funds held in a tax pooling account for a period of time and an amount paid for the entitlement to the funds.

"(5) The payment is treated as—

"(a) a payment of interest to the person who derives the payment for the purposes of section CC 4 of the Income Tax Act 2007, the RWT rules, and the NRWT rules:

"(b) expenditure incurred in deriving the income of the person making the payment.

"Compare: 2004 No 35 ss MBA 5(5), (6), MBA 9 ".

Section 120PA

Section 120PA, heading: "**foreign investor tax credit**" is replaced by "**tax credit for supplementary dividend**".

Section 120PA: "a foreign investor tax credit" is replaced by "a tax credit for a supplementary dividend".

Section 120PA: "section LE 2(4)(b) of the Income Tax Act 2004" is replaced by "section LP 3(3) of the Income Tax Act 2007".

Section 120Q

Section 120Q: "schedule 13, part A of the Income Tax Act 2004" is replaced by "schedule 3, part A of the Income Tax Act 2007".

Section 120R

Section 120R, heading: "**dividend withholding payments**" is replaced by "**FDP**".

Section 120R(1), words before paragraph (a): "a dividend withholding payment" is replaced by "FDP".

Section 120R(1)(a): "elects by notice, under subsection (2) or subsection (3) of section NH 3 of the Income Tax Act 2004 to reduce an amount of net loss" is replaced by "chooses by notice, under section RG 6 of the Income Tax Act 2007 to reduce an amount of tax loss".

Section 120U

Section 120U, heading: "**in respect of tax deduction obligation**" is replaced by "**for obligation to withhold or deduct amount of tax**".

Section 120U(a): "deduct" is replaced by "withhold or deduct an amount of".

Section 120U(b): "a deduction of tax" is replaced by "have an amount of tax withheld or deducted".

Section 120U, the words after the paragraphs: "the deduction of tax" is replaced by "withholding or deducting the amount of tax".

Section 120U, the words after the paragraphs: "deducted" is replaced by "withheld or deducted".

Section 120V

Section 120V, heading: "**excess deductions of resident withholding tax**" is replaced by "**overpaid RWT**".

Section 120V: "excess resident withholding tax under section NF 7 of the Income Tax Act 2004" is replaced by "overpaid RWT under section RM 8 of the Income Tax Act 2007".

Section 125

Section 125, words before paragraph (a), and paragraphs (b), (c), (f) and (h): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 125(i): "section GD 8 of the Income Tax Act 2004" is replaced by "section EY 11 of the Income Tax Act 2007".

Section 125(i): "subsection (4)" is replaced by "subsections (3) to (9)".

Section 125(j)(iii): "sections CD 9, CD 11, HK 7, HK 11, HK 18, HK 24, HK 26, LC 1 to LC 3, LC 7, LC 13 to LC 15, MD 1, and OB 2 of the Income Tax Act 2004" is replaced by "sections CD 15, CD 19, HD 2, HD 3(2), HD 5(4), HD 15, HD 24, HD 26 to HD 29, LA 6 to LA 8, LJ 1 to LJ 7, RD 3, RM 2 to RM 4, RM 6, RM 8, and RM 10 of the Income Tax Act 2007".

Section 125(j)(iv): "78B, 78C, 166B, 225B" are inserted in their numerical order.

Section 130

Section 130(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 133

Section 133, heading: "**deduction**" is replaced by "**withholding**".

Section 133: "in respect of a tax deduction on the basis of a determination made under section NC 1 of the Income Tax Act 2004" is replaced by "in relation to an amount of tax withheld on the basis of a determination under section RD 3(5) of the Income Tax Act 2007".

Section 138E

Section 138E(1)(d): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 138E(1)(e)(iii): "sections CD 9, CD 11, HK 7, HK 11, HK 18, HK 24, HK 26, LC 1 to LC 3, LC 7, LC 13 to LC 15, MD 1, and OB 2 of the Income Tax Act 2004" is replaced by "sections CD 15, CD 19, HD 2, HD 3(2), HD 5(4), HD 15, HD 24, HD 26 to HD 29, LA 6 to LA 8, LJ 1 to LJ 7, RD 3, RM 2 to RM 4, RM 6, RM 8, and RM 10 of the Income Tax Act 2007".

Section 138E(1)(e)(iv): "78B, 78C, 166B, 225B" are inserted in their numerical order.

Section 138M

Section 138M, heading: "**deduction**" is replaced by "**withholding**".

Section 138M, words after the paragraphs: "in respect of a tax deduction on the basis of a determination made under section NC 1 of the Income Tax Act 2004" is replaced by "in relation to an amount of tax withheld on the basis of a determination under section RD 3(5) of the Income Tax Act 2007".

Section 139A

Section 139A(1): "(1B)(a) by an Australian imputation credit account company" is replaced by "(2)(a) by an Australian ICA company".

Section 139A(1), (2), and (4): "annual imputation return" is replaced by "annual ICA return" in each place where it appears.

Section 139A(1): "section NC 15(1)(a) or (b) or (c) or (d) of the Income Tax Act 2004" is replaced by "section RD 22(1) to (5) of the Income Tax Act 2007".

Section 139A(2)(a)(ii): "(1B)(a)" is replaced by "(2)(a)".

Section 139AA

Section 139AA(1)(a): "section NC 15(1)(a) and NC 15(1)(b) of the Income Tax Act 2004" is replaced by "section RD 23(2) of the Income Tax Act 2007".

Section 139B

Section 139B(3B) and (5A): "deducted" is replaced by "withheld or deducted" in each place where it appears.

Section 139B(6)(c)(i): "a deduction of tax that must be made" is replaced by "an amount of tax that must be withheld or deducted".

Section 139C

Section 139C(1B): "section MB 11 of the Income Tax Act 2004" is replaced by "section RM 11 of the Income Tax Act 2007".

Section 139C(2), definition of **provisional tax payable**, paragraphs (a) and (aa): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 139C(2), definition of **provisional tax payable**, paragraph (a): "section MB 9" is replaced by "section RC 10" in each place where it appears.

Section 139C(2), definition of **provisional tax payable**, paragraph (a)(ii): "section MB 4" is replaced by "section RC 5".

Section 139C(2), definition of **provisional tax payable**, paragraph (aa): "sections MB 9 and MB 20"is replaced by "sections RC 10 and RC 21" in each place where it appears.

Section 139C(2), definition of **provisional tax payable**, paragraph (a)(ii): "section MB 9(2)" is replaced by "section RC 10(2)".

Section 140

Section 140: replace by the following:

"**140 Where another person withholds RWT**

For the purposes of determining a person's liability to pay a late payment penalty, the person is treated as having withheld or accounted for an amount of tax if—

"(a) they are liable to pay the late payment penalty for—

"(i) not withholding resident withholding tax (RWT) under the RWT rules; or

"(ii) not accounting for RWT under the RWT rules; and

"(b) they can satisfy the Commissioner that another person, under the RWT rules, —

"(i) withheld the RWT; or

"(ii) accounted for the RWT."

Section 140B

Section 140B(1): "section ME 9(1) of the Income Tax Act 2004" is replaced by "section OB 65 of the Income Tax Act 2007".

Section 140B(1) and (2)(b): additional income tax is replaced by "imputation additional tax" in each place where it appears.

Section 140B(1): "section ME 9C" is replaced by "section OB 72".

Section 140C

Section 140C, heading and subsection: "dividend withholding payment penalty tax" is replaced by "FDP penalty tax" in each place where it appears.

Section 140C(1) and (2): "further dividend withholding payment" is replaced by " further FDP" in each place where it appears.

Section 140C(1): "section MG 9(1) of the Income Tax Act 2004" is replaced by "section OC 30 of the Income Tax Act 2007".

Section 140CB

Section 140CB(1): "section MK 8 of the Income Tax Act 2004" is replaced by "sections OK 21 and OK 22 of the Income Tax Act 2007".

Section 140D

Repeal.

Section 140DB

Repeal.

Section 141

Section 141(7)(c): "associated persons within the meaning of section OD 8(1) of the Income Tax Act 2004" is replaced by "associated persons within the meaning of sections YB 2, YB 8 to YB 14, YB 16, YB 17, and YB 19 of the Income Tax Act 2007".

Section 141(12A): "section EY 42(1) of the Income Tax Act 2004" is replaced by "section EY 43(1) of the Income Tax Act 2007".

Section 141AA

Section 141AA(1): "withholding payment" is replaced by "schedular payment".

Section 141AA(1): "for the purposes of the Income Tax (Withholding Payments) Regulations 1979" is omitted.

Section 141AA(1)(b): "make a required tax deduction" is replaced by "withhold an amount of tax that is required".

Section 141AA(2): "required tax deduction" is replaced by "amount of tax required to be withheld".

Section 141D

Section 141D(3B)(b): "associated under section OD 7 of the Income Tax Act 2004" is replaced by "associated under subpart YB of the Income Tax Act 2007 (to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions)".

Section 141E

Section 141E(2): "deduction" is replaced by "deduction or withholding".

Section 141EB

Section 141EB(3): "loss attributing qualifying company" is replaced by "loss-attributing qualifying company" in each place where it appears.

Section 141FB

Section 141FB(4)(a)(ii) to (iv): is replaced by the following:

"(ii) FBT:
"(iii) GST:
"(iv) RWT:".

Section 141FD

Section 141FD, heading: "**loss attributing qualifying companies**" is replaced by "**loss-attributing qualifying companies**".

Section 141FD(1) and (2): "loss attributing qualifying company" is replaced by "loss-attributing qualifying company" in each place where it appears.

Section 141FD(1): "net loss" is replaced by "tax loss" in each place where it appears.

Section 141FD(3): "that the shareholder claimed in respect of the attributed net loss" is replaced by "of the shareholder for the amount of the tax loss attributed to them".

Section 141JA

Section 141JA: "section NC 16 of the Income Tax Act 2004" is replaced by "section RD 4(2) of the Income Tax Act 2007".

Section 141JB

Section 141JB(1)(a): "section NBA 4(1) of the Income Tax Act 2004" is replaced by "sections RP 9 to RP 11 of the Income Tax Act 2007".

Section 141JB(1)(b): "section NBA 4(1B)(b) of the Income Tax Act 2004" is replaced by "section RP 8(b) of that Act".

Section 142

Section 142(1)(d): "annual imputation return" is replaced by "annual ICA return" in each place where it appears.

Section 142(1)(d): "(1B)(a) by an Australian imputation credit account company" is replaced by "(2)(a) by an Australian ICA company".

Section 142(1A)(a): "section NC 15(1)(b) of the Income Tax Act 2004" is replaced by "section RD 22(2)(b) of the Income Tax Act 2007".

Section 142(1A)(b): "section NC 15(1)(c) or (d) of the Income Tax Act 2004" is replaced by "section RD 22(3) or (4) of that Act".

Section 142E

Section 142E, heading: "**dividend withholding penalty tax**" is replaced by "**FDP penalty tax**".

Section 142E(2): "dividend withholding payment penalty tax" is replaced by "FDP penalty tax" in each place where it appears.

Section 142E(1) and (2): "imputation year" is replaced by "tax year" in each place where it appears.

Section 142E(2): "further dividend withholding payment" is replaced by "further FDP".

Section 143A

Section 143A(3): "dividend withholding payment deduction" is replaced by "payment of FDP".

Section 143A(5)(a) to (f): replace by the following:

"(a) a PAYE income payment:

"(b) a combined tax and earner-related payment:

"(c) an amount of tax withheld for—

"(i) resident passive income:

"(ii) non-resident passive income:
"(iii) an employer's superannuation contribution:
"(d) a deduction of contribution that was payable under Part 3, subpart 1 of the KiwiSaver Act 2006."

Section 143A(6): "making a deduction of dividend withholding payment in respect of a dividend derived" is replaced by "withholding FDP for a foreign dividend derived".

Section 143A(6)(a): "deducted an estimate of the amount of dividend withholding payment" is replaced by "withheld or paid an estimate of the FDP".

Section 143A(6)(b)(i): "section LF 2 of the Income Tax Act 2004" is replaced by "section LL 2 of the Income Tax Act 2007".

Section 143B

Section 143B(3): "making a deduction of a dividend withholding payment in respect of a dividend derived" is replaced by "withholding FDP for a foreign dividend derived".

Section 143B(3)(a): "deducted an estimate of the amount of dividend withholding payment" is replaced by "withheld or paid an estimate of the FDP".

Section 143B(3)(b)(i): "section LF 2 of the Income Tax Act 2004" is replaced by "section LL 2 of the Income Tax Act 2007".

Section 150A

Section 150A(1)(b) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 157

Section 157(1)(d): "a tax deduction" is replaced by "an amount of tax withheld or deducted".

Section 157(1)(d): "that tax deduction" is replaced by "that amount of tax".

Section 157(10), definition of **income tax**, paragraph (a): "the Income Tax Act 2007 and" is inserted before "the Income Tax Act 2004".

Section 157(10), definition of **income tax**, paragraph (b): "a tax deduction" is replaced by "an amount of tax withheld, or combined tax

and earner-related payment, to which section RD 4(1) of the Income Tax Act 2007 applies, or a tax deduction".

Section 157(10), definition of **income tax**, paragraph (bb): insert "sections RP 17 to RP 21 of the Income Tax Act 2007 or" before "subpart MBA of the Income Tax Act 2004".

Section 157(10), definition of **income tax**, paragraph (c): "section RD 4(2)(a) of the Income Tax Act 2007 or" is inserted before "section NC 16(b) of the Income Tax Act 2004".

Section 157(10), definition of **income tax**, paragraph (e): "sections RA 10 and RD 70 of the Income Tax Act 2007 or" is inserted before "section NE 5 of the Income Tax Act 2004".

Section 164

Section 164: "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 165AA

Section 165AA(1), (2) and (4): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 165AA(2): "basic rate of income tax stated in schedule 1, part A, clause 4" is replaced by "basic tax rate set out in schedule 1, part A, clause 3".

Section 165A

Section 165A(1): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 165A(2): "sections LC 3, LC 4(11) and LD 1(6) of the Income Tax Act 2004" is replaced by "sections LA 3 to LA 5, LJ 7, and LK 4 of the Income Tax Act 2007".

New section 165B

After section 165A: insert the following:

"**165B Recovery of overpaid refunds: NRWT**

"(1) This section applies for the purposes of the NRWT rules when the amount of a refund made to a person is more than the amount properly refundable to them.

"(2) The Commissioner may recover the amount overpaid as if it were income tax.

"(3) If the person has led the Commissioner by wilful default or neglect to pay the refund, the amount of the overpayment is due on the date the refund was paid. In every other case, the amount of the overpayment is due on the 5th working day of the month after that in which the Commissioner notifies the person that the amount of the overpayment is payable.

"Compare: 2004 No 35 s NG 16(5) ".

Section 166

Section 166(1): "sections MD 2, ME 20 and NH 4 of the Income Tax Act 2004" is replaced by "sections IA 3(2)(c), OA 2(5), RA 19, RA 20, RM 3, RM 13 to RM 21, RM 32, and RZ 6 of the Income Tax Act 2007 and sections 71B and 104B".

New section 166B

After section 166: insert the following:

"**166B Shipping business of absentee taxpayer**

"(1) This section applies if an assessment is made in relation to—

"(a) an absentee who carries on a shipping business carrying goods or passengers; or

"(b) a person who—

"(i) is the master of a ship owned by or under charter to the absentee; and

"(ii) is treated as an agent under section HD 21 of the Income Tax Act 2007.

"(2) The Commissioner may require a Customs officer to withhold the clearance of the ship pending the payment of any tax assessed.

"Compare: 2004 No 35 s HK 18 ".

Section 167

Section 167, heading: "**tax deductions**" is replaced by "**tax and payments**".

Section 167(1): "The amount of every tax deduction or combined tax and earner premium deduction or combined tax and earner levy

deduction made" is replaced by "Every amount of tax or combined tax and earner-related payment withheld or deducted".

Section 167(2): "Where a tax deduction or combined tax and earner premium deduction or combined tax and earner levy deduction has been made" is replaced by "When an amount of tax or combined tax and earner-related payment has been withheld or deducted".

Section 167(2): "deduction or any part of the deduction in the manner required by subsection (1) or the PAYE rules, the amount of the deduction" is replaced by "tax or payment withheld or deducted (or any part of it) in the manner required by subsection (1) or the PAYE rules, the amount of the tax or payment".

Section 167(2)(a): "deduction" is replaced by "tax or payment". Section 167(2)(b) and (c): "tax deduction" is replaced by "tax or payment" in each place where it appears.

Section 167(2B)(b)(i): "section NBA 4(1) of the Income Tax Act 2004" is replaced by "sections RP 9 to RP 11 of the Income Tax Act 2007".

Section 167(2B)(b)(ii): "section NBA 4(1B)(b) of the Income Tax Act 2004" is replaced by "section RP 8(b) of that Act".

Section 167(4): "**combined tax and earner premium deduction** or **combined tax and earner levy deduction**" is replaced by "**combined tax and earner-related payment**".

Section 168

Section 168, heading: "**make tax deductions**" is replaced by "**withhold or deduct tax or payments**".

Section 168(1): "make any tax deduction or combined tax and earner premium deduction or combined tax and earner levy deduction" is replaced by "withhold or deduct an amount of tax or combined tax and earner-related payment".

Section 168(1): "paragraphs (a), (b), (c), and (d) of section NC 15(1) of the Income Tax Act 2004" is replaced by "section RD 4 of the Income Tax Act 2007".

Section 168(1): "tax deductions" is replaced by "tax or combined tax and earner-related payment".

Section 168(4)(a): "section NBA 4(1) of the Income Tax Act 2004" is replaced by "sections RP 9 to RP 11 of the Income Tax Act 2007".

Section 168(4)(b): "section NBA 4(1B)(b) of the Income Tax Act 2004" is replaced by "section RP 8 of that Act".

Section 169

Section 169, heading: "**tax deductions**" is replaced by "**tax payments**".

Section 169(1): "make any tax deduction or combined tax and earner premium deduction or combined tax and earner levy deduction" is replaced by "withhold or deduct an amount of tax or combined tax and earner-related payment".

Section 169(1): "that deduction or sum" is replaced by "that tax, payment, or sum," in each place where it appears.

Section 169(1B)(a): "section NBA 4(1) of the Income Tax Act 2004" is replaced by "sections RP 9 to RP 11 of the Income Tax Act 2007".

Section 169(1B)(b): "section NBA 4(1B)(b) of the Income Tax Act 2004" is replaced by "section RP 8(b) of that Act".

Section 170

Section 170, heading: "**resident withholding tax deductions**" is replaced by "**RWT**".

Section 170(1): "The amount of every resident withholding tax deduction made in accordance with" is replaced by "The amount of RWT withheld under".

Section 170(2): "resident withholding tax deduction" is replaced by "RWT".

Section 170(2): "a tax deduction" is replaced by "tax".

Section 171

Section 171, heading: "**make resident withholding tax deductions**" is replaced by "**withhold RWT**".

Section 171(1): "make any resident withholding tax deduction" is replaced by "withhold RWT".

Section 171(1): "the deduction correctly been made" is replaced by "the tax been correctly withheld".

Section 171(2): "resident withholding income" is replaced by "resident passive income".

Section 171(3): "made a deduction of resident withholding tax from the resident withholding income in relation to which the first person failed to make such a deduction" is replaced by "withheld RWT from the resident passive income which the first person failed to withhold".

Section 171(3): "that deduction" is replaced by "that tax".

Section 172

Section 172, heading: "**resident withholding tax deductions constitute**" is replaced by "**RWT constitutes**".

Section 172(1): "to make any tax deduction" is replaced by "withhold RWT".

Section 172(1): "that tax deduction" is replaced by "that tax".

Section 173L

Section 173L(2)(b) and (3): "tax deducted" is replaced by "tax withheld or deducted" in each place where it appears.

Section 173L(2)(b): "the deduction" is replaced by "the amount was withheld or deducted".

Section 173L(3): "the deduction occurred" is replaced by "the amount was withheld or deducted".

Section 173M

Section 173M(5)(b): "section CW 34 or CW 35 of the Income Tax Act 2004" is replaced by "section CW 41 or CW 42 of the Income Tax Act 2007".

Section 173MB

Section 173MB: "section NBA 6(4) of the Income Tax Act 2004" is replaced by "section RP 6(4) of the Income Tax Act 2007".

Section 173N

Section 173N, heading: "**rebates**" is replaced by "**tax credits**".

Section 173N, words before paragraph (a): "rebate" is replaced by "tax credit".

Section 173P

Section 173P(2)(a): "section MB 12 of the Income Tax Act 2004" is replaced by "section RC 12 of the Income Tax Act 2007".

Section 173Q

Section 173Q(1)(b)(ii): "section MB 4(3) of the Income Tax Act 2004" is replaced by "section RC 5(2) and (3) of the Income Tax Act 2007".

Section 173Q(2)(a): "section MB 12 of the Income Tax Act 2004" is replaced by "section RC 12 of the Income Tax Act 2007".

Section 173R

Section 173R(2)(a): "section MB 12 of the Income Tax Act 2004" is replaced by "section RC 12 of the Income Tax Act 2007".

Section 174AA

Section 174AA: "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 174AA(b): "tax paid or deducted" is replaced by "tax paid, withheld, or deducted".

Section 177A

Section 177A(3): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 177C

Section 177C(5) and (6): "net loss" is replaced by "tax loss" in each place where it appears.

Section 177C(5B) and (5C): is replaced by the following:

"(5B) If the Commissioner writes off outstanding tax for a taxpayer who has a tax credit carried forward under section LE 3 of the Income Tax Act 2007, the Commissioner must extinguish an amount of the tax credit on a one-for-one basis.

"(5C) If a taxpayer has both a tax loss to which subsection (5) applies and a tax credit to which subsection (5B) applies, the Commissioner must extinguish the tax loss before extinguishing the tax credit."

Section 177D

Section 177D(2)(a): "section CX 41B(4) and (5) or section EW 47B(4) and (5) of the Income Tax Act 2004" is replaced by "section CX 48(4) and (5) or EW 46(4) and (5) of the Income Tax Act 2007".

Section 177D(3)(b) is replaced by the following:

"(b) from the payment of unpaid tax or amounts owing to the Commissioner under the PAYE rules, if the unpaid tax or amounts owing relate to PAYE income payments made for the farming business for which the new start grant was paid."

Section 180

Section 180(1)(a): "section ME 5(1)(j) of the Income Tax Act 2004" is replaced by "section OB 54 of the Income Tax Act 2007".

Section 180(1)(a): "section ME 4(1)(h)" is replaced by "section OB 25".

Section 180(1)(b): "imputation year" is replaced by "tax year".

Section 180(1)(c): "sections ME 5(1)(l) to (n) and ME 12(1)(l) and (m) of the Income Tax Act 2004" is replaced by "sections OB 33, OB 38, OP 31, OP 36, and OZ 3 of the Income Tax Act 2007".

Section 181

Section 181, heading and provisions: "dividend withholding payment" is replaced by "FDP" in each place where it appears.

Section 181(1)(a): "section MG 5(1)(h) of the Income Tax Act 2004" is replaced by "section OC 25 of the Income Tax Act 2007".

Section 181(1)(a): "section MG 4(1)(d) of the Income Tax Act 2004" is replaced by "section OC 12 of that Act".

Section 181(1)(b): "imputation year" is replaced by "tax year".

Section 181(1)(c): "sections MG 5(1)(k) and MG 15(1)(l) of the Income Tax Act 2004" is replaced by "sections OC 15 and OP 67 of the Income Tax Act 2007".

Section 181B

Section 181B(1)(a): "section MK 5(1)(h) of the Income Tax Act 2004" is replaced by "section OK 17 of the Income Tax Act 2007".

Section 181B(1)(a): "section MK 4(1)(g) of the Income Tax Act 2004" is replaced by "section OK 9 of that Act".

Section 180B(1)(b): "imputation year" is replaced by "tax year".

Section 181B(1)(c): "section MK 5(1)(j) of the Income Tax Act 2004" is replaced by "section OK 13 of the Income Tax Act 2007".

Section 181C

Section 181C(1)(a): "section ME 9(1) of the Income Tax Act 2004" is replaced by "section OB 65 of the Income Tax Act 2007".

Section 181C(1)(a) and (b): "imputation year" is replaced by "tax year" in each place where it appears.

Section 181D

Section 181D: "section MK 8(5) or (5B) of the Income Tax Act 2004" is replaced by "sections OK 23 and 24 of the Income Tax Act 2007".

Section 180D: "imputation year" is replaced by "tax year".

Section 183

Section 183(1)(e)(i): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 183A

Section 183A(1)(e): "dividend withholding payment" is replaced by "FDP".

Section 183ABA

Section 183ABA(1): "section OB 1 of the Income Tax Act 2004" is replaced by "section YA 1 of the Income Tax Act 2007".

Section 183H

Section 183H(a)(ii): "dividend withholding payment" is replaced by "FDP".

Section 184

Section 184: "section MD 1 of the Income Tax Act 2004" is replaced by "sections LA 6 to LA 8, RM 2, RM 4 to RM 6, RM 8, and RM 10 of the Income Tax Act 2007".

Section 185

Section 185(1)(a): "Income Tax Act 2004" is replaced by "Income Tax Act 2007".

Section 185(1)(b): "sections LD 8 and LD 9 of the Income Tax Act 2004 by way of a refund of dividend withholding payment" is replaced by "sections LA 6 and LF 8 of the Income Tax Act 2007 by way of a refund of FDP".

Section 185(1)(e): "subpart KD of the Income Tax Act 2004" is replaced by "subparts MA to MF and MZ of the Income Tax Act 2007".

Section 185(1)(f): "section NF 7 or section NG 16 of the Income Tax Act 2004" is replaced by "section RM 8 of that Act".

Section 185(1)(g): "section NBB 6 of the Income Tax Act 2004" is replaced by "section RP 4 of that Act".

Section 185D

Section 185D(1): "subpart NBB of the Income Tax Act 2004" is replaced by "sections RP 2 to RP 5 of the Income Tax Act 2007 and sections 15C, 15G to 15I, and 15M".

Section 185D(2): "section NBB 6 of the Income Tax Act 2004" is replaced by "section RP 4 of the Income Tax Act 2007".

Section 185D(3): "section NBB 6 of this Act" is replaced by "section RP 4 of the Income Tax Act 2007".

Section 225

Section 225(1), and (1)(a), (e) and (f): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Section 225(1)(d): "section OC 4 of the Income Tax Act 2004" is replaced by "section 225AA".

New section 225AA

After section 225: insert the following:

"**225AA Regulations: co-operative dairy and marketing companies**

"(1) The Governor-General may from time to time, by Order in Council, make regulations for the type of company described in subsection (2) for the purposes described in subsection (3).

"(2) The type of company to which this section applies is a company that—

"(a) is 1 of the following:

"(i) a co-operative dairy company:

"(ii) a co-operative milk marketing company, as defined in section 2 of the Co-operative Companies Act 1956:

"(iii) a co-operative pig marketing company, as defined in section 2 of the Co-operative Companies Act 1956; and

"(b) is registered under Part 2 or Part 3 of the Co-operative Companies Act 1996; and

"(c) was in existence at the start of the 1988–89 income year; and

"(d) was a company to which any of sections 201 to 203 of the Income Tax Act 1976, in force at the time, applied at the time.

"(3) The purposes for which the regulations can be made are—

"(a) authorising the Commissioner to classify as income, other than as a dividend, of a shareholder of the company some or all of an amount paid to the shareholder on the surrender of a share in the company, or for a share on the liquidation of the company, that is more than the available subscribed capital per share, calculated under the slice rule, of the share:

"(b) authorising the Commissioner to allocate the income to an income year or income years as the Commissioner thinks fit:

"(c) conferring on the Commissioner a discretionary power necessary for the purposes of the regulations.

"(4) The regulations made may apply different rules in relation to different classes of companies.

"Compare: 2004 No 35 s OC 4 ".

Section 225A

Section 225A, heading: "**Part KD credit**" is replaced by "**family assistance credit**".

Section 225A(1)(a): "chief executive of the department for the time being responsible for the administration of the Social Security Act

1964" is replaced by "chief executive of the administering department".

Section 225A(1)(a) and (b), and (2)(a) and (b): "section KD 6(1)(b) of the Income Tax Act 2004" is replaced by "section 80KP" in each place where it appears.

Section 225A(2)(b)(iii) and (iv): "subpart KD credit" is replaced by "family assistance credit" in each place where it appears.

New section 225B

After section 225A: insert the following:

"**225B Order in Council amending schedule 27**

"(1) The Governor-General may from time to time, by Order in Council, amend schedule 27 of the Income Tax Act 2007 by—

"(a) adding a country or territory outside New Zealand:

"(b) adding types of income for a country or territory outside New Zealand:

"(c) omitting a country or territory outside New Zealand:

"(d) omitting types of income for a country or territory outside New Zealand.

"(2) An amendment by Order in Council under subsection (1)(a) or (b) is repealed on 31 December in the tax year following the tax year in which the Order in Council is made, unless Parliament otherwise enacts.

"Compare: 2004 No 35 s LC 1A(1), (2) ".

Section 226

Section 226(1) and (2): "Income Tax Act 2004" is replaced by "Income Tax Act 2007" in each place where it appears.

Schedule

Schedule: add "Income Tax Act 2007".

Schedule 50 section 3(4)(b): item repealed (with effect on 1 April 2008), on 6 October 2009, by section 591(1) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 50 Part 2B: item repealed (with effect on 1 April 2008), on 6 October 2009, by section 591(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 50 section 33A(1)(a)(iiic): item repealed, on 1 April 2008, by section 561 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 50 section 33C(1)(b): item repealed, on 1 April 2008, by section 561 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 50 section 61: item amended (with effect on 1 April 2008), on 29 August 2011 (applying for the 2008–09 and later income years), by section 140(1) of the Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63).

Schedule 50 section 120KE(6)(a): item repealed, on 1 April 2008, by section 561 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 50 section 125(d): item repealed (with effect on 1 April 2008), on 6 October 2009, by section 591(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 50 section 141B: item repealed, on 1 April 2008, by section 561 of the Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109).

Schedule 51

s ZA 3(5)

Identified changes in legislation

Provisions in Income Tax Act 2007 or Tax Administration Act 1994 (TAA)	**Change**
Business-related provisions, listed in the appendix to this schedule	The tax year basis for these provisions is omitted, or changed to an income year basis.
CD 39(9)(b), (c)	A dividend payable to a shareholder by a company when the amount is applied under section CD 39(9)(a) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.

Provisions in Income Tax Act 2007 or Tax Administration Act 1994 (TAA)	**Change**
FA 3(2)	An ambiguity is removed, which ensures that an amount of the dividend is treated as being derived on the sale of the shares to the extent to which it matches any trading loss of the share dealer.
FA 5(6)	The time of association is clarified as being the time at which the associated person acquires the asset.
FA 9(2) and (3)	The time of association is clarified as being the time at which the associated person acquires the asset.
FC 2 to FC 6	The transfer on death to the executor/administrator and the subsequent transfer from the executor/administrator to the estate is treated as one transfer.
GB 1	Section GB 1(3) is clarified to confirm that the amount of the dividend derived is part of the consideration for the shares.
GB 27(2)(c)	The $60,000 threshold is clarified in order to take into account all income that would be attributed under section GB 29.
GB 35(2)(d)	The ambiguity is removed in order to clarify that multiple purposes are referred to.
GB 42(2)(d)	The ambiguity is removed in order to clarify that multiple purposes are referred to.

Provisions in Income Tax Act 2007 or Tax Administration Act 1994 (TAA)	**Change**
HC 27(2)	The definition of **settlor** is clarified so that any transfer to a trust that increases the net assets of the trust is a settlement on the trust and any deductible payments settled on a trust are included in trustee income.
HC 34(2)	The date for the payment of tax on a taxable distribution from a non-complying trust is the terminal tax date of the person liable to pay that tax.
IA 4(1)	Carried forward tax losses are used first by a person, before the losses may be grouped or otherwise used.
LA 1 to LA 10	Tax credits (other than personal and family tax credits) are used for the year that corresponds to the income year in which the credits arise.
LC 9(2)	This rule relates to the housekeeper and low income tax credits (formerly termed rebates). The policy of the rule is to apportion income of an absentee between periods of the person's absence and presence in New Zealand. The apportionment set out in the bill is on a daily basis. In the interests of simplification, the bill omits from the 2004 Act corresponding rule, the formula that apportioned the income on a "weeks" basis for persons with "regular pay periods". A change in effect is anticipated, but the omission should result at most in a small difference in outcome in favour of taxpayers. The New Zealand Law Society indicated in their submission on the bill that it

Provisions in Income Tax Act 2007 or Tax Administration Act 1994 (TAA)	**Change**
	would be preferable to list this as an intended change.
MC 6	The reference to veteran's pension is omitted because the in-work tax credit is an incentive to return to work.
RD 36(2)	A dividend payable to a shareholder by a company when the amount is applied under section RD 36(1) by the shareholder against a loan from the company to the shareholder includes a dividend that is paid without any withholding of an amount of resident withholding tax or non-resident withholding tax.
YA 1, definition of **land**	The provision is simplified and structured so that the first 3 paragraphs of the rewritten definition are to apply generally for the Act. This is consistent with the objectives of plain accessible legislation and is thought highly unlikely to result in any material change in law. However, as this change in drafting could conceivably result in a change in outcome in some circumstances, the change should be identified for readers.

Provisions in Income Tax Act 2007 or Tax Administration Act 1994 (TAA)	**Change**
YA 1, definition of **mortgage**	The definition of mortgage was introduced at a time when mortgages were subject to tax as a subset of land tax. The drafting in the bill provides for an updated and simplified term to apply generally for the Act. This is consistent with the objectives of plain accessible and up-to-date legislation and is thought highly unlikely to result in any material change in law. However, as this change in drafting could conceivably result in a change in outcome in some circumstances, the change should be identified for readers.
YA 1, definition of **natural resource**	A definition of **natural resource** is inserted for the purposes of section BH 1, and the definitions of **land** and **New Zealand**.
YA 1, definition of **pay**	The provision is simplified and structured so it is to apply generally for the Act. This is consistent with the objectives of plain accessible legislation and is thought highly unlikely to result in any material change in law. However, as this change in drafting could conceivably result in a change in outcome in some circumstances, the change should be identified for readers.

Schedule 51: amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 141(1) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Schedule 51: amended (with effect on 1 April 2008), on 21 December 2010 (applying for the 2008–09 and later income years), by section 141(2) of the Taxation (GST and Remedial Matters) Act 2010 (2010, No 130).

Schedule 51: amended (with effect on 1 April 2008), on 7 December 2009, by section 125(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 51: amended (with effect on 1 April 2008), on 7 December 2009, by section 125(2) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Schedule 51: amended (with effect on 1 April 2008), on 6 October 2009, by section 592 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Appendix
tax year omitted, or changed to income year

CC 11	FO 20
CC 12	GB 1
CG 7	GB 4
CH 6	GB 27
CS 18	GB 28
CV 12	GB 29
CV 13	GC 5
CV 14	GC 9(1)
CW 53	HA 42
CW 54	HC 7
CX 59	HC 8
DB 57	HC 10(4)
EY 11	HC 13
FA 3	HC 15
FA 5	HC 16
FA 8	HC 17
FA 9	HC 18

Appendix—*continued*

FA 10	HC 19
FA 11	HC 20
FB 2	HC 21
FB 8	HC 22
FB 13	HC 25
FB 19	HC 26(1)
FB 20	HC 29
FC 4(2)(c)	HC 30(6)
FE 2	HC 31
FE 5	HC 32(1)
FE 7	HC 34
FE 8	HC 35(4)(a)
FE 21	HC 36(3)
FE 22	HD 5
FE 37	HF 7
FF 2	HR 3(1)–(4)
FF 5	RD 3
FF 6	RF 2
FF 7	RG 7(4) and (7)
FF 9	YA 1, definition of **first business day**
FF 10	

Appendix—*continued*

FM 14	YA 1, definition of **herd livestock**
FN 14	93B TAA
FO 4	
FO 7	
FO 9	
FO 12	
FO 13	
FO 14	
FO 16	
FO 19	

Schedule 52

s ZA 6

Comparative tables of old and rewritten provisions

A

Income Tax Act 2004 and other legislation and regulations: corresponding provisions in Income Tax Act 2007 or Tax Administration Act 1994

Notes

1 The letters "TAA" indicate that the provision referred to appears in the Tax Administration Act 1994.

2 Provisions shown as omitted have been omitted because they are spent or redundant.

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
A 1	A 1
A2	A 2
PART A	
AA 1	AA 1
AA 2	AA 2
AA 3(1)	omitted
AA 3(2)	AA 3
PART B	
Subpart BA	
BA 1	BA 1
Subpart BB	
BB 1	BB 1
BB 2	BB 2
BB 2(3)	RA 4
BB 3	BB 3
Subpart BC	
BC 1	BC 1, RB 2
BC 2	BC 2
BC 3	BC 3
BC 4	BC 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
BC 4(4)	IA 2(1), (2), IA 3(2)(a), (4)
BC 5	BC 5
BC 6(1)	BC 6(1)
BC 6(2)–(4)	omitted
BC 6(5)	BC 6(2)
BC 7	BC 7, RB 3
BC 8(1)	LA 7
BC 8(2)	LA 4
BC 9	BC 8, LA 2, LA 3, LA 5, LA 10, RA 3
BC 9(1)	LA 4, LA 9
BC 10	LA 4, LA 5
Subpart BD	
BD 1	BD 1
BD 2	BD 2
BD 3	BD 3
BD 4	BD 4
Subpart BE	
BE 1	BE 1
BE 1(1), (4), (5)	RA 5

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
BE 1(2), (3), (6)	RA 6
Subpart BF	
BF 1	BF 1
Subpart BG	
BG 1	BG 1
Subpart BH	
BH 1	BH 1
PART C	
Subpart CA	
CA 1	CA 1
CA 2	CA 2
Subpart CB	
CB 1	CB 1
CB 2	CB 3
CB 3	CB 4
CB 4	CB 5
CB 4B	CB 26
CB 5	CB 6
CB 6	CB 7
CB 6B	CB 8

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CB 7	CB 9
CB 8	CB 10
CB 9	CB 11
CB 10	CB 12
CB 11	CB 13
CB 12	CB 14
CB 13	CB 15
CB 14	CB 16
CB 15	CB 17
CB 16	CB 18
CB 17	CB 19
CB 18	CB 20
CB 19	CB 21
CB 20	CB 22
CB 21	CB 23
CB 22	CB 24
CB 23	CB 25
CB 24	CB 27
CB 24B	CB 28
CB 25	CB 29

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CB 26	CB 30
CB 27	CB 31
CB 28	CB 32
Subpart CC	
CC 1	CC 1
CC 2	CC 2
CC 3	CC 3
CC 4	CC 4
CC 5	CC 5
CC 6	CC 6
CC 7	CC 7
CC 8	CC 8
CC 9	CC 9
CC 10	CC 10
Subpart CD	
CD 1	CD 1
CD 1B	CD 2
CD 2	CD 3
CD 3	CD 4
CD 4	CD 5

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CD 5	CD 6
CD 6	CD 7
CD 7	CD 8
CD 7B	CD 9
CD 7C	CD 10
CD 8	CD 13
CD 9	CD 15, OC 1(5)
CD 10	CD 16
CD 10B	CD 17
CD 10C	CD 18
CD 11	CD 19
CD 12	CD 20
CD 13	CD 21
CD 14	CD 22
CD 15	CD 23
CD 16	CD 24
CD 17	CD 25
CD 18	CD 26
CD 19	CD 27
CD 20	CD 28

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CD 21	CD 29
CD 21B	CD 30
CD 22	CD 31
CD 23	CD 32
CD 24	CD 33
CD 24B	CD 34
CD 25	CD 35
CD 26	CD 36
CD 27	CD 38
CD 28	CD 39
CD 29	CD 40
CD 30	CD 41
CD 31	CD 42
CD 32	CD 43
CD 33	CD 44
CD 34	CD 45
CD 35	CD 46
CD 36	CD 47
CD 37	CD 48
CD 38	CD 49

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CD 39	CD 50
CD 40	CD 51
CD 41	CD 52
CD 42	CD 53
CD 43	CD 54
Subpart CE	
CE 1	CE 1
CE 2	CE 2
CE 3	CE 3
CE 4	CE 4
CE 5	CE 5
CE 6	CE 6
CE 7	CE 7
CE 8	CE 8
CE 9	CE 9
CE 10	CE 10
CE 11	CE 11
CE 12	CE 12
Subpart CF	
CF 1	CF 1

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CF 2	CF 2
Subpart CG	
CG 1	CG 1
CG 2	CG 2
CG 3	CG 3
CG 4	CG 4
CG 5	CG 5
CG 6	CG 6
Subpart CH	
CH 1	CH 1
CH 2	CH 2
CH 3	CH 3
CH 4	CH 4
CH 5	CH 5
Subpart CP	
CP 1	CP 1
Subpart CQ	
CQ 1	CQ 1
CQ 2	CQ 2
CQ 3	CQ 3

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CQ 4	CQ 4
CQ 5	CQ 5
CQ 6	CQ 6
Subpart CR	
CR 1	CR 1
CR 2	CR 2
Subpart CS	
CS 1	CS 1
CS 2	CS 2
CS 3	CS 3
CS 4	CS 4
CS 5	CS 5
CS 6	CS 6
CS 7	CS 7
CS 8	CS 8
CS 9	CS 9
CS 10	CS 10
CS 11	CS 11
CS 12	CS 12
CS 13	CS 13

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CS 14	CS 14
CS 15	CS 15
CS 16	CS 16
CS 17	CS 17
Subpart CT	
CT 1	CT 1
CT 2	CT 2
CT 3	CT 3
CT 4	CT 4
CT 5	CT 5
CT 6	CT 6
CT 7	CT 7
Subpart CU	
CU 1	CU 1
CU 2	CU 2
CU 3	CU 3
CU 4	CU 4
CU 5	CU 5
CU 6	CU 6
CU 7	CU 7

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CU 8	CU 8
CU 9	CU 9
CU 10	CU 10
CU 11	CU 11
CU 12	CU 12
CU 13	CU 13
CU 14	CU 14
CU 15	CU 15
CU 16	CU 16
CU 17	CU 17
CU 18	CU 18
CU 19	CU 19
CU 20	CU 20
CU 21	CU 21
CU 22	CU 22
CU 23	CU 23
CU 24	CU 24
CU 25	CU 25
CU 26	CU 26
CU 27	CU 27

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CU 28	CU 28
CU 29	CU 29
Subpart CV	
CV 1	CV 1
CV 2	CV 6
CV 3	CV 7
CV 4	CV 8
Subpart CW	
CW 1	CW 1
CW 2	CW 2
CW 3	CW 3
CW 4	CW 4
CW 5	CW 5
CW 6	CW 6
CW 7	CW 7
CW 8	CW 8
CW 9	CW 9
CW 10	CW 10
CW 11	CW 11
CW 11B	CW 12

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CW 11C	CW 13
CW 12	CW 16
CW 13	CW 17
CW 14	CW 18
CW 15	CW 19
CW 16	CW 20
CW 17	CW 21
CW 18	CW 22
CW 19	CW 23
CW 20	CW 24
CW 21	CW 25
CW 22	CW 26
CW 22B	CW 27
CW 23	CW 28
CW 23B	CW 29
CW 24	CW 30
CW 25	CW 31
CW 26	CW 32
CW 27	CW 33
CW 28	CW 34

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CW 28B	CW 35
CW 29	CW 36
CW 30	CW 37
CW 31	CW 38
CW 32	CW 39
CW 33	CW 40
CW 34	CW 41
CW 35	CW 42
CW 36	CW 43
CW 37	CW 44
CW 38	CW 45
CW 39	CW 46
CW 40	CW 47
CW 40B	CW 48
CW 41	CW 49
CW 42	CW 50
CW 43	CW 51
CW 44	CW 52
CW 45	CW 56
CW 45B	CW 57

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CW 46	CW 58
CW 47	CW 59
CW 48	CW 60
CW 49	CW 61
CW 49B	CW 62
CW 50	CW 64
CW 51	omitted
Subpart CX	
CX 1	CX 1
CX 1B	CX 50
CX 2	CX 2
CX 3	CX 3
CX 4	CX 4
CX 5	CX 5
CX 6	CX 6
CX 6B	CX 7
CX 7	CX 8
CX 8	CX 9
CX 9	CX 10
CX 10	CX 11

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CX 11	CX 12
CX 12	CX 13
CX 13	CX 14
CX 14	CX 15
CX 15	CX 16
CX 16	CX 17
CX 17	CX 19
CX 18	CX 20
CX 18B	CX 21
CX 19	CX 22
CX 20	CX 23
CX 20B	CX 24
CX 21	CX 25
CX 22	CX 26
CX 23	CX 27
CX 24	CX 28
CX 25	CX 29
CX 26	CX 30
CX 26B	CX 31
CX 27	CX 32

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
CX 27B	CX 33
CX 28	CX 34
CX 29	CX 35
CX 30	CX 36
CX 31	CX 37
CX 32	CX 38
CX 33	CX 39
CX 34	CX 40
CX 35	CX 41
CX 36	CX 42
CX 37	CX 43
CX 38	CX 44
CX 39	CX 45
CX 40	CX 46
CX 41	CX 47
CX 41B	CX 48
CX 42	CX 49
CX 43	CX 51
CX 43B	CX 52
CX 44	CX 53

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CX 44B	CX 54
CX 44C	CX 55
CX 44D	CX 56
CX 44E	CX 57
CX 45	omitted
Subpart CY	
CY 1	omitted
Subpart CZ	
CZ 1	CZ 1
CZ 2	CZ 2
CZ 3	CZ 3
CZ 4	CZ 4
CZ 5	CZ 5
CZ 6	CZ 6
CZ 7	CZ 7
CZ 8	CZ 8
CZ 9	CZ 9
CZ 10	CZ 10
CZ 11	CZ 11
CZ 12	CZ 12

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
CZ 13	CZ 13
CZ 14	CZ 14
CZ 15	CZ 15
CZ 16	CZ 16
CZ 17	CZ 17
CZ 18	CZ 18
CZ 19	CZ 19
CZ 20	CZ 22
PART D	
Subpart DA	
DA 1	DA 1
DA 2	DA 2
DA 3	DA 3
DA 4	DA 4
Subpart DB	
DB 1	DB 1
DB 2	DB 2
DB 3	DB 3
DB 4	DB 4
DB 5	DB 5

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DB 6	DB 6
DB 7	DB 7
DB 8	DB 8
DB 9	DB 11
DB 9B	DB 12
DB 10	DB 13
DB 11	DB 14
DB 12	DB 15
DB 12B	DB 16
DB 12C	DB 17
DB 13	DB 18
DB 13B	DB 19
DB 14	DB 20
DB 15	DB 21
DB 16	DB 22
DB 17	DB 23
DB 18	DB 24
DB 19	DB 26
DB 20	DB 27
DB 21	DB 28

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
DB 22	DB 30
DB 23	DB 31
DB 24	DB 32
DB 25	DB 33
DB 26	DB 34
DB 27	DB 35
DB 28	DB 36
DB 28B	DB 37
DB 29	DB 38
DB 30	DB 39
DB 31	DB 40
DB 32	DB 41
DB 33	DB 42
DB 34	DB 43
DB 35	DB 44
DB 36	DB 45
DB 37	DB 46
DB 38	DB 47
DB 39	DB 48
DB 40	DB 49

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DB 41	DB 50
DB 42	DB 51
DB 43	DB 52
DB 43B	DB 53
DB 43C	DB 54
DB 44	DB 55
DB 45	DB 56
Subpart DC	
DC 1	DC 1
DC 2	DC 2
DC 3	DC 3
DC 4	DC 4
DC 5	DC 6
DC 6	DC 7
DC 7	DC 8
DC 8	DC 9
DC 9	DC 10
DC 10	DC 11
DC 11	DC 12
DC 12	DC 13

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
DC 13	DC 14
DC 14	DC 15
Subpart DD	
DD 1	DD 1
DD 2	DD 2
DD 3	DD 3
DD 4	DD 4
DD 5	DD 5
DD 6	DD 6
DD 7	DD 7
DD 8	DD 8
DD 9	DD 9
DD 10	DD 10
DD 11	DD 11
Subpart DE	
DE 1	DE 1
DE 2	DE 2
DE 3	DE 3
DE 4	DE 4
DE 5	DE 5

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DE 6	DE 6
DE 7	DE 7
DE 8	DE 8
DE 9	DE 9
DE 10	DE 10
DE 11	DE 11
DE 12	DE 12
Subpart DF	
DF 1	DF 1
DF 2	DF 2
DF 3	DF 3
DF 4	DF 4
Subpart DN	
DN 1	DN 1
DN 2	DN 2
DN 3	DN 3
DN 4	DN 4
DN 5	DN 5
DN 6	DN 6
DN 7	DN 7

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
DN 9	DN 8
Subpart DO	
DO 1	DO 1
DO 2	DO 2
DO 3	DO 3
DO 4	DO 4
DO 4B	DO 5
DO 4C	DO 6
DO 4D	DO 7
DO 4E **planting**, **plot**	DO 8
DO 4E **replaced area Fraction**	DO 9
DO 5	DO 10
DO 5B	DO 11
DO 6	DO 12
DO 7	DO 13
Subpart DP	
DP 1	DP 1
DP 2	DP 2
DP 3	DP 3
DP 3B	DP 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DP 4	DP 5
DP 5	DP 6
DP 6	DP 7
DP 7	DP 8
DP 8	DP 9
DP 9	DP 10(1), (2)
DP 10	DP 11
Subpart DQ	
DQ 1	DQ 1
DQ 2	DQ 2
DQ 3	DQ 3
DQ 4	DQ 4
Subpart DR	
DR 1	DR 1
DR 2	DR 2
DR 3	DR 3
Subpart DS	
DS 1	DS 1
DS 2	DS 2
DS 3	DS 3

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DS 4	DS 4
Subpart DT	
DT 1	DT 1
DT 2	DT 2
DT 3	DT 3
DT 4	DT 4
DT 5	DT 5
DT 6	DT 6
DT 7	DT 7
DT 8	DT 8
DT 9	DT 9
DT 10	DT 10
DT 11	DT 11
DT 12	DT 12
DT 13	DT 13
DT 14	DT 14
DT 15	DT 15
DT 16	DT 16
DT 17	DT 17
DT 18	DT 18

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DT 19	DT 19
DT 20	DT 20
Subpart DU	
DU 1	DU 1
DU 2	DU 2
DU 3	DU 3
DU 4	DU 4
DU 5	DU 5
DU 6	DU 6
DU 7	DU 7
DU 8	DU 8
DU 9	DU 9
DU 10	DU 10
DU 11	DU 11
DU 12	DU 12
Subpart DV	
DV 1	DV 1
DV 2	DV 2
DV 3	DV 3
DV 4	DV 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
DV 5	DV 5
DV 5(4)(b)	IA 2(4)(b)(i), IA 7(4)(a)
DV 6	DV 6
DV 7	DV 7
DV 7(2)	IA 2(4)(b)(ii), IA 7(4)(b)
DV 8	DV 8
DV 9	DV 9
DV 9(2)	HC 24(4)
DV 10	DV 10
DV 10B	DV 11
DV 11	DV 12
DV 12	DV 13
DV 13	DV 14
Subpart DW	
DW 1	DW 1
DW 2	DW 2
Subpart DX	
DX 1	DX 1
Subpart DY	
DY 1	omitted

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
DY 2	omitted
Subpart DZ	
DZ 1	DZ 1
DZ 2	DZ 2
DZ 3	DZ 3
DZ 4	DZ 4
DZ 5	DZ 5
DZ 6	DZ 6
DZ 7	DZ 7
DZ 8	DZ 8
DZ 9	DZ 9
DZ 10	DZ 10
DZ 11	DZ 11
DZ 12	DZ 12
DZ 13	DZ 13
DZ 14	DZ 15
DZ 15	DZ 16
DZ 16	DZ 17
DZ 17	DZ 18
PART E	

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
Subpart EA	
EA 1	EA 1
EA 2	EA 2
EA 3	EA 3
EA 4	EA 4
Subpart EB	
EB 1	EB 1
EB 2	EB 2
EB 3	EB 3
EB 4	EB 4
EB 5	EB 5
EB 6	EB 6
EB 7	EB 7
EB 8	EB 8
EB 9	EB 9
EB 10	EB 10
EB 11	EB 11
EB 12	EB 12
EB 13	EB 13
EB 14	EB 14

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EB 15	EB 15
EB 16	EB 16
EB 17	EB 17
EB 18	EB 18
EB 19	EB 19
EB 20	EB 20
EB 21	EB 21
EB 22	EB 22
EB 23	EB 23
Subpart EC	
EC 1	EC 1
EC 2	EC 2
EC 3	EC 3
EC 5	EC 4
EC 5B	EC 5
EC 6	EC 6
EC 7	EC 7
EC 8	EC 8
EC 9	EC 9
EC 10	EC 10

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EC 11	EC 11
EC 12	EC 12
EC 13	EC 13
EC 14	EC 14
EC 15	EC 15
EC 16	EC 16
EC 17	EC 17
EC 18	EC 18
EC 19	EC 19
EC 20	EC 20
EC 21	EC 21
EC 22	EC 22
EC 23	EC 23
EC 24	EC 24
EC 25	EC 25
EC 26	EC 26
EC 27	EC 27
EC 28	EC 28
EC 29	EC 29
EC 30	EC 30

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EC 31	EC 31
EC 32	EC 32
EC 33	EC 33
EC 34	EC 34
EC 35	EC 35
EC 36	EC 36
EC 37	EC 37
EC 38	EC 38
EC 39	EC 39
EC 40	EC 40
EC 41	EC 41
EC 42	EC 42
EC 43	EC 43
EC 44	EC 44
EC 45	EC 45
EC 46	EC 46
EC 47	EC 47
EC 48	EC 48
Subpart ED	
ED 1	ED 1

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ED 2	ED 2
Subpart EE	
EE 1	EE 1
EE 2	EE 2
EE 3	EE 3
EE 4	EE 4
EE 5	EE 5
EE 6	EE 6
EE 7	EE 7
EE 8	EE 8
EE 9	EE 9
EE 10	EE 10
EE 11	EE 11
EE 12	EE 12
EE 13	EE 13
EE 14	EE 14
EE 15	EE 15
EE 16	EE 16
EE 17	EE 17
EE 18	EE 18

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EE 19	EE 19
EE 20	EE 20
EE 21	EE 21
EE 22	EE 22
EE 23	EE 23
EE 24	EE 24
EE 24B	EE 25
EE 25	EE 26
EE 25B	EE 27
EE 25C	EE 28
EE 25D	EE 29
EE 25E	EE 30
EE 26	EE 31
EE 26B	EE 32
EE 27	EE 33
EE 27B	EE 34
EE 28	EE 35
EE 29	EE 36
EE 30	EE 37
EE 31	EE 38

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EE 32	EE 39
EE 33	EE 40
EE 34	EE 41
EE 35	EE 42
EE 36	EE 43
EE 37	EE 44
EE 38	EE 45
EE 39	EE 46
EE 40	EE 47
EE 41	EE 48
EE 42	EE 49
EE 43	EE 51
EE 44	EE 52
EE 44B	EE 53
EE 45	EE 54
EE 46	EE 55
EE 47	EE 56
EE 48	EE 57
EE 49	EE 58
EE 50	EE 59

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EE 51	EE 60
EE 52	EE 61
EE 53	EE 62
EE 54	EE 63
EE 55	EE 64
EE 56	EE 65
EE 57	EE 66
EE 58	EE 67
Subpart EF	
EF 1	EF 1
EF 2	EF 2
EF 3	EF 3
EF 4	EF 4
EF 5	EF 5
EF 6	EF 6
Subpart EG	
EG 1	EG 1
EG 2	EG 2
EG 3	EG 3
Subpart EH	

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EH 1	EH 1
EH 2	EH 2
EH 3	EH 3
EH 4	EH 4
EH 5	EH 5
EH 6	EH 6
EH 7	EH 7
EH 8	EH 8
EH 9	EH 9
EH 10	EH 10
EH 11	EH 11
EH 12	EH 12
EH 13	EH 13
EH 14	EH 14
EH 15	EH 15
EH 16	EH 16
EH 17	EH 17
EH 18	EH 18
EH 19	EH 19
EH 20	EH 20

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EH 21	EH 21
EH 22	EH 22
EH 23	EH 23
EH 24	EH 24
EH 25	EH 25
EH 26	EH 26
EH 27	EH 27
EH 28	EH 28
EH 29	EH 29
EH 30	EH 30
EH 31	EH 31
EH 32	EH 32
EH 33	EH 33
EH 34	EH 34
EH 35	EH 35
EH 37	EH 36
EH 38	EH 37
EH 39	EH 38
EH 40	EH 39
EH 41	EH 40

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EH 42	EH 41
EH 43	EH 42
EH 44	EH 43
EH 45	EH 44
EH 46	EH 45
EH 47	EH 46
EH 48	EH 47
EH 49	EH 48
EH 50	EH 49
EH 51	EH 50
EH 52	EH 51
EH 53	EH 52
EH 54	EH 53
EH 55	EH 54
EH 56	EH 55
EH 57	EH 56
EH 58	EH 57
EH 59	EH 58
EH 60	EH 59
EH 61	EH 60

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EH 62	EH 61
EH 64	EH 62
EH 65	EH 63
EH 66	EH 64
EH 67	EH 65
EH 68	EH 66
EH 69	EH 67
EH 70	EH 68
EH 71	EH 69
EH 72	EH 70
EH 73	EH 71
EH 74	EH 72
EH 75	EH 73
EH 76	EH 74
EH 77	EH 75
EH 78	EH 76
EH 79	EH 77
EH 80	EH 78
EH 81	EH 79

Subpart EI

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EI 1	EI 1
EI 2	EI 2
EI 3	EI 3
EI 3B	EI 4
EI 4	EI 5
EI 5	EI 6
EI 6	EI 7
EI 7	EI 8
EI 8	EI 9
Subpart EJ	
EJ 1	EJ 1
EJ 2	EJ 2
EJ 3	EJ 3
EJ 4	EJ 4
EJ 5	EJ 5
EJ 6	EJ 6
EJ 7	EJ 7
EJ 8	EJ 8
EJ 9	EJ 10
EJ 10	EJ 11

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EJ 11	EJ 12
EJ 12	EJ 13
EJ 13	EJ 15
EJ 14	EJ 16
EJ 15	EJ 17
EJ 16	EJ 18
EJ 17	EJ 19
EJ 18	EJ 20
EJ 19	EJ 21
EJ 20	EJ 22
EJ 21	EJ 23
Subpart EK	
EK 1	EK 1
EK 2	EK 2
EK 3	EK 3
EK 4	EK 4
EK 5	EK 5
EK 6	EK 6
EK 7	EK 7
EK 8	EK 8

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EK 9	EK 9
EK 10	EK 10
EK 11	EK 11
EK 12	EK 12
EK 13	EK 13
EK 14	EK 14
EK 15	EK 15
EK 16	EK 16
EK 17	EK 17
EK 18	EK 18
EK 19	EK 19
EK 20	EK 20
EK 21	EK 21
EK 22	EK 22
EK 23	EK 23
Subpart EW	
EW 1	EW 1
EW 2	EW 2
EW 3	EW 3
EW 4	EW 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EW 5	EW 5
EW 6	EW 6
EW 7	EW 7
EW 8	EW 8
EW 9	EW 9
EW 10	EW 10
EW 11	EW 11
EW 12	EW 12
EW 13	EW 13
EW 14	EW 14
EW 15	EW 15
EW 16	EW 16
EW 17	EW 17
EW 18	EW 18
EW 19	EW 19
EW 20	EW 20
EW 21	EW 21
EW 22	EW 22
EW 23	EW 23
EW 24	EW 24

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EW 25	EW 25
EW 26	EW 26
EW 27	EW 27
EW 28	EW 28
EW 29	EW 29
EW 30	EW 30
EW 31	EW 31
EW 32	EW 32
EW 33	EW 33
EW 34	EW 34
EW 35	EW 35
EW 36	EW 36
EW 37	EW 37
EW 38	EW 38
EW 40	EW 39
EW 41	EW 40
EW 42	EW 41
EW 43	EW 42
EW 45	EW 43
EW 46	EW 44

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EW 47	EW 45
EW 47B	EW 46
EW 48	EW 47
EW 49	EW 48
EW 50	EW 49
EW 51	EW 50
EW 52	EW 51
EW 52B	EW 52
EW 53	EW 53
EW 54	EW 54
EW 55	EW 55
EW 56	EW 56
EW 57	EW 57
EW 58	EW 58
EW 59	EW 59
EW 60	EW 60
EW 61	EW 61
EW 62	EW 62
EW 63	EW 63
Subpart EX	

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EX 1	EX 1
EX 2	EX 2
EX 3	EX 3
EX 4	EX 4
EX 5	EX 5
EX 6	EX 6
EX 7	EX 7
EX 8	EX 8
EX 9	EX 9
EX 10	EX 10
EX 11	EX 11
EX 12	EX 12
EX 13	EX 13
EX 14	EX 14
EX 15	EX 15
EX 16	EX 16
EX 17	EX 17
EX 18	EX 18
EX 19	EX 19
EX 20	EX 20

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EX 21	EX 21
EX 22	EX 22
EX 23	EX 23
EX 24	YA 1 **grey List Company**
EX 25	EX 24
EX 26	EX 25
EX 27	EX 26
EX 28	EX 27
EX 29	EX 28
EX 30	EX 29
EX 31	EX 30
EX 32	EX 34
EX 33(1), (2)	EX 35
EX 33(3)	EX 36
EX 33(4)	EX 37
EX 33(5)	EX 38
EX 33B(1), (3)	EX 39
EX 33B(2), (3)	EZ 32
EX 33C	EX 31
EX 33D	EX 32

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
EX 33E	EX 33
EX 34	EX 40
EX 35	EX 41
EX 36	EX 42
EX 37	EX 43
EX 38	EX 44
EX 39	EX 45
EX 40	EX 46
EX 40B	EX 47
EX 41	EX 48
EX 42	EX 49
EX 43	EX 50
EX 44	EX 51
EX 44(7)	EX 57
EX 44B(1), (3)	EX 53(1)(b)
EX 44B(2)	EX 52(1)(b)
EX 44B(4)	omitted
EX 44C	EX 52
EX 44C(11)	EX 57
EX 44D	EX 53

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EX 44D(13)	EX 57
EX 44E	EX 54
EX 45	EX 55
EX 45(15)	EX 57
EX 45B	EX 56
EX 45B(17)	EX 57
EX 46	EX 58
EX 47	EX 59
EX 48	EX 60
EX 49	EX 61
EX 50	EX 62
EX 51	EX 63
EX 52	EX 64
EX 53	EX 65
EX 54	EX 66
EX 54B	EX 67
EX 56	EX 68
EX 57	EX 69
EX 58	EX 70
EX 59	EX 71

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EX 60	EX 72
Subpart EY	
EY 1	EY 1
EY 2	EY 2
EY 3	EY 3
EY 4	EY 4
EY 5	EY 5
EY 6	EY 6
EY 7	EY 7
EY 8	EY 8
EY 9	EY 9
EY 10	EY 10
EY 11	EY 12
EY 12	EY 13
EY 13	EY 14
EY 14	EY 15
EY 15	EY 16
EY 16	EY 17
EY 17	EY 18
EY 18	EY 19

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EY 19	EY 20
EY 20	EY 21
EY 21	EY 22
EY 22	EY 23
EY 23	EY 24
EY 24	EY 25
EY 25	EY 26
EY 26	EY 27
EY 27	EY 28
EY 28	EY 29
EY 29	EY 30
EY 30	EY 31
EY 31	EY 32
EY 32	EY 33
EY 33	EY 34
EY 34	EY 35
EY 35	EY 36
EY 36	EY 37
EY 37	EY 38
EY 38	EY 39

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EY 39	EY 40
EY 40	EY 41
EY 41	EY 42
EY 42	EY 43
EY 42(10)	IA 7(3)
EY 43	EY 44
EY 44	EY 45
EY 45	EY 46
EY 46	EY 47
EY 47	EY 48
EY 48	EY 49
Subpart EZ	
EZ 1	EZ 1
EZ 2	EZ 2
EZ 3	EZ 3
EZ 4	EZ 4
EZ 4B	EZ 5
EZ 4C	EZ 6
EZ 5	EZ 7
EZ 6	EZ 8

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EZ 8	EZ 9
EZ 9	EZ 10
EZ 10	EZ 11
EZ 11	EZ 12
EZ 12	EZ 13
EZ 13	EZ 14
EZ 14	EZ 15
EZ 15	EZ 16
EZ 16	EZ 17
EZ 17	EZ 18
EZ 18	EZ 19
EZ 19	EZ 20
EZ 20	EZ 21
EZ 21	EZ 22
EZ 21B	EZ 23
EZ 22	EZ 24
EZ 23	EZ 25
EZ 24	EZ 26
EZ 25	EZ 27
EZ 26	EZ 28

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EZ 27	EZ 29
EZ 28	EZ 30
EZ 29	EZ 31
EZ 30	EZ 33
EZ 31	EZ 34
EZ 32	EZ 35
EZ 33	EZ 36
EZ 34	EZ 37
EZ 35	EZ 38
EZ 36	EZ 39
EZ 37	EZ 40
EZ 38	EZ 41
EZ 39	EZ 42
EZ 40	EZ 43
EZ 41	EZ 44
EZ 42	EZ 45
EZ 43	EZ 46
EZ 44	EZ 47
EZ 45	EZ 48
EZ 46	EZ 49

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
EZ 47	EZ 50
EZ 48	EZ 51
EZ 49	EZ 52
PART F	
Subpart FB	
FB 2(1), (1A)	YD 5
FB 2(2)	YD 4
FB 3	CB 2
FB 4	EB 24(1)–(4)
FB 4A	DB 29
FB 7	EE 50
Subpart FC	
FC 1	FA 2, FZ 1
FC 1(1)	DB 10
FC 2	FA 2
FC 2(2)	DB 10
FC 2(3)	omitted
FC 3	FA 3
FC 4	FA 4
FC 4(f)(iv)	DB 25

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FC 5	FA 5
FC 5(1)	CG 7
FC 6(2)–(8)	FZ 2
FC 6(4)	DZ 14
FC 6(7), (8)	CZ 20
FC 7	FZ 3
FC 8	DZ 14, FZ 4
FC 8A(1)	FA 6
FC 8A(2), (3)	FA 7
FC 8B(1)	FA 8
FC 8B(2)	FA 9(1)
FC 8B(3)	FA 10(1), (2)
FC 8C	FA 10(6), (7)
FC 8D	FA 10(3)–(5)
FC 8D(2)	CC 12
FC 8E	CC 11, FA 9(2), (3)
FC 8F	FA 6
FC 8G	FA 6
FC 8H	FA 11(1), (2)
FC 8H(2)	CH 6

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FC 8I	FA 11(3)–(7)
FC 8I(3)(a)	CH 6
FC 9	FA 12
FC 10	FA 12
FC 10(1)(a)	FA 13
FC 10(1)(c), (5)(c)	FA 14
FC 10(2), (5)(a)	FA 15
FC 10(3)	FA 16
FC 10(4)	FA 17
FC 10(5)(b)	omitted
FC 10(5)(d)–(f)	CC 13, FA 18
FC 13	CR 3, YD 8
FC 14(1)	YD 8
FC 14(2)	CR 3
FC 15	DW 3
FC 16	HD 16
FC 17	HD 17
FC 18	CV 16, YD 6(1), (2), (4), (5)
FC 19	CV 16(3), YD 6(3)
FC 20	DW 3

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FC 21	YD 7
FC 21(1), (2), (4)	CV 1
FC 21(3), (5)	DW 3
FC 22	HR 8(1)
FC 23	HR 8(2)
FC 24	HR 8(3)–(6)
Subpart FCB	
FCB 1	FL 1
FCB 2	FL 2(1)
FCB 2(b)	CD 14
FCB 3	FL 2(2)
Subpart FD	
FD 1	FM 1, FM 2(1)
FD 2	FM 6(1)–(3), (5)
FD 3(a)	FM 35(1)
FD 3(b)–(e)	FM 31(2)–(6)
FD 4(1), (2)	FM 35
FD 4(3)–(8)	FM 38
FD 5	FM 32
FD 6	FM 34(1)–(4)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FD 6(1)	HD 11
FD 7(1), (2)	FM 36
FD 7(3)–(8)	FM 38
FD 8(1)	FM 37
FD 8(2)	FM 39
FD 8(3), (4), (6), (7)	FM 40
FD 8(5)	FM 41
FD 8(5) proviso	FM 34(5)
FD 8(8)	FM 42
FD 8(9)	FM 33
FD 9	FM 14
FD 10(1), (2)	FM 15
FD 10(3)	FM 16
FD 10(4), (4A)	FM 18
FD 10(4), (4B)	FM 19
FD 10(4), (4C)	FM 20
FD 10(5)	FM 17
FD 10(6), (7)	FM 21
FD 10(8)	CV 3, FM 23
FD 10(9)	FM 22

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
FD 11	FM 6(4)
Subpart FDA	
FDA 1	FN 4
FDA 2	FN 7
FDA 2(1)–(3), (5)	FN 9(1), (2)
FDA 3(1), (3)	FN 8(2)
FDA 3(2), (4)	FN 5
FDA 4	FN 3, FN 9(3)
FDA 5	FN 6(1)–(5)
FDA 5(3)	HD 11
FDA 6(1)	FN 10
FDA 6(2)	FN 11
FDA 6(3), (4), (7), (8)	FN 12
FDA 6(5)	FN 13
FDA 6(6)	FN 6(6)
FDA 6(9)	FN 14
Subpart FE	
FE 1(1)(a), (b)	FO 1
FE 1(1)(c)	FO 4(3)
FE 1(2)	FO 2

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FE 2	FO 6
FE 3	DV 15(1), (2), FO 8
FE 4(a)	FO 9
FE 4(b)	CV 4, FO 7
FE 5	FO 11, FO 15
FE 6(1)–(3B)	FO 10(1)–(6)
FE 6(1), (4)	FO 16
FE 6(3A), (3B)	FO 17
FE 6(5), (6)	FO 12
FE 6(5), (7)	FO 13
FE 6(5), (8)	FO 14
FE 6A	DV 15, FO 10(7)
FE 7(1)(a), (2)	FO 12
FE 7(1)(b), (3)	FO 13
FE 7(1)(b), (4)	FO 14
FE 8	FO 4(1), (2)
FE 9	FO 5
FE 10(1)–(5), (6)(c)	FO 18
FE 10(6)(a)	FO 19
FE 10(6)(b)	FO 20

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
Subpart FF	
FF 1	FB 10
FF 2	FB 9
FF 3	FB 13
FF 4	FB 2
FF 5	FZ 5
FF 6(1)(a)	FB 3
FF 6(1)(a)(iv), (b)(iv), (2)	FB 5
FF 6(1)(b)	FB 4
FF 7(1), (2), (5)	FB 6
FF 7(3), (4), (5)	FB 7
FF 8	FB 8
FF 9	FB 15
FF 10	FB 16
FF 11	FB 17
FF 12	FB 18
FF 13	FB 13
FF 13(1)	EB 24
FF 13(1)(a)(i), (3)	FB 14
FF 14	FB 19

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
FF 15	FB 21
FF 16	FB 21
FF 17(1)	FB 11
FF 17(2), (3)	FB 12
FF 18	IZ 1
FF 19	FB 20
Subpart FG	
FG 1	FE 1
FG 2(1), (6), (8)	FE 2
FG 2(2)	FE 38
FG 2(3)	FE 39
FG 2(4)	FE 40
FG 2(4)–(6)	FE 41
FG 3	FE 5, FE 12
FG 4(1)	FE 12
FG 4(2)	FE 15
FG 4(3), (4)	FE 16
FG 4(5), (6)	FE 8
FG 4(7)	FE 10(3)
FG 4(8)	FE 11

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FG 4(9), (15), (17)	FE 14(1)–(3)
FG 4(10), (11)	FE 25
FG 4(10)	FE 26
FG 4(12)–(14B)	FE 27
FG 4(12), (14C), (14E)	FE 28
FG 4(12), (14C), (14E), (14F)	FE 29
FG 4(14)(D)	FE 30
FG 4(15), (16)	FE 3
FG 5(1)	FE 12
FG 5(2), (10)	FE 17
FG 5(2)–(5), (12), (13)	FE 18
FG 5(6)	FE 10(2)(a)
FG 5(7)	FE 11
FG 5(8)	FE 31
FG 5(9)	FE 32
FG 6	FE 13
FG 7	FE 10(2)(b)
FG 8	CH 9, FE 6
FG 8B	FE 7
FG 8B(1)	CH 10

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
FG 8B(3)	FE 23
FG 8C(1), (2), (4)–(7)	FE 36
FG 8C(3)	omitted
FG 8C(8)	FE 35
FG 8C(9), (10)	FE 34
FG 8D	FE 37
FG 8E	FE 8
FG 8F	FE 20
FG 8G(1)–(3)	FE 21
FG 8G(4)	FE 22
FG 8G(5), (6)	FE 24
FG 8H	FE 19
FG 8I	FE 10(1)
FG 8J	FE 11
FG 9	FE 14(4)
FG 10	FE 9
Subpart FH	
FH 1	FF 4
FH 1(1)	FF 2
FH 2	FF 8

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
FH 3	FF 9
FH 3(1)	FF 10
FH 4	FF 10
FH 5	FF 5
FH 6	FF 6(1), (4), (5)
FH 7	FF 6(2), (3)
FH 8	FF 7
FH 8(3)	CV 10
FH 8(6)	FF 11
Subpart FI	
FI 1	FC 1
FI 2	FC 2(1)
FI 3	FC 2(2)
FI 4	FC 3
FI 5	FC 4
FI 6	FC 6
FI 7	FC 5
FI 8	FC 7
FI 9	FZ 6(1), (3), (4)
FI 10	FZ 6(2)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
FI 11	FC 8
Subpart FZ	
FZ 1	omitted
FZ 2	omitted
PART G	
Subpart GB	
GB 1(1)–(2C)	CW 63, DB 58, GA 1
GB 1(3)	CD 11, GB 1
Subpart GC	
GC 1	GB 2
GC 2	GB 3
GC 3	GB 5
GC 4	GB 4
GC 5	GB 6
GC 6	GB 33
GC 7	EX 3(2), GB 7
GC 8	GB 8
GC 9(1), (4)	EX 3(3)(a), (b), GB 9, GB 10
GC 9(2)	EX 3(3)(c), (d), GB 11, GB 12
GC 9(3), (4)	EX 3(3)(e), (f), GB 13, GB 14

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
GC 9(5)	omitted
GC 9(6)	YD 2(2)
GC 9(7)	EX 3, GB 9– GB 14
GC 10	GB 15, GB 16
GC 11A	DB 58, GB 17
GC 11B	EJ 9, GB 18
GC 12	GB 20
GC 12(1)	GC 12
GC 14	GB 22
GC 14A	GB 26
GC 14B	GB 27
GC 14C	GB 28
GC 14D	GB 29
GC 14E	GB 27
GC 14F	GB 30
GC 14G	GB 49
GC 15	GB 32
GC 15(3), (4)	CX 18, RD 54
GC 16	schedule 5, clause 4
GC 16(b)	GB 31

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
GC 17	GB 31
GC 17B	GA 2
GC 18	omitted
GC 19	omitted
GC 20	omitted
GC 21	GB 34
GC 22(1), (2)	GB 35
GC 22(3), (7), (8)	TAA 90AF
GC 22(4), (5), (9)	GB 36, LE 1(5)
GC 23	GB 37, LE 1(5)
GC 24	GB 38, LE 1(5)
GC 25	GB 39
GC 26	GB 40
GC 27	GB 41
GC 27A(1)–(3)	GB 42
GC 27A(4), (7)–(9)	TAA 90AG
GC 27A(5), (6), (10)	GB 43
GC 28	GB 44
GC 29(1)	GB 45
GC 29(2), (3)	GB 47

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
GC 30	GB 48
GC 31	DB 58, GB 46
Subpart GD	
GD 1(1), (3), (4)	GC 1
GD 1(2), (3A)	GC 2
GD 3(1), (2)	CD 11, CW 63, DB 58, GB 23
GD 3(3)	omitted
GD 3(4), (5)	GB 24
GD 4	DB 57, DC 5
GD 5	CD 11, DB 58, GB 25
GD 6(1), (2)	CS 18
GD 6(3)	CZ 21
GD 7	DB 59, GC 3
GD 8(1), (3)–(8)	EY 11
GD 8(2)	omitted
GD 10	DB 59, GC 5
GD 11	GB 21
GD 12	DB 58, GB 17
GD 12(1)	GZ 1
GD 12A	DB 58, EJ 9, GB 19

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
GD 12B	EJ 9, GB 18
GD 13(1), (2)	GC 6
GD 13(3)	GC 7
GD 13(4), (5)	GC 8
GD 13(6)–(9)	GC 13
GD 13(10)	GC 9, GC 10
GD 13(11)	GC 11
GD 13(12)	GC 12
GD 13(13)	GC 14
GD 14	GC 4
GD 15	DP 10(3)–(5)
Subpart GE	
GE 1	omitted
Subpart GZ	
GZ 1	omitted
PART H	
Subpart HB	
HB 1(1)	FM 3
HB 1(2)	FM 5
HB 1(3)–(5)	FM 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HB 2(1)	FM 3, FM 7
HB 2(1)(a)	CX 60, FM 8
HB 2(1)(b)	DV 16(2), FM 10
HB 2(1)(c)	DV 17, FM 11
HB 2(1)(d)	DV 16(3), FM 12
HB 2(1)(e)	CV 2, FM 9
HB 2(2)	FM 13
Subpart HD	
HD 1(1)(a)	HC 2
HD 1(1)(b), (c), (2)	HR 1
Subpart HE	
HE 1	HD 13
HE 2(1), (1A)	HR 2
HE 2(2), (3)	HR 3(5), (8)
Subpart HF	
HF 1(1)	CB 33
HF 1(2), (3)(a), (b), (4)	DV 19
HF 1(3)(c), (5), (6)	CB 34
HF 1(4)	HE 4
HF 1(7)	HE 5

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HF 1(8)	HE 2
HF 1(9) **association**, **member**	YA 1 **association**, **member**
HF 1(9) **rebate**	HE 3
Subpart HG	
HG 1(a), (b)	HA 6(1)
HG 1(c), (d)	HA 1, HA 13
HG 1(d)	HA 1, HA 20
HG 2	HA 44
HG 3(1)	HA 1, HA 5
HG 3(2), (3)	HA 30
HG 3(4), (5)	HA 31
HG 4(1)	HA 1, HA 5
HG 4(1)–(3)	HA 8
HG 4(2)(a)	HA 28
HG 4(3)	HA 29
HG 4(4)	HA 30
HG 5(1)	HA 32
HG 5(2)	HA 33
HG 6(1)	HA 34
HG 6(2)(a), (b)	HA 35

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HG 6(2)(c)	HA 36
HG 6(3)	HA 37
HG 7	HA 4, HA 11
HG 8	TAA 92AB
HG 9(1)	HA 14
HG 9(2)	HA 20
HG 9(3)–(5)	DB 9
HG 10(a)	CW 14, HA 17
HG 10(b)	HA 22
HG 11(1), (1A)	HA 40
HG 11(1B), (2), (4)	HA 41
HG 11(3)	HA 21
HG 11(3A)	HA 23
HG 12	HA 42
HG 12(2)	YA 2(1)–(3)
HG 13(1)	HA 14
HG 13(1)–(4)	HA 15
HG 13(1)(a), (1A)	CW 15
HG 13(1)(a)(i), (1A)	HA 16
HG 13(1)(aa)	HA 17

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
HG 13(5)	HA 19
HG 13(6)	HA 18
HG 14	HA 1, HA 3
HG 14(a), (b)	HA 5, HA 10
HG 14(c)	HA 38
HG 14(d)	HA 4, HA 12
HG 14A	HA 38
HG 15	HA 39
HG 16	HA 20, IA 7(2)
HG 16(1)	HA 24
HG 16(2)	HA 26
HG 16(3), (4)	HA 27
HG 16(4)	IA 7(5)
HG 17	HA 25
HG 17(1)(a)	HA 24
HG 18	HA 11
Subpart HH	
HH 1(1)	YB 21
HH 1(2)–(4), (8), (10)	HC 28
HH 1(5), (6)	HC 13

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HH 1(7)	CV 13, HC 7(3)
HH 1(8), (9)	HC 1(2)(a), (b), (5)
HH 1(9)	CD 12
HH 1(10)	HC 27
HH 1A	HC 3
HH 2	HC 30
HH 2(2)	HC 10(2)–(4)
HH 3(1)	CV 13, CX 59, HC 17, HC 18
HH 3(1), (4)	HC 19
HH 3(2)	HC 32, HD 12(1)
HH 3(3)	CV 15, HC 23
HH 3(4)	CX 59, HC 19, HC 22, HC 34(1), IA 3(3)
HH 3(5)	CW 53, HC 20
HH 3(5A)	CV 14, HC 21
HH 3(6)	HC 1(2)(c)
HH 3A–HH 3F	CX 58
HH 3A	HC 35(2)
HH 3A(1)(a)	HC 7(2)
HH 3A(1)(b)	HC 17

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HH 3A(2)	HD 12(1)
HH 3B	HC 35(4)(a)
HH 3C	HC 35(4)(b)(i), (ii)
HH 3C(1)(a)–(d), (2), (3)	HC 36
HH 3C(1)(e)	HC 37
HH 3D	HC 36
HH 3E	HC 35(4)(c)
HH 3F	HC 35(4)(b)(iii), (iv)
HH 3F(1)–(2A), (3), (4)	HC 36
HH 3F(2)	YA 1 **minor**
HH 4(1), (2)	HC 24(1)–(3), (5)
HH 4(3), (3A), (6) provisos	HC 25
HH 4(3B)	CW 54
HH 4(3B), (3BB), (3BC)	HC 26
HH 4(4)	HD 12(2)
HH 4(4), (5)	HC 29
HH 4(5)	HC 10(4)
HH 4(7)	HC 33
HH 4(8)	HC 1(2)(c)
HH 5	HC 31

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HH 6(1), (2), (4)	HC 16
HH 6(2)(c), (3)	HC 15
HH 7	TAA 93B
HH 8	CV 12, HC 8
Subpart HI	
HI 1	HF 3
HI 2	HF 2
HI 3	HF 11
HI 4(1), (2)	HF 4(1), (2), (4)–(6)
HI 4(2)	CD 37
HI 4(3)	CV 11(1), HF 5
HI 5(1)	CW 53, HF 6
HI 5(2), (3)	CV 11(1), HF 7
HI 5(4)	HF 4(3)
HI 6	HF 8
HI 7	CV 11(2), HF 4(4)
HI 8	HF 9
HI 9	HF 10
Subpart HJ	
HJ 1	HR 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
Subpart HK	
HK 1	HD 3(1), (2), (4)
HK 1(1)	HD 1, HD 18(1)
HK 2	HD 7
HK 3(1), (1A)	HD 4
HK 3(1A)	HC 32
HK 3(2)	HD 2
HK 3(3)	HD 3
HK 4	HD 5(2)
HK 5	HD 5(3)
HK 6	HD 5(1)
HK 7(1)	HD 2, HD 3(2)
HK 7(2)	HD 5(4)
HK 8	HD 6
HK 9	HD 9
HK 10	HD 10
HK 11	HD 15
HK 12	HD 14(1)
HK 13	HD 14(2)–(6)
HK 16	HD 18(1), HD 20

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
HK 17	HD 20
HK 18	TAA 166B
HK 18(1)	HD 24
HK 19	HD 25
HK 20	HD 19
HK 21	HD 21
HK 22	HD 23
HK 23	HD 22
HK 24(1), (4)	HD 26
HK 24(2)	HD 27(1)
HK 24(3)	HD 28
HK 25	HD 27(2)
HK 26	HD 29
Subpart HL	
HL 1	HL 1
HL 2	HL 2
HL 3	HL 3
HL 4	HL 4
HL 5	HL 5
HL 6	HL 6

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
HL 7	HL 7
HL 8	HL 8
HL 9	HL 9
HL 10	HL 10
HL 11	HL 11
HL 11B	HL 12
HL 12	HL 13
HL 13	HL 14
HL 14	HL 15
HL 15	HL 16
HL 16	HL 17
HL 17	HL 18
HL 18	HL 19
HL 19	HL 20
HL 20	HL 21
HL 21	HL 22
HL 22	HL 23
HL 23	HL 24
HL 23B	HL 25
HL 24	HL 26

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
HL 25	HL 27
HL 26	HL 28
HL 27	HL 29
HL 28	HL 30
HL 29	HL 31
HL 30	HL 32
HL 31	HL 33
Subpart HZ	
HZ 1	HZ 1
HZ 2	HZ 2
PART I	
Subpart ID	
ID 1(1)	IA 8
Subpart IE	
IE 1(1)(a)	IA 1
IE 1(1), (2)	IA 3(2), (4)
IE 1(1), (3)(a)	IA 2(1), (2)
IE 1(2)	IA 4
IE 1(2B)	omitted
IE 1(2BB)	IA 7(10)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
IE 1(2C)	IA 7(9)
IE 1(3)(b)	IA 9(1), (2)
IE 2	IZ 1
IE 2(1)	IA 2(4)(g)
IE 3(1)	IQ 1
IE 3(2), (3), (5)	IQ 2
IE 3(4)	IQ 9
IE 3(5)	IA 2(4)(e), IA 7(5)
IE 4(1)	IQ 1
IE 4(2)–(6)	IQ 3
IE 4(6)	IA 2(4)(f), IA 7(6)
Subpart IF	
IF 1(1)	IA 5
IF 1(2), (3)	IP 3, IP 6
IF 1(5)	IZ 4
IF 1(6)	IZ 5
IF 2	IZ 6
IF 3	IQ 1(2)
IF 4	IE 1, IE 2, IE 5
IF 5	IA 9(3), IE 1

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
IF 6	IE 1, IE 3(1), (2), IQ 1(4)
IF 7	IV 1
Subpart IG	
IG 1(1)	IA 6(1), (2)
IG 1(1), (2)	IC 6
IG 1(1), (3)	IC 1, IC 2
IG 1(2), (5)	IC 3
IG 1(3)	IC 4
IG 2(1), 2(c), (e)	IC 1, IC 2
IG 2(2)	IC 5
IG 2(2)(b)–(f), (5)	IP 5
IG 2(2)(c), (4)(d)(ii), (5)(c)(ii)	IC 6
IG 2(2)(c), (d)(ii)(B)	IZ 7
IG 2(2)(c), (e)	IC 10
IG 2(2)(d), (11)	IC 7
IG 2(2)(e), (4)(c), (d), (5)(b), (c)	IP 2
IG 2(2)(f), (g)	IC 8
IG 2(2)(g), (3)	IC 9
IG 2(4)	IP 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
IG 2(4)(c)(d), (5)(c), (d), (10)	IP 6
IG 2(4)(e), (f), (5)(e), (f)	IP 1
IG 2(4), (5)	IP 7
IG 2(6)	IC 12
IG 2(7)	IC 11
IG 3	omitted
IG 4	IQ 4
IG 4(1)	IQ 1
IG 4(4)	IA 7(5)
IG 5	IQ 5
IG 5(1)	IQ 1
IG 5(4)	IA 7(6)
IG 6(1A)–(3)	ID 1
IG 6(2)	IS 1
IG 6(4), (6), (7)	ID 2
IG 6(5)	IA 9(3)
IG 6(6)	ID 3
IG 6(7)	ID 4
IG 6(8)	ID 5
IG 6(9)	IS 1(2)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
IG 7(1)	IQ 1
IG 7(2)	IQ 6
IG 7(2), (3)	IA 7
IG 7(4)	IQ 7
IG 7(5)	IQ 8
IG 8	IE 5
IG 9	IE 4, IE 5
IG 10	IA 3(1), IW 1
Subpart IH	
IH 1	IS 6, IA 7(7)
IH 1(1)	IS 2
IH 1(2)	IA 7(8), IZ 3
IH 2	IZ 2
IH 2(1)	IA 7(8), IS 5(4)
IH 3	IS 5(1)–(3)
IH 3(1)	EJ 14, IA 7(8)
IH 4	IA 7(7)
IH 4(1)(e)	IS 6
IH 4(2)	IS 1
IH 4(3)	IS 3

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
IH 4(3) proviso	IS 4
IH 5	IA 7(7), IS 2
Subpart II	
II 1(1), (2)	IA 7(3)
II 1(3), (4)	IT 1(1), (2)
II 2	YA 1 **policyholder loss**
II 3	IT 1(3), (4)
Subpart IZ	
IZ 1	RZ 8(1)
IZ 2	RZ 8(3)
IZ 3	RZ 7
IZ 4	RZ 8(2), (4)–(6)
IZ 5	RZ 10
IZ 6	RZ 9
IZ 7	YA 2(1)–(3)
PART K	
Subpart KB	
KB 2	LC 10
KB 3	MA 4
Subpart KC	

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
KC 1(1)(c)	LC 2
KC 1(1)(a), (b), (4)	LC 1
KC 1(2)	LC 11
KC 1(3)	LC 12
KC 2	LC 3
KC 3(1)	LC 4
KC 3(2)	LC 11, LC 12
KC 3(3) **full time earner**, **remunerative work**	LC 5
KC 4(1), (1A)	LC 6
KC 4(2) **child**, **communal home**, **home**, **institution**, **qualifying payments**, **separated person**	LC 8
KC 4(2) **housekeeper**	LC 7
KC 5	LD 1
KC 5(1)	LD 2
KC 5(1)(aa)–(cp), (4)	LD 3
KC 5(1)(ae)–(cp)	schedule 32
Subpart KD	
KD A1	omitted
KD 1(1)(a), (b), (e)(vii), (i), (3)	MB 1

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
KD 1(1)(e)(i)–(vi)	omitted
KD 1(1)(f), (2)	MB 3
KD 1(1)(g)	MB 4
KD 1(1)(h)	MB 5
KD 1(4)–(6)	MB 2
KD 1A	MC 1
KD 1A(2)	LB 4
KD 2(1), (2)	LB 4, MD 1
KD 2(3)	MD 3
KD 2(4)	MZ 2
KD 2(5)	MD 12
KD 2(6), (7)	MD 13
KD 2(6B)	MD 14
KD 2(6C)	MD 15
KD 2A	MD 2
KD 2AA(1), (11)	MC 11
KD 2AA(2), (3)	MC 10
KD 2AA(3)	MD 3(7), MD 11(4)
KD 2AA(3A)	MZ 1(2)
KD 2AA(4)	MC 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
KD 2AA(7)–(11)	MC 9
KD 2AAA(1)(a)	MD 5
KD 2AAA(1)(b)	MD 6
KD 2AAA(1)(c), (3), (4)	MD 7
KD 2AAA(1)(d), (5)–(8)	MD 9
KD 2AAA(1)(e)	MD 8
KD 2AAA(1), (3A)	MD 4
KD 2AAA(2)	MD 10
KD 2AAAB	MZ 1(2)
KD 2AB	MD 11
KD 3(1) **qualifying person**	MC 3–MC 6
KD 3(1) **employment**	ME 2(1), (2)
KD 3(2)	LB 4
KD 3(2)–(5)	ME 1
KD 3A(2)–(4)	MC 7
KD 3A(5)–(9)	MC 9
KD 3A(10)	ME 2(3), (4)
KD 3B	omitted
KD 4(2)	LA 4, LA 7
KD 4(2), (2A)	MF 6

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
KD 4(4)	MF 5
KD 4(5)	TAA 80KV
KD 5(1), (1A)	MF 1
KD 5(1B)–(1C)	TAA 80KA
KD 5(2)–(2AB)	TAA 80KB
KD 5(2A), (5)(b), (7)	TAA 80KF
KD 5(3), (3A)	TAA 80KC
KD 5(4), (5)(a)	TAA 80KD
KD 5(6)	MF 3
KD 5(6A), (7)	MF 4
KD 5(8)	MF 2
KD 5(9)	TAA 80KG
KD 5(10), (12)	TAA 80KH
KD 5(11)	TAA 80KE
KD 5B	omitted
KD 5C MF 7	
KD 6(1)	TAA 80KN
KD 6(1A)	TAA 80KO
KD 6(1B)	TAA 80KP
KD 6(1C)	TAA 80KQ

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
KD 6(1D)	TAA 80KR
KD 6(2), (3)	TAA 80KS
KD 6(4)	TAA 80KT
KD 7(1)	TAA 80KI
KD 7(2), (2A)	TAA 80KM
KD 7(2B), (2C)	TAA 80KK
KD 7(3)	TAA 80KJ
KD 7(3A), (3B), (3C)	TAA 80KU
KD 7(4)	TAA 80KL
KD 7A	TAA 80KW
KD 8	MA 3
KD 9	MA 5
Subpart KE	
KE 1(1)	LZ 6, LZ 7
KE 1(3)	LZ 8
Subpart KF	
KF 3	LC 9
Subpart KG	
KG 1(1)	LZ 9
KG 1(1) proviso	LZ 10

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
KG 1(2)	LZ 11
KG 1(3), (4)	LZ 12
Subpart KH	
KH 1(1), (2)	LQ 1
KH 1(3)	LQ 2
KH 2(1)–(2A), (4)	LQ 4
KH 2(3), (5)–(7)	LQ 3
Subpart KI	
KI 1	LS 1
Subpart KJ	
KJ 1	MK 1, MK 3(2)
KJ 2	MK 2
KJ 3	MK 4, MK 8
KJ 4	MK 3(1), (3), (4)
KJ 5(1), (5)	MK 7
KJ 5(2)	MK 5
KJ 5(3), (4)	MK 6
Subpart KZ	
KZ 1	omitted
KZ 2	omitted

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
KZ 3(1)	LZ 5
KZ 3(1), (4)	LZ 2
KZ 3(2)	LZ 3
KZ 3(3)	LZ 4
PART L	
Subpart LB	
LB 1(1), (3), (3A)	LO 2
LB 1(1)(a), (2), (3), (3A)	LE 5, LF 3
LB 1(1)(ab)	LE 4, LF 2
LB 1(1)(b), (4), (4A), (4B)	LE 6
LB 1(1)(c)	LE 8
LB 1(1)(d)	LF 6, LF 8
LB 1(1)(e), (5)	LE 9, LF 7
LB 1(1)(ea)	LO 3
LB 1(1)(f)	LE 11
LB 1(1)(g)	LF 10
LB 1(1)(h)	LE 10
LB 1(1)(hb)	LE 3
LB 1(1)(i)	LF 9
LB 1(1)(j), (k)	LE 1

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
LB 1(1)(l)	LF 1
LB 1(1)(m)	LO 1
LB 1A	LE 4, LF 2
LB 2(1), (1B), (1C), (2C)	LE 1
LB 2(1C)	LE 7
LB 2(2)	LA 9
LB 2(2B), (3)	LE 2
LB 2(2B), (3B), (3C)	LE 3
LB 2(3), (3A)	IA 2(4)(a)
LB 2(4)	LE 11, TAA 78D
LB 2(5), (6)	LE 10
Subpart LC	
LC 1(1), (1B), (1C)	LJ 2(1), (3), (4)
LC 1(1)	LJ 3
LC 1(1)–(3), (4), (5)	LJ 1
LC 1(2)	LJ 1(1)–LJ 6
LC 1(3A), (3B)	LJ 7
LC 1(4)	LJ 1(5)
LC 1(5)	LJ 1(3)
LC 1A(1), (2)	TAA 225B

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
LC 1A(3)	omitted
LC 2	LJ 2(2)
LC 3	LJ 7
LC 4(1)	LK 3
LC 4(1)–(3)	LK 2
LC 4(1), (4)	LK 1
LC 4(1C)	TAA 93C
LC 4(4)	LK 4
LC 4(4)–(6)	LK 5
LC 4(7)	LK 7
LC 5	LK 6
LC 8	LK 12, LK 13
LC 9	LK 14(2)
LC 10	LK 14(1), (3)
LC 11	LK 12
LC 12	LK 12, LK 15
LC 13(1)	TAA 78B
LC 13(2)	TAA 78C
LC 14	LJ 5
LC 14(1)	LJ 1, LJ 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
LC 14A	LJ 1(4)
LC 16(1)	LK 8
LC 16(2), (3)	LK 9
LC 16(4)	LK 10
LC 16(5)	LK 11
Subpart LD	
LD 1	LA 6
LD 1(2), (2A), (4), (5)	LB 1
LD 1B	LB 6
LD 2	LA 8
LD 3	LA 6
LD 3(2)	LB 3
LD 3(3)	LA 4
LD 3(4)	TAA 78D
LD 3A	LA 6
LD 3A(1)	LO 1
LD 3A(4)	LA 4
LD 3A(5)	LO 5, TAA 78D
LD 3A(6)	LO 4
LD 6	LA 6, LB 2

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
LD 7	LA 6, LB 2
LD 8	LA 6
LD 8(1), (1B), (1C)	LF 1
LD 8(1C)	LF 5
LD 8(3)	LF 10, TAA 78D
LD 8(4), (5)	LF 9
LD 9	LF 8, OC 1(6)
LD 9(4)	TAA 78D
LD 10	LS 2
LD 10B	LS 3
LD 11	LS 4
Subpart LE	
LE 1	LP 1
LE 2(1), (2), (2A)	LP 2
LE 2(3), (4), (6), (7)	LP 3
LE 2(4), (8)	LA 9
LE 2(5)	LP 4
LE 2(6)	LA 4
LE 2(9), (10)	LP 5
LE 2(11), (12)	LP 6

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
LE 3(1), (3), (11)	LP 7
LE 3(5)	LP 2
LE 3(6), (8)	CV 9, LP 8
LE 3(7), (9)	LP 9
LE 3(10)	DX 3, LP 10
LE 4	DX 3, LP 10
LE 4(5)	IA 2(4)(c)
Subpart LF	
LF 1(1)(a)	LL 1
LF 1(1)(a), (2)	LL 2
LF 1(2)	LL 9
LF 2(2), (3)	LL 2, LL 9
LF 3(1)	LL 2
LF 3(1)(f), (g), (h)	LL 5
LF 3(2)	LL 8
LF 4	LF 6
LF 5(1)	LL 3
LF 5(1)(e), (5)	LL 9
LF 5(2)–(5)	LL 4
LF 5(2)(e)	LL 8

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
LF 6(1), (3)	LZ 1
LF 6(4)–(6)	LL 2, TAA 78E
LF 6(6)	TAA 78F
LF 7	DX 2, LL 7
Subpart LG	
LG 1	LQ 5
PART M	
Subpart MB	
MB 1	RC 1
MB 2	RC 3
MB 3	RC 4
MB 4	RA 4, RC 5
MB 5	RC 6
MB 6	RC 7
MB 7	RC 8
MB 8	RC 9
MB 8(1), (2)	RA 14
MB 9	RC 10
MB 10	RC 11
MB 11	RM 11

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MB 12	RA 2, RC 12
MB 13	RC 13
MB 14	RC 14
MB 15(1)–(4), (11)	RC 16
MB 15(5)–(10)	RC 17
MB 16	RC 15
MB 17	RC 18
MB 18	RC 19
MB 19	RC 20
MB 20	RC 21
MB 21	RC 22
MB 22	RC 23
MB 23	RC 24
MB 24	RC 25
MB 25	RC 26
MB 26	omitted
MB 27	RC 27
MB 28	omitted
MB 29	RC 28
MB 30	RC 29

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
MB 31	RC 30
MB 32	RC 31
MB 33	RC 32
MB 34	RC 33
MB 35	RC 34
MB 36	RM 12
MB 37	RC 35
MB 38	RC 36
Subpart MBA	
MBA 1	RP 1
MBA 2	RP 17
MBA 3	RP 18, TAA 15R
MBA 3(1)	TAA 15N
MBA 3(1)(d)	TAA 15Q
MBA 4(1), (2), (4)	TAA 15P
MBA 4(3)	RP 18(3)
MBA 4(5), (6)	TAA 15O
MBA 5(1)–(4)	RP 18
MBA 5(5), (6)	TAA 120OE(1)–(3)
MBA 6(1)–(3)	RP 19

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
MBA 6(4)–(9)	RP 20
MBA 7	RP 21
MBA 8	TAA 15S
MBA 9	TAA 120OE(4)–(5)
Subpart MBB	
MBB 1	omitted
MBB 2(1)(a), (d)	RC 37
MBB 2(1)(b), (c), (2)–(4)	RC 38
MBB 3	RC 39
MBB 4	RC 40
Subpart MC	
MC 1	RA 3, RA 13, RB 1
Subpart MD	
MD 1	LA 6–LA 8
MD 1(1)	RM 2
MD 1(1A)	RM 5
MD 1(1B)	omitted
MD 1(2)	RM 4
MD 1(2B)	RM 6
MD 1(3), (3A)	RB 4

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MD 1(3), (3A), (4)	RM 10
MD 1(4)(b), (c)	RM 8
MD 2(1), (1A)	RM 13
MD 2(2)	RM 14
MD 2(3), (4)	RM 15
MD 2(5)(a)(ii)	RZ 6
MD 2(5), (5A)	RM 16
MD 2(6)	RM 17
MD 2(7)	RM 32
MD 2A	RM 33
MD 2B(1), (1B)	RM 22
MD 2B(2)	RM 23
MD 2B(3)	RM 24
MD 2B(4), (4B)	RM 25
MD 2B(5)	RM 26
MD 2B(6)	RM 27
MD 3(1)	RM 28
MD 3(2)	RM 29
MD 3(3)	RM 30
MD 3(4)	RM 31

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MD 3(4)(a)	RZ 6
MD 5	omitted
Subpart ME	
ME 1(1), (2)	OA 2(2), (3), OB 1
ME 1(3)	omitted
ME 1A	OB 2
ME 1B	OB 60(6), (7)
ME 2	OA 3(3), (4)
ME 3(1)	OA 2(2), (3), OA 3(2)
ME 3(2)	OA 7
ME 4(1)(a)(viii)	OZ 1
ME 4(1)(a), (1C), (2)(a)	OB 4
ME 4(1)(aab), (2)(aab)	OB 19
ME 4(1)(ab), (2)(ab)	OB 16
ME 4(1)(ac), (2)(ac)	OB 5
ME 4(1)(ad), (2)(ad)	OB 6
ME 4(1)(c), (2)(a)	OB 7
ME 4(1)(cb), (2)(bb)	OB 13
ME 4(1)(cc), (2)(bc)	OB 14
ME 4(1)(cd), (2)(bd)	OB 15

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 4(1)(d), (2)(c)	OB 9
ME 4(1)(da)	OF 5
ME 4(1)(da), (2)(ca)	OB 18
ME 4(1)(e), (2)(c)	OB 10
ME 4(1)(ea), (2)(cb)	OB 20
ME 4(1)(e), (f)	OC 1(8)
ME 4(1)(eb), (ec), (2)(cc)	OB 22
ME 4(1)(ed), (2)(cd)	OB 23
ME 4(1)(f), (2)(d)	OB 11
ME 4(1)(g), (2)(e)	OB 12
ME 4(1)(h), (2)(f)	OB 25
ME 4(1)(i), (2)(g)	OB 8
ME 4(1)(j), (2)(h)	OB 17
ME 4(1)(k), (2)(k)	OB 21
ME 4(1A), (2A)	OB 26
ME 4(1B)(a), (2B)(a)	OB 27
ME 4(1B)(b), (2B)(b)	OB 28
ME 4(1B)(c), (2B)(c)	OB 29
ME 5(1)(a), (2)(a)	OB 30
ME 5(1)(ab), (2)(ab)	OB 49

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
ME 5(1)(ac), (2)(ac)	OB 50
ME 5(1)(ad), (2)(ac)	OB 51
ME 5(1)(b), (2)(b)	OB 47
ME 5(1)(c), (2)(c)	OB 42
ME 5(1)(d), (2)(d)	OB 31
ME 5(1)(e)(i)	OZ 2
ME 5(1)(e), (2)(e)	OB 32
ME 5(1)(ea), (2)(ea), (eb)	OB 34
ME 5(1)(eb), (2)(ea), (eb)	OB 35
ME 5(1)(f), (2)(f)	OB 43
ME 5(1)(fb), (2)(fb)	OB 44
ME 5(1)(g), (2)(g)	OB 36
ME 5(1)(h), (2)(e)	OB 37
ME 5(1)(i), (2)(h)	OB 41
ME 5(1)(ia), (2)(ha)	OB 40
ME 5(1)(j), (2)(i)	OB 54
ME 5(1)(ja), (2)(ia)	OB 46
ME 5(1)(k), (2)(j)	OB 56
ME 5(1)(ka), (2)(ja)	OB 48
ME 5(1)(l), (2)(k)	OB 33

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 5(1)(m), (2)(k)	OB 38
ME 5(1)(n)	OZ 3
ME 5(1)(o), (2)(l), (6), (7)	OB 39
ME 5(1A)(a), (2A)	OB 57
ME 5(1A)(b), (2A)	OB 58
ME 5(1A)(c), (2A)	OB 59
ME 5(3)	OA 8
ME 5(4)	OZ 4
ME 6	OB 60(2), OB 62
ME 6(1B)–(1D)	OB 63
ME 6(4)(a)	OB 55
ME 6B	OB 64
ME 7	OB 47
ME 8(1)	OA 18
ME 8(1), (2)	OB 60(3)–(5)
ME 8(2), (3)	OB 61
ME 9(1), (1A), (2)	OB 65
ME 9(3)	OB 66
ME 9(5), (5B)	OB 69
ME 9(5A), (8), (9)	OB 68

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 9(5B)	IA 2(4)(d)
ME 9(6)	OB 70, YA 2(1)–(3)
ME 9(7)–(9)	OB 67
ME 9B	OB 71
ME 9B(1), (2)	OB 13
ME 9B(2)(a)(i)	OB 44
ME 9C	OB 72
ME 10	OP 1
ME 10(1), (1A)–(1C)	OA 2(2), (3)
ME 10(1A)–(1C), (2)	OA 7
ME 10(1A), (1B), (1D)	OP 3
ME 10(1C)	OP 4
ME 11(1)(a), (2)(a)	OP 7
ME 11(1)(aa), (2)(aa)	OP 8
ME 11(1)(ab), (2)(ab)	OP 9
ME 11(1)(b), (2)(b)	OP 10
ME 11(1)(c), (2)(a)	OP 11
ME 11(1)(d), (2)(c)	OP 12
ME 11(1)(e), (2)(c)	OP 13
ME 11(1)(eb), (ec), (2)(cb)	OP 15

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 11(1)(ed), (2)(cc)	OP 16
ME 11(1)(f), (2)(a)	OP 14
ME 11(1)(fb), (2)(fb)	OP 18
ME 11(1)(g), (2)(d)	OP 19
ME 11(1)(i), (2)(e)	OP 24
ME 11(1)(j), (2)(c)	OP 17
ME 11(1)(jb), (2)(eb)	OP 20
ME 11(1)(k), (2)(d)	OP 21
ME 11(1A), (2A)	OP 23
ME 11(1B)(a), (2B)(a)	OP 25
ME 11(1B)(b), (2B)(b)	OP 26
ME 11(1B)(c), (2B)(c)	OP 27
ME 12(1)	OP 5
ME 12(1)(a), (2)(a)	OP 28
ME 12(1)(ab), (2)(ab)	OP 39
ME 12(1)(ac), (2)(ac)	OP 40
ME 12(1)(ad), (2)(ac)	OP 41
ME 12(1)(b), (2)(b)	OP 44
ME 12(1)(c), (2)(c)	OP 29
ME 12(1)(d), (2)(d)	OP 30

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
ME 12(1)(da), (2)(da)	OP 32
ME 12(1)(db), (2)(da)	OP 33
ME 12(1)(e), (2)(e)	OP 43
ME 12(1)(f), (2)(d)	OP 34, OP 35
ME 12(1)(h)	OA 8
ME 12(1)(h), (2)(g)	OP 42
ME 12(1)(i), (2)(h)	OP 46
ME 12(1)(j), (2)(h)	OP 47
ME 12(1)(k), (2)(j)	OP 37
ME 12(1)(l), (2)(k)	OP 31
ME 12(1)(m), (2)(k)	OP 36
ME 12(1)(n), (2)(l), (3), (4)	OP 38
ME 12(1A)(a), (2A)	OP 48
ME 12(1A)(b), (2A)	OP 49
ME 12(1A)(c), (2A)	OP 50
ME 13	OA 4, OP 2
ME 13(1)	OB 3
ME 13(2)	OP 42
ME 13(2), (3)	OP 22
ME 13(2), (4)	OA 8

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 13(3)	OB 52
ME 13(6)	OB 69
ME 14(1)	OJ 3(1)(a), OP 44
ME 14(2)	OB 61
ME 14(3)	OP 6
ME 15	OA 2(2), (3), OJ 1, OJ 2(1)
ME 16	OA 3(3), (4)
ME 17(1)	OA 2(2), (3), OA 3(2), OJ 2(2), (3)
ME 17(2)	OA 7
ME 18(1)(a), (2)(a)	OJ 3
ME 18(1)(b), (2)(b)	OJ 4
ME 18(1)(bb), (2)(bb)	OJ 6
ME 18(1)(bc), (2)(bb)	OJ 7
ME 18(1)(c), (2)(c)	OJ 5
ME 18(3)(a), (4)(a)	OJ 8(4), (5)
ME 18(3)(b), (4)(b)	OJ 9(3), (8)
ME 18(3)(c), (4)(c)	OJ 11(4), (6)
ME 19	LR 1
ME 19(1), (2)	OJ 8(1)–(3)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 19(3)–(6)	OJ 9(1), (2), (4)–(7)
ME 19A	OJ 11(1)–(3), (5)
ME 20	OA 2(5), TAA 104B
ME 21	OJ 1
ME 21(1)	OA 2(2), (3)
ME 21(1), (2)	OJ 12
ME 21(3), (4)	OJ 13
ME 22(1)	OA 2(2), (3), OA 3(2), OJ 1(4)
ME 22(2)	OA 7
ME 23(1)(a), (2)(a), (3), (6)(a)	OJ 14
ME 23(1)(b), (2)(b)	OJ 15
ME 23(4)(a), (5)(a)	OJ 16(4), (5)
ME 23(4)(b), (5)(b)	OJ 17
ME 23(4)(c), (5)(c)	OJ 18
ME 24	LR 1, OJ 16(1)–(3)
ME 25	OA 2(2), (3), OP 1(1), OP 109
ME 26	OA 3(2)
ME 26(1)	OA 7
ME 26(2)	OA 2(2), (3)
ME 26(2)(a), (3)(a)	OP 110

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 26(2)(b), (3)(b)	OP 111
ME 26(2)(c), (3)(c)	OP 112(1), (4)
ME 26(2)(d), (3)(d)	OP 113
ME 26(2)(e), (3)(d)	OP 114
ME 26(4)(a), (5)(a)	OP 115(3), (5)
ME 26(4)(b), (5)(b)	OP 116(3), (8)
ME 27	OP 2
ME 27(1), (3)	OJ 2(4), (5), OP 112(1)–(3)
ME 27(2)	OJ 10
ME 28	LR 1
ME 28(1), (2)	OP 115(1), (2), (4)
ME 28(3), (4)	OP 116(1), (2), (4)–(7)
ME 28(4)	OA 4
ME 29	OB 24, OB 53
ME 29(1)	OA 10, OA 13
ME 29(1)(a)	OA 9
ME 29(2)	OA 17
ME 29(2)(a)	OA 14
ME 29(2)(b)	OA 15
ME 30	OB 73(1)–(3), (8)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ME 30(2)	DV 18
ME 30(3), (4)	OB 77
ME 31	OB 73(4)–(7)
ME 32	OB 74
ME 33	OB 75
ME 34	OB 76
ME 35	OB 78, OB 82
ME 35(2)	DV 18
ME 36	OB 78
ME 37	OB 79
ME 38	OB 80
ME 39	OB 81
ME 40	OA 1(5), TAA 104B
ME 41	OB 45, OP 45
Subpart MF	
MF 1(1)	OA 2(2), (3), OE 1(1), (4)
MF 1(1), (2)	OE 3
MF 1(3)	OE 2(1)
MF 1(4), (5)	OE 4
MF 2	OA 3(3), (4)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MF 3(1)	OA 2(2), (3), OA 3(2)
MF 3(2)	OA 7
MF 4(1)(a)	OE 2(2)
MF 4(1)(a), (2)(a)	OE 6
MF 4(1)(c), (2)(b)	OE 7(5), (9), OE 8
MF 4(1)(d), (2)(c)	OE 9
MF 4(1)(e), (2)(d), (5), (6)	OE 10
MF 4(1)(f), (2)(e)	OE 11
MF 4(3)(a), (4)(a)	OE 2(3), OE 12
MF 4(3)(b), (4)(b)	OE 13
MF 4(3)(c), (4)(c)	OE 14
MF 4(3)(d), (4)(d), (5), (6)	OE 15
MF 4(3)(e), (4)(e)	OE 16
MF 4(5)	OA 8, OE 2(6)
MF 5(1)–(3)	OE 13(2)–(4)
MF 5(4)–(7)	OE 7(1)–(4), (6)–(8), OE 8
MF 6	OA 1(5), TAA 104B
MF 7(1)	OA 2(2), (3)
ME 7(1)(a)	OE 2(4)
MF 7(1), (2)	OP 97

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MF 7(2)	OP 1(1)
MF 7(3), (4)	OP 98
MF 8	OA 3(2)
MF 8(1)	OA 7
MF 8(2)(a), (3)(a)	OP 100
MF 8(2)(c), (3)(b)	OP 101, OP 102
MF 8(2)(d), (3)(c)	OP 103
MF 8(2)(e), (3)(d)	OP 104
MF 8(4)	OA 8
MF 8(4)(a), (5)(a)	OP 105
MF 8(4)(b), (5)(b)	OP 106
MF 8(4)(c), (5)(c)	OP 107
MF 8(4)(d), (5)(d)	OP 108
MF 9	OA 4, OE 2(5), OP 2, OP 99
MF 10(1)	OP 106
MF 10(4), (5), (6)	OP 101, OP 102
MF 11(1)	OA 2(2), (3), OE 1(2), (4)
MF 11(1), (2)	OE 17
MF 11(3)	OA 4
MF 11(4), (5)	OE 18

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MF 12(1)	OA 2(2), (3), OA 3(2)
MF 12(2)	OA 7
MF 13(1), (2)	OE 19
MF 13(3)(a)	OE 20
MF 13(3)(b)	OE 21
MF 13(3)(c)	OE 22
MF 14	OE 20(4), (5)
MF 15	OE 5
MF 16(1)	OA 10
MF 16(1)(a)	OA 9
MF 16(2)(a)	OA 14
MF 16(2)(b)	OA 15
Subpart MG	
MG 1	OA 3(3), (4)
MG 2(1)	OA 2(2), (3)
MG 2(1), (3)	OC 1(1), (2)
MG 2(2), (3)	OC 3
MG 2(4), (5)	OC 4, OP 52
MG 2(6), (7)	OC 5
MG 3(1)	OA 2(2), (3), OA 3(2)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MG 3(2)	OA 7
MG 4(1)(a), (b)	OC 1(3), (4)
MG 4(1)(a), (c), (2)(a), (3)	OC 6(1), (2), (3)(a), (4)
MG 4(1)(b), (2)(b)	OC 7
MG 4(1)(ba), (2)(ba)	OC 9
MG 4(1)(bb), (2)(bb)	OC 8
MG 4(1)(bc), (2)(bc)	OC 10
MG 4(1)(bd), (2)(bd)	OC 11
MG 4(1)(d), (2)(d)	OC 12
MG 5(1)(a), (2)(a)	OC 13
MG 5(1)(ab), (2)(ab)	OC 17
MG 5(1)(b), (2)(b)	OC 20(2), (9)
MG 5(1)(c), (2)(c)	OC 18
MG 5(1)(ca), (2)(ca)	OC 19(1), (4)–(6)
MG 5(1)(d), (2)(d)	OC 14
MG 5(1)(e), (2)(d)	OC 16
MG 5(1)(f), (2)(e)	OC 22
MG 5(1)(g), (2)(e)	OC 23(2), (5)
MG 5(1)(h), (2)(f)	OC 25
MG 5(1)(i), (2)(g), (3), (4)	OC 24

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MG 5(1)(j), (2)(h)	OC 26
MG 5(1)(k), (2)(i)	OC 15
MG 5(3)	OC 1(7)
MG 5(4)	OZ 4
MG 6	OC 27(1), (2)
MG 7	OC 20(1), (3)–(8)
MG 8(1)	OA 18
MG 8(1), (2)	OC 27(3)–(5)
MG 8(1), (8)	OD 20(2), (5)
MG 8(2), (3)	OC 28(1)–(6), (8), (9)
MG 8(2), (3), (8)	OD 21(1)–(5)
MG 8(4)	OC 22, OD 17(5)
MG 8B	OC 23(1), (3)
MG 8B(4) **reduced deficit debit**	OC 38
MG 8B(4) **DWP reference period**	OC 35
MG 8B(4) **maximum deficit debit**	OC 36
MG 8B(4) **policyholder DWP ratio**	OC 37

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MG 8B(4) **shareholder DWP ratio**	OC 39
MG 9(1), (2), (6)	OC 30
MG 9(3)	OC 31
MG 9(4), (5A)	OC 33
MG 9(5)	OC 34(1), (2)
MG 9(7), (8)	OC 32
MG 10	OC 29, OD 22
MG 10(1)	OA 18
MG 11	OC 18(1)–(5)
MG 12	OA 2(5), TAA 104B
MG 13	OP 1
MG 13(1)	OA 2(2), (3), OP 51
MG 13(3)	OA 7
MG 13(6), (7)	OP 53
MG 14(1)	OA 2(2), (3), OA 3(2)
MG 14(1)(a), (2)(a)	OP 56
MG 14(1)(b), (2)(a)	OP 58
MG 14(1)(bb), (2)(ab)	OP 60
MG 14(1)(c), (2)(a)	OP 57

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MG 14(1)(d), (2)(b)	OP 63
MG 14(1)(e), (2)(c)	OP 59(2), (4)
MG 14(1)(f), (2)(d)	OP 62
MG 15(1)	OA 2(2), (3), OA 3(2), (4), OA 8
MG 15(1)(a), (2)(a)	OP 64
MG 15(1)(ab), (2)(ab)	OP 65
MG 15(1)(b), (2)(b)	OP 74
MG 15(1)(c), (2)(c)	OP 69
MG 15(1)(d), (2)(d)	OP 66
MG 15(1)(e), (2)(d)	OP 68
MG 15(1)(f), (2)(e)	OP 72
MG 15(1)(g), (2)(e)	OP 75
MG 15(1)(h), (2)(f)	OP 76
MG 15(1)(i), (2)(g)	OP 73
MG 15(1)(j), (2)(h)	OP 77
MG 15(1)(k), (2)(i)	OP 71
MG 15(1)(l), (2)(j)	OP 67
MG 16	OA 4, OP 2
MG 16(1)	OP 54

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MG 16(1), (4)	OC 2
MG 16(2), (4)	OP 59(1), (3)
MG 16(3)	OC 21
MG 16(5)	OP 71
MG 16(6)	OC 34(3)
MG 16A(1)	OC 28(7)
MG 16A(1B)	OC 23(4)
MG 16A(2)	OP 55
MG 17	OB 24, OB 53
MG 17(1)	OA 3(2)–(4), OA 10, OA 11
MG 17(1)(a)	OA 9
MG 17(2)(a)	OA 14
MG 17(2)(b)	OA 15, OA 16
Subpart MH	
MH 1	RA 7
Subpart MI	
MI 1	OA 3(2)
MI 2(1)–(3)	OD 3
MI 2(1), (4)	OA 2(2), (3), OD 1(1), (2), (5)
MI 2(4)	OD 2(1)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MI 2(5)–(7)	OD 4
MI 3	OA 2(2), (3), OA 3(3), (4)
MI 3(2)	OA 7
MI 4(1)(a)	OD 1(3)
MI 4(1)(a), (2)(a)	OD 5
MI 4(1)(b), (2)(b)	OD 8
MI 4(1)(c), (2)(c)	OD 7
MI 4(1)(d), (2)(d)	OD 9
MI 4(1)(e), (2)(e)	OD 6
MI 5(1)(a)	OD 1(4)
MI 5(1)(a), (2)(a)	OD 1(4), OD 10
MI 5(1)(b), (2)(b)	OD 13
MI 5(1)(c), (2)(c)	OD 17
MI 5(1)(d), (2)(d)	OD 18
MI 5(1)(e), (2)(e), (3)–(6)	OD 16
MI 5(1)(f), (2)(f), (5), (7)	OD 14
MI 5(1)(g), (2)(f), (5)	OD 15
MI 5(1)(h), (2)(g)	OD 19
MI 5(1)(i), (2)(h)	OD 11
MI 5(1)(j), (2)(i)	OD 12

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MI 5(3)–(7)	OA 8
MI 6(1)	OC 19(2), (3), OD 6
MI 6(2)	OD 11
MI 7(1)	OD 22(1)
MI 7(2)	OD 20(6)
MI 8	OD 21
MI 8(1)	OA 18, OD 20, OD 22
MI 9	OD 18
MI 10	OD 23
MI 10(2)	OC 6(3)(b)
MI 10(5)	YA 2(1)–(3)
MI 11	OD 25
MI 12	OA 2(5), TAA 104B
MI 13	OA 9, OA 10, OB 24, OB 53
MI 13(6)	OA 12
MI 13(7)	OD 24
MI 14	OA 2(2), (3), OP 1(1), OP 78(1)
MI 14(1)	OD 1(5)
MI 15	OA 7
MI 16	OP 78(2), YA 1 **CTR company**

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MI 17(1)	OA 2(2), (3), OA 3(2)
MI 17(1)(a), (2)(a)	OP 81
MI 17(1)(b), (2)(b)	OP 82
MI 17(1)(c), (2)(c)	OP 83
MI 17(1)(d), (2)(d)	OP 86
MI 17(1)(e), (2)(e)	OP 84(2), (4)
MI 17(1)(f), (2)(f)	OP 85(1), (5)
MI 18(1)	OA 2(2), (3), OA 3(2)
MI 18(1)(a), (2)(a)	OP 87
MI 18(1)(b), (2)(b)	OP 89
MI 18(1)(c), (2)(c)	OP 92
MI 18(1)(d), (2)(d)	OP 93
MI 18(1)(e), (2)(e), (3), (4)	OP 91
MI 18(1)(e), (3), (4)	OA 8
MI 18(1)(f), (2)(f)	OP 94
MI 18(1)(g), (2)(g)	OP 88(1), (5)
MI 19	OA 4, OP 2
MI 19(1), (2)	OP 79
MI 19(1), (5)	OD 2(2)
MI 19(3), (4)	OP 84(1), (3)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MI 19(5)	OP 90
MI 20(1)	OP 70, OP 85(2)–(4)
MI 20(2)	OP 61, OP 88(2)–(4)
MI 21	OP 95
MI 21(5)	YA 2(1)–(3)
MI 22	OD 21(6)–(8)
MI 22(1)	OP 80
MI 22(4)	OP 96
Subpart MJ	
MJ 1(1)	OA 2(2), (3), OF 1(1), (2), OF 3
MJ 1(2)	OZ 5
MJ 2	OA 3(3), (4)
MJ 3(1)	OA 2(2), (3), OA 3(2), OF 2
MJ 3(2)	OA 7
MJ 4	OZ 5
MJ 5	OF 4
MJ 5(1)	OF 1(3)
MJ 6	OF 5(2)(b)
MJ 6(1)	OF 1(4)
MJ 7	OA 7, OZ 6

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
MJ 8	OA 2(5), TAA 104B
Subpart MK	
MK 1	OK 1
MK 1(1)	OA 1(5)
MK 2	OA 3(3), (4)
MK 3	OK 1
MK 3(1)	OA 2(2), (3), OA 3(2)–(4)
MK 3(2)	OA 7
MK 4(1)(a), (2)(a)	OK 2
MK 4(1)(b), (2)(a)	OK 3
MK 4(1)(c), (2)(a)	OK 4
MK 4(1)(d), (2)(b)	OK 5
MK 4(1)(e), (2)(c)	OK 6
MK 4(1)(f), (2)(c)	OK 7
MK 4(1)(g), (2)(d)	OK 9
MK 4(1)(h), (2)(e)	OK 8
MK 5(1)(a), (2)(a)	OK 10
MK 5(1)(b), (2)(b)	OK 11
MK 5(1)(c), (g), (2)(c)	OK 12
MK 5(1)(d), (2)(d)	OK 16(4), (5)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MK 5(1)(e), (2)(c)	OK 14
MK 5(1)(f), (2)(f)	OK 15
MK 5(1)(h), (2)(g)	OK 17
MK 5(1)(i), (2)(h)	OK 18
MK 5(1)(j), (2)(i)	OK 13
MK 5(3), (4)	OA 8
MK 6	OK 19
MK 7(1)	OA 18, OK 19(2), (3)
MK 7(2)–(4)	OK 20
MK 7(5)	OK 16(1)–(3)
MK 8(1), (2), (6)	OK 21
MK 8(3), (4), (6)	OK 22
MK 8(5)	OK 23
MK 8(5B)	OK 24
MK 8(6)	YA 2(1)–(3)
MK 9	OA 2(5), TAA 104B
Subpart MZ	
MZ 1	omitted
MZ 2	omitted
MZ 3	omitted

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
MZ 4	omitted
MZ 5	omitted
MZ 6	omitted
MZ 8	RZ 1
MZ 9	RZ 2
MZ 10	RZ 3
MZ 11	RZ 4
MZ 12	RZ 5
PART N	
Subpart NB	
NB 1	FM 3
Subpart NBA	
NBA 1	RP 2(1), (2), TAA 15C
NBA 2(1)(a)–(c), (2), (3)	TAA 15D
NBA 2(1)(c)	TAA 15F
NBA 2(4)	TAA 15E
NBA 3	TAA 15J
NBA 4(1)(a)	RP 9
NBA 4(1)(b)(i), (ii)	RP 10
NBA 4(1)(b)(iii)	RP 11

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
NBA 4(1B)	RP 8
NBA 4(2), (3)	RP 7
NBA 4(4)	RP 12
NBA 5	RP 16
NBA 5(1)	RP 14
NBA 5(1B)	RP 15
NBA 5(1), (2)	RP 13
NBA 5(3)	TAA 15K
NBA 5(4)	TAA 15L
NBA 6	RP 6
NBA 7	RA 19, RM 7
NBA 8	RP 2(3), TAA 15J(3), (4)
Subpart NBB	
NBB 1	RP 4
NBB 2	TAA 15G
NBB 3	RP 3, TAA 15C(2)
NBB 3(2)	TAA 15M
NBB 4(1)	TAA 15H
NBB 4(2)–(5)	TAA 15I
NBB 5(1)–(3)	TAA 15M

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
NBB 5(4), (5)	RP 5
NBB 6	RP 4
NBB 7(1), (2)	TAA 15J(3), (4)
NBB 7(3)	RP 2(3)
Subpart NC	
NC 1(1)	omitted
NC 1(2)	RD 3(1), (5)
NC 2(1)	RA 2, RD 16
NC 2(2)–(4)	RD 15
NC 2(5)	RD 17
NC 3	YA 1 **pay**
NC 4	RD 6
NC 5	RD 21
NC 5(2)	RA 10
NC 6	RD 10(1), (2), (4)
NC 6(1A), (3)	RD 9
NC 6(1C), (1D)	RD 11
NC 7(1)	TAA 24L
NC 7(2)	RD 18
NC 7(3)	TAA 24P

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
NC 8(1) proviso	TAA 24C
NC 8(1), (1AA)	TAA 24B
NC 8(1A)	RD 10(2)(a)
NC 8(2)–(4), (11)	TAA 24I
NC 8(7)	TAA 24H
NC 8(9A)	TAA 24D
NC 8(10)	TAA 24P
NC 8(12)	TAA 24E
NC 8A	TAA 24I
NC 9	TAA 24H
NC 10	RD 12
NC 11	RD 13
NC 12	RD 14
NC 12A	TAA 24G
NC 13	RD 11
NC 14	TAA 24F
NC 15	RA 5, RA 15
NC 15(1)	RD 4(1)
NC 15(1), (2), (2B)	TAA 24J
NC 15(1), (5), (6)	RD 22

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
NC 15(3)	TAA 24P
NC 15(4)	RD 2(3)
NC 15(7)	RA 20
NC 16	RA 8, RA 10, RD 4(2)
NC 18	RD 23
NC 18(1)	RD 24
NC 19	RA 9
NC 20	RA 22
NC 20(1)	RA 10
NC 21	RA 21
NC 21(f)–(h)	RD 8
Subpart ND	
ND 1	RA 5(1)(b), RA 10
ND 1(1)–(3)	RD 26
ND 1(2)(a)	RD 59
ND 1(2)(b), (4)	RD 58
ND 1(2)(c), (4), (5)	RD 61
ND 1(2)(c), (5)	RD 60
ND 1(6)	TAA 46E
ND 1A(1)	RD 27(1)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ND 1A(1)–(1D)	RD 28
ND 1A(2)–(6)	RD 29
ND 1AB	RD 30
ND 1B(1)–(6)	RD 31
ND 1B(7)	RD 32
ND 1C	RD 33
ND 1D	RD 34
ND 1DB	RD 35
ND 1E	RD 36
ND 1F	RA 21
ND 1G	RD 34(1), (3)
ND 1H	RD 37
ND 1I	RD 38
ND 1IB	RD 39
ND 1J	RD 40
ND 1K	RD 41
ND 1L	RD 27(2), (3)
ND 1M	YA 1 **identical goods**
ND 1N	RD 42
ND 1O	RD 43

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ND 1P(1)	YA 1 **cost**, **price**
ND 1P(2)	RD 44
ND 1Q	RD 45
ND 1R	RD 46
ND 1S	RD 54
ND 1T	RD 55
ND 1U	RD 56
ND 1V	RD 57
ND 1W(1)	omitted
ND 1W(2)	RA 2, RA 10
ND 2(1)–(4)	RD 59
ND 2(2)	RD 58
ND 2(3)	TAA 46B
ND 2(4)	RD 62(5)
ND 2(5)	omitted
ND 3(1), (1A)	RD 47
ND 3(2)	RD 48
ND 3(4)–(7)	RD 49(1), (2)
ND 4	RD 49(3)
ND 5(1), (2)	RD 51(1)–(2)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ND 5(3)–(6)	RD 50
ND 5A	RD 52
ND 6	RD 53
ND 7	RD 51(4), (6)
ND 7A	RD 51(5), (6)
ND 8	RD 63
ND 8B	RD 39
ND 9	TAA 46B
ND 9(2), (3)	RA 15
ND 10	RA 15
ND 10(1)	RD 59
ND 10(2)–(5)	TAA 46B
ND 10(4)(a)	RA 19, RM 9
ND 11	TAA 46B
ND 12	TAA 46B
ND 13	RA 15, RD 61
ND 13(5), (6)	TAA 46C
ND 13(8)	RA 20
ND 14	RA 15, RD 60
ND 14(2B)	RD 62(5)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
ND 14(5), (6)	TAA 46C
ND 14(8)	RA 20
ND 15	RD 62(5)
ND 15(7), (8)	RD 60(5), TAA 46D
ND 16	RD 49(4)
Subpart NE	
NE 1	RD 64(2)
NE 2	RD 67
NE 2(2)	RD 65(2)
NE 2A(1), (2)	RA 8, RD 68
NE 2A(3)	omitted
NE 2AA	RD 69
NE 2B	RD 69
NE 3B	RD 66(7)(d), (8)–(11), (13)
NE 3	RA 5(1)(c), RD 66(3)–(7), (13)
NE 4	RA 15
NE 5	RA 10, RD 70
NE 6	RA 9, RD 71
NE 6(b), (c)	RD 66(12)
NE 7	RA 23

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
NE 7(2)	RA 2, YA 2(1)–(3)
Subpart NEA	
NEA 1	RD 72
Subpart NF	
NF 1(1)	omitted
NF 1(2), (4), (5)	RE 2
NF 1(2)(b)(ix), (x)	LB 3(3)
NF 2(1)(a)	RE 12
NF 2(1)(b)	RE 13
NF 2(1)(c), (2)	RE 14
NF 2(1)(d)	RE 15
NF 2(1)(e), (f)	RE 16
NF 2(1)(g)	RE 17
NF 2(1A), (1AB)	RE 3
NF 2(1B)	RE 18
NF 2(3), (4)	RE 4
NF 2(5)	RE 10
NF 2(6)	RF 5
NF 2(7), (7B)	RE 5, RE 29
NF 2(8)	RE 6

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
NF 2A(1), (3)	RE 19
NF 2A(2)	omitted
NF 2AA	TAA 15T
NF 2B	RE 11
NF 2C	omitted
NF 2D(1), (3)	RE 19
NF 2D(2)	omitted
NF 3	RA 8, RA 10
NF 3(1)	RE 8
NF 3(1), (2)	RE 7
NF 3(3)–(5)	RE 9
NF 4	RA 6, RA 10, RA 15
NF 4(1), (2)	RE 20
NF 4(1)–(5), (7), (8)	RE 21
NF 4(5)	RA 16
NF 4(6)	RA 17, RE 28
NF 4(6B)	RA 18
NF 4(9)	RE 26
NF 5	RE 22
NF 6(1)	RA 11

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
NF 6(2)–(4)	RA 12
NF 7(1)	RA 19
NF 7(1), (2)	RA 12
NF 7(1), (2), (5)	RM 8
NF 8(1)	RE 23
NF 8(2)–(4)	TAA 24K
NF 8A(1)	RE 24
NF 8A(2), (3)	TAA 24K
NF 8B	RE 25
NF 8B(b)	LB 3(2)
NF 9(1)	RE 27
NF 9(1)–(3)	TAA 32E
NF 9(4), (5)	TAA 32H
NF 9(6), (7), (9)–(11)	TAA 32G
NF 9(8), (10)	TAA 32F
NF 9(12)–(14)	TAA 32I
NF 10	RE 30
NF 10(1)(a), (d), (3)	TAA 32J
NF 11(1)	TAA 32K
NF 11(1), (2)	RE 27

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
NF 11(2)–(9)	TAA 32L
NF 12	RA 9
NF 13	RA 2, RA 10, YA 2(1)–(3)
Subpart NG	
NG 1(1)	omitted
NG 1(2)–(4)	RF 2
NG 2(1)(a)	RF 8
NG 2(1)(b)(i), (ib)	RF 12
NG 2(1)(ab)	RF 12B
NG 2(1)(b)(iii)	RF 12C
NG 2(1)(b)(ii)	RF 10(5B)
NG 2(1)(c)	RF 7
NG 2(2)	RF 14
NG 2(3), (4)	RF 9
NG 3	RB 3, RF 2(4)
NG 4	RF 2(5), (6)
NG 5	TAA 32M(1)
NG 6	TAA 32M(2)
NG 7	TAA 32M(3)–(5)
NG 8(1)	RF 3

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
NG 8(2), (3)	RF 4
NG 9	RF 10
NG 9(1)(a)	OD 1(3)
NG 10	RF 15
NG 11	RA 6, RA 15
NG 11(1)–(3)	RF 13
NG 11(4)	RA 16
NG 11(4B)	RA 18
NG 12	RA 8, RA 10
NG 13	RA 10, RF 6
NG 14	RF 11
NG 15	RA 9
NG 16	RA 19
NG 16(1), (1A)	RM 8
NG 16(5)	TAA 165B
NG 16A(1)	RA 11
NG 16A(2), (3)	RA 12
NG 17(1)	RA 23
NG 17(2)	RA 2, YA 2(1)–(3)
Subpart NH	

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
NH 1(1)	RG 3
NH 1(2)	RG 2
NH 2(1)	RG 4
NH 2(2), (3)	RG 5
NH 2(4)	TAA 32N
NH 3	RA 6, RA 15
NH 3(1)	RG 3
NH 3(2)	IA 3(2)(b)
NH 3(2)–(4)	RG 6
NH 3(6)	TAA 32N
NH 3(7)	RA 2, RM 6, YA 2(1)–(3)
NH 4	RA 19
NH 4(1)	RM 3
NH 4(2), (3)	RM 18
NH 4(4)(a)	RM 19
NH 4(4)(b)	RM 20
NH 4(5)(b), (c)	TAA 71B
NH 4(5), (6)	IA 3(2)(c), RM 21
NH 4(8)	RA 20
NH 4(9)	FM 30(6)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
NH 5(1), (2)	FM 25
NH 5(3), (9)	FM 24
NH 5(4)	FM 26
NH 5(5), (6), (8)	FM 27
NH 5(6), (7)	IA 3(2)(c)
NH 5(7)	FM 28
NH 6(1), (2), (5), (7)	FM 30(1)–(5), (7)
NH 6(6)	FM 29
NH 7	RG 7
Subpart NZ	
NZ 1	omitted
PART O	
Subpart OB	
OB 1	YA 1
OB 1 **absentee**	HD 18(2)
OB 1 **beneficiary income**	HC 5, HC 6(1)–(3)
OB 1 **category A income**	HR 3(1), (2), (7)
OB 1 **category B income**	HR 3(3)
OB 1 **complying fund rules**	RD 66
OB 1 **consideration**	FA 7, FA 13

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
OB 1 **consolidation rules**	FM 2(2)
OB 1 **corpus**	HC 4
OB 1 **current value**	HR 3(4)
OB 1 **designated investment fund**	HR 3(6)
OB 1 **distribution**	HC 14
OB 1 **dividend withholding payment rules**	RG 1
OB 1 **DWP reference period**	OC 35
OB 1 **effective interest**	HA 43
OB 1 **eligible company**	FM 31(1)
OB 1 **eligible period**	MC 8
OB 1 **employer's superannuation contribution**	RD 65(1)
OB 1 **extra pay**	RD 7
OB 1 **FBT rules**	RD 25
OB 1 **foreign company**	HA 6(2)
OB 1 **foreign trust**	HC 10(2)–(4), HC 11
OB 1 **full time earner**	MA 7
OB 1 **fully conduit tax relief credited**	RF 9(6), (7)
OB 1 **group investment fund**	HR 3(4)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
OB 1 **imputation rules**	FN 2
OB 1 **lessee's acquisition cost**	FA 7, FA 13
OB 1 **lessee's outstanding balance**	FA 15
OB 1 **lessor's disposition value**	FA 7, FA 13
OB 1 **lessor's outstanding balance**	FA 15
OB 1 **Maori authority**	HF 1
OB 1 **Maori authority rules**	HF 1
OB 1 **maximum deficit debit**	OC 36
OB 1 **member credit contributions**	MK 3(1)
OB 1 **member credit year**	MK 1(2), MK 4, MK 8
OB 1 **net balance due**	FA 15
OB 1 **non-qualifying trust**	HC 12
OB 1 **NRWT rules**	RF 1
OB 1 **PAYE rules**	RD 2(1), (2)
OB 1 **policyholder DWP ratio**	OC 37
OB 1 **principal caregiver**	MC 10
OB 1 **provisional tax rules**	RC 2, RC 3
OB 1 **qualifying amalgamation**	FO 3

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
OB 1 **qualifying person** (a)(i)	MC 3
OB 1 **qualifying person** (a)(ii)	MC 4
OB 1 **qualifying person** (a)(iii)	MC 5
OB 1 **qualifying trust**	HC 10(1)
OB 1 **reduced deficit debit**	OC 38
OB 1 **relative**	YB 9–YB 12
OB 1 **resident imputation subgroup**	FN 8
OB 1 **RWT rules**	RE 1
OB 1 **salary or wages**	RD 5
OB 1 **settlor**	HC 27, HC 28
OB 1 **shareholder DWP ratio**	OC 39
OB 1 **specified period**	MC 11
OB 1 **specified superannuation contribution**	RD 65(1), (2)
OB 1 **SSCWT rules**	RD 64
OB 1 **taxable distribution**	HC 15
OB 1 **trans-Tasman imputation group**	FN 8
OB 1 **trustee income**	HC 5, HC 7(1)
OB 2	RD 3(1)–(4)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
OB 3(1)	HA 2
OB 3(1)(a), (b), (g)	HA 6(2)
OB 3(1)(c), (3)	HA 7
OB 3(1)(d)	HA 9(1)
OB 3(1)(f)	HA 5
OB 3(3A)	HA 11(5)
OB 3(4)	HA 9(2)
OB 3A	YA 1 **charitable purpose**
OB 6	YA 2
OB 6(1)(a), (d), (i)	omitted
OB 6(1)(b), (c)	YA 2(4)
OB 6(1)(e)	YA 2(5)
OB 6(1)(f)	YA 2(6)
OB 6(2), (3)	YA 3
Subpart OC	
OC 1(1)	omitted
OC 1(2)	HR 5
OC 1(2)–(6)	HR 6
OC 1(6)	HR 7
OC 3(a)	YA 1 **company** (e)

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
OC 3(b)	YA 1 **business** (b)(i)
OC 3(c)	CV 5
OC 3(d)	omitted
OC 4	TAA 225AA
Subpart OD	
OD 1	YC 1
OD 2	omitted
OD 3(1), (2)	YC 2
OD 3(3)(a)	YC 5
OD 3(3)(c)	YC 6
OD 3(3)(d)	YC 4(1)–(3)
OD 4(1), (2)	YC 3
OD 4(3)(a)	YC 5
OD 4(3)(c)	YC 6
OD 4(3)(d), (4)	YC 4(4)–(8)
OD 5(1)	YC 7
OD 5(2)	YC 8
OD 5(3), (4)	YC 9
OD 5(5)	YC 10
OD 5(5A)–(5C)	YC 12

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
OD 5(6)	YC 11
OD 5(6A)–(6F)	YC 13
OD 5(7)	YC 14
OD 5(8)	YC 15
OD 5(9)	YC 16
OD 5A	YC 17
OD 5AA	YC 18
OD 5B	YC 19
OD 6	YC 20
OD 7(1)(a), (2), (3)	YB 2
OD 7(1)(b), (2)	YB 5
OD 7(1)(c)	YB 9–YB 12
OD 7(1)(d)(i)	YB 16
OD 7(1)(d)(ii)	YB 17
OD 8(1), (3), (4)	YB 20
OD 8(1)(a), (2), (3)(a)(i), (3A), (4)(a)(i), (6)	YB 2
OD 8(1)(b), (2)(b), (c)	YB 8
OD 8(1)(c), (3)(d), (4)(c)	YB 9–YB 12
OD 8(1)(d), (3)(e), (4)(d)	YB 16

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
OD 8(1)(e), (3)(f), (4)(e)	YB 17
OD 8(1)(f), (3)(h)	YB 14
OD 8(1)(g), (3)(g)	YB 13
OD 8(1)(h)	YB 19
OD 8(3)(a)(ii), (3A)	YB 3
OD 8(3)(b)	YB 7
OD 8(3)(c), (3A)	YB 4
OD 8(3)(i)	YB 15
OD 8(3)(j)	YB 18
OD 8(4)(b)	YB 6
OD 8(4)(b)(i)	YB 5
OD 9	YB 21
Subpart OE	
OE 1	YD 1
OE 2(1), (1B)	YD 2(1), (3)
OE 2(2)–(6)	YD 3
OE 4(1)	YD 4
OE 4(1A)	YZ 1
OE 5	omitted
OE 7(1), (2)	YD 10

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
OE 7(3)–(5)	YD 11
OE 8	YD 9
Subpart OF	
OF 1	YE 1
OF 2(1)	HC 6(3), (4)
PART Y	
Subpart YA	
YA 1	ZA 1
YA 2	ZA 2
YA 3	ZA 3
YA 4	ZA 4
YA 5	ZA 5
YA 6	ZA 6
Schedules	
Schedule 1	schedule 1
Schedule 2 part A	schedule 5
Schedule 2 part B	schedule 1
Schedule 3	schedule 24
Schedule 4	schedule 25
Schedule 5	schedule 26

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
Schedule 6	schedule 27
Schedule 6B	schedule 19
Schedule 7	schedule 20
Schedule 8	schedule 17
Schedule 9	schedule 18
Schedule 10	schedule 10
Schedule 11	schedule 12
Schedule 11B	schedule 11
Schedule 12	schedule 31
Schedule 13	schedule 3
Schedule 14	schedule 1
Schedule 15	schedule 37
Schedule 16	schedule 13
Schedule 17	schedule 14
Schedule 18	schedule 36
Schedule 19	schedule 2
Schedule 19, appendix	omitted
Schedule 20	schedule 48
Schedule 21	schedule 49
Schedule 22	schedule 50

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	**Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994**
Schedule 22A	schedule 51
Schedule 23	schedule 52
Other Legislation and Regulations	
Income Tax Amendment Act (No 5) 1988, s 9	HC 1(2)(d)
Income Tax (Withholding Payments) Regulations 1979, regs 2, 4, 6–8	RD 8
Income Tax (Withholding Payments) Regulations 1979, reg 3	RD 10(3)
Income Tax (Withholding Payments) Regulations 1979, reg 5	TAA 24M
Income Tax (Withholding Payments) Regulations 1979, reg 5(3)	RD 24
Income Tax (Withholding Payments) Regulations 1979, reg 6A	TAA 24N
Income Tax (Withholding Payments) Regulations 1979, regs 10, 11	RD 19

A—*continued*

Provision in Income Tax Act 2004 (unless otherwise stated)	Corresponding provision in Income Tax Act 2007 or Tax Administration Act 1994
Income Tax (Withholding Payments) Regulations 1979, reg 12	RD 20
Income Tax (Withholding Payments) Regulations 1979, reg 12A	TAA 24O
Income Tax (Withholding Payments) Regulations 1979 , schedule	schedule 4

Schedule 52 Part A: amended, on 1 April 2008, by section 593(1)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(1)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(3) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(4)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(4)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(5) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(6) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(7) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(8) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(9) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(10)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

A—*continued*

Schedule 52 Part A: amended, on 1 April 2008, by section 593(10)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(10)(c) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(10)(d) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(11) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(12) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part A: amended, on 1 April 2008, by section 593(13) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

B
Income Tax Act 2007: corresponding provisions in Income Tax Act 2004 and other legislation or regulation

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
A 1	A 1
A 2	A 2
PART A	
AA 1	AA 1
AA 2	AA 2
AA 3(1)	AA 3(2)
AA 3(2)	new
AA 4	new
PART B	
Subpart BA	

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
BA 1	BA 1
Subpart BB	
BB 1	BB 1
BB 2	BB 2
BB 3	BB 3
Subpart BC	
BC 1	BC 1
BC 2	BC 2
BC 3	BC 3
BC 4	BC 4
BC 5	BC 5
BC 6	BC 6(1), (5)
BC 7	BC 7
BC 8	BC 9
Subpart BD	
BD 1	BD 1
BD 2	BD 2
BD 3	BD 3
BD 4	BD 4
Subpart BE	

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
BE 1	BE 1
Subpart BF	
BF 1	BF 1
Subpart BG	
BG 1	BG 1
Subpart BH	
BH 1	BH 1
PART C	
Subpart CA	
CA 1	CA 1
CA 2	CA 2
Subpart CB	
CB 1	CB 1
CB 2	FB 3
CB 3	CB 2
CB 4	CB 3
CB 5	CB 4
CB 6	CB 5, OB 1 **land** (a)(i)
CB 7	CB 6
CB 8	CB 6B

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CB 9	CB 7
CB 10	CB 8
CB 11	CB 9
CB 12	CB 10
CB 13	CB 11
CB 14	CB 12
CB 15	CB 13
CB 16	CB 14
CB 17	CB 15
CB 18	CB 16
CB 19	CB 17
CB 20	CB 18
CB 21	CB 19
CB 22	CB 20
CB 23	CB 21
CB 24	CB 22
CB 25	CB 23
CB 26	CB 4B
CB 27	CB 24
CB 28	CB 24B

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
CB 29	CB 25
CB 30	CB 26
CB 31	CB 27
CB 32	CB 28
CB 33	HF 1(1)
CB 34	HF 1(3)(c), (5), (6)
Subpart CC	
CC 1	CC 1
CC 2	CC 2
CC 3	CC 3
CC 4	CC 4
CC 5	CC 5
CC 6	CC 6
CC 7	CC 7
CC 8	CC 8
CC 9	CC 9
CC 10	CC 10
CC 11	FC 8E
CC 12	FC 8D(2)
CC 13	FC 10(5)(d)–(f)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart CD	
CD 1	CD 1
CD 2	CD 1B
CD 3	CD 2
CD 4	CD 3
CD 5	CD 4
CD 6	CD 5
CD 7	CD 6
CD 8	CD 7
CD 9	CD 7B
CD 10	CD 7C
CD 11	GB 1(3), GD 3, GD 5
CD 12	HH 1(9)
CD 13	CD 8
CD 14	FCB 2(b)
CD 15	CD 9
CD 16	CD 10
CD 17	CD 10B
CD 18	CD 10C
CD 19	CD 11

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
CD 20	CD 12
CD 21	CD 13
CD 22	CD 14
CD 23	CD 15
CD 24	CD 16
CD 25	CD 17
CD 26	CD 18
CD 27	CD 19
CD 28	CD 20
CD 29	CD 21
CD 30	CD 21B
CD 31	CD 22
CD 32	CD 23
CD 33	CD 24
CD 34	CD 24B
CD 35	CD 25
CD 36	CD 26
CD 37	HI 4(2)
CD 38	CD 27
CD 39	CD 28

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CD 40	CD 29
CD 41	CD 30
CD 42	CD 31
CD 43	CD 32
CD 44	CD 33
CD 45	CD 34
CD 46	CD 35
CD 47	CD 36
CD 48	CD 37
CD 49	CD 38
CD 50	CD 39
CD 51	CD 40
CD 52	CD 41
CD 53	CD 42
CD 54	CD 43
Subpart CE	
CE 1	CE 1
CE 2	CE 2
CE 3	CE 3
CE 4	CE 4

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CE 5	CE 5
CE 6	CE 6
CE 7	CE 7
CE 8	CE 8
CE 9	CE 9
CE 10	CE 10
CE 11	CE 11
CE 12	CE 12
Subpart CF	
CF 1	CF 1
CF 2	CF 2
Subpart CG	
CG 1	CG 1
CG 2	CG 2
CG 3	CG 3
CG 4	CG 4
CG 5	CG 5
CG 6	CG 6
CG 7	FC 5(1)
Subpart CH	

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CH 1	CH 1
CH 2	CH 2
CH 3	CH 3
CH 4	CH 4
CH 5	CH 5
CH 6	FC 8H(2), FC 8I(3)(a)
CH 7	new
CH 8	new
CH 9	FG 8(1)
CH 10	FG 8B(1)
Subpart CP	
CP 1	CP 1
Subpart CQ	
CQ 1	CQ 1
CQ 2	CQ 2
CQ 3	CQ 3
CQ 4	CQ 4
CQ 5	CQ 5
CQ 6	CQ 6
Subpart CR	

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CR 1	CR 1
CR 2	CR 2
CR 3	FC 13, FC 14(2)
Subpart CS	
CS 1	CS 1
CS 2	CS 2
CS 3	CS 3
CS 4	CS 4
CS 5	CS 5
CS 6	CS 6
CS 7	CS 7
CS 8	CS 8
CS 9	CS 9
CS 10	CS 10
CS 11	CS 11
CS 12	CS 12
CS 13	CS 13
CS 14	CS 14
CS 15	CS 15
CS 16	CS 16

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CS 17	CS 17
CS 18	GD 6(1), (2)
Subpart CT	
CT 1	CT 1
CT 2	CT 2
CT 3	CT 3
CT 4	CT 4
CT 5	CT 5
CT 6	CT 6
CT 7	CT 7
Subpart CU	
CU 1	CU 1
CU 2	CU 2
CU 3	CU 3
CU 4	CU 4
CU 5	CU 5
CU 6	CU 6
CU 7	CU 7
CU 8	CU 8
CU 9	CU 9

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CU 10	CU 10
CU 11	CU 11
CU 12	CU 12
CU 13	CU 13
CU 14	CU 14
CU 15	CU 15
CU 16	CU 16
CU 17	CU 17
CU 18	CU 18
CU 19	CU 19
CU 20	CU 20
CU 21	CU 21
CU 22	CU 22
CU 23	CU 23
CU 24	CU 24
CU 25	CU 25
CU 26	CU 26
CU 27	CU 27
CU 28	CU 28
CU 29	CU 29

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart CV	
CV 1	CV 1
CV 2	HB 2(1)(e)
CV 3	FD 10(8)
CV 4	FE 4(b)
CV 5	OC 3(c)
CV 6	CV 2
CV 7	CV 3
CV 8	CV 4
CV 9	LE 3(6), (8)
CV 10	FH 8(3)
CV 11	HI 4(3), HI 5(2), (3), HI 7
CV 12	HH 8
CV 13	HH 1(7), HH 3(1)
CV 14	HH 3(5A)
CV 15	HH 3(3)
CV 16	FC 18, FC 19
CV 17	FC 21(1), (2), (4)
Subpart CW	
CW 1	CW 1

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CW 2	CW 2
CW 3	CW 3
CW 4	CW 4
CW 5	CW 5
CW 6	CW 6
CW 7	CW 7
CW 8	CW 8
CW 9	CW 9
CW 10	CW 10
CW 11	CW 11
CW 12	CW 11B
CW 13	CW 11C
CW 14	HG 10(a)
CW 15	HG 13(1)(a), (1A)
CW 16	CW 12
CW 17	CW 13
CW 18	CW 14
CW 19	CW 15
CW 20	CW 16
CW 21	CW 17

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CW 22	CW 18
CW 23	CW 19
CW 24	CW 20
CW 25	CW 21
CW 26	CW 22
CW 27	CW 22B
CW 28	CW 23
CW 29	CW 23B
CW 30	CW 24
CW 31	CW 25
CW 32	CW 26
CW 33	CW 27
CW 34	CW 28
CW 35	CW 28B
CW 36	CW 29
CW 37	CW 30
CW 38	CW 31
CW 39	CW 32
CW 40	CW 33
CW 41	CW 34

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CW 42	CW 35
CW 43	CW 36
CW 44	CW 37
CW 45	CW 38
CW 46	CW 39
CW 47	CW 40
CW 48	CW 40B
CW 49	CW 41
CW 50	CW 42
CW 51	CW 43
CW 52	CW 44
CW 53	HH 3(5)
CW 54	HH 4(3B)
CW 55	HI 5(1)
CW 56	CW 45
CW 57	CW 45B
CW 58	CW 46
CW 59	CW 47
CW 60	CW 48
CW 61	CW 49

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CW 62	CW 49B
CW 63	GB 1(1)–(2C), GD 3(1), (2)
CW 64	CW 50
Subpart CX	
CX 1	CX 1
CX 2	CX 2
CX 3	CX 3
CX 4	CX 4
CX 5	CX 5
CX 6	CX 6
CX 7	CX 6B
CX 8	CX 7
CX 9	CX 8
CX 10	CX 9
CX 11	CX 10
CX 12	CX 11
CX 13	CX 12
CX 14	CX 13
CX 15	CX 14
CX 16	CX 15

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CX 17	CX 16
CX 18	GC 15(3), (4)
CX 19	CX 17
CX 20	CX 18
CX 21	CX 18B
CX 22	CX 19
CX 23	CX 20
CX 24	CX 20B
CX 25	CX 21
CX 26	CX 22
CX 27	CX 23
CX 28	CX 24
CX 29	CX 25
CX 30	CX 26
CX 31	CX 26B
CX 32	CX 27
CX 33	CX 27B
CX 34	CX 28
CX 35	CX 29
CX 36	CX 30

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CX 37	CX 31
CX 38	CX 32
CX 39	CX 33
CX 40	CX 34
CX 41	CX 35
CX 42	CX 36
CX 43	CX 37
CX 44	CX 38
CX 45	CX 39
CX 46	CX 40
CX 47	CX 41
CX 48	CX 41B
CX 49	CX 42
CX 50	CX 1B
CX 51	CX 43
CX 52	CX 43B
CX 53	CX 44
CX 54	CX 44B
CX 55	CX 44C
CX 56	CX 44D

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CX 57	CX 44E
CX 58	HH 3A–HH 3F
CX 59	HH 3(4)
CX 60	HB 2(1)(a)
CX 61	GB (1)–(2C), GD 3(1), (2)
Subpart CZ	
CZ 1	CZ 1
CZ 2	CZ 2
CZ 3	CZ 3
CZ 4	CZ 4
CZ 5	CZ 5
CZ 6	CZ 6
CZ 7	CZ 7
CZ 8	CZ 8
CZ 9	CZ 9
CZ 10	CZ 10
CZ 11	CZ 11
CZ 12	CZ 12
CZ 13	CZ 13
CZ 14	CZ 14

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
CZ 15	CZ 15
CZ 16	CZ 16
CZ 17	CZ 17
CZ 18	CZ 18
CZ 19	CZ 19
CZ 20	FC 6(7), (8)
CZ 21	GD 6(3)
CZ 22	CZ 20
PART D	
Subpart DA	
DA 1	DA 1
DA 2	DA 2
DA 3	DA 3
DA 4	DA 4
Subpart DB	
DB 1	DB 1
DB 2	DB 2
DB 3	DB 3
DB 4	DB 4
DB 5	DB 5

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
DB 6	DB 6
DB 7	DB 7
DB 8	DB 8
DB 9	HG 9(3)–(5)
DB 10	FC 1(1), FC 2(2)
DB 11	DB 9
DB 12	DB 9B
DB 13	DB 10
DB 14	DB 11
DB 15	DB 12
DB 16	DB 12B
DB 17	DB 12C
DB 18	DB 13
DB 19	DB 13B
DB 20	DB 14
DB 21	DB 15
DB 22	DB 16
DB 23	DB 17
DB 24	DB 18
DB 25	FC 4(f)(iv)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DB 26	DB 19
DB 27	DB 20
DB 28	DB 21
DB 29	FB 4A
DB 30	DB 22
DB 31	DB 23
DB 32	DB 24
DB 33	DB 25
DB 34	DB 26
DB 35	DB 27
DB 36	DB 28
DB 37	DB 28B
DB 38	DB 29
DB 39	DB 30
DB 40	DB 31
DB 41	DB 32
DB 42	DB 33
DB 43	DB 34
DB 44	DB 35
DB 45	DB 36

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DB 46	DB 37
DB 47	DB 38
DB 48	DB 39
DB 49	DB 40
DB 50	DB 41
DB 51	DB 42
DB 52	DB 43
DB 53	DB 43B
DB 54	DB 43C
DB 55	DB 44
DB 56	DB 45
DB 57	GD 4
DB 58	GB 1(1)–(2C), GC 11A, GC 31, GD 3(1), (2), GD 5, GD 12, GD 12A
DB 59	GD 7, GD 10
Subpart DC	
DC 1	DC 1
DC 2	DC 2
DC 3	DC 3
DC 4	DC 4

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DC 5	GD 4
DC 6	DC 5
DC 7	DC 6
DC 8	DC 7
DC 9	DC 8
DC 10	DC 9
DC 11	DC 10
DC 12	DC 11
DC 13	DC 12
DC 14	DC 13
DC 15	DC 14
Subpart DD	
DD 1	DD 1
DD 2	DD 2
DD 3	DD 3
DD 4	DD 4
DD 5	DD 5
DD 6	DD 6
DD 7	DD 7
DD 8	DD 8

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
DD 9	DD 9
DD 10	DD 10
DD 11	DD 11
Subpart DE	
DE 1	DE 1
DE 2	DE 2
DE 3	DE 3
DE 4	DE 4
DE 5	DE 5
DE 6	DE 6
DE 7	DE 7
DE 8	DE 8
DE 9	DE 9
DE 10	DE 10
DE 11	DE 11
DE 12	DE 12
Subpart DF	
DF 1	DF 1
DF 2	DF 2
DF 3	DF 3

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DF 4	DF 4
Subpart DN	
DN 1	DN 1
DN 2	DN 2
DN 3	DN 3
DN 4	DN 4
DN 5	DN 5
DN 6	DN 6
DN 7	DN 7
DN 8	DN 9
Subpart DO	
DO 1	DO 1
DO 2	DO 2
DO 3	DO 3
DO 4	DO 4
DO 5	DO 4B
DO 6	DO 4C
DO 7	DO 4D
DO 8	DO 4E **planting**, **plot**
DO 9	DO 4E **replaced area fraction**

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
DO 10	DO 5
DO 11	DO 5B
DO 12	DO 6
DO 13	DO 7
Subpart DP	
DP 1	DP 1
DP 2	DP 2
DP 3	DP 3
DP 4	DP 3B
DP 5	DP 4
DP 6	DP 5
DP 7	DP 6
DP 8	DP 7
DP 9	DP 8
DP 10	DP 9, GD 15
DP 11	DP 10
Subpart DQ	
DQ 1	DQ 1
DQ 2	DQ 2
DQ 3	DQ 3

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
DQ 4	DQ 4
Subpart DR	
DR 1	DR 1
DR 2	DR 2
DR 3	DR 3
Subpart DS	
DS 1	DS 1
DS 2	DS 2
DS 3	DS 3
DS 4	DS 4
Subpart DT	
DT 1	DT 1
DT 2	DT 2
DT 3	DT 3
DT 4	DT 4
DT 5	DT 5
DT 6	DT 6
DT 7	DT 7
DT 8	DT 8
DT 9	DT 9

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DT 10	DT 10
DT 11	DT 11
DT 12	DT 12
DT 13	DT 13
DT 14	DT 14
DT 15	DT 15
DT 16	DT 16
DT 17	DT 17
DT 18	DT 18
DT 19	DT 19
DT 20	DT 20
Subpart DU	
DU 1	DU 1
DU 2	DU 2
DU 3	DU 3
DU 4	DU 4
DU 5	DU 5
DU 6	DU 6
DU 7	DU 7
DU 8	DU 8

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
DU 9	DU 9
DU 10	DU 10
DU 11	DU 11
DU 12	DU 12
Subpart DV	
DV 1	DV 1
DV 2	DV 2
DV 3	DV 3
DV 4	DV 4
DV 5	DV 5
DV 6	DV 6
DV 7	DV 7
DV 8	DV 8
DV 9	DV 9
DV 10	DV 10
DV 11	DV 10B
DV 12	DV 11
DV 13	DV 12
DV 14	DV 13
DV 15	FE 6A

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DV 15(1), (2)	FE 3
DV 16	HB 2(1)(b), (d)
DV 17	HB 2(1)(c)
DV 18	ME 30(2), ME 35(2)
DV 19	HF 1(2), (3)(a), (b), (4)
Subpart DW	
DW 1	DW 1
DW 2	DW 2
DW 3	FC 15, FC 20, FC 21(3), (5)
Subpart DX	
DX 1	DX 1
DX 2	LF 7
DX 3	LE 3(10), LE 4
Subpart DZ	
DZ 1	DZ 1
DZ 2	DZ 2
DZ 3	DZ 3
DZ 4	DZ 4
DZ 5	DZ 5
DZ 6	DZ 6

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
DZ 7	DZ 7
DZ 8	DZ 8
DZ 9	DZ 9
DZ 10	DZ 10
DZ 11	DZ 11
DZ 12	DZ 12
DZ 13	DZ 13
DZ 14	FC 6(4), FC 8
DZ 15	DZ 14
DZ 16	DZ 15
DZ 17	DZ 16
DZ 18	DZ 17
PART E	
Subpart EA	
EA 1	EA 1
EA 2	EA 2
EA 3	EA 3
EA 4	EA 4
Subpart EB	
EB 1	EB 1

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EB 2	EB 2
EB 3	EB 3
EB 4	EB 4
EB 5	EB 5
EB 6	EB 6
EB 7	EB 7
EB 8	EB 8
EB 9	EB 9
EB 10	EB 10
EB 11	EB 11
EB 12	EB 12
EB 13	EB 13
EB 14	EB 14
EB 15	EB 15
EB 16	EB 16
EB 17	EB 17
EB 18	EB 18
EB 19	EB 19
EB 20	EB 20
EB 21	EB 21

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EB 22	EB 22
EB 23	EB 23
EB 24	FB 4, FF 13(1)
Subpart EC	
EC 1	EC 1
EC 2	EC 2
EC 3	EC 3
EC 4	EC 5
EC 5	EC 5B
EC 6	EC 6
EC 7	EC 7
EC 8	EC 8
EC 9	EC 9
EC 10	EC 10
EC 11	EC 11
EC 12	EC 12
EC 13	EC 13
EC 14	EC 14
EC 15	EC 15
EC 16	EC 16

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EC 17	EC 17
EC 18	EC 18
EC 19	EC 19
EC 20	EC 20
EC 21	EC 21
EC 22	EC 22
EC 23	EC 23
EC 24	EC 24
EC 25	EC 25
EC 26	EC 26
EC 27	EC 27
EC 28	EC 28
EC 29	EC 29
EC 30	EC 30
EC 31	EC 31
EC 32	EC 32
EC 33	EC 33
EC 34	EC 34
EC 35	EC 35
EC 36	EC 36

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EC 37	EC 37
EC 38	EC 38
EC 39	EC 39
EC 40	EC 40
EC 41	EC 41
EC 42	EC 42
EC 43	EC 43
EC 44	EC 44
EC 45	EC 45
EC 46	EC 46
EC 47	EC 47
EC 48	EC 48
Subpart ED	
ED 1	ED 1
ED 2	ED 2
Subpart EE	
EE 1	EE 1
EE 2	EE 2
EE 3	EE 3
EE 4	EE 4

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EE 5	EE 5
EE 6	EE 6
EE 7	EE 7
EE 8	EE 8
EE 9	EE 9
EE 10	EE 10
EE 11	EE 11
EE 12	EE 12
EE 13	EE 13
EE 14	EE 14
EE 15	EE 15
EE 16	EE 16
EE 17	EE 17
EE 18	EE 18
EE 19	EE 19
EE 20	EE 20
EE 21	EE 21
EE 22	EE 22
EE 23	EE 23
EE 24	EE 24

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EE 25	EE 24B
EE 26	EE 25
EE 27	EE 25B
EE 28	EE 25C
EE 29	EE 25D
EE 30	EE 25E
EE 31	EE 26
EE 32	EE 26B
EE 33	EE 27
EE 34	EE 27B
EE 35	EE 28
EE 36	EE 29
EE 37	EE 30
EE 38	EE 31
EE 39	EE 32
EE 40	EE 33
EE 41	EE 34
EE 42	EE 35
EE 43	EE 36
EE 44	EE 37

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EE 45	EE 38
EE 46	EE 39
EE 47	EE 40
EE 48	EE 41
EE 49	EE 42
EE 50	FB 7
EE 51	EE 43
EE 52	EE 44
EE 53	EE 44B
EE 54	EE 45
EE 55	EE 46
EE 56	EE 47
EE 57	EE 48
EE 58	EE 49
EE 59	EE 50
EE 60	EE 51
EE 61	EE 52
EE 62	EE 53
EE 63	EE 54
EE 64	EE 55

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EE 65	EE 56
EE 66	EE 57
EE 67	EE 58
Subpart EF	
EF 1	EF 1
EF 2	EF 2
EF 3	EF 3
EF 4	EF 4
EF 5	EF 5
EF 6	EF 6
Subpart EG	
EG 1	EG 1
EG 2	EG 2
EG 3	EG 3
Subpart EH	
EH 1	EH 1
EH 2	EH 2
EH 3	EH 3
EH 4	EH 4
EH 5	EH 5

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EH 6	EH 6
EH 7	EH 7
EH 8	EH 8
EH 9	EH 9
EH 10	EH 10
EH 11	EH 11
EH 12	EH 12
EH 13	EH 13
EH 14	EH 14
EH 15	EH 15
EH 16	EH 16
EH 17	EH 17
EH 18	EH 18
EH 19	EH 19
EH 20	EH 20
EH 21	EH 21
EH 22	EH 22
EH 23	EH 23
EH 24	EH 24
EH 25	EH 25

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EH 26	EH 26
EH 27	EH 27
EH 28	EH 28
EH 29	EH 29
EH 30	EH 30
EH 31	EH 31
EH 32	EH 32
EH 33	EH 33
EH 34	EH 34
EH 35	EH 35
EH 36	EH 37
EH 37	EH 38
EH 38	EH 39
EH 39	EH 40
EH 40	EH 41
EH 41	EH 42
EH 42	EH 43
EH 43	EH 44
EH 44	EH 45
EH 45	EH 46

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EH 46	EH 47
EH 47	EH 48
EH 48	EH 49
EH 49	EH 50
EH 50	EH 51
EH 51	EH 52
EH 52	EH 53
EH 53	EH 54
EH 54	EH 55
EH 55	EH 56
EH 56	EH 57
EH 57	EH 58
EH 58	EH 59
EH 59	EH 60
EH 60	EH 61
EH 61	EH 62
EH 62	EH 64
EH 63	EH 65
EH 64	EH 66
EH 65	EH 67

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EH 66	EH 68
EH 67	EH 69
EH 68	EH 70
EH 69	EH 71
EH 70	EH 72
EH 71	EH 73
EH 72	EH 74
EH 73	EH 75
EH 74	EH 76
EH 75	EH 77
EH 76	EH 78
EH 77	EH 79
EH 78	EH 80
EH 79	EH 81
Subpart EI	
EI 1	EI 1
EI 2	EI 2
EI 3	EI 3
EI 4	EI 3B
EI 5	EI 4

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EI 6	EI 5
EI 7	EI 6
EI 8	EI 7
EI 9	EI 8
Subpart EJ	
EJ 1	EJ 1
EJ 2	EJ 2
EJ 3	EJ 3
EJ 4	EJ 4
EJ 5	EJ 5
EJ 6	EJ 6
EJ 7	EJ 7
EJ 8	EJ 8
EJ 9	GC 11B, GD 12A, GD 12B
EJ 10	EJ 9
EJ 11	EJ 10
EJ 12	EJ 11
EJ 13	EJ 12
EJ 14	IH 3(1)
EJ 15	EJ 13

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EJ 16	EJ 14
EJ 17	EJ 15
EJ 18	EJ 16
EJ 19	EJ 17
EJ 20	EJ 18
EJ 21	EJ 19
EJ 22	EJ 20
EJ 23	EJ 21
Subpart EK	
EK 1	EK 1
EK 2	EK 2
EK 3	EK 3
EK 4	EK 4
EK 5	EK 5
EK 6	EK 6
EK 7	EK 7
EK 8	EK 8
EK 9	EK 9
EK 10	EK 10
EK 11	EK 11

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EK 12	EK 12
EK 13	EK 13
EK 14	EK 14
EK 15	EK 15
EK 16	EK 16
EK 17	EK 17
EK 18	EK 18
EK 19	EK 19
EK 20	EK 20
EK 21	EK 21
EK 22	EK 22
EK 23	EK 23
Subpart EW	
EW 1	EW 1
EW 2	EW 2
EW 3	EW 3
EW 4	EW 4
EW 5	EW 5
EW 6	EW 6
EW 7	EW 7

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EW 8	EW 8
EW 9	EW 9
EW 10	EW 10
EW 11	EW 11
EW 12	EW 12
EW 13	EW 13
EW 14	EW 14
EW 15	EW 15
EW 16	EW 16
EW 17	EW 17
EW 18	EW 18
EW 19	EW 19
EW 20	EW 20
EW 21	EW 21
EW 22	EW 22
EW 23	EW 23
EW 24	EW 24
EW 25	EW 25
EW 26	EW 26
EW 27	EW 27

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EW 28	EW 28
EW 29	EW 29
EW 30	EW 30
EW 31	EW 31
EW 32	EW 32
EW 33	EW 33
EW 34	EW 34
EW 35	EW 35
EW 36	EW 36
EW 37	EW 37
EW 38	EW 38
EW 39	EW 40
EW 40	EW 41
EW 41	EW 42
EW 42	EW 43
EW 43	EW 45
EW 44	EW 46
EW 45	EW 47
EW 46	EW 47B
EW 47	EW 48

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EW 48	EW 49
EW 49	EW 50
EW 50	EW 51
EW 51	EW 52
EW 52	EW 52B
EW 53	EW 53
EW 54	EW 54
EW 55	EW 55
EW 56	EW 56
EW 57	EW 57
EW 58	EW 58
EW 59	EW 59
EW 60	EW 60
EW 61	EW 61
EW 62	EW 62
EW 63	EW 63
Subpart EX	
EX 1	EX 1
EX 2	EX 2
EX 3	EX 3, GB 7, GC 9

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EX 4	EX 4
EX 5	EX 5
EX 6	EX 6
EX 7	EX 7
EX 8	EX 8
EX 9	EX 9
EX 10	EX 10
EX 11	EX 11
EX 12	EX 12
EX 13	EX 13
EX 14	EX 14
EX 15	EX 15
EX 16	EX 16
EX 17	EX 17
EX 18	EX 18
EX 19	EX 19
EX 20	EX 20
EX 21	EX 21
EX 22	EX 22
EX 23	EX 23

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EX 24	EX 25
EX 25	EX 26
EX 26	EX 27
EX 27	EX 28
EX 28	EX 29
EX 29	EX 30
EX 30	EX 31
EX 31	EX 33C
EX 32	EX 33D
EX 33	EX 33E
EX 34	EX 32
EX 35	EX 33(1), (2)
EX 36	EX 33(3)
EX 37	EX 33(4)
EX 38	EX 33(5)
EX 39	EX 33B(1), (3)
EX 40	EX 34
EX 41	EX 35
EX 42	EX 36
EX 43	EX 37

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EX 44	EX 38
EX 45	EX 39
EX 46	EX 40
EX 47	EX 40B
EX 48	EX 41
EX 49	EX 42
EX 50	EX 43
EX 51	EX 44
EX 52	EX 44B(2), EX 44C
EX 53	EX 44B(1), (3), EX 44D
EX 54	EX 44E
EX 55	EX 45
EX 56	EX 45B
EX 57	EX 44(7), EX 44C(11), EX 44D(13), EX 45(15), EX 45B(17)
EX 58	EX 46
EX 59	EX 47
EX 60	EX 48
EX 61	EX 49
EX 62	EX 50

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EX 63	EX 51
EX 64	EX 52
EX 65	EX 53
EX 66	EX 54
EX 67	EX 54B
EX 68	EX 56
EX 69	EX 57
EX 70	EX 58
EX 71	EX 59
EX 72	EX 60
Subpart EY	
EY 1	EY 1
EY 2	EY 2
EY 3	EY 3
EY 4	EY 4
EY 5	EY 5
EY 6	EY 6
EY 7	EY 7
EY 8	EY 8
EY 9	EY 9

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EY 10	EY 10
EY 11	GD 8(1), (3)–(9)
EY 12	EY 11
EY 13	EY 12
EY 14	EY 13
EY 15	EY 14
EY 16	EY 15
EY 17	EY 16
EY 18	EY 17
EY 19	EY 18
EY 20	EY 19
EY 21	EY 20
EY 22	EY 21
EY 23	EY 22
EY 24	EY 23
EY 25	EY 24
EY 26	EY 25
EY 27	EY 26
EY 28	EY 27
EY 29	EY 28

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
EY 30	EY 29
EY 31	EY 30
EY 32	EY 31
EY 33	EY 32
EY 34	EY 33
EY 35	EY 34
EY 36	EY 35
EY 37	EY 36
EY 38	EY 37
EY 39	EY 38
EY 40	EY 39
EY 41	EY 40
EY 42	EY 41
EY 43	EY 42
EY 44	EY 43
EY 45	EY 44
EY 46	EY 45
EY 47	EY 46
EY 48	EY 47
EY 49	EY 48

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart EZ	
EZ 1	EZ 1
EZ 2	EZ 2
EZ 3	EZ 3
EZ 4	EZ 4
EZ 5	EZ 4B
EZ 6	EZ 4C
EZ 7	EZ 5
EZ 8	EZ 6
EZ 9	EZ 8
EZ 10	EZ 9
EZ 11	EZ 10
EZ 12	EZ 11
EZ 13	EZ 12
EZ 14	EZ 13
EZ 15	EZ 14
EZ 16	EZ 15
EZ 17	EZ 16
EZ 18	EZ 17
EZ 19	EZ 18

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EZ 20	EZ 19
EZ 21	EZ 20
EZ 22	EZ 21
EZ 23	EZ 21B
EZ 24	EZ 22
EZ 25	EZ 23
EZ 26	EZ 24
EZ 27	EZ 25
EZ 28	EZ 26
EZ 29	EZ 27
EZ 30	EZ 28
EZ 31	EZ 29
EZ 32	EX 33B(2), (3)
EZ 33	EZ 30
EZ 34	EZ 31
EZ 35	EZ 32
EZ 36	EZ 33
EZ 37	EZ 34
EZ 38	EZ 35
EZ 39	EZ 36

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
EZ 40	EZ 37
EZ 41	EZ 38
EZ 42	EZ 39
EZ 43	EZ 40
EZ 44	EZ 41
EZ 45	EZ 42
EZ 46	EZ 43
EZ 47	EZ 44
EZ 48	EZ 45
EZ 49	EZ 46
EZ 50	EZ 47
EZ 51	EZ 48
EZ 52	EZ 49
PART F	
Subpart FA	
FA 1	new
FA 2	FC 1, FC 2
FA 3	FC 3
FA 4	FC 4
FA 5	FC 5

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FA 6	FC 8A(1), FC 8F, FC 8G
FA 7	FC 8A(2), (3), OB 1 **consideration**, **lessee's acquisition cost**, **lessor's disposition value**
FA 8	FC 8B(1)
FA 9(1)	FC 8B(2)
FA 9(2), (3)	FC 8E
FA 10(1), (2)	FC 8B(3)
FA 10(3)–(5)	FC 8D
FA 10(6), (7)	FC 8C
FA 11(1), (2)	FC 8H
FA 11(3)–(7)	FC 8I
FA 12	FC 9, FC 10
FA 13	FC 10(1)(a), OB 1 **consideration**, **lessee's acquisition cost**, **lessor's disposition value**
FA 14	FC 10(1)(c), (5)(c)
FA 15	FC 10(2), (5)(a), OB 1 **lessee's outstanding balance**, **lessor's outstanding balance**, **net balance due**
FA 16	FC 10(3)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FA 17	FC 10(4)
FA 18	FC 10(5)(d)–(f)
Subpart FB	
FB 1	new
FB 2	FF 4
FB 3	FF 6(1)(a)
FB 4	FF 6(1)(b)
FB 5	FF 6(1)(a)(iv), (b)(iv), (2)
FB 6	FF 7(1), (2), (5)
FB 7	FF 7(3), (4), (5)
FB 8	FF 8
FB 9	FF 2
FB 10	FF 1
FB 11	FF 17(1)
FB 12	FF 17(2), (3)
FB 13	FF 13
FB 14	FF 13(1)(a)(i), (3)
FB 15	FF 9
FB 16	FF 10
FB 17	FF 11

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FB 18	FF 12
FB 19	FF 14
FB 20	FF 19
FB 21	FF 15, FF 16
Subpart FC	
FC 1	FI 1
FC 2	FI 2, FI 3
FC 3	FI 4
FC 4	FI 5
FC 5	FI 7
FC 6	FI 6
FC 7	FI 8
FC 8	FI 11
Subpart FE	
FE 1	FG 1
FE 2	FG 2(1), (6), (8)
FE 3	FG 4(15), (16)
FE 4	new
FE 5	FG 3
FE 6	FG 8

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
FE 7	FG 8B
FE 8	FG 4(5), (6), FG 8E
FE 9	FG 10
FE 10	FG 4(7), FG 5(6), FG 7, FG 8I
FE 11	FG 4(8), FG 5(7), FG 8J
FE 12	FG 3, FG 4(1), FG 5(1)
FE 13	FG 6
FE 14	FG 4(9), (15), (17), FG 9
FE 15	FG 4(2)
FE 16	FG 4(3), (4)
FE 17	FG 5(2), (10)
FE 18	FG 5(2)–(5), (12), (13)
FE 19	FG 8H
FE 20	FG 8F
FE 21	FG 8G(1)–(3)
FE 22	FG 8G(4)
FE 23	FG 8B(3)
FE 24	FG 8G(5), (6)
FE 25	FG 4(10), (11)
FE 26	FG 4(10)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FE 27	FG 4(12)–(14B)
FE 28	FG 4(12), (14C), (14E)
FE 29	FG 4(12), (14C), (14E), (14F)
FE 30	FG 4(14D)
FE 31	FG 5(8)
FE 32	FG 5(9)
FE 33	new
FE 34	FG 8C(9), (10)
FE 35	FG 8C(8)
FE 36	FG 8C(1), (2), (4)–(7)
FE 37	FG 8D
FE 38	FG 2(2)
FE 39	FG 2(3)
FE 40	FG 2(4)
FE 41	FG 2(4)–(6)
Subpart FF	
FF 1	new
FF 2	FH 1(1)
FF 3	new
FF 4	FH 1

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FF 5	FH 5
FF 6	FH 6, FH 7
FF 7	FH 8
FF 8	FH 2
FF 9	FH 3
FF 10	FH 3(1), FH 4
FF 11	FH 8(6)
Subpart FL	
FL 1	FCB 1
FL 2	FCB 2, FCB 3
Subpart FM	
FM 1	FD 1
FM 2	FD 1, OB 1 **consolidation rules**
FM 3	HB 1(1), HB 2(1), NB 1
FM 4	HB 1(3)–(5)
FM 5	HB 1(2)
FM 6	FD 2, FD 11
FM 7	HB 2(1)
FM 8	HB 2(1)(a)
FM 9	HB 2(1)(e)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FM 10	HB 2(1)(b)
FM 11	HB 2(1)(c)
FM 12	HB 2(1)(d)
FM 13	HB 2(2)
FM 14	FD 9
FM 15	FD 10(1), (2)
FM 16	FD 10(3)
FM 17	FD 10(5)
FM 18	FD 10(4), (4A)
FM 19	FD 10(4), (4B)
FM 20	FD 10(4), (4C)
FM 21	FD 10(6), (7)
FM 22	FD 10(9)
FM 23	FD 10(8)
FM 24	NH 5(3), (9)
FM 25	NH 5(1), (2)
FM 26	NH 5(4)
FM 27	NH 5(5), (6), (8)
FM 28	NH 5(7)
FM 29	NH 6(6)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FM 30	NH 4(9), NH 6(1), (2), (5), (7)
FM 31	FD 3(b)–(e), OB 1 **eligible company**
FM 32	FD 5
FM 33	FD 8(9)
FM 34	FD 6, FD 8(5) proviso
FM 35	FD 3(a), FD 4(1), (2)
FM 36	FD 7(1), (2)
FM 37	FD 8(1)
FM 38	FD 4(3)–(8), FD 7(3)–(8)
FM 39	FD 8(2)
FM 40	FD 8(3), (4), (6), (7)
FM 41	FD 8(5)
FM 42	FD 8(8)
Subpart FN	
FN 1	new
FN 2	OB 1 **imputation rules**
FN 3	FDA 4
FN 4	FDA 1
FN 5	FDA 3(2)–(4)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FN 6	FDA 5, FDA 6(6)
FN 7	FDA 2
FN 8	FDA 3(1), (3), OB 1 **resident imputation subgroup**, **trans-Tasman imputation group**
FN 9	FDA 2(1)–(3), (5), FDA 4
FN 10	FDA 6(1)
FN 11	FDA 6(2)
FN 12	FDA 6(3), (4), (7), (8)
FN 13	FDA 6(5)
FN 14	FDA 6(9)
Subpart FO	
FO 1	FE 1(1)(a), (b)
FO 2	FE 1(2)
FO 3	OB 1 **qualifying amalgamation**
FO 4	FE 1(1)(c), FE 8
FO 5	FE 9
FO 6	FE 2
FO 7	FE 4(b)
FO 8	FE 3

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
FO 9	FE 4(a)
FO 10	FE 6(1)–(3B), FE 6A
FO 11	FE 5
FO 12	FE 6(5), (6), FE 7(1)(a), (2)
FO 13	FE 6(5), (7), FE 7(1)(b), (3)
FO 14	FE 6(5), (8), FE 7(1)(b), (4)
FO 15	FE 5
FO 16	FE 6(1), (4)
FO 17	FE 6(3A), (3B)
FO 18	FE 10(1)–(5), (6)(c)
FO 19	FE 10(6)(a)
FO 20	FE 10(6)(b)
Subpart FZ	
FZ 1	FC 1
FZ 2	FC 6(2)–(8)
FZ 3	FC 7
FZ 4	FC 8
FZ 5	FF 5
FZ 6	FI 9, FI 10
PART G	

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart GA	
GA 1	GB 1(1)–(2C)
GA 2	GC 17B
Subpart GB	
GB 1	GB 1(3)
GB 2	GC 1
GB 3	GC 2
GB 4	GC 4
GB 5	GC 3
GB 6	GC 5
GB 7	GC 7
GB 8	GC 8
GB 9	GC 9(1), (4)
GB 10	GC 9(1), (4)
GB 11	GC 9(2)
GB 12	GC 9(2)
GB 13	GC 9(3), (4)
GB 14	GC 9(3), (4)
GB 15	GC 10
GB 16	GC 10

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
GB 17	GC 11A, GD 12
GB 18	GC 11B, GD 12B
GB 19	GD 12A
GB 20	GC 12
GB 21	GD 11
GB 22	GC 14
GB 23	GD 3(1), (2)
GB 24	GD 3(4), (5)
GB 25	GD 5
GB 26	GC 14A
GB 27	GC 14B, GC 14E
GB 28	GC 14C
GB 29	GC 14D
GB 30	GC 14F
GB 31	GC 16(b), GC 17
GB 32	GC 15
GB 33	GC 6
GB 34	GC 21
GB 35	GC 22(1), (2)
GB 36	GC 22(4), (5), (9)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
GB 37	GC 23
GB 38	GC 24
GB 39	GC 25
GB 40	GC 26
GB 41	GC 27
GB 42	GC 27A(1)–(3)
GB 43	GC 27A(5), (6), (10)
GB 44	GC 28
GB 45	GC 29(1)
GB 46	GC 31
GB 47	GC 29(2), (3)
GB 48	GC 30
GB 49	GC 14G
Subpart GC	
GC 1	GD 1(1), (3), (4)
GC 2	GD 1(2), (3A)
GC 3	GD 7
GC 4	GD 14
GC 5	GD 10
GC 6	GD 13(1), (2)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
GC 7	GD 13(3)
GC 8	GD 13(4), (5)
GC 9	GD 13(10)
GC 10	GD 13(10)
GC 11	GD 13(11)
GC 12	GC 12(1), GD 13(12)
GC 13	GD 13(6)–(9)
GC 14	GD 13(13)
Subpart GZ	
GZ 1	GD 12(1)
PART H	
Subpart HA	
HA 1	HG 1(c), (d), HG 3(1), HG 4(1), HG 14
HA 2	OB 3(1)
HA 3	HG 14
HA 4	HG 7, HG 14(d)
HA 5	HG 3(1), HG 4(1), HG 14(a), (b), OB 3(1)(f)
HA 6	HG 1(a), (b), OB 1 **foreign company**, OB 3(1)(a), (b), (g)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HA 7	OB 3(1)(c), (3)
HA 8	HG 4(1)–(3)
HA 9	OB 3(1)(d), (4)
HA 10	HG 14(a), (b)
HA 11	HG 7, HG 18, OB 3(3A)
HA 12	HG 14(d)
HA 13	HG 1(c)
HA 14	HG 9(1), HG 13(1)
HA 15	HG 13(1)–(4)
HA 16	HG 13(1)(a)(i), (1A)
HA 17	HG 10(a), HG 13(1)(aa)
HA 18	HG 13(6)
HA 19	HG 13(5)
HA 20	HG 1(d), HG 9(2), HG 16
HA 21	HG 11(3)
HA 22	HG 10(b)
HA 23	HG 11(3A)
HA 24	HG 16(1), HG 17(1)(a)
HA 25	HG 17
HA 26	HG 16(2)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HA 27	HG 16(3), (4)
HA 28	HG 4(2)(a)
HA 29	HG 4(3)
HA 30	HG 3(2), (3), HG 4(4)
HA 31	HG 3(4), (5)
HA 32	HG 5(1)
HA 33	HG 5(2)
HA 34	HG 6(1)
HA 35	HG 6(2)(a), (b)
HA 36	HG 6(2)(c)
HA 37	HG 6(3)
HA 38	HG 14(c), HG 14A
HA 39	HG 15
HA 40	HG 11(1), (1A)
HA 41	HG 11(1B), (2), (4)
HA 42	HG 12
HA 43	OB 1 **effective interest**
HA 44	HG 2
Subpart HC	

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HC 1	GC 14, HH 1(8), (9), HH 3(6), HH 4(8), Income Tax Amendment Act (No 5) 1988, s 9
HC 2	HD 1(1)(a)
HC 3	HH 1A
HC 4	OB 1 **corpus**
HC 5	OB 1 **beneficiary income**, **trustee income**
HC 6	OB 1 **beneficiary income**, OF 2(3)
HC 7	HH 1(7), HH 3A(1)(a), OB 1 **trustee income**
HC 8	HH 8
HC 9	new
HC 10	HH 2(2), HH 4(5) proviso, OB 1 **foreign trust**, **qualifying trust**
HC 11	OB 1 **foreign trust**
HC 12	OB 1 **non-qualifying trust**
HC 13	HH 1(5), (6)
HC 14	OB 1 **distribution**
HC 15	HH 6(2)(c), (3), OB 1 **taxable distribution**

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HC 16	HH 6(1), (2), (4)
HC 17	HH 3(1), HH 3A(1)(b)
HC 18	HH 3(1)
HC 19	HH 3(1), (4)
HC 20	HH 3(5)
HC 21	HH 3(5A)
HC 22	HH 3(4)
HC 23	HH 3(3)
HC 24	DV 9(2), HH 4(1), (2)
HC 25	HH 4(3), (3A), (6) provisos
HC 26	HH 4(3B), (3BB), (3BC)
HC 27	HH 1(10), OB 1 **settlor**
HC 28	HH 1(1)–(4), (8), (10), OB 1 **settlor**
HC 29	HH 4(4), (5)
HC 30	HH 2
HC 31	HH 5
HC 32	HH 3(2), HK 3(1A)
HC 33	HH 4(7)
HC 34	HH 3(4)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HC 35	HH 3A–HH 3C, HH 3E, HH 3F(2), (2A)
HC 36	HH 3C(1)(a)–(d), (2), (3), HH 3D, HH
3F(1), (2A)–(4)	
HC 37	HH 3C(1)(e)
Subpart HD	
HD 1	HK 1(1)
HD 2	HK 3(2), HK 7(1)
HD 3	HK 1, HK 3(3), HK 7(1)
HD 4	HK 3(1), (1A)
HD 5	HK 4–HK 6, HK 7(2)
HD 6	HK 8
HD 7	HK 2
HD 8	new
HD 9	HK 9
HD 10	HK 10
HD 11	FD 6(1), FDA 5(3)
HD 12	HH 3(2), HH 3A(2), HH (4)
HD 13	HE 1
HD 14	HK 12, HK 13

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HD 15	HK 11
HD 16	FC 16
HD 17	FC 17
HD 18	HK 1(1), HK 16, OB 1 **absentee**
HD 19	HK 20
HD 20	HK 16, HK 17
HD 21	HK 21
HD 22	HK 23
HD 23	HK 22
HD 24	HK 18(1)
HD 25	HK 19
HD 26	HK 24(1), (4)
HD 27	HK 24(2), HK 25
HD 28	HK 24(3)
HD 29	HK 26
Subpart HE	
HE 1	new
HE 2	HF 1(8)
HE 3	HF 1(9) **rebate**
HE 4	HF 1(4)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
HE 5	HF 1(7)
Subpart HF	
HF 1	OB 1 **Maori authority**, **Maori authority rules**
HF 2	HI 2
HF 3	HI 1
HF 4	HI 4(1), (2), HI 5(4), HI 7
HF 5	HI 4(3)
HF 6	HI 5(1)
HF 7	HI 5(2), (3)
HF 8	HI 6
HF 9	HI 8
HF 10	HI 9
HF 11	HI 3
Subpart HL	
HL 1	HL 1
HL 2	HL 2
HL 3	HL 3
HL 4	HL 4
HL 5	HL 5

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
HL 6	HL 6
HL 7	HL 7
HL 8	HL 8
HL 9	HL 9
HL 10	HL 10
HL 11	HL 11
HL 12	HL 11B
HL 13	HL 12
HL 14	HL 13
HL 15	HL 14
HL 16	HL 15
HL 17	HL 16
HL 18	HL 17
HL 19	HL 18
HL 20	HL 19
HL 21	HL 20
HL 22	HL 21
HL 23	HL 22
HL 24	HL 23
HL 25	HL 23B

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
HL 26	HL 24
HL 27	HL 25
HL 28	HL 26
HL 29	HL 27
HL 30	HL 28
HL 31	HL 29
HL 32	HL 30
HL 33	HL 31
Subpart HR	
HR 1	HD 1(1)(b), (c), (2)
HR 2	HE 2(1), (1A)
HR 3	HE 2(2), (3), OB 1 **category A income**, **category B income**, **current value**, **designated investment fund**, **group investment fund**
HR 4	HJ 1
HR 5	OC 1(2)
HR 6	OC 1(2)–(6)
HR 7	OC 1(6)
HR 8	FC 22–FC 24
HR 8(2)	FC 23

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart HZ	
HZ 1	HZ 1
HZ 2	HZ 2
PART I	
Subpart IA	
IA 1	IE 1(1)(a)
IA 2	BC 4(4), DV 5(4)(b), DV 7(2), IE 1(1), (3)(a), IE 2(1), IE 3(5), IE 4(6), LB 2(3), (3A), LE 4(5), ME 9(5B)
IA 3	BC 4(4), HH 3(4), IE 1(1), (2), IG 10, NH 3(2), NH 4(5), (6), NH 5(6), (7)
IA 4	IE 1(2)
IA 5	IF 1(1)
IA 6	IG 1(1)
IA 7	DV 5(4)(b), DV 7(2), EY 42(10), HG 16, IE 1(2BB), (2C), IE 3(5), IE 4(6), IG 4(4), IG 5(5), IG 7(2), (3), IH 1, IH 2(1), IH 3– IH 5, II 1(1), (2)
IA 8	ID 1(1)
IA 9	IE 1(3)(b), IF 5, IG 6(5)
IA 10	new

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart IC	
IC 1	IG 1(1), (3), IG 2(1), 2(c), (e)
IC 2	IG 1(1), (3), IG 2(1), 2(c), (e)
IC 3	IG 1(2), (5)
IC 4	IG 1(3)
IC 5	IG 2(2)
IC 6	IG 1(1), (2), IG 2(2)(c), (4)(d)(ii), (5)(c)(ii)
IC 7	IG 2(2)(d), (11)
IC 8	IG 2(2)(f), (g)
IC 9	IG 2(g), (3)
IC 10	IG 2(c), (e)
IC 11	IG 2(7)
IC 12	IG 2(6)
Subpart ID	
ID 1	IG 6(1A)–(3)
ID 2	IG 6(4), (6), (7)
ID 3	IG 6(6)
ID 4	IG 6(7)
ID 5	IG 6(8)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart IE	
IE 1	IF 4–IF 6
IE 2	IF 4
IE 3(1), (2)	IF 6
IE 4	IG 9
IE 5	IF 4, IG 8, IG 9
Subpart IP	
IP 1	IG 2(4)(e), (f), (5)(e), (f)
IP 2	IG 2(2)(e), (4)(c), (d), (5)(b), (c)
IP 3	IF 1(2), (3)
IP 4	IG 2(4)
IP 5	IG 2(2)(b)–(f), (5)
IP 6	IF 1(2), (3), IG 2(4)(c), (d), (5)(c), (d), (10)
IP 7	IG 2(4), (5)
Subpart IQ	
IQ 1	IE 3 (1), IE 4 (1), IF 3, IF 6, IG 4(1), IG 5(1), IG 7(1)
IQ 2	IE 3 (2), (3), (5)
IQ 3	IE 4 (2)–(6)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
IQ 4	IG 4
IQ 5	IG 5
IQ 6	IG 7(2)
IQ 7	IG 7(4)
IQ 8	IG 7(5)
IQ 9	IE 3(4)
Subpart IS	
IS 1	IG 6(2), IH 4(2)
IS 2	IH 1(1), IH 5
IS 3	IH 4(3)
IS 4	IH 4(3) proviso
IS 5	IH 2(1), IH 3
IS 6	IH 1, IH 4(1)(e)
Subpart IT	
IT 1	II 1(3), (4), II 3
Subpart IV	
IV 1	IF 7
Subpart IW	
IW 1	IG 10
Subpart IZ	

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
IZ 1	FF 18, IE 2
IZ 2	IH 2
IZ 3	IH 1(2)
IZ 4	IF 1(5)
IZ 5	IF 1(6)
IZ 6	IF 2
IZ 7	IG 2(2)(c), (d)(ii)(B)
PART L	
Subpart LA	
LA 1	new
LA 2	BC 9
LA 3	BC 9
LA 4	BC 8(2), BC 9(1), BC 10, KD 4(2), LD 3(3), LD 3A(4), LE 2(6)
LA 5	BC 9, BC 10
LA 6	LD 1, LD 3, LD 3A, LD 6, LD 7, LD 8, MD 1
LA 7	BC 8(1), MD 1, KD 4(2)
LA 8	LD 2, MD 1
LA 9	BC 9(1), LB 2(2), LE 2(4), (8)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
LA 10	BC 9
Subpart LB	
LB 1	LD 1(2), (2A), (4), (5)
LB 2	LD 6, LD 7
LB 3	LD 3(2), NF 1(2)(b)(ix), (x), NF 8B(b)
LB 4	KD 1A(2), KD 2(1), KD 3(2)
LB 5	LD 2
LB 6	LD 1B
Subpart LC	
LC 1	KC 1(1)(a), (b), (4)
LC 2	KC 1(1)(c)
LC 3	KC 2
LC 4	KC 3(1)
LC 5	KC 3(3) **full time earner**, **remunerative work**
LC 6	KC 4(1), (1A)
LC 7	KC 4(2) **housekeeper**
LC 8	KC 4(2) **child**, **communal home**, **home**, **institution**, **qualifying payments**, **separated person**

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
LC 9	KF 3
LC 10	KB 2
LC 11	KC 1(2), KC 3(2)
LC 12	KC 1(3), KC 3(2)
Subpart LD	
LD 1	KC 5
LD 2	KC 5(1)
LD 3	KC 5(1)(aa)–(cp), (4)
Subpart LE	
LE 1	LB 1(1)(j), (k), LB 2(1), (1B), (1C), (2C), GC 22(4), (5), (9), GC 23, GC 24
LE 2	LB 2(2B), (3)
LE 3	LB 1(1)(hb), LB 2(2B), (3B), (3C)
LE 4	LB 1(1)(ab), LB 1A
LE 5	LB 1(1)(a), (2), (3), (3A)
LE 6	LB 1(1)(b), (4), (4A), (4B)
LE 7	LB 2(1C)
LE 8	LB 1(1)(c)
LE 9	LB 1(1)(e), (5)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
LE 10	LB 1(1)(h), LB 2(5), (6)
LE 11	LB 1(1)(f), LB 2(4)
Subpart LF	
LF 1	LB 1(1)(l), LD 8(1), (1B), (1C)
LF 2	LB 1(1)(ab), LB 1A
LF 3	LB 1(1)(a), (2), (3), (3A)
LF 4	LB 1(1)(b), (4), (4A), (4B)
LF 5	LD 8(1C)
LF 6	LB 1(1)(d)
LF 7	LB 1(1)(e), (5)
LF 8	LB 1(1)(d), LD 9
LF 9	LB 1(1)(i), LD 8(4), (5)
LF 10	LB 1(1)(g), LD 8(3)
Subpart LJ	
LJ 1	LC 1(1)–(5), LC 14(1), LC 14A
LJ 2	LC 1(1), (1B), (1C), LC 2
LJ 3	LC 1(1)
LJ 4	LC 14(1)
LJ 5	LC 14
LJ 6	LC 1(2)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
LJ 7	LC 1(3A), (3B), LC 3
Subpart LK	
LK 1	LC 4(1), (4)
LK 2	LC 4(1)–(3)
LK 3	LC 4(1)
LK 4	LC 4(4)
LK 5	LC 4(4)–(6)
LK 6	LC 5
LK 7	LC 4(7)
LK 8	LC 16(1)
LK 9	LC 16(2), (3)
LK 10	LC 16(4)
LK 11	LC 16(5)
LK 12	LC 8, LC 11, LC 12
LK 13	LC 8
LK 14	LC 9, LC 10
LK 15	LC 12
Subpart LL	
LL 1	LF 1(1)(a)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
LL 2	LF 1(1)(a), (2), LF 2(2), (3), LF 3(1), LF 6(4)–(6)
LL 3	LF 5(1)
LL 4	LF 5(2)–(5)
LL 5	LF 3(1)(f), (g), (h)
LL 6	LF 4
LL 7	LF 7
LL 8	LF 3(2), LF 5(2)(e)
LL 9	LF 1(2), LF 2(2), (3), LF 5(1)(e), (5)
Subpart LO	
LO 1	LB 1(1)(m), LD 3A(1)
LO 2	LB 1(3), (3A)
LO 3	LB 1(1)(ea)
LO 4	LD 3A(6)
LO 5	LD 3A(5)
Subpart LP	
LP 1	LE 1
LP 2	LE 2(1), (2), (2A), LE 3(5)
LP 3	LE 2(3), (4), (6), (7)
LP 4	LE 2(5)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
LP 5	LE 2(9), (10)
LP 6	LE 2(11), (12)
LP 7	LE 3(1), (3), (11)
LP 8	LE 3(6), (8)
LP 9	LE 3(7), (9)
LP 10	LE 3(10), LE 4
Subpart LQ	
LQ 1	KH 1(1), (2)
LQ 2	KH 1(3)
LQ 3	KH 2(3), (5)–(7)
LQ 4	KH 2(1)–(2A), (4)
LQ 5	LG 1
Subpart LR	
LR 1	ME 19, ME 24, ME 28
Subpart LS	
LS 1	KI 1
LS 2	LD 10
LS 3	LD 10B
LS 4	LD 11
Subpart LZ	

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
LZ 1	LF 6(1), (3)
LZ 2	KZ 3(1), (4)
LZ 3	KZ 3(2)
LZ 4	KZ 3(3)
LZ 5	KZ 3(1)
LZ 6	KE 1(1)
LZ 7	KE 1(1)
LZ 8	KE 1(3)
LZ 9	KG 1(1)
LZ 10	KG 1(1) proviso
LZ 11	KG 1(2)
LZ 12	KG 1(3), (4)
PART M	
Subpart MA	
MA 1	new
MA 2	new
MA 3	KD 8
MA 4	KB 3
MA 5	KD 9
MA 6	new

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
MA 7	OB 1 **full time earner**
MA 8	new
Subpart MB	
MB 1	KD 1(1)(a), (b), (e)(vii), (i), (3)
MB 2	KD 1(4)–(6)
MB 3	KD 1(1)(f), (2)
MB 4	KD 1(1)(g)
MB 5	KD 1(1)(h)
Subpart MC	
MC 1	KD 1A
MC 2	new
MC 3	KD 2AA(4), KD 3(1), OB 1 **qualifying person** (a)(i)
MC 4	KD 2AA(4), KD 3(1), OB 1 **qualifying person** (a)(ii)
MC 5	KD 3(1), OB 1 **qualifying person** (a)(iii)
MC 6	KD 3(1) **qualifying person**
MC 7	KD 3A(2)–(4)
MC 8	OB 1 **eligible period**
MC 9	KD 2AA(7)–(10), KD 3A(5)–(9)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
MC 10	KD 2AA(2), (3), OB 1 **principal caregiver**
MC 11	KD 2AA(1), (11), OB 1 **specified period**, **eligible period**
Subpart MD	
MD 1	KD 2(1), (2)
MD 2	KD 2A
MD 3	KD 2(3), KD 2AA(3)
MD 4	KD 2AAA(1), (3A)
MD 5	KD 2AAA(1)(a)
MD 6	KD 2AAA(1)(b)
MD 7	KD 2AAA(1)(c), (3), (4)
MD 8	KD 2AAA(1)(e)
MD 9	KD 2AAA(1)(d), (5)–(8)
MD 10	KD 2AAA(2)
MD 11	KD 2AA(3), KD 2AB
MD 12	KD 2(5)
MD 13	KD 2(6), (7)
MD 14	KD 2(6B)
MD 15	KD 2(6C)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart ME	
ME 1	KD 3(2)–(5)
ME 2	KD 3(1) **employment**, KD 3A(10)
Subpart MF	
MF 1	KD 5(1), (1A)
MF 2	KD 5(8)
MF 3	KD 5(6)
MF 4	KD 5(6A), (7)
MF 5	KD 4(4)
MF 6	KD 4(2), (2A)
MF 7	KD 5C
Subpart MK	
MK 1	KJ 1, OB 1 **member credit year**
MK 2	KJ 2
MK 3	KJ 1, KJ 4, OB 1 **member credit contribution**
MK 4	KJ 3, OB 1 **member credit year**
MK 5	KJ 5(2)
MK 6	KJ 5(3), (4)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
MK 7	KJ 5(1), (5)
MK 8	KJ 3, OB 1 **member credit year**
Subpart MZ	
MZ 1	KD 2AA(3A), KD 2AAAB
MZ 2	KD 2(4)
PART O	
Subpart OA	
OA 1	new
OA 2(2), (3)	ME 1(1), ME 3(1), ME 10(1), (1A)–(1C), ME 15, ME 17(1), ME 20, ME 21(1), ME 22(1), ME 25, ME 26(2), ME 40, MF 1(1), MF 3(1), MF 6, MF 7(1), MF 11(1), MF 12(1), MG 2(1), MG 3(1), MG 12, MG 13(1), MG 14(1), MG 15(1), MI 2(1), (4), MI 3(1), MI 14, MI 17(1), MI 18(1), MJ 1(1), MJ 3(1), MJ 8, MK 1(1), MK 3(1), MK 9
OA 3	ME 2, ME 3(1), ME 16, ME 17(1), ME 22(1), ME 26, MF 3(1), MF 8, MF 12(1), MG 1, MG 3(1), MG 14(1), MG 15(1), MI 1, MI 3(1), MI 17(1), MI 18(1), MJ 2, MJ 3(1), MK 2, MK 3(1)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OA 4	ME 13, ME 28(4), MF 9, MF 11(3), MG 16, MI 19
OA 5	new
OA 6	new
OA 7	ME 3(2), ME 10(1A)–(1C), (2), ME 17(2), ME 22(2), ME 26(1), MF 3(2), MF 8(1), MF 12(2), MG 3(2), MG 13(3), MI 3(2), MI 15, MJ 3(2), MK 3(2)
OA 8	ME 5(3), ME 12(1)(h), ME 13(2), (4), MF 4(5), MF 8(4), MG 15(1), MI 5(3)–(7), MI 18(1)(e), (3), (4), MK 5(3), (4)
OA 9	ME 29(1)(a), MF 16(1)(a), MG 17(1)(a), MI 13
OA 10	ME 29(1), MF 16(1), MG 17(1), MI 13
OA 11	MG 17(1)
OA 12	MI 13(6)
OA 13	ME 29(1)
OA 14	ME 29(2)(a), MF 16(2)(a), MG 17(2)(a)
OA 15	ME 29(2)(b), MF 16(2)(b), MG 17(2)(b)
OA 16	MG 17(2)(b)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OA 17	ME 29(2)
OA 18	ME 8(1), MG 8(1), MG 10(1), MI 8(1), MK 7(1)
Subpart OB	
OB 1	ME 1
OB 2	ME 1A
OB 3	ME 13(1)
OB 4	ME 4(1)(a), (1C), (2)(a)
OB 5	ME 4(1)(ac), (2)(ac)
OB 6	ME 4(1)(ad), (2)(ad)
OB 7	ME 4(1)(c), (2)(a)
OB 8	ME 4(1)(i), (2)(g)
OB 9	ME 4(1)(d), (2)(c)
OB 10	ME 4(1)(e), (2)(c)
OB 11	ME 4(1)(f), (2)(d)
OB 12	ME 4(1)(g), (2)(e)
OB 13	ME 4(1)(cb), (2)(bb), ME 9B(1), (2)
OB 14	ME 4(1)(cc), (2)(bc)
OB 15	ME 4(1)(cd), (2)(bd)
OB 16	ME 4(1)(ab), (2)(ab)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OB 17	ME 4(1)(j), (2)(h)
OB 18	ME 4(1)(da), (2)(ca)
OB 19	ME 4(1)(aab), (2)(aab)
OB 20	ME 4(1)(ea), (2)(cb)
OB 21	ME 4(1)(k), (2)(k)
OB 22	ME 4(1)(eb), (ec), (2)(cc)
OB 23	ME 4(1)(ed), (2)(cd)
OB 24	ME 29, MG 17, MI 13
OB 25	ME 4(1)(h), (2)(f)
OB 26	ME 4(1A), (2A)
OB 27	ME 4(1B)(a), (2B)(a)
OB 28	ME 4(1B)(b), (2B)(b)
OB 29	ME 4(1B)(c), (2B)(c)
OB 30	ME 5(1)(a), (2)(a)
OB 31	ME 5(1)(d), (2)(d)
OB 32	ME 5(1)(e), (2)(e)
OB 33	ME 5(1)(l), (2)(k)
OB 34	ME 5(1)(ea), (2)(ea), (eb)
OB 35	ME 5(1)(eb), (2)(ea), (eb)
OB 36	ME 5(1)(g), (2)(g)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OB 37	ME 5(1)(h), (2)(e)
OB 38	ME 5(1)(m), (2)(k)
OB 39	ME 5(1)(o), (2)(l), (6), (7)
OB 40	ME 5(1)(ia), (2)(ha)
OB 41	ME 5(1)(i), (2)(h)
OB 42	ME 5(1)(c), (2)(c)
OB 43	ME 5(1)(f), (2)(f)
OB 44	ME 5(1)(fb), (2)(fb), ME 9B(2)(a)(i)
OB 45	ME 41
OB 46	ME 5(1)(ja), (2)(ia)
OB 47	ME 5(1)(b), (2)(b), ME 7
OB 48	ME 5(1)(ka), (2)(ja)
OB 49	ME 5(1)(ab), (2)(ab)
OB 50	ME 5(1)(ac), (2)(ac)
OB 51	ME 5(1)(ad), (2)(ac)
OB 52	ME 13(3)
OB 53	ME 29, MG 17, MI 13
OB 54	ME 5(1)(j), (2)(i)
OB 55	ME 6(4)(a)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OB 56	ME 5(1)(k), (2)(j)
OB 57	ME 5(1A)(a), (2A)
OB 58	ME 5(1A)(b), (2A)
OB 59	ME 5(1A)(c), (2A)
OB 60	ME 1B, ME 6, ME 8(1), (2)
OB 61	ME 8(2), (3), ME 14(2)
OB 62	ME 6
OB 63	ME 6(1B)–(1D)
OB 64	ME 6B
OB 65	ME 9(1), (1A), (2)
OB 66	ME 9(3)
OB 67	ME 9(7)–(9)
OB 68	ME 9(5A), (8), (9)
OB 69	ME 9(5), (5B), ME 13(6)
OB 70	ME 9(6)
OB 71	ME 9B
OB 72	ME 9C
OB 73	ME 30, ME 31
OB 74	ME 32
OB 75	ME 33

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OB 76	ME 34
OB 77	ME 30(3), (4)
OB 78	ME 35, ME 36
OB 79	ME 37
OB 80	ME 38
OB 81	ME 39
OB 82	ME 35
Subpart OC	
OC 1	CD 9, LD 9, ME 4(1)(e), (f), MG 2(1), (3), MG 4(1)(a), (b), MG 5(3)
OC 2	MG 16(1), (4)
OC 3	MG 2(2), (3)
OC 4	MG 2(4), (5)
OC 5	MG 2(6), (7)
OC 6	MG 4(1)(a), (c), (2)(a), (3), MI 10(2)
OC 7	MG 4(1)(b), (2)(b)
OC 8	MG 4(1)(bb), (2)(bb)
OC 9	MG 4(1)(ba), (2)(ba)
OC 10	MG 4(1)(bc), (2)(bc)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OC 11	MG 4(1)(bd), (2)(bd)
OC 12	MG 4(1)(d), (2)(d)
OC 13	MG 5(1)(a), (2)(a)
OC 14	MG 5(1)(d), (2)(d)
OC 15	MG 5(1)(k), (2)(i)
OC 16	MG 5(1)(e), (2)(d)
OC 17	MG 5(1)(ab), (2)(ab)
OC 18	MG 5(1)(c), (2)(c), MG 11
OC 19	MG 5(1)(ca), (2)(ca), MI 6(1)
OC 20	MG 5(1)(b), (2)(b), MG 7
OC 21	MG 16(3)
OC 22	MG 5(1)(f), (2)(e), MG 8(4)
OC 23	MG 5(1)(g), (2)(e), MG 8B, MG 16A(1B)
OC 24	MG 5(1)(i), (2)(g), (3), (4)
OC 25	MG 5(1)(h), (2)(f)
OC 26	MG 5(1)(j), (2)(h)
OC 27	MG 6, MG 8(1), (2)
OC 28	MG 8(2), (3), MG 16A(1)
OC 29	MG 10

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OC 30	MG 9(1), (2), (6)
OC 31	MG 9(3)
OC 32	MG 9(7), (8)
OC 33	MG 9(4), (5A)
OC 34	MG 9(5), MG 16(6)
OC 35	MG 8B(4) **DWP reference period**
OC 36	MG 8B(4) **maximum deficit Debit**
OC 37	MG 8B(4) **policyholder DWP ratio**
OC 38	MG 8B(4) **reduced deficit debit**
OC 39	MG 8B(4) **shareholder DWP ratio**
Subpart OD	
OD 1	MI 2(1), (4), MI 4(1)(a), MI 5(1)(a), MI 14(1), NG 9(1)(a)
OD 2	MI 2(4), MI 19(1), (5)
OD 3	MI 2(1)–(3)
OD 4	MI 2(5)–(7)
OD 5	MI 4(1)(a), (2)(a)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OD 6	MI 4(1)(e), (2)(e), MI 6(1)
OD 7	MI 4(1)(c), (2)(c)
OD 8	MI 4(1)(b), (2)(b)
OD 9	MI 4(1)(d), (2)(d)
OD 10	MI 5(1)(a), (2)(a)
OD 11	MI 5(1)(i), (2)(h), MI 6(2)
OD 12	MI 5(1)(j), (2)(i)
OD 13	MI 5(1)(b), (2)(b)
OD 14	MI 5(1)(f), (2)(f), (5), (7)
OD 15	MI 5(1)(g), (2)(f), (5)
OD 16	MI 5(1)(e), (2)(e), (3)–(6)
OD 17	MG 8(4), MI 5(1)(c), (2)(c)
OD 18	MI 5(1)(d), (2)(d), MI 9
OD 19	MI 5(1)(h), (2)(g)
OD 20	MG 8(1), (8), MI 7(2), MI 8(1)
OD 21	MG 8(2), (3), (8), MI 8, MI 22(1)–(3)
OD 22	MG 10, MI 7(1), MI 8(1)
OD 23	MI 10
OD 24	MI 13(7)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OD 25	MI 11
Subpart OE	
OE 1	MF 1(1), MF 11(1)
OE 2	MF 1(3), MF 4(1)(a), (3)(a), (5), MF 7(1)(a), MF 9
OE 3	MF 1(1), (2)
OE 4	MF 1(4), (5)
OE 5	MF 15
OE 6	MF 4(1)(a), (2)(a)
OE 7	MF 4(1)(c), (2)(b), MF 5(4)–(7)
OE 8	MF 4(1)(c), MF 5(4)–(7)
OE 9	MF 4(1)(d), (2)(c)
OE 10	MF 4(1)(e), (2)(d), (5), (6)
OE 11	MF 4(1)(f), (2)(e)
OE 12	MF 4(3)(a), (4)(a)
OE 13	MF 4(3)(b), (4)(b), MF 5(1)–(3)
OE 14	MF 4(3)(c), (4)(c)
OE 15	MF 4(3)(d), (4)(d), (5), (6)
OE 16	MF 4(3)(e), (4)(e)
OE 17	MF 11(1), (2)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OE 18	MF 11(4), (5)
OE 19	MF 13(1), (2)
OE 20	MF 13(3)(a), MF 14
OE 21	MF 13(3)(b)
OE 22	MF 13(3)(c)
Subpart OF	
OF 1	MJ 1(1), MJ 5(1), MJ 6(1)
OF 2	MJ 3(1)
OF 3	MJ 1(1)
OF 4	MJ 5
OF 5	ME 4(1)(da), MJ 6
Subpart OJ	
OJ 1	ME 15, ME 21, ME 22(1)
OJ 2	ME 15, ME 17(1), ME 27(1), (3)
OJ 3	ME 14(1), ME 18(1)(a), (2)(a)
OJ 4	ME 18(1)(b), (2)(b)
OJ 5	ME 18(1)(c), (2)(c)
OJ 6	ME 18(1)(bb), (2)(bb)
OJ 7	ME 18(1)(bc), (2)(bb)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OJ 8	ME 18(3)(a), (4)(a), ME 19(1), (2)
OJ 9	ME 18(3)(b), (4)(b), ME 19(3)–(6)
OJ 10	ME 27(2)
OJ 11	ME 18(3)(c), (4)(c), ME 19A
OJ 12	ME 21(1), (2)
OJ 13	ME 21(3), (4)
OJ 14	ME 23(1)(a), (2)(a), (3), (6)(a)
OJ 15	ME 23(1)(b), (2)(b)
OJ 16	ME 23(4)(a), (5)(a), ME 24
OJ 17	ME 23(4)(b), (5)(b)
OJ 18	ME 23(4)(c), (5)(c)
Subpart OK	
OK 1	MK 1, MK 3
OK 2	MK 4(1)(a), (2)(a)
OK 3	MK 4(1)(b), (2)(a)
OK 4	MK 4(1)(c), (2)(a)
OK 5	MK 4(1)(d), (2)(b)
OK 6	MK 4(1)(e), (2)(c)
OK 7	MK 4(1)(f), (2)(c)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OK 8	MK 4(1)(h), (2)(e)
OK 9	MK 4(1)(g), (2)(d)
OK 10	MK 5(1)(a), (2)(a)
OK 11	MK 5(1)(b), (2)(b)
OK 12	MK 5(1)(c), (g), (2)(c)
OK 13	MK 5(1)(j), (2)(i)
OK 14	MK 5(1)(e), (2)(c)
OK 15	MK 5(1)(f), (2)(f)
OK 16	MK 5(1)(d), (2)(d), MK 7(5)
OK 17	MK 5(1)(h), (2)(g)
OK 18	MK 5(1)(i), (2)(h)
OK 19	MK 6, MK 7(1)
OK 20	MK 7(2)–(4)
OK 21	MK 8(1), (2), (6)
OK 22	MK 8(3), (4), (6)
OK 23	MK 8(5)
OK 24	MK 8(5B)
Subpart OP	
OP 1	ME 10, ME 25, MF 7, MG 13, MI 14

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OP 2	ME 13, ME 27, MF 9, MG 16, MI 19
OP 3	ME 10(1A), (1B), (1D)
OP 4	ME 10(1C)
OP 5	ME 12(1)
OP 6	ME 14(3)
OP 7	ME 11(1)(a), (2)(a)
OP 8	ME 11(1)(aa), (2)(aa)
OP 9	ME 11(1)(ab), (2)(ab)
OP 10	ME 11(1)(b), (2)(b)
OP 11	ME 11(1)(c), (2)(a)
OP 12	ME 11(1)(d), (2)(c)
OP 13	ME 11(1)(e), (2)(c)
OP 14	ME 11(1)(f), (2)(a)
OP 15	ME 11(1)(eb), (ec), (2)(cb)
OP 16	ME 11(1)(ed), (2)(cc)
OP 17	ME 11(1)(j), (2)(c)
OP 18	ME 11(1)(fb), (2)(fb)
OP 19	ME 11(1)(g), (2)(d)
OP 20	ME 11(1)(jb), (2)(eb)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OP 21	ME 11(1)(k), (2)(d)
OP 22	ME 13(2), (3)
OP 23	ME 11(1A), (2A)
OP 24	ME 11(1)(i), (2)(e)
OP 25	ME 11(1B)(a), (2B)(a)
OP 26	ME 11(1B)(b), (2B)(b)
OP 27	ME 11(1B)(c), (2B)(c)
OP 28	ME 12(1)(a), (2)(a)
OP 29	ME 12(1)(c), (2)(c)
OP 30	ME 12(1)(d), (2)(d)
OP 31	ME 12(1)(l), (2)(k)
OP 32	ME 12(1)(da), (2)(da)
OP 33	ME 12(1)(db), (2)(da)
OP 34	ME 12(1)(f), (2)(d)
OP 35	ME 12(1)(f), (2)(d)
OP 36	ME 12(1)(m), (2)(k)
OP 37	ME 12(1)(k), (2)(j)
OP 38	ME 12(1)(n), (2)(l), (3), (4)
OP 39	ME 12(1)(ab), (2)(ab)
OP 40	ME 12(1)(ac), (2)(ac)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OP 41	ME 12(1)(ad), (2)(ac)
OP 42	ME 12(1)(h), (2)(g), ME 13(2)
OP 43	ME 12(1)(e), (2)(e)
OP 44	ME 12(1)(b), (2)(b), ME 14(1)
OP 45	ME 41
OP 46	ME 12(1)(i), (2)(h)
OP 47	ME 12(1)(j), (2)(h)
OP 48	ME 12(1A)(a), (2A)
OP 49	ME 12(1A)(b), (2A)
OP 50	ME 12(1A)(c), (2A)
OP 51	MG 13(1)
OP 52	MG 2(4), (5)
OP 53	MG 13(6), (7)
OP 54	MG 16(1)
OP 55	MG 16A(2)
OP 56	MG 14(1)(a), (2)(a)
OP 57	MG 14(1)(c), (2)(a)
OP 58	MG 14(1)(b), (2)(a)
OP 59	MG 14(1)(e), (2)(c), MG 16(2), (4)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OP 60	MG 14(1)(bb), (2)(ab)
OP 61	MI 20(2)
OP 62	MG 14(1)(f), (2)(d)
OP 63	MG 14(1)(d), (2)(b)
OP 64	MG 15(1)(a), (2)(a)
OP 65	MG 15(1)(ab), (2)(ab)
OP 66	MG 15(1)(d), (2)(d)
OP 67	MG 15(1)(l), (2)(j)
OP 68	MG 15(1)(e), (2)(d)
OP 69	MG 15(1)(c), (2)(c)
OP 70	MI 20(1)
OP 71	MG 15(1)(k), (2)(i), MG 16(5)
OP 72	MG 15(1)(f), (2)(e)
OP 73	MG 15(1)(i), (2)(g)
OP 74	MG 15(1)(b), (2)(b)
OP 75	MG 15(1)(g), (2)(e)
OP 76	MG 15(1)(h), (2)(f)
OP 77	MG 15(1)(j), (2)(h)
OP 78	MI 14, MI 16
OP 79	MI 19(1), (2)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OP 80	MI 22(1)
OP 81	MI 17(1)(a), (2)(a)
OP 82	MI 17(1)(b), (2)(b)
OP 83	MI 17(1)(c), (2)(c)
OP 84	MI 17(1)(e), (2)(e), MI 19(3), (4)
OP 85	MI 17(1)(f), (2)(f), MI 20(1)
OP 86	MI 17(1)(d), (2)(d)
OP 87	MI 18(1)(a), (2)(a)
OP 88	MI 18(1)(g), (2)(g), MI 20(2)
OP 89	MI 18(1)(b), (2)(b)
OP 90	MI 19(5)
OP 91	MI 18(1)(e), (2)(e), (3), (4)
OP 92	MI 18(1)(c), (2)(c)
OP 93	MI 18(1)(d), (2)(d)
OP 94	MI 18(1)(f), (2)(f)
OP 95	MI 21
OP 96	MI 22(4)
OP 97	MF 7(1), (2)
OP 98	MF 7(3), (4)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
OP 99	MF 9
OP 100	MF 8(2)(a), (3)(a)
OP 101	MF 8(2)(c), (3)(b), MF 10(4)–(6)
OP 102	MF 8(2)(c), (3)(b), MF 10(4), (5), (6)
OP 103	MF 8(2)(d), (3)(c)
OP 104	MF 8(2)(e), (3)(d)
OP 105	MF 8(4)(a), (5)(a)
OP 106	MF 8(4)(b), (5)(b), MF 10(1)
OP 107	MF 8(4)(c), (5)(c)
OP 108	MF 8(4)(d), (5)(d)
OP 109	ME 25
OP 110	ME 26(2)(a), (3)(a)
OP 111	ME 26(2)(b), (3)(b)
OP 112	ME 26(2)(c), (3)(c), ME 27(1), (3)
OP 113	ME 26(2)(d), (3)(d)
OP 114	ME 26(2)(e), (3)(d)
OP 115	ME 26(4)(a), (5)(a), ME 28(1), (2)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
OP 116	ME 26(4)(b), (5)(b), ME 28(3), (4)
Subpart OZ	
OZ 1	ME 4(1)(a)(viii)
OZ 2	ME 5(1)(e)(i)
OZ 3	ME 5(1)(n)
OZ 4	ME 5(4), MG 5(4)
OZ 5	MJ 1(2), MJ 4
OZ 6	MJ 7
PART R	
Subpart RA	
RA 1	new
RA 2	MB 12, NC 2(1), ND 1W(2), NE 7(2), NF 13, NG 17(2), NH 3(7)
RA 3	BC 9, MC 1
RA 4	BB 2(3), MB 4
RA 5	BE 1(1), (4), (5), NC 15, ND 1, NE 3
RA 6	NF 4, NG 11, NH 3
RA 7	MH 1

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RA 8	NC 16, NE 2A(1), (2), NF 3, NG 12
RA 9	NC 19, NE 6, NF 12, NG 15
RA 10	NC 5(2), NC 16, NC 20(1), ND 1, ND 1W(2), NE 5, NF 3, NF 4, NF 13, NG 12, NG 13
RA 11	NF 6(1), NG 16A(1)
RA 12	NF 6(2)–(4), NF 7(1), (2), NG 16A(2), (3)
RA 13	MC 1
RA 14	MB 8(1), (2)
RA 15	NC 15, ND 9(2), (3), ND 10, ND 13, ND 14, NE 4, NF 4, NG 11, NH 3
RA 16	NF 4(5), NG 11(4)
RA 17	NF 4(6)
RA 18	NF 4(6B), NG 11(4B)
RA 19	NBA 7, ND 10(4)(a), NF 7, NG 16, NH 4
RA 20	NC 15(7), ND 13(8), ND 14(8), NH 4(8)
RA 21	NC 21, ND 1F
RA 22	NC 20

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RA 23	NE 7, NG 17(1)
Subpart RB	
RB 1	MC 1
RB 2	BC 1
RB 3	BC 7, NG 3
RB 4	MD 1(3), (3A)
Subpart RC	
RC 1	MB 1
RC 2	OB 1 **provisional tax rules**
RC 3	MB 2, OB 1 **provisional tax rules**
RC 4	MB 3
RC 5	MB 4
RC 6	MB 5
RC 7	MB 6
RC 8	MB 7
RC 9	MB 8
RC 10	MB 9
RC 11	MB 10
RC 12	MB 12

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RC 13	MB 13
RC 14	MB 14
RC 15	MB 16
RC 16	MB 15(1)–(4), (11)
RC 17	MB 15(5)–(10)
RC 18	MB 17
RC 19	MB 18
RC 20	MB 19
RC 21	MB 20
RC 22	MB 21
RC 23	MB 22
RC 24	MB 23
RC 25	MB 24
RC 26	MB 25
RC 27	MB 27
RC 28	MB 29
RC 29	MB 30
RC 30	MB 31
RC 31	MB 32
RC 32	MB 33

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RC 33	MB 34
RC 34	MB 35
RC 35	MB 37
RC 36	MB 38
RC 37	MBB 2(1)(a), (d)
RC 38	MBB 2(1)(b), (c), (2)–(4)
RC 39	MBB 3
RC 40	MBB 4
Subpart RD	
RD 1	new
RD 2	NC 15(4), OB 1 **PAYE rules**
RD 3	NC 1(2), OB 2
RD 4	NC 15(1), NC 16
RD 5	OB 1 **salary or wages**
RD 6	NC 4
RD 7	OB 1 **extra pay**
RD 8	NC 21(f)–(h), Income Tax (Withholding Payments) Regulations 1979, regulations 2, 4, 6–8
RD 9	NC 6(1A), (3)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RD 10	NC 6, NC 8(1A), Income Tax (Withholding Payments) Regulations 1979, regulation 3
RD 11	NC 6(1C), (1D), NC 13
RD 12	NC 10
RD 13	NC 11
RD 14	NC 12
RD 15	NC 2(2)–(4)
RD 16	NC 2(1)
RD 17	NC 2(5)
RD 18	NC 7(2)
RD 19	Income Tax (Withholding Payments) Regulations 1979, regulations 10, 11
RD 20	Income Tax (Withholding Payments) Regulations 1979, regulation 12
RD 21	NC 5
RD 22	NC 15(1), (5), (6)
RD 23	NC 18
RD 24	NC 18(1), Income Tax (Withholding Payments) Regulations 1979, regulation 5(3)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RD 25	OB 1 **FBT rules**
RD 26	ND 1(1)–(3)
RD 27	ND 1A(1), ND 1L
RD 28	ND 1A(1)–(1D)
RD 29	ND 1A(2)–(6)
RD 30	ND 1AB
RD 31	ND 1B(1)–(6)
RD 32	ND 1B(7)
RD 33	ND 1C
RD 34	ND 1D, ND 1G
RD 35	ND 1DB
RD 36	ND 1E
RD 37	ND 1H
RD 38	ND 1I
RD 39	ND 1IB, ND 8B
RD 40	ND 1J
RD 41	ND 1K
RD 42	ND 1N
RD 43	ND 1O
RD 44	ND 1P(2)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RD 45	ND 1Q
RD 46	ND 1R
RD 47	ND 3(1), (1A)
RD 48	ND 3(2)
RD 49	ND 3(4)–(7), ND 4, ND 16
RD 50	ND 5(3)–(6)
RD 51	ND 5(1), (2), ND 7, ND 7A
RD 52	ND 5A
RD 53	ND 6
RD 54	GC 15(3), (4), ND 1S
RD 55	ND 1T
RD 56	ND 1U
RD 57	ND 1V
RD 58	ND 1(2)(b), (4), ND 2(2)
RD 59	ND 1(2)(a), ND 10(1), ND 2(1)–(4)
RD 60	ND 1(2)(c), (5), ND 14, ND 15(7), (8)
RD 61	ND 1(2)(c), (4), (5), ND 13
RD 62	ND 2(4), ND 14(2B), ND 15
RD 63	ND 8

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RD 64	NE 1, OB 1 **SSCWT rules**
RD 65	NE 2(2), NE 3, NE 3B, NE 6, OB 1 **employer's superannuation contribution**, **specified superannuation contribution**
RD 66	OB 1 **complying fund rules**
RD 67	NE 2
RD 68	NE 2A(1), (2)
RD 69	NE 2B
RD 70	NE 5
RD 71	NE 6
RD 72	NEA 1
Subpart RE	
RE 1	OB 1 **RWT rules**
RE 2	NF 1(2), (4), (5)
RE 3	NF 2(1A), (1AB)
RE 4	NF 2(3), (4)
RE 5	NF 2(7)
RE 6	NF 2(8)
RE 7	NF 3(1), (2)
RE 8	NF 3(1)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RE 9	NF 3(3)–(5)
RE 10	NF 2(5)
RE 11	NF 2B
RE 12	NF 2(1)(a)
RE 13	NF 2(1)(b)
RE 14	NF 2(1)(c), (2)
RE 15	NF 2(1)(d)
RE 16	NF 2(1)(e), (f)
RE 17	NF 2(1)(g)
RE 18	NF 2(1B)
RE 19	NF 2A(1), (3), NF 2D(1), (3)
RE 20	NF 4(1), (2)
RE 21	NF 4(1)–(5), (7), (8)
RE 22	NF 5
RE 23	NF 8(1)
RE 24	NF 8A(1)
RE 25	NF 8B
RE 26	NF 4(9)
RE 27	NF 9(1), NF 11(1), (2)
RE 28	NF 4(6)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
RE 29	NF 2(7)
RE 30	NF 10
Subpart RF	
RF 1	OB 1 **NRWT rules**
RF 2	NG 1(2)–(4), NG 3, NG 4
RF 3	NG 8(1)
RF 4	NG 8(2), (3)
RF 5	NF 2(6)
RF 6	NG 13
RF 7	NG 2(1)(c)
RF 8	NG 2(1)(a)
RF 9	NG 2(3), (4), OB 1 **fully conduit tax relief credited**
RF 10	NG 2(1)(b)(ii), NG 9
RF 11	NG 14
RF 12	NG 2(1)(b)(i), (ib), (iii)
RF 12B	NG 2(1)(ab)
RF 12C	NG 2(1)(b)(iii)
RF 13	NG 11(1)–(3)
RF 14	NG 2(2)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RF 15	NG 10
Subpart RG	
RG 1	OB 1 **dividend withholding payment rules**
RG 2	NH 1(2)
RG 3	NH 1(1), NH 3(1)
RG 4	NH 2(1)
RG 5	NH 2(2), (3)
RG 6	NH 3(2)–(4)
RG 7	NH 7
Subpart RM	
RM 1	new
RM 2	MD 1(1)
RM 3	NH 4(1)
RM 4	MD 1(2)
RM 5	MD 1(1A)
RM 6	MD 1(2B), NH 3(7)
RM 7	NBA 7
RM 8	MD 1(4)(b), (c), NF 7(1), (2), (5), NG 16(1), (1A)
RM 9	ND 10(4)(a)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RM 10	MD 1(3), (3A), MD 1(4)
RM 11	MB 11
RM 12	MB 36
RM 13	MD 2(1), (1A)
RM 14	MD 2(2)
RM 15	MD 2(3), (4)
RM 16	MD 2(5), (5A)
RM 17	MD 2(6)
RM 18	NH 4(2), (3)
RM 19	NH 4(4)(a)
RM 20	NH 4(4)(b)
RM 21	NH 4(5), (6)
RM 22	MD 2B(1), (1B)
RM 23	MD 2B(2)
RM 24	MD 2B(3)
RM 25	MD 2B(4), (4B)
RM 26	MD 2B(5)
RM 27	MD 2B(6)
RM 28	MD 3(1)
RM 29	MD 3(2)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
RM 30	MD 3(3)
RM 31	MD 3(4)
RM 32	MD 2(7)
RM 33	MD 2A
Subpart RP	
RP 1	MBA 1
RP 2	NBA 1, NBA 8, NBB 7(3)
RP 3	NBB 3
RP 4	NBB 1, NBB 6
RP 5	NBB 5(4), (5)
RP 6	NBA 6
RP 7	NBA 4(2), (3)
RP 8	NBA 4(1B)
RP 9	NBA 4(1)(a)
RP 10	NBA 4(1)(b)(i), (ii)
RP 11	NBA 4(1)(b)(iii)
RP 12	NBA 4(4)
RP 13	NBA 5(1), (2)
RP 14	NBA 5(1)
RP 15	NBA 5(1B)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
RP 16	NBA 5
RP 17	MBA 2
RP 18	MBA 3, MBA 4(3), MBA 5(1)–(4)
RP 19	MBA 6(1)–(3)
RP 20	MBA 6(4)–(9)
RP 21	MBA 7
Subpart RZ	
RZ 1	MZ 8
RZ 2	MZ 9
RZ 3	MZ 10
RZ 4	MZ 11
RZ 5	MZ 12
RZ 6	MD 2(5)(a)(ii), MD 3(4)(a)
RZ 7	IZ 3
RZ 8	IZ 1, IZ 2, IZ 4
RZ 9	IZ 6
RZ 10	IZ 5
PART Y	
Subpart YA	

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
YA 1 **association**	HF 1(9) **association**
YA 1 **business** (b)	OC 1(2)(c), OC 3(b)
YA 1 **charitable purpose**	OB 3A
YA 1 **company** (d), (e)	OC 1(2)(a), OC 3(a)
YA 1 **cost**	ND 1P(1)
YA 1 **CTR company**	MI 16
YA 1 **grey list company**	EX 24
YA 1 **identical goods**	ND 1M
YA 1 **member**	HF 1(9) **member**
YA 1 **minor**	HH 3F(2)
YA 1 **policyholder loss**	II 2
YA 1 **price**	ND 1P(1)
YA 2	HG 12(2), IZ 7, MB 12, ME 9(6), MI 10(5), MI 21(5), MK 8(6), NC 20(1), ND 1W(2), NE 7(2), NF 13, NG 17(2), NH 3(7), OB 6
YA 3	OB 6(2), (3)
Subpart YB	
YB 1	new
YB 2	OD 7(1)(a), (2), (3), OD 8(1)(a), (2), (3)(a)(i), (3A), (4)(a)(i), (6)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
YB 3	OD 8(3)(a)(ii), (3A)
YB 4	OD 8(3)(c), (3A)
YB 5	OD 7(1)(b), (2), OD 8(4)(b)(i)
YB 6	OD 8(4)(b)
YB 7	OD 8(3)(b)
YB 8	OD 8(1)(b), (2)(b), (c)
YB 9	OB 1 **relative**, OD 7(1)(c), OD 8(1)(c), (3)(d), (4)(c)
YB 10	OB 1 **relative**, OD 7(1)(c), OD 8(1)(c), (3)(d), (4)(c)
YB 11	OB 1 **relative**, OD 7(1)(c), OD 8(1)(c), (3)(d), (4)(c)
YB 12	OB 1 **relative**, OD 7(1)(c), OD 8(1)(c), (3)(d), (4)(c)
YB 13	OD 8(1)(g), (3)(g)
YB 14	OD 8(1)(f), (3)(h)
YB 15	OD 8(3)(i)
YB 16	OD 7(1)(d)(i), OD 8(1)(d), (3)(e), (4)(d)
YB 17	OD 7(1)(d)(ii), OD 8(1)(e), (3)(f), (4)(e)
YB 18	OD 8(3)(j)

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
YB 19	OD 8(1)(h)
YB 20	OD 8(1), (3), (4)
YB 21	HH 1(1), OD 9
Subpart YC	
YC 1	OD 1
YC 2	OD 3(1), (2)
YC 3	OD 4(1), (2)
YC 4	OD 3(3)(d), OD 4(3)(d), (4)
YC 5	OD 3(3)(a), OD 4(3)(a)
YC 6	OD 3(3)(c), OD 4(3)(c)
YC 7	OD 5(1)
YC 8	OD 5(2)
YC 9	OD 5(3), (4)
YC 10	OD 5(5)
YC 11	OD 5(6)
YC 12	OD 5(5A)–(5C)
YC 13	OD 5(6A)–(6F)
YC 14	OD 5(7)
YC 15	OD 5(8)
YC 16	OD 5(9)

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
YC 17	OD 5A
YC 18	OD 5AA
YC 19	OD 5B
YC 20	OD 6
Subpart YD	
YD 1	OE 1
YD 2	GC 9(6), OE 2(1), (1B)
YD 3	OE 2(2)–(6)
YD 4	FB 2(2)
YD 5	FB 2(1A)
YD 6	FC 18, FC 19
YD 7	FC 21
YD 8	FC 13, FC 14(1)
YD 9	OE 8
YD 10	OE 7(1), (2)
YD 11	OE 7(3)–(5)
Subpart YE	
YE 1	OF 1
Subpart YF	
YF 1	new

B—*continued*

Provision Income Tax Act 2007	Corresponding provision in Income Tax Act 2004 (unless otherwise stated)
Subpart YZ	
YZ 1	OE 4(1A)
PART Z	
ZA 1	YA 1
ZA 2	YA 2
ZA 3	YA 3
ZA 4	YA 4
ZA 5	YA 5
ZA 6	YA 6
Schedules	
Schedule 1	schedule 1, schedule 14, schedule 2 part B
Schedule 2	schedule 19
Schedule 3	schedule 13
Schedule 4	Income Tax (Withholding Payments) Regulations 1979 , schedule
Schedule 5	GC 16, schedule 2 part A
Schedule 10	schedule 10
Schedule 11	schedule 11B
Schedule 12	schedule 11

B—*continued*

Provision Income Tax Act 2007	**Corresponding provision in Income Tax Act 2004 (unless otherwise stated)**
Schedule 13	schedule 16
Schedule 14	schedule 17
Schedule 17	schedule 8
Schedule 18	schedule 9
Schedule 19	schedule 6B
Schedule 20	schedule 7
Schedule 24	schedule 3
Schedule 25	schedule 4
Schedule 26	schedule 5
Schedule 27	schedule 6
Schedule 31	schedule 12
Schedule 32	KC 5(1)(ae)–(cp)
Schedule 36	schedule 18
Schedule 37	schedule 15
Schedule 48	schedule 20
Schedule 49	schedule 21
Schedule 50	schedule 22
Schedule 51	schedule 22A
Schedule 52	schedule 23

Schedule 52 Part B: amended, on 1 April 2008, by section 593(14) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

B—*continued*

Schedule 52 Part B: amended, on 1 April 2008, by section 593(15) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(16) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(17) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(18) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(19) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(20) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(21)(a) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(21)(b) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(22) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(23) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(24) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(25) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 52 Part B: amended, on 1 April 2008, by section 593(26) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

C
New TAA provisions

New section in TAA 1994	**From section in ITA 2004 (unless otherwise stated)**
TAA 15C	NBA 1, NBB 3
TAA 15D	NBA 2(1)(a)–(c), (2), (3)
TAA 15E	NBA 2(4)
TAA 15F	NBA 2(1)(c)

C—*continued*

New section in TAA 1994	From section in ITA 2004 (unless otherwise stated)
TAA 15G	NBB 2
TAA 15H	NBB 4(1)
TAA 15I	NBB 4(2)–(5)
TAA 15J	NBA 3, NBA 8, NBB 7(1), (2)
TAA 15K	NBA 5(3)
TAA 15L	NBA 5(4)
TAA 15M	NBB 3(2), NBB 5(1), (3)
TAA 15N	MBA 3(1)
TAA 15O	MBA 4(5), (6)
TAA 15P	MBA 4(1), (2), (4)
TAA 15Q	MBA 3(1)(d)
TAA 15R	MBA 3
TAA 15S	MBA 8
TAA 15T	NF 2AA
TAA 24B	NC 8(1), (1AA)
TAA 24C	NC 8(1) proviso
TAA 24D	NC 8(9A)
TAA 24E	NC 8(12)
TAA 24F	NC 14
TAA 24G	NC 12A
TAA 24H	NC 8(7), NC 9

C—*continued*

New section in TAA 1994	From section in ITA 2004 (unless otherwise stated)
TAA 24I	NC 8(2)–(4), (11), NC 8A
TAA 24J	NC 15(1), (2), (2B)
TAA 24K	NF 8(2)–(4), NF 8A(2)–(3)
TAA 24L	NC 7(1)
TAA 24M	Income Tax (Withholding Payments) Regulations 1979, reg 5
TAA 24N	Income Tax (Withholding Payments) Regulations 1979, reg 6A
TAA 24O	Income Tax (Withholding Payments) Regulations 1979, reg 12A
TAA 24P	NC 7(3), NC 8(10), NC 15(3)
TAA 32E	NF 9(1)–(3)
TAA 32F	NF 9(8), (10)
TAA 32G	NF 9(6), (7), (9)–(11)
TAA 32H	NF 9(4), (5)
TAA 32I	NF 9(12)–(14)
TAA 32J	NF 10(1)(a), (d), (3)
TAA 32K	NF 11(1)
TAA 32L	NF 11(2)–(9)
TAA 32M(1)	NG 5

C—*continued*

New section in TAA 1994	From section in ITA 2004 (unless otherwise stated)
TAA 32M(2)	NG 6
TAA 32M(3)–(5)	NG 7
TAA 32N	NH 2(4), NH 3(6)
TAA 46B	ND 2(3), ND 9, ND 10(2)–(5), ND 11, ND 12
TAA 46C	ND 13(5), (6), ND 14(5), (6)
TAA 46D	ND 15(7), (8)
TAA 46E	ND 1(6)
TAA 71B	NH 4(5)(b), (c)
TAA 78B	LC 13(1)
TAA 78C	LC 13(2)
TAA 78D	LB 2(4), LD 3(4), LD 3A(5), LD 8(3), LD 9(4)
TAA 78E	LF 6(4)
TAA 78F	LF 6(6)
TAA 80KA	KD 5(1B)–(1C)
TAA 80KB	KD 5(2)–(2AB)
TAA 80KC	KD 5(3), (3A)
TAA 80KD	KD 5(4), (5)(a)
TAA 80KE	KD 5(11)
TAA 80KF	KD 5(2A), (5)(b), (7)

C—*continued*

New section in TAA 1994	From section in ITA 2004 (unless otherwise stated)
TAA 80KG	KD 5(9)
TAA 80KH	KD 5(10), (12)
TAA 80KI	KD 7(1)
TAA 80KJ	KD 7(3)
TAA 80KK	KD 7(2B), (2C)
TAA 80KL	KD 7(4)
TAA 80KM	KD 7(2), (2A)
TAA 80KN	KD 6(1)
TAA 80KO	KD 6(1A)
TAA 80KP	KD 6(1B)
TAA 80KQ	KD 6(1C)
TAA 80KR	KD 6(1D)
TAA 80KS	KD 6(2), (3)
TAA 80KT	KD 6(4)
TAA 80KU	KD 7(3A), (3B), (3C)
TAA 80KV	KD 4(5)
TAA 80KW	KD 7A
TAA 90AF	GC 22(3), (7), (8)
TAA 90AG	GC 27A(4), (7)–(9)
TAA 92AB	HG 8
TAA 93B	HH 7

C—*continued*

New section in TAA 1994	**From section in ITA 2004 (unless otherwise stated)**
TAA 93C	LC 4(1C)
TAA 104B	ME 20, ME 40, MF 6, MG 12, MI 12, MJ 8, MK 9
TAA 120OE(1)–(3)	MBA 5(5), (6)
TAA 120OE(4)–(5)	MBA 9
TAA 165B	NG 16(5)
TAA 166B	HK 18
TAA 225AA	OC 4
TAA 225B	LC 1A(1), (2)

Taxation (Limited Partnerships) Act 2008

Public Act	2008 No 2
Date of assent	13 March 2008
Commencement	see section 2

1 Title

This Act is the Taxation (Limited Partnerships) Act 2008.

2 Commencement

This Act comes into force on 1 April 2008.

Part 1
Amendments to Income Tax Act 2007

4 New section CB 27B

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

5 New heading and section CB 35 added

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

6 Meaning of asset for sections CU 3 to CU 10

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

7 Amount treated as repayment for purposes of section CU 17: net income

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

8 New heading and section CW 55B added

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

9 New heading and section CX 62 added

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

10 New heading and section DV 20 added

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

11 New section DO 11B inserted

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

12 Meaning of asset for sections DU 1 to DU 7

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

13 Financial arrangements, income, and expenditure relevant to criteria

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

14 Section EX 13 repealed

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

15 Cash basis holder

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

16 Attribution rule: calculation

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

17 New heading and section GB 50 added

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008,

subsection (1) applies for income years starting on and after 1 April 2008.

18 Section HD 20 replaced

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

19 New subpart HG

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

20 Section HR 1 repealed

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

21 New sections HZ 3 and HZ 4

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

22 When unincorporated bodies hold certificates

(1) *Amendment incorporated in the principal Act.*

(2) For a person who is not a limited partner in a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

23 Definitions

(1) This section amends section YA 1.

(2) *Amendment incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendment incorporated in the principal Act.*

(6) *Amendment incorporated in the principal Act.*

(7) *Amendment incorporated in the principal Act.*

(8) *Amendments incorporated in the principal Act.*

(9) *Amendment incorporated in the principal Act.*

(10) *Amendment incorporated in the principal Act.*

(11) *Amendments incorporated in the principal Act.*

(12) *Amendment incorporated in the principal Act.*

(13) *Amendments incorporated in the principal Act.*

(14) *Amendment incorporated in the principal Act.*

(15) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsections (2) to (14) apply for income years starting on and after 1 April 2008.

24 Partnerships: partnership and partner

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsections (1) and (2) apply for income years starting on and after 1 April 2008.

25 Partnerships: partnership and associate of partner

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsections (1) and (2) apply for income years starting on and after 1 April 2008.

26 Classes of income treated as having New Zealand source

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsections (1) and (2) apply for income years starting on and after 1 April 2008.

Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008

Public Act	2008 No 36
Date of assent	29 May 2008
Commencement	see section 2

1 Title

This Act is the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008.

2 Commencement

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) In Part 1, other than sections 3, 4, 9 and 11,—

- (a) the subsections (1) of the sections are treated as coming into force on 1 April 2008:
- (b) the subsections (2) of the sections come into force on 1 April 2009:
- (c) the subsections (3) of the sections come into force on 1 April 2010:
- (d) the subsections (4) of the sections come into force on 1 April 2011.

(3) In Part 1, 11,—

- (a) subsection (1) comes into force on 1 July 2008:
- (b) subsection (2) comes into force on 1 April 2009:
- (c) subsection (3) comes into force on 1 April 2010:
- (d) subsection (4) comes into force on 1 April 2011.

(4) In Part 2, other than sections 12 and 17,—

- (a) the subsections (1) of the sections come into force on 1 October 2008:
- (b) the subsections (2) of the sections come into force on 1 April 2010:
- (c) the subsections (3) of the sections come into force on 1 April 2011.

(5) In Part 3,—

(a) Sections 59 and 60 are treated as coming into force on 19 December 2007:
(b) Sections 24, 25, 26(1), 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 43, 44, 45, 46, 48(2) and (3)(a), 49, 50, 56, and 58are treated as coming into force on 1 April 2008:
(c) Sections 20, 21, 22, 23, 31, 48(4) and (5), 55, and 57 come into force on 1 July 2008:
(d) Sections 39, 40, 41, 42, 47, 51, and 52 come into force on 1 October 2008:
(e) Section 26(2) comes into force on 1 April 2009.

Part 1
Personal tax cuts and Working for Families tax credit increase: 2008–09 start

3 Application

In this Part, other than sections 4 and 9,—
(a) the subsections (1) of the sections apply for the 2008–09 income year and later income years:
(b) the subsections (2) of the sections apply for the 2009–10 income year and later income years:
(c) the subsections (3) of the sections apply for the 2010–11 income year and later income years:
(d) the subsections (4) of the sections apply for the 2011–12 income year and later income years.

Part 3
Annual rates, consequential personal tax cuts amendments, and remedial matters

Amendments to Income Tax Act 2007

24 Heading and section LC 1 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

25 Section LC 2 repealed

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

26 Child's income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 income year and later income years.

(4) Subsection (2) applies for the 2009–10 income year and later income years.

27 Tax credits for absentees

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

28 Adjustment for change in return date

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

29 Adjustment when person is non-resident for part of tax year

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

30 Adjustment when person is non-resident

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 income year and later income years.

32 Tax credits for supplementary dividends

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

33 New sections MF 4B and MF 4C

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year.

34 Meaning of net family scheme income

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

36 Calculation of maximum permitted ratios

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

37 Tax credits for non-resident investors

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 income year and later income years.

38 Payment dates for terminal tax

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

43 Calculation of all-inclusive pay

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 income year and later income years.

44 Resident passive income

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 income year and later income years.

47 New sections RZ 5B and RZ 5C

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for provisional tax instalments payable on or after 1 October 2008.

48 Definitions

(1) This section amends section YA 1.

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (2) and (3)(a) apply for the 2008–09 income year and later income years.

49 Treatment of qualifying company election tax, FBT, FDP penalty tax, imputation penalty tax, and withdrawal tax

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 income year and later income years.

Income Tax (Minimum Family Tax Credit) Order 2008

(SR 2008/384)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 6th day of October 2008

Present:
His Excellency the Governor-General in Council

Pursuant to section MF 7(1)(d) of the Income Tax Act 2007, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

Order

1 Title

This order is the Income Tax (Minimum Family Tax Credit) Order 2008.

2 Commencement

This order comes into force on 1 April 2009.

3 Increase of prescribed amount in formula for minimum family tax credit

(1) *Amendment incorporated in the principal Act.*

(2) Subclause (1) applies in respect of the 2009–10 tax year and later tax years.

Rebecca Kitteridge,
Clerk of the Executive Council.

Date of notification in *Gazette*: 9 October 2008.

Taxation (Urgent Measures and Annual Rates) Act 2008

Public Act	2008 No 105
Date of assent	15 December 2008
Commencement	see section 2

1 Title

This Act is the Taxation (Urgent Measures and Annual Rates) Act 2008.

2 Commencement

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) In Part 1, other than sections 3, 4, and 15,—

(a) the subsections (1) of the sections come into force on 1 April 2009:

(b) the subsections (2) of the sections come into force on 1 April 2010:

(c) the subsections (3) of the sections come into force on 1 April 2011.

(3) In Part 2,—

(a) sections 24, 27, and 28 are treated as coming into force on 19 December 2007:

(b) section 19(1)(a) and (b) is treated as coming into force on 1 April 2008:

(c) sections 19(1)(c), 21, 25, and 26 come into force on 1 April 2009:

(d) sections 19(1)(d), 20(2) to (7), and 22 come into force on 1 October 2009.

(4) In Part 3,—

(a) sections 33(1) and 40 are treated as coming into force on 1 April 2008:

(b) section 41 is treated as coming into force on 29 May 2008:

(c) sections 34 and 35 are treated as coming into force on 1 October 2008:

(d) sections 29, 31, 33(2), 36(2), 37, and 39 come into force on 1 April 2009:

(e) section 32 comes into force on 1 April 2010.

(5) In Part 4, sections 43, 44, 45, 46, 48, 50, 52, 53, 54, 55, 56(2) and (3), 57, and 58 come into force on 1 April 2009.

Part 2
Research and development tax credits repeal

Amendments to Income Tax Act 2007

19 Subpart LH—Tax credits for expenditure on research and development

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1)(a) and (b) applies for the 2008–09 income year and later income years.

(3) Subsection (1)(c) applies for the 2009–10 income year and later income years.

21 Some definitions

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

Part 3
Annual rates, independent earner tax credit, and consequential personal tax cuts amendments

Annual rates of income tax for 2009–10 tax year

29 Rates of income tax for 2009–10 tax year

(1) Income tax imposed by section BB 1 of the Income Tax Act 2007 must, for the 2009–10 tax year, be paid at the basic rates specified in schedule 1 of that Act.

(2) Section 61 of the Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 is repealed.

Taxation (Business Tax Measures) Act 2009

Public Act	2009 No 5
Date of assent	30 March 2009
Commencement	see section 2

1 Title

This Act is the Taxation (Business Tax Measures) Act 2009.

2 Commencement

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) In Part 1, the sections, other than sections 3 and 24, come into force on 1 April 2009.

(3) In Part 2,—

(a) section 32 is treated as coming into force on 19 December 2007:

(b) sections 29(1), 30(1), and 31(1) come into force on 1 April 2009:

(c) sections 29(2), 30(2), and 31(2) come into force on 1 April 2010.

Part 1
Business tax measures

Amendments to Income Tax Act 2007

4 New heading and new section DB 62

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

5 Valuing closing stock under $5,000

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2009–10 income year and later income years.

6 When use of spreading method not required

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

7 Straight-line method

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

8 Consistency of use of straight-line method and market valuation method

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2009–10 income year and later income years.

9 Section EW 54 replaced

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

10 Section EW 56 repealed

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

11 Thresholds

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) *Amendment incorporated in the principal Act.*

(4) *Amendment incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2009–10 income year and later income years.

12 Financial arrangements, income, and expenditure relevant to criteria

(1) *Amendment incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (4) apply for the 2009–10 income year and later income years.

13 Section EW 59 replaced

(1) *Amendment incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 income year and later income years.

14 Trustee of deceased's estate

(1) *Amendment incorporated in the principal Act.*

(2) *Amendment incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2009–10 income year and later income years.

Part 2
Minor remedial matters

Amendments to Income Tax Act 2007

29 Employer's liability for attributed benefits

(1) *Amendment incorporated in the principal Act.*

(2) In section RD 50(5), "61.29%" is replaced by "58.73%".

(3) Subsection (1) applies for the 2009–10 income year and later income years.

(4) Subsection (2) applies for the 2010–11 income year and later income years.

30 Calculation for certain employees when information lacking

(1) *Amendment incorporated in the principal Act.*

(2) In section RD 52(3)(b), "61.29%" is replaced by "58.73%".

(3) Subsection (1) applies for the 2009–10 income year and later income years.

(4) Subsection (2) applies for the 2010–11 income year and later income years.

31 Pooling non-attributed benefits

(1) *Amendment incorporated in the principal Act.*

(2) In section RD 53(4)(a), "61%" is replaced by "59%".

(3) Subsection (1) applies for the 2009–10 income year and later income years.

(4) Subsection (2) applies for the 2010–11 income year and later income years.

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009

Public Act 2009 No 34
Date of assent 6 October 2009
Commencement see section 2

1 Title

This Act is the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009.

2 Commencement

(1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.

(2) Sections 74, 108, 319, 320, 322, 323, 502, 510, 546, 549, 557(26), (45), (53), (132), (145), and (147), 605(1), and (3), 606, 610, 682, 862, and 863 are treated as coming into force 3 months after this Act receives the Royal assent.

(3) Section 704(5) is treated as coming into force—

(a) in relation to the Parliamentary Service, on 1 October 1986:

(b) in relation to the Office of the Clerk of the House of Representatives, on 1 August 1988.

(4) Section 855 is treated as coming into force on 1 April 1993.

(5) Section 850 is treated as coming into force on 1 April 1995.

(6) Sections 851 and 860 are treated as coming into force on 1 April 1997.

(7) Sections 847, 848, 849, 852, 853, 854, and 856 are treated as coming into force on 1 October 2001.

(8) Sections 628(1), 646(1) and (4), 647(1), (3), and (6), 712, 735, 736, 738, 741, 742, 743, 746, 747, 748, 749, 750, 751, 754, 759, 760, 761, 764(2), 767, 769, 770, 771, 772, 773, 789(2) and (4), 832, 844(2), (9), (15), (23), (25), (31), and (33), 845, 858(1) and (3), and 864 are treated as coming into force on 1 April 2005.

(9) Section 647(2) is treated as coming into force on 1 October 2005.

(10) Sections 744, 768, and 844(3), (13), (14), (22), and (32) are treated as coming into force on 1 April 2006.

(11) Sections 646(2) and 647(4) are treated as coming into force on 3 April 2006.

(12) Sections 706, 739, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789(1) and (3), 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 819(2), 841, and 844(8), (11), (18), (21), and (35) are treated as coming into force on 1 April 2007.

(13) Section 684 is treated as coming into force on 17 May 2007.

(14) Sections 720, 731, 733(2) and (4), and 844(6) and (17) are treated as coming into force on 1 July 2007.

(15) Sections 612, 625, 675, 677, 756, 808, 809, 811, 812, 813, 814, 815, 816, 817, 818, 819(1), 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 833, 834, 835, 836, 837, 838, 839, 840, 842, 843, and 844(26) are treated as coming into force on 1 October 2007.

(16) Section 764(1) and (3) is treated as coming into force on 1 December 2007.

(17) Sections 638(2), 757, 830, and 831 are treated as coming into force on 19 December 2007.

(18) Section 758 is treated as coming into force on 1 January 2008.

(19) Section 737, 740, 755, 762, 790, 791, 792, 803, 804, 805, 806, 807, 810, and 844(4), (5), (7), (10), (12), (16), and (27) to (30) are treated as coming into force on 25 February 2008.

(20) Section 763 is treated as coming into force on 4 March 2008.

(21) Sections 5(1), (2), (4), (5), and (7), 11, 12, 15(1)(b), 16, 18, 19(1), (2), (3) and (5), 20(3), 24, 25, 26, 32, 34, 35, 36, 37, 38, 41(1) and (2), 42, 43, 44, 45, 47, 48, 52, 53, 54, 56(1) and (4), 60, 62, 68, 72, 73(3), 76, 81, 82, 83, 84, 85, 93, 96(1) and (3), 97, 98(1), (3), and (4), 99, 100, 101, 102(1), (3), (5), and (7), 103(1), (3), and (5), 104(1) and (3), 105(1), (3), and (5), 106(1), (3), and (5), 107, 109, 111, 117, 118, 119, 120, 121, 127, 128, 129, 130, 131, 133, 134, 135, 136(1) and (3), 137(1), (2), (3), and (5), 138, 140, 141, 142, 143, 144, 145, 146, 147, 150, 151, 152(1), 161(7) and (15), 166, 167, 168, 169, 170, 171, 172, 173(1) to (3), (5) to (7), and (11), 174,

176(1), 177(1), (2) to (4), and (6) to (10), 178(1) to (5), and (7) to (11), 179, 180(1), 181(1), (2), and (5), 182, 183, 188, 196, 197, 198, 201, 202(1) and (3), 203, 204, 205(1), (4), and (5), 209(2), (3), and (5), 211(3) and (6), 215(1) and (3), 218(1), (4), (5), (7), and (9), 227, 230(4), 232, 233, 234, 235, 236, 238(1) and (4), 239(1), 241, 242(1), 251, 253, 254, 255, 256, 257, 258, 261, 262(1), 263, 264(2) and (4), 265, 266, 268, 269, 270, 271, 272, 273, 274, 275, 277, 280, 281, 282(1), (3), (4), and (5), 283, 284(1), (2), (4), and (6), 285, 286, 287, 288, 289, 290, 291, 293, 294, 296(2), (3), and (8), 297(2) and (5), 298(1) and (4), 299, 300, 302(2) and (4), 304, 306, 308(1), 309, 311, 312, 314, 317, 318, 321, 324(1), (2), (4), and (6), 329, 330, 331, 332, 333, 334, 335, 336(1), (3), (5), and (6), 337, 338, 339, 340(1), (3), (4), and (7), 341, 344, 345, 349, 350, 352, 353, 354, 355, 356, 357, 358, 359, 360(1) and (3), 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 376, 378(1), (2), (4), (5), and (7), 379, 381(2) and (4), 383, 387, 388(2) and (5), 389(2) and (3), 390, 391, 393, 394, 397, 398, 399(1), (4), and (8), 400(2) and (6), 409, 420(1) and (3), 421(1) and (3), 422, 427, 431(1) and (3), 440, 441, 442, 443, 444, 446, 447(2) and (5), 452(3) and (6), 453, 455, 457, 460(2), (4), and (7), 466, 470, 486, 489, 490(2), (3) and (5), 491(1), (3), and (5), 492(1) and (5), 493, 494, 495, 496, 497, 500, 503(2), (3), and (4), 504, 505, 506, 507, 509, 511, 512, 513, 514(1) to (4), (7), and (9) to (11), 515, 516, 517(1) and (3) to (5), 518(1) and (3) to (5), 519(1) to (6) and (8) to (13), 520, 521, 522, 523, 524, 525, 526, 529, 530, 531(1), (2), and (4) to (7), 532, 533, 534, 536, 537, 538, 539, 541, 542, 543, 544, 545, 547, 548, 554, 555, 556, 557(5), (7), (10), (25), (28), (29), (36), (37), (39), (42), (49), (50), (51), (52), (54), (55), (57), (58), (59), (62), (63), (64), (68), (69), (76), (84), (85), (88), (93), (95), (98), (99), (109), (114), (118), (119), (130), (134), (137), (138), (139), (140), (141), (142), (143), (144), (146), (149), (156), (157), (164), (170), (171), (175), (176), (184), (187), (191), (193), (195), (197), (198), (199), (200), (202), (204), (210), (214), (217), (219), (222), (224), (225), and (228), 559, 560, 561, 562, 564, 567, 568, 569, 570, 571(1) and (3), 572, 573, 574, 575, 576, 579(3) to (8), 580, 581, 582, 583, 585, 590, 591, 592, 593, 596(3), (4), (7), and (8), 597(4), 598(1) and (3), 599(1),

609, 614, 615, 616(2), 619(2), (3), (6), and (7), 620, 624, 627, 628(2) to (4), 630(1), 631, 632, 633, 636, 637, 640, 642, 643, 644, 646(3) and (5), 647(5) and (7), 648, 649, 650, 651(1) and (3), 654, 659, 660, 661, 664, 665, 669, 671, 672, 673, 680, 683, 690, 691, 693, 701, 702, 715(1) to (3), 717, 719, 724, 725, 726, 727, 729, 730, 733(3) and (5), 765, 766, 774, 775, 776, 777, 778, 844(19), (20), (24), and (34), 858(2) and (4), 859, and 865 are treated as coming into force on 1 April 2008.

(22) Sections 88, 315, 316, 360(2), 503(1), 557(148), 732, 867, and 868 are treated as coming into force on 1 July 2008.

(23) Sections 40, 58, 61, 243, 244, 745, 752, and 753 are treated as coming into force on 26 September 2008.

(24) Section 137(4) and (6) are treated as coming into force on 1 October 2008.

(25) Sections 10, 80, 112(2) and (3), 115, 116, 132(2) and (4), 173(8), (13), and (15), 557(32), (48), (60), (82), (105), (127), (131), (159), (160), (181), (186), and (206), and 704(2) and (4) are treated as coming into force on 1 January 2009.

(26) Sections 9, 27, 50, 64, 92, 114, 136(2), (4), (5), and (6), 139, 173(9), 176(2) and (3), 181(4) and (8), 184, 276, 278, 279, 282(2), 284(3), (5), (7), and (8), 301, 347(1), 399(2) and (6), 445(1) and (4), 462, 463, 464, 465, 492(2), 508, 514(5), (6), and (8), 517(2), 518(2), 519(7), 550, 557(92), (158), (165), (166), (188), and (209), 571(2), (4), and (5), 587, 607, 608, 619(1), (4), and (5), 623, 715(4), and 721 are treated as coming into force on 1 April 2009.

(27) Sections 5(3), (6), and (8), 6, 14, 17(2), (3) and (5), 20(1), (2), and (4), 22, 23, 29, 30, 39, 41(3) and (6), 69, 70, 71, 79, 90, 91, 110, 152(2) and (3), 153, 154, 155, 156, 160, 161(1) to (6), (9) to (14), (16), and (17), 162, 163, 164, 165, 175, 180(2) to (4), 195, 202(2) and (4), 206, 207, 208, 209(1) and (4), 210, 211(1), (2), (4), (5), and (7), 212, 213, 214, 215(2), (4), and (5), 216, 217, 218(3) and (10), 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230(1) to (3), and (5) to (7), 231, 237, 238(2), (3), and (5), 240, 246, 247, 248, 249, 250, 252, 259, 260, 302(1) and (3), 303, 305, 340(2), (5), and (6), 342, 343, 346, 377, 385, 395, 399(3) and (7), 400(3) and (7), 401(2) and (5), 403, 404, 405, 406, 407, 408, 412, 413, 414, 415, 416,

417, 419, 421(2) and (4), 423, 424, 425, 426, 428, 429, 430, 431(2) and (4), 432, 433, 434, 435, 436, 437, 448, 456, 459(1) and (3), 460(3) and (8), 461(1) and (3), 468, 469(1) and (3), 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 485, 488, 490(1) and (4), 491(2), (4) and (6), 492(3), (4), and (6), 527, 528, 540, 557(8), (9), (11), (14), (16), (22), (23), (30), (34), (38), (40), (41), (43), (61), (70), (71), (74), (75), (77), (78), (79), (80), (89), (94), (96), (104), (117), (123), (128), (129), (182), (183), (185), (203), (208), (211), (212), (213), (215), (216), and (229), 558, 577(2), 584, 586, 596(5) and (9), 597(1) to (3), (5) and (6), 605(2) and (4), 617, 634, 635, 651(2) and (5), 652, 655, 656, 657, 658, 666, 668, 674, 676, 678, 686, 687, 688, 695, 697, and 700 are treated as coming into force on 30 June 2009.

(28) Sections 46, 56(2), (3), and (5), 59, 86, 87, and 89 come into force on 1 October 2009.

(29) Sections 95, 123, 124, 125, 126, 557(108), and (110) come into force on 1 January 2010.

(30) Sections 4, 7, 8, 13, 15(1)(a) and (2), 17(1) and (4), 19(4), (6), and (7), 21, 28, 41(4), (5), and (7), 51, 63, 65, 66, 67, 73(1), (2), and (4), 75, 77, 78, 96(2), (4), and (5), 98(2), (5), and (6), 102(2), (4), (6), and (8), 103(2), (4), and (6), 104(2) and (4), 105(2), (4), and (6), 106(2), (4), and (6), 112(1), 113, 122, 149, 157, 158, 159, 161(8) and (18), 173(4), (10), (12), and (14), 177(5), (11), and (12), 178(6), (12), and (13), 181(3), (6), and (7), 191, 192, 218(2), (6), (8), and (11), 239(2) and (3), 242(2) to (4), 245, 262(2) and (3), 264(1) and (3), 267, 292, 295, 296(4), (6), and (9), 298(2), (3), and (5), 308(2) and (3), 313, 324(3), (5), and (7), 328, 336(2), (4), and (7), 347(2), 348, 351, 378(3), (6), and (8), 384, 401(1), (3), and (4), 438, 498, 531(3) and (8), 535, 557(2), (3), (4), (13), (15), (17), (18), (19), (21), (24), (31), (44), (66), (73), (81), (83), (91), (97), (100), (101), (102), (103), (106), (107), (111), (115), (116), (121), (126), (133), (136), (150), (154), (155), (167), (177), (179), (180), (192), (196), (220), (221), (223), and (227), 563, 565, 566, 579(1) and (2), 588, 594, 599(2), 611, 613, 618, 621, 622, 626, 628(5) and (6), 645, 651(4) and (6), 679, 681, 710(3), 713, and 861 come into force on 1 April 2010.

(31) Sections 200 and 487 come into force on 30 June 2010.

(32) Sections 33, 49, 55, 94, 132(1), (3), (5), and (6), 185, 186, 187, 189, 190, 193, 194, 199, 296(1), (5), and (7), 297(1), (3), and (4), 307, 310, 325, 326, 327, 372, 373, 374, 375, 380, 381(1), (3), and (5), 382, 386, 388(1), (3), and (4), 392, 396, 399(5) and (9), 400(1), (4), and (5), 402, 410, 411, 418, 420(2) and (4), 439, 445(2), (3), and (5), 447(1), (3), and (4), 449, 450, 451, 452(1), (2), (4), and (5), 454, 458, 459(2) and (4), 460(1), (5), and (6), 461(2) and (4), 467, 469(2) and (4), 483, 484, 557(6), (12), (20), (27), (33), (35), (46), (56), (65), (67), (72), (87), (90), (112), (113), (120), (122), (124), (151), (152), (153), (161), (162), (163), (168), (169), (172), (178), (189), (190), (194), (201), (205), (207), (218), and (226), 577(1) and (3), 629, and 663 come into force on 1 July 2010.

Part 1
Amendments to Income Tax Act 2007

5 Withholding liabilities

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) Subsections (1) and (2) apply for the 2008–09 and later income years.

(8) Subsection (3) applies for all income years beginning on or after 1 July 2009.

6 Other obligations

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

9 Section CB 27B repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

11 New section CC 8B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

12 What is a transfer of value?

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

14 Section CD 21 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

16 Treasury stock acquisitions

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

17 Property made available intra-group

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2010–11 and later income years.

(5) Subsection (2) applies for all income years beginning on or after 1 July 2009.

20 Available subscribed capital (ASC) amount

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for all income years beginning on or after 1 July 2009.

22 Heading and sections CD 45 to CD 52 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

23 Prevention of double taxation of share cancellation dividends

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

24 Amounts derived in connection with employment

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2008–09 and later income years.

27 New subpart CO inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

29 When attributed CFC income arises

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) to (4) apply for all income years beginning on or after 1 July 2009.

30 When FIF income arises

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

33 Sections CR 1 and CR 2 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

34 New section CR 4 added

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) for an insurer who uses IFRS 4,—

(i) for the 2009–10 and later income years, unless subparagraph (ii) applies:

(ii) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year:

(b) for a life insurer,—

(i) on and after 1 July 2010, unless subparagraph (ii) applies:

(ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

35 Withdrawals

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

36 Exclusions of withdrawals of various kinds

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

37 Exclusion of withdrawal on partial retirement

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

38 Exclusion of withdrawal when member ends employment

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

39 Section CV 10 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

41 Dividend derived by company from overseas

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (3) applies for all income years beginning on or after 1 July 2009.

(7) Subsection (4) applies for the 2010–11 and later income years.

44 Expenditure on account, and reimbursement, of employees

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) does not apply in relation to a tax position taken by a person—

(a) in the period from 1 April 2008 to the date on which this Act receives the Royal assent; and

(b) in relation to a deduction for an amount of depreciation loss; and

(c) relying on section CW 17 in the absence of the amendment made by subsection (1).

46 Section CW 37 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for an amount derived by a company as a large budget screen production grant if—

(a) the final application for the large budget screen production grant is made on or after 1 October 2009; and

(b) the company does not incur before 1 July 2008 an amount of $3,000,000 or more in expenditure on the project to which the large budget screen production grant relates.

49 New section CW 59C inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

50 New section CW 62B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

52 Contributions to superannuation schemes

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

54 Section CX 28 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

55 Section CX 39 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

56 Government grants to businesses

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2008–09 and later income years.

(5) Subsection (2) applies for an amount derived by a company as a large budget screen production grant if—

(a) the final application for the large budget screen production grant is made on or after 1 October 2009; and

(b) the company does not incur before 1 July 2008 an amount of $3,000,000 or more in expenditure on the project to which the large budget screen production grant relates.

60 New heading and section CX 48D inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

63 Section CX 55 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) for a portfolio investment entity, including a life fund PIE, and the New Zealand Superannuation Fund, for the 2010–11 and later income years:

(b) for a life insurer, other than in relation to a life fund PIE,—

(i) on and after 1 July 2010, unless subparagraph (ii) applies:

(ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

Section 63(2)(b)(i): amended (with effect on 7 October 2009), on 7 December 2009, by section 166 of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

68 Determining tax liabilities

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

69 Interest: not capital expenditure

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

70 Interest: most companies need no nexus with income

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

71 Interest: money borrowed to acquire shares in group companies

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

76 Portfolio investment entities: zero-rated portfolio investors and allocated losses

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

79 Expenditure incurred in deriving exempt dividend

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

81 New section DB 60B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for deductions accrued on or after 1 January 2008.

82 Contributions to employees' superannuation schemes

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

83 Criteria for approval of share purchase schemes: before period of restriction ends

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

87 Government grants to businesses

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for an amount derived by a company as a large budget screen production grant if—

(a) the final application for the large budget screen production grant is made on or after 1 October 2009; and

(b) the company does not incur before 1 July 2008 an amount of $3,000,000 or more in expenditure on the

project to which the large budget screen production grant relates.

90 When attributed CFC loss arises

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (2) and (3) apply for all income years beginning on or after 1 July 2009.

91 When FIF loss arises

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

92 Section DO 11B repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

94 Sections DR 1 to DR 3 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

97 New section DT 1A inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 4 March 2008.

99 Petroleum development expenditure

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 1 April 2008.

100 Disposal of petroleum mining asset to associate

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for expenditure incurred on or after 1 April 2008.

101 Amount written off by holding company

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (2) applies for the 2008–09 and later income years.

102 Transfer of expenditure to master fund

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) Subsections (1) and (3) apply for the 2008–09 and 2009–10 income years.

(8) Subsections (2) and (4) apply for the 2010–11 and later income years.

103 Carry forward of expenditure

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and 2009–10 income years.

(6) Subsection (2) applies for the 2010–11 and later income years.

104 New section DV 4B inserted and replaced

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and 2009–10 income years.

(4) Subsection (2) applies for the 2010–11 and later income years.

105 Investment funds: transfer of expenditure to master funds

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and 2009–10 income years.

(6) Subsection (2) applies for the 2010–11 and later income years.

106 Formula for calculating maximum deduction

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and 2009–10 income years.

(6) Subsection (2) applies for the 2010–11 and later income years.

107 Carry forward of expenditure

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

109 New section DW 4 added

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) for an insurer who uses IFRS 4,—

(i) for the 2009–10 and later income years, unless subparagraph (ii) applies:

(ii) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year:

(b) for a life insurer,—

(i) on and after 1 July 2010, unless subparagraph (ii) applies:

(ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

110 Section DX 2 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

114 New heading and section EC 26B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

117 Pool method: calculating amount of depreciation

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

120 Meaning of adjusted tax value

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

121 Employer's superannuation contribution tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

127 Section EJ 12 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 1 April 2008.

128 Relinquishing petroleum mining permit

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 1 April 2008.

129 New sections EJ 13B and EJ 13C inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 1 April 2008.

130 Disposal of petroleum mining asset

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 1 April 2008.

131 Sections EJ 19 and EJ 20 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for expenditure incurred on or after 1 April 2008.

132 What is an excepted financial arrangement?

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) and (3) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies; or

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for

the tax year corresponding to the first relevant income year.

135 IFRS financial reporting method

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (2) does not apply for a taxpayer and an income year if the taxpayer has,—

(a) before 30 June 2009, filed a return of income for the income year; and

(b) taken a tax position in the return which ignores subsection (2).

136 Determination alternatives

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (2) and (4) apply for the 2009–10 and later income years.

137 Expected value method

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (4) applies for the 2009–10 and later income years.

139 Mandatory use of some determinations

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

152 Associates and 10% threshold

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (2) applies for all income years beginning on or after 1 July 2009.

153 New section EX 18A inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

154 Formula for calculating attributed CFC income or loss

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

155 Taxable distribution from non-complying trust

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for all income years beginning on or after 1 July 2009.

156 New heading and sections EX 20B to EX 20E inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

161 Branch equivalent income or loss: calculation rules

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) *Amendments incorporated in the principal Act.*

(9) *Amendments incorporated in the principal Act.*

(10) *Amendments incorporated in the principal Act.*

(11) *Amendments incorporated in the principal Act.*

(12) *Amendments incorporated in the principal Act.*

(13) *Amendments incorporated in the principal Act.*

(14) *Amendments incorporated in the principal Act.*

(15) *Amendments incorporated in the principal Act.*

(16) *Amendments incorporated in the principal Act.*

(17) Subsections (1) to (6) and (9) to (14) apply for all income years beginning on or after 1 July 2009.

(18) Subsection (8) applies for the 2010–11 and later income years.

162 New heading and sections EX 21B to EX 21E inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

163 Heading and section EX 22 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

164 Section EX 23 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

165 Change of CFC's balance date

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

169 Exemption for Australian unit trusts with adequate turnover or distributions

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

173 Limits on choice of calculation methods

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) *Amendments incorporated in the principal Act.*

(9) *Amendments incorporated in the principal Act.*

(10) *Amendments incorporated in the principal Act.*

(11) *Amendments incorporated in the principal Act.*

(12) *Amendments incorporated in the principal Act.*

(13) *Amendments incorporated in the principal Act.*

(14) Subsections (4) and (10) apply for the 2010–11 and later income years.

(15) Subsection (8) applies for all income years beginning on or after 1 July 2009.

175 Branch equivalent method

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

176 Comparative value method

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (2) applies for the 2009–10 and later income years.

180 Additional FIF income or loss if CFC owns FIF

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (2) and (3) apply for all income years beginning on or after 1 July 2009.

181 Codes: comparative value method, deemed rate of return method, fair dividend rate method, and cost method

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Section EX 59(1C)(b) is replaced by the following:

"(b) the FIF is a foreign PIE equivalent."

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) In section EX 59, in the list of defined terms,—

(a) "foreign investment vehicle" is omitted:

(b) "foreign PIE equivalent" is inserted.

(7) Subsection (3) applies for the 2010–11 and later income years.

(8) Subsection (4) applies for the 2009–10 and later income years.

183 Changes in application of FIF exemptions

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

184 New section EX 66B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

185 Sections EY 1 to EY 5 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for

the tax year corresponding to the first relevant income year.

186 Section EY 6 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

187 Meaning of claim

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

188 Superannuation schemes providing life insurance

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

189 Meaning of life reinsurance

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

190 Sections EY 15 to EY 47 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

193 Non-resident life insurers with life insurance policies in New Zealand

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

194 Deductions for disposal of property: 1982–83 and 1989–90 income years

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (4) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new

life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

195 Section EZ 31 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

197 Income and expenditure where financial arrangement redeemed or disposed of

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

199 New headings and sections EZ 53 to EZ 62 added

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

202 New section FA 2B inserted

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies if a debt security is stapled to a share on or after 25 February 2008.

(4) Subsection (2) applies for all income years beginning on or after 1 July 2009.

203 Financial arrangements rules

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

205 Property transferred to charities or to close relatives and others

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and later income years.

206 What this subpart does

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

207 When this subpart applies

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

208 Section FE 3 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

209 Some definitions

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(5) Subsection (2) applies for the 2008–09 and later income years.

210 Thresholds for application of interest apportionment rules

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

211 Apportionment of interest by excess debt entity

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (3) applies for the 2008–09 and later income years.

(7) Subsections (1), (2), and (4) apply for all income years beginning on or after 1 July 2009.

212 Calculation of debt percentages

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) to (4) apply for all income years beginning on or after 1 July 2009.

213 Financial arrangements entered into with persons outside group

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (3) applies for all income years beginning on or after 1 July 2009.

214 Consolidation of debts and assets

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

215 Total group debt

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (2) applies for all income years beginning on or after 1 July 2009.

216 Total group assets

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

217 Measurement of debts and assets of worldwide group

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) to (4) apply for all income years beginning on or after 1 July 2009.

218 Banking group's New Zealand net equity

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) *Amendments incorporated in the principal Act.*

(9) *Amendments incorporated in the principal Act.*

(10) Subsection (3) applies for all income years beginning on or after 1 July 2009.

(11) Subsections (2), (6), and (8) apply for the 2010–11 and later income years.

219 New Zealand group for excess debt entity that is a company

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

220 Identifying New Zealand parent

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) *Amendments incorporated in the principal Act.*

(9) *Amendments incorporated in the principal Act.*

(10) *Amendments incorporated in the principal Act.*

(11) Subsections (1) to (9) apply for all income years beginning on or after 1 July 2009.

221 Section FE 28 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

222 Section FE 29 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

223 Ownership interests in companies outside New Zealand group

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

224 Worldwide group for corporate excess debt entity

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

225 New sections FE 31B and FE 31C inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

226 Section FE 32 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

227 Identifying members of New Zealand banking group

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (4) apply for the 2008–09 and later income years.

228 Subpart FF repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

229 Consolidation rules

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

230 Some general rules for treatment of consolidated groups

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) Subsections (1) to (3) and (5) apply for all income years beginning on or after 1 July 2009.

231 Heading and sections FM 24 to FM 26 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

232 Eligibility rules

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

234 Trans-Tasman imputation groups and resident imputation subgroups

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

235 Amortising property

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

237 New sections GB 15B and GB 15C inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

238 Attribution rule for income from personal services

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2008–09 and later income years.

(5) Subsection (2) applies for all income years beginning on or after 1 July 2009.

240 Section GB 39 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

246 Insufficient amount receivable by person

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

247 Compensating arrangement: person receiving more than arm's length amount

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

248 Requests for matching treatment

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

249 Section GC 12 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

250 New section GZ 2 inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

251 Shareholding requirements

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

252 New section HA 8B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

253 Limit on foreign non-dividend income

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

254 When requirements no longer met

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

256 Fully imputed distributions

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

257 Section HA 16 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

259 Calculating qualifying company election tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

260 Corpus of trust

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

261 Trustee income

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

263 Distributions from community trusts

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

264 Who is a settlor?

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies, for the purposes of—

(a) provisions other than the land provisions, for the 2010–11 and later income years:

(b) the land provisions other than section CB 11, for land acquired on or after the date on which this Act receives the Royal assent:

(c) section CB 11, for land on which improvements are begun on or after the date on which this Act receives the Royal assent.

(4) Subsection (2) applies for the 2008–09 and later income years.

265 Liability of trustee as agent

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

266 Beneficiary income of minors

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

269 General provisions relating to disposals

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsections (1) and (2) apply for income years starting on and after 1 April 2008.

270 Section HG 4 replaced

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

271 Disposal of partner's interests

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsections (1) and (2) apply for income years starting on and after 1 April 2008.

272 Disposal of trading stock

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008,

subsection (1) applies for income years starting on and after 1 April 2008.

273 Disposal of depreciable property

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

274 Disposal of financial arrangements and certain excepted financial arrangements

(1) *Amendments incorporated in the principal Act.*

(2) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (1) applies for income years starting on and after 1 April 2008.

275 Disposal of short-term agreements for the sale and purchase of property or services

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) For a person who is not a limited partner of a limited partnership registered under the Limited Partnerships Act 2008, subsection (2) applies for income years starting on and after 1 April 2008.

276 Section HG 10 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2009–10 and later income years.

282 Investor membership requirement

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (2) applies for the 2009–10 and later income years.

284 Investor interest size requirement

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) Subsections (3), (5), and (7) apply for the 2009–10 and later income years.

288 Treatment of income from interest when entitlement conditional or lacking

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

290 Credits received by portfolio tax rate entity or portfolio investor proxy

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (3) apply for the 2008–09 and later income years.

293 Transitional residents

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) to (5) apply for the 2008–09 and later income years.

294 New heading and sections HR 9 and HR 10 added

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

296 Restrictions relating to ring-fenced tax losses

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(8) Subsections (2) and (3) apply for the 2008–09 and later income years.

(9) Subsection (4) applies for the 2010–11 and later income years.

297 Restrictions relating to schedular income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (3) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(5) Subsection (2) applies for the 2008–09 and later income years.

298 Common ownership: group of companies

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2008–09 and 2009–10 income years.

(5) Subsection (2) applies for the 2010–11 and later income years.

300 Pre-consolidation losses: use by group companies

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

301 When this subpart applies

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

302 Ring-fencing cap on attributed CFC net losses

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(4) Subsection (2) applies for the 2008–09 and later income years.

303 New section IQ 2B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

304 Ring-fencing cap on FIF net losses

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

305 Group companies using attributed CFC net losses

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

306 Group companies using FIF net losses

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

307 Subpart IT replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

310 New section LA 8B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

311 Use of tax credits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

314 Tax credits for families

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) and (2) apply for the 2008–09 and later income years.

315 Tax credits related to personal service rehabilitation payments: providers

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

316 Tax credits related to personal service rehabilitation payments: payers

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

317 Tax credits for transitional circumstances

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

324 Tax credits for imputation credits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (1) applies for the 2008–09 and later income years.

(7) Subsection (3) applies for the 2010–11 and later income years.

325 Use of remaining credits by companies and trustees

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) to (4) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new

life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

326 New section LE 2B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

327 Use of remaining credits by others

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

330 Who this subpart applies to

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) to (4) apply for the 2008–09 and later income years.

331 Tax credits relating to expenditure on research and development

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

332 Requirements

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

333 Adjustments to eligible expenditure

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

334 New section LH 14B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

335 What this subpart does

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

336 Tax credits for foreign income tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) and (3) apply for the 2008–09 and later income years.

(7) Subsection (2) applies for the 2010–11 and later income years.

338 Calculation of New Zealand tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2008–09 and later income years.

339 Section LJ 7 replaced by new sections LJ 7 and LJ 8

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

340 Tax credits relating to attributed CFC income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (2) applies for all income years beginning on or after 1 July 2009.

(7) Subsections (1) and (3) apply for the 2008–09 and later income years.

341 Calculation of amount of credit

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

342 New section LK 5B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

343 Subpart LL repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

344 Use of remaining credits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

345 Continuity rules for carrying credits forward

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

346 Sections LQ 1 to LQ 4 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

349 Meaning of full-time earner for family scheme

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

352 Family scheme income of major shareholders in close companies

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

354 Third requirement: residence

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

355 When person does not qualify

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

356 Continuing requirements

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

357 Principal caregiver

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

358 Second requirement: principal care

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

359 Third requirement: residence

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

360 Fifth requirement: full-time earner

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (3) apply for the 2008–09 and later income years.

361 Calculation of in-work tax credit

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

363 Meaning of net family scheme income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) to (3) apply for the 2008–09 and later income years.

364 Recovery of overpaid tax credit

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

365 Section MF 6 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

368 When short payment and unpaid compulsory employer contributions found after tax credit used

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

371 New section MZ 3 added

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

372 Memorandum accounts

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

373 Credits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

374 Debits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

375 Opening balances of memorandum accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

377 Section OA 12 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

378 General rules for companies with imputation credit accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) Subsections (1), (2), and (4) apply for the 2008–09 and later income years.

(8) Subsection (3) applies for the 2010–11 and later income years.

379 Australian companies with imputation credit accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

380 New section OB 3B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

381 ICA payment of tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (2) applies for the 2008–09 and later income years.

(5) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

382 ICA resident withholding tax withheld

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new

life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

385 Section OB 11 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for dividends received in all income years beginning on or after 1 July 2009.

386 Section OB 17 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

387 ICA transfer to master fund

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

388 ICA refund of income tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(5) Subsection (2) applies for the 2008–09 and later income years.

389 ICA amount applied to pay other taxes

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (2) applies for the 2008–09 and later income years.

390 ICA refund from tax pooling account

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for a tax position taken on or after 1 April 2008 except for a tax position taken by a company when—

(a) the company has received a refund of the type referred to in section OB 34(1); and

(b) the refund is received in the company's 2008–09 income year but before 2 July 2008; and

(c) the company has relied on section OB 34(4), as it was before the amendment made by this section, to determine the date of the debit.

392 New section OB 35B inserted

(1) *Amendments incorporated in the principal Act.*\

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

393 ICA refund of tax credit

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

394 ICA transfer for net foreign attributed income

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

395 Section OB 39 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

396 Section OB 47 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

397 ICA benchmark dividend rules

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

398 Imputation additional tax on leaving wholly-owned group

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (4) apply for the 2008–09 and later income years.

399 Table O1: imputation credits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsection (2) applies for the 2009–10 and later income years.

(7) Subsection (3) applies for all income years beginning on or after 1 July 2009.

(8) Subsection (4) applies for the 2008–09 and later income years.

(9) Subsection (5) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

400 Table O2: imputation debits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) and (4) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(6) Subsection (2) applies for the 2008–09 and later income years.

(7) Subsection (3) applies for all income years beginning on or after 1 July 2009.

401 General rules for companies with FDP accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2010–11 and later income years.

(5) Subsection (2) applies for all income years beginning on or after 1 July 2009.

402 New section OC 2B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

403 When company chooses to stop being FDPA company

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

404 When company emigrates

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

405 Section OC 6 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for dividends received in all income years beginning on or after 1 July 2009.

406 Section OC 8 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

407 Section OC 9 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

408 Section OC 10 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

409 FDPA refund of tax credit

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

410 Section OC 20 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

411 Section OC 23 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

413 Payment of further FDP for closing debit balance

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for all income years beginning on or after 1 July 2009.

414 Payment of further FDP when company no longer New Zealand resident

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for all income years beginning on or after 1 July 2009.

415 Reduction of further FDP

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for all income years beginning on or after 1 July 2009.

416 Section OC 33 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

417 Section OC 34 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

418 Heading and sections OC 35 to OC 39 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

419 Table O3: FDP credits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

420 Table O4: FDP debits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

(4) Subsection (2) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

421 General rules for companies with CTR accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later tax years.

(4) Subsection (2) applies for all income years beginning on or after 1 July 2009.

422 Choosing to become CTR company

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later tax years.

423 When company stops being CTR company

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

424 Section OD 5 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

425 Section OD 8 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

426 Section OD 11 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

427 CTRA increase in resident shareholding

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later tax years.

428 Section OD 23 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

429 Section OD 24 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

430 Table O5: conduit tax relief credits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

431 Table O6: conduit tax relief debits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later tax years.

(4) Subsection (2) applies for all income years beginning on or after 1 July 2009.

432 Branch equivalent tax accounts of companies

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

433 Heading and sections OE 12 and OE 13 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for dividends received in all income years beginning on or after 1 July 2009.

434 Sections OE 14 to OE 16 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

435 New heading and section OE 16B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

436 Table O7: branch equivalent tax credits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

437 Table O8 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

439 Subpart OJ repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

440 MACA payment of tax

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

441 MACA refund of income tax

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

442 MACA payment of other taxes

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

443 New section OK 14B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

444 Table O18: Maori authority debits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

445 When credits and debits arise only in consolidated imputation group accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(5) Subsections (2) and (3) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

446 Provisions applying to consolidated imputation groups

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

447 Consolidated ICA payment of tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(5) Subsection (2) applies for the 2008–09 and later income years.

448 Section OP 14 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

449 Consolidated ICA resident withholding tax withheld

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

450 Section OP 20 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

451 Section OP 21 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—
(a) on and after 1 July 2010, unless paragraph (b) applies:
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

452 Consolidated ICA refund of income tax

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) and (2) apply—
(a) on and after 1 July 2010, unless paragraph (b) applies:
(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(6) Subsection (3) applies for the 2008–09 and later income years.

453 Consolidated ICA amount applied to pay other taxes

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

454 New section OP 33B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

455 Consolidated ICA refund of tax credit

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

456 Section OP 38 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

457 Consolidated ICA transfer to policyholder credit account

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

458 Section OP 44 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

459 Table O19: imputation credits of consolidated imputation groups

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(4) Subsection (2) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

460 Table O20: imputation debits of consolidated imputation groups

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) and (5) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(7) Subsections (2) and (4) apply for the 2008–09 and later income years.

(8) Subsection (3) applies for all income years beginning on or after 1 July 2009.

461 When credits and debits arise only in consolidated FDP group accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(4) Subsection (2) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

462 Section OP 56 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

463 Section OP 57 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

464 Section OP 61 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

465 Section OP 62 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

466 Consolidated FDPA refund of tax credit

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

467 Section OP 74 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

468 Table O21: FDP credits of consolidated FDP groups

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

469 Table O22: FDP debits of consolidated FDP groups

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(4) Subsection (2) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

470 CTR accounts of consolidated groups

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

471 When credits and debits arise only in CTR group accounts

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

472 Section OP 81 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

473 Section OP 82 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

474 Section OP 88 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

475 Section OP 95 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

476 Table O23: conduit tax relief credits of consolidated groups

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

477 Table O24: conduit tax relief debits of consolidated groups

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

478 Section OP 99 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

479 Heading and sections OP 105 to OP 108 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

480 New heading and section OP 108B inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

481 Table O25: branch equivalent tax credits of consolidated BETA groups

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

482 Table O26 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

483 Headings and sections OP 109 to OP 116 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

484 Tables O27 and O28 repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for

the tax year corresponding to the first relevant income year.

485 ASCA lost excess available subscribed capital

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

486 Modifying ratios for imputation credits and FDP credits

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

488 What this Part does

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

489 Tax obligations for employment-related taxes

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2008–09 and later income years.

490 Withholding and payment obligations for passive income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for all income years beginning on or after 1 July 2009.

(5) Subsection (2) applies for the 2008–09 and later income years.

491 When obligations not met

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and later income years.

(6) Subsection (2) applies for all income years beginning on or after 1 July 2009.

492 Payment dates for interim and other tax payments

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and later income years. However, subsection (1) does not apply to a person in relation to a tax position taken by the person—

(a) in the period from 1 April 2008 to the date of Royal assent of this Act; and

(b) in relation to the payment of FDP; and

(c) relying upon section RA 15(2) prior to the amendment made by subsection (1).

(6) Subsection (3) applies for all income years beginning on or after 1 July 2009.

493 Amalgamation of companies

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

494 Regulations

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

495 Application of other provisions for purposes of ESCT rules and NRWT rules

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2008–09 and later income years.

496 Payment of terminal tax

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

497 Schedular income tax liability for filing taxpayers for non-resident passive income

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

500 Attribution rule for income from personal services

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

503 PAYE income payments

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (2) and (3) apply for the 2008–09 and later income years. However, subsections (2) and (3) do not apply to a person in relation to a tax position taken by the person—

(a) in the period from 1 April 2008 to the date of Royal assent of this Act; and

(b) relating to the treatment of an amount of income; and

(c) relying upon section RD 3(3) and (4) as they were prior to the amendment made by subsections (2) and (3).

504 Salary or wages

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) *Amendments incorporated in the principal Act.*

(9) Subsections (1), (2), and (6) apply for the 2008–09 and later income years.

(10) Subsections (3) and (4) apply for the 2008–09 and later income years.

507 Reduction in certain circumstances

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsection (1) applies for the 2008–09 and later income years.

508 Multiple payments of salary or wages

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2009–10 and later income years.

509 Advance payments of salary or wages

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

511 Payments of extra pay with other PAYE income payments

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

512 Schedular payments without notification

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

514 PAYE income payment forms for amounts of tax paid to Commissioner

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*
(5) *Amendments incorporated in the principal Act.*
(6) *Amendments incorporated in the principal Act.*
(7) *Amendments incorporated in the principal Act.*
(8) *Amendments incorporated in the principal Act.*
(9) *Amendments incorporated in the principal Act.*
(10) *Amendments incorporated in the principal Act.*
(11) Subsections (4) and (7) apply for the 2008–09 and later income years.

517 Close company option

(1) *Amendments incorporated in the principal Act.*
(2) *Amendments incorporated in the principal Act.*
(3) *Amendments incorporated in the principal Act.*
(4) *Amendments incorporated in the principal Act.*
(5) Subsections (1) and (3) apply for the 2008–09 and later income years.

518 Small business option

(1) *Amendments incorporated in the principal Act.*
(2) *Amendments incorporated in the principal Act.*
(3) *Amendments incorporated in the principal Act.*
(4) *Amendments incorporated in the principal Act.*
(5) Subsections (1) and (3) apply for the 2008–09 and later income years.

519 Employer's superannuation contributions

(1) *Amendments incorporated in the principal Act.*
(2) *Amendments incorporated in the principal Act.*
(3) *Amendments incorporated in the principal Act.*
(4) *Amendments incorporated in the principal Act.*
(5) *Amendments incorporated in the principal Act.*
(6) *Amendments incorporated in the principal Act.*
(7) *Amendments incorporated in the principal Act.*
(8) *Amendments incorporated in the principal Act.*

(9) *Amendments incorporated in the principal Act.*

(10) *Amendments incorporated in the principal Act.*

(11) *Amendments incorporated in the principal Act.*

(12) *Amendments incorporated in the principal Act.*

(13) Subsections (1) to (6) and (8) to (11) apply for the 2008–09 and later income years.

520 Calculating amounts of tax for employer's superannuation contributions

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2008–09 and later income years.

521 Choosing to have amount treated as salary or wages

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2008–09 and later income years.

522 Choosing different rates for employer's superannuation contributions

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

523 Calculating amounts on failure to withhold

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

524 Amounts of tax treated as paid to and received by superannuation funds

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

525 Resident passive income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years. However, subsections (1) and (2) do not apply to a person in relation to a tax position taken by the person—

(a) in the period from 1 April 2008 to 3 December 2008; and

(b) in relation to the payment of an amount of resident passive income to a non-resident engaged in business in New Zealand; and

(c) relying upon section RE 2 as it was prior to the amendment made by subsections (1) and (2).

526 Obligation to withhold RWT

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

527 Persons who have withholding obligations

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

528 Agents' or trustees' obligations in relation to certain dividends

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for all income years beginning on or after 1 July 2009.

529 Notification by companies

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

530 Interest

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

531 Non-resident passive income

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) and (2) apply for the 2008–09 and later income years.

(7) Subsection (4) applies for the 2008–09 and later income years. However, subsection (4) does not apply to a person in relation to a tax position taken by the person—

(a) in the period from 1 April 2008 to 3 December 2008; and

(b) in relation to a payment of non-resident passive income; and

(c) relying on section RF 2(5) as it was prior to the amendment made by subsection (4).

(8) Subsection (3) applies for the 2010–11 and later income years.

533 When dividends fully imputed or fully credited

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

534 Non-cash dividends

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) Subsections (1) and (3) apply for the 2008–09 and later income years.

536 Section RF 12 replaced by sections RF 12 to RF 12C

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

537 Credit balance in branch equivalent tax account

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

538 Using loss balances

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

539 Reduction of payments for conduit tax relief

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

540 Subpart RG repealed

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

543 Using refund to satisfy tax liability

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (1) applies for the 2008–09 and later income years.

544 Operation of PAYE intermediaries' trust accounts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsections (1) to (3) apply for the 2008–09 and later income years.

545 General responsibility of employers

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

547 Employer's superannuation contributions

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) Subsections (1) and (2) apply for the 2008–09 and later income years.

548 General responsibilities of PAYE intermediaries

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies for the 2008–09 and later income years.

554 Standard method: 2008–09 and 2009–10 income years

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

555 GST ratio method: 2008–09 and 2009–10 income years

(1) This section amends section YA 1.

(2) Subsection (1) applies for the 2008–09 and later income years.

557 Definitions

(1) This section amends section YA 1.

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

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(222) *Amendments incorporated in the principal Act.*

(223) *Amendments incorporated in the principal Act.*

(224) Subsections (7) and (141) apply—

(a) for an insurer who uses IFRS 4,—

(i) for the 2009–10 and later income years, unless subparagraph (ii) applies:

(ii) for the first income year for which an insurer adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2009–10 income year and the person chooses to use IFRS 4 in a return of income for that first year:

(b) for a life insurer,—

(i) on and after 1 July 2010, unless subparagraph (ii) applies:

(ii) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(225) Subsections (5), (10), (29), (36), (42), (51), (54), (55), (57), (58), (59), (62), (68), (84), (88), (99), (109), (119), (130), (134), (144), (145), (146), (184), (187), (193), (195), (198),

(199), (214), and (217) apply for the 2008–09 and later income years.

(226) Subsections (6), (12), (20), (27), (33), (35), (46), (56), (65), (67), (72), (87), (90), (112), (113), (120), (122), (124), (151), (152), (153), (161), (162), (163), (168), (169), (172), (178), (189), (190), (194), (201), (205), (207), (218), and (219) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

(227) Subsections (2), (3), (4), (13), (15), (31), (44), (91), (100), (107), (115), (179), (180), and (196) apply, for the purposes of—

(a) provisions other than the land provisions, for the 2010–11 and later income years:

(b) the land provisions other than section CB 11, for land acquired on or after the date on which this Act receives the Royal assent:

(c) section CB 11, for land on which improvements are begun on or after the date on which this Act receives the Royal assent.

(228) Subsections (50) and (52) apply for the 2008–09 and later income years. However, subsections (50) and (52) do not apply to a person in relation to a tax position taken by the person—

(a) in the period from 1 April 2008 to 3 December 2008; and

(b) in relation to the rate of tax applying to a schedular payment; and

(c) relying on the definition of **employee** or **employer**, as applicable, as the definition was before the amendment made by subsections (50) and (52).

(229) Subsections (8), (9), (11), (14), (16), (22), (23), (30), (34), (38), (40), (41), (43), (61), (70), (71), (74), (75), (77), (78), (79), (80), (89), (94), (96), (104), (117), (123), (128), (129), (182), (183), (185), (203), (208), (211), (212), (213), (215),

and (216) apply for all income years beginning on or after 1 July 2009.

558 Meaning of income tax varied

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

563 Table, heading, and sections YB 1 to YB 20 replaced

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies, for the purposes of—

(a) provisions other than the land provisions, for the 2010–11 and later income years:

(b) the land provisions other than section CB 11, for land acquired on or after the date on which this Act receives the Royal assent:

(c) section CB 11, for land on which improvements are begun on or after the date on which this Act receives the Royal assent.

568 Disregarding certain securities

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

571 Residence of natural persons

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) Subsection (2) applies for the 2009–10 and later income years.

572 Country of residence of foreign companies

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

576 New section YZ 2 inserted

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

577 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in this Act in a return of income for the tax year corresponding to the first relevant income year.

579 Schedule 4—Rates of tax for schedular payments

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) *Amendments incorporated in the principal Act.*

(4) *Amendments incorporated in the principal Act.*

(5) *Amendments incorporated in the principal Act.*

(6) *Amendments incorporated in the principal Act.*

(7) *Amendments incorporated in the principal Act.*

(8) Subsections (3) to (7) apply for the 2008–09 and later income years.

580 Schedule 5—Fringe benefit values for motor vehicles

(1) *Amendments incorporated in the principal Act.*

(2) Subsection (1) applies for the 2008–09 and later income years.

581 Schedule 13—Depreciable land improvements

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

582 Schedule 20—Expenditure on farming, horticultural, aquacultural, and forestry improvements

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

583 Schedule 21—Expenditure and activities related to research and development

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

585 Schedule 25—Foreign investment funds

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsection (2) applies for the 2008–09 and later income years.

589 Schedule 32—Recipients of charitable or other public benefit gifts

(1) *Amendments incorporated in the principal Act.*

(2) *Amendments incorporated in the principal Act.*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009

Public Act	2009 No 63
Date of assent	7 December 2009
Commencement	see section 2

1 Title

This Act is the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009.

2 Commencement

(1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section.

(2) Sections 102 and 118(20) come into force on the day that the New Zealand Superannuation and Retirement Income Amendment Act 2009 comes into force.

(3) Section 164 is treated as coming into force on 1 April 1995.

(4) Sections 149, 150, 151, 152, 153, 155, 157, 158, 160, 161, 162(2), (5), (6), (7), (8), and (9), and 163, and schedule 2, rows 1, and 3 to 13 are treated as coming into force on 1 April 2005.

(5) Sections 146 and 162(3) are treated as coming into force on 1 July 2007.

(6) Section 159 and schedule 2, row 2 are treated as coming into force on 1 October 2007.

(7) Section 154 is treated as coming into force on 19 December 2007.

(8) Section 162(4) is treated as coming into force on 25 February 2008.

(9) Section 156 is treated as coming into force on 4 March 2008.

(10) Sections 4, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 26, 29, 31, 40, 41, 42, 44, 45, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 80(1), 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 104(1), 105, 106, 107, 110, 111, 112, 113, 116, 117, 118(2), (3), (4),

(7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (24), (26), (27), (29), (31), (32), and (33), 121, 122(1), 123(1), 125, 126, 135, 139, and schedule 1, rows 2 to 17, 20, 22, 23, and 27 to 44 are treated as coming into force on 1 April 2008.

(11) Sections 19, 30, 43, and schedule 1, row 21 are treated as coming into force on 1 April 2009.

(12) Sections 23, 24, 25, 27, 28, and schedule 1, row 18 are treated as coming into force on 30 June 2009.

(13) Sections 147 and 165 are treated as coming into force on 1 July 2009.

(14) Sections 166 and 167 are treated as coming into force on 7 October 2009.

(15) Sections 74, 75, and 76 come into force on 7 January 2010.

(16) Sections 78(1), 114, 115, 118(21), and schedule 1, row 35 come into force on 1 February 2010.

(17) Sections 8, 9, 21, 22, 39, 46, 47, 48, 49, 50, 51, 52, 83, 103, 104(2), 108, 109, 118(5), (18), (22), (23), (25), and (36), 120, 122(2), (4), (5), and (6), 123(2) and (3), 124, 130, 131, 132, 133, and 134(1), (2), (3), (4), (5), (6), and (7), and schedule 1, rows 24 to 26 come into force on 1 April 2010.

(18) Sections 32, 33, 34, 35, 36, 37, 38, 118(6), (19), (28), and (34), and schedule 1, row 19 come into force on 1 July 2010.

(19) Sections 77, 78(2), (3), and (5), 118(35), 119, 122(3), and schedule 1, row 37 comes into force on 1 April 2011.

(20) Sections 73, 78(4) and (6), 79, 80(2), 81, 82, 118(30) and (40), and schedule 1, row 36 come into force on 1 April 2013.

Part 1
Amendments to Income Tax Act 2007

11 Research or development

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

14 Cost of acquiring timber or right to take timber: other cases

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

15 Section DP 11 replaced

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

16 Acquiring film rights

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

17 Mining exploration expenditure or mining development expenditure on acquisition of asset

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

18 Meaning of income from forestry

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

19 Determination alternatives

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2009–10 and later income years.

23 Attributable CFC amount

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for all income years beginning on or after 1 July 2009.

24 Net attributable CFC income or loss

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

25 Adjustment of fraction for excessively debt funded CFC

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

26 Attributable CFC amount and net attributable CFC income or loss

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

27 Non-attributing active CFC: default test

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for all income years beginning on or after 1 July 2009.

28 Non-attributing active CFC: test based on accounting standard

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for all income years beginning on or after 1 July 2009.

29 Exemption for Australian unit trusts with adequate turnover or distributions

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

31 Accounting profits method

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years. However, subsection (1) does not apply to a person in relation to a tax position taken by the person in a return of income filed before the date of Royal assent of this Act in relation to the calculation of an income interest in a FIF, relying on section EX 49(6) before the amendment made by this section.

33 Policyholder base income: profit participation policies

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) *Amendment(s) incorporated in the Act(s).*

(5) Subsections (1) to (4) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

34 Policyholder base allowable deductions: profit participation policies

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

36 Shareholder base income: profit participation policies

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009in a return of income for the tax year corresponding to the first relevant income year.

37 Shareholder base allowable deductions: profit participation policies

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

38 Transitional adjustments: life risk

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) *Amendment(s) incorporated in the Act(s).*

(5) *Amendment(s) incorporated in the Act(s).*

(6) *Amendment(s) incorporated in the Act(s).*

(7) *Amendment(s) incorporated in the Act(s).*

(8) *Amendment(s) incorporated in the Act(s).*

(9) *Amendment(s) incorporated in the Act(s).*

(10) *Amendment(s) incorporated in the Act(s).*

(11) *Amendment(s) incorporated in the Act(s).*

(12) Subsections (1) to (11) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

41 Attribution rule for income from personal services

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

43 Beneficiary income

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for income years corresponding to the 2009–10 and later tax years.

44 Who is a settlor?

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years. However, subsection (1) does not apply to a person in relation to a tax position taken by the person—

(a) in the period that starts on the first day of the 2008–09 income year and ends on the date of Royal assent of this Act; and

(b) in relation to a payment to an employee share purchase agreement in consideration of a valid salary sacrifice made by the employee; and

(c) relying upon paragraph (a)(i) of the definition of **settlor** in the Income Tax Act 2004, that the term **settlor** in the trust rules, and in the definitions of **corpus**, **foreign trust**, and **settlement**, for a trust other than a unit trust, means a person who makes, or has made at any time, a disposition of property to or for the benefit of the trust or on terms of the trust for less than market value.

45 Unlisted company choosing to become portfolio listed company

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

54 Tax losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) *Amendment(s) incorporated in the Act(s).*

(5) *Amendment(s) incorporated in the Act(s).*

(6) *Amendment(s) incorporated in the Act(s).*

(7) *Amendment(s) incorporated in the Act(s).*

(8) *Amendment(s) incorporated in the Act(s).*

(9) *Amendment(s) incorporated in the Act(s).*

(10) Subsections (1) to (9) apply for the 2008–09 and later income years.

55 Using tax losses in tax year

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

56 Using loss balances carried forward to tax year

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

57 Restrictions on companies' loss balances carried forward

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for the 2008–09 and later income years.

58 Restrictions on companies grouping tax losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

59 Restrictions relating to ring-fenced losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for the 2008–09 and later income years.

60 General treatment

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

61 New section IQ 1B inserted

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

62 Ring-fencing cap on attributed CFC net losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for the 2008–09 and later income years.

63 Ring-fencing cap on FIF net losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

64 Group companies using attributed CFC net losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) *Amendment(s) incorporated in the Act(s).*

(5) Subsections (1) to (4) apply for the 2008–09 and later income years.

65 Pre-consolidation losses: general treatment

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

66 When group membership lacking in loss period

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

67 When group membership lacking in tax year of use

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

68 General treatment of mining companies' tax losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply for the 2008–09 and later income years.

69 Treatment of tax losses resulting from certain expenditure

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) *Amendment(s) incorporated in the Act(s).*

(5) *Amendment(s) incorporated in the Act(s).*

(6) *Amendment(s) incorporated in the Act(s).*

(7) Subsections (1) to (6) apply for the 2008–09 and later income years.

70 Holding companies' tax losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

71 Petroleum miners' tax losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

72 Life insurers' policyholder net losses

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

84 Adjustments for calculation of family scheme income

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

85 Calculation of maximum permitted ratios

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

87 ICA debit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

89 FDPA debit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

91 BETA credit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

93 MACA debit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

95 Consolidated ICA debit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

97 Consolidated FDPA debit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

99 Consolidated BETA credit for loss of shareholder continuity

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

101 Amounts treated as income tax

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

104 Payment of extra pay with other PAYE income payments

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsection (1) applies for the 2008–09 and later income years.

(4) Subsection (2) applies for the 2010–11 and later income years.

105 RWT rules and their application

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

106 Resident passive income

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

107 New section RE 10B inserted

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

110 When payment treated as non-resident passive income

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

111 NRWT rules and their application

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

112 Obligation to withhold amounts of tax for non-resident passive income

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

113 When amounts of tax not withheld or partly withheld

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

117 Overpaid RWT or NRWT

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

118 Definitions

(1) This section amends section YA 1.

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) *Amendment(s) incorporated in the Act(s).*

(5) *Amendment(s) incorporated in the Act(s).*

(6) *Amendment(s) incorporated in the Act(s).*

(7) *Amendment(s) incorporated in the Act(s).*

(8) *Amendment(s) incorporated in the Act(s).*

(9) *Amendment(s) incorporated in the Act(s).*

(10) *Amendment(s) incorporated in the Act(s).*

(11) *Amendment(s) incorporated in the Act(s).*

(12) *Amendment(s) incorporated in the Act(s).*

(13) *Amendment(s) incorporated in the Act(s).*

(14) *Amendment(s) incorporated in the Act(s).*

(15) *Amendment(s) incorporated in the Act(s).*

(16) *Amendment(s) incorporated in the Act(s).*

(17) *Amendment(s) incorporated in the Act(s).*

(18) *Amendment(s) incorporated in the Act(s).*

(19) *Amendment(s) incorporated in the Act(s).*

(20) *Amendment(s) incorporated in the Act(s).*

(21) *Amendment(s) incorporated in the Act(s).*

(22) *Amendment(s) incorporated in the Act(s).*

(23) *Amendment(s) incorporated in the Act(s).*

(24) *Amendment(s) incorporated in the Act(s).*

(25) *Amendment(s) incorporated in the Act(s).*

(26) *Amendment(s) incorporated in the Act(s).*

(27) *Amendment(s) incorporated in the Act(s).*

(28) *Amendment(s) incorporated in the Act(s).*

(29) *Amendment(s) incorporated in the Act(s).*

(30) The definition of **supplementary dividend holding company** is omitted.

(31) *Amendment(s) incorporated in the Act(s).*

(32) *Amendment(s) incorporated in the Act(s).*

(33) *Amendment(s) incorporated in the Act(s).*

(34) *Amendment(s) incorporated in the Act(s).*

(35) The definition of **year of payment** is omitted.

(36) *Amendment(s) incorporated in the Act(s).*

(37) Subsections (2), (3), (4), (7), (8), (9), (10), (11), (12), (13), (14), (17), (27), (29), (31), (32), and (33) apply for the 2008–09 and later income years.

(38) Subsections (5), (18), (22), (25), and (36) apply for the 2010–11 and later income years.

(39) Subsections (6), (19), (28), and (34) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

(40) Subsection (30) applies for the 2013–14 and later income years.

121 Transparency of nominees

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2008–09 and later income years.

122 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) In schedule 1, part D, table 3, "0.33" is replaced by "0.30" in each place where it appears.

(4) *Amendment(s) incorporated in the Act(s).*

(5) *Amendment(s) incorporated in the Act(s).*

(6) *Amendment(s) incorporated in the Act(s).*

(7) Subsection (1) applies for the 2008–09 and later income years.

(8) Subsections (2), (4), (5), and (6) apply for the 2010–11 and later income years.

(9) Subsection (3) applies for the 2011–12 and later income years.

123 Schedule 2—Basic tax rates for PAYE income payments

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsection (1) applies for the 2008–09 and later income years.

(5) Subsections (2) and (3) apply for the 2010–11 and later income years.

125 Schedule 51—Identified changes in legislation

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply for the 2008–09 and later income years.

Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010

Public Act	2010 No 109
Date of assent	7 September 2010
Commencement	see section 2

1 Title

This Act is the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010.

2 Commencement

(1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.

(2) Section 195(2) is treated as coming into force on 24 May 1999.

(3) Section 198 is treated as coming into force on 21 December 2004.

(4) Section 192 is treated as coming into force on 1 January 2005.

(5) Sections 199, 202, 207(1) and (3), 208, and 211(1) and (3) are treated as coming into force on 1 April 2005.

(6) Sections 200, 201, and 207(2) are treated as coming into force on 1 April 2007.

(7) Sections 66, 131, 134, 135, 170, 204, 205, and 206 are treated as coming into force on 1 October 2007.

(8) Sections 197 and 203 are treated as coming into force on 19 December 2007.

(9) Sections 5, 10, 11, 17, 25, 26, 27, 30, 31, 36, 37, 38, 42, 52, 53, 54, 55, 57, 58, 59, 60, 61, , 63, 64, 65, 75, 81, 82, 83, 84, 86, 87, 89, 90, 92, 95, 97, 98, 99, 100, 105,106, 107, 108, 112, 116, 117(2), (4), (5), (8), (10), (23), (28), and (33), 118, 119, 121(1), (2), and (4), 127, 128, 130(1) to (3), 136, 138, 145, 195(5), and 211(2) and (4) are treated as coming into force on 1 April 2008.

(10) Section 195(4) is treated as coming into force on 1 July 2008.

(11) Section 56 is treated as coming into force on 26 September 2008.

(12) Sections 6(1), (2), (3), and (5)(b), 20, 21, 28(1) and (5)(b) and 117(9), (18), (22), and (24) are treated as coming into force on 1 January 2009.

(13) Section 117(12) is treated as coming into force on 1 April 2009.

(14) Sections 43, 44, 103, 104, 109, 110, and 149(1) are treated as coming into force on 30 June 2009.

(15) Sections 178, 179, and 180 are treated as coming into force on 7 October 2009.

(16) Section 14 is treated as coming into force on 31 December 2009.

(17) Sections 23, 32 to 35, 117(11) and (14), and 126(3) are treated as coming into force on 1 January 2010.

(18) Sections 101 and 102 are treated as coming into force on 1 March 2010.

(19) Sections 7, 8, 9, 19, 24, 67, 70, 72(3) and (4), 73, 74, 80, 91, 93, 113, 115, 117(13), (15), (19), (20), (21), (29), and (34), 120, 121(3), 122, 123, 124, 126(6), 129, 130(4) and (5), 137, and 186 are treated as coming into force on 1 April 2010.

(20) Sections 76, 77, 78, 79, and 117(6), (25), and (31) are treated as coming into force on 1 June 2010.

(21) Sections 6(4) and (5)(a), 18, 22, 28(2), (3), (4), and (5)(a), 29, 45, 46, 47, 48, 49, 50, 85, 117(7), (26), and (35), 189(3), and 191 are treated as coming into force on 1 July 2010.

(22) Sections 39 to 41 and 51 come into force on 26 September 2010.

(23) Sections 69, 71, 72(1) and (2), and 111 come into force on 1 October 2010.

(24) Sections 12, 16, 68, 88, 96, 114, 117(16), (27), (30), and (32), 132, 133, and 173 come into force on 1 April 2011.

(25) Sections 13, 94, 117(3) and (17), 176(1) and (3), 183, 184, 188, and 189(1), (2), (4), and (5) come into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as

provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability.

Part 2
Amendments to Income Tax Act 2007

17 Benefits provided to employees who are shareholders or investors

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1)—

(a) applies for the 2008–09 and later income years, except if paragraph (b) applies:

(b) does not apply for a person and an income year in relation to a tax position taken for the income year by the person—

(i) in the period from 1 April 2008 to the date of the Royal assent of this Act; and

(ii) in a return of income, an FBT return, or a GST return filed before the date of the Royal assent of this Act; and

(iii) relying upon section CX 17(4) as it was before the amendment made by subsection (1).

27 Apportionment on disposal of business assets that include trading stock

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1)—

(a) applies for the 2008–09 and later income years, except if paragraph (b) applies:

(b) does not apply for a person and an income year in relation to a tax position taken by the person—

(i) in a return of income filed before 28 October 2009; and

(ii) relating to an apportionment of an amount on a disposal of trading stock and other assets; and

(iii) relying on section EB 24(1) as it was before the amendment made by subsection (1).

42 Meaning of controlled foreign company

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1)—

(a) applies for the 2008–09 and later income years, except if paragraph (b) applies:

(b) does not apply for a person in relation to a tax position taken by the person—

(i) before 19 November 2009; and

(ii) relying on the provision amended by this section as it was immediately before the amendment made by this section.

45 Part-year tax calculations

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1) to (3) apply—

(a) on and after 1 July 2010, except if paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

46 Outstanding claims reserving amount: non-participation policies not annuities

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, except if paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

47 Premium smoothing reserving amount: non-participation policies not annuities

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, except if paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

48 Unearned premium reserving amount: non-participation policies not annuities

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, except if paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

49 Capital guarantee reserving amount: non-participation policies not annuities

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, except if paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

50 Transitional adjustments: life risk

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*
(3) *Amendment(s) incorporated in the Act(s).*
(4) *Amendment(s) incorporated in the Act(s).*
(5) *Amendment(s) incorporated in the Act(s).*
(6) *Amendment(s) incorporated in the Act(s).*
(7) *Amendment(s) incorporated in the Act(s).*
(8) *Amendment(s) incorporated in the Act(s).*
(9) *Amendment(s) incorporated in the Act(s).*
(10) *Amendment(s) incorporated in the Act(s).*
(11) *Amendment(s) incorporated in the Act(s).*
(12) *Amendment(s) incorporated in the Act(s).*
(13) *Amendment(s) incorporated in the Act(s).*
(14) *Amendment(s) incorporated in the Act(s).*
(15) *Amendment(s) incorporated in the Act(s).*
(16) *Amendment(s) incorporated in the Act(s).*
(17) Subsections (1) to (15) apply—
  (a) on and after 1 July 2010, except if paragraph (b) applies:
  (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

54 Disposals of trading stock at below market value

(1) *Amendment(s) incorporated in the Act(s).*
(2) Subsection (1)—
  (a) applies for the 2008–09 and later income years, except if paragraph (b) applies:
  (b) does not apply for a person and an income year in relation to a tax position taken by the person—
    (i) in a return of income filed before 28 October 2009; and
    (ii) relating to a disposal of trading stock; and
    (iii) relying on section GC 1 as it was before the replacement made by subsection (1).

89 Limitation on deductions

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (2) and (3)—

(a) apply for the 2008–09 and later income years, except if paragraph (b) applies:

(b) do not apply for a person and an income year after the 2007–08 income year in relation to a tax position for the income year taken by the person—

(i) before 19 November 2009; and

(ii) relying on the provision amended by this section as it was immediately before the amendment made by this section.

117 Definitions

(1) This section amends section YA 1.

(2) *Amendment(s) incorporated in the Act(s).*

(3) After the definition of **Australian approved deposit fund**, the following is inserted:

"**Australian complying superannuation scheme** means an entity that is a complying superannuation fund for the purposes of Part 5, Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority".

(4) *Amendment(s) incorporated in the Act(s).*

(5) *Amendment(s) incorporated in the Act(s).*

(6) *Amendment(s) incorporated in the Act(s).*

(7) *Amendment(s) incorporated in the Act(s).*

(8) *Amendment(s) incorporated in the Act(s).*

(9) *Amendment(s) incorporated in the Act(s).*

(10) *Amendment(s) incorporated in the Act(s).*

(11) *Amendment(s) incorporated in the Act(s).*

(12) *Amendment(s) incorporated in the Act(s).*

(13) *Amendment(s) incorporated in the Act(s).*

(14) *Amendment(s) incorporated in the Act(s).*

(15) *Amendment(s) incorporated in the Act(s).*

(16) In the definition of **member**, paragraph (b) is repealed.

(17) In the definition of **member credit contribution**, after paragraph (a)(iii), the following is added:

"(iv) a superannuation contribution that was transferred from an Australian complying superannuation scheme and contributed to a KiwiSaver scheme:".

(18) *Amendment(s) incorporated in the Act(s).*

(19) *Amendment(s) incorporated in the Act(s).*

(20) *Amendment(s) incorporated in the Act(s).*

(21) *Amendment(s) incorporated in the Act(s).*

(22) *Amendment(s) incorporated in the Act(s).*

(23) *Amendment(s) incorporated in the Act(s).*

(24) *Amendment(s) incorporated in the Act(s).*

(25) *Amendment(s) incorporated in the Act(s).*

(26) *Amendment(s) incorporated in the Act(s).*

(27) The definition of **significant financial hardship** is repealed.

(28) *Amendment(s) incorporated in the Act(s).*

(29) *Amendment(s) incorporated in the Act(s).*

(30) In the definition of **trust rules**, paragraph (a) is repealed.

(31) *Amendment(s) incorporated in the Act(s).*

(32) The definition of **withdrawal** is repealed.

(33) Subsections (2), (5), (8), (23), and (28) apply for the 2008–09 and later income years.

(34) Subsection (13) applies for the 2010–11 and later income years.

(35) Subsection (26) applies—

(a) on and after 1 July 2010, except if paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

121 Schedule 4—Rates of tax for schedular payments

(1) *Amendment(s) incorporated in the Act(s).*

(2) *Amendment(s) incorporated in the Act(s).*

(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsection (2) applies to a payment for work and services made in the 2008–09 and later income years, other than a payment—

(a) for work or services performed before the day that this Act receives the Royal assent; and

(b) from which the payer is not obliged to withhold an amount of tax, ignoring subsection (2).

Taxation (GST and Remedial Matters) Act 2010

Public Act	2010 No 130
Date of assent	20 December 2010
Commencement	see section 2

1 Title

This Act is the Taxation (GST and Remedial Matters) Act 2010.

2 Commencement

(1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in this section.

(2) Section 184 is treated as coming into force on 1 January 2005.

(3) Sections 164, 165, 168, and 170 are treated as coming into force on 1 April 2005.

(4) Section 169 is treated as coming into force on 1 April 2006.

(5) Sections 166 and 167 are treated as coming into force on 1 October 2007.

(6) Section 12 is treated as coming into force on 30 November 2007.

(7) Sections 28, 30, 37(1), 38, 41, 51, 52, 65, 66, 82, 83, 106, 108, 113, 117, 118, 119, 125, 126(1) and (3), 127, 128, 132(30), (32), and (46), 133, 141, 146(2), (4), (5), and (9), 147, 156, 160, and 188 are treated as coming into force on 1 April 2008.

(8) Section 114 is treated as coming into force on 1 October 2008.

(9) Sections 132(39) and 146(1), (6), and (8) are treated as coming into force on 1 April 2009.

(10) Sections 132(31) and 151 are treated as coming into force on 6 October 2009.

(11) Sections 43, 44, 57, 72, 75, 85, 86, 87, 88, 89, 90, 91, 92, 94, 97, 98, 99, 100, 105, 110, 130(2), 132(3), (13), and (22), and 146(3) and (7) are treated as coming into force on 1 April 2010.

(12) Sections 49 and 50 are treated as coming into force on 20 May 2010.

(13) Sections 10(2), 11, 27, 47, 48, 58, 59, 132(35), and 180 are treated as coming into force on 1 July 2010.

(14) Sections 145, 182, and 183 come into force on 1 August 2010.

(15) Section 34 comes into force on 5 August 2010.

(16) Section 23 comes into force on 7 September 2010.

(17) Sections 22, 35, 42, 56(1) and (3), 116, 120 to 124, 131, and 157 come into force on 1 October 2010.

(18) Section 186 comes into force on 31 October 2010.

(19) Section 138 comes into force on 1 November 2010.

(20) Sections 4, 5, 6, 7, 8, 9, 10(1), (3), and (4), 14, 15, 16, 19, 21, 26, 31, 37(2) and (3), 39, 40, 46, 54, 56(2), (4), and (5), 62, 63, 67, 68, 69, 70, 73, 74, 76, 77, 78, 79, 81, 96(1), 104, 111, 112, 126(2) and (4), 132(2), (4), (5), (6), (7), (8), (9), (11), (12), (14), (15), (16), (19), (21), (23), (24), (25), (26), (27), (28), (33), (34), (36), (37), (38), (40), (41), (42), (44), (45), (47), (48), and (50), 135, 136, 137, 139(1)(b), (c), and (d), 140, 144, 149, 152, 154, 155, 158, 162, and 172 come into force on 1 April 2011.

(21) Section 96(2) comes into force on 1 April 2013.

(22) Section 115 comes into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability.

Part 2
Amendments to Income Tax Act 2007

58 Outstanding claims reserving amount: non-participation policies not annuities

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009

in a return of income for the tax year corresponding to the first relevant income year.

59 Transitional adjustments: life risk

(1)–(3) *Amendment(s) incorporated in the Act(s).*

(4) Subsections (1), (2), and (3) apply—

(a) on and after 1 July 2010, unless paragraph (b) applies:

(b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

84 New section HL 19B inserted

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) does not apply to a portfolio tax rate entity in relation to a tax position taken by the entity—

(a) in the period from 1 April 2008 to the date of Royal assent of this Act; and

(b) in relation to the attribution of income to investors in the entity and the determination of net amounts in section HL 19; and

(c) relying on the rules related to portfolio investment entities as they were before the amendment made by subsection (1).

95 New section HM 35B inserted

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies for the 2010–11 and later income years. However, subsection (1) does not apply to a multi-rate PIE in relation to a tax position taken by the PIE—

(a) in the period from 1 April 2010 to the date of Royal assent of this Act; and

(b) in relation to the attribution of income to investors in the PIE and the determination of net amounts in section HM 35; and

(c) relying on the PIE rules as they were before the amendment made by subsection (1).

115 Treatment of tax credits on permanent emigration other than to Australia

(1) In the heading to section MK 8(1), "**other than to Australia**" is omitted.

(2) In section MK 8(1), "to a place other than Australia" is omitted.

Taxation (Tax Administration and Remedial Matters) Act 2011

Public Act	2011 No 63
Date of assent	29 August 2011
Commencement	see section 2

1 Title

This Act is the Taxation (Tax Administration and Remedial Matters) Act 2011.

2 Commencement

(1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.

(2) Sections 219 and 222 are treated as coming into force on 1 April 1995.

(3) Sections 220 and 221 are treated as coming into force on 1 April 1997.

(4) Sections 192, 193, 194, 195, 196, 197, 198, 201, 206, 207, and 208 are treated as coming into force on 1 April 2005.

(5) Sections 199, 200, and 202 are treated as coming into force on 1 April 2007.

(6) Sections 203, 204, and 205 are treated as coming into force on 1 October 2007.

(7) Sections 4, 7, 12, 13, 17, 18, 19, 20, 22, 31, 32, 33, 34, 35, 40, 41, 45(1), (3), (4), and (6), 46, 48, 49, 50, 91, 92(1) and (3), 93, 94(1), (3), (7), (8), and (10), 96(1), (3), (4), and (5), 97(1), (2), (3), (6), and (8), 98, 99, 100, 101, 102, 103, 104, 108, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 124, 130(3), (5), (10), (15), (16), and (19), 131, 133, 135, 140, 161, and 210 are treated as coming into force on 1 April 2008.

(8) Section 130(14) is treated as coming into force on 1 January 2009.

(9) Sections 21(1) and (3), 37(1), (3), and (5), 39, 42, 44(1) and (3), 94(4), (5), (6), (9), and (11), 95, 96(2) and (6), 97(5), (7), and (9), and 130(6), (8), and (17) come into force on 30 June 2009.

(10) Sections 109 and 110 come into force on 5 January 2010.

(11) Sections 53, 54(1) and (5), 59(1) and (2), 65, 80(1), (3), (4), and (5), 106(1) and (3), and 130(9) and (18) are treated as coming into force on 1 April 2010.

(12) Section 237 comes into force on 1 July 2010.

(13) Sections 5, 11, 23, 24, 25, 26, 27, 43, and 188 are treated as coming into force on 4 September 2010.

(14) Sections 47, 130(2), and 160 are treated as coming into force on 30 September 2010.

(15) Section 136(8) is treated as coming into force on 1 October 2010.

(16) Section 45(2) and (5) are treated as coming into force on the day of introduction for the Taxation (Tax Administration and Remedial Matters) Bill.

(17) Sections 28, 29, 30, 88, 89, 107, 134, 136(1), (2), (3), (6), (7), and (9), 139, 209, 235(1)(b) and (c), (2), and (3), 236, 238, 239, 240, 241, 243, 244(2) and (3) are treated as coming into force on 1 April 2011.

(18) Section 132 is treated as coming into force on 1 May 2011.

(19) Sections 92(2), 94(2) and (12), and 97(4) and (10) come into force on 1 July 2011.

(20) Section 245 comes into force on 1 October 2011.

(21) Sections 9(3) and (5), 71, 81, 106(2) and (4), 123, 130(13) and (20), 136(4) and (5), and 138 come into force on 1 April 2012.

(22) Sections 21(2) and (4), 37(2), (4), and (6), and 44(2) and (4) come into force on 30 June 2013.

8 Dividend within New Zealand wholly-owned group

(1)–(2) *Amendment(s) incorporated in the Act(s).*

(3) Subsections (1) and (2) apply to—

- (a) dividends derived by a company, other than a Maori authority, on or after the first day of the company's 2010–11 income year; or
- (b) dividends derived by a Maori authority on or after the first day of the Maori authority's 2012–13 income year.

13 New section DB 3B

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1) applies—

(a) for the 2010–11 and later income years; and

(b) for the 2009–10 income year,—

(i) for a person who has not furnished a return of income for the income year on or before 24 November 2010; or

(ii) for a person who has furnished a return of income on or before 24 November 2010, only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction in the return or in a notice of proposed adjustment issued before that date:

(c) for the 2008–09 income year, only in relation to an amount of interest imposed under Part 7 of the Tax Administration Act 1994 that the person has treated as a deduction—

(i) in a return of income that they have furnished on or before 24 November 2010:

(ii) in a notice of proposed adjustment that is issued on or before 24 November 2010.

39 Limits on choice of calculation methods

(1) *Amendment(s) incorporated in the Act(s).*

(2) Subsection (1)—

(a) applies for income years beginning on or after 1 July 2009, except if paragraph (b) applies:

(b) does not apply for a person and an income year in relation to a tax position taken by the person—

(i) in a return of income filed before the date of Royal assent to the Taxation (Tax Administration and Remedial Matters) Act 2011; and

(ii) relating to the calculation of FIF income or loss from shares; and

(iii) relying on section EX 46(10)(a) as it was before the replacement made by subsection (1).

45 Apportionment of interest by excess debt entity

(1)–(4) *Amendment(s) incorporated in the Act(s).*

(5) Subsection (2) does not apply to a person and an income year in relation to a tax position taken by the person—

(a) in a return of income filed before the date on which the Taxation (Tax Administration and Remedial Matters) Bill is reported to the House of Representatives by the select committee considering the bill; and

(b) relating to the apportionment of interest expenditure; and

(c) relying on section FE 6(3)(ac) as it was before the replacement made by subsection (2).

(6) Subsection (3) applies for the 2008–09 and later income years.

49 Further eligibility requirements relating to investments

(1) After section HL 10(2)(b)(vii), the following is added:

"(viii) an amount of income under section CW 4 (Annuities under life insurance policies) or CX 40 (Superannuation fund deriving amount from life insurance policy)."

(2) Subsection (1) applies for the 2008–09 and later income years.

50 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period

(1) After section HL 21(12), the following is added:

"*Determining investors' prescribed investor rate*

"(13) For the purposes of determining the item **rate** in subsection (9), the taxable income of the investor does not include an amount that—

"(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and

"(b) is treated as taxable income because section CX 56 (Portfolio investor allocated income and distributions of income by portfolio investment entities) does not apply."

(2) In section HL 21, in the list of defined terms, "prescribed investor rate" and "taxable income" are inserted.

(3) Subsection (1) applies for the 2008–09 and later income years.

94 Ring-fencing cap on attributed CFC net losses

(1)–(2) *Amendment(s) incorporated in the Act(s).*

(3) Section IQ 2(1), other than its heading, is replaced by the following:

"(1) The total amount of attributed CFC net loss and FIF net loss, relating to a CFC or FIF that is resident in the jurisdiction when the loss arises, that is subtracted from the person's net income for the tax year is—

"(a) the total amount of attributed CFC income and FIF income calculated under the branch equivalent method that the person derives in the tax year in relation to a CFC or FIF that is resident in the jurisdiction, if that amount is less than or equal to the amount referred to in paragraph (b); or

"(b) the total amount of such attributed CFC net loss and FIF net loss that—

"(i) the person carries forward to the tax year:

"(ii) is made available in the tax year to the person by another company in the same group."

(4)–(9) *Amendment(s) incorporated in the Act(s).*

(10) Subsections (1), (3), and (7) apply for the 2008–09 and later income years.

(11)–(12) *Amendment(s) incorporated in the Act(s).*

96 Ring-fencing cap on FIF net losses

(1) Section IQ 3(1), other than the heading, is replaced by the following:

"(1) If a person's FIF net loss is carried forward to a tax year or FIF net loss is made available to the person in the tax year, the FIF net loss may be subtracted, under section IQ 2, from the person's net income for the tax year."

(2)–(4) *Amendment(s) incorporated in the Act(s).*

(5) Subsections (1), (3), and (4) apply for the 2008–09 and later income years.

(6) *Amendment(s) incorporated in the Act(s).*

130 Definitions

(1)–(12) *Amendment(s) incorporated in the Act(s).*

(14)–(15) *Amendment(s) incorporated in the Act(s).*

(16) Subsection (5) does not apply in relation to a tax position taken by a person—

(a) in the period from 1 April 2008 to 30 November 2010; and

(b) in relation to the payment of fringe benefit tax; and

(c) relying on section RD 3(2) to (4) in the absence of the amendment made by subsection (5).

(17)–(19) *Amendment(s) incorporated in the Act(s).*

Contents

1 General
2 About this eprint
3 List of amendments incorporated in this eprint (most recent first)

Notes

1 General

This is an eprint of the Income Tax Act 2007. The eprint incorporates all the amendments to the Act as at 2 December 2011. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* http://www.pco.parliament.govt.nz/eprints/.

3 List of amendments incorporated in this eprint (most recent first)

Local Government Borrowing Act 2011 (2011 No 77): section 14

Taxation (Tax Administration and Remedial Matters) Act 2011 (2011 No 63): sections 4 to 140

Taxation (Canterbury Earthquake Measures) Act 2011 (2011 No 24): sections 4, 5, 7–9, 11(2)

Taxation (Annual Rates and Budget Measures) Act 2011 (2011 No 23): sections 6, 7

Financial Reporting Amendment Act 2011 (2011 No 22): section 12

Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13): section 100(3)

Kiwisaver Amendment Act 2011 (2011 No 8): section 56

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 85(1)

Research, Science, and Technology Act 2010 (2010 No 131): section 18

Taxation (GST and Remedial Matters) Act 2010 (2010 No 130): sections 26–95, 96(1),97–114,116–141, 189

Governor-General Act 2010 (2010 No 122): sections 22–25

Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010 (2010 No 109): sections 5–12, 14–93, 95–116, 117(2), (4)–(16), (18)–(35), 118–124

Taxation (Definitions of Dependent Child) Act 2010 (2010 No 104): section 7

Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37): section 113(1)

Taxation (Budget Measures) Act 2010 (2010 No 27): sections 4–40 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 75, 76, 77, 78, 79, 80, 81–94, 96(2)–(5), (7)–(9), 97–99

Accident Compensation Amendment Act 2010 (2010 No 1): section 49

Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63): sections 4–72, 74–77, 78(1)–(3), (5), 80(1), 83–117, 118(2)–(20), (22)-(29), (31)–(36), 119–121, 122, 123–126

Income Tax (Minimum Family Tax Credit) Order 2009 (SR 2009/367): clause 3

Immigration Act 2009 (2009 No 51): section 406(1)

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): sections 4–594

Taxation (Business Tax Measures) Act 2009 (2009 No 5): sections 4–22, 29–31

Taxation (Urgent Measures and Annual Rates) Act 2008 (2008 No 105): sections 5–14, 19, 20, 21, 22, 29(1), 31 33, 34, 35, 36, 37, 52–57

Income Tax (Minimum Family Tax Credit) Order 2008 (SR 2008/384): clause 3

Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85): sections 68–76

Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Act 2008 (2008 No 36): sections 5–8, 13–16, 20–52

Taxation (Limited Partnerships) Act 2008 (2008 No 2): sections 4–26

Taxation (KiwiSaver) Act 2007 (2007 No 110): sections 123–137

Taxation (Business Taxation and Remedial Matters) Act 2007 (2007 No 109): sections 307–562