Part D – Deductions

DA – General rules

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DA 1 General permission

Nexus with income

(1) A person is allowed a deduction for an amount of expenditure or loss to the extent to which the expenditure or loss is—

(a) incurred by them in deriving their counted income; or

(b) incurred by them in carrying on a business for the purpose of deriving counted income.

General permission

(2) Subsection (1) is called the general permission.

Origin:	(1) BD 2(1)(b)(i), (ii). (2) new.
Defined terms:	amount, business, counted income, deduction, derived, general permission, incurred, person.
Comment:	As noted in the general commentary, the drafting of subsection (1) reflects the current section BD 2 (1)(b) and authorises a deduction only to the extent to which counted (formerly gross) income is derived. In view of the exempt income limitation in draft section DA 2 (3), it may not be necessary for the rewritten section to take this approach. It may be sufficient to authorise a deduction if there is a nexus with any income. Comment is sought on this suggestion. Subsection (1)(b) is, arguably, superfluous.

DA 2 General limitations

Capital limitation

(1) A person is not allowed a deduction for an amount of expenditure or loss to the extent to which it is of a capital nature. This rule is called the capital limitation.

Private limitation

(2) A person is not allowed a deduction for an amount of expenditure or loss to the extent to which it is of a private or domestic nature. This rule is called the private limitation.

Exempt income limitation

(3) A person is not allowed a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving exempt income under subpart CW (Exempt income). This rule is called the exempt income limitation.

Employment limitation

(4) A person is not allowed a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving income from employment. This rule is called the employment limitation.

Withholding tax limitation

(5) A person is not allowed a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving schedular income subject to final withholding. This rule is called the withholding tax limitation.

Indemnity limitation

(6) A person is not allowed a deduction for an amount of expenditure or loss to the extent to which it is recoverable under insurance or a right of indemnity. This rule is called the indemnity limitation.

Relationship of general limitations to general permission

(7) Each of the general limitations in this section overrides the general permission.

Origin:	(1) BD 2(2)(e). (2) BD 2(2)(a). (3) BD 2(2)(b). (4) BD 2(2)(c). (5) BD 2(2)(d). (6) DJ 1(c). (7) new.
Defined terms:	amount, capital limitation, deduction, derived, employment limitation, exempt income, exempt income limitation, general limitation, general permission, income from employment, incurred, indemnity limitation, private limitation, schedular income subject to final withholding, withholding tax limitation.

DA 3 Effect of specific rules on general rules

Supplements to general permission

(1) A provision in any of subparts DB to DZ may supplement the general permission.

Relationship of general limitations to supplements to general permission

(2) Each of the general limitations overrides a supplement to the general permission unless the provision creating the supplement expressly states otherwise.

Relationship between other specific provisions and general permission or general limitations

(3) A provision in any of subparts DB to DZ may override any one or more of—

- (a) the general permission:
- (b) the capital limitation:
- (c) the private limitation:
- (d) the exempt income limitation:
- (e) the employment limitation:
- (f) the withholding tax limitation:
- (g) the indemnity limitation.

Express reference needed to supplement

(4) A provision in any of subparts DB to DZ takes effect to supplement the general permission only if it expressly states that it supplements the general permission.

Express reference needed to override

(5) A provision in any of subparts DB to DZ takes effect to override the general permission or a general limitation only if it expressly states either—

- (a) that it overrides the general permission or the relevant limitation; or
- (b) that the general permission or the relevant limitation does not apply.

No supplement or override in Part E

(6) No provision in Part E (Timing and quantifying rules) supplements the general permission or overrides the general permission or a general limitation.

Origin:	(1) BD 2(1)(b)(iii), (2)(e). (2) new. (3) new. (4) new. (5) new. (6) new.
Defined terms:	capital limitation, employment limitation, exempt income limitation, general limitation, general permission, indemnity limitation, private limitation, withholding tax limitation.
Comment:	The reference in draft subsection (6) to Part E (Timing and quantifying rules) will need to be expanded to cover later parts as they are rewritten.

DA 4 Treatment of depreciation loss

Depreciation loss subject to general rules

(1) For the purposes of applying the general permission and general limitations, an amount of depreciation loss quantified under subpart EF (Depreciation) for an item of property is treated as if it were actually a loss.

Capital limitation not applying automatically

(2) However, the capital limitation does not apply to such an amount of depreciation loss merely because the item of property is itself of a capital nature.

Origin:	(1) BD 2(1)(a). (2) BD 2(1)(a).
Defined terms:	amount, capital limitation, depreciable property, depreciation loss, general limitation, general permission.
Comment:	Consideration is being given to whether the term ‘loss’ should be defined to include amounts of depreciation loss generally.

DB – Specific rules for expenditure types

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Taxes

DB 1 Taxes and penalties (other than goods and services tax)

No deduction

(1) A person is not allowed a deduction for the following:

- (a) income tax:
- (b) a civil penalty under Part IX of the Tax Administration Act 1994:
- (c) a tax, a penalty, or interest on unpaid tax that is payable under the laws of a country or territory outside New Zealand and is substantially the same as a civil penalty, or a criminal penalty, or interest imposed under the Tax Administration Act 1994.

'Income tax' defined

(2) In this section, **income tax—**

- (a) includes—
  - (i) further income tax:
  - (ii) a tax imposed in a country or territory outside New Zealand that is substantially the same as income tax:

(iii) imputation penalty tax:

(iv) a dividend withholding payment, further dividend withholding payment, and dividend withholding payment penalty tax:

(v) qualifying company election tax; and

(b) does not include—

(i) fringe benefit tax:

(ii) specified superannuation contribution withholding tax.

Link with subpart DA

(3) This section overrides the general permission.

Origin:	(1) DB 1(1). (2) DB 1(2). (3) new.
Defined terms:	deduction, dividend withholding payment, dividend withholding payment penalty tax, fringe benefit tax, further dividend withholding payment, further income tax, general permission, goods and services tax, imputation penalty tax, income tax, New Zealand, qualifying company election tax, specified superannuation contribution withholding tax, tax.

DB 2 Goods and services tax

No deduction

(1) A person is not allowed a deduction for the following:

(a) input tax charged, levied, or calculated on a supply of goods and services to a person:

(b) goods and services tax payable by a person to the Commissioner.

Application of goods and services for purposes other than making taxable supplies

(2) Subsection (1) does not apply to output tax charged for goods and services that a registered person is treated as supplying under section 21 (1) or section 21I (1) to 21I (3) of the Goods and Services Tax Act 1985, but only to the extent to which—

(a) the person is allowed a deduction for the expenditure that the person incurs in acquiring or producing the goods and services; or

(b) the person is allowed a deduction for an amount of depreciation loss for the goods and services.

Application of capital asset

(3) However, the exception in subsection (2) does not apply when a capital asset is applied—

(a) for the main purpose of making taxable supplies when the asset was acquired or produced other than for the main purpose of making taxable supplies; or

(b) other than for the main purpose of making taxable supplies when the asset was acquired or produced for the main purpose of making taxable supplies.

Depreciable property

(4) The provisions that apply when an amount of depreciation loss is quantified by reference to the cost of an item of depreciable property to a person are in section EF 44 (Cost: goods and services tax).

Link with subpart DA

(5) Subsection (1) overrides the general permission. Subsection (2) limits the extent to which subsection (1) overrides the general permission. The general limitations still apply.

Origin:	(1) ED 4(2). (2) ED 4(3)(a), first proviso (c), (d). (3) ED 4(3) second proviso (e), (f). (4) new. (5) new.
Defined terms:	amount, Commissioner, deduction, depreciable property, depreciation loss, general limitation, general permission, goods, goods and services tax payable, input tax, output tax, person, registered person, services.

DB 3 Determining tax liabilities

Tax-related expenditure

(1) A person is allowed a deduction for expenditure that they incur in connection with the following matters:

(a) calculating or determining their income tax liability for an income year:

(b) calculating or determining the goods and services tax payable by them in a taxable period:

(c) preparing, instituting, or presenting an objection or challenge to, or an appeal following, a determination or assessment made under this Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985:

(d) making a contribution towards the expenditure incurred by another person if—

(i) the other person is allowed a deduction for that expenditure; and

(ii) the expenditure relates to a matter affecting the determination of the first person's liability for income tax or goods and services tax; and

(iii) the first person has objected to, challenged, or appealed against an assessment or determination made in relation to the matter under this Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985.

This subsection is overridden by subsection (2).

Exceptions

(2) Subsection (1) does not apply to expenditure that a person incurs in connection with the following matters:

(a) a matter arising from a return of income or a return under the Goods and Services Tax Act 1985 that was fraudulent or wilfully misleading:

(b) an offence under any of the Inland Revenue Acts:

(c) a shortfall penalty assessed under this Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985 (but not an assessment that is later cancelled):

(d) an objection, challenge, or appeal that is inconsequential or frivolous:

(e) a matter arising under the Goods and Services Tax Act 1985 to the extent to which it relates to a taxable activity that does not constitute a business for the purposes of this Act.

Definitions for this section

(3) In this section,—

goods and services tax payable—

(a) means an amount of goods and services tax calculated under sections 19 to 19D and section 20 of the Goods and Services Tax Act 1985; and

(b) includes—

(i) an amount refundable under those sections; and

(ii) an amount referred to in sections 17 (2) and 27 (6) of that Act

taxable activity has the meaning given to it by section 6 of the Goods and Services Tax Act 1985

taxable period has the meaning given to it by section 2 of the Goods and Services Tax Act 1985.

Link with subpart DA

(4) This section supplements the general permission and overrides the private limitation and the employment limitation. The other general limitations still apply.

Origin:	(1) DJ 5(1). (2) DJ 5(3). (3) DJ 5(4). (4) new.
Defined terms:	amount, business, deduction, employment limitation, general limitation, general permission, goods and services tax payable, income tax liability, income year, incurred, Inland Revenue Acts, person, private limitation, return of income, taxable activity, taxable period.
Comment:	Expenditure remains deductible in the income year in which it is incurred, even if the expenditure relates to another income year. However, the direct timing rule to that effect, contained in the opening words of current section DJ 5 (1), has been omitted, because the timing is sufficiently addressed by the general 'incurred' timing rule in draft section BD 4 (2) (Allocation of deductions to particular income years). Draft subsection (1)(a) now refers to the calculation of income tax liability as well as the determination of liability. This is consistent with the principles of self-assessment and brings the provision into line with the language already used in draft section BB 2 (1) (Principal obligations). Current section DJ 5 (2), which provides that reimbursements and recoveries of amounts previously allowed as a deduction under section DJ 5 are income, has been rewritten as section CG 4 (Recovered expenditure: determining tax liabilities).

DB 4 Chatham Islands dues

Expenditure on dues

(1) A person is allowed a deduction for expenditure incurred on dues that are levied under the Chatham Islands Council Act 1995 relating to goods that the person uses in connection with carrying on a business.

Allocation of deduction

(2) The deduction for the expenditure is allocated to the income year in which the dues are paid.

Cost of goods

(3) Expenditure to which subsection (1) applies must not be taken into account in calculating the cost of the goods for the purpose of any deduction relating to the goods.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DJ 3(1). (2) DJ 3(1). (3) DJ 3(2). (4) new.
Defined terms:	business, capital limitation, deduction, general permission, general limitation, income year, person.
Comment:	The reference in current section DJ 3 (1) to the Chatham Islands County Council Empowering Act 1980 is obsolete and has been omitted. The timing rule in current section DJ 3 (1), which allocates the deduction to the income year in which payment is made, has been isolated and is now expressed in a separate subsection (2).

Financing costs

DB 5 Transaction costs: borrowing money for use as capital

Cost of borrowing money

(1) A person is allowed a deduction for expenditure incurred in borrowing money that is used as capital in deriving their income.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 11. (2) new.
Defined terms:	capital limitation, derived, general limitation, general permission, income, incurred, person.
Comment:	Current section DJ 11 allows a deduction for both financing costs and property leasing costs. The financing costs element has been isolated and is now expressed in this separate section, grouped with other financing cost provisions.

DB 6 Interest

Interest

(1) A person is allowed a deduction for expenditure that they incur on interest.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DD 1(b). (2) new.
Defined terms:	capital limitation, general limitation, general permission, interest, person.

DB 7 Repayment of debt sold at discount to associate of debtor

Repayment of debt

(1) When section EH 57 (6)(b) (Income and deduction when debt sold at discount to associate of debtor) applies, the debtor is allowed a deduction for the amount quantified in that subsection.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) EH 53(1), (7). (2) new.
Defined terms:	amount, associated person, capital limitation, deduction, general limitation, general permission.

DB 8 Money borrowed to buy shares in group companies

Companies in same group

(1) Subsection (2) applies when company A in a group of companies borrows money to acquire shares in company B in the same group. Companies are treated as being in the same group of companies for an income year only if they are in the group at the end of the income year.

Interest

(2) Company A is allowed a deduction for the interest payable by it on the money borrowed.

Amalgamations

(3) Subsection (4) applies when—

(a) company A in a group of companies borrows money to acquire shares in company B in the same group; and

(b) company B ceases to exist through a qualifying amalgamation; and

(c) both companies were members of the group immediately before the amalgamation.

Interest, when amalgamation occurs

(4) Company A is allowed a deduction, from the time when the amalgamation occurs, for the interest payable by it on the money borrowed.

Link with subpart DA

(5) This section supplements the general permission and overrides the exempt income limitation. The other general limitations still apply.

Origin:	(1) DD 1(b)(iii), (iii) second proviso. (2) DD 1(b)(iii). (3) DD 3. (4) DD 3. (5) new.
Defined terms:	amalgamation, company, exempt income limitation, general limitation, general permission, group of companies, income year, interest, pay, qualifying amalgamation, share.

Security arrangements

DB 9 Security payment

Loss generally

(1) Subsection (2) applies when—

(a) a person receives a security payment for a loss; and

(b) the person is not allowed a deduction for the loss under any other provision of this Act.

Loss

(2) The person is allowed a deduction for the loss quantified in section EH 58 (2) (Deduction for security payment).

Other loss

(3) Subsection (4) applies when—

(a) a person receives a security payment for a share loss within the meaning of section DB 18 (Share losses); and

(b) the requirements of section DB 18 are met; and

(c) the person is not allowed a deduction for the loss under any other provision of this Act.

Share loss

(4) The person is allowed a deduction for the share loss quantified in section EH 58 (4) (Deduction for security payment).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) EH 55(1). (2) EH 55(1). (3) EH 55(2). (4) EH 55(2). (5) new.

Defined terms:	capital limitation, deduction, general limitation, general permission, person, security payment.

DB 10 Sureties

When this section applies

(1) This section applies when a surety incurs expenditure or loss under a security arrangement.

No deduction, with qualification

(2) Neither the surety nor a person with whom the surety was an associated person over the security arrangement's term is allowed a deduction for the expenditure or loss to the extent to which the expenditure or loss is wholly or partly due to—

(a) the actions of the surety or a person with whom the surety was an associated person over the arrangement's term; or

(b) the occurrence of an event, if the occurrence could have been influenced by the surety or a person with whom the surety was an associated person over the arrangement's term; or

(c) the failure to occur of an event, if the failure to occur could have been influenced by the surety or a person with whom the surety was an associated person over the arrangement's term.

Link with subpart DA

(3) This section overrides the general permission.

Origin:	(1) EH 56. (2) EH 56. (3) new.
Defined terms:	associated person, deduction, general permission, person, security arrangement.

Premises costs

DB 11 Transaction costs: leases

Costs of obtaining lease

(1) A person is allowed a deduction for expenditure that they incur in preparing and registering, or renewing, a lease of property.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 11. (2) new.
Defined terms:	capital limitation, general limitation, general permission, lease, person.
Comment:	Current section DJ 11 allows a deduction for both property leasing costs and financing costs. The property leasing costs element has been isolated and is now expressed in this separate section, grouped with other property cost provisions.

DB 12 Destruction of temporary building

Destruction of temporary building

(1) A person is allowed a deduction for a loss that they incur through the destruction of a temporary building.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DD 1(c). (2) new.
Defined terms:	capital limitation, general limitation, general permission, incurred, person, temporary building.

DB 13 Payments for non-compliance with covenant for repair

When this section applies

(1) This section applies when—

(a) a lessee of land uses it to derive income; and

(b) the lease contains a covenant requiring the lessee to maintain the land or to make repairs to improvements on the land, including painting and general maintenance; and

(c) the lessee does not comply with the covenant; and

(d) the lessee is, consequently, liable to make a payment to the lessor; and

(e) either—

(i) the lessee, during the term of the lease or after it ends, makes the payment to the lessor; or

(ii) the lessor recovers the payment from the lessee during the term of the lease or after it ends.

Cost of repairs

(2) The lessee is allowed a deduction for the payment to the extent to which it relates to maintenance or repairs and to the extent to which the lessee would have been allowed a deduction for the expenditure had the lessee incurred it during the term of the lease.

Allocation of deduction

(3) The deduction for the payment is allocated to the income year in which the lessee makes the payment or the lessor recovers the payment.

Exception

(4) Section EK 18 (Payment by lessee for non-compliance with covenant for repair) overrides subsection (3).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) EO 5(1). (2) EO 5(2), (3). (3) EO 5(2). (4) EO 5(2). (5) new.
Defined terms:	capital limitation, deduction, derived, general limitation, general permission, income, income year, incurred, lease, lessee, lessor, term of the lease.
Comment:	Lessees who become liable to pay money to their lessors because of non-compliance with a covenant to maintain or repair land are allowed a deduction for any payments that they make and that relate to the maintenance and repairs by current section EO 5 (1). Current section EO 5 also directs that the deduction is allocated to the income year of payment, subject to a discretion for lessees to spread the deduction over the three preceding income years. The deduction is now allowed in this separate section in Part D (Deductions). This is consistent with Part B (Core provisions). The primary timing rule that the deduction is allocated to the income year in which the lessee makes payment is also included here. This is consistent with draft section BD 4 (2) (Allocation of deductions to particular income years). The timing rule allowing lessees to allocate the deduction to earlier income years is set out in a separate timing rule in Part E (Timing and quantifying rules). The rule is in draft section EK 18 (Payment by lessee for non-compliance with covenant for repair).

DB 14 Lessors' offsetting deduction: payments for non-compliance and change in use

When this section applies

(1) This section applies when—

(a) a lessor receives a payment for non-compliance with a covenant for repair that is counted income under section CC 2 (Payments for non-compliance with covenant for repair); and

(b) in the income year in which the lessor receives the payment or in any of the following 4 income years,—

(i) the lessor does not use the land to which the payment relates to derive counted income, but continues to own the land; and

(ii) the lessor incurs expenditure in maintaining the land or in making repairs to improvements on the land, including painting and general maintenance; and

(iii) the lessor would have been allowed a deduction if the land had been used for the purpose of deriving counted income; and

(iv) a person is not allowed a deduction for the expenditure except under this section.

Maintenance or repairs

(2) The lessor is allowed a deduction in the income year in which the expenditure is incurred.

Amount of deduction

(3) The amount of the deduction is the lesser of—

(a) the amount of the expenditure; and

(b) the amount of the payment that is counted income derived by the person in the income year through the operation of section CC 2 (Payments for non-compliance with covenant for repair), section EJ 2 (Payment to lessor for non-compliance with covenant for repair), or section EJ 3 (Payment for non-compliance: when lessor ceases to own land).

Ownership of land

(4) For the purposes of subsection (1)(b)(i), a lessor is treated as owning land if they have an estate or interest in the land. The estate or interest may be legal or equitable, but an interest as a mortgagee is not included.

Link with subpart DA

(5) This section supplements the general permission. The general limitations still apply.

Origin:	(1) EN 1(6). (2) EN 1(6). (3) EN 1(6). (4) EN 1(8). (5) new.
Defined terms:	amount, counted income, deduction, derived, estate, general limitation, general permission, income year, incurred, interest, lessor, owner.

Comment:	Lessors who receive payments for non-compliance with covenants to maintain or repair land, and who subsequently undertake the maintenance or repairs themselves at a time when they are not using the land to derive income, are allowed a deduction for their expenditure by current section EN 1 (6). Current section EN 1 also identifies the payments for non-compliance as income, directs that the payments are recognised as income in the income year of receipt, and allows the spreading of the income. The deduction is now allowed in this separate section in Part D (Deductions). This is consistent with draft Part B (Core provisions).

Revenue account property

DB 15 Cost of revenue account property

Cost of revenue account property

(1) A person is allowed a deduction for expenditure that they incur as the cost of revenue account property.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 13. (2) DJ 13.
Defined terms:	capital limitation, deduction, general limitation, general permission, person, revenue account property.
Comment:	Arguably, it is not necessary to replicate current section DJ 13. Current section DJ 13A has not been replicated on the basis that it is unnecessary.

DB 16 Acquiring commercial bills

Redeeming or disposing of commercial bill

(1) A person is allowed a deduction if they acquire a commercial bill from another person (other than under a matrimonial agreement) and derive income under section CC 7 (Commercial bills) on the redemption or disposal of the commercial bill.

Amount of deduction

(2) The amount of the deduction is the value of the commercial bill on the date on which the person acquired it.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 16. (2) DJ 16. (3) new.

Defined terms:	amount, commercial bill, deduction, derived, general limitation, general permission, income, matrimonial agreement, person.

DB 17 Acquisition of companies' own shares

No deduction, with qualification

(1) A company is not allowed a deduction for expenditure or loss that it incurs in acquiring shares in the company if the acquisition is treated by section 67A (1) of the Companies Act 1993 as not resulting in the shares being cancelled.

Link with subpart DA

(2) This section overrides the general permission.

Origin:	(1) DJ 12. (2) new.
Defined terms:	cancellation, company, deduction, general permission, share.

DB 18 Share losses

When this section applies

(1) This section applies when—

- (a) company A acquires a share in company B by subscribing for it or by buying it; and
- (b) the share declines in value; and
- (c) because of the decline in value, company A incurs a loss (a share loss), whether on a disposal of the share or a valuation of it under subpart EE (Valuation of excepted financial arrangements) or in any other way; and
- (d) company B—
  - (i) itself uses the amount subscribed for the share; or
  - (ii) uses it to fund directly or indirectly another (company C); and
- (e) company B or company C has a net loss and the amount used is taken into account in calculating the net loss; and
- (f) company A, or a company that is in the same group of companies as company A at any time in the income year in which company B or company C has the net loss, offsets an amount for the net loss under section IG 2 (Net loss offset between group companies); and
- (g) the offset is in an income year before the income year in which company A incurs the share loss (but not before the 1993-94 income year).

No deduction, with qualification

(2) Company A is not allowed a deduction for the share loss, except to the extent to which the share loss, as described in subsection (3), is more than the amount offset under section IG 2 (Net loss offset between group companies), as described in subsection (4).

Share loss

(3) The share loss includes every loss to which all the following apply:

(a) company A incurs it as a result of the share's decline in value; and

(b) company A incurs it in an income year before the income year in which company A incurs the share loss; and

(c) company A has been prevented from deducting it by the operation of subsection (2).

Amount offset

(4) The amount offset under section IG 2 (Net loss offset between group companies) includes every amount that company A, or a company that is in the same group of companies as company A at any time in the income year in which company A has the net loss, has offset for the net loss under that section.

Link with subpart DA

(5) This section overrides the general permission.

Origin:	(1) DJ 1(b)(i), (ii), (iii), (iv), (v). (2) DJ 1(b). (3) DJ 1(b). (4) DJ 1(b). (5) new.
Defined terms:	amount, company, deduction, general permission, group of companies, income year, net loss, share.

DB 19 Undertakings or schemes involving personal property

When this section applies

(1) This section applies when an amount that a person derives from disposing of personal property in carrying on or carrying out an undertaking or scheme entered into for the purpose of making a profit is income of the person under section CB 2 (Carrying on or carrying out profit-making schemes) and under no other provision.

Cost of personal property

(2) The person is allowed a deduction for the cost of the personal property, as determined under subsection (3).

Determining amount of deduction

(3) For the purpose of determining the deduction that the person is allowed for the cost of the personal property, the person is treated as—

(a) having disposed of the property to an unrelated third party immediately before the start of the undertaking or scheme; and

(b) having reacquired the property immediately after the start of the undertaking or scheme at the market value of the property at the time.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 15. (2) DJ 15. (3) DJ 15. (4) new.
Defined terms:	amount, deduction, derived, general limitation, general permission, income, person.

DB 20 Land on revenue account

If a person derives income under sections CB 5 to CB 10 from the disposal of land, and the land is acquired together with other property, the cost of acquisition must be apportioned between the land and the other property.

Origin:	DJ 14(4).
Defined terms:	derived, income, land, person.

DB 21 Major land development begun after 10 years

When this section applies

(1) This section applies when a person derives income from the disposal of land under section CB 10 (Disposal: major development begun after 10 years) and under no other provision.

Cost of land

(2) The person is allowed a deduction for the cost of the land, as determined under subsection (3).

Determining amount of deduction

(3) For the purpose of determining the deduction that the person is allowed for the cost of the land, the person is treated as—

(a) having disposed of the land to an unrelated third party immediately before the start of the undertaking or scheme; and

(b) having reacquired it immediately after the start of the undertaking or scheme at the market value of the land at the time.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 14(3). (2) DJ 14(3). (3) DJ 14(3). (4) new.
Defined terms:	amount, deduction, derived, general limitation, general permission, income, person.

DB 22 Changes in permitted use of land

Disposing of land

(1) If a person derives income from the disposal of land under section CB 11 (Disposal of land affected by changes in permitted use) and under no other provision, the person is allowed a deduction.

Amount of deduction

(2) The maximum amount of the deduction is the profit obtained from the disposal of the land. The maximum is applied to the greater of $1,000 and an amount calculated using the formula—

$$\text{percentage of profit} \times \text{years.}$$

Definition of items in formula

(3) In the formula,—

(a) **percentage of profit** is 10% of the profit on the disposal of the land:

(b) **years** is the number (which may not be more than 10) of complete consecutive 12-month periods between the date on which the person acquired the land and the date on which they disposed of it, with the first 12-month period starting on the date on which the person acquired the land.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 14(1). (2) DJ 14(1), (2). (3) DJ 14(1). (4) new.

Defined terms:	amount, deduction, derived, general limitation, general permission, income, person.

Bad debts

DB 23 Bad debts

No deduction, with qualification

(1) A person is not allowed a deduction in an income year for a bad debt, except to the extent to which the debt is written off as bad in the income year.

Financial arrangement debt: income amount

(2) A person who derives counted income from a financial arrangement to which the financial arrangements rules apply is allowed a deduction in an income year for an amount owing under the financial arrangement to the extent to which—

(a) the amount is a bad debt and is written off as bad in the income year; and

(b) the amount is attributable to the income; and

(c) subsection (5) does not limit the deduction.

Financial arrangement debt: dealers in arrangements

(3) A person is allowed a deduction in an income year for an amount owing under a financial arrangement to which the financial arrangements rules apply to the extent to which—

(a) the amount is a bad debt and is written off as bad in the income year; and

(b) the person carries on a business for the purpose of deriving counted income that includes dealing in financial arrangements of the same class as, or a similar class to, the financial arrangement; and

(c) the person is not associated with the person owing the amount written off; and

(d) subsection (5) does not limit the deduction.

Financial arrangement debt: dealers in property or services sold

(4) A person is allowed a deduction in an income year for an amount owing under a financial arrangement to which the financial arrangements rules apply to the extent to which—

(a) the amount is a bad debt and is written off as bad in the income year; and

(b) the financial arrangement is an agreement for the sale and purchase of property or services; and

(c) the person carries on a business for the purpose of deriving counted income that involves dealing in the property or services that are the subject of the agreement; and

(d) subsection (5) does not limit the deduction.

Bad debt representing loss already offset

(5) A deduction is allowed for a bad debt only to the extent to which it exceeds amounts offset under section IG 2 (Net loss offset between group companies) if—

(a) the person writing off the amount of debt is a company (company A); and

(b) the debt is owed to it by another company (company B); and

(c) company B—

(i) itself uses the amount giving rise to the debt; or

(ii) uses it to fund directly or indirectly another company (company C); and

(d) company B or company C has a net loss and the amount used is taken into account in calculating the net loss; and

(e) company A, or a company that is in the same group of companies as company A at any time in the income year in which company B or company C has the net loss, offsets an amount for the net loss under section IG 2 (Net loss offset between group companies); and

(f) the offset is in an income year before the income year in which company A writes off the amount of debt (but not before the 1993-94 income year).

Link with subpart DA

(6) Subsection (1) overrides the general permission. Subsections (2), (3), and (4) supplement the general permission and override the capital limitation. The other general limitations still apply.

Origin:	(1) DJ 1(a)(iii). (2) DJ 1(a)(i); EH 54(1), (2). (3) DJ 1(a)(i); EH 54(1), (3). (4) DJ 1(a)(i); EH 54(1), (4). (5) DJ 1(a)(iv). (6) new.

Defined terms:	agreement for the sale and purchase of property or services, amount, associated person, business, capital limitation, company, counted income, deduction, derived, financial arrangement, financial arrangements rules, general limitation, general permission, group of companies, income year, net loss, person.

DB 24 Bad debts owed to estates

When this section applies

(1) This section applies for an income year when a debt owing to a person at the date of their death is either counted income of the person or counted income of the trustee of their estate for any income year, and some or all of the debt is not recoverable and is written off as bad.

Bad debt

(2) The following persons, in the following order, are allowed a deduction for the amount of the debt written off:

(a) first, the trustee, to the extent of counted income derived as trustee income; and

(b) second, any beneficiary who has a vested interest in the capital of the estate, to the extent of counted income derived in the income year by or in trust for the beneficiary, and to the extent to which the amount is chargeable against the capital of the beneficiary; and

(c) third, for any balance for which a person is not allowed a deduction in the income year, a person is allowed a deduction in the same manner in the next income year, and so on.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 2. (2) DJ 2. (3) new.
Defined terms:	amount, counted income, deduction, derived, general limitation, general permission, income year, person, trustee, trustee income.

Research and development

DB 25 Scientific research

Expenditure on scientific research

(1) A person is allowed a deduction for expenditure incurred in connection with scientific research that they carry on for the purpose of deriving their income. This subsection is overridden by subsection (2).

Exception

(2) A person is not allowed a deduction for expenditure of the kind described in subsection (1) to the extent to which the expenditure relates to an asset that—

(a) is not created from the scientific research; and

(b) is an asset for which the person is allowed a deduction for an amount of depreciation loss.

Amount of depreciation loss

(3) A person is allowed a deduction for an amount of depreciation loss for an asset used in connection with scientific research that they carry on for the purpose of deriving their counted income, if the Commissioner is satisfied that complete and satisfactory accounts have been kept by or on behalf of the person. This subsection applies despite section DA 4 (Treatment of depreciation loss).

Link with subpart DA

(4) Subsection (1) overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 9(1). (2) DJ 9(1). (3) DJ 9(1), (2). (4) new.
Defined terms:	amount, capital limitation, Commissioner, counted income, deduction, depreciation loss, derived, general limitation, general permission, income, incurred, person.

DB 26 Patent expenses

Patent-related expenditure

(1) A person is allowed a deduction for expenditure that they incur in connection with the grant, maintenance, or extension of a patent if they—

(a) acquired the patent before 23 September 1997; and

(b) use the patent in deriving income in the income year in which they incur the expenditure.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 6(1). (2) new.
Defined terms:	capital limitation, derived, general limitation, general permission, income, income year, person.

DB 27 Patent rights: devising patented inventions

When this section applies

(1) This section applies when a person incurs expenditure in devising an invention for which a patent has been granted. The section applies whether the person devised the invention alone or in conjunction with another person.

Using patent in deriving income

(2) When the person uses the patent in deriving income in an income year, the person is allowed a deduction for expenditure incurred before 1 April 1993, but not if a deduction has otherwise been allowed for the expenditure.

Disposing of all rights

(3) If the person disposes of all the patent rights relating to the invention, the person is allowed a deduction for the expenditure that they have incurred in connection with devising the invention to the extent to which a deduction has not already been allowed under subsection (2).

Disposing of some rights

(4) If the person disposes of some of the patent rights relating to the invention, the person is allowed a deduction for the expenditure that equates with the proportion of the rights disposed of.

Link with subpart DA

(5) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 6(2); EN 2(3)(a). (2) DJ 6(2). (3) EN 2(3)(a). (4) EN 2(3)(a). (5) new.
Defined terms:	capital limitation, deduction, derived, general limitation, general permission, income, income year, incurred, patent rights, person.
Comment:	Expenditure incurred in devising a patented invention, the patent rights of which are disposed of, is allowed as a deduction by current section EN 2 (3)(a). Current section EN 2 also identifies amounts derived from the disposal as income, records a previous power of the Commissioner to spread the income, and directs a spreading of the corresponding deduction. The deduction is now allowed in this separate section in Part D (Deductions). This is consistent with Part B (Core provisions). The timing rule in current section EN 2 (3B), which directs that the deduction be spread when the corresponding income has been spread, has not been rewritten, as the income-spreading provision (the proviso to subsection (1) of current section EN 2) is itself obsolete and has not been rewritten.

	Further work is being undertaken to clarify the linkage between the provisions relating to patent rights and the provisions applying respectively to depreciable property and revenue account property.

DB 28 Patent rights acquired before 1 April 1993

When this section applies

(1) This section applies when a person disposes of patent rights that they acquired before 1 April 1993.

Loss on disposal

(2) The person is allowed a deduction for a loss incurred on the disposal of the patent rights. The amount is calculated using the formula—

$$\frac{\text{unexpired term of the patent rights at the date of disposal}}{\text{unexpired term of the patent rights at the date of acquisition}} \quad x \quad \text{cost.}$$

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) EN 2(3)(b). (2) EN 2(3)(b). (3) new.
Defined terms:	amount, capital limitation, general limitation, general permission, patent rights, person.
Comment:	A limited deduction for the cost of patent rights that are disposed of, and that were acquired before 1 April 1993, is allowed as a deduction by current section EN 2 (3)(b). See also the comment on draft section DB 27.

DB 29 Patent rights acquired on or after 1 April 1993

When this section applies

(1) This section applies when a person disposes of patent rights that they acquired on or after 1 April 1993.

Loss on disposal

(2) The person is allowed a deduction for a loss on the disposal of the patent rights. The amount is calculated using the formula—

$$\text{total cost} \; - \; \text{total depreciation losses.}$$

Definition of items in formula

(3) In the formula,—

(a) **total cost** is the total cost to the person of the patent rights:

(b) **total depreciation losses** is the total of the amounts of depreciation loss for the patent rights for which the person is allowed a deduction under this Act and the depreciation deductions for the patent rights that the person was allowed under the Income Tax Act 1976.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) EN 2(3)(c). (2) EN 2(3)(c). (3) EN 2(3)(c). (4) new.
Defined terms:	amount, capital limitation, deduction, depreciation loss, general limitation, general permission, patent rights, person.
Comment:	A deduction for the undepreciated balance of the total cost of patent rights that are disposed of, and that were acquired after 1 April 1993, is provided for in current section EN 2 (3)(c). See also the comment on draft section DB 27.

Marketing

DB 30 Gifts of money by company

Gift of money

(1) A company that is not a close company is allowed a deduction to the extent specified in subsection (2) for a gift of money to a society, association, institution, organisation, trust, or fund of the kind described in section KC 5 (1) (Rebates for gifts of money).

Amount of deduction

(2) The deduction is limited in an income year to the following extent:

(a) for all gifts to 1 donee, the deduction must not be more than the greater of—

(i) 1% of the amount that would be the company's net income if this section did not exist; and

(ii) $4,000; and

(b) for all gifts, the deduction must not be more than the greater of—

(i) $1,000; and

(ii) 5% of the amount that would be the net income of the company in that year if this section did not exist.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 4. (2) DJ 4 proviso. (3) new.

Defined terms:	amount, deduction, close company, company, general limitation, general permission, income year, net income.

Theft

DB 31 Property misappropriated by employees or service providers

When this section applies

(1) This section applies when—

(a) a person carries on a business; and

(b) an employee of the business, or a person who provides services to the business, misappropriates property; and

(c) the loss resulting from the misappropriation is not allowed as a deduction under any other provision of this Act.

This subsection is overridden by subsection (2).

Exceptions

(2) This section does not apply when—

(a) the person who misappropriates the property is a relative of the person who carries on the business; or

(b) the business is carried on by a company, and—

(i) the company and the person who misappropriates the property are associated persons; or

(ii) the company and a relative of the person who misappropriates the property are associated persons; or

(c) the person who carries on the business is a trustee of a trust, and the person who misappropriates the property either created the trust, settled property on the trust, or is a beneficiary of the trust.

Loss resulting from misappropriation by employee

(3) The person is allowed a deduction for the loss that they incur in the course of the business as a result of the misappropriation of the property.

Allocation of deduction

(4) The deduction for the loss is allocated to the income year in which the loss is ascertained.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DJ 8(1), (2). (2) DJ 8(1), (2). (3) DJ 8(1). (4) DJ 8(1). (5) new.
Defined terms:	associated person, business, capital limitation, company, deduction, employee, general limitation, general permission, income year, person, relative, trustee.

DB 32 Making good loss from misappropriation by partners

When this section applies

(1) This section applies when a person carrying on a business in partnership makes a payment to make good a loss that arises from a partner (other than the person or their spouse) misappropriating property that—

(a) belongs to another person who is neither a partner in the partnership nor the spouse of a partner; and

(b) is received in the course of the business either by the partnership or one or more of its partners.

Payment to make good loss

(2) The person is allowed a deduction for the payment if the person is under a legal liability to make good the loss.

Allocation of deduction

(3) The deduction for the payment is allocated to the income year in which the payment is made.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DJ 7. (2) DJ 7. (3) DJ 7. (4) new.
Defined terms:	business, capital limitation, deduction, general limitation, general permission, income year, person.

DB 33 Restitution of stolen property

Amount of restitution

(1) A person who derives income under section CB 29 (Obtaining property by theft**)** is allowed a deduction for an amount equal to the amount of restitution that they make to a person who is beneficially entitled to property to which section CB 29 applies.

Allocation of deduction

(2) The deduction for the amount of restitution is allocated to the income year in which the person makes restitution.

'Amount of restitution' defined

(3) In this section, **amount of restitution** includes restitution made to a person claiming through the person beneficially entitled to the property.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 18(1), (2). (2) DJ 18(2). (3) DJ 18(3). (4) new.
Defined terms:	amount, amount of restitution, deduction, derived, general limitation, general permission, income, income year, person, property.

Pollution control

DB 34 Preventing pollution of environment

When this section applies

(1) This section applies when a person carries on a business, other than a farming or agricultural business, in New Zealand.

Construction on land to prevent pollution

(2) The person is allowed a deduction for expenditure that they incur in the business on constructing on land in New Zealand earthworks, ponds, settling tanks, or other similar improvements whose primary purpose is the treatment of industrial waste to prevent or combat pollution of the environment.

Allocation of deduction

(3) The deduction for the expenditure is allocated, as to 20%, to the income year in which the expenditure is incurred, and, as to 80%, at the rate of 20% to each of the following 4 income years. The deduction may be reallocated so that the minimum that a person has for any of those years is the lesser of the following amounts:

(a) $1,000 in total; and

(b) the balance of the deduction not allocated to a previous income year.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 10(1). (2) DJ 10(1). (3) DJ 10(2). (4) new.
Defined terms:	amount, business, capital limitation, deduction, general limitation, general permission, income year, New Zealand, person.

Repayments

DB 35 Payments for remitted amounts

When this section applies

(1) This section applies when—

(a) a person is allowed a deduction for an income year of an amount that the person is liable to pay; and

(b) the person's liability for the amount is later remitted or cancelled, wholly or partly; and

(c) the remission or cancellation is not a dividend described in section CD 3 (Transfers of value generally); and

(d) the person is not required to calculate a base price adjustment by section EH 35 (When calculation of base price adjustment required); and

(e) the amount to which the remission or cancellation applies is counted income of the person under section CG 2 (Remitted amounts); and

(f) the person makes a payment for the amount to which the remission or cancellation applies.

Payment

(2) The person is allowed a deduction for the amount of the payment for the income year in which it is made.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) IE 1(4)(g). (2) IE 1(4)(g). (3) new.

Defined terms:	amount, counted income, deduction, dividend, general limitation, general permission, income year, person.

DB 36 Restrictive covenant breached

When this section applies

(1) This section applies when an employee (person A) makes a payment to another person (person B) in the following circumstances:

(a) person A derives counted income under section CE 9 (Restrictive covenants); and

(b) person A breaches a term of the undertaking they gave to person B; and

(c) person A is, consequently, required to make the payment to person B.

Payment

(2) Person A is allowed a deduction for the payment. The amount of the deduction is the lesser of the following:

(a) the counted income that person A derives under section CE 9 (Restrictive covenants); and

(b) the payment that person A makes to person B, excluding interest, punitive damages, exemplary damages, and person B's legal costs and other expenses.

Allocation of deduction

(3) The deduction for the payment is allocated to the income year in which person A makes the payment to person B.

Link with subpart DA

(4) This section supplements the general permission and overrides the employment limitation. The other general limitations still apply.

Origin:	(1) DJ 21(1). (2) DJ 21(2), (3). (3) EO 6. (4) DJ 21(4).
Defined terms:	amount, counted income, deduction, derived, employee, employment limitation, general limitation, general permission, income year, person.

Timing adjustments: stock and prepayments

DB 37 Trading stock, livestock, and excepted financial arrangements

When this section applies

(1) This section applies to a person who has a business that has trading stock or livestock, or who holds excepted financial arrangements that are revenue account property, whether the stock or arrangements are held at the start of an income year, or at the end of an income year, or both.

Adjustment

(2) When section EB 1 (Stock and excepted financial arrangements) applies, the person is allowed a deduction for the adjustment calculated under subsection (3) of that section.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) new. (2) EE 2(4). (3) new.
Defined terms:	business, deduction, excepted financial arrangement, general limitation, general permission, income year, livestock, person, revenue account property, trading stock.
Comment:	This section and draft section CG 10 (Trading stock, livestock, and excepted financial arrangements) ensure that the net change in value of the taxpayer’s trading stock, livestock, and excepted financial arrangements (on revenue account) is brought to account as either income or a deduction.

DB 38 Adjustment for prepayments and deferred payments

When this section applies

(1) This section applies when a person has, under the rules in section EC 3 (Prepayments and certain deferred payments), an unexpired amount of expenditure at the end of an income year.

Unexpired amount

(2) The person is allowed a deduction of the unexpired amount for the next income year.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) new. (2) EF 1(1)(b). (3) new.
Defined terms:	amount, deduction, general limitation, general permission, income year, person.

DB 39 Adjustment for change to accounting practice

When this section applies

(1) This section applies when a person has, under the rules in section EM 2 (2) or (3) (Adjustment for change to accounting practice), an amount owed by them or an amount owing to them as quantified in those subsections.

Deduction in year of change

(2) The person is allowed a deduction of the amount as quantified and allocated under section EM 2.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) EC 1. (2) EC 1. (3) new.
Defined terms:	amount, deduction, general limitation, general permission, person.

DC – Employee or contractor expenditure

Index

DC 1 Lump sum payments on retirement

Lump sum payment on retirement

(1) A person who carries on a business is allowed a deduction for a lump sum paid as a bonus, gratuity, or retiring allowance to an employee on retirement.

Payments on loss of employment

(2) For the purposes of subsection (1), a lump sum paid on retirement includes a lump sum paid to—

(a) an employee when they end their employment or service through redundancy, loss of office, or other similar circumstances:

(b) a former employee when they are unable to be re-employed in seasonal work in circumstances that would be considered the loss of employment or service through redundancy if they resulted in ending the seasonal work.

Allocation of deduction

(3) The deduction for the lump sum is allocated to the income year in which the lump sum is paid.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DF 5(1). (2) DF 5(2). (3) DF 5(1). (4) new.
Defined terms:	business, deduction, employee, general limitation, general permission, income year, person.

DC 2 Pension payments to former employees

Payment of pension

(1) A person who carries on a business is allowed a deduction for a reasonable amount paid as a pension to a former employee or the employee's surviving spouse if all the following apply:

(a) the pension is paid for the employee's past services in the business; and

(b) the employee has retired from the employment or their employment has ended through redundancy or similar circumstances; and

(c) the former employee or their spouse has a right to receive the pension under a deed for a fixed period or for life (or, in the case of the spouse, until the spouse remarries).

Allocation of deduction

(2) The deduction for the amount is allocated to the income year in which the amount is paid.

When employer a close company

(3) For the purposes of subsection (1), if the employer is a close company and the former employee (or a relative) is or was a shareholder in that company, a person is allowed a deduction only when the employment is genuine, and only to the extent of the amount that would have been paid at arm's length in the open market.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DF 4(1). (2) DF 4(1). (3) DF 4(2). (4) new.
Defined terms:	amount, business, close company, deduction, employee, employer, general limitation, general permission, income year, person, relative, shareholder.

DC 3 Payments to working partners

Payment to working partner

(1) A partner in a partnership is allowed a deduction for their share of a payment made under a contract of service to a working partner who personally and actively performs duties that are required to be performed in carrying on the business of the partnership. However, the partner is allowed a deduction only for a payment made for duties performed during the currency of the contract of service. This subsection is overridden by subsection (2).

Exception

(2) This section does not apply to a partnership that is engaged exclusively or mainly in investing money or in holding, or dealing in, shares, securities, investments, or estates or interests in land.

Amount of deduction

(3) The amount of the deduction is limited to the amount authorised in the contract of service, including the payment of a bonus.

Excessive salary

(4) Section GD 3 (Payment of excessive salary or wages, or allocation of excessive share of profits or losses to relative employed by or in partnership with taxpayer) overrides this section.

Definitions for this section

(5) In this section,—

contract of service means an agreement in writing entered into by all the partners that specifies the terms and conditions of the services to be performed by the working partner and the amount payable to the working partner for the performance of the services

land includes any estate or interest in land, whether legal or equitable, corporeal or incorporeal, freehold or chattel, and any option to acquire land or an estate or interest in land.

Link with subpart DA

(6) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DF 8(1), (3). (2) DF 8(2). (3) DF 8(1). (4) DF 8(1). (5) DF 8(3). (6) new.
Defined terms:	amount, business, contract of service, deduction, estate, general limitation, general permission, interest, land, share.

DC 4 Loans to employees under share purchase schemes

Financial assistance

(1) A company that provides financial assistance to an employee by way of an interest-free loan under a share purchase scheme is allowed a deduction for providing the assistance, but not after 5 years from the date of the loan. The scheme requires the Commissioner's approval, which must be given if the scheme meets all the criteria set out in section DC 5.

Amount of deduction

(2) The amount of the deduction is equal to the interest that would have been payable by the employing company if the amount of the loan had been borrowed by the company at an interest rate of 10% annually with interest calculated with monthly rests, and as if repayments by the employee under the scheme were repayments of the notional loan by the company.

Group of companies

(3) If the employing company is part of a group of companies, and the share purchase scheme involves shares issued by another company in the group, the shares are treated as if they were issued by the employing company.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DF 7(1), (2). (2) DF 7(1). (3) DF 7(3) 'employing company' proviso. (4) new.
Defined terms:	amount, Commissioner, company, deduction, employee, employing company, general limitation, general permission, group of companies, interest, share, share purchase scheme.

DC 5 Criteria for approval of share purchase schemes

When this section applies

(1) This section sets out the criteria for approval of share purchase schemes to which section DC 4 applies.

Purchase of shares

(2) The shares must be available for no more than their market value at the date of purchase or subscription. The amount that an employee spends on buying shares under the scheme or any similar scheme must not be more than $2,340 in a 3-year period.

Eligibility

(3) Employees must be eligible to participate equally in the scheme, that is, full-time permanent employees on an equal basis with every other full-time permanent employee, and, if the scheme applies to part-time employees and seasonal employees, part-time employees on an equal basis with every other part-time employee, and seasonal employees similarly with every other seasonal employee. Any minimum period of employment or service before employees are eligible to participate must not be more than 3 years' full-time work or, for other employees, an accumulated period that is the equivalent of 3 years' full-time work.

Loans to employees

(4) A loan to an employee to buy shares must be free of interest and other charges. If the loan is required to be a minimum amount, that amount must not be more than $624. Employees must be able to repay the loan by regular equal instalments at intervals of 1 month or less over a period of between 3 years and 5 years from the date of the loan, although they may choose to repay some or all of the loan before the due date for repayment.

Shares held on trust

(5) During the period of restriction, the trustee of the scheme must hold the shares in trust for the employee, and pay directly to the employee any dividends (which may not be put towards the repayment of any sum owed to the company or to the trustee). The dividends are treated as having been derived by the employee. The employee must not dispose of their rights or interests in the shares.

When period of restriction ends

(6) The following paragraphs apply when a period of restriction ends:

(a) at the end of the period of restriction, the trustee must transfer the shares to the employee, unless the employee is no longer employed by the company. Alternatively, at the option of the employee, the trustee must buy the shares at the market value on the date of purchase:

(b) if the period of restriction ends because the employee ends their employment through death, accident, sickness, redundancy, or retirement at normal retiring age, the trustee must transfer the shares to the legal representative of the employee's estate or to the former employee. Alternatively, at the option of the legal representative or former employee, the trustee must buy the shares at the market value on the date of purchase. The purchase is subject to the repayment of any outstanding loan under the scheme for the shares:

(c) if the period of restriction ends because the employee ends their employment for any other reason, the trustee must buy the shares at the market value at the date on which the employee ended their employment, subject to the repayment of any outstanding loan under the scheme for the shares.

Purchase price when trustee buys shares

(7) If the trustee buys the shares in any of the circumstances in which employment is ended as described in subsection (6), the purchase price must not be more than the price paid for the shares by the employee.

Withdrawal from scheme

(8) An employee must be able to withdraw from the scheme on giving 3 months' notice to the trustee. The employee is then treated for the purposes of the scheme as if they ended their employment with the company on the date the notice takes effect, and subsections (6)(c) and (7) apply.

Hardship

(9) With the employee's agreement, a trustee may vary the terms of the repayment of a loan under the scheme, or may allow the employee to withdraw from the scheme as if they had ended their employment in the circumstances described in subsection (5), if the trustee is satisfied that the employee's continued participation in the scheme would result in serious hardship.

Origin:	(1) new. (2) DF 7(2)(a), (b). (3) DF 7(2)(c), (d). (4) DF 7(2)(e), (f), (g). (5) DF 7(2)(h). (6) DF 7(2)(i). (7) DF 7(2)(i). (8) DF 7(2)(j). (9) DF 7(2)(k).
Defined terms:	amount, company, derived, dividend, employee, normal retiring age, notice, share, share purchase scheme, trustee.

DC 6 Definitions for sections DC 4 to DC 6

Definitions

(1) In this section, and in sections DC 4 and DC 5,—

employee—

(a) means a person employed by a company; and

(b) does not include—
   (i) a director of the company; or
   (ii) a person who, with any associated person, holds 10% or more of the issued capital of the company; or
   (iii) a company, a local authority, a public authority, or an unincorporated body of persons

employing company, for an employee,—

(a) means the company that employs the employee; and
(b) if the company is in a group of companies, includes another company in that group

normal retiring age means—

(a) not less than 60 years of age; or
(b) for a female employee who is entitled under a contract of employment entered into before 1 April 1978 with the employing company to retire before 60 years of age, not less than 55 years of age; or
(c) an earlier age that the Commissioner considers reasonable in the nature of the employment, or in the general terms of employment in the business or occupation of that employee

share, for a company whose shares are made available under a share purchase scheme, means a fully paid ordinary share that ranks equally with, and has the same designation as, an existing ordinary voting share in the company

trustee means a person or group of persons appointed to administer a share purchase scheme of an employing company, and to hold shares under that scheme on trust for an employee during the period of restriction.

'Period of restriction' defined

(2) In this section, and in sections DC 4 and DC 5,—

(a) **period of restriction** has the meaning given to it by subsections (3) and (4); and
(b) for the purposes of the definition of **period of restriction**, if an employing company is part of a group of companies, and an employee is transferred to another company in the group, the employee is treated as continuing in their employment.

Shorter of 2 periods

(3) **Period of restriction** means the shorter of—

(a) a period of 3 years starting on the date the employee buys or subscribes for the shares, or the period of repayment of a loan made to them under the scheme for this purpose, whichever is longer; and

(b) a period starting on the date the employee buys or subscribes for the shares and ending on the date the employee ceases their employment with the employing company.

This subsection is overridden by subsection (4).

Exception

(4) If the employee buys or subscribes for the shares at market value, and the rules of the scheme provide a period of restriction, that period applies, but it must be no shorter than the period of repayment of a loan made under the scheme for the purpose, and must be no longer than the period described in subsection (3) that would apply if this subsection did not exist.

Origin:	(1) DF 7(3). (2) DF 7(3). (3) DF 7(3). (4) DF 7(3).
Defined terms:	associated person, company, director, employee, employing company, group of companies, group of persons, local authority, normal retiring age, period of restriction, person, public authority, share, share purchase scheme, trustee.

DC 7 Contributions to employees' benefit funds

No deduction, with qualification

(1) An employer is not allowed a deduction for an amount that they pay to a fund (other than a superannuation scheme) to provide individual personal benefits to their employees if the employees' rights to receive benefits from the fund are not fully secured.

Amounts set aside as fund

(2) An employer is allowed a deduction for an amount that they set aside as a fund (other than a superannuation scheme) to provide individual personal benefits to their employees if the employees' rights to receive benefits from the fund are fully secured.

Link with subpart DA

(3) Subsection (1) overrides, and subsection (2) supplements, the general permission. The general limitations still apply for the purposes of subsection (2).

Origin:	(1) DF 2(1), (2). (2) DF 2(1), (2). (3) new.
Defined terms:	amount, deduction, employee, employer, general limitation, general permission, superannuation scheme.
Comment:	Current section DF 1 ousts the general deductibility rule and, as a result, current section DF 2 is needed to permit the deduction specifically. Once the initial ouster is dispensed with for amounts that an employer pays to a fund, all that is required is a limitation preventing deduction if the employee's rights are not secured. In contrast, however, a specific deduction provision is required for amounts that an employer sets aside as a fund because there is no expenditure (no amount passes from the employer to another person) and the general rules do not allow a deduction. In this case, a rule is required that the deduction is allowed provided the rights are secured.

DC 8 Contributions to employees' superannuation schemes

Contribution

(1) An employer is allowed a deduction for a contribution to an employees' superannuation scheme.

Allocation of deduction

(2) The deduction is allocated to the income year in which the employer makes the contribution.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DF 3(1). (2) DF 3(1). (3) new.
Defined terms:	capital limitation, deduction, employee, employer, general limitation, general permission, income year, superannuation scheme.

DC 9 Attribution of personal services

When this section applies

(1) This section applies to an amount that section GC 14D (Attribution rule — calculation) requires a person (person B) to attribute to another person (person C) in the following circumstances:

(a) a person (person A) buys services from person B; and

(b) the services are performed by person C; and

(c) person C is associated with person B.

Amount attributed

(2) Person B is allowed a deduction for the amount attributed.

Allocation of deduction

(3) The deduction is allocated to the income year in which the amount is attributed to person C.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DJ 19. (2) DJ 19. (3) EO 6. (4) new.
Defined terms:	amount, associated person, capital limitation, deduction, general limitation, general permission, income year, person.

DC 10 Restrictive covenants or exit inducements

Expenditure on restrictive covenant or exit inducement

(1) A person is allowed a deduction for expenditure that they incur that is income of another person under section CE 9 (Restrictive covenants) or section CE 10 (Exit inducements). This subsection is overridden by subsection (2).

Exception

(2) Subsection (1) does not apply if—

(a) the other person performs services for the person; and

(b) expenditure that the person would have incurred for the services, if the other person had not derived an amount that is income under section CE 9 (Restrictive covenants) or section CE 10 (Exit inducements), would have been of a capital nature.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DJ 20(1). (2) DJ 20(2). (3) new.
Defined terms:	amount, capital limitation, derived, general limitation, general permission, income, incurred, person.

DD – Entertainment expenditure

Index

DD 1 Entertainment expenditure generally

When this subpart applies

(1) This subpart applies when, in deriving income, a person incurs expenditure on entertainment that provides both a private and a business benefit.

No deduction, with qualification

(2) The person is not allowed a deduction for expenditure that they incur on the forms of entertainment specified in section DD 2, except for 50% of the amount that they would have been allowed if this subsection had not existed. This rule is called the limitation rule. However, the limitation rule either does not apply or is restricted in its application in the way described in sections DD 4 to DD 8.

Link with subpart DA

(3) This section overrides the general permission.

Origin:	(1) DG 1(1). (2) DG 1(2). (3) new.
Defined terms:	amount, business, deduction, derived, general permission, income, limitation rule, person.

DD 2 Limitation rule

What limitation rule applies to

(1) The expenditure to which the limitation rule applies is expenditure on the forms of entertainment described in subsections (2) to (6). The expenditure described in this section includes any incidental expenditure.

Corporate boxes

(2) The limitation rule applies to deductions for expenditure on corporate boxes, marquees, tents, or other exclusive areas (either temporary or permanent) at sporting, cultural, or other recreational events, or activities taking place off the person's business premises. It includes the cost of tickets or other rights of entry to these areas, and the cost of food and drink incidental to this form of entertainment.

Holiday accommodation

(3) The limitation rule applies to deductions for expenditure on accommodation in a holiday home, time-share apartment, or leisure venue. It includes the cost of food and drink incidental to this form of entertainment, but it does not apply to accommodation that is merely incidental to business activities or employment duties.

Pleasure craft

(4) The limitation rule applies to deductions for expenditure on yachts or other pleasure craft. It includes the cost of food and drink incidental to this form of entertainment.

Entertainment off the premises

(5) The limitation rule applies to deductions for expenditure on food and drink that a person provides as entertainment off their business premises.

Entertainment on the premises

(6) The limitation rule applies to deductions for expenditure on food and drink (other than light refreshments such as a morning tea) that a person provides as entertainment on their business premises either at a social function, or in an area of the premises that at the time is reserved for senior employees to use and is not open to all of the person's employees working in the premises. The limitation rule applies whether or not guests are present.

'Expenditure' defined

(7) In subsections (2) to (4), **expenditure** includes—

(a) an amount of depreciation loss; and

(b) expenditure on running costs and maintenance and similar matters; and

(c) a deduction for a lease premium under section DZ 7 (Premium paid for lease of land).

Origin:	(1) DG 1(1), (3)(c). (2) schedule 6A, part A, cl 1. (3) schedule 6A, part A, cl 2. (4) schedule 6A, part A, cl 3. (5) schedule 6A, part A, cl 4. (6) schedule 6A, part A, cl 4; part B, cl 4(a). (7) DG 1(3)(b).
Defined terms:	amount, business, business premises, deduction, depreciation loss, employee, limitation rule, person.
Comment:	Current clause 4(c)(ii) in part A of schedule 6A suggests that expenditure on food and beverage is subject to the limited deduction effect of current section DG 1 only if provided or consumed in an area of the taxpayer’s premises reserved for senior staff and their guests. The final sentence of draft subsection (6) makes it clear that the limitation applies regardless of whether guests are involved. This was the original policy intent and the clarification was proposed in issues paper 2, page 22.

DD 3 When limitation rule does not apply

The limitation rule is either restricted in its application or does not apply to the deductions for the expenditure described in sections DD 4 to DD 8.

Origin:	DG 1(2).
Defined terms:	deduction, limitation rule.

DD 4 Employment-related activities

Business travel expenditure

(1) The limitation rule does not apply to a deduction for expenditure on food or drink consumed by a person while travelling in the course of business or for their employment duties. However, the limitation rule applies if—

(a) the travel is mainly for the purpose of enjoying entertainment:

(b) the food or drink is consumed at a meal or function involving an existing or potential business contact as a guest:

(c) the food or drink is consumed at a social function.

Conference expenditure

(2) The limitation rule does not apply to a deduction for expenditure on light refreshments at a conference or educational course or similar event, nor to food or drink consumed at such an event lasting for at least

4 consecutive hours (excluding meal times). However, the limitation rule applies if the event is mainly for the purpose of entertainment.

Expenditure on employees' meals

(3) The limitation rule does not apply to a deduction for expenditure on—

(a) a reasonable amount of food or drink provided as a meal allowance, or the reimbursement of the cost of that food and drink, when an employee works overtime, if the allowance or reimbursement is exempt income under section CW 13 (Reimbursement of employees and expenditure for their benefit):

(b) a light refreshment such as a morning tea consumed on the premises referred to in section DD 2 (6):

(c) a light meal consumed as part of the employee's employment duties in an area of the person's business premises that at the time is reserved for senior employees and their guests to use, and is not open to all of the person's employees working in the premises.

Origin:	(1) schedule 6A, part B, cl 1. (2) schedule 6A, part B, cls 2, 4. (3) schedule 6A, part B, cls 3, 4, 5.
Defined terms:	business, business contacts, business premises, deduction, employee, exempt income, limitation rule, person.

DD 5 Promoting goods or services

Sponsored promotions

(1) The limitation rule does not apply to a deduction for expenditure on entertainment that is sponsored mainly to promote a person's business or goods or services to the public, when neither existing business contacts, nor employees, nor anyone associated with the person (or with the person whose business, goods, or services are being promoted) has a greater opportunity to enjoy the entertainment than the public generally.

Incidental costs of promotion

(2) The limitation rule does not apply to a deduction for expenditure on the incidental costs associated with a trade display or function that is open to the public and held mainly to promote a business or goods or services.

Expenditure on samples

(3) The limitation rule does not apply to a deduction for expenditure on samples that a person provides for advertising or promotion purposes to anyone who is not an employee of or associated with the person.

Entertainment for review

(4) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides to a person who is reviewing the entertainment for a paper, magazine, book, or other medium of communication.

Origin:	(1) schedule 6A, part B, cl 8.
	(2) schedule 6A, part B, cl 6.
	(3) schedule 6A, part B, cl 10.
	(4) schedule 6A, part B, cl 12.
Defined terms:	associated person, business, business contacts, deduction, employee, limitation rule, person.

DD 6 Entertainment as business or for charitable purpose

Entertainment as business

(1) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides for market value or in an arm's length transaction in the ordinary course of their business, if that business is to provide one or more of the forms of entertainment referred to in section DD 2.

Entertainment for charitable purposes

(2) The limitation rule does not apply to a deduction for expenditure on entertainment that a person provides to members of the public for charitable purposes.

Origin:	(1) schedule 6A, part B, cl 9.
	(2) schedule 6A, part B, cl 11.
Defined terms:	business, charitable purpose, deduction, limitation rule, person.

DD 7 Entertainment outside New Zealand

The limitation rule does not apply to a deduction for expenditure on entertainment that is enjoyed or consumed outside New Zealand.

Origin:	schedule 6A, part B, cl 7.
Defined terms:	deduction, limitation rule, New Zealand.

DD 8 Entertainment that is income or fringe benefit

The limitation rule does not apply to a deduction for expenditure on entertainment that is income of the person who consumes it, nor to a fringe benefit to which fringe benefit tax applies.

Origin:	schedule 6A, part B, cls 13, 14.
Defined terms:	deduction, fringe benefit tax, income, limitation rule, person.

DD 9 Interpretation: reimbursement, apportionment

In sections DD 2 to DD 8,—

(a) a person is treated as having incurred expenditure on entertainment described in section DD 2 if they pay an allowance for, or reimburse an employee's expenditure on, that entertainment, and that allowance or reimbursement is exempt income under section CW 13 (Reimbursement of employees and expenditure for their benefit):

(b) if a person incurs expenditure that relates only partly to the entertainment, the expenditure must be apportioned accordingly:

(c) these provisions override the fringe benefit tax rules but, if an employee of the person providing the benefit may choose when to receive or use the benefit, or if they do not receive or use the benefit in the course of their employment duties, the fringe benefit tax rules apply.

Origin:	DG 1(3)(a), (4).
Defined terms:	employee, exempt income, fringe benefit tax rules, incurred, person.

DD 10 Definitions for this subpart

In this section, and in sections DD 1 to DD 9,—

business includes any recurring income-earning activity

business contacts—

(a) includes clients, customers, suppliers, shareholders, and others who have business dealings with a person (or an associate); and

(b) if the person is in partnership, does not include other partners in the partnership

business premises—

(a) means the normal business premises or a temporary workplace of the person (or an associate); and

(b) does not include premises or a workplace established mainly for the purpose of enjoying entertainment.

Origin:	schedule 6A definitions 'business', 'business contacts', 'business premises'.
Defined terms:	associated person, business, business contacts, business premises, person, shareholder.

DE – Motor vehicle expenditure

Index

Introductory provisions

DE 1 When this subpart applies

Apportioning motor vehicle expenditure

(1) This subpart sets out the rules for determining the proportion of business use of a motor vehicle when a person uses a motor vehicle partly for business purposes and partly for other purposes. The person is allowed a deduction for expenditure that relates to the business use of the vehicle or for an amount of depreciation loss that relates to the business use of the vehicle.

When rules do not apply

(2) The rules in this subpart do not apply—

(a) to a company, or to a person whose only income is income from employment; and

(b) in relation to a motor vehicle that is not used other than for the purpose of deriving income or for a purpose that constitutes a fringe benefit.

Link with subpart DA

(3) This subpart overrides the private limitation to the extent set out in this subpart. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DH 1(3); EG 2(1)(d). (2) DH 1(2). (3) new.
Defined terms:	amount, business purposes, business use, company, deduction, depreciation loss, derived, general limitation, general permission, income, income from employment, motor vehicle, person, private limitation.

DE 2 Methods for calculating proportion of business use

The 3 methods that may be used to calculate the proportion of business use of a motor vehicle are—

(a) actual records (see section DE 4):

(b) a logbook (see sections DE 5 to DE 10):

(c) mileage rates when travel for business purposes is not more than 5,000 kilometres in an income year (see section DE 11).

Origin:	DH 2.
Defined terms:	business purposes, business use, income year, motor vehicle.
Comment:	Using mileage rates published by the Commissioner to calculate expenditure on business use, currently an administrative practice, is given legislative effect in this section, as proposed in issues paper 2, page 39.

DE 3 Deductions on default

When this section applies

(1) This section applies when a person does not measure the proportion of business use of a motor vehicle by one of the methods that is available to them to use. It applies if—

(a) the person has not maintained complete and accurate details to show the proportion of business use; or

(b) a period is not a term to which a proportion of business use established by a logbook applies; or

(c) the person cannot use the mileage rate method.

Amount of deduction

(2) The deduction for expenditure or loss incurred is limited to the lesser of the following:

(a) the proportion of actual business use; and

(b) 25% of the total use of the motor vehicle.

Origin:	(1) DH 4. (2) DH 4.
Defined terms:	amount, business use, deduction, incurred, motor vehicle, person.

Actual records

DE 4 **Actual records**

To determine the proportion of business use of a motor vehicle a person may use actual records showing the reasons for and the distance of journeys by a motor vehicle for business purposes. However, when the period covered falls within the term of a logbook, actual records may be used only if the Commissioner agrees.

Origin:	DH 2.
Defined terms:	business purposes, business use, Commissioner, motor vehicle, person.

Logbook period

DE 5 **Using logbook for test period**

A person may keep a logbook for a test period for the purpose of establishing the proportion of business use of a motor vehicle to its total use in an income year (or part of an income year) that falls within a logbook term. If a person uses a logbook as a method of establishing the proportion of business use, they must also record the total distance travelled in each income year (or part of an income year) that falls within a logbook term.

Origin:	DH 3(1).
Defined terms:	business use, income year, motor vehicle, person.

DE 6 **Logbook requirements**

Test period

(1) When a logbook is used to establish the proportion of business use of a motor vehicle, a person must select a start date, and keep the logbook for at least 90 consecutive days at a time that represents (or is likely to represent) the average proportion of travel by the motor vehicle for business purposes during the logbook term.

Record of reasons for and distance of journeys

(2) In the 90-day test period, the person must record complete and accurate details of journeys for business purposes, and record the total distance travelled by the motor vehicle. The logbook must record—

(a) the start and end of the 90-day test period; and

(b) the motor vehicle's odometer readings at the start and end of the test period; and

(c) the motor vehicle's odometer readings at the start and end of each business journey; and

(d) the date, starting point, and destination of each business journey; and

(e) the reason for each business journey; and

(f) the departure time and arrival of each business journey when the use of the vehicle is constrained by time.

Origin:	(1) DH 3(2). (2) DH 3(2).
Defined terms:	business, business purposes, business use, motor vehicle, person.
Comment:	For further information on this draft section, see *Tax Information Bulletin*, vol 7, no 8 (February 1996).

DE 7 Logbook term

When logbook term applies

(1) A logbook term is a period to which the proportion of business use of a motor vehicle established by the logbook applies. The term lasts up to 3 years and starts and ends as described in subsections (2) and (3).

Start of term

(2) A logbook term starts on the date that is the latest of the following days:

(a) the first day of the income year in which a person starts to keep a logbook:

(b) the day that a person buys or acquires the motor vehicle (unless the vehicle is a replacement vehicle (see section DE 10)):

(c) the day immediately after the last day of the previous logbook term:

(d) a day that a person specifies.

End of term

(3) The logbook term ends on the date that is the earliest of the following days:

(a) the day that a person disposes of the motor vehicle without replacing it:

(b) the day that is 3 years after the first day of the income year in which the logbook term started:

(c) a day that the Commissioner specifies under section DE 8:

(d) a day that a person specifies.

Origin:	(1) DH 3(3).
	(2) DH 3(3).
	(3) DH 3(3).
Defined terms:	business use, Commissioner, income year, motor vehicle, person.

DE 8 Inadequate logbook

Non-representative logbook proportion

(1) If the Commissioner considers that the proportion of business use recorded in a logbook does not, or does no longer, represent the average use of a motor vehicle for business purposes during an income year that falls within a logbook term, the Commissioner may,—

(a) within the logbook term, direct a person to keep a further logbook and specify the period for keeping the logbook; or

(b) if satisfied that the logbook is not representative, treat a person as not having kept a logbook that applies to the logbook term.

Further logbook

(2) If the Commissioner directs a person to keep a further logbook, and the proportion of business use calculated under that logbook is less by 20% (or more) than the proportion under the first logbook, the Commissioner may find that the first logbook either—

(a) represented the average use of the motor vehicle for business purposes for only part of the logbook term; or

(b) did not represent that use at all.

First case: partly representative logbook

(3) If subsection (2)(a) applies, the Commissioner may determine a date on which the application of the first logbook ended, and the further logbook applies to a new logbook term that starts on the day after that date.

Second case: non-representative logbook

(4) If subsection (2)(b) applies, the Commissioner may direct that the further logbook should apply for the logbook term to which the first logbook originally applied.

Origin:	(1) DH 3(6).
	(2) DH 3(7).
	(3) DH 3(7)(a).
	(4) DH 3(7)(b).
Defined terms:	business purposes, business use, Commissioner, income year, motor vehicle, person.

DE 9 Variance during logbook term

If, in any month during a logbook term, the proportion of business use in that month is less by 20% (or more) than the proportion established by the logbook, and the proportion of business use recorded in the logbook no longer represents the average use of the motor vehicle for business purposes, the logbook term must end on the last day of that month.

Origin:	DH 3(4).
Defined terms:	business purposes, business use, motor vehicle.

DE 10 Replacement vehicles

For the purpose of establishing the proportion of business use of a motor vehicle, a replacement vehicle is treated in the same way as the vehicle it replaced if—

(a) the logbook is likely to be representative of the average travel for business purposes and other purposes for the remainder of the logbook term; and

(b) from the date of replacement, a person keeps a record of the total distance travelled by the replacement vehicle for each income year (or part of an income year) of the remaining logbook term.

Origin:	DH 3(5).
Defined terms:	business purposes, business use, income year, motor vehicle, person.

Mileage rates

DE 11 Mileage rate method

Using mileage rates

(1) If a person's business travel is not more than 5,000 kilometres in an income year, they may use the mileage rate method to calculate the expenditure or loss on a motor vehicle that represents the proportion of business use of the motor vehicle.

Calculating the mileage

(2) Under the mileage rate method, the person must keep details of the business use of the motor vehicle, and calculate the mileage travelled for business purposes for the income year. The amount of the deduction under this method is found by multiplying the mileage rate by the distance that reflects the proportion of business use to total use of the vehicle for the income year.

Origin:	(1) new. (2) new.
Defined terms:	amount, business, business purposes, business use, deduction, income year, motor vehicle, person.
Comment:	For further information on this draft section, see issues paper 2, page 39.

DE 12 Setting mileage rates

For the purposes of section DE 11, the Commissioner must from time to time set and publish a mileage rate.

Origin:	new.
Defined terms:	Commissioner.
Comment:	This provision prescribes the substance of the mileage rate method authorised in draft section DE 11.

DF – Government grants

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DF 1 Government grants to businesses

When subsection (2) applies

(1) Subsection (2) applies when—

(a) a payment is granted by a local authority or a public authority to a person for a business carried on by the person; and

(b) the payment is in the nature of a grant or subsidy, or is a grant-related suspensory loan, but is not otherwise a payment in the nature of an advance or loan; and

(c) the payment is made to the person for expenditure that they incur, other than in a way described in subsection (3); and

(d) the person would be allowed a deduction for the expenditure if this section did not exist.

No deduction, with qualification

(2) The person is not allowed the deduction for the expenditure that they would have been allowed if this section had not existed, except for the amount of the expenditure that is more than the payment.

When subsection (4) applies

(3) Subsection (4) applies when—

(a) a payment is granted by a local authority or a public authority to a person for a business carried on by the person; and

(b) the payment is in the nature of a grant or subsidy, or is a grant-related suspensory loan, but is not otherwise a payment in the nature of an advance or loan; and

(c) the payment is made to the person for expenditure that they incur in acquiring, constructing, installing, or extending an item of depreciable property; and

(d) the person owns the item; and

(e) the person is allowed a deduction for an amount of depreciation loss for the item.

Amount of depreciation loss

(4) For the purposes of quantifying the amount of depreciation loss, the amount of the expenditure is reduced by the amount of the payment.

Amendment of assessment

(5) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section.

Link with subpart DA

(6) This section overrides the general permission.

Origin:	(1) DC 1(1), (4). (2) DC 1(2). (3) DC 1(3), (4). (4) DC 1(3). (5) DC 1(5). (6) new.
Defined terms:	amount, business, Commissioner, deduction, depreciable property, depreciation loss, general permission, grant-related suspensory loan, local authority, person, public authority, time bar.

DF 2 Repayment of grant-related suspensory loans

Amount of repayment

(1) A person is allowed a deduction for the amount of a repayment that they are required to make of some or all of a grant-related suspensory loan to the extent to which the amount relates to a payment to which section DF 1 (2) applies.

Allocation of deduction

(2) The deduction is allocated to the income year in which repayment is first required.

Amount of depreciation loss

(3) If a person is required to repay some or all of a grant-related suspensory loan, then, to the extent to which section DF 1 (3) and (4) apply to the loan,—

(a) the person is allowed a deduction for an amount of depreciation loss for the item; and

(b) the amount of depreciation loss is the total of all amounts of depreciation loss for the item for which the person would have been allowed a deduction in previous income years if section DF 1 (3) and (4) had not applied.

Quantifying amount of depreciation loss

(4) For the purposes of quantifying the amount of depreciation loss for the item in the income year and in later income years, the following matters must be taken into account:

(a) the amount of the deduction under subsection (3):

(b) the total of all amounts of depreciation loss for the item for which the person has been allowed a deduction in previous income years:

(c) the person's expenditure on acquiring, constructing, installing, or extending the item.

Identifying expenditure

(5) For the purposes of this section and section DF 1, if a person making a grant-related suspensory loan makes a statement as to the expenditure that relates to the loan or to the repayment of the loan, the statement provides conclusive evidence on the question.

Link with subpart DA

(6) This section supplements the general permission and overrides the capital limitation for the amount described in subsection (1). The other general limitations still apply.

Origin:	(1) DC 3(2). (2) DC 3(2). (3) DC 3(3). (4) DC 3(4). (5) DC 3(5). (6) new.
Defined terms:	amount, capital limitation, deduction, depreciable property, depreciation loss, general limitation, general permission, grant-related suspensory loan, income year, person.

DN – Attributed losses from foreign equity

Index

Attributed controlled foreign company loss

DN 1 Deduction for attributed controlled foreign company loss

Deduction available

(1) An attributed controlled foreign company (CFC) loss of a person is allowed as a deduction, subject to the jurisdictional ring-fencing rule in section DN 4.

Link with subpart DA

(2) This section supplements the general permission. The general limitations still apply.

Origin:	(1) CG 1(a). (2) new.
Defined terms:	attributed CFC loss, deduction, general limitation, general permission, person.

DN 2 When attributed CFC loss arises

A person has an attributed CFC loss from a foreign company in an income year if all the following apply:

(a) the foreign company is a CFC at any time during one of its accounting periods, under the rules in sections EI 1 to EI 7:

(b) the accounting period ends during the income year:

(c) the person has an income interest in the foreign company for the accounting period, under the rules in sections EI 8 to EI 13:

(d) the person is a New Zealand resident at any time during the accounting period:

(e) the person's income interest is 10% or more for the accounting period, under the rules in sections EI 14 to EI 17:

(f) the CFC has a branch equivalent loss for the accounting period, under the rules in section EI 21 (Branch equivalent income or loss: calculation rules):

(g) the CFC is not an unqualified grey list CFC for the accounting period, under the rules in section EI 22 (Unqualified grey list CFCs).

Origin:	CG 6(1); CG 7(1); CG 13(1); new.
Defined terms:	accounting period, attributed CFC loss, branch equivalent loss, CFC, foreign company, income interest, income year, New Zealand resident, person.

DN 3 Calculation of attributed CFC loss

The amount of an attributed CFC loss is calculated under the rules in sections EI 18 to EI 20.

Origin:	new.
Defined terms:	amount, attributed CFC loss.

DN 4 Ring-fencing cap on deduction

Amount of deduction

(1) The deduction that a person is allowed for an attributed CFC loss from a CFC in an income year must not be more than the total of—

(a) any attributed CFC income of the person for the income year from another CFC that is resident in the same country as the first CFC for the relevant accounting period; and

(b) any foreign investment fund (FIF) income of the person for the income year calculated under the branch equivalent method from a FIF that is resident in the same country.

Income only once

(2) When subsection (1) is applied to an attributed CFC loss, an amount of attributed CFC income or FIF income may be used only to the extent to which the income is not used when—

(a) subsection (1) is applied to another attributed CFC loss; or

(b) section DN 9 is applied to a FIF loss.

Excess subject to section IE 3

(3) Any excess not able to be deducted because of subsection (1) is an attributed CFC net loss able to be used under section IE 3 (Attributed foreign net losses).

Origin:	(1) DP 1(1). (2) DP 1(3). (3) DP 1(2).
Defined terms:	accounting period, amount, attributed CFC income, attributed CFC loss, attributed CFC net loss, branch equivalent method, CFC, deduction, FIF, FIF income, income year, person.

Foreign investment fund loss

DN 5 Foreign investment fund loss

Deduction available

(1) A foreign investment fund (FIF) loss of a person is allowed as a deduction. However,—

(a) the deduction for a FIF loss calculated under any calculation method other than the branch equivalent method is subject to the FIF rules ring-fencing rule in section DN 8:

(b) the deduction for a FIF loss calculated under the branch equivalent method is subject to the jurisdictional ring-fencing rule in section DN 9.

Link with subpart DA

(2) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DP 2(1); DP 3(1). (2) new.
Defined terms:	branch equivalent method, calculation method, deduction, FIF loss, general limitation, general permission, person.

DN 6 When FIF loss arises

General rule

(1) A person has a FIF loss in an income year if all the following apply:

(a) at any time in the year, the person has—

(i) rights in a foreign company, or a foreign superannuation scheme, or an entity listed in schedule 4, part B; or

(ii) rights under a life insurance policy issued by a non-resident:

(b) at that time, the rights are an attributing interest in a FIF under the rules in section EI 30 (Attributing interests in FIFs) and section EI 31 (Direct income interest in a FIF):

(c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of—

  (i) the CFC regime exemption in section EI 32 (CFC rules exemption):

  (ii) the grey list exemption in section EI 33 (Grey list exemption):

  (iii) the foreign exchange control exemption in section EI 34 (Foreign exchange control exemption):

  (iv) the immigrant's 4-year exemption in section EI 35 (Immigrant's four-year exemption):

  (v) the immigrant's accrued superannuation entitlement exemption in section EI 36 (Immigrant's accrued superannuation entitlement exemption):

  (vi) the annuity or pension exemption in section EI 37 (Non-resident's pension or annuity exemption):

(d) if the person is a natural person and not acting as a trustee, the total cost (calculated under the rules in section EI 56 (Measurement of cost)) of attributing interests in FIFs that the person holds at any time during the year when the person is a New Zealand resident is more than $50,000:

(e) the person is a New Zealand resident at any time during the year and the person held the attributing interest at that time:

(f) under the relevant calculation method chosen by the person, a loss amount is calculated for the year or relevant accounting period under the rules in sections EI 38 to EI 45.

Look-through calculation methods

(2) Despite subsection (1), if the calculation method is the accounting profits method or branch equivalent method,—

(a) FIF loss arises in the income year only if the relevant accounting period of the FIF ends during the year; and

(b) the tests in subsection (1)(a), (b), (c), and (e) are applied on the basis that references in subsection (1)(a), (b), (c), and (e) to any time in the year are read as references to any time in the relevant accounting period.

Special rule: CFC with FIF interest

(3) A person with an income interest of 10% or more in a CFC can also have a FIF loss in an income year under the special rule in section EI 46 (Additional FIF income or loss if CFC owns FIF), which applies when a CFC has an attributing interest in a FIF (whether or not the CFC is an unqualified grey list CFC under the rules in section EI 22 (Unqualified grey list CFCs)).

Origin:	(1) CG 15(1), (2). (2) CG 7(5); CG 16(2). (3) CG 7(5).
Defined terms:	accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, CFC, FIF, FIF loss, foreign company, foreign superannuation scheme, grey list, income interest, income year, life insurance policy, New Zealand resident, non-resident, person, trustee.

DN 7 Calculation of FIF loss

The amount of a FIF loss is calculated, using the relevant calculation method, under the rules in sections EI 42 to EI 49.

Origin:	new.
Defined terms:	amount, calculation method, FIF loss.

DN 8 Ring-fencing cap on deduction: not branch equivalent method

Amount of deduction

(1) If a person has a FIF loss that is calculated under any calculation method other than the branch equivalent method, the deduction the person is allowed for the loss in an income year must not be more than the total of—

(a) any FIF income of the person for the income year that is calculated under any method other than the branch equivalent method; and

(b) any FIF income of the person for previous income years that is calculated under any method other than the branch equivalent method.

Income only once

(2) When subsection (1) is applied to a FIF loss, an amount of FIF income may be used only to the extent to which the income is not used when applying subsection (1) to another FIF loss.

Excess subject to section IE 4

(3) Any excess not able to be deducted because of subsection (1) is a FIF net loss able to be used under section IE 4 (Foreign investment fund net losses).

Ring-fencing does not apply to traders

(4) Subsection (1) does not apply to a FIF loss of a person from an attributing interest if the person acquired the interest—

(a) as part of a business that includes dealing in such interests; or

(b) for the purpose of deriving a gain when the interest is disposed of; or

(c) as part of an undertaking or scheme entered into or devised for the purpose of making a profit.

Conduit tax relief rebate: past years' income

(5) When subsection (1)(b) is applied in the case of an amount of FIF income for a previous year calculated under the accounting profits method, the amount must be reduced by the amount of any conduit tax relief rebate allowed against that income under section KH 1 (Conduit tax relief).

Calculation of rebate amount

(6) The amount of the conduit tax relief rebate referred to in subsection (5) is calculated using the formula—

$$\frac{\text{FIF income} - \text{FIF losses}}{\text{foreign attributed income} - \text{foreign attributed losses}} \quad x \quad \text{rebate.}$$

Definition of items in formula

(7) In the formula,—

(a) **FIF income** is all FIF income of the person in the previous year calculated under the accounting profits method:

(b) **FIF losses** is all FIF losses of the person in the previous year calculated under the accounting profits method that are offset under subsection (1)(a):

(c) **foreign attributed income** is all foreign attributed income of the person for the previous year:

(d) **foreign attributed losses** means all foreign attributed loss offsets for the previous year:

(e) **rebate** is the person's conduit tax relief rebate for the previous year under section KH 1 (Conduit tax relief).

Origin:	(1) DP 2(1). (2) DP 2(2).

	(3) DP 2(3).
	(4) DP 2(4).
	(5) DP 2(1A).
	(6) DP 2(1B).
	(7) DP 2(1B).
Defined terms:	accounting profits method, amount, branch equivalent method, calculation method, deduction, FIF income, FIF loss, FIF net loss, foreign attributed income, foreign attributed loss offsets, income year, person.

DN 9 Ring-fencing cap on deduction: branch equivalent method

Amount of deduction

(1) If a person has a FIF loss that is calculated under the branch equivalent method, the deduction the person is allowed for the loss in an income year must not be more than the total of—

(a) any attributed CFC income of the person for the income year from a CFC that is resident in the same country as the FIF for the relevant accounting period of the CFC; and

(b) any FIF income of the person for the income year that is calculated under the branch equivalent method from another FIF resident in the same country.

Income only once

(2) When subsection (1) is applied to a FIF loss, an amount of attributed CFC income or FIF income may be used only to the extent to which the income is not used when applying—

(a) subsection (1) to another FIF loss; or

(b) section DN 4 to an attributed CFC loss.

Excess subject to section IE 4

(3) Any excess not able to be deducted because of subsection (1) is a FIF net loss able to be used under section IE 4 (Foreign investment fund net losses).

Origin:	(1) DP 3(1).
	(2) DP 3(1).
	(3) DP 1(2).
Defined terms:	accounting period, amount, attributed CFC income, attributed CFC loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, FIF net loss, income year, person.

DO – Farming, agricultural, and aquacultural business expenditure

Index

Farming and agriculture

DO 1 Enhancements to land, except trees

Expenditure on enhancements

(1) A person is allowed a deduction for expenditure that they incur on the following in carrying on a farming or agricultural business on land in New Zealand:

(a) the destruction of weeds or plants detrimental to the land:
(b) the destruction of animal pests detrimental to the land:
(c) the repair of flood or erosion damage to the land:
(d) the destruction of scrub, stumps, or undergrowth on the land:
(e) the clearing or removing from the land of scrub, stumps, or undergrowth:
(f) the construction on the land of fences for agricultural purposes, including buying wire or wire netting for the purpose of making new or existing fences rabbit-proof.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DO 3(a), (b), (c), (d), (g). (2) new.
Defined terms:	business, capital limitation, deduction, general limitation, general permission, New Zealand, person.

DO 2 Shelter belts

When this section applies

(1) This section applies when a person carries on a farming or agricultural business on land in New Zealand, whether or not the business is the principal business carried on on the land.

Expenditure on preventing erosion or providing shelter

(2) The person is allowed a deduction for expenditure that they incur in planting or maintaining trees, whether or not on the land, for the purposes of—

(a) preventing or combating erosion of the land; or

(b) providing shelter to the land.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DO 3. (2) DO 3(e), (f). (3) new.
Defined terms:	business, capital limitation, deduction, general limitation, general permission, New Zealand, person.

DO 3 Trees on farms

When this section applies

(1) This section applies when—

(a) a person carries on, on land in New Zealand, a farming or agricultural business that is the principal business carried on on the land; and

(b) they plant or maintain trees on the land; and

(c) the trees are not—

(i) trees for which the person is allowed a deduction under section DO 2; or

(ii) trees planted mainly to produce fruit; or

(iii) trees planted under a forestry encouragement agreement under the Forestry Encouragement Act 1962.

Expenditure on planting and maintaining trees

(2) The person is allowed a deduction for the lesser of $7,500 and the expenditure that they incur, for each of the following:

(a) planting trees on the land:

(b) maintaining trees on the land.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DO 7(1). (2) DO 7(2)(e). (3) new.
Defined terms:	business, capital limitation, deduction, general limitation, general permission, New Zealand, person.

DO 4 Improvements to land

When this section applies

(1) This section applies when—

(a) a person carries on a farming or agricultural business on land in New Zealand; and

(b) an improvement described in schedule 7, part A has been made to the land.

Owner of land

(2) A person who owns the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person or by another person; and

(c) it is not incurred on anything described in any of sections DO 1 to DO 3; and

(d) it is incurred in the 1995-96 income year or in a later income year, not including the income year in which the person disposes of the land (the income year referred to in this paragraph is the income year of the person who owns the land); and

(e) it is incurred in developing the land; and

(f) it is of benefit to the business in the income year in which the person is allowed the deduction.

Non-owner of land

(3) A person who does not own the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person; and

(c) it is not incurred on anything described in any of sections DO 1 to DO 3; and

(d) it is incurred in the 1995-96 income year or in a later income year, not including the income year in which the person ceases to carry on the business on the land; and

(e) it is incurred in developing the land; and

(f) it is of benefit to the business in the income year in which the person is allowed the deduction.

Amount of deduction

(4) The amount of the deduction is calculated using the formula—

$$\text{schedule 7 percentage} \;\; x \;\; \text{diminished value.}$$

Definition of items in formula

(5) In the formula,—

(a) **schedule 7 percentage** is the percentage set out opposite the description of the improvement in schedule 7, part A:

(b) **diminished value** is the diminished value of the improvement.

Amount for obsolete vines or trees

(6) When vines or trees described in schedule 7, part A, item 12 have ceased to exist, or to be used in deriving income, on or after 16 December 1991,—

(a) subsection (4) does not apply; and

(b) the amount of the deduction is the diminished value of the vines or trees at the time they ceased to exist or to be used in deriving income.

Link with subpart DA

(7) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DO 4(1), (2). (2) DO 4(1). (3) DO 4(2). (4) DO 4(3)(b). (5) DO 4(3)(b).

	(6) DO 4(4).
	(7) new.
Defined terms:	amount, business, capital limitation, deduction, derived, diminished value, general limitation, general permission, income, income year, New Zealand, owner, person.
Comment:	See the notes on consequential amendments to schedule 7 in volume 3.

DO 5 Farming expenditure of lessor or sublessor

When this section applies

(1) This section applies when a person—

(a) is the owner of an estate in fee simple or of a leasehold estate in land in New Zealand; and

(b) grants a lease or a sublease of the land to a person who carries on a farming or agricultural business on the land; and

(c) in the term of the lease or sublease, incurs expenditure to which both the following apply:

(i) it relates to the land; and

(ii) it is of a kind for which the person is allowed a deduction under any of section DO 1, section DO 2, or section DO 4.

Farming expenses

(2) Section DO 1, section DO 2, or section DO 4, whichever is applicable to the person, applies as if the person were personally carrying on a farming or agricultural business on the land at the time they incur the expenditure.

Origin:	(1) DO 6.
	(2) DO 6.
Defined terms:	business, deduction, estate, lease, leasehold estate, lessor, New Zealand, owner, person, term of the lease.

DO 6 Certificates as to purposes of planting

Trees planted mainly for purposes of timber production

(1) The question whether trees are planted mainly for the purposes of timber production arises under schedule 7, part A, item 12.

Certificate: timber production

(2) A certificate as to the purposes for which the trees were planted provides conclusive evidence on the question if it is given by—

(a) a properly authorised officer of the relevant regional council; or

(b) a properly authorised officer of the Ministry of Forestry; or

(c) any other person who is suitably qualified to give a certificate.

Origin:	(1) DO 4(5).
	(2) DO 4(5).
Defined terms:	person.
Comment:	See the notes on consequential amendments to schedule 7 in volume 3.

Aquaculture

DO 7 Improvements

When this section applies

(1) This section applies when—

(a) the person carries on an aquacultural business in New Zealand; and

(b) the aquacultural business is—

(i) fish farming under a licence issued under the Freshwater Fish Farming Regulations 1983; or

(ii) mussel farming; or

(iii) rock oyster farming; or

(iv) scallop farming; or

(v) sea-cage salmon farming; and

(c) an improvement described in any of parts B to F of schedule 7 is made for the purposes of the business.

Owner of improvement

(2) A person who owns the improvement is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person or by another person; and

(c) it is incurred in the 1995-96 income year or in a later income year, not including the income year in which the person ceases to carry on the business (the income year referred to in this paragraph is the income year of the person who owns the improvement); and

(d) it is incurred in developing the business; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Non-owner of improvement

(3) A person who does not own the improvement is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person; and

(c) it is incurred in the 1995-96 income year or in a later income year, not including the income year in which the person ceases to carry on the business; and

(d) it is incurred in developing the business; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Amount of deduction

(4) The amount of the deduction is calculated using the formula—

schedule 7 percentage *x* diminished value.

Definition of items in formula

(5) In the formula,—

(a) **schedule 7 percentage** is the percentage set out opposite the description of the improvement in schedule 7, part B, C, D, E, or F:

(b) **diminished value** is the diminished value of the improvement.

Link with subpart DA

(6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DO 5(1), (2); OB 1 ‘aquaculture’. (2) DO 5(1). (3) DO 5(2). (4) DO 5(1), (2), (3)(b). (5) DO 5(1), (2), (3)(b). (6) new.
Defined terms:	amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand, person.
Comment:	See the notes on consequential amendments to schedule 7 in volume 3.

DP – Forestry expenditure

Index

DP 1 Cost of timber

Definition

(1) **Cost of timber** means an expenditure or loss that a person incurs in deriving income under section CB 22 (Disposal of timber or right to take timber) or section CB 23 (Disposal of land with standing timber) for which they have not been allowed a deduction.

Determination of amount

(2) When the Commissioner receives from a person a return of income showing that they have incurred an expenditure or loss that may be a cost of timber, the Commissioner—

(a) determines the amount to be deducted for the expenditure or loss; and

(b) gives the person notice of the amount.

Application of Tax Administration Act 1994

(3) Section 92 (5) of the Tax Administration Act 1994 applies, as far as applicable and with the necessary modifications, as if a determination by the Commissioner were a determination of net loss made under section 92 (3) of the Act.

Origin:	(1) DL 1(7), (8). (2) DL 1(10), (11). (3) DL 1(10), (11).
Defined terms:	amount, Commissioner, cost of timber, deduction, derived, income, incurred, net loss, notice, person, return of income.
Comment:	Further work is to be undertaken on clarifying the linkage between this draft section, draft section DP 2, and draft section EB 2 (Matching rule: other revenue account property).

DP 2 Cost of acquiring timber, or right to take timber, in certain cases

Disposal of land with standing timber

(1) For a person acquiring land with standing timber on it in a disposal to which section CB 23 (Disposal of land with standing timber) applies, the cost of acquiring the timber is the amount that is, under section CB 23 (Disposal of land with standing timber), income of the person disposing of the land.

Forestry business on land bought from Crown, Maori owners, or holding company

(2) For a person acquiring land with standing timber on it in a sale to which section DP 10 applies, the cost of acquiring the timber is the amount described in section DP 10 (2).

Other cases

(3) For a person acquiring timber or a right to take timber in a disposal or distribution to which section FB 4 (Income derived from disposal of trading stock together with other assets of a business) or section FF 7 (Standing timber) or section GD 1 (Sale of trading stock for inadequate consideration) or section GD 2 (Distribution of trading stock to shareholders of company) applies, the cost of acquiring the timber or the cost of acquiring a right to take timber is the amount treated as—

(a) the price paid or realised under section FB 4 (Income derived from disposal of trading stock with other assets of business):

(b) the consideration under section FF 7 (Standing timber):

(c) the price realised under section GD 1 (Sale of trading stock for inadequate consideration):

(d) the price realised under section GD 2 (Distribution of trading stock to shareholders of company).

Origin:	(1) CJ 1(2)(e)(ii). (2) DL 5(1)(d)(iii). (3) OB 1 ‘cost’.
Defined terms:	amount, business, holding company, income, Maori owners, person, right to take timber, standing timber, timber.

Comment:	Current section FF 7 appears in a rewritten form in the consequential amendments in volume 3. See also the comment on draft section DP 1.

DP 3 Specific kinds of forestry expenditure

Business and construction expenditure

(1) A person carrying on a forestry business on land in New Zealand is allowed a deduction for expenditure that they incur on—

(a) interest on money borrowed for the purposes of the business and employed as capital in the business:

(b) the construction to or on the land of access tracks that are—

(i) constructed for a specific operational purpose; and

(ii) used for no longer than 12 months after construction:

(c) the cost of standing timber that is lost or destroyed.

Link with subpart DA

(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DL 1(3)(c), (4), (12). (2) new.
Defined terms:	business, capital limitation, general limitation, general permission, New Zealand, person, standing timber.

DP 4 Plant or machinery

When this section applies: first case

(1) This section applies when—

(a) a person incurs expenditure on acquiring, on or after 1 April 1975, plant or machinery; and

(b) the person first uses the plant or machinery on or after 1 April 1975; and

(c) the person uses the plant or machinery mainly in developing land in New Zealand for use in a forestry business to be carried on by them on the land.

When this section applies: second case

(2) This section also applies when—

(a) a person carrying on a forestry business on land in New Zealand incurs expenditure on acquiring, on or after 1 April 1975, plant or machinery; and

(b) the person first uses the plant or machinery on or after 1 April 1975; and

(c) the person uses the plant or machinery mainly in planting or maintaining trees on the land.

Depreciation loss

(3) The person is allowed a deduction for an amount of depreciation loss for the plant or machinery.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DL 1(5). (2) DL 1(5). (3) DL 1(5). (4) DL 1(5).
Defined terms:	amount, business, capital limitation, deduction, depreciation loss, general limitation, general permission, New Zealand, person.

DP 5 Improvements to land

When this section applies

(1) This section applies when—

(a) a person carries on a forestry business on land in New Zealand; and

(b) an improvement described in schedule 7, part G has been made to the land.

Owner of land

(2) A person who owns the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person or by another person; and

(c) it is incurred in the 1995-96 income year or in a later income year, not including the income year in which the person disposes of the land (the income year referred to in this paragraph is the income year of the person who owns the land); and

(d) it is incurred in developing the land; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Non-owner of land

(3) A person who does not own the land is allowed a deduction for expenditure to which all the following apply:

(a) it is incurred on making the improvement; and

(b) it is incurred by the person; and

(c) it is incurred in the 1995-96 income year or in a later income year, not including the income year in which the person ceases to carry on the business on the land; and

(d) it is incurred in developing the land; and

(e) it is of benefit to the business in the income year in which the person is allowed the deduction.

Amount of deduction

(4) The amount of the deduction is calculated using the formula —

schedule 7 percentage *x* diminished value.

Definition of items in formula

(5) In the formula,—

(a) **schedule 7 percentage** is the percentage set out opposite the description of the improvement in schedule 7, part G:

(b) **diminished value** is the diminished value of the improvement.

Link with subpart DA

(6) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DL 2(1), (2). (2) DL 2(1). (3) DL 2(2). (4) DL 2(3)(b). (5) DL 2(3)(b). (6) new.
Defined terms:	amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand, owner, person.
Comment:	See the notes on consequential amendments to schedule 7 in volume 3.

DP 6 Land contouring

No deduction

(1) A person who derives income under section CB 22 (Disposal of timber or right to take timber) or section CB 23 (Disposal of land with standing timber) is not allowed a deduction for expenditure that they incur on land contouring in the course of deriving the income.

Link with subpart DA

(2) This section overrides the general permission.

Origin:	(1) DL 1(9). (2) new.
Defined terms:	deduction, derived, general permission, income, person.

DP 7 Forestry encouragement agreement: deductions

When this section applies

(1) This section applies when a person makes a forestry encouragement agreement under the Forestry Encouragement Act 1962.

Forestry expenditure under agreement

(2) The person is allowed a deduction for expenditure that they incur if all the following apply to the expenditure:

(a) it is expenditure incurred in planting or maintaining trees under the agreement; and

(b) it is not expenditure for which an advance has been or is to be made under the agreement; and

(c) it is not expenditure represented in a payment made to the person under the Forestry Encouragement Grants Regulations 1983 and incurred in—

(i) planting or maintaining trees; or

(ii) meeting administrative overheads, rates, rent, insurance premiums, or other expenses of the same kind; or

(iii) paying interest on money borrowed for the purposes of developing the forest and employed as capital in developing the forest.

Matters relating to advance

(3) The person is allowed a deduction for expenditure that they incur in—

(a) making a payment of interest for an advance made under the agreement; or

(b) making a payment reducing the principal of an advance made under the agreement.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DL 6(1). (2) DL 6(1).

	(3) DL 6(1).
	(4) new.
Defined terms:	capital limitation, deduction, general limitation, general permission, person.

DP 8 Forestry encouragement agreement: no deduction

No deduction

(1) A person who has made a forestry encouragement agreement under the Forestry Encouragement Act 1962 is not allowed a deduction for an amount equal to the amount from which they are relieved in the following circumstances:

(a) an advance is made to the person under the agreement; and

(b) the advance is exempt income of the person under section CW 2 (Forestry encouragement agreements); and

(c) the person is later relieved from some or all of their liability to repay the principal.

Link with subpart DA

(2) This section overrides the general permission.

Origin:	(1) DL 6(2)(b).
	(2) new.
Defined terms:	amount, deduction, exempt income, general permission, person.

DP 9 Forestry business on land bought from Crown, Maori owners, or holding company

No deduction: forestry company

(1) A forestry company is not allowed a deduction for interest to which both the following apply:

(a) it is paid by the company under a qualifying debenture issued by the company; and

(b) it is exempt income of the person deriving it, under section CW 3 (Forestry companies and Maori investment companies).

No deduction: Maori investment company

(2) A Maori investment company is not allowed a deduction for interest to which both the following apply:

(a) it is paid by the company under a qualifying debenture issued by the company; and

(b) it is exempt income of the person deriving it, under section CW 3 (Forestry companies and Maori investment companies).

Application of sections FC 2 and FZ 2 to qualifying debenture

(3) Section FC 2 (Interest on debentures issued in substitution for shares) and section FZ 2 (Amounts owing under convertible notes deemed to be share capital and holders deemed to be shareholders) do not apply to a qualifying debenture.

Link with subpart DA

(4) This section overrides the general permission.

Origin:	(1) DL 5(1)(b). (2) DL 5(1)(b). (3) DL 5(1)(c). (4) new.
Defined terms:	business, deduction, derived, exempt income, forestry company, general permission, holding company, interest, Maori investment company, Maori owners, person, qualifying debenture.

DP 10 Forestry business on land bought from Crown, Maori owners, or holding company: cost of timber

When this section applies

(1) This section applies when a forestry company buys land with standing timber on it from a seller who is the Crown, the Maori owners, or a holding company of the forestry company.

Cost of timber

(2) The cost of the timber is the lesser of the following:

(a) the costs of timber to the seller at the date of the sale to the forestry company; and

(b) the cost of acquiring the timber to the forestry company, which is worked out by following these steps—

(i) first, add the market value of the standing timber on the date of the sale (A) to the market value of the land (as if it did not have standing timber on it) on the date of the sale to give their combined market value (B):

(ii) second, calculate what proportion of B is constituted by A:

(iii) third, apply the proportion to the consideration for the sale to give the cost.

Sellers of Maori land

(3) For the purposes of subsection (1),—

(a) land sold to the forestry company by the Maori Trustee or by a trustee for a Maori owner is treated as if it had been sold by the beneficial owners:

(b) land sold to the forestry company by a Maori incorporation is treated as if it had been sold by the members of the incorporation.

Origin:	(1) DL 5(1)(d). (2) DL 5(1)(d)(ii), (iii). (3) DL 5(1)(d)(ii), (iii).
Defined terms:	business, cost of timber, forestry company, holding company, Maori incorporation, Maori land, Maori owners, standing timber, trustee.

DQ – Income equalisation schemes

Index

DQ 1 Main income equalisation scheme

Deposit

(1) A person who has made a deposit for an income year is allowed a deduction of the amount quantified in section EN 7 (2) (Deposit allowed as deduction).

Allocation of deduction

(2) The deduction is allocated to the income year described in section EN 7 (3) (Deposit allowed as deduction).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) EI 3. (2) EI 3. (3) new.
Defined terms:	amount, capital limitation, deduction, deposit, general limitation, general permission, income year, main income equalisation scheme.

DQ 2 Adverse event income equalisation scheme

Deposit

(1) A person who has made a deposit for an income year is allowed a deduction of the amount quantified in section EN 42 (2) (Deposit allowed as deduction).

Allocation of deduction

(2) The deduction is allocated to the income year described in section EN 42 (3) (Deposit allowed as deduction).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) EI 13. (2) EI 13. (3) new.
Defined terms:	adverse event income equalisation scheme, amount, capital limitation, deduction, deposit, general limitation, general permission, income year.

DQ 3 Thinning operations income equalisation scheme

Deposit

(1) A person who has made a deposit for an income year is allowed a deduction of the amount quantified in section EN 69 (2) (Deposit allowed as deduction).

Allocation of deduction

(2) The deduction is allocated to the income year described in section EN 69 (3) (Deposit allowed as deduction).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) EI 3; EI 17(2). (2) EI 3; EI 17(2). (3) new.
Defined terms:	amount, capital limitation, deduction, deposit, general limitation, general permission, income year, thinning operations income equalisation scheme.

DR – Life insurance business expenditure

Index

DR 1 Mortality profit formula: negative result

When this section applies

(1) This section applies when—

(a) a life insurer follows the steps in section EG 23 (2) (When life insurers providing life insurance at start of income year) or section EG 24 (2) (When life insurers not providing life insurance at start of income year) for an income year and gets a negative result; and

(b) the negative result is not treated as zero because one of the exceptions in section EG 30 (2) to (4) (Mortality profit formula: individual result may be negative only in some cases) applies.

Negative result

(2) The life insurer is allowed a deduction of the amount quantified in section EG 31 (2) (Mortality profit formula: negative result).

Allocation of deduction

(3) The deduction is allocated to the income year described in section EG 31 (3) (Mortality profit formula: negative result).

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DK 3A. (2) DK 3A. (3) DK 3A. (4) new.
Defined terms:	amount, deduction, general limitation, general permission, income year, life insurer, mortality profit formula.

DR 2 Disposal of property

When this section applies

(1) This section applies when a life insurer disposes of any property of their life insurance business. This subsection is overridden by subsection (2).

Exceptions

(2) This section does not apply when the property is—

(a) a financial arrangement; or

(b) property for whose cost the life insurer has already been allowed a deduction, other than for an amount of depreciation loss.

Cost of property

(3) The life insurer is allowed a deduction of the amount quantified in section EG 44 (2) (Deductions for disposal of property).

Allocation of deduction

(4) The deduction is allocated to the income year described in section EG 44 (6) (Deductions for disposal of property).

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DK 3B(1). (2) DK 3B(2). (3) DK 3B(1). (4) DK 3B(1). (5) new.
Defined terms:	amount, business, capital limitation, deduction, depreciation loss, financial arrangement, general limitation, general permission, income year, life insurance, life insurer, property.
Comment:	Current section DK 3E has not been replicated because it is not necessary. This draft section is written widely enough to cover an excepted financial arrangement. Draft section EC 2 (3)(d) (‘Trading stock’ defined) does the job of providing that an excepted financial arrangement is not trading stock. Current section GD 7 (a) does the job of providing that any property disposed of by a life insurer is treated as trading stock.

DR 3 Specific deductions not allowed to life insurers and fully reinsured persons

No deduction

(1) A life insurer is not allowed a deduction for—

(a) a claim payable by the life insurer under a life insurance policy; or

(b) expenditure or loss incurred by the life insurer in deriving policyholder income; or

(c) a bonus or other discretionary amount added to a policy; or

(d) a premium payable by the life insurer under a life reinsurance policy.

Fully reinsured persons

(2) Subsection (1) applies to a person who is carrying on a business of providing life insurance but who is treated as not carrying on a business of providing life insurance because they have full reinsurance.

Link with subpart DA

(3) This section overrides the general permission.

Origin:	(1) DK 3. (2) DK 3D. (3) new.
Defined terms:	amount, business, claim, deduction, derived, full reinsurance, general permission, life insurance, life insurance policy, life insurer, life reinsurance policy, pay, person, policyholder income, premium.
Comment:	Draft subsection (1)(c) uses the same language as draft section EG 10 (5)(b) (‘Claim’ defined).

DS – Film industry expenditure

Index

DS 1 When this subpart applies

Film expenditure

(1) Sections DS 2 to DS 10, DZ 3, EK 4 to EK 8, GC 11, GC 11A, GC 11B, and GD 12 to GD 12B (all of which are sections dealing with films) provide for the deductions that persons are allowed for expenditure that they incur in acquiring a right in a film and for film production expenditure, and the allocation of those deductions, as follows:

(a) if the expenditure is incurred in acquiring a right in a film, a person is allowed a deduction only under section DS 2 and the deduction is allocated under—

(i) section EK 4 (Expenditure incurred in acquiring rights in feature films), if it is a feature film:

(ii) section EK 5 (Expenditure incurred in acquiring rights in films other than feature films), if it is not a feature film:

(b) if the expenditure is film production expenditure, a person is allowed a deduction only under section DS 3 and the deduction is allocated under—

(i) section EK 6 (Film production expenditure for New Zealand films), if it has a final certificate that it is a New Zealand film under section EK 7 (Certification of New Zealand films):

(ii) section EK 8 (Film production expenditure for films other than New Zealand films), if it does not have a final certificate of that kind:

(c) deductions under section DS 2 or section DS 3—

(i) are reduced under section DS 4, section DS 5, and section DZ 3 (Film reimbursement scheme: when clawback rule does not apply) if the person disposes of property under a film reimbursement scheme:

(ii) do not exist if subsection (2) applies:

(d) section GC 11 (Films), section GC 11A (Non-market transactions to acquire rights in films), section GC 11B (Manipulation of arrangements to acquire rights in films), and sections GD 12 to GD 12B apply to avoidance and non-market transactions relating to these deductions.

No deduction

(2) A person who uses a limited recourse loan in acquiring, producing, or marketing a film or a right in a film is not allowed a deduction under any section of this Act for revenue film expenditure or capital film expenditure under sections DS 6 to DS 9.

Origin:	(1) new. (2) new.
Defined terms:	capital film expenditure, deduction, feature film, film, film production expenditure, film reimbursement scheme, incurred, limited recourse loan, New Zealand, person, revenue film expenditure, right in a film.
Comment:	Current section GD 12 appears in a rewritten form in the consequential amendments in volume 3 together with draft section GC 11A (Non-market transactions to acquire rights in films), draft section GC 11B (Manipulation of arrangements to acquire rights in films), draft section GD 12A (Film production expenditure if payments postponed or contingent), and draft section GD 12B (Manipulation of arrangements to incur film production expenditure).

DS 2 Acquiring rights in films

Expenditure incurred in acquiring film right

(1) A person is allowed a deduction for expenditure that they incur in acquiring a right in a film, if the film is completed (whether it is completed before, when, or after the film right is acquired). This section is overridden by sections DS 3 to DS 9.

Allocation of deduction

(2) The deduction is allocated under section EK 4 (Expenditure incurred in acquiring rights in feature films) or section EK 5 (Expenditure incurred in acquiring rights in films other than feature films).

Certain expenditure excluded

(3) This section does not apply to expenditure that a person incurs in acquiring a right in a film if—

(a) the person operates a television station, a network, or a cable television system, and the film right is mainly acquired to enable the film to be broadcast in New Zealand; or

(b) the film is intended to be shown as an advertisement; or

(c) the expenditure is film production expenditure.

No other deductions

(4) A person is not allowed a deduction if the film is not completed.

Link with subpart DA

(5) Subsection (1) overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. For subsection (1) amounts, subsection (4) overrides the general permission.

Origin:	(1) EO 3(1), (4), (5), (7). (2) new. (3) EO 3(1), (2), (9). (4) EO 3(1), (3). (5) new.
Defined terms:	amount, capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, incurred, New Zealand, person, right in a film.
Comment:	The main change in this rewritten provision, compared with current section EO 3, is the removal of the cost of production element. This allows for the drafting of the provision to be significantly simplified. For example, the depreciation recovery provision in current section EO 3 (8), which relates only to film production, does not need to be retained in draft section DS 5, which now deals exclusively with the acquisition of film rights.

DS 3 Film production expenditure

Film production expenditure

(1) A person is allowed a deduction for film production expenditure that they incur if the film is completed and the person has a right in the film on or before the film is completed. This section is overridden by sections DS 4 to DS 9.

Reimbursed expenditure

(2) If, before the film is completed, a person (person A) reimburses another person (person B) for film production expenditure that person B incurs, the reimbursement is treated as film production expenditure incurred by person A for the purposes of subsection (1).

Allocation of deduction

(3) The deduction is allocated under section EK 6 (Film production expenditure for New Zealand films) or section EK 8 (Film production expenditure for films other than New Zealand films).

Certain expenditure excluded

(4) This section does not apply to film production expenditure that a person incurs if—

(a) the person operates a television station, a network, or a cable television system, and the film is produced mainly for broadcast in New Zealand; or

(b) the film is intended to be shown as an advertisement.

No other deductions

(5) A person is not allowed a deduction if the film is not completed.

Link with subpart DA

(6) Subsection (1) overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply. For subsection (1) amounts, subsection (4) overrides the general permission.

Origin:	(1) EO 4(4), (5). (2) EO 4(1). (3) new. (4) new. (5) EO 4(2), (3). (6) new.
Defined terms:	amount, capital limitation, completed, deduction, film, film production expenditure, general limitation, general permission, incurred, New Zealand, person, right in a film.
Comment:	The depreciation recovery provision in current section EO 4 (8) has been omitted, with reliance being placed instead on the general depreciation recovery provisions in subpart EF (Depreciation). This is preferable to the stand-alone approach in current section EO 4 (8). Also, current section EO 4 (8) is not consistent with self-assessment.

DS 4 Clawback of deductions for film reimbursement schemes

General rule

(1) A person who disposes of property under a film reimbursement scheme must reduce the total deductions that they are or have been allowed under section DS 2 or section DS 3, or would have been allowed if this section did not exist, using the formula in section DS 5.

When rule does not apply

(2) Subsection (1) does not apply to a deduction for expenditure excluded under section DZ 3 (Film reimbursement scheme: when clawback rule does not apply).

Amendment of assessment

(3) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section.

Origin:	(1) EO 4A(2), (3), (4). (2) EO 4A(2A). (3) EO 4B.
Defined terms:	Commissioner, deduction, film reimbursement scheme, person, time bar.
Comment:	The incorporation of paragraph (b) of the current definition of ‘right’ in section OB 1 into the film expenditure provisions in draft section DS 5 and draft section DZ 3 (Film reimbursement scheme: when clawback rule does not apply) allows the drafting of this provision to be simplified—for example, there is no need for a provision equivalent to current section EO 4A (2)(a)(ii). The definition of ‘film reimbursement scheme’ now appears in section OB 1 (see the amendments to section OB 1 (Definitions) in volume 3).

DS 5 Calculation of clawback amounts on film reimbursement schemes

Formula

(1) When section DS 4 (1) applies, the total deductions must be reduced to the amount calculated using the formula—

$$\text{total deductions} - \text{total consideration.}$$

Definition of items in formula

(2) In the formula,—

(a) **total deductions** is the total amount of deductions that the person is or has been allowed under section DS 2 or section DS 3 or would have been allowed if section DS 4 did not exist:

(b) **total consideration** is the total amount of consideration for the disposal of the property that the person derives and that is not film income.

Order of reduced deductions for previous income years

(3) In subsection (1), deductions must be reduced in the same order as they would have been allowed.

Origin:	(1) EO 4A(3), (4). (2) EO 4A(3). (3) EO 4A(5).
Defined terms:	amount, deduction, derived, film income, film reimbursement scheme, income year, person.

Comment:	The calculation of the clawback amount has been simplified. It applies to the total amount of the deductions allowed at any time.

DS 6 Deductions for film expenditure if amount not at risk

Amount of deduction

(1) A person who uses a limited recourse loan in acquiring, producing, or marketing a film or a right in a film must subtract, under section DS 7, the amount of the loan from the deductions for revenue film expenditure and for capital film expenditure that the person would be allowed under this Act if this section did not exist.

Amount of deduction on repayment of loan

(2) The person is allowed, under section DS 8, a deduction that is equal to the amount of any repayment by them of part or all of the limited recourse loan, but not more than the total amount subtracted under subsection (1).

Link with subpart DA

(3) Subsection (1) overrides the general permission Subsection (2) supplements the general permission and overrides the capital limitation. The other general limitations still apply to subsection (2) amounts.

Origin:	(1) DK 1(2), (3). (2) DK 1(5). (3) new.
Defined terms:	amount, capital film expenditure, capital limitation, deduction, film, general limitation, general permission, limited recourse loan, person, revenue film expenditure, right in a film.
Comment:	This section now explicitly applies to revenue-type losses (that is, losses covered by current section BD 2 (1)(b)). This would seem to be sensible given that section DS 3 also includes such losses and that section DS 3 is subject to section DS 6. It may be argued that the limited recourse loan provisions constitute a timing rule rather than a deductions rule. However, our view is that, because these provisions artificially subtract and allow deductions (rather than simply defer deductions for actual expenditure), their primary function is to limit deductions (unless the limited recourse loan is repaid) and the allocation function is secondary.

DS 7 Method of subtracting loan amounts from deductions

Order in which loan amounts subtracted from deductions

(1) When section DS 6 (1) applies, the amount of the loan made in an income year must be subtracted from the deductions that the person would otherwise be allowed for expenditure of the following type and in the following order:

(a) from deductions for revenue film expenditure that the person incurred in a previous income year and did not pay on or before the start of the income year, if the loan was borrowed to pay for the expenditure:

(b) from the deductions for capital film expenditure that the person incurred in a previous income year and did not pay on or before the start of the income year, if the loan was borrowed to pay for the expenditure:

(c) from deductions for revenue film expenditure that the person incurred in the income year:

(d) from deductions for capital film expenditure that the person incurred in the income year.

Cumulative subtractions

(2) The application of section DS 6 (1) is cumulative, so that—

(a) the loan amount must be subtracted in each case from the total amount of the deductions that the person would otherwise have been allowed for each type of expenditure reduced by any previous subtractions under that section; and

(b) the order in subsection (1) applies accordingly.

Origin:	(1) DK 1(4). (2) DK 1(4).
Defined terms:	amount, capital film expenditure, deduction, income year, incurred, person, revenue film expenditure.

DS 8 Deductions for repayments

Order of deductions for repayment

(1) When section DS 6 (2) applies, the deduction that the person is allowed in relation to the repayment must be for expenditure of the same type and deductions must be in the same order as that for which the person was not allowed a deduction under section DS 6 (1) in any previous income year.

Cumulative application

(2) The application of section DS 6 (2) is cumulative, so that—

(a) the amount of the deduction that the person may be allowed under that subsection for each type of expenditure is the total amount that the person was not allowed for that type under section DS 6 (1) in any previous income year, reduced by any amounts that the person was allowed as deductions under section DS 6 (2) in any previous income year; and

(b) the order in subsection (1) applies accordingly.

Repayment of a loan with another limited recourse loan

(3) A loan is treated as not having been repaid for the purposes of section DS 6 (2) to the extent to which a limited recourse loan is used directly or indirectly to repay the loan.

Allocation of deduction

(4) The deduction is allocated to the income year in which the repayment is made.

Origin:	(1) DK 1(5). (2) DK 1(5). (3) DK 1(6). (4) DK 1(5).
Defined terms:	amount, deduction, income year, limited recourse loan.

DS 9 Interest on limited recourse loans

Interest

(1) For the purposes of sections DS 6 to DS 8, a person is treated as incurring interest that is payable on a limited recourse loan only at the time of payment of the interest.

Link with subpart DA

(2) This section overrides the general permission.

Origin:	(1) DK 1(7). (2) new.
Defined terms:	general permission, interest, pay, limited recourse loan, person.

DS 10 Definitions for this subpart

In this subpart,—

capital film expenditure means expenditure of a capital nature that a person incurs in acquiring, constructing, installing, or extending an asset for use in acquiring, producing, or marketing a film or a right in a film

limited recourse loan means—

(a) an amount that person A borrows from person B on or after 6 August 1982 if person A is protected, wholly or partly, against loss arising from investment of the amount because—

(i) the amount borrowed is a non-recourse loan or part of a non-recourse loan; or

(ii) a guarantee is provided by a person who has an interest (other than as a creditor) in the business or activity in which the amount is invested or in a product, result, or effect of that business or activity being carried on; or

(iii) another arrangement exists that is of a substantially similar nature; and

(b) an amount that person A borrows from person B on or after 1 April 1983 if—

(i) person A and person B are associated persons; and

(ii) the amount borrowed is, directly or indirectly, an amount that person B has borrowed and in relation to which person B is protected from loss arising from its investment for any of the reasons set out in paragraph (a)

non-recourse loan means an amount that person A borrows from person B if—

(a) the repayment of the amount borrowed or interest on it is secured on income from a business or activity or on the happening of a future event; and

(b) person A is for any reason liable to pay less than the total amount borrowed or the total amount of interest on it

revenue film expenditure means expenditure (other than capital film expenditure) that a person incurs in acquiring, producing, or marketing a film or a right in a film.

Origin:	DK 1(2), (3), (8).
Defined terms:	amount, arrangement, associated person, business, capital film expenditure, film, income, limited recourse loan, non-recourse loan, person, revenue film expenditure, right in a film.

DT – Petroleum mining expenditure

Index

Introductory provision

DT 1 Expenditure generally

No deductions except under this subpart

(1) A deduction for petroleum exploration expenditure or petroleum development expenditure or the expenditure described in any of sections DT 11 to DT 18 is not allowed except under this subpart.

Link with subpart DA

(2) This section overrides the general permission.

Origin:	(1) DM 1(1). (2) new.
Defined terms:	deduction, general permission, petroleum development expenditure, petroleum exploration expenditure.

Petroleum exploration expenditure

DT 2 Petroleum exploration expenditure

Petroleum exploration expenditure

(1) A person is allowed a deduction for petroleum exploration expenditure that they incur.

Allocation of deduction

(2) The deduction is allocated to the income year in which the petroleum exploration expenditure is incurred.

Arrangements and sale of property

(3) Section DT 3 overrides this section.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DM 1(2)(a). (2) DM 1(2)(a). (3) DM 1(2). (4) DM 1A(1).
Defined terms:	arrangement, capital limitation, deduction, general limitation, general permission, income year, person, petroleum exploration expenditure.

DT 3 Arrangement for petroleum exploration expenditure and sale of property

What this section applies to

(1) This section applies to a person and an arrangement if—

(a) the person may incur expenditure under the arrangement and would be allowed a deduction for the expenditure under section DT 2; and

(b) the person or a person associated with them may dispose of property—

(i) under the arrangement; or

(ii) under a right given by the arrangement; or

(iii) in meeting an obligation of the person or the associated person that arises from the arrangement; and

(c) the property is not—

(i) exploratory material; or

(ii) a prospecting permit for petroleum; or

(iii) an exploration permit for petroleum.

Amount of deduction

(2) The person is not allowed a deduction for the expenditure described in subsection (1)(a) except for an amount that is greater than zero and the amount calculated using the formula—

expenditure – (consideration – lesser amount).

This subsection is overridden by subsection (3).

Exception

(3) If consideration for the property is derived in an income year, the person's deductions in previous income years for the expenditure described in subsection (1)(a) are reduced so that the total of those deductions is equal to the greater of zero and the amount calculated using the formula—

previous expenditure – consideration.

Order when adjustment made

(4) When an adjustment under subsection (3) is being made, deductions are treated as not allowed in the same order in time as they would have been allowed under section DT 2 (1).

'Associated person' defined

(5) In this section, **associated person** has the meaning given in section OD 7 (Defining when 2 persons are associated persons) or section OD 8 (3) (Further definitions of associated persons).

Definition of items in formulas

(6) In the formulas in subsections (2) and (3),—

(a) **expenditure** is the amount of expenditure that a person would be allowed as a deduction in the income year under section DT 2 (1):

(b) **consideration** is the total consideration for the property that is derived before or during the income year:

(c) **lesser amount** is the lesser of—

(i) the amount of consideration; and

(ii) the amount of expenditure that a person would be allowed as a deduction in previous income years under section DT 2 (1):

(d) **previous expenditure** is the amount of expenditure that a person would be allowed as a deduction in previous income years under section DT 2 (1).

Petroleum exploration expenditure

(7) This section overrides section DT 2.

Origin:	(1) DM 1A(2). (2) DM 1A(3). (3) DM 1A(4). (4) DM 1A(5). (5) DM 1A(6). (6) DM 1A(3), (4). (7) DM 1A(1).
Defined terms:	amount, arrangement, associated person, consideration, deduction, derived, exploration permit, exploratory material, income year, person, petroleum, petroleum exploration expenditure, prospecting permit.

DT 4 Licences and permits

Consideration that a person pays to acquire a prospecting licence, a prospecting permit, or an exploration permit from a petroleum miner is treated as petroleum exploration expenditure incurred in the income year in which the licence or permit is disposed of.

Origin:	DM 3(1).
Defined terms:	consideration, exploration permit, income year, person, petroleum exploration expenditure, petroleum miner, prospecting licence, prospecting permit.

DT 5 Exploratory material

Consideration that a person pays to acquire exploratory material from a petroleum miner is treated as petroleum exploration expenditure incurred in the income year in which the material is disposed of. This section is overridden by section EK 9 (Petroleum development expenditure).

Origin:	DM 3.
Defined terms:	consideration, exploratory material, income year, person, petroleum exploration expenditure, petroleum miner.

DT 6 Amendment of assessment

Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to section DT 3.

Origin:	DM 1B.
Defined terms:	Commissioner, time bar.

Petroleum development expenditure

DT 7 Petroleum development expenditure

When deduction allowed

(1) A petroleum miner is allowed a deduction for petroleum development expenditure that they incur and that has not been deducted under any of sections DT 9 to DT 14 or section IH 3 (Loss carry back by petroleum miners).

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 1(2)(b). (2) new.
Defined terms:	capital limitation, deduction, general limitation, general permission, petroleum development expenditure, petroleum miner.

DT 8 Expenditure on petroleum permit or permit-specific asset

Expenditure that a person incurs in buying a petroleum permit or a permit-specific asset is treated as petroleum development expenditure if,—

(a) at the time the permit or asset is bought, petroleum is produced continuously in commercial quantities under the petroleum permit; or

(b) an application for a mining permit for the permit area has been made by a person entitled to such a permit under section 32 (3) of the Crown Minerals Act 1991.

Origin:	DM 1(8).
Defined terms:	permit area, permit-specific asset, person, petroleum, petroleum development expenditure, petroleum permit.

DT 9 Exploratory well expenditure

When this section applies

(1) This section applies when a petroleum miner incurs exploratory well expenditure for which they would be allowed a deduction. When the well comes into commercial production, the miner is treated as deriving income equal to the amount of the exploratory well expenditure in the first year of production (see section CG 12 (Exploratory well expenditure)).

Expenditure

(2) The petroleum miner is allowed a deduction for the amount of exploratory well expenditure that is treated as their income under section CG 12 (Exploratory well expenditure). It is treated as petroleum development expenditure in the income year in which commercial production from the well starts.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 1(9). (2) DM 1(9)(b). (3) new.
Defined terms:	amount, capital limitation, commercial production, deduction, exploratory well expenditure, general limitation, general permission, income, income year, petroleum development expenditure, petroleum miner.

DT 10 Acquisitions of certain petroleum mining assets

Consideration that a person pays to acquire a petroleum mining asset (other than a prospecting licence, a prospecting permit, or an exploration permit) from a petroleum miner is treated as petroleum development expenditure incurred in the income year in which the petroleum mining asset is disposed of.

Origin:	DM 3(1).
Defined terms:	consideration, exploration permit, income year, person, petroleum development expenditure, petroleum miner, petroleum mining asset, prospecting licence, prospecting permit.

Other expenditure

DT 11 Expenditure on abandoned exploratory well

When deduction allowed

(1) A petroleum miner is allowed a deduction for expenditure that they incur before 16 December 1991 in drilling, testing, completing, and abandoning an exploratory well if—

(a) the miner seals and abandons the well before commercial production from the well starts; and

(b) the expenditure has not been deducted in any previous income year.

Sealing and abandoning well

(2) To seal and abandon an exploratory well, a petroleum miner must make a declaration under the Oaths and Declaration Act 1957 that they do not intend to—

(a) use the exploratory well in petroleum mining operations; or

(b) apply for a mining licence over the area containing the exploratory well.

Allocation of deduction

(3) The deduction is allocated to the income year in which the well is sealed and abandoned.

Link with subpart DA

(4) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 1(5)(c). (2) OB 1 'seal and abandonment'. (3) DM 1(5)(c). (4) new.
Defined terms:	capital limitation, commercial production, deduction, exploratory well, general limitation, general permission, income year, mining licence, petroleum miner, petroleum mining operations, seal and abandon.

DT 12 Farm-out arrangements

Farm-in expenditure classified

(1) Farm-in expenditure that a farm-in party incurs under a farm-out arrangement on or after 16 December 1991 is treated as—

(a) petroleum exploration expenditure, if it is exploratory well expenditure or prospecting expenditure; or

(b) petroleum development expenditure, if paragraph (a) does not apply.

This subsection is overridden by subsection (2), but otherwise applies despite any other provision of this Act.

Excess expenditure incurred before 16 December 1991

(2) A transferee under a farm-out arrangement is allowed a deduction of excess expenditure incurred before 16 December 1991 in a farm-out arrangement entered into before 16 December 1991, and for which a deduction has not been allowed in any previous income year. The deduction is allowed under section DT 2, section DT 7, or section DT 17 (whichever section applies).

Excess expenditure incurred on or after 16 December 1991

(3) A transferee under a farm-out arrangement is allowed a deduction of excess expenditure incurred on or after 16 December 1991 in a farm-out arrangement entered into before 16 December 1991 and for which the transferee is allowed a deduction under section DT 2, section DT 7, or section DT 17 (whichever section applies).

Reduction of amounts

(4) A transferor under a farm-out arrangement entered into before 16 December 1991 must reduce (but is not allowed as a deduction) the deductions described in subsection (5) by the amount determined under subsection (6).

Deductions to which subsection (4) applies

(5) The deductions to which subsection (4) applies are deductions for expenditure incurred before, on, or after 16 December 1991 that—

(a) are not deductions of a kind referred to in subsection (6)(a) to (c); and

(b) are attributable to—

(i) the petroleum permit to which the farm-out arrangement relates; and

(ii) a licence-specific asset or permit-specific asset held for conducting petroleum mining operations.

Amount of reduction

(6) The amount of the reduction under subsection (4), in an income year, is the same amount as would have been determined under (repealed) section 214I (2) and (3) of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992, as if references in that section 214I (2) and (3) to deferred deductions were references to any deductions, deferred or not, attributable to the relevant licence or permit, except deductions for—

(a) residual expenditure; and

(b) expenditure incurred on or before the date on which the application for a prospecting licence or prospecting permit was submitted for the relevant licence area; and

(c) expenditure that is neither petroleum exploration expenditure nor petroleum development expenditure.

Definitions for this section

(7) In subsections (3) to (6), **excess expenditure**, **farm-out arrangement**, **licence-specific assets**, **transferee**, and **transferor** have the same meanings as in (repealed) section 214D of the Income Tax Act 1976 as inserted by (repealed) section 15 of the Income Tax Amendment Act (No 2) 1990.

Link with subpart DA

(8) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 4(1). (2) DM 4(2)(a)(i). (3) DM 4(2)(a)(ii). (4) DM 4(2)(b). (5) DM 4(2)(b). (6) DM 4(3). (7) new. (8) new.
Defined terms:	amount, capital limitation, deduction, excess expenditure, exploratory well expenditure, farm-in expenditure, farm-in party, farm-out arrangement, general limitation, general permission, income year, licence-specific assets, permit-specific asset, petroleum development expenditure, petroleum exploration expenditure, petroleum mining operations, petroleum permit, prospecting expenditure, prospecting licence, prospecting permit, residual expenditure, transferee, transferor.

DT 13 Damaged assets

Repairs

(1) A deduction is allowed for expenditure incurred to repair a damaged permit-specific asset.

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 5. (2) new.
Defined terms:	capital limitation, deduction, general limitation, general permission, permit-specific asset.

DT 14 Cost of shares or trust interests in petroleum mining entity

When this section applies

(1) This section applies when a person receives an amount to which section CT 3 (Disposal of interests in controlled petroleum mining asset) or section CT 4 (Disposal of interests in controlled petroleum entities by longer-term holders) applies. However, this section does not

apply to a disposal of share or trust interests when that disposal together with all other disposals that the person makes in the controlled petroleum mining entity during the previous 2 income years amounts to less than 10% of the person's shares or trust interests in the entity calculated in the year of disposal.

Costs

(2) The person is allowed a deduction for the cost incurred in disposing of the shares or trust interests.

Allocation of deduction

(3) The deduction is allocated to the income year in which the income is derived.

Cost for longer-term holders

(4) The cost incurred by a person to whom section CT 4 (Disposal of interests in controlled petroleum mining entities by longer-term holders) applies in disposing of the shares or trust interests is the market value on 1 October 1990 of the shares or trust interests.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 6(1), (2). (2) DM 6(1). (3) DM 6(1). (4) new. (5) new.
Defined terms:	amount, capital limitation, controlled petroleum mining entity, deduction, derived, disposal, general limitation, general permission, income, income year, person, share.

DT 15 Limited deduction for person associated with petroleum miner

When this section applies

(1) This section applies to an associated person of a petroleum miner when—

(a) the petroleum miner has some or all of a prospecting licence or a mining licence; and

(b) the associated person undertakes petroleum mining operations in the licence area of the prospecting licence or mining licence and—

(i) does so under an arrangement for reward; and

(ii) when doing so is not a petroleum miner in relation to the petroleum mining operations.

No deduction, with qualification

(2) The associated person is not allowed a deduction for expenditure or loss that they incur in petroleum mining operations described in subsection (1), except to the extent of the amount of income that they derive from those operations.

Link with subpart DA

(3) This section overrides the general permission.

Origin:	(1) DK 2. (2) DK 2. (3) new.
Defined terms:	amount, arrangement, associated person, deduction, derived, general permission, income, mining licence, petroleum miner, petroleum mining operations, prospecting licence.

DT 16 Disposals to associated persons

When this section applies

(1) This section applies to a petroleum miner when—

(a) section EK 11 (3) (Disposing of petroleum mining asset) applies; and

(b) the disposal of a petroleum mining asset to which that subsection applies is—

(i) to an associated person of the petroleum miner; or

(ii) if the disposal is on or after 16 December 1991, to a person holding that asset for the petroleum miner or an associated person of the petroleum miner.

Amount of deduction

(2) The amount of a deduction under section EK 11 (3) (Disposing of petroleum mining asset) must not be more than the amount that would be the petroleum miner’s net income if their only income were from the disposal described in subsection (1)(b).

Reduction

(3) To the extent to which a deduction is not allowed under subsection (2), the petroleum miner must reduce any deductions for the petroleum mining asset by the difference between the amount of those deductions and the maximum deduction under subsection (2).

Amount of difference

(4) The petroleum miner is allowed a deduction for the amount of the difference in subsection (3) if the person who acquires the asset from the petroleum miner—

(a) disposes of the asset to a person who is not associated with the petroleum miner; or

(b) ceases to be a person associated with the petroleum miner.

Adjustment

(5) The Commissioner may adjust a return of income of a petroleum miner who is allowed a deduction under subsection (4), and continue to treat as associated the petroleum miner and an associated person if the miner and the other person ceased to be associated—

(a) in order to obtain the deduction under subsection (4); or

(b) for various reasons, one of which is to obtain the deduction under subsection (4).

Allocation of deduction

(6) The deduction under subsection (4) is allocated to—

(a) the income year in which the asset was disposed of as described in subsection (4)(a); or

(b) the income year in which the association referred to in subsection (4)(b) ceased to exist.

Link with subpart DA

(7) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 1(6). (2) DM 1(6)(a). (3) DM 1(6)(b). (4) DM 1(7). (5) DM 1(7) proviso. (6) DM 1(7). (7) new.
Defined terms:	amount, associated person, capital limitation, Commissioner, deduction, disposal, general limitation, general permission, income, income year, net income, person, petroleum miner, petroleum mining asset, return of income.

DT 17 Relinquishing petroleum permit or disposing of petroleum mining asset

Petroleum permit

(1) A petroleum miner who relinquishes a petroleum permit is allowed a deduction for an amount quantified in section EK 10 (Relinquishing petroleum permit).

Petroleum mining asset

(2) A petroleum miner who disposes of a petroleum mining asset and derives income from the disposal is allowed a deduction for an amount quantified in section EK 11 (Disposing of petroleum mining asset).

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 1(5). (2) DM 1(5). (3) new.
Defined terms:	amount, capital limitation, deduction, disposal, general limitation, general permission, income, petroleum miner, petroleum mining asset, petroleum permit.

DT 18 Removal or restoration operations

Expenditure

(1) A petroleum miner is allowed a deduction for an amount quantified in section EK 12 (Expenditure on removal or restoration operations).

Link with subpart DA

(2) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DM 2. (2) new.
Defined terms:	amount, capital limitation, deduction, general limitation, general permission, petroleum miner, removal or restoration operations.

General provisions

DT 19 Acquiring permit-specific assets and petroleum permits

Permit-specific asset

(1) Expenditure incurred to acquire a permit-specific asset must be attributed to—

(a) the asset; and

(b) the permit area in which the asset is used.

Petroleum permit

(2) Expenditure incurred to acquire a petroleum permit must be attributed to the permit area of the petroleum permit.

Application

(3) Subsections (1) and (2) apply for the purposes of sections CT 1 to CT 6, CX 38, DT 1 to DT 21, EK 9 to EK 16, EZ 2, GC 12, and IH 3 (all of which are sections dealing with petroleum mining).

Origin:	(1) DM 1(4)(a). (2) DM 1(4)(b). (3) DM 1(4).
Defined terms:	permit area, permit-specific asset, petroleum permit.

DT 20 Petroleum mining operations outside New Zealand

Sections CT 1 to CT 6, CX 38, DT 1 to DT 21, EK 9 to EK 16, EZ 2, GC 12, and IH 33 (all of which are sections dealing with petroleum mining) apply to a petroleum miner undertaking petroleum mining operations that are—

(a) outside New Zealand and undertaken through a branch or a controlled foreign company; and

(b) substantially the same as the activities governed by those sections.

Origin:	DM 7(1).
Defined terms:	controlled foreign company, New Zealand, petroleum miner, petroleum mining operations.
Comment:	Current section DM 7 (2), which relates to the application of the Crown Minerals Act 1991 by analogy with the equivalent provisions of an overseas country, has been moved to section 91 of the Tax Administration Act 1994 (see the consequential amendments in volume 3).

DT 21 Partnership interests and disposal of part of asset

When this section applies

(1) This section applies for the purposes of—

(a) sections CT 1 to CT 6, CX 38, DT 1 to DT 21, EK 9 to EK 16, EZ 2, and GC 12 (all of which are sections dealing with petroleum mining); and

(b) section 91 of the Tax Administration Act 1994.

Partner's share

(2) A partner's share or interest in a petroleum permit or other property of the partnership to which the sections referred to in subsection (1) apply is the same as the partner's income interest in the partnership.

Disposal of part of asset

(3) References in the sections in subsection (1) to disposal of an asset apply equally to disposal of part of an asset.

Origin:	(1) DM 9; DM 10. (2) DM 9. (3) DM 10.
Defined terms:	disposal, income, petroleum permit.

DU – Mineral mining expenditure

Index

DU 1 When mining company has mining outgoing excess

'Mining outgoing excess' defined

(1) **Mining outgoing excess** means an amount that a mining company calculates for an income year using the formula—

mining expenditure – income from mining.

Definition of items in formula

(2) In the formula,—

(a) **mining expenditure** is all the expenditure or loss that the mining company incurs in the income year in deriving income from mining for which it would be allowed a deduction that would be allocated to the income year:

(b) **income from mining** is the income from mining of the mining company allocated to the income year.

Origin:	(1) OB 1 'mining outgoing excess'. (2) OB 1 'mining outgoing excess'.
Defined terms:	amount, deduction, derived, income from mining, income year, mining company, mining outgoing excess.

DU 2 Effect of mining company having mining outgoing excess

Calculating amount of deduction

(1) When a mining company has a mining outgoing excess, the total of the deductions that it is allowed for the income year for expenditure or loss taken into account in the **mining expenditure** item of the formula in section DU 1 is not more than the lesser of—

(a) two-thirds of the mining outgoing excess; and

(b) the greater of zero and the amount calculated using the formula—

non-mining income – non-mining expenditure.

Definition of items in formula

(2) In the formula,—

(a) **non-mining income** is the income other than income from mining of the mining company allocated to the income year:

(b) **non-mining expenditure** is all the expenditure or loss that the mining company incurs in the income year in deriving income other than income from mining for which it is allowed a deduction that is allocated to the income year.

Origin:	(1) DN 1(3). (2) DN 1(3).
Defined terms:	amount, deduction, derived, income, income from mining, income year, mining company, mining outgoing excess.

DU 3 Mining exploration expenditure and mining development expenditure

Expenditure

(1) A mining company is allowed a deduction for mining exploration expenditure or mining development expenditure that it incurs.

Mining expenditure

(2) The amount of the expenditure must be taken into account in the **mining expenditure** item of the formula in section DU 1.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DN 1(5). (2) DN 1(5). (3) new.
Defined terms:	amount, capital limitation, general limitation, general permission, mining company, mining development expenditure, mining exploration expenditure.

DU 4 Mining exploration expenditure or mining development expenditure on acquisition of asset

What this section does

(1) This section applies when a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure. It describes the consideration that the mining company is treated as giving for the asset and the consideration that the person who disposes of the asset to the mining company is treated as receiving for it.

Consideration in various cases

(2) The consideration is,—

(a) in a case other than one described in any of subsections (3) to (6), the consideration that the company incurs for the acquisition of the asset:

(b) in the case described in subsection (3), the consideration specified in the subsection for the acquisition of the asset:

(c) in the case described in subsection (4), the consideration specified in the subsection for the acquisition of the asset:

(d) in the case described in subsection (5), the consideration specified in subsection (6) for the acquisition of the asset.

Consideration other than in cash

(3) If some or all of the consideration for the acquisition is other than cash, and the acquisition is not from an associated person, the consideration that is not in cash has the value agreed between the mining company and the person from whom the asset is acquired. If the mining company and the person do not agree, or if the Commissioner considers that the value agreed is unreasonable, the consideration that is not in cash has the value that the Commissioner decides.

Acquisition from associated person

(4) If the acquisition is from an associated person, the consideration for the acquisition is the market value that the asset has on the date of the acquisition.

Amount specified by parties to acquisition

(5) Subsection (6) applies when—

(a) the mining company acquires the asset for use in carrying on mining operations or associated mining operations; and

(b) the mining company and the person from whom the asset is acquired give notice to the Commissioner that they have agreed to apply subsection (6); and

(c) the notice is given to the Commissioner within one of the following times:

(i) the time within which the mining company is required to file a return of income for the income year in which it acquires the asset:

(ii) a further time allowed by the Commissioner; and

(d) the notice specifies an amount that—

(i) is not more than the market value that the asset has at the date of the acquisition; and

(ii) is not less than the amount of any part of the consideration that is in cash.

Amount

(6) The consideration for the acquisition is the amount that the mining company and the person specify in the notice.

Origin:	(1) DN 1(10), (12)(a). (2) DN 1(10)(b). (3) DN 1(10)(b). (4) DN 1(10)(a). (5) DN 1(10)(c), (d), (11). (6) DN 1(10)(c).
Defined terms:	amount, associated mining operations, associated person, Commissioner, income year, mining company, mining development expenditure, mining exploration expenditure, mining operations, notice, person, return of income.

DU 5 Replacing or repairing asset

When subsections (2) and (3) apply

(1) Subsections (2) and (3) apply when—

(a) a mining company complies with section CU 6 (2) (Compensation and scrap payment: use to replace or repair asset); and

(b) the mining company incurs expenditure in replacing or repairing the asset; and

(c) the mining company has an excess amount because the expenditure is more than the total of the following:

(i) the amount of compensation paid; and

(ii) the amount (if any) payable to the mining company for the disposal of any scrap of the asset.

Excess

(2) The company is allowed a deduction for the excess.

Mining expenditure

(3) The excess amount must be taken into account in the **mining expenditure** item of the formula in section DU 1.

When subsections (5) and (6) apply

(4) Subsections (5) and (6) apply when—

(a) a mining company complies with section CU 6 (2) (Compensation and scrap payment: use to replace or repair asset); and

(b) the Commissioner specifies a period as a reasonable period within which to complete the replacement or repair; and

(c) the mining company incurs expenditure in replacing or repairing the asset after the last day of the period.

Limitation on calculation of excess amount

(5) The expenditure incurred after the last day of the period is not taken into account to determine the existence or amount of an excess amount for the purposes of subsection (1)(c).

Mining expenditure

(6) The amount of the expenditure must be taken into account in the **mining expenditure** item of the formula in section DU 1.

Link with subpart DA

(7) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DN 1(14)(c)(i) and (d). (2) DN 1(14)(d). (3) DN 1(14)(h). (4) DN 1(14)(h). (5) DN 1(14)(h). (6) DN 1(14)(h). (7) new.
Defined terms:	amount, capital limitation, Commissioner, general limitation, general permission, mining company.

DU 6 Income appropriated to expenditure

When this section applies

(1) This section applies when—

(a) a mining company appropriates income to mining exploration expenditure or mining development expenditure; and

(b) the company makes the appropriation within 2 months after the end of an income year or within a longer time allowed by the Commissioner; and

(c) the amount that the company appropriates is not more than its net income for the income year, calculated as if this section did not exist.

Amount appropriated

(2) The company is allowed a deduction for the part of the amount to which both the following apply:

(a) it is not spent in the income year to which the appropriation relates; and

(b) it will be, or is likely to be, used as mining exploration expenditure or mining development expenditure before the end of the second income year following the income year to which the appropriation relates.

Allocation of deduction

(3) The deduction for the part of the amount is allocated to the income year to which the appropriation relates.

Mining expenditure

(4) The part of the amount to which subsection (2)(a) and (b) apply must be taken into account in the **mining expenditure** item of the formula in section DU 1.

Link with subpart DA

(5) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DN 1(6). (2) DN 1(6)(a). (3) DN 1(6)(a). (4) DN 1(6)(a). (5) new.
Defined terms:	amount, capital limitation, Commissioner, deduction, general limitation, general permission, income, income year, mining company, mining development expenditure, mining exploration expenditure, net income.

DU 7 Non-mining asset used to derive income from mining

When this section applies

(1) This section applies when—

(a) a mining company starts to use, or starts again to use, an asset to derive income from mining; and

(b) immediately before that, the company used the asset to derive income other than income from mining.

Adjustment

(2) The Commissioner may make an adjustment of any deduction of the mining company for the asset for the income year, as between the part of the income year in which the company used the asset to derive income from mining and the part of the income year in which the company did not use the asset to derive income from mining.

Origin:	(1) DN 1(15)(a). (2) DN 1(15)(a).
Defined terms:	Commissioner, deduction, derived, income, income from mining, income year, mining company.

DU 8 Depreciation

When this section applies: first case

(1) This section applies when—

(a) a mining company acquires an asset by incurring—

(i) mining exploration expenditure or mining development expenditure; or

(ii) the exploration expenditure or development expenditure referred to in section 27 (3)(a) of the Land and Income Tax Amendment Act 1971; and

(b) the company is allowed a deduction for the expenditure; and

(c) the company uses the asset, wholly or mainly, to derive income from mining.

When this section applies: second case

(2) This section also applies when—

(a) a mining company complies with section CU 6 (2) (Compensation and scrap payment: use to replace or repair asset); and

(b) the company incurs expenditure in replacing or repairing the asset; and

(c) the company is allowed a deduction for the expenditure; and

(d) the company uses the asset, wholly or mainly, to derive income from mining.

No deduction, with qualification

(3) The company is not allowed a deduction for an amount of depreciation loss for the asset while the company uses it to derive income from mining. This subsection does not apply while the company uses the asset to derive income other than income from mining; for the purpose of calculating the amount of depreciation loss, the asset has the value

described in section CU 10 (2) (Mining asset used to derive income other than income from mining).

Link with subpart DA

(4) This section overrides the general permission.

Origin:	(1) DN 1(7)(a)(ii), (c), (8)(c). (2) DN 1(14)(c)(ii). (3) DN 1(8)(c). (4) new.
Defined terms:	amount, deduction, depreciation loss, derived, general permission, income, income from mining, mining company, mining development expenditure, mining exploration expenditure.

DU 9 Resident mining operators

Sections of this subpart applying to resident mining operators

(1) Sections DU 1, DU 3, DU 4, DU 5, DU 7, and DU 8 apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies.

Application of section DU 8

(2) Section DU 8 applies with the additional modification that in section DU 8 (1)(a)(ii) the reference to an asset acquired by incurring the exploration expenditure or development expenditure referred to in section 27 (3)(a) of the Land and Income Tax Amendment Act 1971 is replaced by a reference to an asset of the kind referred to in paragraph (i) of item 'a' of the formula in section 31 (3) of the Land and Income Tax Amendment Act (No 2) 1972.

Amount of deduction

(3) When a resident mining operator has a mining outgoing excess, the total of the deductions that it is allowed for the income year for expenditure or loss taken into account in the **mining expenditure** item of the formula in section DU 1 is not more than the lesser of—

(a) the total amount of the expenditure and loss; and

(b) the prescribed amount for the income year.

'Prescribed amount' defined

(4) **Prescribed amount** means 50% of the amount by which the income that the resident mining operator derives in an income year other than from its mining operations or associated mining operations is more than the total of the expenditure and losses, for which it is allowed deductions, that it incurs in the income year in deriving the income.

Net loss

(5) Expenditure or loss of a resident mining operator for which it would be allowed a deduction in an income year if subsection (3) did not exist is a net loss of the operator for the income year for the purposes of section IE 1 (Net losses may be offset against future net income), section IF 1 (Net losses may be offset against future net income), and section IH 1 (Losses of mining companies and petroleum miners).

Origin:	(1) DN 4(5), (7). (2) DN 4(5)(e). (3) DN 4(2). (4) OB 1 ‘prescribed amount’. (5) DN 4(3).
Defined terms:	amount, associated mining operations, deduction, derived, income, income year, mining company, mining operations, mining outgoing excess, net loss, prescribed amount, resident mining operator.

DU 10 Non-resident mining operators

Sections of this subpart applying to non-resident mining operators

(1) Sections DU 3 to DU 8 and section IH 4 (2) and (3) (Companies engaged in exploring for, searching for, or mining, certain minerals) apply, with any necessary modifications, to non-resident mining operators as if non-resident mining operators were mining companies, income from mining were income from a mining venture, mining operations were mining ventures, and associated mining operations were mining ventures.

Application of section DU 3

(2) Section DU 3 applies with the additional modification that subsection (2) is omitted.

Application of section DU 5

(3) Section DU 5 applies with the additional modification that subsections (3) and (6) are omitted.

Application of section DU 6

(4) Section DU 6 applies with the additional modification that subsection (4) is omitted.

Application of section DU 8

(5) Section DU 8 applies with the additional modification that in section DU 8 (1)(a)(ii) the reference to an asset acquired by incurring the exploration expenditure or development expenditure referred to in section 27 (3)(a) of the Land and Income Tax Amendment Act 1971 is replaced by a reference to an asset of the kind referred to in paragraph (i) of item ‘a’ of the formula in section 31 (3) of the Land and Income Tax Amendment Act (No 2) 1972.

Origin:	(1) DN 5(2)(a). (2) DN 5(2)(a)(iii). (3) DN 5(2)(a)(iii). (4) DN 5(2)(a)(iii). (5) DN 5(2)(a)(vi).
Defined terms:	associated mining operations, income from mining, mining company, mining operations, mining venture, non-resident mining operator.

DU 11 Disposal of mining shares by company

Cost of share

(1) When a company disposes of a mining share, the company is allowed a deduction for the cost of the share to it.

Determining cost of share

(2) The cost of the share to the company is the difference between the following 2 sums:

(a) the total of—

(i) the consideration that the company gave to acquire the share; and

(ii) any capital the company contributed later for the share:

(b) the total of—

(i) any reinvestment profit of the company included in the consideration that the company gave; and

(ii) any reinvestment profit of the company included in the capital that the company contributed.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DN 2(1). (2) DN 2(1). (3) new.
Defined terms:	capital limitation, company, general limitation, general permission, mining share, reinvestment profit.

DU 12 Amount written off by holding company

Amount written off

(1) A holding company of a mining company is allowed a deduction for an amount written off a loan it made to the mining company. This subsection is qualified by subsection (2).

Exclusions

(2) The following are not included within the words ‘an amount written off a loan it made to the mining company’ in subsection (1):

(a) interest that the holding company writes off; or

(b) a loan to the extent to which the holding company makes the loan from its reinvestment profit; or

(c) a loan made on or after 1 October 1978 to the extent to which the loan—

(i) is made to obtain an unfair advantage for tax purposes; and

(ii) is excessive, having regard to previous loans made by the holding company and any other circumstances.

Amount of deduction

(3) The deduction is not more than the lesser of—

(a) 50% of the amount that, if this section did not exist, would be the net income of the holding company for the income year in which the amount is written off; and

(b) the prescribed proportion of all the mining exploration expenditure and mining development expenditure incurred by the mining company in the income year in which the amount is written off, reduced by all the deductions the holding company is allowed under this section in all income years before the income year in which the amount is written off.

Reduction of amount

(4) This subsection applies if the holding company that made the loan was a mining holding company and made the loan wholly or partly out of payments that it received and for which any person was allowed a deduction under section 159 of the Income Tax Act 1976. The part of the amount calculated under subsection (3) that arises from those payments is reduced by one-third.

Allocation of deduction

(5) The deduction for the amount written off is allocated to the income year in which the amount is written off.

Link with subpart DA

(6) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DN 3(3). (2) DN 3(1), (2), (10).

	(3) DN 3(3) first proviso. (4) DN 3(3) second proviso. (5) DN 3(3). (6) new.
Defined terms:	amount, capital limitation, deduction, general limitation, general permission, holding company, income year, interest, loan, mining company, mining development expenditure, mining exploration expenditure, mining holding company, net income, person, prescribed proportion, reinvestment profit, tax.

DV – Expenditure specific to certain entities

Index

Superannuation funds

DV 1 Publicising superannuation funds

When this section applies

(1) This section applies when a superannuation fund incurs expenditure to which all the following apply:

(a) it is incurred in developing, marketing, selling, promoting, or advertising the fund; and

(b) it is not incurred in acquiring a building, equipment, land, machinery, or plant; and

(c) it is counted income of the recipient.

Development or marketing expenditure

(2) The superannuation fund is allowed a deduction for the expenditure.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DI 3(1). (2) DI 3(1). (3) new.
Defined terms:	capital limitation, counted income, deduction, general limitation, general permission, superannuation fund.

DV 2 Transfer of expenditure

When this section applies

(1) This section applies when—

(a) a superannuation fund (the member superannuation fund) invests some or all of its funds in another superannuation fund (the master superannuation fund); and

(b) while the member superannuation fund has funds invested in the master superannuation fund, the member superannuation fund incurs expenditure of a kind described in subsection (2).

Expenditure on publicising or managing

(2) The expenditure is expenditure to which all the following apply:

(a) it is incurred—

(i) in developing, marketing, selling, promoting, or advertising the fund; or

(ii) in managing the fund; and

(b) it is not incurred in acquiring a building, equipment, land, machinery, or plant; and

(c) it is counted income of the recipient.

When expenditure becomes master superannuation fund's

(3) The member superannuation fund may choose to treat some or all of the expenditure as expenditure incurred by the master superannuation fund in deriving counted income.

How election made

(4) The member superannuation fund makes the election by giving notice to the Commissioner with its return of income and within one of the following times:

(a) the time within which the return must be filed under section 37 of the Tax Administration Act 1994; or

(b) a longer time allowed by the Commissioner.

Effect of election

(5) When the member superannuation fund makes an election, subsections (6) to (9) apply to the part or the whole, as chosen, of the expenditure.

When expenditure incurred

(6) The expenditure is treated as being incurred by the master superannuation fund on the day on which it was incurred by the member superannuation fund.

Deduction allowed to master superannuation fund

(7) The master superannuation fund is allowed a deduction for the expenditure. The amount of the deduction is limited by subsection (8).

Amount of deduction

(8) The formula in section DV 3 is used to calculate the maximum deduction that the master superannuation fund is allowed for expenditure of the member superannuation fund treated as being incurred by the master superannuation fund.

Deducted expenditure not incurred by member superannuation fund

(9) The expenditure for which the master superannuation fund is allowed a deduction is treated as not being incurred by the member superannuation fund.

Link with subpart DA

(10) Subsection (7) supplements the general permission and overrides the capital limitation. The other general limitations still apply. Subsection (9) overrides the general permission.

Origin:	(1) DI 3(2)(a), (b), (9)(a). (2) DI 3(2)(b). (3) DI 3(2), (8). (4) DI 3(2). (5) DI 3(2). (6) DI 3(2)(c). (7) DI 3(2)(d). (8) DI 3(2)(d). (9) DI 3(2)(e). (10) new.
Defined terms:	amount, capital limitation, Commissioner, counted income, deduction, derived, general limitation, general permission, notice, return of income, superannuation fund.

DV 3 Formula for calculating maximum deduction

Formula used to calculate maximum deduction

(1) The formula referred to in section DV 2 (8) is—

taxable income – non-resident withholding income.

Definition of items in formula

(2) The items in the formula are defined in subsections (3) and (4).

Taxable income

(3) **Taxable income** is the amount that would be the master superannuation fund's taxable income for the income year in which the expenditure is incurred if sections DV 2 to DV 4 did not exist.

Non-resident withholding income

(4) **Non-resident withholding income** is the total of any amounts of non-resident withholding income of any of the kinds to which section NG 4 (Non-resident withholding tax to be minimum tax in certain cases) applies derived by the master superannuation fund in the income year in which the expenditure is incurred.

Origin:	(1) DI 3(2)(d). (2) DI 3(2)(d). (3) DI 3(2)(d). (4) DI 3(2)(d).
Defined terms:	amount, deduction, derived, income year, non-resident withholding income, superannuation fund, taxable income.

DV 4 Transfer of surplus expenditure

When this section applies

(1) This section applies when all the following apply:

(a) the expenditure treated as being incurred by the master superannuation fund, under section DV 2 (3), is more than the maximum amount for which it is allowed a deduction, as calculated under section DV 3, so there is surplus expenditure; and

(b) the member superannuation fund chooses to deal with the surplus expenditure under this section, rather than deducting it itself; and

(c) the member superannuation fund has funds invested in the master superannuation fund at the time referred to in section DV 2 (1)(b) and while its election under section DV 2 (3) continues and while it deals with the surplus expenditure under this section.

Surplus carried forward

(2) The member superannuation fund carries the surplus expenditure forward to the next income year and takes the following steps:

(a) it gets the combined expenditure by adding the surplus expenditure to the expenditure, if any, incurred by it in the income year that it chooses to treat as being incurred by the master superannuation fund:

(b) it calculates the maximum deduction for the income year, using the formula in section DV 3:

(c) if the combined expenditure is the same as or less than the maximum deduction, it—

(i) treats the surplus expenditure as expenditure incurred by the master superannuation fund in deriving counted income in the income year; and

(ii) applies subsections (4) to (7):

(d) if the combined expenditure is more than the maximum deduction, it—

(i) carries forward the new surplus expenditure to the next income year; and

(ii) applies subsection (3).

Surplus dealt with until gone

(3) The member superannuation fund repeats the steps in subsection (2) for the following income years until all surplus expenditure is deducted.

Deduction to master superannuation fund

(4) Expenditure treated under subsection (2)(c)(i) as incurred by the master superannuation fund in deriving income is allowed as a deduction for the income year in which it is so treated. The amount of the deduction is limited by subsection (5).

Amount of deduction

(5) The maximum amount of a deduction under subsection (4) is the maximum deduction for the income year, calculated using the formula in section DV 3.

Deducted expenditure not incurred by member superannuation fund

(6) Expenditure for which the master superannuation fund is allowed a deduction is treated as not being incurred by the member superannuation fund.

Sequential deductions

(7) Expenditure for which the master superannuation fund is allowed a deduction must be deducted in sequence according to the income year in which the member superannuation fund incurred it.

Link with subpart DA

(8) Subsection (4) supplements the general permission and overrides the capital limitation. The other general limitations still apply. Subsection (6) overrides the general permission.

Origin:	(1) DI 3(8), (9). (2) DI 3(3), (4), (5), (6). (3) DI 3(5). (4) DI 3(4), (6). (5) DI 3(4), (6). (6) DI 3(4), (6). (7) DI 3(7). (8) new.
Defined terms:	amount, capital limitation, deduction, derived, general limitation, general permission, income, income year, superannuation fund.

Other entities

DV 5 Group investment funds

Management fees

(1) The trustees of a group investment fund may choose to deduct expenditure incurred in paying management fees to a trustee company on behalf of, or as agent for, the investors in the fund.

Allocation of deduction

(2) The trustees of the fund are treated as having incurred the expenditure on the date on which investors incur the management fees.

How election made

(3) The trustees make the election by deducting expenditure in their returns of income.

Election irrevocable

(4) An election to deduct expenditure is irrevocable.

Expenditure not incurred by investors

(5) The expenditure for which the trustees of the fund are allowed a deduction is treated as not having been incurred by the investors.

Link with subpart DA

(6) Subsection (1) supplements the general permission. The general limitations still apply. Subsection (5) overrides the general permission.

Origin:	(1) DI 3A(1). (2) DI 3A(2). (3) DI 3A(3). (4) DI 3A(4). (5) DI 3A(5). (6) new.
Defined terms:	deduction, general limitation, general permission, group investment fund, investor, management fees, trustee, trustee company.

DV 6 Non-profit organisations

What this section applies to

(1) This section applies to an organisation that does not have the purpose of making a profit for a proprietor, member, or shareholder, and whose constitution prohibits a distribution of property in any form to a proprietor, member, or shareholder. For the purposes of this section, it is irrelevant whether the organisation is incorporated or not.

Amount of deduction

(2) When this section applies, the organisation is allowed a deduction for the lesser of—

- (a) $1,000; and
- (b) the amount that would be the organisation's net income if this section did not exist.

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DJ 17. (2) DJ 17. (3) new.
Defined terms:	amount, deduction, general limitation, general permission, net income, shareholder.

DV 7 Trusts

No deduction

(1) A person who derives beneficiary income is not allowed a deduction for expenditure or loss that a trustee incurs in deriving the income.

Trustee income

(2) For the purpose of determining the deductions that a trustee is allowed in an income year, beneficiary income of beneficiaries of the trust for the income year is treated as trustee income.

Link with subpart DA

(3) Subsection (1) overrides the general permission. Subsection (2) supplements the general permission. The general limitations still apply.

Origin:	(1) DI 5; DI 6. (2) DI 5; DI 6. (3) new.
Defined terms:	beneficiary income, deduction, derived, general limitation, general permission, income year, person, trustee, trustee income.

DV 8 Building societies

Expenditure of building societies

(1) A building society is allowed a deduction for—

(a) expenditure incurred on money borrowed by way of withdrawable shares:

(b) interest and other financial charges incurred in providing money that is used to provide an interest-free loan to a person who holds a terminating share:

(c) an amount incurred in purchasing a balloted loan right from a person who holds a terminating share.

Allocation of deduction

(2) The deduction for the amount referred to in subsection (1)(c) is allocated to the income year in which the amount is paid.

Link with subpart DA

(3) This section overrides the capital limitation. The general permission must still be satisfied and other general limitations still apply.

Origin:	(1) DI 1(1). (2) DI 1(1). (3) new.
Defined terms:	amount, balloted loan right, building society, capital limitation, deduction, general limitation, general permission, income year, person, terminating share, withdrawable share.

DV 9 Maori authorities: donations

Donation to Maori association

(1) A Maori authority that makes a donation to a Maori association (within the meaning of the Maori Community Development Act 1962) is allowed a deduction for the amount of the donation.

Amount of deduction

(2) The deduction in an income year is limited to 5% of the amount that would be the Maori authority's net income in the income year if this section did not exist.

Link with subpart DA

(3) This section supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Origin:	(1) DI 2. (2) DI 2. (3) new.
Defined terms:	amount, capital limitation, deduction, general limitation, general permission, income year, Maori authority, net income.

DV 10 Group companies

When this section applies

(1) This section applies when—

(a) a company in a wholly-owned group of companies derives income under section CV 1 (Companies within wholly-owned groups) in an income year; and

(b) the expenditure that the company incurs in deriving the income would be allowed as a deduction only if the wholly-owned group were one company.

Expenditure

(2) The company is allowed a deduction for the expenditure in the income year in which the income is derived.

Link with subpart DA

(3) This section supplements the general permission and overrides the exempt income limitation. The other general limitations still apply.

Origin:	(1) DI 4. (2) DI 4. (3) new.
Defined terms:	company, deduction, derived, exempt income limitation, general limitation, general permission, income, income year, wholly-owned group of companies.

DV 11 Amalgamated company: expenditure on improvements for forestry, farming, agricultural, or aquacultural business

When this section applies

(1) This section applies when all the following apply:

(a) an amalgamating company ceases to exist because of a qualifying amalgamation; and

(b) the amalgamated company acquires land or a business from the amalgamating company; and

(c) the amalgamating company would have been allowed a deduction under any of section DO 4 (Improvements to land), section DO 7 (Improvements), or section DP 5 (Improvements to land) for the land or business if the amalgamation had not occurred.

Improvements

(2) While the amalgamated company holds the land or carries on the business, it is allowed the deduction that the amalgamating company would have had under section DO 4 (Improvements to land), section DO 7 (Improvements), or section DP 5 (Improvements to land).

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DL 7; DO 8. (2) DL 7; DO 8. (3) new.
Defined terms:	amalgamated company, amalgamating company, amalgamation, business, deduction, general limitation, general permission, qualifying amalgamation.

DW – Expenditure specific to certain industries

Index

Accident insurance

DW 1 Private insurers under Accident Insurance Act 1998

When this section applies

(1) This section applies when an insurer, as defined in paragraph (a) of the definition of 'insurer' in section 13 of the Accident Insurance Act 1998, has a reserve in an income year to cover both the following:

(a) claims, relating to events covered by the Accident Insurance Act 1998 occurring before the end of the income year, that—

(i) have been made with the insurer but have not been settled before the end of the income year; or

(ii) are expected to be made with the insurer; and

(b) an estimate of claims, relating to events covered by the Accident Insurance Act 1998 occurring before the end of the income year, that have not been reported to the insurer.

Reserve

(2) The insurer is allowed a deduction for the income year of the reserve at the end of the income year.

Amount

(3) The reserve at the end of the income year is—

(a) an amount calculated by an actuary applying subsection (4) and adopted by the insurer for financial reporting purposes; or

(b) if no such amount has been calculated, an amount determined by the Commissioner, who may seek the advice of the Government Actuary or any other actuary in determining it.

Calculation or determination of reserve

(4) A person calculating or determining the amount of a reserve under subsection (3) must ensure that the amount has regard to—

(a) generally accepted accounting practice; and

(b) generally accepted actuarial practice; and

(c) the present value of expected future payments.

Link with subpart DA

(5) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DK 5(1), (7), (8). (2) DK 5(6). (3) DK 5(3), (4). (4) DK 5(5). (5) new.
Defined terms:	actuary, amount, Commissioner, deduction, general limitation, general permission, income year, person.

Airport operations

DW 2 Airport operators

No deduction, with qualification

(1) An airport operator is not allowed a deduction for expenditure or loss to the extent to which the expenditure or loss is, in terms of the joint venture agreement that relates to the airport operator, a charge against any part of the joint income of the parties to the agreement that has been allocated or distributed to any party. For this purpose, expenditure includes a provision that is treated as expenditure or loss under section OC 1 (2)(h) (Airport operators).

Link with subpart DA

(2) This section overrides the general permission.

Origin:	(1) DK 4. (2) new.
Defined terms:	airport operator, deduction, general permission, income, joint venture agreement.

Bloodstock racing

DW 3 Bloodstock racing

No deduction, with qualification

(1) A person is not allowed a deduction for expenditure or loss that they incur—

(a) on the racing of bloodstock; or

(b) in relation to the racing of bloodstock.

This subsection is overridden by subsection (2) and subsection (3).

Exception: deduction for racing expenditure

(2) A person is allowed a deduction for expenditure or loss that they incur in the following circumstances:

(a) the person is in the business of breeding bloodstock; and

(b) they incur the expenditure or loss in preparing for sale bloodstock that they are preparing for racing; and

(c) they do not race the bloodstock on which they incur the expenditure or loss.

Exception: other deductions for racing expenditure

(3) A person is allowed a deduction for expenditure or loss that they incur in the following circumstances:

(a) the person receives consideration for preparing bloodstock for racing; and

(b) the consideration is income of the person; and

(c) they incur the expenditure or loss in preparing the bloodstock for racing.

Link with subpart DA

(4) This section overrides the general permission.

Origin:	(1) DO 1(b). (2) DO 1(a). (3) DO 1(a). (4) new.
Defined terms:	bloodstock, business, deduction, general permission, income, person.

DX – Other expenditure

DX 1 Testamentary annuities

When this section applies

(1) This section applies when—

(a) property is left by will subject to the payment of an annuity, or when a court order under the Family Protection Act 1955 or a deed of family arrangement makes property subject to the payment of an annuity; and

(b) the property, or property substituted for it, is transferred to a beneficiary; and

(c) the property transferred, or property that the beneficiary substitutes for it, is charged with the payment of the annuity or part of the annuity.

Payment of annuity

(2) The owner of the property (or the substituted property) is allowed a deduction for an amount that they pay on account of the annuity. This subsection is overridden by subsection (3).

Exception

(3) A person is not allowed a deduction—

(a) if the owner is not a beneficiary but a person who has bought the property subject to the condition that they assume the liability for the annuity (or a part of it):

(b) to the extent to which the annuity is payable under a court order or under a deed of family arrangement and represents consideration for the purchase of the property (or the substituted property) by the owner.

Amount of deduction

(4) The deduction is limited in an income year to the amount that would be the net income of the owner for that income year if the owner's only income in that income year were from the property (or the substituted property).

'Beneficiary' defined

(5) In this section, **beneficiary** means—

(a) a person to whom a testator has left property by will; or

(b) a person who is entitled under a will to buy property that forms part of the testator's estate when that property is subject to the payment of an annuity; or

(c) a person who is entitled to the property under an order of a court under the Family Protection Act 1955 or a deed of family arrangement.

Link with subpart DA

(6) This section supplements the general permission and overrides the private limitation. The other general limitations still apply.

Origin:	(1) DD 2(1). (2) DD 2(1). (3) DD 2(1) first proviso, second proviso. (4) DD 2(1). (5) DD 2(2). (6) new.
Defined terms:	amount, arrangement, beneficiary, deduction, general limitation, general permission, income, income year, net income, person, private limitation.

DY – Specific deduction rules in Parts F to I

Index

DY 1 Amounts that are deductions under Parts to be rewritten

Deduction

(1) An amount of expenditure or loss is a deduction if it is allowed as a deduction under a provision in any of Parts F to I.

General permission and general limitations

(2) A provision in any of Parts F to I may supplement the general permission or override any one or more of—

(a) the general permission:

(b) the capital limitation:

(c) the private limitation:

(d) the exempt income limitation:

(e) the employment limitation:

(f) the withholding tax limitation:

(g) the indemnity limitation.

Origin:	(1) new. (2) new.
Defined terms:	amount, capital limitation, deduction, employment limitation, exempt income limitation, general limitation, general permission, indemnity limitation, private limitation, withholding tax limitation.
Comment:	This section can be progressively narrowed as Parts are rewritten.

DY 2 Amounts that are not deductions under Parts to be rewritten

No deduction

(1) An amount of expenditure or loss is not a deduction if it is not allowed as a deduction under a provision in any of Parts F to I.

General permission

(2) A provision in any of Parts F to I may override the general permission or any supplement to the general permission made under section DA 3 (1) (Effect of specific rules on general rules).

Origin:	(1) new.
	(2) new.
Defined terms:	amount, deduction, general permission.
Comment:	This section can be progressively narrowed as Parts are rewritten.

DZ – Terminating provisions

Index

DZ 1 Life insurers acquiring property before 1 April 1988

When this section applies

(1) This section applies when all the following apply:

(a) a life insurer started carrying on the business of providing life insurance on or before the last day of the 1988-89 income year; and

(b) on the last day of the 1987-88 income year the life insurer's Life Insurance Fund covered some or all of the following matters:

(i) superannuation policies; and

(ii) pre-1983 mortgage repayment insurance policies; and

(iii) annuities that had been granted; and

(c) the life insurer, as part of the business, acquired property before 1 April 1988; and

(d) the life insurer, as part of the business, disposes of the property; and

(e) either—

(i) the life insurer has not already been allowed a deduction for the property, whether under section DR 2 (Disposal of property) or any other provision; or

(ii) the life insurer has been allowed a deduction for the property, but only for an amount of depreciation loss or because of the application of the old financial arrangements rules or the financial arrangements rules; and

(f) section DR 2 (6) (Disposal of property) does not apply to the disposal.

Property

(2) The life insurer is allowed a deduction for the amount quantified in section EZ 21 (Life insurers acquiring property before 1 April 1988).

'Superannuation policy' defined

(3) In this section, **superannuation policy** means a life insurance policy—

(a) that—

(i) is vested in a superannuation fund that was or was treated as being a superannuation category 1 scheme on or before 17 December 1987, not including a scheme that was classified by the Government Actuary as a personal pension superannuation scheme and that admitted new members after 17 December 1987; or

(ii) was effected for the purposes of any such superannuation fund; or

(iii) was accepted by any such superannuation fund for the purposes of the fund; and

(b) that has not ceased to be a policy for the purposes of the superannuation fund.

Link with subpart DA

(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

Origin:	(1) DK 3C(1), (2). (2) DK 3C(1). (3) OB 1 'superannuation policy'. (4) new.
Defined terms:	amount, business, capital limitation, deduction, depreciation loss, financial arrangements rules, general limitation, general permission, income year, life insurance, Life Insurance Fund, life insurance policy, life insurer, property, superannuation category 1 scheme, superannuation fund, superannuation policy, superannuation scheme.

DZ 2 General insurance with risk period straddling 1 July 1993

When this section applies

(1) This section applies when—

(a) a company carries on a business of providing general insurance or guarantees against loss, damage, or risk, immediately before and on 1 July 1993; and

(b) the company, as insurer, enters into an insurance contract in the course of carrying on the business outside New Zealand; and

(c) the contract covers a period of risk starting before 1 July 1993 and ending after 1 July 1993.

No deduction, with qualification

(2) The company is not allowed a deduction for an amount payable under the contract unless the event giving rise to the payment occurs on or after 1 July 1993.

Link with subpart DA

(3) This section overrides the general permission.

Origin:	(1) CZ 6(c)(i), (ii), (vi). (2) CZ 6(c)(i), (ii), (vi). (3) new.
Defined terms:	amount, business, company, deduction, general insurance, general permission, insurance contract, New Zealand.

DZ 3 Film reimbursement scheme: when clawback rule does not apply

Film reimbursement scheme

(1) Section DS 4 (Clawback of deductions for film reimbursement schemes) does not apply to a deduction for expenditure that relates to a film and is incurred by person A under a film reimbursement scheme if—

(a) the scheme is entered into on or before 30 June 2001; and

(b) the film has a final certificate or a provisional certificate that it is a New Zealand film under section EK 7 (Certification of New Zealand films) (unless, in the case of a provisional certificate, materially incorrect information was provided to the New Zealand Film Commission in obtaining the certificate); and

(c) the film had not been completed before 7 July 1999; and

(d) before 7 July 1999,—

(i) one or more contracts had been entered into for the supply of goods or services in New Zealand in relation to the film; and

(ii) at least $1,000,000 of expenditure had been incurred under the contract or contracts; and

(e) on or before 1 November 1999, a person who entered into a contract referred to in paragraph (d)(i) gave notice to the Commissioner that the requirements in paragraphs (c) and (d) were met; and

(f) the expenditure for which a person is allowed a deduction under section DS 2 (Acquiring rights in films) or section DS 3 (Film production expenditure) is no more than 140% of the physical cost of production of the film; and

(g) (without limiting section BG 1 (Tax avoidance)), on the date the film reimbursement scheme is entered into, there is an expectation based on reasonable commercial assumptions that the income to be derived by person A as a result of the expenditure will be at least equal to the sum of—

(i) all expenditure incurred by person A under the scheme; and

(ii) a return on each amount of expenditure that is equivalent to the return on 5-year government stock measured on the date that the scheme is entered into; and

(h) if the expenditure is incurred on depreciable intangible property of a type listed in schedule 17, the expenditure is an amount paid to person B in the circumstances described in subsection (2).

Expenditure on depreciable intangible property

(2) For the purposes of subsection (1)(h), the circumstances are that the amount paid is income of person B, and, at all times in the income year in which the payment is made, person B—

(a) is resident in a country or territory specified in schedule 3, part A; and

(b) is liable to income tax in that country or territory by reason of domicile, residence, place of incorporation, or place of management in that country or territory; and

(c) has calculated its income that is liable to income tax in that country or territory without applying a feature of the taxation law of the country or territory specified in schedule 3, part B.

Definitions for this section

(3) In this section,—

government stock means stock issued under Part VI of the Public Finance Act 1989

physical cost of production means expenditure incurred in producing a film, whether incurred in New Zealand or elsewhere, other than expenditure incurred—

(a) in marketing or selling the film; and

(b) on depreciable intangible property of a type listed in schedule 17.

Origin:	(1) EO 4A(2A), (2B). (2) EO 4A(2A). (3) EO 4A(8).
Defined terms:	amount, Commissioner, completed, deduction, depreciable intangible property, derived, film, film reimbursement scheme, government stock, income, income tax, incurred, income year, New Zealand, notice, person, physical cost of production.

DZ 4 Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991

Expenditure between 1 October 1990 and 15 December 1991

(1) Petroleum mining development expenditure incurred by a petroleum miner on or after 1 October 1990 and before or on 15 December 1991 is allowed as a deduction of the petroleum miner. This subsection is overridden by subsection (2).

Exception

(2) However, petroleum mining development expenditure as described in subsection (1) is not allowed as a deduction under that subsection if it has been deducted under—

(a) section DT 8 (Expenditure on petroleum permit or permit-specific asset); or

(b) section DT 16 (4) (Disposals or associated persons); or

(c) (repealed) sections 214D to 214M of the Income Tax Act 1976 as inserted by (repealed) section 15 of the Income Tax Amendment Act (No 2) 1990.

'Petroleum mining development expenditure' defined

(3) In this section, **petroleum mining development expenditure** has the same meaning as in (repealed) section 214D of the Income Tax Act 1976 as inserted by (repealed) section 15 of the Income Tax Amendment Act (No 2) 1990.

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) DM 1(3). (2) DM 1(3). (3) new. (4) new.
Defined terms:	deduction, general limitation, general permission, petroleum miner, petroleum mining development expenditure.

DZ 5 Mineral mining: company making loan before 1 April 1979

If section DU 12 (Amount written off by holding company) would have applied to a loan by a company to another company made on or before 31 March 1979 if the Income Tax Amendment Act 1979 had not been enacted, the section applies, as far as applicable, to such a loan as if the Act (except section 45) had not been enacted.

Origin:	DN 3(11).
Defined terms:	company.

DZ 6 Buying patent rights before 1 April 1993

When this section applies

(1) This section applies when a person buys patent rights before 1 April 1993 and uses them in deriving their income. In this section, if the person dies after incurring expenditure on buying the rights, references to the person include their personal representative, a trustee of their estate, and a beneficiary of their estate.

Buying patent rights

(2) The person is allowed a deduction of the amount quantified in section EZ 24 (2) (Buying patent rights before 1 April 1993).

Link with subpart DA

(3) This section supplements the general permission. The general limitations still apply.

Origin:	(1) EZ 5(1), (4). (2) EZ 5(2). (3) new.
Defined terms:	amount, deduction, derived, general limitation, general permission, income, patent rights, person, trustee.

DZ 7 Premium paid on lease of land

When this section applies

(1) This section applies when a person (person A) leases land that they use in deriving their income, and a grant or renewal of the lease occurs before 1 April 1993.

Premium paid

(2) Person A is allowed a deduction of the amount quantified in section EZ 25 (2) (Premium paid for lease of land).

Definitions for this section

(3) In this section, **lease** and **premium** have the meanings given to them by section EZ 25 (5) (Premium paid for lease of land).

Link with subpart DA

(4) This section supplements the general permission. The general limitations still apply.

Origin:	(1) EZ 6(1). (2) EZ 6(1). (3) EZ 6(2). (4) new.
Defined terms:	amount, deduction, derived, general limitation, general permission, income, lease, person, premium.