

- 
- (2) However, except when the context requires otherwise, this Act applies only—
- (a) with respect to the tax on income derived in the 2004–05 tax year and later tax years, in the case of a person whose income year is the same as the tax year; and
  - (b) with respect to the tax on income derived in the corresponding income years, in the case of a person whose income year is not the same as the tax year.

*Defined:* corresponding income year, income, income year, tax, tax year

Compare: 1994 No 164 s A 1(2), (3)

## Part A

### Purpose and interpretation

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| AA 1 | Purpose of Act |
| AA 2 | Interpretation |
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#### AA 1 Purpose of Act

The main purposes of this Act are—

- (a) to define, and impose tax on, net income:
- (b) to impose obligations concerning tax:
- (c) to set out rules for calculating tax and for satisfying the obligations imposed.

*Defined:* net income, tax

Compare: 1994 No 164 s AA 1

#### AA 2 Interpretation

##### Aids to interpretation

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

##### Defined terms

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

Compare: 1994 No 164 s AA 3(2)

### **AA 3 Definitions**

#### **References to this Act**

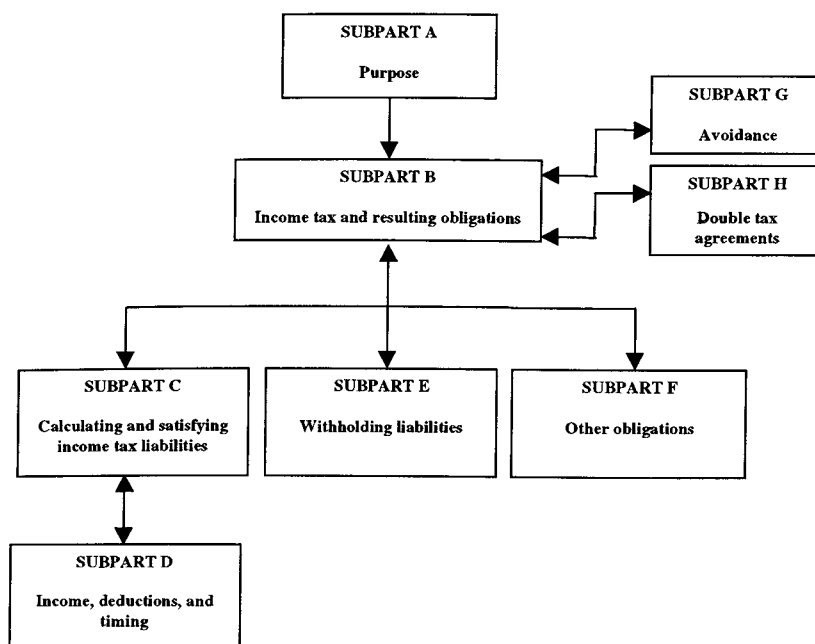
- (1) Except in this Part, and **Parts B to E**, a reference to this Act includes a reference to the Tax Administration Act 1994 unless the context requires that it not be included.

#### **Significance of Part O**

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

Compare: 1994 No 164 s AA 4

## Part B Core provisions



### Subpart BA—Purpose

#### BA 1 Purpose

The purpose of this Part is—

- (a) to impose income tax, provisional tax, withholding liabilities and other tax obligations concerning taxes:
- (b) to set out procedures to be followed for calculating tax and satisfying the obligations imposed under this Act: 10
- (c) to provide a basis for applying the other Parts:
- (d) generally to set up the scheme of the Act and the main links between its Parts.

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

Compare: 1994 No 164 s BA 1

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## Subpart BB—Income tax and resulting obligations

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- BB 1 Imposition of tax
  - BB 2 Principal obligations
  - BB 3 Overriding effect of certain matters
- 

### **BB 1 Imposition of tax**

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

*Defined:* annual taxing Act, income tax, tax, taxable income

Compare: 1994 No 164 s BB 1

### **BB 2 Principal obligations**

#### **Income tax liability**

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

#### **Non-filing taxpayer**

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

#### **Provisional tax**

- (3) A provisional taxpayer must pay provisional tax for a tax year in accordance with the provisional tax rules.

#### **Withholding liabilities**

- (4) A person who has a withholding liability must satisfy it in accordance with **subpart BE** (Withholding liabilities).

#### **Other obligations**

- (5) A person who has an obligation under **subpart BF** (Other obligations) must satisfy it in accordance with that subpart.

*Defined:* income tax liability, non-filing taxpayer, provisional tax rules, provisional tax, provisional taxpayer, return of income, tax year

Compare: 1994 No 164 s BB 2

### **BB 3 Overriding effect of certain matters**

#### **Tax avoidance arrangements: subpart BG**

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

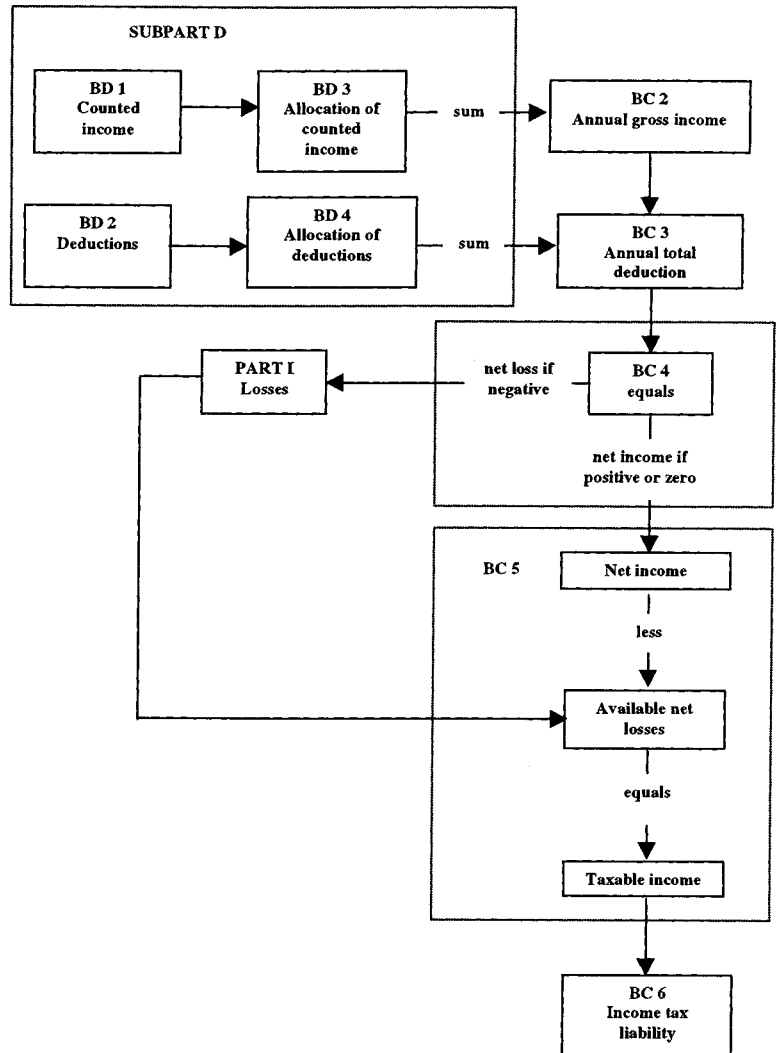
#### **Double tax agreements: subpart BH**

- (2) Under **subpart BH** (Double tax agreements), a double tax agreement has effect in relation to income tax, despite anything in this Act or in any other enactment.

*Defined:* Commissioner, double tax agreement, income tax, tax avoidance arrangement

Compare: 1994 No 164 s BB 3

Subpart BC—Calculating and satisfying income tax liabilities



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## Subpart BC—Calculating and satisfying income tax liabilities

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| BC 3  | Annual total deduction                               |
| BC 4  | Net income and net loss                              |
| BC 5  | Taxable income                                       |
| BC 6  | Income tax liability of filing taxpayer              |
| BC 7  | Income tax liability of person with schedular income |
| BC 8  | Surplus rebates                                      |
| BC 9  | Satisfaction of income tax liability                 |
| BC 10 | Surplus credits                                      |

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### BC 1 Non-filing and filing taxpayers

#### Non-filing taxpayer

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

#### Filing taxpayer

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

#### Filing taxpayer with schedular income

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

*Defined:* amount, annual gross income, filing taxpayer, income, income tax liability, non-filing taxpayer, schedular income, tax, tax year

Compare: 1994 No 164 ss BC 1(1), BC 2

### BC 2 Annual gross income

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

*Defined:* annual gross income, corresponding income year, counted income, tax year

Compare: 1994 No 164 s BC 4

**BC 3 Annual total deduction**

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

*Defined:* annual total deduction, corresponding income year, deduction, tax year

Compare: 1994 No 164 s BC 5

**BC 4 Net income and net loss****Income more than deductions**

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

**Income equal to deductions**

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

**Deductions more than income**

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

**Treatment of net loss**

- (4) A person with a net loss for a tax year may, in accordance with **Part I** (Treatment of net losses),—
- (a) subtract the net loss from their net income for a future tax year; or
  - (b) make the net loss available to another person to subtract from that other person's net income for that or a future tax year.

*Defined:* annual gross income, annual total deduction, net income, net loss, tax year

Compare: 1994 No 164 s BC 6

**BC 5 Taxable income**

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

*Defined:* available net loss, net income, taxable income, tax year

Compare: 1994 No 164 s BC 7



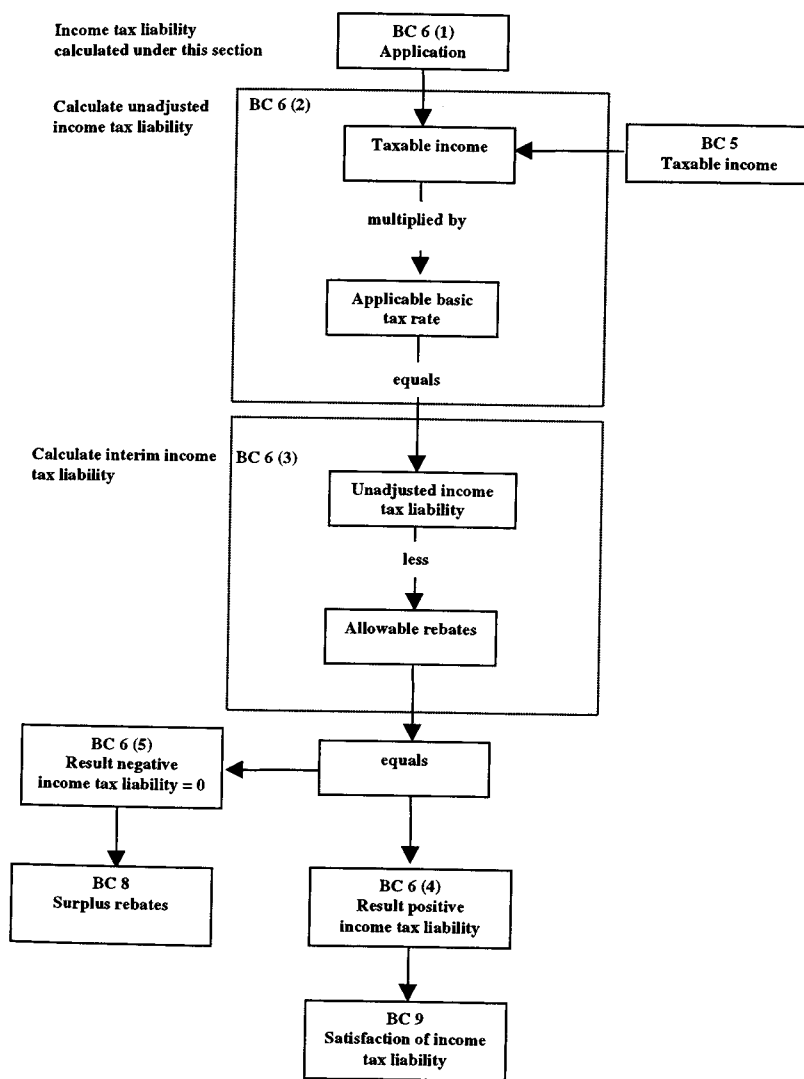
their net income in accordance with **Part I** (Treatment of net losses).

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

Compare: 1994 No 164 s BC 7

**BC 6 Income tax liability of filing taxpayer**

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**BC 6 Income tax liability of filing taxpayer****Calculation rules**

- (1) The income tax liability of a filing taxpayer for a tax year is the amount calculated in accordance with **subsections (2) to (5)**.

**Unadjusted income tax liability**

- (2) The unadjusted income tax liability of the filing taxpayer for the tax year is calculated by multiplying their taxable income for the tax year by the applicable basic tax rate.

**Adjusted income tax liability**

- (3) The unadjusted income tax liability of the filing taxpayer is adjusted by subtracting their allowable rebates from the unadjusted income tax liability.

**Result positive**

- (4) If the adjusted income tax liability is more than zero, that amount is the filing taxpayer's income tax liability for the tax year.

**Result negative**

- (5) If the adjusted income tax liability is zero or negative, the filing taxpayer's income tax liability for the tax year is zero.

*Defined:* adjusted income tax liability, allowable rebates, amount, applicable basic tax rate, filing taxpayer, income tax liability, tax year, taxable income, unadjusted income tax liability

Compare: 1994 No 164 s BC 8(1)–(5)

**BC 7 Income tax liability of person with schedular income****Modified income tax liability**

- (1) The income tax liability for a tax year of a person who has schedular income for the year is the total of—
- their schedular income tax liability for the year calculated under **subsection (2) or (3)**; and
  - the amount that would be their income tax liability for the year if they had no schedular income.

**Schedular income tax liability**

- (2) If a person has 1 type of schedular income for a tax year, their schedular income tax liability for the year is the amount that

would be the income tax liability for the year if their only income for the year were that schedular income.

### **Multiple schedular income**

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

*Defined:* amount, income, income tax liability, schedular income, schedular income tax liability, tax year

Compare: 1994 No 164 s BC 3

## **BC 8 Surplus rebates**

### **Amount of surplus rebates**

- (1) If the adjusted income tax liability of a person is negative for a tax year, the person's amount of surplus rebates is the lesser of—
- (a) the total of the refundable rebates to which the person is entitled for the year; and
  - (b) the difference between zero and the adjusted income tax liability.

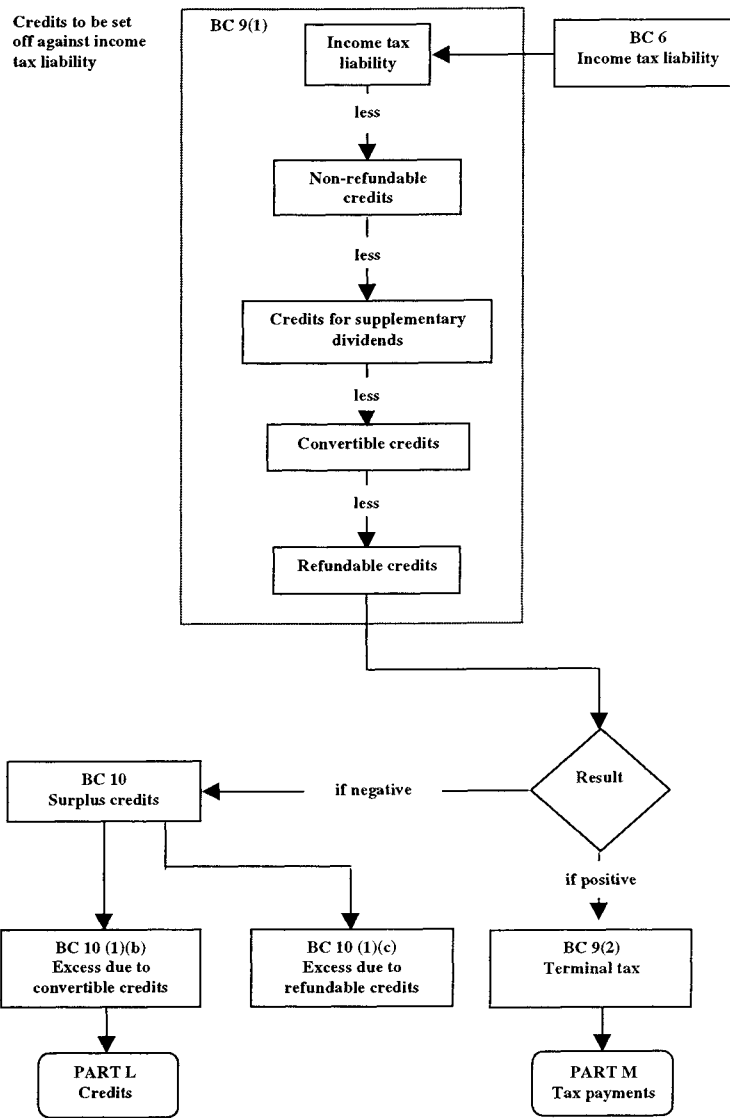
### **Refunds from Commissioner**

- (2) The Commissioner must refund the amount of surplus rebates in accordance with **section KD 4** (Allowance of credit of tax in end of year assessment).

*Defined:* adjusted income tax liability, amount, Commissioner, refundable rebate, tax year

Compare: 1994 No 164 ss BC 8(6), BC 10(1)

**BC 9 Satisfaction of income tax liability**



**BC 9 Satisfaction of income tax liability****Use of tax credits**

- (1) Credits for tax paid or tax withheld, calculated under **Part L** (Credits), satisfy a person's income tax liability for a tax year as far as the credits extend.

**Terminal tax**

- (2) If the person's income tax liability exceeds the total of the credits, the difference is the person's terminal tax. The person must pay the terminal tax to complete the satisfaction of their income tax liability.

*Defined:* income tax liability, tax, tax year, terminal tax

Compare: 1994 No 164 ss BC 1(2), BC 9(1)

**BC 10 Surplus credits****Composition of surplus credits**

- (1) The composition of a person's surplus credits is determined by offsetting their credits against the income tax liability in the following order:
  - (a) non-refundable credits:
  - (b) credits allowed to the person under **Part L** (Credits) in respect of supplementary dividends:
  - (c) convertible credits:
  - (d) refundable credits.

**Application of surplus credits**

- (2) If, for a tax year, the total of a person's credits for tax paid or tax withheld exceeds their income tax liability, then—
  - (a) first, the surplus credits are offset against other income tax obligations of the person in accordance with **Parts L** (Credits) **and M** (Tax payments); and
  - (b) second, remaining surplus credits are dealt with in accordance with **Parts L** (Credits) **and M** (Tax payments); and

- (c) third, the Commissioner must refund any surplus refundable credits, in accordance with **Parts M** (Tax payments) **and N** (Withholding taxes and taxes on income of others).

*Defined:* Commissioner, convertible credit, income tax, income tax liability, non-refundable credit, refundable credit, supplementary dividend, surplus refundable credits, tax, tax year

Compare: 1994 No 164 ss BC 9(2), (3), BC 10(2)

## Subpart BD—Income, deductions, and timing

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- BD 1 Income, exempt income, excluded income, and counted income  
 BD 2 Deductions  
 BD 3 Allocation of income to particular income years  
 BD 4 Allocation of deductions to particular income years

## BD 1 Income, exempt income, excluded income, and counted income

### Amounts of income

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

### Exempt income

- (2) An amount of income of a person is exempt income if—
- it is their exempt income under a provision in **subpart CW** (Exempt income); or
  - it is a foreign-sourced amount and the person is a non-resident when it is derived (but for non-resident trustees, this paragraph is subject to **section HH 4** (Trustee income)).

### Excluded income

- (3) An amount of income of a person is excluded income if it is their excluded income under a provision in **subpart CX** (Excluded income).

### Counted income

- (4) An amount of income of a person is counted income in the calculation of a person's annual gross income if it is neither their exempt income nor their excluded income.

*Defined:* amount, annual gross income, counted income, excluded income, exempt income, foreign-sourced amount, income, non-resident

Compare: 1994 No 164 s BD 1

## **BD 2 Deductions**

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

*Defined:* amount, deduction

Compare: 1994 No 164 s BD 2

## **BD 3 Allocation of income to particular income years**

### **Application**

- (1) Every amount of income must be allocated to an income year in accordance with this section.

### **General rule**

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

### **Interpretation of derive**

- (3) When the time of derivation of an amount of income is being determined, regard must be had to case law, which—
- (a) requires some people to calculate net income on an accrual basis; and
  - (b) requires other people to calculate net income on a cash basis; and
  - (c) more generally, defines the concept of derivation.

### **Income credited in account**

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

### **Role of Part E**

- (5) **Part E** (Timing and quantifying rules) contains a number of provisions that—
- (a) specifically modify the allocation of income or have the effect of modifying the allocation of income; or
  - (b) allocate income as part of the process of quantifying it.

#### **Single allocation**

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

*Defined:* amount, business, income, income year, net income

Compare: 1994 No 164 ss BD 3(1)–(4), EB 1(1)

### **BD 4 Allocation of deductions to particular income years**

#### **Application**

- (1) Every deduction must be allocated to an income year in accordance with this section.

#### **General rule**

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

#### **Interpretation of incur**

- (3) When the time of incurrence of an amount of expenditure or loss is being determined, regard must be had to case law, which—
- (a) requires some people to calculate net income on an accrual basis; and
  - (b) requires other people to calculate net income on a cash basis; and
  - (c) more generally, defines the concept of incurrence.

#### **Role of Part E**

- (4) **Part E** (Timing and quantifying rules) contains a number of provisions that—
- (a) specifically modify the allocation of deductions or have the effect of modifying the allocation of deductions; or
  - (b) allocate deductions as part of the process of quantifying them.



**Allocation**

- (5) If an expenditure or loss gives rise to more than 1 deduction, the deductions are allocated to income years to the extent that their total does not exceed the amount of that expenditure or loss.

*Defined:* amount, business, cash basis profession, deduction, income year, loss, net income, pay

Compare: 1994 No 164 ss BD 4, EF 1(1)(a)

**Subpart BE—Withholding liabilities****BE 1 Withholding liabilities****Source deduction payments**

- (1) A person who makes a source deduction payment must withhold an amount from the payment in accordance with the PAYE rules.

**Resident withholding income**

- (2) A person who makes a payment of resident withholding income must withhold an amount from the payment in accordance with the RWT rules.

**Non-resident withholding income**

- (3) A person who makes a payment of non-resident withholding income must withhold an amount from the payment in accordance with the NRWT rules.

**Fringe benefits**

- (4) A person who provides a fringe benefit to another person must pay fringe benefit tax in accordance with the FBT rules.

**Specified superannuation contributions**

- (5) A person who makes a specified superannuation contribution to a superannuation fund must pay specified superannuation contribution withholding tax in accordance with the SSCWT rules.

**Dividend withholding payments**

- (6) A person who receives dividends must make dividend withholding payments in accordance with the dividend withholding payment rules.

*Defined:* amount, dividend, dividend withholding payment, dividend withholding payment rules, FBT rules, fringe benefit, fringe benefit tax, non-resident withholding income, NRWT rules, PAYE rules, resident withholding income, RWT rules, source deduction payment, specified superannuation contribution, specified superannuation contribution withholding tax, SSCWT rules, superannuation fund

Compare: 1994 No 164 s BE 1

## Subpart BF—Other obligations

### BF 1 Other obligations

A person must pay the following under the relevant Part:

- (a) qualifying company election tax under **Part H** (Treatment of net income of certain entities):
- (b) income tax on taxable distributions from non-qualifying trusts under **Part H** (Treatment of net income of certain entities):
- (c) withdrawal tax under **Part I** (Treatment of net losses):
- (d) further income tax under **Part M** (Tax payments):
- (e) further dividend withholding payments under **Part M** (Tax payments).

*Defined:* further dividend withholding payment, further income tax, income tax, non-qualifying trust, qualifying company election tax, taxable distribution, withdrawal tax

Compare: 1994 No 164 s BF 1

## Subpart BG—Avoidance

### BG 1 Tax avoidance

#### Avoidance arrangement void

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

#### Reconstruction

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

*Defined:* Commissioner, income tax, tax avoidance arrangement

Compare: 1994 No 164 s BG 1

## Subpart BH—Double tax agreements

### BH 1 Double tax agreements

#### Meaning

- (1) **Double tax agreement** means an agreement that—
- (a) has been negotiated for 1 or more of the purposes set out in **subsection (2)**; and
  - (b) has been agreed between either—
    - (i) the government of any territory outside New Zealand and the government of New Zealand; or
    - (ii) the Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office; and
  - (c) has entered into force as a result of a declaration by the Governor-General by Order in Council under **subsection (3)**.

#### Purposes

- (2) The following are the purposes for which a double tax agreement may be negotiated:
- (a) to provide relief from double taxation:
  - (b) to provide relief from tax:
  - (c) to tax the income derived by non-residents from any source in New Zealand:
  - (d) to determine the income to be attributed to non-residents or their agencies, branches, or establishments in New Zealand:
  - (e) to determine the income to be attributed to New Zealand residents who have special relationships with non-residents:
  - (f) to prevent fiscal evasion:
  - (g) to facilitate the exchange of information:
  - (h) to assist in recovering unpaid tax.

#### Entry into force

- (3) An agreement negotiated in accordance with **subsection (1)(a) and (b)** enters into force on the date specified by the Governor-General by Order in Council.

#### Overriding effect

- (4) A double tax agreement has effect in relation to income tax, despite anything in this Act or in any other enactment.

**Agreement for recovery of tax**

- (5) Despite **subsection (4)**, an agreement that provides for the recovery of unpaid tax is subject to Part 10A of the Tax Administration Act 1994.

**Reference to profits**

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

*Defined:* business, double tax agreement, income, income tax, net income, New Zealand, New Zealand resident, non-resident, source in New Zealand, tax

Compare: 1994 No 164 s BH 1

## Part C Income

### Subpart CA—General rules

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- CA 1 Amounts that are income
  - CA 2 Amounts that are exempt or excluded income
- 

#### CA 1 Amounts that are income

##### Amounts specifically identified

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

##### Ordinary meaning

- (2) An amount is also income of a person if it is their income according to the ordinary meaning of the word.

*Defined:* amount, income

Compare: 1994 No 164 ss BD 1(1), CD 5

#### CA 2 Amounts that are exempt or excluded income

##### Exempt income

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

##### Excluded income

- (2) An amount of income of a person is excluded income if it is excluded income under a provision in **subpart CX** (Excluded income) **or CZ** (Terminating provisions).

*Defined:* amount, excluded income, exempt income, income

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## Subpart CB—Income from business or trade-like activities

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#### *Schemes for profit*

CB 2 Carrying on or carrying out schemes for profit

#### *Personal property*

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CB 4 Business of dealing in personal property

#### *Land*

CB 5 Disposal of land acquired for purpose or with intention of disposal

CB 6 Disposal: land acquired for business purposes

CB 7 Disposal within 10 years: land dealing business

CB 8 Disposal within 10 years: land development or subdivision business

CB 9 Disposal within 10 years of improvement: building business

CB 10 Disposal: schemes for development or division begun within 10 years

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CB 27 Sale of patent rights

*Transfer of business*

CB 28 Sale of business: transferred employment income obligations

*Stolen property*CB 29 Obtaining property by theft

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***Business generally*****CB 1 Amounts derived from business**

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

*Defined:* amount, business, income

Compare: 1994 No 164 s CD 3

***Schemes for profit*****CB 2 Carrying on or carrying out schemes for profit**

An amount that a person derives from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit is income of the person.

*Defined:* amount, income

Compare: 1994 No 164 s CD 4

***Personal property*****CB 3 Personal property acquired for purpose of disposal**

An amount that a person derives from the disposal of personal property is income of the person if they acquired the property for the purpose of disposing of it.

*Defined:* amount, income, personal property

Compare: 1994 No 164 s CD 4

**CB 4 Business of dealing in personal property**

An amount that a person derives from the disposal of personal property is income of the person if their business is to deal in property of that type.

*Defined:* amount, business, income, personal property

Compare: 1994 No 164 s CD 4

***Land*****CB 5 Disposal of land acquired for purpose or with intention of disposal****Income**

- (1) An amount that a person derives from the disposal of land is income of the person if they acquired the land for the purpose or with the intention of disposing of it. If the person acquires the land with more than 1 purpose or intention, but has as a purpose or intention the disposal of the land, the amount derived from the disposal is income of the person.

**Exclusions**

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 14** and for business premises in **section CB 17**.

*Defined:* amount, business, disposal of land, income, land

Compare: 1994 No 164 s CD 1(2)(a)

**CB 6 Disposal: land acquired for business purposes****Income**

- (1) An amount that a person (**person A**) derives from the disposal of land is income of person A if—
- (a) both the following apply:
    - (i) at the time person A acquired the land they, or an associated person, carried on a business of dealing in land; and
    - (ii) person A acquired the land for the purpose of the business; or
  - (b) both the following apply:
    - (i) at the time person A acquired the land they, or an associated person, carried on a business of developing land or dividing land into lots; and



- (ii) person A acquired the land for the purpose of the business; or
- (c) all the following apply:
  - (i) at the time person A acquired the land they, or an associated person, carried on a business of erecting buildings; and
  - (ii) person A acquired the land for the purpose of the business; and
  - (iii) before or after acquiring the land person A, or an associated person, made improvements to it.

### Exclusions

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 14** and for business premises in **section CB 17**.

*Defined:* amount, associated person, business, disposal of land, improvements, income, land

Compare: 1994 No 164 s CD 1(2)(b)(i), (c)(i), (d)(i)

## CB 7 Disposal within 10 years: land dealing business

### Income

- (1) An amount that a person derives from the disposal of land is income of the person if—
- (a) they dispose of the land within 10 years of acquiring it; and
  - (b) at the time they acquired the land, they carried on a business of dealing in land, whether or not the land was acquired for the purpose of the business.

### Income: associated person in business of dealing in land

- (2) An amount that a person (**person A**) derives from the disposal of land within 10 years of acquiring it is income of person A if a person (**person B**) associated with them at the time the land was acquired carried on a business of dealing in land, whether or not—
- (a) person A carried on a business of dealing in land; or
  - (b) the land was acquired for the purpose of person B's business.

### Exclusions

- (3) **Subsections (1) and (2)** are overridden by the exclusions for residential land in **section CB 14** and for business premises in **section CB 17**.

*Defined:* amount, associated person, business, disposal of land, income, land, year

Compare: 1994 No 164 s CD 1(2)(b)(ii)

### **CB 8 Disposal within 10 years: land development or subdivision business**

#### **Income**

- (1) An amount that a person derives from the disposal of land is income of the person if—
- (a) they dispose of the land within 10 years of acquiring it; and
  - (b) at the time they acquired the land, they carried on a business of developing land or dividing land into lots, whether or not the land was acquired for the purpose of the business.

#### **Income: associated person in business of developing or subdividing land**

- (2) An amount that a person (**person A**) derives from the disposal of land within 10 years of acquiring it is income of person A if a person (**person B**) associated with them at the time the land was acquired carried on a business of developing land or dividing land into lots, whether or not—
- (a) person A carried on a business of developing land or dividing land into lots; or
  - (b) the land was acquired for the purpose of person B's business.

#### **Exclusions**

- (3) **Subsections (1) and (2)** are overridden by the exclusions for residential land in **section CB 14** and for business premises in **section CB 17**.

*Defined:* amount, associated person, business, disposal of land, income, land, year

Compare: 1994 No 164 s CD 1(2)(c)(ii)

**CB 9 Disposal within 10 years of improvement: building business****Income**

- (1) An amount that a person derives from the disposal of land is income of the person if—
  - (a) they dispose of the land within 10 years of completing improvements to it; and
  - (b) at the time they began the improvements, they carried on a business of erecting buildings, whether or not the land was acquired for the purpose of the business.

**Income: associated person in business of erecting buildings**

- (2) An amount that a person (**person A**) derives from the disposal of land within 10 years of completing improvements on it is income of person A if another person (**person B**) associated with person A at the time the improvements were begun carried on a business of erecting buildings, whether or not—
  - (a) person A carried on a business of erecting buildings; or
  - (b) the land was acquired for the purpose of person B's business.

**Exclusions**

- (3) **Subsections (1) and (2)** are overridden by the exclusions for residential land in **section CB 14** and for business premises in **section CB 17**.

*Defined:* amount, associated person, business, disposal of land, improvements, income, land, year

Compare: 1994 No 164 s CD 1(2)(d)(ii)

**CB 10 Disposal: schemes for development or division begun within 10 years****Income**

- (1) An amount that a person derives from the disposal of land is income of the person if—
  - (a) an undertaking or scheme involving the development of the land or the division of the land into lots has been carried on or carried out, whether or not the activity of the undertaking or scheme has a business-like character; and

- (b) the undertaking or scheme was begun within 10 years of the date on which the person acquired the land; and
- (c) the development or division work is not minor; and
- (d) the development or division work has been carried out by the person or on their behalf.

### Exclusions

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 15**, for business premises in **section CB 18**, for farmland in **section CB 19**, and for investment land in **section CB 21**.

*Defined:* amount, business, disposal of land, income, land, year

Compare: 1994 No 164 s CD 1(2)(f)

## **CB 11 Disposal: major development or division begun after 10 years**

### Income

- (1) An amount that a person derives from the disposal of land is income of the person to the extent to which—
  - (a) the amount is not income under any of **sections CB 5 to CB 10 and CB 12**; and
  - (b) the amount is derived in the following circumstances:
    - (i) an undertaking or scheme, which is not necessarily in the nature of a business, is carried on; and
    - (ii) the undertaking or scheme involves the development of the land or the division of the land into lots; and
    - (iii) the person, or another person on their behalf, carries on development or division work on or relating to the land; and
    - (iv) the development or division work involves significant expenditure on channelling, contouring, drainage, earthworks, kerbing, levelling, roading, or any other amenity, service, or work customarily undertaken or provided in major projects involving the development of land for commercial, industrial, or residential purposes.

### Exclusions

- (2) **Subsection (1)** is overridden by the exclusions for residential land in **section CB 15** and for farmland in **section CB 19**.

*Defined:* amount, business, disposal of land, income, land, year

Compare: 1994 No 164 s CD 1(2)(g)

## **CB 12 Disposal of land affected by changes in permitted use**

### **Income**

- (1) An amount that a person derives from the disposal of land is income of the person if all the following apply:
- (a) the amount is not income under any of **sections CB 5 to CB 10**; and
  - (b) the person disposed of the land within 10 years of acquiring it; and
  - (c) the total amount that they derive from its disposal is more than the cost of the land; and
  - (d) at least 20% of the excess arises, after the person acquired the land, from 1 or more of the circumstances listed in **subsection (2)**.

### **Circumstances for purposes of subsection (1)(d)**

- (2) The circumstances referred to in **subsection (1)(d)** are, in relation to the land,—
- (a) the imposition of the rules of an operative district plan under the Resource Management Act 1991 that relate to that land, or a change to those rules, when the changes were made after the person acquired the land, or the likely imposition of such rules:
  - (b) the granting of a consent under the Resource Management Act 1991 in relation to that land, when the consent was granted after the person acquired the land, or the likely grant of such a consent:
  - (c) the making of a decision of the Environment Court, when the decision was made after the person acquired the land, or the likely making of such a decision:
  - (d) the removal of any condition, obligation, restriction, prohibition, or covenant (including a designation or heritage order) imposed under the Resource Management Act 1991, if the removal occurred after the person acquired the land, or the likely removal of any of these:
  - (e) other similar changes or events, or likely changes or events, relating to the land.

**Exclusions**

- (3) **Subsection (1)** is overridden by the exclusions for residential property in **section CB 16** and for farmland in **section CB 20**.

*Defined:* amount, disposal of land, income, land, year

Compare: 1994 No 164 s CD 1(2)(e)

**CB 13 Transactions between associated persons****Date on which land acquired**

- (1) For the purposes of **sections CB 6 to CB 10 and CB 12**, if a person (**person A**) transfers land to another person (**person B**) and person A and person B are associated persons, person B is treated as having acquired the land on the date on which person A acquired it.

**Treatment following transfer from associated person**

- (2) The treatment of amounts derived on the disposal of land following a transfer of the land from an associated person is dealt with in **section GD 9** (Land transferred between associated persons).

*Defined:* amount, associated person, disposal of land, land

Compare: 1994 No 164 s CD 1(11)

*Exclusions for residential land***CB 14 Residential exclusion from sections CB 5 to CB 9****Dwellinghouse occupied as residence**

- (1) **Sections CB 5 to CB 9** do not apply to an amount that a person derives from the disposal of land (**exclusion**), if—
- (a) the person acquired the land with a dwellinghouse on it, or acquired the land and erected a dwellinghouse on it; and
  - (b) the dwellinghouse was occupied mainly as a residence by the person and any member of their family living with them or, if the person is a trustee, by 1 or more beneficiaries of the trust.

**What exclusion applies to**

- (2) The exclusion applies to the land that has the dwellinghouse on it, and the land related to it, if the total area of related land

is no more than 4,500 square metres, or a larger area for the reasonable occupation and enjoyment of the dwellinghouse.

**When exclusion does not apply**

- (3) The exclusion does not apply when the person has engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of dwellinghouses.

*Defined:* amount, disposal of land, land, trustee

Compare: 1994 No 164 s CD 1(3)(b)

**CB 15 Residential exclusion from sections CB 10 and CB 11**

**Dividing residential land**

- (1) **Sections CB 10 and CB 11** do not apply to an amount that a person derives from the disposal of land when the land is a lot resulting from the division by them of a larger area of land into 2 or more lots.

**Developing or dividing land for residential use**

- (2) **Section CB 10** does not apply to an amount that a person derives from the disposal of land under an undertaking or scheme for the development or division of land when the work involved in the undertaking or scheme is to create or effect a development, division, or improvement for residential purposes for the person (or any member of their family living with them) who is residing on the land.

**Meaning of larger area of land**

- (3) In this section, **larger area of land** means an area of land to which both the following apply:
- (a) it was no more than 4,500 square metres immediately before it was divided; and
  - (b) the person occupied it mainly as residential land for themselves and a member of their family living with them.

*Defined:* amount, disposal of land, land, larger area of land

Compare: 1994 No 164 s CD 1(6)

**CB 16 Residential exclusion from section CB 12****Land acquired and disposed of for residential purposes**

- (1) **Section CB 12** does not apply to an amount that a person derives from the disposal of land if—
  - (a) they acquired the land and used it or intended to use it for residential purposes; and
  - (b) they disposed of the land to another person who acquired it for residential purposes.

**Ascertaining purpose of acquisition**

- (2) In **subsection (1)(b)**, the purpose of the acquisition by that other person is ascertained from the circumstances of the disposal and other relevant matters.

**Meaning of residential purposes**

- (3) In this section, **residential purposes**—
  - (a) means a purpose that the person has of using the land or intending to use the land mainly as a residence for themselves and members of their family living with them; and
  - (b) includes the purpose of erecting a dwellinghouse on the land to be occupied as such a residence.

*Defined:* amount, disposal of land, land, residential purposes

Compare: 1994 No 164 s CD 1(4)(a)(ii), (b)(ii)

*Exclusions for business premises***CB 17 Business exclusion from sections CB 5 to CB 9****Premises occupied for business**

- (1) **Sections CB 5 to CB 9** do not apply to an amount that a person derives from the disposal of land that is business premises (**exclusion**), if the person acquired and occupied, or erected and occupied, the premises mainly for carrying on a substantial business from them.

**When exclusion does not apply**

- (2) The exclusion does not apply when the person has engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of business premises.



**Meaning of land**

- (3) In this section, **land** includes land reserved for use with the business premises when it is required for the reasonable occupation of the premises and the carrying on of the business.

*Defined:* amount, business, disposal of land, land

Compare: 1994 No 164 s CD 1(3)(a)

**CB 18 Business exclusion from section CB 10**

**Section CB 10** does not apply to an amount that a person derives from the disposal of land under an undertaking or scheme for the development or division of land if—

- (a) the work involved in the undertaking or scheme is to create or effect a development, division, or improvement that is for use in, and for the purposes of, the carrying on of a business by the person on the land; and
- (b) the business does not consist of that undertaking or scheme.

*Defined:* amount, business, disposal of land, land

Compare: 1994 No 164 s CD 1(2)(f) proviso

*Exclusions for farmland***CB 19 Farmland exclusion from sections CB 10 and CB 11****Division of land used for farming or agricultural business**

- (1) **Sections CB 10 and CB 11** do not apply to an amount that a person derives from the disposal of land if—
- (a) the land is a lot resulting from the division of a larger area of land into 2 or more lots; and
  - (b) immediately before the land was divided, the larger area of land was occupied or used by the person, their spouse, or both of them, mainly for the purposes of a farming or agricultural business carried on by either or both of them; and
  - (c) the area and nature of the land disposed of mean that it is then capable of being worked as an economic unit as a farming or agricultural business; and
  - (d) the land was disposed of mainly for the purpose of using it in a farming or agricultural business.

**Circumstances for purposes of subsection (1)(b)**

- (2) The circumstances of the disposal of the land are relevant to the decision on whether the land was disposed of mainly for the purpose of using it in a farming or agricultural business. The circumstances include—
- (a) the consideration for the disposal of the land:
  - (b) current prices paid for land in that area:
  - (c) the terms of the disposal:
  - (d) a zoning or other classification relating to the land:
  - (e) the proximity of the land to any other land being used or developed for uses other than farming or agricultural uses.

#### **Meaning of economic unit**

- (3) In this section, **economic unit** means an area of land that is capable of being worked as a separate, stable farming or agricultural business either at the time of the disposal of the land or within 1 operating cycle of that time. The business revenue must be sufficient to cover the cost of holding and operating the land for the purpose of the business, including the cost of capital, labour, and any other production costs required by the business.

*Defined:* amount, business, disposal of land, economic unit, land

Compare: 1994 No 164 s CD 1(7)

### **CB 20 Farmland exclusion from section CB 12**

#### **Land acquired and disposed of for farming or agricultural purposes**

- (1) **Section CB 12** does not apply to an amount that a person derives from the disposal of land if—
- (a) they acquired the land, and they, their spouse, or both of them used or intended to use the land mainly for the purposes of a farming or agricultural business carried on by them, their spouse, or both of them; and
  - (b) they disposed of the land to another person mainly for the purposes of the continuing use of the land in a farming or agricultural business.

#### **Ascertaining purpose of acquisition**

- (2) For the purposes of **subsection (1)(b)**, the purpose of the acquisition by the other person is ascertained from the circumstances of the disposal (other than the circumstances listed in **section**

**CB 12**) that arose after the land was acquired by the person referred to in **paragraph (a)**, and other relevant matters.

*Defined:* amount, business, disposal of land, land

Compare: 1994 No 164 s CD 1(4)(a)(i), (b)(i), (c)

### *Exclusion for investment land*

#### **CB 21 Investment exclusion from section CB 10**

**Section CB 10** does not apply to an amount that a person derives from the disposal of land under an undertaking or scheme for the development of land if the work involved in the undertaking or scheme is to create or effect a development, division, or improvement that is for use in, and for the purpose of, the person's deriving, in relation to the land, income of the kind described in **section CC 1** (Land).

*Defined:* amount, disposal of land, income, land

Compare: 1994 No 164 s CD 1(2)(f) proviso

### *Definitions*

#### **CB 22 Some definitions**

In this section, and in **sections CB 5 to CB 21**,—

**disposal of land** includes—

- (a) compulsory acquisition under any Act by the Crown, a local authority, or a public authority;
- (b) if there is a mortgage secured on the land, a disposal by or on behalf of the mortgagee as a result of the mortgagor's defaulting under the mortgage

**land**—

- (a) means some or all of any land to which those sections apply or some or all of that land together with any other land; and
- (b) includes an estate or interest in land, whether legal or equitable, corporeal or incorporeal, freehold or chattel (including an option to acquire land or an estate or interest in land); and
- (c) does not include a mortgage.

*Defined:* disposal of land, estate, interest, land, local authority, mortgage, public authority

Compare: 1994 No 164 ss CD 1(10), (12), (13), OB 1 "land"

## *Timber*

### **CB 23 Disposal of timber or right to take timber**

#### **Income**

- (1) An amount is income of a person if they derive it from—
- (a) the disposal of timber; or
  - (b) the disposal of a right to take timber.

#### **Whether or not person owns land**

- (2) **Subsection (1)** applies whether or not the person owns the land on which the timber is situated.

*Defined:* amount, disposal, income, owner, right to take timber

Compare: 1994 No 164 s CJ 1(1)

### **CB 24 Disposal of land with standing timber**

#### **When this section applies**

- (1) This section applies when a person disposes of land with standing timber on it.

#### **Exclusions**

- (2) This section does not apply when the standing timber is of 1 of the following kinds:
- (a) trees that are ornamental or incidental, as evidenced by a certificate given under **section 44C** of the Tax Administration Act 1994; or
  - (b) trees in a crop subject to a forestry right, as defined in section 2 of the Forestry Rights Registration Act 1983, registered under the Land Transfer Act 1952; or
  - (c) trees subject to a right to take a benefit (in the form of a profit à prendre) granted before 1 January 1984.

#### **Income**

- (3) The amount that the person derives from the disposal of the standing timber is income of the person.

#### **Amount of income**

- (4) The amount of the income is calculated using the formula—
- $$\frac{\text{value of timber}}{\text{value of timber} + \text{value of land}} \times \text{disposal price.}$$

**Definition of items in formula**

- (5) In the formula,—
- (a) **value of timber** is the market value of the standing timber on the date of the disposal:
  - (b) **value of land** is the market value of the land, as if it did not have standing timber on it, on the date of the disposal:
  - (c) **disposal price** is the consideration for the disposal.

*Defined:* amount, disposal, income, standing timber

Compare: 1994 No 164 s CJ 1(2)(a)–(d), (e)(i)

***Farming, forestry, or fishing*****CB 25 Refunds under income equalisation scheme**

Income derived by a person, as timed and quantified under any of the following provisions, is income of the person:

- (a) **sections EH 11, EH 14, EH 16, EH 18, EH 20 to EH 22, EH 24, and EH 26** (which relate to the main income equalisation scheme):
- (b) **sections EH 47, EH 49, EH 51 to EH 53, EH 55, and EH 57** (which relate to the adverse event income equalisation scheme):
- (c) **sections EH 74, EH 76, and EH 78** (which relate to the thinning operations income equalisation scheme).

*Defined:* adverse event income equalisation scheme, income, main income equalisation scheme, person, thinning operations income equalisation scheme

***Minerals*****CB 26 Disposal of minerals****Income**

- (1) An amount that a person derives from the disposal of minerals taken from land is income of the person.

**Whether or not person owns land**

- (2) **Subsection (1)** applies whether or not the person owns the land from which the minerals are taken.

*Defined:* amount, disposal, income, mineral, owner

Compare: 1994 No 164 s CJ 1(1)

### *Intellectual property*

#### **CB 27 Sale of patent rights**

An amount that a person derives from the sale of patent rights is income of the person.

*Defined:* amount, income, patent rights

Compare: 1994 No 164 s EN 2(1), (4)

### *Transfer of business*

#### **CB 28 Sale of business: transferred employment income obligations**

##### **When this section applies**

- (1) This section applies when **section DC 9** (Sale of business: transferred employment income obligations) applies and the reduction in the consideration is more than the buyer actually pays for the transferred obligation.

##### **Income**

- (2) The excess is income of the buyer.

##### **Timing of income**

- (3) The income is allocated to the income year in which the reduction of the transferred provision is required to be recognised by the buyer under generally accepted accounting practice.

*Defined:* generally accepted accounting practice, income, income year

Compare: 1994 No 164 s CD 3A

### *Stolen property*

#### **CB 29 Obtaining property by theft**

##### **Income**

- (1) If a person obtains possession or control of property without colour of right, an amount equal to the market value of the property is income of the person.

##### **Timing of income**

- (2) The income is allocated to the income year in which the person obtains possession or control of the property.

**Whether or not constructive trust**

- (3) **Subsection (1)** applies whether or not the person holds the property as a trustee under a constructive trust.

*Defined:* amount, income, income year, possession, property, trustee

Compare: 1994 No 164 ss CD 6(1), (2), EN 5(1), (2)

**Subpart CC—Income from holding property  
(excluding equity)**

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*Land use*

**CC 1 Land**

**Income**

- (1) An amount described in **subsection (2)** is income of the owner of land if they derive the amount from—
- (a) a lease, licence, or easement affecting the land; or
  - (b) the grant of a right to take the profits of the land.

**Amounts**

- (2) The amounts are—
- (a) rent:
  - (b) a fine:
  - (c) a premium:
  - (d) a payment for the goodwill of a business:
  - (e) a payment for the benefit of a statutory licence:
  - (f) a payment for the benefit of a statutory privilege:
  - (g) other revenues.

*Defined:* amount, business, income, lease, owner

Compare: 1994 No 164 s CE 1(1)(e)

## **CC 2 Non-compliance with covenant for repair**

### **When this section applies**

- (1) This section applies when a lessor of land derives an amount for non-compliance by the lessee with an obligation under a lease of the land—
- (a) to maintain the land; or
  - (b) to make repairs to improvements on the land.

### **Income**

- (2) The amount is income of the lessor.

### **Timing of income**

- (3) The income is allocated to the income year in which the lessor receives the amount.

### **Relationship with sections EI 2 and EI 3**

- (4) **Subsection (3)** is overridden by **sections EI 2** (Amount paid to lessor for non-compliance with covenant for repair) **and EI 3** (Amount paid for non-compliance: when lessor ceases to own land).

*Defined:* amount, income, income year, lease, repairs

Compare: 1994 No 164 s EN 1(1), (2)



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## *Financial instruments*

### **CC 3 Financial arrangements**

#### **Income: party to financial arrangement**

- (1) If a person who is a party to a financial arrangement is treated as deriving an amount of income from the financial arrangement under **subpart EW** (Financial arrangements rules), the amount is income of the person.

#### **Income: trustee**

- (2) Income derived by a trustee in the circumstances described in **section EW 58** (Income when debt forgiven to trustee) is income of the trustee.

*Defined:* amount, financial arrangement, income, trustee

Compare: 1994 No 164 s CE 1(1)(c)

### **CC 4 Payments of interest**

#### **Income**

- (1) Interest derived by a person is income of the person.

#### **Apportionment**

- (2) Interest due but unpaid on the date on which a person disposes of a security is apportioned between the person disposing of the security and the person acquiring it.

*Defined:* income, interest, pay

Compare: 1994 No 164 s CE 1(1)(a)

### **CC 5 Annuities**

#### **Income**

- (1) An annuity derived by a person is income of the person.

#### **Apportionment**

- (2) Income under an annuity due but unpaid on the date on which a person disposes of the annuity is apportioned between the person disposing of the annuity and the person acquiring it.

#### **Relationship with sections CW 4 and CW 23**

- (3) This section is overridden by **sections CW 4** (Annuities under life insurance policies) **and CW 23** (Annuities from Crown Bank Accounts).

*Defined:* income

Compare: 1994 No 164 s CE 1(1)(a)

## **CC 6 Commercial bills**

### **Income: redemption**

- (1) The amount that a person receives on the redemption of a commercial bill owned by the person is income of the person.

### **Income: disposal**

- (2) The value of a commercial bill on the day its owner disposes of it is income of the owner. This subsection does not apply if the disposal is a transfer made under a matrimonial agreement.

### **Death of owner**

- (3) If the owner of a commercial bill dies, they are treated as having disposed of the bill on the date of their death.

*Defined:* amount, commercial bill, income, matrimonial agreement

Compare: 1994 No 164 s CE 3

## **CC 7 Prizes received under Building Societies Act 1965**

### **Income**

- (1) A prize received by a person under section 31A of the Building Societies Act 1965 is income of the person, whether they take it as cash or as an advance.

### **Timing of income**

- (2) The income is allocated as follows:
- (a) a cash prize is allocated to the day on which the bonus ballot giving rise to the prize is held:
  - (b) an advance is allocated to the day on which the advance is made or, if the advance is made in a series of advances, to the first day on which an advance is made.

*Defined:* income

Compare: 1994 No 164 s CE 1(2)(d)

**CC 8 Consideration other than in money****When this section applies**

- (1) This section applies when—
  - (a) a lender provides money to a borrower for use in a business that the borrower carries on in New Zealand; and
  - (b) the borrower provides to the lender, as some or all of the consideration, a tangible or intangible benefit that—
    - (i) is not interest; and
    - (ii) may or may not be relief from an obligation; and
    - (iii) may or may not be convertible into money; and
  - (c) the borrowing is a commercial transaction under which the borrower would have been liable to pay interest at the current commercial rate, given the nature and term of the loan, if the borrower had not provided the benefit (whether or not the contract between the borrower and the lender provides for the payment of interest if the benefit is not provided).

**Income**

- (2) The amount described in **subsection (3)** is income of the lender.

**Amount of income**

- (3) The amount is the interest that the borrower would have been liable to pay if the lender had lent the money to the borrower in consideration of the payment of interest at the current commercial rate, given the nature and term of the loan, reduced by the amount of any interest that the borrower pays.

*Defined:* amount, business, income, interest, New Zealand, pay, payment

Compare: 1994 No 164 s CE 1(1)(b), (2)(a)–(c)

**CC 9 Use of money interest payable by Commissioner****Income**

- (1) Interest payable by the Commissioner to a person under Part 7 of the Tax Administration Act 1994 is income of the person.

**Timing of income**

- (2) Interest to which this section applies is allocated under **section EF 4** (Use of money interest payable by Commissioner).

**Relationship with financial arrangements rules**

- (3) Interest to which this section applies is disregarded for the purposes of the financial arrangements rules.

*Defined:* Commissioner, financial arrangements rules, income, interest, pay

Compare: 1994 No 164 s ED 5

**Royalties****CC 10 Royalties****Income**

- (1) A royalty derived by a person is income of the person.

**Meaning of royalty**

- (2) **Royalty** includes a payment of any kind derived as consideration for—
- (a) the use of, or right to use, a copyright, patent, trademark, design or model, plan, secret formula or process, or other similar property or right:
  - (b) the use of, or right to use, a mine or quarry:
  - (c) the extraction, removal, or other exploitation of standing timber or a natural resource:
  - (d) the right to extract, remove, or otherwise exploit standing timber or a natural resource:
  - (e) the use of, or right to use, a film, a videotape, or a tape in connection with radio broadcasting:
  - (f) the supply of scientific, technical, industrial, or commercial knowledge or information:
  - (g) the total or partial forbearance of the use of, or the grant of a right to use, property or a right referred to in any of **paragraphs (a) to (e)**:
  - (h) the supply of assistance that enables the application or use of anything in any of **paragraphs (a) to (f)**:
  - (i) the total or partial forbearance of the supply of knowledge or information or assistance referred to in **paragraph (f) or (h)**.

**Relevance of description of payment**

- (3) For the purposes of **subsection (2)**, none of the following is relevant:
- (a) how the payment is described or computed:

- (b) whether the payment is periodical or otherwise:
- (c) whether the payment is an instalment of the purchase price of real property:
- (d) whether the payment is an instalment of the purchase price of personal property.

*Defined:* income, royalty, standing timber

Compare: 1994 No 164 ss CD 2, OB 1 “royalty”

## CC 11 Films

### When this section applies

- (1) This section applies when a person has a right or interest of any kind (including a future or contingent right or interest) in or to—
  - (a) a film; or
  - (b) any tangible or intangible property in, or relating to, the film; or
  - (c) any tangible or intangible property in, or relating to, other assets relating to the film.

### Income

- (2) The following amounts derived by the person are income of the person:
  - (a) an amount derived from the right to use, use of, or disposal of the right or interest:
  - (b) an amount that is dependent on, or calculated by reference to, income under **paragraph (a)**:
  - (c) an amount derived from the right to use, use of, or disposal of a right to income under **paragraph (a) or (b)**.

### Relationship with section FC 21

- (3) This section is overridden by **section FC 21** (Amounts derived by non-residents from renting films).

*Defined:* amount, film, income

Compare: 1994 No 164 s CJ 2

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**Subpart CD—Income from equity**

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- CD 43 Prevention of double taxation of share cancellation dividends

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**Income****CD 1 Income**

A dividend derived by a person is income of the person.

*Defined:* dividend, income

Compare: 1994 No 164 ss CE 1(1)(a), CF 1

**What is a dividend?****CD 2 What is a dividend?**

**Sections CD 3 to CD 13** define the amounts that are dividends.

*Defined:* amount, dividend

**CD 3 Transfers of value generally****Transfers of value from company**

- (1) A transfer of value from a company to a person is a dividend if—
  - (a) the cause of the transfer is a shareholding in the company, as described in **section CD 5**; and
  - (b) none of the exclusions in **sections CD 14 to CD 27** applies to the transfer.

**Calculation rules**

- (2) **Sections CD 28 to CD 32** apply for the purposes of calculating the amount of the dividend.

*Defined:* company, dividend, transfer of value

Compare: 1994 No 164 s CF 2(1)(a)–(e), (g)–(l), (1A), (3), (7), (10)

**CD 4 What is a transfer of value?****General test**

- (1) A transfer of value from a company to a person occurs when—
  - (a) the company provides money or money's worth to the person; and
  - (b) if the person provides any money or money's worth to the company under the same arrangement, the market value of what the company provides is more than the market value of what the person provides.

**Release of debt**

- (2) A transfer of value from a company to a person also occurs if the person is released from an obligation to pay money to the company, either by agreement or by operation of law.

**Provision of services for less than market value**

- (3) Despite **subsection (1)**, a transfer of value does not occur to the extent to which the money's worth provided by the company is only the provision of services.

**Limit to subsection (3)**

- (4) **Subsection (3)** does not apply to the provision of services by a company that is a close company, except if the provision is the benefit of expenditure of the company.

*Defined:* arrangement, close company, company, transfer of value

Compare: 1994 No 164 s CF 2(1)(a)–(e), (g)–(l), (1A), (3), (10)

**CD 5 When is a transfer caused by a shareholding relationship?****General test**

- (1) A transfer of value from a company to a person (**recipient**) is caused by a shareholding in the company if—
  - (a) the recipient—
    - (i) holds shares in the company; or
    - (ii) is associated with a shareholder; or
    - (iii) is the trustee of a trust, and a beneficiary of the trust is either a shareholder or the spouse of a shareholder; and



- (b) the company makes the transfer because those shares are held by the relevant shareholder.

#### **Indication that test met**

- (2) One indication that a transfer is caused by a shareholding is if the terms of the arrangement that results in the transfer are different from the terms on which the company would enter into a similar arrangement if no shareholding were involved.

#### **Past or future shareholding**

- (3) When **subsection (1)** is applied, it does not matter whether the shares are held before or after the transfer of value occurs.

#### **Deductible distributions of producer boards**

- (4) Despite **subsection (1)**, a transfer of value by a statutory producer board to a member is not caused by a shareholding if—
  - (a) the transfer is a cash distribution; and
  - (b) the distribution is a deduction under **section HF 1** (Profits of mutual associations in respect of transactions with members) or another provision of this Act; and
  - (c) the board does not choose to treat the distribution as a dividend under **section ME 30** (Statutory producer board may determine to attach imputation credit to certain distributions).

#### **Deductible distributions of co-operative companies**

- (5) Despite **subsection (1)**, a transfer of value by a co-operative company to a shareholder is not caused by a shareholding if—
  - (a) the transfer is a cash distribution; and
  - (b) the distribution is a deduction under **section HF 1** (Profits of mutual associations in respect of transactions with members) or another provision of this Act; and
  - (c) the company does not choose to treat the distribution as a dividend under **section ME 35** (Co-operative company may make annual determination to attach imputation credit to certain distributions).

*Defined:* arrangement, associated person, company, co-operative company, deduction, share, shareholder, statutory producer board, transfer of value, trustee

Compare: 1994 No 164 s CF 2(1)(g), (k), (l), (2), (7)

**CD 6 Bonus issues in lieu of dividend****Bonus issues in lieu**

- (1) A bonus issue in lieu is a dividend.

**Amount of dividend**

- (2) The amount of the dividend is the money or money's worth offered as an alternative, minus any resident withholding tax payable in relation to the dividend.

*Defined:* amount, bonus issue in lieu, dividend, resident withholding tax

Compare: 1994 No 164 s CF 2(1)(f), (6)(a)

**CD 7 Elections to make bonus issue into dividend****Treating bonus issues as dividends**

- (1) A bonus issue is a dividend if the company chooses under this section to treat the bonus issue as a dividend.

**Form of election**

- (2) A company chooses to treat a bonus issue as a dividend by—
- (a) resolving, when it makes the bonus issue, that it is a dividend; and
  - (b) resolving, when it makes the bonus issue, the amount to be treated as a dividend, which must be more than zero; and
  - (c) giving notice to the Commissioner under section 63 of the Tax Administration Act 1994 of the election and the amount.

**Amount of dividend**

- (3) The amount of the dividend is the amount chosen by the company.

*Defined:* amount, bonus issue, Commissioner, company, dividend, notice

Compare: 1994 No 164 ss CF 2(1)(f), (6)(b), CF 8

**CD 8 Notional distributions of producer boards and co-operative companies****Notional distributions of producer boards**

- (1) A notional distribution of a statutory producer board is a dividend if the board determines to attach an imputation credit

to the notional distribution under **section ME 30** (Statutory producer board may determine to attach imputation credit to certain distributions).

**Calculation: section ME 33**

- (2) The amount of the dividend is calculated under **section ME 33** (Notional distribution deemed to be dividend).

**Notional distributions of co-operative companies**

- (3) A notional distribution of a co-operative company is a dividend if the company determines to attach an imputation credit to the notional distribution under **section ME 35** (Co-operative company may make annual determination to attach imputation credit to certain distributions).

**Calculation: section ME 38**

- (4) The amount of the dividend is calculated under **section ME 38** (Notional distribution deemed to be dividend).

**Corresponding payments not dividends**

- (5) **Section CD 24** means that a payment that corresponds to a notional distribution may not be a dividend.

*Defined:* amount, co-operative company, dividend, imputation credit, statutory producer board

Compare: 1994 No 164 s CF 2(1)(l)

## CD 9 Tax credits linked to dividends

### Imputation and dividend withholding payment credits

- (1) The amount of a dividend is increased by—
- an imputation credit attached to the dividend; or
  - a dividend withholding payment credit attached to the dividend.

### Relationship with section CD 10

- (2) **Subsection (1)** is overridden by **section CD 10**

### When subsection (1) does not apply

- (3) **Subsection (1)** does not apply in—

- (a) **Part L** (Credits), except for **subpart LE** (Non-resident investors); or
- (b) **Part M** (Tax payments); or
- (c) **Part N** (Withholding taxes and taxes on income of others).

*Defined:* amount, dividend, dividend withholding payment credit, imputation credit, tax  
Compare: 1994 No 164 s CF 6(1)

## CD 10 Certain dividends not increased by tax credits

### When this section applies

- (1) This section applies when a unit trust manager, in the ordinary course of their management activities for a unit trust,—
  - (a) acquires units from unit holders under the terms on which the units were offered to potential unit holders; and
  - (b) derives a dividend from the redemption or other cancellation of units in the unit trust.

### Credit not included

- (2) For the purposes of **Parts B, C, E, and F**, the dividend derived does not include an amount of imputation credit attached to it to the extent to which the dividend (exclusive of the imputation credit) recovers the price paid by the unit trust manager to acquire the units.

### Relationship with sections CD 9 and FC 3

- (3) **Subsection (2)** applies despite **section CD 9(1) and (2)**. To the extent to which **subsection (2)** applies, **section FC 3** (Share dealing) does not apply.

### Some definitions

- (4) In this section,—
  - imputation credit** includes a dividend withholding payment credit
  - unit trust manager** includes—
    - (a) a person nominated by the unit trust manager; or
    - (b) a trustee or a manager of a group investment fund that derives category A income; or

- (c) a person nominated by the trustee or the manager of the group investment fund.

*Defined:* amount, cancellation, dividend, imputation credit, return of income, tax year, unit trust, unit trust manager

Compare: 1994 No 164 s CF 7A

## CD 11 Foreign tax credits and refunds linked to dividends

### Foreign tax credits

- (1) If a person is entitled to a tax credit in a foreign country under a double tax agreement when they derive a dividend, the amount of the dividend is increased by the tax credit.

### Foreign tax refunds

- (2) When a person who has derived a dividend from outside New Zealand also derives a refund of income tax of a foreign country, the refund is treated as a dividend if—
- (a) the company paying the dividend was entitled to deduct the tax from the dividend; and
- (b) the person was not personally liable to pay the tax.

*Defined:* amount, company, dividend, double tax agreement, foreign tax, income tax, New Zealand, pay, tax

Compare: 1994 No 164 ss CF 6(2)–(4), CF 7

## CD 12 Benefits of shareholder-employees or directors

### Non-executive directors' cash benefits

- (1) An amount in money paid by a company to a non-executive director of the company is a dividend if—
- (a) the director is a shareholder in the company; and
- (b) the benefit is provided solely because the director is a non-executive director of the company.

### Residual category fringe benefits

- (2) A non-cash benefit provided by a company to an employee is a dividend if—
- (a) the benefit is an unclassified benefit; and
- (b) the employee is a shareholder in the company; and
- (c) the company chooses, under **section CX 17(2)** (Benefits provided to employees who are shareholders or investors), to treat the benefit as a dividend.

**Non-executive directors' specific fringe benefits**

- (3) A non-cash benefit provided by a company to a non-executive director of the company is a dividend if—
- (a) the benefit is not an unclassified benefit under **section CX 32** (Meaning of unclassified benefit) but instead is 1 of the specified fringe benefits under any of **sections CX 8 to CX 20** (which relate to fringe benefits); and
  - (b) the director is a shareholder in the company; and
  - (c) the benefit is provided solely because the director is a non-executive director of the company.

**Other shareholder-employee benefits**

- (4) In any other case of a non-cash benefit provided by a company to a person who is both an employee and a shareholder, the benefit is not a dividend if—
- (a) the application of **section CX 17(2)** (Benefits provided to employees who are shareholders or investors) means it is a fringe benefit; and
  - (b) **section CD 23** accordingly excludes it from being a dividend.

**Meaning of non-executive director**

- (5) In this section, **non-executive director** means a person whose only services to the company as an employee are the formal occupation of the role of director and compliance with the associated statutory obligations.

*Defined:* amount, company, director, dividend, employee, fringe benefit, non-executive director, pay, shareholder, unclassified benefit

Compare: 1994 No 164 ss CF 2(1A), CI 2A(1), (2), OB 1 “non-executive director shareholder”

**CD 13 Attributed repatriations from controlled foreign companies****Attributed repatriations**

- (1) Attributed repatriation of a person who has an income interest in a CFC is a dividend.

**Calculation: sections CD 35 to CD 42**

- (2) The amount of the dividend is calculated under **sections CD 35 to CD 42**.

**Timing of income**

- (3) The dividend is treated as having been paid by the CFC to the person, and as having been derived by the person,—
- (a) 6 months after the end of the relevant accounting period of the CFC, if the person is a company for which the dividend is exempt income under **section CW 9** (Dividend derived by company from overseas); and
  - (b) at the end of the accounting period, in any other case.

**New Zealand residents**

- (4) The dividend of a person who has ceased to be a New Zealand resident is treated as being derived while the person is a New Zealand resident.

*Defined:* accounting period, amount, attributed repatriation, CFC, company, dividend, exempt income, income interest, New Zealand resident, pay

Compare: 1994 No 164 ss CF 2(16), CG 8(13)

***What is not a dividend?*****CD 14 Returns of capital: off-market share cancellations****Application of this section**

- (1) This section applies if a company pays an amount to a shareholder because of the off-market cancellation of a share in the company (other than on liquidation of the company).

**Ordering rule**

- (2) The amount is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the ordering rule, if—
- (a) 1 of the bright line tests in **subsection (3)** is met; and
  - (b) the company is not an unlisted trust that has chosen the slice rule for the share under **subsection (4)**; and
  - (c) the anti-avoidance rule in **subsection (6)** does not apply.

**Bright line tests**

- (3) The bright line tests referred to in **subsection (2)(a)** are as follows:
- (a) the cancellation is part of a pro rata cancellation that results in a fifteen percent capital reduction for the company:

- (b) the cancellation is part of a pro rata cancellation that involves a ten percent capital reduction and the Commissioner has given a notice under **subsection (8)**:
- (c) the cancellation is not part of a pro rata cancellation and results in the shareholder suffering a fifteen percent interest reduction:
- (d) the company is an unlisted trust and the cancellation is not part of a pro rata cancellation:
- (e) the share is a non-participating redeemable share.

#### **Unlisted trusts choosing slice rule**

- (4) If the company is an unlisted trust, it may issue a share on terms that the ordering rule does not apply and that instead the slice rule applies to the cancellation. If this happens, the amount paid is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the slice rule (but still subject to the anti-avoidance rule in **subsection (6)**).

#### **Calculation concessions for foreign unlisted widely-held trusts**

- (5) If a company is an unlisted widely-held trust not resident in New Zealand and a shareholder cannot obtain sufficient information to calculate the available subscribed capital per share under the ordering rule, the share is treated as if it were issued under **subsection (4)** on terms that the slice rule applies and the available subscribed capital under the slice rule is equal to the amount paid for the issue of the share.

#### **Overriding anti-avoidance rule**

- (6) Neither **subsection (2) nor (4)** excludes an amount paid by a company on cancellation of a share from being a dividend if any part of the payment is in lieu of the payment of a dividend.

#### **Factors relevant in applying anti-avoidance rule**

- (7) For the purposes of applying **subsection (6)**, the following factors must be considered:
  - (a) the nature and amount of dividends paid by the company before or after the cancellation; and
  - (b) the issue of shares in the company after the cancellation; and



- (c) the expressed purpose or purposes of the cancellation; and
- (d) any other relevant factor.

**Commissioner notifying view**

- (8) If no part of a payment on cancellation of a share is in lieu of the payment of a dividend, the Commissioner may give notice to the company that the Commissioner does not regard **sub-section (6)** as applicable to the cancellation.

**Some definitions**

- (9) In this section,—

**counted associate** means—

- (a) a person associated with the shareholder other than merely by virtue of being a relative; or
- (b) a person associated with the shareholder merely by virtue of being a spouse or minor child of the shareholder, or a trustee of a trust under which a spouse or minor child of the shareholder is a beneficiary

**fifteen percent capital reduction** means the circumstance in which the total amount paid by the company on account of the cancellation (or on account of any other pro rata cancellation of participating shares in the company occurring at the same time) is at least 15% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

**fifteen percent interest reduction** means the circumstance in which, immediately after and as a result of the cancellation (together with any other cancellation of participating shares in the company occurring at the same time),—

- (a) the total direct voting interests in the company of the shareholder and any counted associates is no more than 85% of their total direct voting interests in the company immediately before the cancellation; and
- (b) if at the time of the cancellation a market value circumstance exists, the total direct market value interests in the company of the shareholder and any counted associates is no more than 85% of their total direct market value interests immediately before the cancellation

**non-participating redeemable share** means a share that meets the following conditions:

- (a) the share is issued, under the company's constitution or establishing legislation, on terms that involve the share being required or allowed to be redeemed or repaid before the company is liquidated; and
- (b) the share is—
  - (i) a redeemable share under section 68 of the Companies Act 1993 or an equivalent provision of foreign law; or
  - (ii) issued under 1 of New Zealand's Acts relating to co-operative companies; or
  - (iii) subject to **section FC 1** (Floating rate of interest on debentures) or **FC 2** (Interest on debentures issued in substitution for shares); or
  - (iv) a unit in a unit trust that is not a widely-held trust; and
- (c) the share is either a fixed rate share or a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule; and
- (d) the shareholder does not have shareholder decision-making rights in relation to the share except—
  - (i) a protective right; or
  - (ii) if the company is subject to 1 of New Zealand's Acts relating to co-operative companies

**participating share** means a share that is not a non-participating redeemable share

**protective right** means a shareholder decision-making right that—

- (a) arises only if the shareholder's position may be altered to the shareholder's detriment or if the company defaults on its obligations under the terms of the share; and
- (b) is granted to the shareholder only to assist the shareholder to prevent the alteration or to remedy the default; and
- (c) when the share is issued is not expected to arise

**ten percent capital reduction** means the circumstance in which the total amount paid by the company on account of the cancellation (or paid on account of any other pro rata cancellation of participating shares in the company occurring at the

same time) is at least 10% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

**unlisted trust** means a unit trust or group investment fund, the units or interests in which are not quoted on the official list of a recognised exchange.

*Defined:* amount, associated person, available subscribed capital, cancellation, Commissioner, company, co-operative company, counted associate, direct market value interest, direct voting interest, dividend, fifteen percent capital reduction, fifteen percent interest reduction, fixed rate share, group investment fund, liquidation, market value circumstance, New Zealand, non-participating redeemable share, notice, off-market cancellation, ordering rule, participating share, pay, pro rata cancellation, protective right, recognised exchange, relative, resident in New Zealand, share, shareholder, shareholder decision-making rights, slice rule, ten percent capital reduction, trustee, unit trust, unlisted trust, unlisted widely-held trust, widely-held trust

Compare: 1994 No 164 s CF 3(1)(b), (2)(c), (14)

## CD 15 Ordering rule and slice rule

### Ordering rule

- (1) Under the ordering rule, the available subscribed capital per share is calculated for a share using the formula—

$$\frac{\text{available subscribed capital of class}}{\text{shares being cancelled of class.}}$$

### Definition of items in formula

- (2) In the ordering rule formula,—
- (a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:
- (b) **shares being cancelled of class** is the number of shares of the same class as the share (including the share) being cancelled at the time.

### Slice rule

- (3) Under the slice rule, the available subscribed capital per share is calculated for a share using the formula—

$$\frac{\text{available subscribed capital of class}}{\text{shares of class.}}$$

### Definition of items in formula

- (4) In the slice rule formula,—

- (a) **available subscribed capital of class** is the available subscribed capital, of all shares of the same class as the share, at the relevant time for the calculation:
- (b) **shares of class** is the number of shares of the same class as the share (including the share) on issue at the time.

**Amount when foreign company information inadequate**

- (5) Despite **subsections (2) to (4)**, the available subscribed capital per share calculated under the ordering rule is zero if—
  - (a) the company is not resident in New Zealand; and
  - (b) the relevant shareholder cannot obtain sufficient information to calculate the actual available subscribed capital per share using the relevant rule.

*Defined:* available subscribed capital, cancellation, foreign company, ordering rule, resident in New Zealand, share, shareholder, shares of the same class, slice rule

Compare: 1994 No 164 ss CF 3(2)(b), OB 1 “available subscribed capital per share”, “available subscribed capital per share cancelled”

**CD 16 Returns of capital: on-market share cancellations**

**Companies acquiring own shares**

- (1) An amount paid by a company in acquiring 1 of its shares in an on-market cancellation is not a dividend.

**When excess amount relevant**

- (2) Despite **subsection (1)**, any excess of the amount paid over the available subscribed capital per share under the ordering rule—
  - (a) is treated as a dividend and not a return of capital when applying—
    - (i) **section CD 30:**
    - (ii) **section CD 33(2)(c):**
    - (iii) **section GB 1(3)** (Agreements purporting to alter incidence of tax to be void); and
  - (b) gives rise to an imputation credit account debit under **section ME 5(1)(c) and (2)(c)** (Debits arising to imputation credit account).

*Defined:* amount, available subscribed capital, company, dividend, imputation credit account, on-market cancellation, ordering rule, share

Compare: 1994 No 164 ss CF 3(1)(e), (f), OB 1 “available subscribed capital”

**CD 17 Treasury stock acquisitions****Treasury stock generally**

- (1) An amount paid by a company in acquiring 1 of its shares is not a dividend if—
- (a) the acquisition is treated as not resulting in the cancellation of the share, under section 67A(1) of the Companies Act 1993 or section 24 of the Co-operative Companies Act 1996 (each of which relates to treasury stock); and
  - (b) the acquisition is not part of a pro rata cancellation or something that is in substance a pro rata cancellation.

**Reversion to on-market cancellation treatment**

- (2) **Subsections (4) to (6)** apply in the case of an acquisition of a share to which **subsection (1)** or section CF 3(1)(d) or (da) of the Income Tax Act 1994 applies if,—
- (a) before the first anniversary of the acquisition, the company cancels the share; or
  - (b) at the first anniversary, the company has failed to transfer a share of the same class in an arm's length transfer, except if the company is established under New Zealand co-operative company legislation; or
  - (c) after the first anniversary, the company cancels the share, and the company is established under New Zealand co-operative company legislation.

**Requirement for arm's length transfers**

- (3) When **subsection (2)(b)** is applied,—
- (a) a transfer is arm's length only if it is—
    - (i) to a person not associated with the company; or
    - (ii) in a transaction that occurs on a recognised exchange, through a broker or some other agent independent of the company, and that is not preceded by any arrangement between the transferee and the company for the transfer; and
  - (b) each arm's length transfer of a share is taken into account only in relation to a single share acquisition to which **subsection (1)** has applied.

**Reduction of available subscribed capital**

- (4) If **subsection (2)** applies, then, with effect from the cancellation or the first anniversary (depending on which first causes **subsection (2)** to apply), the available subscribed capital of the class of the share is reduced by the available subscribed capital per share calculated under the ordering rule as at the date of the cancellation or first anniversary.

#### **Imputation credit account debit**

- (5) If **subsection (2)** applies, then, with effect from the date of the acquisition by the company, **section ME 5(1)(c) and (2)(c)** (Debits arising to imputation credit account) apply as if the original acquisition were an on-market cancellation but item “a” of the formula in **section ME 5(1)(c)** were equal to only the excess of the amount received by the shareholder over the reduction described in **subsection (4)**.

#### **Relief from imputation penalty tax**

- (6) No imputation penalty tax is imposed under section 140B of the Tax Administration Act 1994 (nor any late payment penalty imposed under that Act in relation to the imputation penalty tax) if it would not have arisen had **subsection (5)** applied only with effect from the date of cancellation or first anniversary (depending on which first causes **subsection (2)** to apply).

*Defined:* agent, amount, arrangement, associated person, available subscribed capital, cancellation, company, dividend, imputation credit account, imputation penalty tax, New Zealand, on-market cancellation, ordering rule, pro rata cancellation, recognised exchange, share, shareholder

Compare: 1994 No 164 s CF 3(1)(d), (da), (3), (3A)

## **CD 18 Capital distributions on liquidation**

#### **Application of this section**

- (1) This section applies if an amount is paid to a shareholder in relation to a share because of the liquidation of the company.

#### **Return of subscribed capital or capital gains**

- (2) The amount paid is a dividend only to the extent to which it is more than—
- (a) the available subscribed capital per share calculated under the ordering rule; and

- (b) the available capital distribution amount per share calculated under **section CD 34**.

#### **Statutory producer board capital levies**

- (3) If the company is a statutory producer board, the amount is not a dividend to the extent to which it is a return of a levy charged specifically for capital development.

#### **Non-deductible capital**

- (4) An amount that is not a dividend as a result of **subsection (3)** is nevertheless treated as a return of capital for the purposes of the capital limitation.

*Defined:* amount, available capital distribution amount, available subscribed capital, capital limitation, company, dividend, levy, liquidation, ordering rule, share, shareholder, statutory producer board

Compare: 1994 No 164 s CF 3(1)(c), (i), (4)

### **CD 19 Property made available intra-group**

#### **Application of this section**

- (1) This section applies if—
  - (a) a transfer of value is made by a company (**first company**) to another company (**associated company**); and
  - (b) if this section did not exist, the transfer would be a dividend under **section CD 5(1)(a)(ii)** (because the associated company is associated with a shareholder in the first company) or under **section CD 5(1)(a)(iii)** (because the associated company is the trustee of a trust of which a shareholder in the first company, or a shareholder's spouse, is a beneficiary).

#### **Intra-group property arrangements worth \$10,000 or less**

- (2) The transfer of value is not a dividend if—
  - (a) the transfer consists of making property available for less than market value; and
  - (b) the transfer is not a loan; and
  - (c) in the tax year of the first company in which the transfer occurs, the total amount of transfers of value by the first company to the associated company that would be dividends for the year if this section did not exist is no more than \$10,000.

**Downward transfers of value**

- (3) The transfer of value is also not a dividend if—
- (a) either—
    - (i) the first company has a voting interest in the associated company; or
    - (ii) the first company is associated with a company (**parent company**) that has a voting interest in the associated company and that could have received the transfer of value without it being counted income, non-resident withholding income, or a gain subject to dividend withholding payment for the parent company; and
  - (b) the associated company does not have a voting interest in the first company; and
  - (c) no person (other than the parent company) has both—
    - (i) a voting interest or a market value interest in the first company; and
    - (ii) a voting interest or a market value interest in the associated company of more than 10%.

**Relationship with section FC 3**

- (4) **Subsection (3)** does not apply to a transfer of value that is subject to **section FC 3** (Share dealing).

**Rules for identifying voting interests**

- (5) For the purposes of **subsection (3)(a) and (b)**,—
- (a) for the purposes of determining if a company has a voting interest in another company, the look-through rule in **section OD 3(3)(d)** (Voting interests) does not apply to treat the initial company's voting interest as held by its shareholders or anyone else; and
  - (b) a zero voting interest is not a voting interest.

**Rules for identifying voting and market value interests**

- (6) For the purposes of **subsection (3)(c)**,—
- (a) for the purposes of determining the extent to which a person (other than the parent company) has a voting interest or market value interest in the first company or the associated company, the look-through rules in **sections OD 3(3)(d)** (Voting interests) and **OD 4(3)(d)** (Market



- value interests) do not apply to treat the person's voting interest or market value interest as held by the person's shareholders or anyone else unless the person treated as holder is the parent company; and
- (b) for the purposes of determining the extent to which a person (other than the parent company) has a voting interest or market value interest of more than 10% in the associated company, the look-through rules in **sections OD 3(3)(d)** (Voting interests) and **OD 4(3)(d)** (Market value interests) do not apply to treat a voting interest or market value interest of the first company or the parent company in the associated company as held by their respective shareholders or anyone else; and
- (c) a zero voting interest is not a voting interest and a zero market value interest is not a market value interest.

*Defined:* amount, associated person, company, counted income, dividend, dividend withholding payment, loan, market value interest, non-resident withholding income, shareholder, tax year, transfer of value, trustee, voting interest

Compare: 1994 No 164 s CF 2(13)–(14)

### **CD 20 Transfers of certain excepted financial arrangements within wholly-owned groups**

When **section ED 2** (Transfers of certain excepted financial arrangements within wholly-owned groups) applies to a transfer of an excepted financial arrangement within a wholly-owned group of companies, the transfer does not give rise to a dividend.

*Defined:* dividend, excepted financial arrangement, wholly-owned group of companies

Compare: 1994 No 164 s EE 14(4)

### **CD 21 Non-taxable bonus issues**

A non-taxable bonus issue is not a dividend.

*Defined:* dividend, non-taxable bonus issue

Compare: 1994 No 164 s CF 3(1)(a)

### **CD 22 Flat-owning companies**

#### **Occupation rights**

- (1) If a flat-owning company makes residential property available to a person, that is not a dividend.

#### **Meaning of flat-owning company**

- (2) In this section, **flat-owning company** means a company—
- (a) whose constitution provides that every registered shareholder is entitled to the use of a specific residential property in New Zealand owned by the company; and
  - (b) whose only significant assets are residential properties available for use by specific shareholders and funds reserved for meeting the company's ancillary costs.

*Defined:* company, dividend, flat-owning company, New Zealand, shareholder

Compare: 1994 No 164 s CF 2(1)(e), (21)

## CD 23 Employee benefits

### Fringe benefit tax rules

- (1) A fringe benefit subject to fringe benefit tax is not a dividend.

### Board

- (2) An amount that is employment income under **section CE 1(d)** (Amounts derived in connection with employment) is not a dividend.

*Defined:* amount, dividend, employment income, fringe benefit, fringe benefit tax, fringe benefit tax rules

Compare: 1994 No 164 s CF 3(1)(g), (h)

## CD 24 Payments corresponding to notional distributions of producer boards and co-operative companies

### Statutory producer board payments

- (1) An amount paid by a statutory producer board to a person in relation to a tax year is not a dividend if—
- (a) the person was a member of the board at some time during the tax year; and
  - (b) unless the Commissioner allows otherwise, the amount is calculated on the basis of the member's share of—
    - (i) the total produce transactions of members with the board during the tax year; or
    - (ii) the total levies payable by members to the board for the tax year; and
  - (c) the amount corresponds to a notional distribution amount treated as a dividend under **section CD 8(1)**.

### Co-operative company payments

- (2) An amount paid by a co-operative company to a person in relation to a tax year is not a dividend if—
- (a) the person was a shareholder of the company at some time during the tax year; and
  - (b) unless the Commissioner allows otherwise, the amount is calculated on the basis of the shareholder's share of the total produce transactions of shareholders with the company during the tax year; and
  - (c) the amount corresponds to a notional distribution amount treated as a dividend under **section CD 8(3)**.

### **Non-deductible capital**

- (3) An amount that is not a dividend as a result of this section is nevertheless treated as a return of capital for the purposes of the capital limitation.

*Defined:* amount, capital limitation, Commissioner, co-operative company, dividend, levy, member, produce transactions, producer board, shareholder, statutory producer board, tax year

Compare: 1994 No 164 s CF 3(1)(ia), (j), (4)

### **CD 25 Qualifying amalgamations**

An amount derived by an amalgamated company on a qualifying amalgamation from an amalgamating company that ceases to exist on the amalgamation is not a dividend if it merely arises from—

- (a) the amalgamated company acquiring property of the amalgamating company; or
- (b) the amalgamated company being relieved of an obligation owed to the amalgamating company.

*Defined:* amalgamated company, amalgamating company, amalgamation, amount, dividend, qualifying amalgamation

Compare: 1994 No 164 s CF 5(a)

### **CD 26 Foreign investment fund income**

An amount paid by a company to a person is not a dividend if,—

- (a) at the time the person derives the amount, the person's interest in the company is an attributing interest (or would have been if the company had not been liquidated); and
- (b) the person calculates their FIF income or loss in relation to the interest and the period in which the amount is

paid under the comparative value method or the deemed rate of return method.

**Defined:** amount, attributing interest, company, comparative value method, deemed rate of return method, dividend, FIF, FIF income, foreign investment fund, loss, liquidation

Compare: 1994 No 164 s CF 3(1)(k)

### **CD 27 Group investment fund management fees**

An amount paid out of a group investment fund to the trustee of the fund for the benefit of an investor in the fund is not a dividend if—

- (a) it is applied in paying a management fee to the trustee; and
- (b) the trustee is allowed a deduction for the fee under **section DV 8** (Group investment funds).

**Defined:** amount, deduction, dividend, group investment fund, management fees, trustee

Compare: 1994 No 164 s CF 3(1)(ga)

## *Calculation rules*

### **CD 28 General calculation rule for transfers of value**

#### **Difference in value**

- (1) The amount of a dividend that is a transfer of value from a company to a person is calculated using the formula—  
value from company – value from person.

#### **Definition of items in formula**

- (2) In the formula,—
  - (a) **value from company** is the market value of the money or money's worth that the company provides to the person;
  - (b) **value from person**—
    - (i) is the market value of the money or money's worth (if any) that the person provides to the company as consideration for the transfer; and
    - (ii) excludes any amount that is merely attributable to the holding or giving up of rights as a shareholder in the company.

#### **Relationship with sections CD 29 to CD 32**

- (3) This section is overridden by **sections CD 29 to CD 32**.

*Defined:* amount, company, dividend, shareholder, transfer of value

Compare: 1994 No 164 s CF 2(1)(c)–(e)

## **CD 29 Calculation of amount of dividend when property made available**

### **How this section applies**

- (1) This section applies to determine the amount of a dividend that arises under **section CD 3** because a company makes property available to a person.

### **Amounts calculated quarterly**

- (2) The amount of the dividend is calculated for each quarter during which the property is made available.

### **Date when amounts treated as paid**

- (3) The amount of the dividend calculated for a quarter is treated as being paid by the company to the person and as being derived by the person 6 months after the end of the company's tax year. However, if the company gives notice to the shareholder on an earlier date of the amount of the dividend for that quarter, the amount is treated as being paid and derived on that earlier date instead.

### **Using FBT rules**

- (4) Unless the property made available is a loan, the amount of the dividend for each quarter is the value of the fringe benefit for that quarter calculated under the FBT rules as if—
- making the property available were the provision of a fringe benefit by the company to an employee in relation to employment, despite anything in **sections CX 8 to CX 33** (which relate to fringe benefits); and
  - the company were not to choose to pay fringe benefit tax on an income year basis under **section ND 14** (Payment of fringe benefit tax on income year basis for shareholder-employees).

### **Using difference from benchmark rate**

- (5) If the property made available is a loan, the amount of the dividend for each quarter is the excess (if any) of interest,

calculated for the quarter on the basis of the daily balance of the loan and the benchmark rate specified in **subsections (6) to (8)**, over the actual amount of interest accruing on the loan in the quarter. However, the company may choose instead to calculate the dividend as the excess of the benchmark interest rate amount over the amount of income accruing to the company in the quarter calculated under the yield to maturity method.

**Benchmark rate: FBT rate for certain loans**

- (6) For the purposes of **subsection (5)**, the benchmark rate of interest is the prescribed rate of interest (the rate generally applicable under the FBT rules) if—
- (a) all amounts payable to the company for the loan are expressed in New Zealand dollars; and
  - (b) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter.

**Setting benchmark rate**

- (7) For the purposes of **subsection (5)**, the benchmark rate is the rate set by the Commissioner if—
- (a) all amounts payable to the company in relation to the loan are payable in a single currency other than New Zealand dollars; and
  - (b) the Commissioner has set a benchmark rate for that currency; and
  - (c) either the borrower is not a company or, if the borrower is another company, the company making the loan notifies the Commissioner that this subsection is to apply to the loan and the quarter.

**Default benchmark rate**

- (8) For the purposes of **subsection (5)**, if neither **subsection (6)** nor **(7)** applies, the benchmark rate of interest is a market rate determined at the end of the quarter for a loan made on the same terms between persons at arm's length.

**Daily loan balance: certain repayments backdated**

- (9) For the purposes of **subsection (5)**, in determining the daily balance of a loan during a tax year, an amount repaid during the tax year is treated as having been applied in repayment of the loan at the start of the company's tax year or, if later, the day the loan was made, if—
- (a) the amount is repaid by applying any salary, wages, extra pay, dividends, or interest payable by the company to the borrower; and
  - (b) the amount payable by the company is income of the borrower for the tax year or a previous tax year; and
  - (c) the amount payable by the company is payable without any tax deduction under the PAYE rules, the RWT rules, or the NRWT rules.

**Daily loan balance: company nominating amount**

- (10) Subject to **subsection (9)**, for the purposes of **subsection (5)**, the daily balance of the loan for a tax year is treated as being equal to the notional balance chosen under **subsection (11)** by the company making the loan if—
- (a) the borrower is a company; and
  - (b) the loan is a variable principal debt instrument; and
  - (c) the company making the loan notifies the Commissioner that this subsection applies for the loan and the tax year; and
  - (d) the amount of the dividend calculated as a result for the loan, the borrower, and the tax year is no more than 30% greater or less than the amount that would be calculated if this section did not apply.

**Notional balance options**

- (11) The notional balance referred to in **subsection (10)** is whichever of the following is chosen by the company making the loan and notified to the Commissioner:
- (a) the average of the outstanding balances of the loan at the end of each month in the company's tax year:
  - (b) the average of—
    - (i) the outstanding balance of the loan at the start of the tax year or the first time during the tax year at which the loan exists, whichever is later; and
    - (ii) the outstanding balance of the loan at the end of the tax year or the last time during the tax year at which the loan exists, whichever is earlier.

**Notice generally by tax returns**

- (12) Reference in this section to a company notifying the Commissioner is a reference to either—
- (a) a notice given to the Commissioner with the company's return of income for the relevant tax year; or
  - (b) if no return is required, a notice given by the date on which a return would be required to be filed for the tax year if a return had been required.

**Attributed repatriation dividends**

- (13) No amount of dividend arises under **section CD 3** as a result of any difference between the interest (if any) payable by a person to a CFC in an accounting period of the CFC under a loan and the benchmark rate of interest specified in any of **subsections (6) to (8)** if—
- (a) the outstanding balance of the loan at the end of the account period is taken into account under **sections CD 36 to CD 42** in calculating the New Zealand repatriation amount of the CFC for the accounting period; and
  - (b) as a result, the person derives a dividend under **section CD 13**.

**When loan disregarded**

- (14) **Subsection (13)** does not apply to the extent to which the loan is a loan to which—
- (a) **section CD 40(11)** applies, meaning that the loan is disregarded for the accounting period; or
  - (b) **section CZ 11(4)** (Transitional relief for calculation of attributed repatriation dividends: 2 July 1992) applies, meaning that the loan is effectively disregarded for the accounting period.

**Defined:** accounting period, amount, attributed repatriation, CFC, Commissioner, company, dividend, employee, extra pay, FBT rules, financial arrangement, fringe benefit, fringe benefit tax, income, income year, interest, loan, New Zealand, New Zealand repatriation amount, notice, NRWT rules, pay, PAYE rules, prescribed rate of interest, quarter, return of income, RWT rules, shareholder, tax deduction, tax year, variable principal debt instrument

Compare: 1994 No 164 s CF 2(11), (12), (19)



**CD 30 Adjustment if dividend recovered by company****When dividends recovered**

- (1) If a company recovers a dividend from a shareholder under section 56 of the Companies Act 1993 or an equivalent provision of foreign law, this section applies to the extent necessary to ensure that—
  - (a) the recovered dividend and any attached imputation credit or dividend withholding payment credit are disregarded for the purposes of this Act; and
  - (b) the resulting refunds are made.

**Amendment of assessments**

- (2) **Section 113A** of the Tax Administration Act 1994 requires the Commissioner to amend assessments if given notice of the recovery.

**Refunds**

- (3) If the Commissioner is given notice of the recovery, the Commissioner must refund any relevant—
  - (a) income tax, dividend withholding payment, or dividend withholding payment penalty tax of the shareholder; and
  - (b) non-resident withholding tax or resident withholding tax of the company.

**Relationship with sections MD 1 and NH 4**

- (4) The refund is made despite **sections MD 1** (Refund of excess tax) **and NH 4** (Refund for overpayment and to company in loss), but subject to the other provisions of this Act.

**Adjustments to accounts**

- (5) A credit or debit (as applicable) arises as at the date of recovery, and must be recorded in—
  - (a) the imputation credit account of the company;
  - (b) if the shareholder is an imputation credit account company or dividend withholding payment account company, the imputation credit account or dividend withholding payment account of the shareholder.

*Defined:* assessment, Commissioner, company, dividend, dividend withholding payment, dividend withholding payment account, dividend withholding payment account company, dividend withholding payment credit, dividend withholding payment penalty tax, imputation credit, imputation credit account, imputation credit

account company, income tax, non-resident withholding tax, notice, resident withholding tax, shareholder

Compare: 1994 No 164 s CF 2(8)

### **CD 31 Adjustment if amount repaid later**

#### **When released debt repaid**

- (1) If the release by a company of a shareholder's obligation to pay money to the company has been treated as a dividend and the released amount is later repaid to the company, this section applies to the extent necessary to ensure that—
  - (a) the dividend is disregarded for the purposes of this Act; and
  - (b) the resulting refunds are made.

#### **When close company expenditure repaid**

- (2) If any expenditure of a close company that shareholders in the company believed on reasonable grounds was only for the benefit of the company is nevertheless a dividend and the expenditure is later repaid to the company, this section applies to the extent necessary to ensure that—
  - (a) the dividend is disregarded for the purposes of this Act; and
  - (b) the resulting refunds are made.

#### **Amendment of assessments**

- (3) **Section 113A** of the Tax Administration Act 1994 requires the Commissioner to amend assessments if given notice of the repayment.

#### **Refunds**

- (4) If the Commissioner is given notice of the repayment, the Commissioner must refund any relevant tax of the shareholder.

#### **Relationship with section MD 1**

- (5) The refund is made despite **section MD 1** (Refund of excess tax), but subject to the other provisions of this Act.

#### **Repayment of pre-1992 loans**

- (6) **Subsection (1)** applies to the repayment of an amount treated as a dividend under section 4(1)(b) of the Income Tax Act 1976

(as it applied before 1 April 1992 to give the Commissioner a discretion to treat loans as dividends), as if the amount repaid were a released amount that is repaid.

*Defined:* amount, assessment, close company, Commissioner, company, dividend, notice, shareholder, tax

Compare: 1994 No 164 s CF 2(9), (10)

## **CD 32 Adjustments if additional consideration paid**

### **Differences from market value**

- (1) If a dividend from a company arises because of a difference between the market value of property provided by or to the company and the consideration paid for it, the dividend is disregarded for the purposes of this Act if the conditions in **subsections (2) to (4)** are met.

### **Market value**

- (2) The consideration paid must have been an amount that the company considered was the market value, having taken reasonable steps at the time of the transaction to ascertain a market value.

### **Difference paid**

- (3) The recipient of the dividend must have later paid to the company—
- (a) sufficient additional consideration to reflect the actual market value of the property at the time; or
  - (b) a refund of any excess consideration paid by the company.

### **Accounts adjusted**

- (4) Any necessary adjustments must have been made to the accounts of the company and the recipient for the additional consideration or refund.

*Defined:* amount, company, dividend

Compare: 1994 No 164 s CF 2(9A)

**CD 33 Available subscribed capital amount****Formula for calculating amount of available subscribed capital**

- (1) For a share (**share**) in a company at any relevant time (**calculation time**), the amount of available subscribed capital is calculated using the formula—

1 July 1994 balance + subscriptions – returns.

**Definition of items in formula**

- (2) In the formula,—
- (a) **1 July 1994 balance** is,—
- (i) if the company existed before 1 July 1994, the amount calculated under **subsection (3)**; and
- (ii) in any other case, zero:
- (b) **subscriptions**, subject to **subsections (6) to (19)**, is the total amount of consideration that the company received, after 30 June 1994 and before the calculation time, for the issue of shares of the same class (**the class**) as the share:
- (c) **returns**, subject to **subsections (20) to (23)**, is the total amount of consideration that the company paid, after 30 June 1994 and before the calculation time, on the cancellation of shares in the relevant class and that was not a dividend because of **section CD 14 or CD 16** or a corresponding repealed provision.

**1 July 1994 balance**

- (3) The 1 July 1994 balance is calculated using the formula—

$$\frac{\text{paid-up capital} + \text{premiums}}{\text{all shares issued}} \times \text{30 June 1994 shares.}$$
**Definition of items in formula**

- (4) In the 1 July 1994 balance formula,—
- (a) **paid-up capital**, subject to **subsection (5)** relating to bonus issues, is the total amount of capital paid up before 1 July 1994 for shares in the class:
- (b) **premiums** is the total amount of qualifying share premium paid to the company before 1 July 1994 for shares in the class, but not including amounts applied before 1 July 1994 in paying up capital:

- (c) **all shares issued** is the number of shares in the class ever issued at the end of 30 June 1994:
- (d) **30 June 1994 shares** is the number of shares in the class on issue at the end of 30 June 1994.

**1 July 1994 balance: bonus issues after 30 September 1988**

- (5) The capital amount included in calculating the 1 July 1994 amount does not include an amount paid up by way of a bonus issue made after 30 September 1988, unless—
  - (a) the bonus issue was a taxable bonus issue; or
  - (b) the amount was paid up by application of an amount of qualifying share premium.

**Subscriptions amount: taxable bonus issues and debt capitalisations**

- (6) The subscriptions amount includes,—
  - (a) in the case of a bonus issue in lieu, the amount offered as an alternative to the bonus issue; and
  - (b) in the case of a taxable bonus issue that is not a bonus issue in lieu, the amount of the dividend arising from the taxable bonus issue; and
  - (c) in the case of shares issued on conversion of, or as consideration for the release of, a debt claim against the company, the amount of debt converted or released.

**Subscriptions amount: non-taxable and exempt bonus issues**

- (7) The subscriptions amount does not include—
  - (a) an amount for a bonus issue if neither **subsection (6)(a) nor (b)** applies; or
  - (b) an amount for a taxable bonus issue made to a shareholder to whom the bonus issue was exempt income under **section CW 9** (Dividend derived by company from overseas) **or CW 10** (Dividend within New Zealand wholly-owned group) (or under a corresponding repealed provision) except to the extent to which the taxable bonus issue is fully credited.

**Subscriptions amount: reinvested exempt dividends**

- (8) The subscriptions amount does not include—

- (a) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend to a shareholder,—
  - (i) if the dividend was exempt income of the shareholder under **section CW 9** (Dividend derived by company from overseas) **or CW 10** (Dividend within New Zealand wholly-owned group) (or a corresponding repealed provision); and
  - (ii) if the shareholder was not required to deduct an amount of dividend withholding payment from the dividend by **section NH 1** (Liability to make deduction in respect of foreign withholding payment dividend); and
  - (iii) to the extent to which the dividend is not fully credited; or
- (b) an amount received by the company that is mainly attributable, directly or indirectly, to the company paying a dividend at a time when the company is a controlled foreign company to another controlled foreign company (regardless of whether either company is resident in a grey list country).

**Subscriptions amount: share-for-share exchanges**

- (9) **Subsection (10)** applies if—
  - (a) the company receives an amount, directly or indirectly, for the issue of shares in the class that is in the form of shares in another company; and
  - (b) immediately after the issue there are 1 or more persons whose common voting interests (or common market value interests), as defined in **section IG 1(5)** (Companies included in group of companies), in the company and the other company total 10% or greater; and
  - (c) the receipt is not on an amalgamation.

**Subscriptions amount: no uplift for share-for-share exchanges**

- (10) If **subsection (9)** applies, the subscriptions amount does not include the amount received to the extent to which it is more than the total available subscribed capital per share, calculated using the slice rule and calculated after deducting any ineligible capital amount described in **subsections (13) and (14)** of the

shares in the other company at the date on which the amount is received.

**Subscriptions amount: company share capital reorganisation**

- (11) **Subsection (12)** applies if a company receives an amount for the issue of shares in the class in the form of—
- (a) a shareholder giving up rights of membership in the company; or
  - (b) a shareholder giving up rights of membership in a company associated with the company or that is in substance the same company.

**Subscriptions amount: no uplift for share capital reorganisation**

- (12) If **subsection (11)** applies, the subscriptions amount does not include the amount received to the extent to which it is more than the total available subscribed capital per share of the rights given up at the date they are given up, calculated—
- (a) using the slice rule; and
  - (b) after deducting any ineligible capital amount described in **subsections (13) and (14)**; and
  - (c) as if the rights given up were shares, if they are not shares.

**Subscriptions amount: when ineligible capital arises**

- (13) For the purposes of **subsections (10) and (12)**, an ineligible capital amount arises if—
- (a) a company (**acquiring company**) issues shares in consideration for acquiring, directly or indirectly, shares in another company (**acquired company**); and
  - (b) the acquired company has issued shares in anticipation of the shares being acquired by the acquiring company; and
  - (c) those shares issued in anticipation are not a fully credited taxable bonus issue; and
  - (d) the acquiring company pays an amount in consideration for acquiring the shares in the acquired company in addition to issuing shares in the acquiring company.

**Subscriptions amount: amount of ineligible capital**

- (14) The ineligible capital amount is the lesser of—
- (a) the total of the available subscribed capital per share calculated using the slice rule of the shares in the acquired company that is attributable to the shares issued in anticipation (except to the extent to which the shares issued in anticipation are a fully credited taxable bonus issue); and
  - (b) the total additional amount paid by the acquiring company referred to in **subsection (13)(d)**.

**Subscriptions amount: amalgamated company**

- (15) If the company is an amalgamated company that results from an amalgamation under section 222(2) of the Companies Act 1993, the subscriptions amount—
- (a) includes an amount equal to the available subscribed capital at the time of the amalgamation of all shares in the amalgamating companies of an equivalent class to the class (not being shares held directly or indirectly by an amalgamating company and not being shares in the amalgamated company), as if the amount were consideration received at the time of the amalgamation for the issue of the amalgamated company's shares; and
  - (b) does not include any other amount for the agreement of shareholders of an amalgamating company to the amalgamation and the resulting property acquisitions by the amalgamated company.

**Subscriptions amount: no double counting**

- (16) The subscriptions amount does not include amounts included in calculating the 1 July 1994 balance.

**Subscriptions amount: treasury stock sales excluded**

- (17) The subscriptions amount does not include the amount of consideration received by a company for disposing of a share if the disposal is taken into account under **section CD 17** to determine that the amount paid by the company on a previous share acquisition is not subject to **section CD 17(4) to (6)**.

**Subscriptions amount: superannuation fund's interest in GIF**



- (18) The subscriptions amount of a company that is a group investment fund includes the value of the interest of a superannuation fund in the group investment fund at the end of 31 March 1999.

**1 July 1994 and subscriptions amount: foreign currency conversions**

- (19) If an amount of consideration that a company receives for the issue of shares is payable in a foreign currency, the amount paid is treated, for the purposes of this section, as if it were converted into New Zealand currency at the calculation time.

**Returns amount: on-market cancellations by associate**

- (20) If the acquisition of a share by an associate of the company is treated under **section ME 5(5)** (Debits arising to imputation credit account) as if it were an on-market cancellation by the company, it is treated in the same way for the purposes of calculating the returns amount.

**Returns amount: recovered amounts**

- (21) The returns amount does not include any amount recovered by the company before the calculation time under section 56 of the Companies Act 1993 or an equivalent provision of foreign law.

**Returns amount: shares cancelled on amalgamation**

- (22) If shares in an amalgamated company held by an amalgamating company are cancelled on the amalgamation, the returns amount included in calculating the available subscribed capital amount of a share in the amalgamated company that is of the same class as the cancelled shares is increased by the amount calculated using the formula—

$$\text{cancelled shares} \times \text{asc per share.}$$

**Definition of items in formula**

- (23) In the formula,—
- (a) **cancelled shares** is the number of cancelled shares:
  - (b) **asc per share** is the available subscribed capital per share calculated under the slice rule of each cancelled share immediately before the amalgamation.

**Meaning of fully credited**

- (24) In this section, the part of a dividend that is **fully credited** is the part that is calculated using the formula—

$$\text{dividend excluding credits} \times \frac{\text{actual ratio}}{\text{maximum ratio}}.$$

**Definition of items in formula**

- (25) In the formula,—
- (a) **dividend excluding credits** is the dividend excluding any attached imputation credit or dividend withholding payment credit:
  - (b) **actual ratio** is the total of the imputation ratio and dividend withholding payment ratio of the dividend:
  - (c) **maximum ratio** is the maximum imputation ratio specified in **section ME 8(1)** (Allocation rules for imputation credits).

**Meaning of qualifying share premium**

- (26) In this section, **qualifying share premium** means an amount of premium paid to a company for the issue of a share by the company if—
- (a) the amount was credited to a share premium account in the company's books; and
  - (b) the issue of shares was not in consideration for the acquisition, directly or indirectly, of shares in another company.

**Defined:** amalgamated company, amalgamating company, amalgamation, amount, associated person, available subscribed capital, bonus issue, bonus issue in lieu, cancellation, common market value interest, common voting interest, company, controlled foreign company, dividend, dividend withholding payment, dividend withholding payment credit, dividend withholding payment ratio, exempt income, fully credited, grey list, group investment fund, group of companies, imputation credit, imputation ratio, New Zealand, non-taxable bonus issue, off-market cancellation, on-market cancellation, qualifying share premium, share, shareholder, shares of the same class, slice rule, superannuation fund, taxable bonus issue

Compare: 1994 No 164 ss CF 3(2)(a), (14), CF 4, OB 1 “available subscribed capital”, “fully credited”, “ineligible capital amount”, “qualifying share premium”, “transitional capital amount”

**CD 34 Available capital distribution amount****Rules for calculating amount of available capital distribution**

- (1) For a share (**the share**) on the liquidation of the company, the available capital distribution amount per share is calculated using the formula—

$$(\text{receipt} - \text{asc per share}) \times \frac{\text{capital gains} + (\text{capital property distributed} - \text{cost}) - \text{capital losses}}{\text{total receipts} - \text{total asc per share.}}$$

**Definition of items in formula**

- (2) In the formula,—
- (a) **receipt** is the amount received by the shareholder on the liquidation for the share:
  - (b) **asc per share** is the available subscribed capital per share calculated under the ordering rule for the share at the time of the liquidation:
  - (c) **capital gains** is the total of the capital gain available for distribution to shareholders in the company on the liquidation, but excluding any gain occurring when the company distributes property to a shareholder on the liquidation:
  - (d) **capital property distributed** is the total market value of capital property of the company distributed to shareholders on the liquidation:
  - (e) **cost** is the total cost to the company of the capital property included in the **capital property distributed** item:
  - (f) **capital losses** is the total of capital loss amounts of the company arising in the 1992–93 or a later tax year, but excluding any loss occurring when the company distributes property to shareholders on the liquidation:
  - (g) **total receipts** is the total of all amounts received by shareholders on the liquidation:
  - (h) **total asc per share** is the total of the available subscribed capital per share calculated under the ordering rule of all shares in the company at the time of the liquidation.

**Positive amounts**

- (3) Despite **subsection (1)**, the available capital distribution amount per share can never be negative.

**When foreign company information inadequate**

- (4) Despite **subsection (1)**, the available capital distribution amount is zero if—
- (a) the company is not resident in New Zealand; and
  - (b) the shareholder cannot obtain sufficient information to calculate the actual available capital distribution amount.

**Capital gains amount: bonus issued capital gains**

- (5) A capital gain amount is treated as still being available for distribution to the extent to which—
- (a) it has been applied to pay up a bonus issue made after 30 September 1988; and
  - (b) the bonus issue is a non-taxable bonus issue; and
  - (c) the bonus issued share is still on issue at the time of the company's liquidation.

This subsection is overridden by **subsection (6)**.

**Capital gains amount: capital gains before 1992–93**

- (6) A capital gain amount derived before the 1992–93 tax year is not available for distribution to the extent to which a capital loss amount has arisen for the company in the tax year in which the capital gain amount was derived or in a later tax year before the 1992–93 tax year. Capital loss amounts are offset against capital gain amounts in the chronological order in which each arose and, to the extent offset, are then disregarded for the purposes of this subsection.

**Capital gains amount: when capital gain amounts arise**

- (7) For the purposes of this section, a company derives a capital gain amount if,—
- (a) after 31 March 1988, it disposes of capital property for an amount of consideration that is more than the cost of the property to the company; the capital gain amount is the excess; or

- (b) after 31 March 1988, it receives a gift and no part is the income of the company; the capital gain amount is the amount of the gift; or
- (c) an amount is derived by the company from another company on liquidation of the other company that is excluded from being a dividend as a result of **section CD 18(2)(b)** and this section; or
- (d) an amount is derived by the company that is attributable to a revaluation of livestock in the 1992–93 or a later tax year under section 86D of the Income Tax Act 1976 or **section EC 11** (Valuation under herd scheme) or **EC 15** (Herd livestock disposed of before values set); or
- (e) the amount is described in **section CZ 15(1)** (Available capital distribution amount: 1965 and 1985 to 1992).

**Capital gains amount: amalgamated company inheriting gain**

- (8) An amalgamated company is treated as deriving a capital gain amount at the time of the amalgamation equal to a capital gain amount of an amalgamating company to the extent to which—
  - (a) the amalgamating company ceases to exist on the amalgamation; and
  - (b) the amalgamating company's capital gain amount was available for distribution at the time and was not distributed to anyone other than the amalgamated company.

**Capital losses amount: when capital losses arise**

- (9) For the purposes of this section, a company incurs a capital loss if it disposes of capital property for an amount of consideration less than the cost of the property to the company. The capital loss amount is the deficit.

**Related person transactions**

- (10) No capital gain amount is derived or capital loss amount is incurred by a company after 31 March 1988 on disposing of property under an arrangement with a related person. This subsection is overridden by **subsection (11)**.

**Close companies liquidations**

- (11) **Subsection (10)** does not apply if—
  - (a) the company is a close company; and

- (b) the related person is not a company; and
- (c) the disposal is on the liquidation of the company.

#### **Reinvested exempt dividends**

- (12) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of any shares subscribed for by the company in another company does not include any consideration for the subscribed shares that is excluded from the available subscribed capital of the other company under **section CD 33(7)(b) or (8)**.

#### **Amounts written up**

- (13) When a capital gain amount, a capital loss amount, or the cost of capital property is determined, the cost of the relevant capital property is increased to the extent to which—
- (a) the value of the property is written up in the company's books; and
  - (b) because it was attributed to the write-up,—
    - (i) an amount paid before 11 June 1965 is treated as described in **section CZ 15(2)(a)** (Available capital distribution amount: 1965 and 1985 to 1992); or
    - (ii) an issue of a share before 1 April 1988 is treated as described in **section CZ 15(2)(b)** (Available capital distribution amount: 1965 and 1985 to 1992).

#### **Meaning of related person**

- (14) In **subsections (10) and (11)**, **related person** means a person related to a company (**first company**) because 1 of the following applies to the person and the company:
- (a) the person owns, can control (directly or indirectly), or has the right to acquire 20% or more of the first company's ordinary shares; or
  - (b) the person owns, can control (directly or indirectly), or has the right to acquire 20% or more of the voting rights of shareholders in the first company; or
  - (c) the person is a company and the first company owns, can control (directly or indirectly), or has the right to acquire 20% or more of the ordinary shares in the person; or
  - (d) the person is a company and the first company owns, can control (directly or indirectly), or has the right to

- acquire 20% or more of the voting rights of shareholders in the company; or
- (e) the person is a company and 20% or more of the shares or voting rights in the person are owned or controlled by persons that also own, control, or have the right to acquire 20% or more of the shares or voting rights in the first company; or
  - (f) the person is a partner or co-venturer of the first company; or
  - (g) the person is the trustee of a trust and the first company, or a person who is a related person of the first company under this subsection, benefits or can benefit under the trust (directly or indirectly); or
  - (h) the person is a partnership and 1 or more persons, that are related persons of the first company under this subsection, are entitled to 50% or more of the partnership's assets or profits or are able to control the partnership.

#### **Look-through relatives and nominees**

- (15) For the purposes of **subsection (14)**, a person is treated as holding anything held by—
- (a) their spouse; or
  - (b) their child; or
  - (c) a child of their spouse; or
  - (d) a spouse of their child.

#### **Look-through interposed companies**

- (16) For the purposes of **subsection (14)(e)**, if shares or voting rights in a company are owned or controlled by another company, a look-through approach must be applied. The look-through approach requires that—
- (a) the shares or voting rights are treated as if owned or controlled by the shareholders in the other company:
  - (b) if a shareholder in the other company is a company, that shareholder's portion of the shares or voting rights are treated as if owned or controlled by the shareholders in the shareholder company:
  - (c) the approach is applied in the same way to any chain of companies, whatever the length of the chain.

#### **Meaning of capital property**

(17) In this section, **capital property** means property of the company that is not revenue account property.

*Defined:* amalgamated company, amalgamating company, amalgamation, amount, available capital distribution amount, available subscribed capital, bonus issue, capital property, close company, company, deduction, dividend, income, income year, liquidation, non-taxable bonus issue, ordering rule, related person, relative, resident in New Zealand, revenue account property, share, shareholder, tax year, trustee

Compare: 1994 No 164 ss CF 3(2)(b), (6)–(12), (14) “excess return amount”, CF 5(b), OB 1 “capital gain amount”

### *CFC attributed repatriation calculation rules*

#### **CD 35 When does a person have attributed repatriation from a CFC?**

##### **General rule**

- (1) A person has an amount of attributed repatriation from a CFC if—
- (a) the person has an income interest in the CFC in 1 of the CFC’s accounting periods; and
  - (b) the person’s income interest is 10% or more for the accounting period, under **sections EX 14 to EX 16** (which relate to the 10% threshold); and
  - (c) the CFC has a New Zealand repatriation amount for the accounting period, under **sections CD 36 to CD 42**.

##### **Formula**

- (2) The amount of the person’s attributed repatriation for the accounting period is calculated using the formula—
- person’s income interest × New Zealand repatriation amount.

*Defined:* accounting period, amount, attributed repatriation, CFC, income interest, New Zealand repatriation amount

Compare: 1994 No 164 s CG 8(1)

#### **CD 36 New Zealand repatriation amount**

##### **Formula**

- (1) The New Zealand repatriation amount of a CFC for an accounting period is calculated using the formula—
- closing New Zealand property – opening New Zealand property.



**Definition of items in formula**

- (2) In the formula,—
- (a) **closing New Zealand property** is the amount of New Zealand property of the CFC at the end of the accounting period calculated under the rules in **sections CD 37 to CD 41**;
  - (b) **opening New Zealand property** is the amount of New Zealand property of the CFC at the start of the accounting period, calculated under the rules in **sections CD 37 to CD 41**.

**Positive amounts**

- (3) The New Zealand repatriation amount can never be negative.

**CFC's unrepatriated income balance**

- (4) The New Zealand repatriation amount can never exceed the unrepatriated income balance of the CFC for the accounting period, calculated under **section CD 42**.

*Defined:* accounting period, amount, attributed repatriation, CFC, New Zealand repatriation amount

Compare: 1994 No 164 s CG 8(2)

**CD 37 New Zealand property amount****Formula**

- (1) The amount of New Zealand property of a CFC at any time is calculated using the formula—
- $$\text{tangible property} + \text{associated party equity} + \text{associated party debt.}$$

**Definition of items in formula**

- (2) In the formula,—
- (a) **tangible property** is the total amount of tangible property (including real property), measured at cost, held by the CFC and situated in New Zealand;
  - (b) **associated party equity** is the total amount of shares or options over shares, measured at cost, held by the CFC in companies that are at the time both—
    - (i) resident in New Zealand; and
    - (ii) associated with the CFC:

- (c) **associated party debt** is the total amount of balances outstanding, measured under **section CD 40**, but never totalling less than zero, of all financial arrangements, to which both—
- (i) the CFC is a party; and
  - (ii) a New Zealand resident associated with the CFC at the time is a party.

#### **Acquisitions from associates below market value**

- (3) If the CFC acquires any property from a person who is associated (at the time of acquisition) with the CFC for a cost that is less than the market value of the property at the time, the cost to the CFC of acquiring the property is treated as being equal to the market value at the time (except to the extent to which 1 of the specific rules in **sections CD 38 to CD 41** states otherwise).

*Defined:* amount, associated, CFC, company, financial arrangement, New Zealand resident, resident in New Zealand, share

Compare: 1994 No 164 s CG 8(3), (5), (14) “tangible property”

### **CD 38 Cost of tangible property**

#### **Capital expenditure**

- (1) The cost of any item of tangible property (except trading stock) includes each of the following expenditures if no deduction would have been allowed under this Act for it (except for an amount of depreciation loss) had the CFC been a New Zealand resident:
- (a) the original purchase price of the property;
  - (b) other expenditure incurred on purchasing the property;
  - (c) expenditure incurred before the relevant time in improving the property;
  - (d) expenditure incurred before the relevant time in establishing or improving the CFC’s legal right to the property.

#### **Outstanding third party funding**

- (2) The cost of any item of tangible property is reduced (but not to less than zero) by the balance outstanding at the time of a loan to the extent to which—
- (a) the loan is secured over the property; and
  - (b) the lender is not associated at the time with the CFC; and

- (c) the balance is attributable to expenditure on the property included in the cost under **subsection (1)** (including any refinancing of an amount that is attributable to such expenditure).

#### **Temporary New Zealand property**

- (3) Subject to **section CD 41(3) and (4)**, the amount of the **tangible property** item in the formula in **section CD 37(1)** excludes the cost of any property that is either—
  - (a) situated in New Zealand for less than 365 days in total; or
  - (b) disposed of by the CFC—
    - (i) by the later of 364 days after its acquisition and 9 months after the end of the CFC's accounting period in which it was acquired; and
    - (ii) to a person that is either a New Zealand resident or is not associated with the CFC at the time of the cost measurement.

#### **CFC's business operations assets**

- (4) The amount of the **tangible property** item in the formula in **section CD 37(1)** excludes the cost of any property that is acquired or used by the CFC in the course of carrying on a substantial business that is not either—
  - (a) of the same nature as a business also carried on in New Zealand at the time of the acquisition by a person that is—
    - (i) a New Zealand resident; and
    - (ii) associated at the time with the CFC; and
    - (iii) not a company in which the CFC holds at the time shares that are excluded from the New Zealand repatriation measurement by **section CD 39(1)**; or
  - (b) carried on solely or substantially for the purpose of defeating the application of **section CD 13**.

**Defined:** accounting period, associated person, attributed repatriation, business, CFC, company, deduction, depreciation loss, New Zealand, New Zealand resident, share, trading stock

Compare: 1994 No 164 s CG 8(6), (14) "qualified transitory property"

**CD 39 Cost of associated party equity****Shares in subsidiaries engaged in same business**

- (1) The cost of associated party equity at any time excludes the cost of shares or options over shares acquired in a company if—
- (a) the CFC and the company are a wholly-owned group of companies at the time; and
  - (b) the company carries on a business of the same nature as a substantial business carried on by the CFC before the acquisition; and
  - (c) the CFC (or another CFC associated with it at the time) has a significant involvement in managing the company's business; and
  - (d) neither the company's business nor the CFC's business is of the same nature as a business also carried on in New Zealand at the time of the acquisition by a person that is—
    - (i) a New Zealand resident; and
    - (ii) associated at the time with the CFC; and
    - (iii) not a company in which the CFC holds at the time shares that are excluded from the New Zealand repatriation amount measurement by this subsection; and
  - (e) neither the company's business nor the CFC's business is carried on solely or substantially for the purpose of defeating the application of **section CD 13**.

**Currency conversions**

- (2) If any shares or options are not denominated in New Zealand dollars, the cost is calculated by converting the amount in the relevant foreign currency at the rate of exchange applying on the date the shares or options were acquired.

**Defined:** associated person, attributed repatriation, business, CFC, company, New Zealand, New Zealand resident, New Zealand repatriation amount, share, wholly-owned group of companies

Compare: 1994 No 164 s CG 8(7)

**CD 40 Outstanding balances of financial arrangements****Rules for attributed repatriation calculation only**

- (1) The rules in this section apply only for the purposes of calculating the amount of the **associated party debt** item in the formula in **section CD 37(1)**.

**Balance: amounts due**

- (2) The outstanding balance of a financial arrangement to which the CFC is a party is the amount due to or by the CFC under the financial arrangement, whether or not payable at the time.

**Calculation under CFC rules**

- (3) The amount due is calculated by applying **section EX 21** (Branch equivalent income or loss: calculation rules) and 1 of the spreading methods under the financial arrangement rules as if calculating the branch equivalent income or loss of the CFC.

**Currency conversion**

- (4) If the amount is not due in New Zealand dollars, the amount is converted by applying the exchange rate between the foreign currency and New Zealand dollars that applies on the date the financial arrangement is entered into.

**All arrangements with same associate**

- (5) In calculating the net outstanding balance of a financial arrangement to which the CFC and an associated person are parties, all financial arrangements entered into by those parties are treated as a single financial arrangement, with outstanding balances aggregated and netted off.

**Short-term financial arrangements**

- (6) No account is taken of a financial arrangement that, on the date it is entered into, is reasonably expected to and does mature within 365 days of the day on which it was entered into.

**Aggregation of consecutive or successive arrangements**

- (7) For the purposes of **subsection (6)**, if 2 or more consecutive or successive financial arrangements may, having regard to the

tenor of this section, fairly be regarded as 1 financial arrangement, those financial arrangements are to be regarded as 1 financial arrangement.

#### **Accruing amounts**

- (8) For the purposes of **subsections (6) and (10)(c)(i)**, an amount accrued (including interest and discount on issue) on a financial arrangement is treated as—
- (a) a new financial arrangement entered into on the date of accrual; and
  - (b) having been paid only when previous accruals on the financial arrangement have been paid.

#### **Temporary adjustments**

- (9) A temporary reduction or increase in the outstanding balance, at the end of an accounting period of the CFC, of any financial arrangement is disregarded if it has a purpose or effect of defeating the application of **section CD 13**.

#### **When financial arrangement matures within 5 years or is remitted**

- (10) **Subsections (11) and (12)** apply if—
- (a) a CFC is party to a financial arrangement; and
  - (b) the outstanding balance of the financial arrangement has been or, but for **subsection (11)**, would be taken into account in calculating the New Zealand repatriation amount of the CFC for an accounting period; and
  - (c) either—
    - (i) the financial arrangement matures within 5 years of the date on which it was entered into; or
    - (ii) an amount owing under the financial arrangement is remitted or released and, as a result, a person derives a dividend; and
  - (d) **section CZ 11(4)** (Transitional relief for calculation of attributed repatriation dividends: 2 July 1992) does not apply to the financial arrangement.

#### **Retrospective exclusion of amounts**

- (11) If a person with an income interest in the CFC notifies the Commissioner in writing of the maturity or dividend, for the

purposes of calculating the dividend amount which the person has derived under **section CD 13** from the CFC,—

- (a) the financial arrangement is disregarded, if **subsection (10)(c)(i)** applies; or
- (b) the amount remitted or released is disregarded, if **subsection (10)(c)(ii)** applies.

#### **Amendment of assessments and refunds**

- (12) In order to give effect to **subsection (11)**, the Commissioner must—
  - (a) amend any relevant assessment under **section 113B** of the Tax Administration Act 1994; and
  - (b) refund any income tax, dividend withholding payment, dividend withholding payment penalty tax, or late payment penalty, despite **section MD 1** (Refund of excess tax) but otherwise subject to this Act.

#### **Substitution of financial arrangements**

- (13) For the purposes of **subsection (10)(c)(i)**, a financial arrangement (**first financial arrangement**) to which a CFC is a party is not treated as maturing within 5 years of the date on which it was entered into if—
  - (a) on or after the date of maturity, another financial arrangement (**second financial arrangement**) is entered into by the CFC or a CFC associated with first CFC at any time during the term of the second financial arrangement; and
  - (b) the second financial arrangement is a substitute, in whole or part, for the first financial arrangement; and
  - (c) the second financial arrangement was entered into with a purpose of ensuring that **subsections (11) and (12)** apply.

*Defined:* accounting period, amount, associated, attributed repatriation, branch equivalent income, CFC, Commissioner, dividend, dividend withholding payment, dividend withholding payment penalty tax, financial arrangement, income interest, income tax, interest, loss, maturity, New Zealand, New Zealand repatriation amount, year

Compare: 1994 No 164 ss CF 2(17), (18), CG 8(8)

### **CD 41 Property transfers between associated persons**

#### **Transfers between associated CFCs**

- (1) **Subsection (2)** applies if—
  - (a) a CFC disposes of any property to another CFC; and

- (b) the first CFC held the property at the start of the accounting period in which the disposal occurs; and
- (c) the 2 CFCs are associated persons at the time of the disposal.

**Calculation as if property held by second CFC for whole period**

- (2) A person can choose to calculate their attributed repatriation from both CFCs as if the disposal had occurred at the start of each CFC's accounting period in which the disposal in fact occurs. The election is made by the person preparing their return of income accordingly.

**Transfers to non-residents with mismatching accounting periods**

- (3) **Subsection (4)** applies if—
  - (a) a CFC disposes of property to an associated person who is not a New Zealand resident during an accounting period (**transfer period**); and
  - (b) the CFC did not own the property at the end of the previous accounting period; and
  - (c) the associated person has an accounting period that ends on a later date than the CFC's transfer period ends; and
  - (d) the associated person holds the property at the end of the CFC's transfer period; and
  - (e) the associated person does not hold the property at the end of its own accounting period in which the disposal occurs.

**Calculation as if CFC holding property at the end of period**

- (4) For the purposes of calculating the CFC's New Zealand repatriation amount, it is treated as if it still held the property at the end of the transfer period.

*Defined:* accounting period, associated, attributed repatriation, CFC, New Zealand repatriation amount, New Zealand resident, return of income

Compare: 1994 No 164 s CG 8(4), (10)



**CD 42 Unrepatriated income balance****Formula**

- (1) The unrepatriated income balance of a CFC for an accounting period is calculated using the formula—

shareholders' funds – available subscribed capital  
– previous New Zealand repatriation amounts.

**Definition of items in formula**

- (2) In the formula,—
- (a) **shareholders' funds** is the total shareholders' funds of the CFC at the end of the accounting period, measured under generally accepted accounting practice:
  - (b) **available subscribed capital** is the CFC's available subscribed capital at the end of the accounting period, excluding any amount resulting from—
    - (i) a bonus issue by the CFC derived by a person who is not a resident of New Zealand; or
    - (ii) direct or indirect reinvestment of a distribution by the CFC after 2 July 1992 to a person not resident in New Zealand:
  - (c) **previous New Zealand repatriation amounts** is the total of any—
    - (i) New Zealand repatriation amount of the CFC for a previous accounting period, reduced under any amended assessment under **section CD 40(12)**; and
    - (ii) specified repatriation amount of the CFC for previous accounting period ending after 2 July 1992 and before the 2003–04 tax year calculated under section CG 8 of the Income Tax Act 1994 as it applied before the 2003–04 tax year and reduced under any amended assessment under section CF 2(17) of the Income Tax Act 1994 as it similarly applied.

**Positive amounts**

- (3) The unrepatriated income balance can never be negative.

*Defined:* accounting period, available subscribed capital, bonus issue, CFC, generally accepted accounting practice, income year, New Zealand, New Zealand repatriation amount, resident of New Zealand, tax year

Compare: 1994 No 164 s CG 8(11)

### *Prevention of double taxation*

#### **CD 43 Prevention of double taxation of share cancellation dividends**

##### **Application of this section**

- (1) This section applies if—
- (a) a person derives an amount from the cancellation of a share in a company; and
  - (b) the amount is income of the person under 1 of the following provisions (**other rules**):
    - (i) **section CB 1** (Amounts derived from business); or
    - (ii) **section CB 2** (Carrying on or carrying out schemes for profit); or
    - (iii) **section CB 3** (Personal property acquired for purpose of disposal); or
    - (iv) another provision of this Act outside this subpart.

##### **Treatment of amount**

- (2) For the purposes of the other rules, the amount derived by the person from the company is treated as if it were reduced (but not below zero) by the amount of any dividend derived by the person in relation to the cancellation (excluding any attached imputation credit or dividend withholding payment credit).

##### **Non-taxable dividends**

- (3) **Subsection (2)** does not apply to the extent to which—
- (a) the dividend is exempt income of the person under **sections CW 9 to CW 11** (which relate to income from equity); and
  - (b) **section NH 1** (Liability to make deduction in respect of foreign withholding payment dividend) does not require the person to deduct a dividend withholding payment from the dividend.

##### **Subsection (3)(b): formula**

- (4) For the purposes of **subsection (3)(b)**, the extent to which a person is required to deduct dividend withholding payment is calculated using the formula—

$$\text{dividend withholding payment} \times \frac{1}{\text{tax rate.}}$$

**Definition of items in formula**

- (5) In the formula,—
- (a) **dividend withholding payment** is any dividend withholding payment that must be deducted from the dividend under **section NH 2(1)** (Amount of dividend withholding payment to be deducted):
  - (b) **tax rate** is the basic rate of income tax for companies, expressed as a decimal, stated in **schedule 1, part A, clause 5** (Basic rates of income tax and specified superannuation contribution withholding tax), that applies for the tax year in which the dividend is paid.

**Relationship of dividend exclusions to other provisions**

- (6) Subject to **subsection (2)**, the amount derived by the person from the company may be income of the person despite the fact that the amount is excluded from being a dividend by any of **sections CD 14 to CD 19**.

**Relationship with section FC 3**

- (7) This section is overridden by **section FC 3** (Share dealing).

*Defined:* amount, basic rate, company, dividend, dividend withholding payment, dividend withholding payment credit, exempt income, imputation credit, income, income tax, share, tax year

Compare: 1994 No 164 s CF 2(15)

**Subpart CE—Employee or contractor income****Index***Employment income*

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

*Definitions*

- CE 5 Meaning of expenditure on account of an employee
- CE 6 Meaning of share
- CE 7 Meaning of share purchase agreement

*Attributed income*

- CE 8 Attributed income from personal services

*Restrictive covenants and exit inducement payments*

- CE 9 Restrictive covenants
  - CE 10 Exit inducements
- 

***Employment income*****CE 1 Amounts derived in connection with employment**

The following amounts or benefits that a person derives in connection with their employment or service are income of the person:

- (a) salary or wages or an allowance, bonus, extra pay, or gratuity:
- (b) expenditure on account of an employee that is expenditure on account of the person:
- (c) the market value of board that the person receives in connection with their employment or service:
- (d) a benefit received under a share purchase agreement:
- (e) directors' fees:
- (f) compensation for loss of employment or service:
- (g) any other benefit in money.

**Defined:** amount, expenditure on account of an employee, extra pay, income, salary or wages, share purchase agreement

Compare: 1994 No 164 ss CH 3, OB 1 "monetary remuneration"

**CE 2 Value and timing of benefits under share purchase agreements****What this section does**

- (1) This section determines the value of a benefit that an employee receives under a share purchase agreement and the allocation of the benefit to a particular tax year. If restrictions apply to the disposal of shares received under a share purchase agreement, **section CE 3** applies.

**If employees acquire shares**

- (2) If an employee acquires shares under a share purchase agreement, the value of the benefit to the employee is the amount by which the value of the shares when they were acquired is more than the amount paid or payable for them. The employee receives the benefit in the tax year in which they acquire the shares.

**If employees dispose of rights to non-associates**

- (3) If an employee disposes of their rights under a share purchase agreement to a person who is not associated with them, the value of the benefit is the consideration for the disposal of the rights. The employee receives the benefit in the tax year in which they dispose of the rights.

**If associates acquire shares**

- (4) If, following 1 or more transactions between associated persons, an associated person acquires the shares under a share purchase agreement, the value of the benefit is the difference between the value of the shares on the date of acquisition by the associated person and the amount paid or payable for them. If the difference is negative, the value is zero. The employee receives the benefit in the tax year in which the associated person acquires the shares.

**If associates dispose of rights to non-associates**

- (5) If, following 1 or more transactions between associated persons, a person who is not an associated person acquires the rights under a share purchase agreement, the value of the benefit is the consideration paid for that disposal. The employee receives the benefit in the tax year in which the last associated person disposes of the rights.

**If shares transferred when employees end employment or die**

- (6) The value of the benefit is zero if a share purchase agreement provides unconditionally that, when the employee ends their employment or service or dies, the shares must be transferred to the employer or to the person from whom they were acquired, either without consideration or for a consideration no more than that paid by the employee.

**Benefits under approved schemes**

- (7) The value of the benefit is zero if the benefit arises under a share purchase scheme approved by the Commissioner under

**section DC 11** (Loans to employees under share purchase schemes).

*Defined:* amount, associated person, Commissioner, employee, employer, share, share purchase agreement, share purchase scheme, tax year

Compare: 1994 No 164 s CH 2(2), (3) second proviso, third proviso

### **CE 3 Restrictions on disposal of shares**

#### **Effect of restrictions**

- (1) When the benefit to an employee under a share purchase agreement is being valued, a restriction in the agreement on the disposal of the shares is taken into account only if the restriction ends at least 8 years after the end of the tax year in which the employee receives the benefit or after the employee dies.

#### **If employees end employment before restriction ends**

- (2) If, in the circumstances described in **subsection (1)**, the employee ends their employment or service before the restriction ends, all the shares must be transferred unconditionally to the employer or the person from whom they were acquired either for no consideration or for a consideration that is no more than that paid by the employee.

#### **If employees transfer shares under matrimonial agreements**

- (3) If a share purchase agreement does not restrict an employee from transferring the shares under a matrimonial agreement, but the disposal of the shares by the person to whom the shares are transferred is restricted for a period that ends at least 8 years after the end of the tax year in which the employee would otherwise have received the benefit or after the death of the employee, then the restriction is treated as applying to the employee.

*Defined:* employee, employer, matrimonial agreement, share, share purchase agreement, tax year, year

Compare: 1994 No 164 s CH 2(3) first proviso, fourth proviso

**CE 4 Adjustments to value of benefits under share purchase agreements**

The Commissioner may adjust the value of a benefit under a share purchase agreement at any time if the value has been reduced because—

- (a) a restriction under **section CE 3(2) or (3)** existed when the employee disposed of the shares and was not taken into account in valuing the benefit; or
- (b) further consideration is required for the shares; or
- (c) the shares are reacquired either without consideration or for a consideration no more than that paid by the employee.

*Defined:* Commissioner, employee, share, share purchase agreement

Compare: 1994 No 164 s CH 2(4)

*Definitions***CE 5 Meaning of expenditure on account of an employee****Meaning**

- (1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee.

**Inclusion**

- (2) **Expenditure on account of an employee** includes a premium that an employer pays on a life insurance policy taken out for the benefit of the employee (or their spouse or their child). This subsection is overridden by **subsection (3)(f) to (i)**.

**Exclusions**

- (3) **Expenditure on account of an employee** does not include—
  - (a) expenditure for the benefit of an employee or a payment made to reimburse an employee under **section CW 13** (Expenditure on account, and reimbursement, of employees):
  - (b) an allowance for additional transport costs under **section CW 14** (Allowance for additional transport costs):
  - (c) expenses that an employee pays in connection with their employment or service to the extent to which the expenditure is their employer's liability, if the

- employee undertakes to discharge the liability in consideration of the making of the payment:
- (d) expenditure on an employment-related loan to which the fringe benefit tax rules apply:
  - (e) an employer's superannuation contribution:
  - (f) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee (or their spouse or their child) if—
    - (i) the premium cannot be refunded to, or converted to cash by, the employee or an associated person; and
    - (ii) the only benefits that are payable under the policy are those payable on the death of the employee (or their spouse or their child) or those payable because of accident, disease, or sickness of the employee (or their spouse or their child):
  - (g) a premium that an employer that is a close company pays on a life insurance policy taken out for the benefit of the employee (or their spouse or their child), to the extent to which the expenditure is treated as a dividend under **subpart CD** (Income from equity):
  - (h) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee (or their spouse or their child) if the policy is, or is part of, a superannuation category 1 scheme, a superannuation category 2 scheme, or a superannuation category 3 scheme:
    - (i) a premium that an employer pays on a life insurance policy taken out for the benefit of the employee (or their spouse or their child) if the policy is held by or on behalf of trustees of a superannuation category 3 scheme.

**Defined:** additional transport costs, associated person, close company, dividend, employee, employer, employer's superannuation contribution, employment-related loan, expenditure on account of an employee, fringe benefit tax rules, life insurance policy, premium, superannuation category 1 scheme, superannuation category 2 scheme, superannuation category 3 scheme, trustee

Compare: 1994 No 164 s OB 1 "expenditure on account of an employee", "specified fund"

## CE 6 Meaning of share

In **sections CE 2 to CE 4 and CE 7**,—

- (a) **share** includes a convertible note:



- (b) shares are treated as having been acquired on the date on which the right or option to buy them is exercised:
- (c) if shares or rights are acquired or transferred under an agreement by a trustee for the benefit of an employee to whom **section CE 2** applies, the employee is treated as having acquired or transferred the shares or rights.

*Defined:* convertible note, share, trustee

Compare: 1994 No 164 s CH 2(5), (6), (8)

### **CE 7 Meaning of share purchase agreement**

In **sections CE 1(d) and CE 2 to CE 4**, **share purchase agreement** means an agreement to sell or issue shares in a company to an employee who receives the benefit in connection with their employment or service, although it is not necessary for an employment relationship to exist when the employee receives the benefit.

*Defined:* company, employee, employment, share, share purchase agreement

Compare: 1994 No 164 s CH 2(1), (7)

## *Attributed income*

### **CE 8 Attributed income from personal services**

#### **When this section applies**

- (1) This section applies when, under **sections GC 14B to GC 14E** (which relate to the attribution rule), a person is required to attribute an amount to another person.

#### **Income**

- (2) The amount attributed is income of the person to whom it is attributed.

#### **Timing of income**

- (3) The amount is allocated to the income year in which it is attributed.

*Defined:* amount, income, income year

Compare: 1994 No 164 ss CD 7, EN 8

*Restrictive covenants and exit inducement payments***CE 9 Restrictive covenants****When this section applies**

- (1) This section applies when—
  - (a) a person (**person A**) gives an undertaking that restricts, or is intended to restrict, their ability to perform services as an employee, office holder, or independent contractor, whether or not the undertaking is legally enforceable; and
  - (b) a person, whether or not person A, derives an amount for the undertaking.

**Income**

- (2) The amount is income of person A.

**Exclusion**

- (3) **Subsection (2)** does not apply if the following circumstances exist:
  - (a) person A derives the amount because person A sells a business to another person (**person B**); and
  - (b) person A and person B agree in writing that the transaction is the sale of a business; and
  - (c) person A derives the amount as consideration for an undertaking by person A not to provide goods or services in competition with the goods or services that person B provides from the business; and
  - (d) person A does not provide services to person B after the sale of the business, other than temporarily providing services incidental to the sale.

**Sale of all shares in company**

- (4) For the purposes of **subsection (3)**, the sale of a business includes the sale of shares in a company, but only if—
  - (a) the sale is of all the shares in the company; and
  - (b) the company—
    - (i) carries on a business; or
    - (ii) directly or indirectly wholly owns another company that carries on a business.

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**Modifications to subsection (3) when subsection (4) applies**

- (5) When **subsection (4)** applies,—
- (a) the words “person A sells a business” in **subsection (3)(a)** mean that person A may sell the business or a company associated with person A may sell the business;
  - (b) the words “person A and person B agree” in **subsection (3)(b)** mean that person A may agree with person B or a company associated with person A may agree with person B;
  - (c) the words “person B” in **subsection (3)(c) and (d)** mean the company that carries on the business, whether the company referred to in **subsection (4)(b)(i)** or the company referred to in **subsection (4)(b)(ii)**.

**Sale of part of business**

- (6) For the purposes of **subsection (3)**, the sale of a business includes the sale of part of a business, if the part can be operated separately.

*Defined:* amount, associated person, business, company, employee, income, share

Compare: 1994 No 164 s CHA 1

**CE 10 Exit inducements**

An amount is income of a person if they derive it for—

- (a) the loss of a vocation; or
- (b) the loss of a position; or
- (c) leaving a position; or
- (d) loss of status.

*Defined:* amount, income

Compare: 1994 No 164 s CHA 2

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

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**Index**

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

**CF 1 Benefits, pensions, compensation, and government grants****Income**

- (1) The following amounts are income:
  - (a) an accident compensation payment:
  - (b) an education grant:
  - (c) an income-tested benefit:
  - (d) a living alone payment:
  - (e) a New Zealand superannuation payment:
  - (f) a pension:
  - (g) a veteran's pension.

**Some definitions**

- (2) In this section,—  
**accident compensation payment** means 1 or more of the following:
  - (a) a payment under the Accident Compensation Act 1982 of earnings-related compensation that is not recovered or recoverable by, or refunded to, to the chief executive of the department currently responsible for administering the Social Security Act 1964:
  - (b) a payment under section 80(4) of the Accident Compensation Act 1982 that is not recovered or recoverable by, or refunded to, to the chief executive of the department currently responsible for administering the Social Security Act 1964:
  - (c) a payment of any of the following kinds under the Accident Rehabilitation and Compensation Insurance Act 1992, none of which is recovered or recoverable:
    - (i) compensation for loss of earnings under any of sections 38, 39, and 43; or
    - (ii) a vocational rehabilitation allowance under section 25; or
    - (iii) compensation for loss of potential earning capacity under section 45 or 46; or
    - (iv) weekly compensation under any of sections 58, 59, and 60; or
    - (v) continued compensation under section 138:
  - (d) a payment under the Accident Insurance Act 1998 of weekly compensation that is not recovered or recoverable:

- (e) a payment under a policy of personal accident or sickness insurance under section 188(1)(a) of the Accident Insurance Act 1998 (as it was immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000) of compensation for loss of earnings or loss of potential earning capacity as it relates to work-related personal injury;
- (f) a payment under the Injury Prevention, Rehabilitation, and Compensation Act 2001 by the Corporation of weekly compensation that is not recovered or recoverable under section 248 of that Act

**education grant** means a basic grant or an independent circumstances grant under regulations made under section 303 of the Education Act 1989

**pension—**

- (a) includes a gratuitous payment made to a person in return for services that the person (or their parent, child, spouse, former spouse, or dependant) provided to the payer when the payment would not have been made if the services had not been provided; and
- (b) does not include a payment made to the person because of, and within 1 year after, the death of that parent, child, spouse, former spouse, or dependant.

*Defined:* accident compensation payment, amount, chief executive of the department currently responsible for administering the Social Security Act 1964, education grant, income, income-tested benefit, living alone payment, New Zealand superannuation, pension, veteran's pension, year

Compare: 1994 No 164 s CC 1

## CF 2 Remission of specified suspensory loans

### When this section applies

- (1) This section applies when a public authority—
  - (a) grants a loan to a person for a business that the person carries on; and
  - (b) designates the loan as a specified suspensory loan.

### Income

- (2) An amount remitted on the specified suspensory loan is income of the person.

### Timing of income

- (3) The amount is allocated in equal parts to the income year of remission and the following 2 income years. However, the person may choose to allocate some or all of the amount in the following 2 income years to a previous income year that is 1 of the 3 income years.

#### **Business ceasing**

- (4) If the person ceases to carry on the business for which the specified suspensory loan was granted, an amount remitted that is allocated to a later income year is allocated to the income year in which the person ceases business.

*Defined:* amount, business, income, income year, public authority

Compare: 1994 No 164 s DC 2

### Subpart CG—Recoveries

#### **Index**

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| CG 1 | Amount of depreciation recovery income                          |
| CG 2 | Remitted amounts  |
| CG 3 | Bad debt repayment  |
| CG 4 | Recovered expenditure or loss                                   |
| CG 5 | Recoveries or receipts by employers from superannuation schemes |
| CG 6 | Receipts from insurance or other compensation for trading stock |

#### **CG 1 Amount of depreciation recovery income**

An amount of depreciation recovery income that a person has is income of the person.

*Defined:* amount, depreciation recovery income, income

#### **CG 2 Remitted amounts**

##### **When this section applies**

- (1) This section applies when—
- a person is allowed a deduction for an income year of an amount that the person is liable to pay; and
  - the person's liability for the amount is later remitted or cancelled, wholly or partly; and
  - the remission or cancellation is not a dividend; and

- (d) the person is not required to calculate a base price adjustment by **section EW 35** (When calculation of base price adjustment required).

### **Income**

- (2) The amount to which the remission or cancellation applies is income of the person.

### **Timing of income**

- (3) The income is allocated to the income year in which the remission or cancellation occurs.

### **How remission or cancellation occurs**

- (4) Remission or cancellation occurs, for the purposes of this section, in 1 of the following ways:
  - (a) a liability is remitted to the extent to which the person is discharged from it without fully adequate consideration in money or money's worth:
  - (b) a liability is cancelled to the extent to which the person is released from it under the Insolvency Act 1967 or the Companies Act 1993 or the laws of a country or territory other than New Zealand:
  - (c) a liability is cancelled to the extent to which the person is released from it by a deed or agreement of composition with the person's creditors:
  - (d) a liability is cancelled to the extent to which it is irrecoverable or unenforceable through lapse of time.

*Defined:* amount, deduction, dividend, income, income year, New Zealand

Compare: 1994 No 164 ss CE 4(1), (2), IE 1(4)(d)

### **CG 3 Bad debt repayment**

An amount received by a person for a bad debt for which the person has been allowed a deduction is income of the person.

*Defined:* amount, deduction, income

Compare: 1994 No 164 s CE 1(1)(d)

### **CG 4 Recovered expenditure or loss**

#### **When this section applies**

- (1) This section applies when—

- (a) a person is allowed a deduction for expenditure or loss; and
- (b) the person recovers some or all of the expenditure or loss, whether through insurance, indemnity, or otherwise; and
- (c) the amount recovered, to the extent of the deduction, is not income of the person under any other provision of this Act.

**Income**

- (2) The amount recovered, to the extent of the deduction, is income of the person.

**Timing of income**

- (3) The income is allocated to the income year in which the amount is recovered.

*Defined:* amount, deduction, income year

Compare: 1994 No 164 ss DJ 1(c), DJ 5(2), DJ 7, DJ 8(1), DL 1(6), (12), DL 4

**CG 5 Recoveries or receipts by employers from superannuation schemes****When this section applies**

- (1) This section applies when—
  - (a) an employer makes an employer's superannuation contribution to a superannuation scheme for their employee's benefit; and
  - (b) the employer is allowed a deduction for the contribution; and
  - (c) the employer—
    - (i) recovers the contribution from the superannuation scheme; or
    - (ii) receives a benefit in money or money's worth from the superannuation scheme, other than an amount paid to the employer under the scheme in return for contributions made by or on behalf of the employer in a personal capacity.

**Income**

- (2) The amount recovered or received is, to the extent of the deduction, income of the employer.



**Timing of income**

- (3) The income is allocated to the income year in which the amount is recovered or received.

*Defined:* amount, deduction, employee, employer, employer's superannuation contribution, income, income year, superannuation scheme

Compare: 1994 No 164 s DF 3(3), (4)

**CG 6 Receipts from insurance or other compensation for trading stock****When this section applies**

- (1) This section applies when a person receives an amount of insurance or other compensation for the loss or destruction of, or damage to,—
- (a) trading stock;
  - (b) anything acquired, manufactured, or produced for a purpose ancillary to a business of manufacturing or producing goods for sale or exchange.

**Income**

- (2) The part of the insurance or other compensation that is attributable to the asset is income if—
- (a) the person is allowed a deduction in a tax year for the cost of the asset; and
  - (b) the deduction is not for an amount of depreciation loss.

**Timing of income**

- (3) The income is allocated to the income year in which the amount is received.

*Defined:* amount, business, deduction, depreciation loss, income, income year, tax year, timber, trading stock

Compare: 1994 No 164 s EE 19

## Subpart CH—Adjustments

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

- CH 1 Trading stock, livestock, and excepted financial arrangements
- CH 2 Adjustment for prepayments
- CH 3 Adjustment for deferred payment of employment income

*Change to accounting practice*

- CH 4 Adjustment for change to accounting practice

*GST adjustments*

- CH 5 GST adjustments
- 

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

#### **CH 1 Trading stock, livestock, and excepted financial arrangements**

##### **When this section applies**

- (1) This section applies when—
  - (a) a person—
    - (i) has a business that has trading stock or livestock; or
    - (ii) holds excepted financial arrangements that are revenue account property; and
  - (b) **section EA 1** (Trading stock, livestock, and excepted financial arrangements) applies.

##### **Income**

- (2) The adjustment calculated under **section EA 1(2)** (Trading stock, livestock, and excepted financial arrangements) is income of the person for the income year.

**Defined:** business, excepted financial arrangement, income, income year, revenue account property, trading stock

Compare: 1994 No 164 s EE 2(4)

## CH 2 Adjustment for prepayments

### When this section applies

- (1) This section applies when a person has, under **section EA 3** (Prepayments), an unexpired amount of expenditure at the end of an income year.

### Income

- (2) The unexpired amount is income of the person for the income year.

*Defined:* amount, income, income year

Compare: 1994 No 164 s EF 1(1)(b)

## CH 3 Adjustment for deferred payment of employment income

### When this section applies

- (1) This section applies when a person has, under **section EA 4** (Deferred payment of employment income), an unpaid amount of expenditure on employment income that is to be treated as income for an income year.

### Income

- (2) The unpaid amount is income of the person for the income year.

*Defined:* amount, employment income, income, income year

Compare: 1994 No 164 s EF 1(1)(b)

### *Change to accounting practice*

## CH 4 Adjustment for change to accounting practice

### When this section applies

- (1) This section applies when a person has, under **section EG 2(2)(a) or (3)(a)** (Adjustment for changes to accounting practice), an amount owing to them or an amount owed by them as quantified in those paragraphs.

### Income

- (2) An amount quantified and allocated under **section EG 2(2)(a) or (3)(a)** (Adjustment for changes to accounting practice) is income of the person.

*Defined:* amount, income

Compare: 1994 No 164 s EC 1

### *GST adjustments*

#### **CH 5 GST adjustments**

##### **Income**

- (1) An amount calculated under sections 21F and 21G of the Goods and Services Tax Act 1985 relating to the application of goods and services is income of a person.

##### **Exclusion**

- (2) This section does not apply to an amount that relates to the application of a capital asset other than for the purposes of deriving income.

*Defined:* amount, income

Compare: 1994 No 164 s ED 4(3)(b), (g)

#### Subpart CQ—Attributed income from foreign equity

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##### **Index**

###### *Attributed controlled foreign company income*

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

###### *Foreign investment fund income*

- CQ 4 Foreign investment fund income
  - CQ 5 When FIF income arises
  - CQ 6 Calculation of FIF income
-

*Attributed controlled foreign company income***CQ 1 Attributed controlled foreign company income**

Attributed CFC income of a person is income.

*Defined:* attributed CFC income, income

Compare: 1994 No 164 s CG 1(a)

**CQ 2 When attributed CFC income arises****General rule**

- (1) A person has attributed CFC income from a foreign company in an income year if all the following apply:
  - (a) the foreign company is a CFC at any time during 1 of its accounting periods, under **sections EX 1 to EX 7** (which relate to the definition of a controlled foreign company):
  - (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 **sections EX 8 to EX 13** (which relate to calculating a person's income interest):
  - (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 **sections EX 14 to EX 16** (which relate to the 10% threshold):
  - (f) the CFC has branch equivalent income for the accounting period under **section EX 21** (Branch equivalent income or loss: calculation rules) or the special rule in **section EX 19** (Taxable distribution from non-qualifying trust) applies because the CFC gets a distribution from a non-qualifying trust:
  - (g) the CFC is not an unqualified grey list CFC for the accounting period, under **section EX 22** (Unqualified grey list CFCs).

**Special rule: branch equivalent FIF with taxable distribution**

- (2) A person also has attributed CFC income if **section EX 43(5)** (Branch equivalent method) applies because—
  - (a) the person has an attributing interest in a FIF; and

- (b) the person is using the branch equivalent method to calculate FIF income; and
- (c) the FIF receives a taxable distribution from a non-qualifying trust.

**Treated as derived while person New Zealand resident**

- (3) Attributed CFC income of a person who has ceased to be a New Zealand resident is treated as being derived while the person was a New Zealand resident.

**Dividend income can arise**

- (4) A person with an income interest of 10% or more in a CFC can also have dividend income under **section CD 13** (Attributed repatriations from controlled foreign companies) to the extent to which any attributed repatriation is calculated for the person and the CFC under **sections CD 35 to CD 42** (which relate to CFC attributed repatriation calculation rules).

*Defined:* accounting period, attributed CFC income, attributed repatriation, attributing interest, branch equivalent income, branch equivalent method, CFC, distribution, dividend, FIF, FIF income, foreign company, grey list, income, income interest, income year, New Zealand resident, non-qualifying trust, taxable distribution

Compare: 1994 No 164 ss CG 6(1), CG 7(1), (6), CG 13(1), CG 21(2)(a)

**CQ 3 Calculation of attributed CFC income**

The amount of attributed CFC income is calculated under the rules in **sections EX 18 to EX 20** (which relate to the calculation of attributed CFC income or loss).

*Defined:* amount, attributed CFC income

*Foreign investment fund income*

**CQ 4 Foreign investment fund income**

FIF income of a person is income.

*Defined:* FIF income, income

Compare: 1994 No 164 s CG 1(b)

**CQ 5 When FIF income arises**

**General rule**

- (1) A person has FIF income 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** (Foreign investment funds); 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 **sections EX 30** (Attributing interests in FIFs) and **EX 31** (Direct income interests in FIFs):
  - (c) at that time, the rights are not exempt from being an attributing interest in a FIF under any of—
    - (i) the CFC rules exemption in **section EX 32** (CFC rules exemption):
    - (ii) the grey list exemption in **section EX 33** (Grey list exemption):
    - (iii) the foreign exchange control exemption in **section EX 34** (Foreign exchange control exemption):
    - (iv) the immigrant's 4 year exemption in **section EX 35** (Immigrant's 4 year exemption):
    - (v) the immigrant's accrued superannuation entitlement exemption in **section EX 36** (Immigrant's exemption for accrued superannuation entitlement):
    - (vi) the non-resident's annuity or pension exemption in **section EX 37** (Exemption for non-resident's pension or annuity):
  - (d) if the person is a natural person and not acting as a trustee, the total cost (calculated under **section EX 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, an income amount is calculated for the year under **sections EX 38 to EX 45** (which relate to the calculation of FIF income or loss), **EX 48** (Top-up FIF income: deemed rate of return method), or **EX 49** (Top-up FIF income: 1 April 1993 uplift interests).

**Look-through calculation methods**

- (2) Despite **subsection (1)**, if the calculation method is the accounting profits method or branch equivalent method,—
- (a) FIF income 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 FIF income in an income year under the special rule in **section EX 46** (Additional FIF income or loss if CFC owns FIF), which applies when the CFC has an attributing interest in a FIF (whether or not the CFC is an unqualified grey list CFC under **section EX 22** (Unqualified grey list CFCs)).

**Treated as derived while person New Zealand resident**

- (4) FIF income of a person who has ceased to be a New Zealand resident is treated as being derived while the person was a New Zealand resident.

*Defined:* accounting period, accounting profits method, amount, attributing interest, branch equivalent method, calculation method, CFC, FIF, FIF income, foreign company, foreign superannuation scheme, grey list, income, income interest, income year, life insurance policy, New Zealand resident, non-resident, trustee

Compare: 1994 No 164 ss CG 7(5), CG 15(1), (2), CG 16(2), (5)

**CQ 6 Calculation of FIF income**

The amount of any FIF income is calculated, using the relevant calculation method, under **sections EX 42 to EX 49** (which relate to the calculation of FIF income or loss).

*Defined:* amount, calculation method, FIF income



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## Subpart CR—Income from life insurance

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- CR 1 Income of life insurer  
CR 2 Amount of income of life insurer
- 

**CR 1 Income of life insurer****Income: premium loading**

- (1) The premium loading that a life insurer has in an income year is income of the life insurer for the income year.

**Income: mortality profit**

- (2) The mortality profit that a life insurer has in an income year is income of the life insurer for the income year.

**Income: discontinuance profit**

- (3) The discontinuance profit that a life insurer has in an income year is income of the life insurer for the income year.

**Income: policyholder income**

- (4) The policyholder income that a life insurer has in an income year is income of the life insurer for the income year.

**Income: disposal amount**

- (5) An amount that a life insurer derives from disposing of any property of their life insurance business is income of the life insurer.

*Defined:* amount, business, discontinuance profit, income, income year, life insurance, life insurer, mortality profit, policyholder income, premium loading, property

Compare: 1994 No 164 ss CM 5(1), CM 6(1), CM 7(1), CM 10, CM 15(3)

**CR 2 Amount of income of life insurer****Premium loading**

- (1) The premium loading that a life insurer has in an income year is quantified under **sections EY 14 to EY 23** (which relate to premium loading).

**Mortality profit**

- (2) The mortality profit that a life insurer has in an income year is quantified under **sections EY 24 to EY 33** (which relate to mortality profit).

**Discontinuance profit**

- (3) The discontinuance profit that a life insurer has in an income year is quantified under **sections EY 34 to EY 40** (which relate to discontinuance profit).

**Policyholder income**

- (4) The policyholder income that a life insurer has in an income year is quantified under **sections EY 41 to EY 44** (which relate to policyholder income).

**Disposal of property**

- (5) The amount of income that a life insurer derives from disposing of any property of their life insurance business is quantified under **section EY 45** (Income from disposal of property).

*Defined:* amount, business, discontinuance profit, income, income year, life insurance, life insurer, mortality profit, policyholder income, premium loading, property

## Subpart CS—Superannuation funds

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## ***Withdrawals***

### **CS 1 Withdrawals**

#### **When this section applies**

- (1) This section applies when a withdrawal is made from a superannuation fund, if all the following apply:
  - (a) the fund is either—
    - (i) a fund to which the member's employer has made specified superannuation contributions for the member's benefit; or
    - (ii) a fund that has received a transfer from another superannuation fund for the member; and
  - (b) the withdrawal is related to the member's membership of the fund; and
  - (c) the application of this section to the withdrawal is not excluded by any of **sections CS 2 to CS 9**.

#### **Income**

- (2) Part of the withdrawal is income of the superannuation fund. The part that is income is calculated using the formula—

$$\frac{0.05 \times \text{withdrawal}}{\text{tax rate.}}$$

#### **Definition of items in formula**

- (3) The items in the formula are defined in **subsections (4) and (5)**.

**Withdrawal**

- (4) **Withdrawal** is 1 of the following:
- (a) if part of the withdrawal consists of some or all of the employer's contributions to superannuation savings and the trustee of the superannuation fund can establish the amount of the part, **withdrawal** is the withdrawn amount of the employer's contributions to superannuation savings;
  - (b) in any other case, **withdrawal** is—
    - (i) the money withdrawn from the superannuation fund; or
    - (ii) if money is not withdrawn, the market value of the withdrawal on the date of the withdrawal.

**Tax rate**

- (5) **Tax rate** is the basic rate of income tax stated in **schedule 1, part A, clause 4** (Basic rates of income tax and specified superannuation contribution withholding tax).

**Reduction of income**

- (6) The superannuation fund may reduce the income by 25% for each tax year to which both the following apply:
- (a) the tax year is 1 of the 4 tax years before the tax year in which the withdrawal is made; and
  - (b) in the tax year, the total of the member's taxable income and the employer's specified superannuation contributions to the fund for the member's benefit is less than \$60,000.

**Timing of income**

- (7) The income is allocated as follows:
- (a) if the superannuation fund is wound up or becomes a foreign superannuation scheme, the income is allocated to the tax year in which the withdrawal is made;
  - (b) in any other case, the income is allocated to the tax year following the tax year in which the withdrawal is made.

**Defined:** amount, employer, employer's contributions to superannuation savings, foreign superannuation scheme, income, income tax, member, specified superannuation contribution, superannuation fund, tax year, taxable income, trustee, withdrawal

Compare: 1994 No 164 ss CL 4, EN 6

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### *Exclusions*

#### **CS 2 Exclusions of withdrawals of various kinds**

##### **Withdrawal of member's contributions**

- (1) **Section CS 1** does not apply to a withdrawal of a member's contributions.

##### **Withdrawal of employer's contributions**

- (2) **Section CS 1** applies to a withdrawal of the employer's contributions to superannuation savings for a member's benefit only if—
- (a) the employer increases the level of the employer's specified superannuation contributions on and after 1 April 2000, as compared with the level in the last pay period ending before 1 April 2000; and
  - (b) the employer does not come within any of **subsection (3)(a) to (c)**.

##### **Increase not treated as such**

- (3) An employer who increases the level of specified superannuation contributions is treated as not doing so—
- (a) to the extent to which the employer increases the level by making additional specified superannuation contributions for the member's benefit to compensate for underpaying specified superannuation contributions for the member's benefit; or
  - (b) if the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract, and the requirement existed before 1 April 2000; or
  - (c) if the level of specified superannuation contributions does not change as a percentage of salary as between the level on and after 1 April 2000 and the level in the last pay period ending before 1 April 2000.

##### **Superannuation fund administration costs**

- (4) **Section CS 1** does not apply to a withdrawal for fees and expenses associated with the management and marketing of the superannuation fund.

##### **Life, health, sickness, or accident insurance**

- (5) **Section CS 1** does not apply to—
- (a) a withdrawal for the payment of premiums for life, health, sickness, or accident insurance held by or on behalf of a member of the superannuation fund, whether the insurance is group insurance or individual insurance; or
  - (b) a withdrawal to pay an amount claimed under insurance described in **paragraph (a)**.

**Transfer between funds**

- (6) **Section CS 1** does not apply to a withdrawal that takes the form of a direct transfer of an amount from a superannuation fund to another superannuation fund.

**Transfer from wound-up fund**

- (7) **Section CS 1** does not apply to a withdrawal that takes the form of a direct transfer to another superannuation fund of an amount from a superannuation fund that is wound up.

**Amount in fund on certain dates**

- (8) **Section CS 1** does not apply to a withdrawal of an amount, or earnings on it, that is in the superannuation fund either—
- (a) on the fund's balance date that precedes 1 April 2000, if a trustee of the fund calculates the amount in the fund on the balance date; or
  - (b) at the close of business on 31 March 2000, in any other case.

**Interpretation of subsection (8)**

- (9) For the purposes of **subsection (8)**,—
- (a) the amount that is in the superannuation fund is calculated according to market value;
  - (b) an amount in a superannuation fund includes specified superannuation contributions received after the fund's balance date that precedes 1 April 2000 or 31 March 2000, as applicable, if the contributions relate to a pay period ending on or before the fund's balance date or 31 March 2000, as applicable.

*Defined:* amount, employer, employer's contributions to superannuation savings, life insurance, member, member's contribution, pay, pay period, premium, specified superannuation contribution, superannuation fund, trustee, withdrawal

Compare: 1994 No 164 ss CL 3, CL 21

**CS 3 Exclusion of withdrawal on grounds of hardship****Significant financial hardship**

- (1) **Section CS 1** does not apply to a withdrawal to the extent to which the withdrawal is necessary to alleviate significant financial hardship.

**Meaning of significant financial hardship**

- (2) In this section, **significant financial hardship** includes significant financial difficulties that arise because of—
- (a) a member's inability to meet minimum living expenses; or
  - (b) a member's inability to carry out their usual occupation because of their temporary or permanent illness, injury, or disability; or
  - (c) a member's inability to meet mortgage repayments on their principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or
  - (d) the cost of modifying a residence to meet special needs arising from a disability of a member or a member's dependant; or
  - (e) the cost of medical treatment for an illness or injury of a member or a member's dependant; or
  - (f) the cost of palliative care for a member or a member's dependant; or
  - (g) the cost of a funeral for a deceased member or a member's deceased dependant.

*Defined:* member, mortgage, significant financial hardship, withdrawal

Compare: 1994 No 164 s CL 5

**CS 4 Exclusion of withdrawal to settle division of relationship property**

**Section CS 1** does not apply to a withdrawal to the extent to which the withdrawal is necessary to settle the division of relationship property under the Property (Relationships) Act 1976—

- (a) on the ending of the marriage of a husband and wife, “ending” having the meaning given to it by section 2A(2) of the Act; or

- (b) on the ending of the de facto relationship of de facto partners, “ending” having the meaning given to it by section 2D(4) of the Act.

*Defined:* withdrawal

Compare: 1994 No 164 s CL 6

### **CS 5 Exclusion of withdrawal paid as annuity or pension**

**Section CS 1** does not apply to a withdrawal if the amount withdrawn is—

- (a) used to buy an annuity that is payable for life or over 10 or more years; or
- (b) payable as an annuity for life or over 10 or more years; or
- (c) payable as a pension for life or over 10 or more years.

*Defined:* amount, pay, withdrawal, year

Compare: 1994 No 164 s CL 7

### **CS 6 Exclusion of withdrawal on partial retirement**

#### **Partial retirement**

- (1) **Section CS 1** does not apply to a withdrawal made on or after the date on which a member partially retires, if, on the date the withdrawal is made,—
  - (a) the member is employed for 30 hours per week or less; and
  - (b) the member has reduced their working hours because they are nearing full retirement; and
  - (c) the member stops contributing to the superannuation fund; and
  - (d) the member’s employer stops making specified superannuation contributions to the superannuation fund for the member’s benefit; and
  - (e) the member gives a notice as described in **subsection (2)** to the trustees of the superannuation fund.

#### **Notice**

- (2) The member’s notice to the trustees of the superannuation fund must—
  - (a) state that the member does not intend to increase their hours in paid employment in the future; and



- (b) state that the member's employer understands that the member's hours in paid employment will not increase in the future; and
- (c) be signed by the employer to acknowledge that the employer's understanding is as described in **paragraph (b)**.

#### **Later withdrawals**

- (3) A member who makes a withdrawal after giving notice as required by **subsection (2)** is not required to give notice for each later withdrawal if their intention has not changed.

*Defined:* employer, member, notice, specified superannuation contribution, superannuation fund, trustee, withdrawal

Compare: 1994 No 164 s CL 12

### **CS 7 Exclusion of withdrawal when member ends employment**

#### **Ending employment because of injury, disability, or death**

- (1) **Section CS 1** does not apply to a withdrawal made on or after the date on which a member ends their employment with an employer if the member ends their employment because the member is injured or disabled or dies.

#### **Ending employment of 2 years or more**

- (2) **Section CS 1** does not apply to a withdrawal made in the circumstances described in **subsections (3) and (4)** and at the time described in **subsection (5)**.

#### **Circumstances for purposes of subsection (2)**

- (3) For the purposes of **subsection (2)**, the circumstances are—
  - (a) a member is employed for 2 years or more; and
  - (b) in each of the 2 tax years ending on or before the date on which the member ends their employment, the specified superannuation contributions the employer makes in the tax year for the member's benefit—
    - (i) are 150% or more of the specified superannuation contributions made in the previous tax year but are treated as not being so, in a case described in **subsection (4)**; or

- (ii) are not 150% or more of the specified superannuation contributions made in the previous tax year, in any other case; and
- (c) in the tax year in which the member ends their employment, the annualised specified superannuation contributions the employer makes in the tax year for the member's benefit—
  - (i) are 150% or more of the specified superannuation contributions made in the previous tax year but are treated as not being so, in a case described in **subsection (4)**; or
  - (ii) are not 150% or more of the specified superannuation contributions made in the previous tax year, in any other case.

**Cases treated as coming within subsection (3)**

- (4) For the purposes of **subsection (3)**, specified superannuation contributions to a superannuation fund that are 150% or more of the specified superannuation contributions made in the previous tax year are treated as not being so—
  - (a) to the extent to which the employer increases the level by making additional specified superannuation contributions for the member's benefit to compensate for underpaying specified superannuation contributions for the member's benefit; or
  - (b) if the increase occurs before 1 April 2000; or
  - (c) if the increase is required by a trust deed or a contract, or an amendment to a trust deed or a contract, and the requirement existed before 1 April 2000; or
  - (d) if the employer starts making specified superannuation contributions for a member's benefit under a contract, or an amendment to a contract, that was signed before 1 April 2000; or
  - (e) if the level of specified superannuation contributions does not change as a percentage of salary as between the level on and after 1 April 2000 and the level in the last pay period ending before 1 April 2000.

**Time for purposes of subsection (2)**

- (5) For the purposes of **subsection (2)**, the times are—
  - (a) on or after the date on which a member ends their employment with an employer; or

- (b) shortly before the date on which the member ends their employment, in anticipation of the member's ending their employment.

#### **Ending employment in any other case**

- (6) If a withdrawal is made on or after the date on which a member ends their employment with an employer and the application of **section CS 1** is not excluded by **subsection (1) or (2)**, **section CS 1** applies only to the withdrawal of an amount equal to the employer's contributions to superannuation savings calculated for the period starting on the first day of the tax year that starts 2 tax years before the date on which the member ends their employment and ending on the date of withdrawal.

#### **What is not ending employment**

- (7) **Section CS 10** describes a case in which a member is treated as not ending their employment for the purposes of this section.

*Defined:* amount, employer, employer's contributions to superannuation savings, member, pay period, specified superannuation contribution, superannuation fund, tax year, withdrawal

Compare: 1994 No 164 s CL 8(1)–(6)

### **CS 8 Exclusion of withdrawal when member ends employment: lock-in rule**

#### **Deferral of withdrawal**

- (1) **Section CS 1** does not apply to a withdrawal of an amount made 2 years after the date on which a member ends their employment with an employer if, when the member ends their employment, the member defers the withdrawal for 2 years after the date of ending their employment.

#### **What is not ending employment**

- (2) **Section CS 10** describes a case in which a member is treated as not ending their employment for the purposes of this section.

*Defined:* amount, employer, member, withdrawal, year

Compare: 1994 No 164 s CL 9

## **CS 9 Exclusion of withdrawal from defined benefit fund when member ends employment**

### **Defined benefit fund**

- (1) **Section CS 1** does not apply to a withdrawal made from a defined benefit fund—
  - (a) on or after the date on which a member ends their employment with an employer, irrespective of the member's length of service; or
  - (b) shortly before the date on which a member ends their employment with an employer, in anticipation of the member's ending their employment, irrespective of the member's length of service.

### **What is not ending employment**

- (2) **Section CS 10** describes a case in which a member is treated as not ending their employment for the purposes of this section.

*Defined:* defined benefit fund, employer, member, withdrawal

Compare: 1994 No 164 s CL 10(1)

## **CS 10 When member treated as not ending employment**

### **When this section applies**

- (1) This section applies for the purposes of **sections CS 7, CS 8, and CS 9**.

### **Transfer to related employer**

- (2) A member is treated as not ending their employment with an employer (**employer A**) if the member transfers from employer A to another employer (**employer B**) and employer B is a related employer of employer A.

### **Related employer**

- (3) Employer B is a related employer of employer A if employer B—
  - (a) is treated as a separate employer from employer A; and
  - (b) is—
    - (i) a branch or division of employer A; or
    - (ii) associated with employer A.

*Defined:* associated person, employer, member

Compare: 1994 No 164 s CL 11

*Transfers to or from superannuation funds and  
superannuation schemes*

**CS 11 Transfer by superannuation fund to another  
superannuation fund**

**Notification of nature of amount transferred**

- (1) An amount transferred by a superannuation fund (**transferor fund**) to another superannuation fund (**transferee fund**) retains its nature in the transferee fund if—
- (a) the transferee fund is not a defined benefit fund; and
  - (b) the trustees of the transferor fund, the member's past employer, or the member's present employer give notice to the transferee fund of the nature of the amount transferred.

**No notification of nature of amount transferred**

- (2) If the trustees of the transferor fund, the member's past employer, or the member's present employer do not give notice to the transferee fund of the nature of the amount transferred, the amount transferred is treated as being, in the transferee fund, the employer's contributions to superannuation savings.

**Notification of nature of amounts transferred to  
defined benefit fund**

- (3) Amounts to which **section CS 2(1) or (8)** apply that are transferred by a superannuation fund to a defined benefit fund retain their nature in the defined benefit fund if the trustees of the superannuation fund give notice to the defined benefit fund of the nature of the amounts.

**No notification of nature of amounts transferred to  
defined benefit fund**

- (4) If the trustees of the superannuation fund do not give notice to the defined benefit fund of the nature of the amounts to which **section CS 2(1) or (8)** apply, **section CS 1** applies to the amount transferred when it is withdrawn from the defined benefit fund

unless the application of **section CS 1** is excluded by any of **sections CS 2 to CS 9**.

*Defined:* amount, defined benefit fund, employer, employer's contributions to superannuation savings, member, notice, notify, superannuation fund, trustee

Compare: 1994 No 164 s CL 14

### **CS 12 Transfer from superannuation scheme to superannuation fund**

An amount transferred directly from a superannuation scheme to a superannuation fund is treated as being, in the superannuation fund, the member's contribution.

*Defined:* amount, member's contribution, superannuation fund, superannuation scheme

Compare: 1994 No 164 s CL 15

### **CS 13 Investment by superannuation fund in another superannuation fund**

#### **Superannuation fund investing in another superannuation fund**

- (1) If a superannuation fund (**superannuation fund A**) is a member of another superannuation fund (**superannuation fund B**),—
- (a) superannuation fund A's investment in superannuation fund B is not a transfer; and
  - (b) a withdrawal of an amount related to superannuation fund A's investment in superannuation fund B is not a transfer; and
  - (c) a withdrawal of an amount related to superannuation fund A's investment in superannuation fund B is not a withdrawal to which **section CS 2** applies.

#### **Superannuation fund investing in superannuation scheme**

- (2) If a superannuation fund is a member of a superannuation scheme,—
- (a) the fund's investment in the scheme is not a transfer; and
  - (b) a withdrawal by the fund related to the investment is not a transfer.

*Defined:* amount, member, superannuation fund, superannuation scheme, withdrawal

Compare: 1994 No 164 s CL 16

***Treatment of amounts when superannuation fund becomes superannuation scheme or vice versa***

**CS 14 Superannuation fund becomes superannuation scheme**

**Effect of change**

- (1) If a superannuation fund becomes a superannuation scheme, other than a foreign superannuation scheme,—
- (a) an amount in the fund at the time it becomes a superannuation scheme retains its nature; and
  - (b) the following sections apply to a withdrawal from the superannuation scheme as if the scheme were a superannuation fund:
    - (i) **sections CS 1 to CS 17, EZ 26** (Withdrawals on or between 14 and 30 September 2000 from late balance date superannuation funds), **and NEA 1** (Recovery of tax paid by superannuation fund); and
    - (ii) sections 32A, 32B, and 32C of the Tax Administration Act 1994.

**Market value of amounts**

- (2) The amount in the superannuation fund at the time it becomes a superannuation scheme is calculated according to market value.

*Defined:* amount, foreign superannuation scheme, superannuation fund, superannuation scheme, withdrawal

Compare: 1994 No 164 s CL 17

**CS 15 Superannuation fund becomes foreign superannuation scheme**

If a superannuation fund becomes a foreign superannuation scheme, every amount in the superannuation fund is treated as if it had been withdrawn immediately before the fund became a foreign superannuation scheme.

*Defined:* amount, foreign superannuation scheme, superannuation fund

Compare: 1994 No 164 s CL 18

**CS 16 Superannuation scheme becomes superannuation fund**

If a superannuation scheme becomes a superannuation fund, every amount in the superannuation scheme at the time it

becomes a superannuation fund is treated as being a member's contribution to the superannuation fund.

*Defined:* amount, member's contribution, superannuation fund, superannuation scheme

Compare: 1994 No 164 s CL 19

### ***Treatment of distributions when superannuation fund wound up***

#### **CS 17 Superannuation fund wound up**

When a superannuation fund is wound up, a distribution related to a member's membership is treated as being a withdrawal.

*Defined:* member, superannuation fund, withdrawal

Compare: 1994 No 164 s CL 20

### **Subpart CT—Income from petroleum mining**

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

#### *Definitions*

- CT 6 Meaning of petroleum miner
  - CT 7 Meaning of petroleum mining asset
- 

#### **CT 1 Disposal of exploratory material or petroleum mining asset**

##### **Income: disposal of exploratory material**

- (1) The consideration that a petroleum miner derives from disposing of exploratory material is income of the petroleum miner.

##### **Income: disposal of petroleum mining asset**

- (2) The consideration that a petroleum miner derives from disposing of a petroleum mining asset is income of the petroleum miner.



**Relationship with section CX 38**

- (3) This section is overridden by **section CX 38** (Farm-out arrangements for petroleum mining).

*Defined:* consideration, disposal, exploratory material, farm-out arrangement, income, petroleum miner, petroleum mining asset

Compare: 1994 No 164 s CJ 3

**CT 2 Damage to assets**

The consideration that a petroleum miner derives for damage to an asset of the kind described in **section CT 7(1)(b)** is income of the petroleum miner.

*Defined:* consideration, income, petroleum miner

Compare: 1994 No 164 s CJ 5

**CT 3 Exploratory well used for commercial production****When this section applies**

- (1) This section applies when a petroleum miner uses an exploratory well for commercial production of petroleum, whether or not the well has been sealed and abandoned previously.

**Income**

- (2) An amount equal to the amount of expenditure described in **subsection (3)** is treated as income of the petroleum miner.

**Exploratory well expenditure**

- (3) The expenditure is exploratory well expenditure to which all the following apply:
- it is directly attributable to drilling or acquiring the exploratory well; and
  - the petroleum miner or a holder of a previous interest in the well is or has been allowed a deduction for it as petroleum exploration expenditure; and
  - it is incurred in relation to the permit held currently by the petroleum miner, or a previous permit surrendered in exchange for the permit currently held under section 32(3) of the Crown Minerals Act 1991.

**Timing of income**

- (4) The amount is allocated to the income year in which commercial production from the well starts.

**Part interest**

- (5) If the petroleum miner has a part interest in the exploratory well when that well is first used for commercial production, the amount of expenditure treated as income under this section must bear the same proportion to the exploratory well expenditure specified in **subsection (3)** as that part interest bears to all interests in the well.

*Defined:* amount, commercial production, deduction, exploratory well, exploratory well expenditure, income, income year, permit, petroleum, petroleum exploration expenditure, petroleum miner, seal and abandonment

Compare: 1994 No 164 s DM 1(9)(a)

**CT 4 Partnership interests and disposal of part of asset**

In this subpart, and in **sections CX 37 and CX 38** (which relate to petroleum mining) **and CZ 7** (Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001), unless the context requires otherwise,—

- (a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their interest in the income of the partnership:
- (b) references to the disposal of an asset apply equally to the disposal of part of an asset.

*Defined:* disposal, petroleum permit

Compare: 1994 No 164 ss DM 9, DM 10

**CT 5 Petroleum mining operations outside New Zealand**

This subpart, and **sections CX 37 and CX 38** (which relate to petroleum mining) **and CZ 7** (Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001), apply, with any necessary modifications, to a petroleum miner who undertakes 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 petroleum mining activities governed by this Act.

*Defined:* controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 1994 No 164 s DM 7(1)

## *Definitions*

### **CT 6 Meaning of petroleum miner**

#### **Meaning**

- (1) **Petroleum miner** means a person who undertakes an activity described in **subsection (3)** in a permit area for which the person has a petroleum permit.

#### **Exclusion**

- (2) **Petroleum miner** does not include a person who undertakes an activity described in **subsection (3)** for consideration that is not in the form of, or contingent on,—
- (a) the production of petroleum from the permit area; or
  - (b) profits from the production of petroleum from the permit area; or
  - (c) an interest or a right to an interest in the petroleum permit.

#### **Activities: inclusions**

- (3) The activities are those carried out in connection with—
- (a) prospecting or exploring for petroleum;
  - (b) developing a permit area for producing petroleum;
  - (c) producing petroleum;
  - (d) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user;
  - (e) removal or restoration operations.

#### **Activities: exclusions**

- (4) The activities do not include the further treatment (other than treatment at the production facilities) of crude oil, condensate, or natural gas, after the well stream has been separated and stabilised into those substances,—
- (a) by liquefaction or compression; or
  - (b) for the extraction of constituent products; or
  - (c) for the production of derivative products.

**Defined:** consideration, natural gas, permit area, petroleum, petroleum miner, petroleum permit, removal or restoration operations

Compare: 1994 No 164 s OB 1 “development operations”, “further processing”, “petroleum miner”

**CT 7 Meaning of petroleum mining asset****Meaning**

- (1) **Petroleum mining asset** means—
- (a) a petroleum permit;
  - (b) an asset that—
    - (i) is acquired by a petroleum miner for the purpose of carrying on an activity described in **subsection (3)** in a permit area or areas; and
    - (ii) has an estimated useful life that depends on, and is no longer than, the remaining life of the petroleum permit for the area or areas;
  - (c) a share or partial interest in an asset described in **paragraph (a) or (b)**.

**Exclusion**

- (2) **Petroleum mining asset** does not include land.

**Activities: inclusions**

- (3) The activities are those carried out in connection with—
- (a) developing a permit area for producing petroleum;
  - (b) producing petroleum;
  - (c) processing, storing, or transmitting petroleum before its dispatch to a buyer, consumer, processor, refinery, or user;
  - (d) removal or restoration operations.

**Activities: exclusions**

- (4) The activities do not include the further treatment (other than treatment at the production facilities) of crude oil, condensate, or natural gas, after the well stream has been separated and stabilised into those substances,—
- (a) by liquefaction or compression; or
  - (b) for the extraction of constituent products; or
  - (c) for the production of derivative products.

**Defined:** land, natural gas, permit area, petroleum, petroleum miner, petroleum mining asset, petroleum permit, removal or restoration operations

Compare: 1994 No 164 s OB 1 “development operations”, “further processing”, “permit specific asset”, “petroleum mining asset”

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## Subpart CU—Income from mineral mining

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### *Introductory provision*

#### **CU 1 Mining company's 2 kinds of income**

Income derived by a mining company is either income from mining or income other than income from mining.

*Defined:* income, income from mining, mining company

Compare: 1994 No 164 s DN 1(2)

### *Income from mining*

#### **CU 2 Mining company that processes or manufactures**

##### **When this section applies**

- (1) This section applies when—
  - (a) a mining company—
    - (i) obtains specified minerals from its mining operations; or
    - (ii) through a combination of its mining operations and its associated mining operations, brings specified minerals to the stage at which they are ready to be processed or used in a manufacturing operation; and
  - (b) the company produces products by processing the specified minerals or using them in a manufacturing operation; and
  - (c) the company disposes of the products.

##### **Income classified**

- (2) For the income year in which the mining company disposes of the products, the Commissioner must classify the mining company's income from the disposal as income from mining or income other than income from mining. The Commissioner must classify the income by apportioning it under **subsection (3)** or by making a decision under **subsection (4)**.

##### **Apportionment**

- (3) In apportioning the income, the Commissioner must make an appropriate apportionment of the value of the stock of products on hand at the start and end of the income year and must take into account the matters the Commissioner considers relevant and appropriate, including—

- (a) the capital employed, or the expenditure or losses incurred, in the mining operations, associated mining operations, and processing of the specified minerals or the use of the specified minerals in a manufacturing operation:
- (b) the extent of the steps involved in the mining operations, associated mining operations, and processing of the specified minerals or the use of the specified minerals in a manufacturing operation.

### Decision

- (4) In making a decision, the Commissioner must take into account the amount that would have been—
  - (a) the value received or receivable for the specified minerals if they had been disposed of in the income year to a wholly independent person in the state in which they resulted from the mining operations or the combination of mining operations and associated mining operations; and
  - (b) the value of the products on hand at the end of the income year if the specified minerals from which they came had been valued for the purposes of **subpart EB** (Valuation of trading stock (including dealer's live-stock)) in the state in which they resulted from the mining operations or the combination of mining operations and associated mining operations.

*Defined:* amount, associated mining operations, Commissioner, income, income from mining, income year, mining company, mining operations, specified mineral

Compare: 1994 No 164 s DN 1(4)

## CU 3 Disposal of assets

### When this section applies

- (1) This section applies when—
  - (a) a mining company acquires an asset, including mining prospecting information or a mining or prospecting right, by incurring mining exploration expenditure or mining development expenditure; and
  - (b) the company, whether or not still a mining company, disposes of the asset.

### Exclusion

- (2) This section does not apply when—
- (a) a mining company acquires an asset, including mining prospecting information or a mining or prospecting right, by incurring mining exploration expenditure or mining development expenditure; and
  - (b) the company, whether or not still a mining company, passes the ownership of the asset to another person; and
  - (c) the passing of ownership is not because the asset is sold to the other person; and
  - (d) the company does not receive, and is not entitled to receive, consideration for the passing of ownership; and
  - (e) the company and the other person deal with each other over the passing of ownership at arm's length, even if they are associated persons at a time relevant to the passing of ownership.

#### **Consideration**

- (3) **Subsections (4) to (8)** describe the consideration that the company is treated as receiving for the asset and the consideration that the person who acquired the asset from the company is treated as giving for it.

#### **Consideration in various cases**

- (4) The consideration is,—
- (a) in a case other than one described in any of **subsections (5) to (8)**, the consideration that the company derives from the disposal of the asset:
  - (b) in the case described in **subsection (5)**, the consideration specified in the subsection for the disposal of the asset:
  - (c) in the case described in **subsection (6)**, the consideration specified in the subsection for the disposal of the asset:
  - (d) in the case described in **subsection (7)**, the consideration specified in **subsection (8)** for the disposal of the asset.

#### **Consideration other than in cash**

- (5) If some or all of the consideration for the disposal is other than cash, and the disposal is not to an associated person, the consideration that is not in cash has the value agreed between the company and the person to whom the asset is disposed of. If the 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.

**Disposal to associated person**

- (6) If the disposal is to an associated person, the consideration for the disposal is the market value that the asset has on the date of the disposal.

**When subsection (8) applies**

- (7) **Subsection (8)** applies when—
- (a) the company disposes of the asset to a person acquiring it for use in carrying on mining operations or associated mining operations or a mining venture; and
  - (b) the company and the person give notice to the Commissioner that they have agreed to apply **subsection (8)**; and
  - (c) the notice is given to the Commissioner within 1 of the following times:
    - (i) the time within which the company is required to file a return of income for the income year in which it disposes of the asset;
    - (ii) a further time allowed by the Commissioner; and
  - (d) the notice specifies an amount that—
    - (i) is no more than the market value that the asset has at the date of the disposal; and
    - (ii) is not less than the amount of any part of the consideration that is in cash.

**Amount specified by parties to disposal**

- (8) The consideration for the disposal is the amount that the company and the person specify in the notice.

*Defined:* amount, asset, associated mining operations, associated person, Commissioner, company, income year, mining company, mining development expenditure, mining exploration expenditure, mining operations, mining or prospecting right, mining prospecting information, mining venture, notice, return of income

Compare: 1994 No 164 s DN 1(9)–(12)(b)

**CU 4 Compensation for lost, destroyed, or damaged assets**

**When sections CU 5 to CU 8 apply**

- (1) **Sections CU 5 to CU 8** apply when—

- (a) a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure; and
- (b) the company is allowed a deduction for the expenditure under—
  - (i) **section DU 3** (Mining exploration expenditure and mining development expenditure); or
  - (ii) **section DZ 10(1)(a)** (Mineral mining: 1954 to 2004); and
- (c) the asset is lost, destroyed, or damaged; and
- (d) the company, whether or not still a mining company,—
  - (i) is paid compensation for the loss, destruction, or damage; and
  - (ii) is entitled to receive payment for any scrap of the asset that it disposes of.

#### **What sections CU 5 to CU 8 apply to**

- (2) **Sections CU 5 to CU 8** apply to any asset (**asset A**) that a mining company acquires by incurring mining exploration expenditure or mining development expenditure, except for an asset (**asset B**) used to derive income other than income from mining to which **section CU 10** is applied. **Sections CU 5 to CU 8** apply to asset B only if it is later used to derive income from mining and **section DU 7** (Non-mining asset used to derive income from mining) is applied to it.

*Defined:* asset, company, deduction, income, income from mining, mining company, mining development expenditure, mining exploration expenditure

Compare: 1994 No 164 s DN 1(13)

### **CU 5 Compensation and scrap payment: income from mining**

#### **Income**

- (1) When, under **section CU 4**, this section applies, the total of the following amounts is income from mining of the mining company:
  - (a) the amount of compensation paid; and
  - (b) the amount (if any) payable to the company for the disposal of any scrap of the asset.

#### **Timing of income**

- (2) The income from mining is allocated to the income year in which the compensation is paid.

**Relationship with sections CU 6 to CU 8**

- (3) This section is overridden by **sections CU 6 to CU 8**.

*Defined:* amount, asset, income from mining, income year, mining company

Compare: 1994 No 164 s DN 1(13), (14)

**CU 6 Compensation and scrap payment: use to replace or repair asset****Choice between section CU 5 and sections CU 7 and CU 8**

- (1) If the mining company wants **sections CU 7 and CU 8** to apply instead of **section CU 5**, it must comply with **subsection (2)**.

**Choice of sections CU 7 and CU 8**

- (2) The company must—
- (a) give notice to the Commissioner that the compensation will be used to replace or repair the asset; and
  - (b) give the notice within the time within which the company must file a return of income for the income year in which the loss, destruction, or damage occurred; and
  - (c) start the replacement or repair by the end of the second income year after the income year in which the loss, destruction, or damage occurred.

*Defined:* asset, Commissioner, income year, mining company, notice, return of income

Compare: 1994 No 164 s DN 1(14)

**CU 7 Compensation and scrap payment: not income from mining**

When, under **section CU 4**, this section applies, neither of the following amounts is income from mining of the mining company:

- (a) the amount of compensation paid; or
- (b) the amount (if any) payable to the company for the disposal of any scrap of the asset.

*Defined:* amount, asset, income from mining, mining company

Compare: 1994 No 164 s DN 1(14)(a), (b)

**CU 8 Compensation and scrap payment: more than expenditure****When this section applies**

- (1) This section applies when—
  - (a) the mining company complies with **section CU 6(2)**; and
  - (b) the company incurs expenditure in replacing or repairing the asset; and
  - (c) the company has an excess amount because the expenditure is less than the total of the following:
    - (i) the amount of compensation paid; and
    - (ii) the amount, if any, payable to the company for the disposal of any scrap of the asset.

**Income**

- (2) The excess amount is income from mining of the company, whether or not the company is still a mining company when the excess amount is determined.

**Timing of income**

- (3) The income from mining is allocated to the income year in which the replacement or repair of the asset is in fact completed or is treated as completed.

**When replacement or repair treated as completed**

- (4) The replacement or repair, even if not in fact completed, is treated as completed—
  - (a) on the last day of the period, if any, specified by the Commissioner as a reasonable period within which to complete the replacement or repair; or
  - (b) on the day on which work on the replacement or repair stops; or
  - (c) on the day on which the asset is transferred from the company's mining operations and used, wholly or mainly, to derive income other than income from mining; or
  - (d) on the day on which the company disposes of the asset other than for scrap; or
  - (e) on the day on which the company stops being a mining company.

**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)**.

*Defined:* amount, asset, Commissioner, company, income, income from mining, income year, mining company, mining operations

Compare: 1994 No 164 s DN 1(14)(e), (g)–(i)

## **CU 9 Previous deduction for income appropriated**

### **Income**

- (1) An amount equal to the amount for which a mining company is allowed a deduction under **section DU 6** (Income appropriated to expenditure) is income from mining of the mining company.

### **Timing of income**

- (2) The income is allocated to the income year following the income year in which the mining company is allowed the deduction.

### **Company stops mining**

- (3) A mining company that stops being a mining company before the end of the income year to which the income is allocated is treated as if it were still a mining company in the income year.

*Defined:* amount, deduction, income from mining, income year, mining company

Compare: 1994 No 164 s DN 1(6)(b)

## **CU 10 Mining asset used to derive income other than income from mining**

### **When this section applies**

- (1) This section applies when—
- (a) a mining company acquires an asset by incurring mining exploration expenditure or mining development expenditure; and
  - (b) the company uses the asset, wholly or mainly, to derive income other than income from mining.

### **Income**

- (2) An amount equal to the market value that the asset has on the date it was first used, wholly or mainly, to derive income other

than income from mining is income from mining of the mining company.

#### **Timing of income**

- (3) The income is allocated to the income year in which the asset is first used, wholly or mainly, to derive income other than income from mining.

#### **Company stops mining**

- (4) A mining company that stops being a mining company before the end of the income year to which the income is allocated is treated as if it were still a mining company in the income year.

*Defined:* asset, income, income from mining, income year, mining company, mining development expenditure, mining exploration expenditure

Compare: 1994 No 164 s DN 1(8)

### **CU 11 Meaning of asset for sections CU 3 to CU 10**

#### **Mining company's share or interest in asset**

- (1) **Sections CU 3 to CU 10** apply to a share or interest that a mining company has in an asset—
- (a) to the extent to which the mining company acquired the share or interest by incurring—
    - (i) mining exploration expenditure or mining development expenditure; or
    - (ii) the exploration expenditure or development expenditure referred to in **section DZ 10(2)(a)** (Mineral mining: 1954 to 2004); and
  - (b) to the extent to which the mining company uses the share or interest for the purpose of deriving income from mining.

#### **Partner's share or interest in asset**

- (2) For the purposes of **sections CU 3 to CU 10**, a partner's share or interest in each asset of the partnership is the same as the partner's interest in the totality of the assets of the partnership.

#### **Replaced or repaired asset**

- (3) For the purposes of **sections CU 3 to CU 10**,—
- (a) an asset that a mining company acquires by incurring expenditure in replacing or repairing the asset is the

same asset as the one that was lost, destroyed, or damaged:

- (b) part of an asset that a mining company acquires by incurring expenditure in repairing the asset is part of the asset that was damaged.

*Defined:* asset, income from mining, mining company, mining development expenditure, mining exploration expenditure

Compare: 1994 No 164 s DN 1(14)(f), (16), (17)

## CU 12 Resident mining operators

### Sections in this subpart applying to resident mining operators

- (1) **Sections CU 1 to CU 8, CU 10, and CU 11** apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies.

### Additional modification of sections CU 4 and CU 11

- (2) For the purposes of **subsection (1)**,—
  - (a) **section CU 4(1)(b)(ii)** applies as described in **section DZ 10(1)(b)** (Mineral mining: 1954 to 2004); and
  - (b) **section CU 11(1)(a)(ii)** applies as described in **section DZ 10(2)(b)** (Mineral mining: 1954 to 2004).

*Defined:* mining company, resident mining operator

Compare: 1994 No 164 s DN 4(1), (5), (7)

## CU 13 Non-resident mining operators

### Sections in this subpart applying to non-resident mining operators

- (1) **Sections CU 3 to CU 11** 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.

### Additional modification of sections CU 4 and CU 11

- (2) For the purposes of **subsection (1)**,—
  - (a) **section CU 4(1)(b)(ii)** applies as described in **section DZ 10(1)(b)** (Mineral mining: 1954 to 2004); and

- (b) **section CU 11(1)(a)(ii)** applies as described in **section DZ 10(2)(b)** (Mineral mining: 1954 to 2004).

*Defined:* associated mining operations, income from mining, mining company, mining operations, mining venture, non-resident mining operator

Compare: 1994 No 164 s DN 5(2)(a), (c)

## **CU 14 Recovery of reinvestment profit on disposal of mining shares**

### **When this section applies**

- (1) This section applies when—
- (a) a company derives an amount from disposing of a mining share, including a disposal described in **section CU 20**; and
  - (b) an amount of the company's reinvestment profit is used in calculating the deduction for the cost of the mining share under **section DU 11(2)(b)** (Disposal of mining shares by company).

### **Income**

- (2) The lesser of the following amounts is income of the company:
- (a) the amount derived from the disposal of the mining share minus the deduction for the cost of the mining share; and
  - (b) the amount of reinvestment profit used in calculating the deduction for the cost of the mining share.

### **Timing of income**

- (3) The income is allocated to the income year in which the mining share is disposed of.

### **Relationship with sections CX 39 and CX 40**

- (4) This section is overridden by **sections CX 39** (Disposal of mining shares) and **CX 40** (Disposal of mining shares acquired with reinvestment profit).

*Defined:* amount, company, deduction, income, income year, mining share, reinvestment profit

Compare: 1994 No 164 s DN 2(7), (8)(c)



**CU 15 Recovery of reinvestment profit not used for mining purposes****When subsections (2) and (3) apply**

- (1) **Subsections (2) and (3)** apply when some or all of a company's reinvestment profit—
- (a) is used for purposes other than mining purposes within the prescribed period; and
  - (b) will not be used for mining purposes within the prescribed period.

**Income**

- (2) The amount of reinvestment profit described by **subsection (1)** is income of the company.

**Timing of income**

- (3) The income is allocated to the income year in which the amount is used for purposes other than mining purposes.

**When subsections (5) and (6) apply**

- (4) **Subsections (5) and (6)** apply when none of a company's reinvestment profit is used for mining purposes within the prescribed period.

**Income**

- (5) The reinvestment profit is income of the company.

**Timing of income**

- (6) The income is allocated to the last income year of the prescribed period.

**No longer reinvestment profit**

- (7) The amount referred to in **subsection (2)** and the reinvestment profit referred to in **subsection (5)** cease to be reinvestment profit.

*Defined:* amount, company, income, income year, mining purposes, prescribed period, reinvestment profit

Compare: 1994 No 164 s DN 2(3)–(5)

**CU 16 Recovery of reinvestment profit on repayment of loans****When this section applies**

- (1) This section applies when—
- (a) a company (**lender company**) makes a loan to a mining company or a mining holding company; and
  - (b) the loan is made wholly or partly out of the lender company's reinvestment profit; and
  - (c) the loan is wholly or partly repaid.

**Income**

- (2) The amount calculated using the formula in **subsection (3)** is income of the lender company.

**Formula**

- (3) The formula is—

$$\frac{\text{reinvestment profit amount}}{\text{loan amount}} \times \text{repayment.}$$

**Definition of items in formula**

- (4) In the formula,—
- (a) **reinvestment profit amount** is the amount of the loan made out of the lender company's reinvestment profit;
  - (b) **loan amount** is the amount of the loan;
  - (c) **repayment** is the amount repaid.

**Timing of income**

- (5) The income is allocated to the income year in which the repayment is made.

**Relationship with section CX 41**

- (6) This section is overridden by **section CX 41** (Repayment of loans made from reinvestment profit).

*Defined:* amount, company, income, income year, mining company, mining holding company, reinvestment profit

Compare: 1994 No 164 s DN 2(5)

**CU 17 Repayment by mining company of amount written off****When this section applies**

- (1) This section applies when—

- (a) a holding company of a mining company is allowed, under **section DU 12** (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and
- (b) the mining company—
  - (i) repays, to the holding company or any other person, some or all of the amount written off; or
  - (ii) is treated, under **section CU 18 or CU 19**, as having repaid to the holding company some or all of the amount written off.

### **Income**

- (2) The amount repaid, to the extent of the deduction, is income of the holding company.

### **Timing of income**

- (3) The income is allocated to the income year in which the mining company repays the amount or is treated as repaying the amount.

*Defined:* amount, deduction, holding company, income, income year, loan, mining company

Compare: 1994 No 164 s DN 3(7), (8)

## **CU 18 Amount treated as repayment for purposes of section CU 17: excess**

### **When this section applies**

- (1) This section applies when,—
  - (a) in a tax year, a holding company of a mining company is allowed, under **section DU 12** (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and
  - (b) in a later tax year, the holding company disposes of shares in the mining company or an interest in shares in the mining company; and
  - (c) the holding company has an excess amount because the amount it derives from the disposal is more than the amount paid up in cash on the shares.

### **Repayment amount**

- (2) For the purposes of **section CU 17**, the excess amount is treated as repayment by the mining company of the amount written off.

*Defined:* amount, deduction, holding company, loan, mining company, share, tax year

Compare: 1994 No 164 s DN 3(6)

### **CU 19 Amount treated as repayment for purposes of section CU 17: net income**

#### **When this section applies**

- (1) This section applies when—
- (a) a holding company of a mining company is allowed, under **section DU 12** (Amount written off by holding company) or an earlier Act, a deduction for an amount it has written off a loan it made to the mining company; and
  - (b) the deduction is allocated to an income year; and
  - (c) the mining company would have had net income in a later tax year, if the situation described in **subsection (2)** had existed; and
  - (d) the mining company would have had net income in the later tax year, if the situation described in **subsection (3)**, if it arises, had existed.

#### **First situation**

- (2) The first situation is that in the later tax year no person is allowed a deduction for the mining company's mining exploration expenditure or mining development expenditure.

#### **Second situation**

- (3) The second situation arises if, in the later tax year, the mining company disposes of an asset in circumstances to which **section CU 3 or CZ 5(1)(b)** (Mining company's 1970–71 tax year) applies. The situation is that the amount received or receivable for the asset is the amount determined under **subsection (4) or (5)**.

#### **Amount for which asset disposed of: most cases**

- (4) If any of **section CU 3(4)(a), (b), and (c)** applies to the disposal of the asset, the amount is the consideration determined under whichever one of the paragraphs applies.

#### **Amount for which asset disposed of: election of section CU 3(8)**

- (5) If **section CU 3(4)(d)** applies to the disposal of the asset, the amount is the greater of the following up to the limit of the market value that the asset has on the date of disposal:
- (a) the part of the amount specified in the notice under **section CU 3(8)** that is in cash (which may be zero); and
  - (b) the total amount of loans made on or before the date of disposal by all holding companies of the mining company to the extent to which the loans—
    - (i) relate to the asset (including a part not disposed of); and
    - (ii) have been written off and allowed as a deduction under **section DU 12** (Amount written off by holding company) or an earlier Act; and
    - (iii) have not been repaid, and have not been treated as repaid under this section or **section CU 18**, on or before the date of disposal.

#### **Asset**

- (6) For the purposes of **subsections (3) to (5)**,—
- (a) a reference to an asset means the part of the asset that is disposed of, which may be some of it or all of it, and a reference to an amount received or receivable for an asset means the amount for the part that is disposed of:
  - (b) a reference to an asset includes a reference to a share or interest in the asset:
  - (c) a partner's share or interest in each asset of the partnership is the same as the partner's interest in the totality of the assets of the partnership:
  - (d) every member of any other association of persons who receive income jointly or carry on activities jointly has a share or interest in each asset of the association that is the same as the member's interest in the totality of the assets of the association.

#### **Amount of net income**

- (7) For the purposes of **section CU 17**, the prescribed proportion of the amount that would have been the net income of the mining company is treated as repayment by the mining company of the amount written off. The repayment is treated as having

been made on the day following the end of the tax year in which the mining company would have had net income.

**Defined:** amount, deduction, holding company, income, income year, loan, mining company, mining development expenditure, mining exploration expenditure, net income, notice, prescribed proportion, tax year

Compare: 1994 No 164 s DN 3(4), (5), (8), (9)

### **CU 20 Mining company or mining holding company liquidated**

If a mining company or a mining holding company is liquidated,—

- (a) a share held in the company is treated as disposed of to the company; and
- (b) a distribution received for the share on the liquidation is treated as an amount received for the disposal.

**Defined:** amount, liquidation, mining company, mining holding company, share

Compare: 1994 No 164 s DN 2(8)

## ***Definitions***

### **CU 21 Income from mining**

#### **Meaning**

- (1) **Income from mining** means the part of the income of a mining company that is derived in a tax year from the company's mining operations or associated mining operations in the tax year.

#### **Resident mining operators and non-resident mining operators**

- (2) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

**Defined:** associated mining operations, income, income from mining, mining company, mining operations, mining venture, non-resident mining operator, resident mining operator, tax year

Compare: 1994 No 164 ss DN 4(4), DN 5(1), OB 1 "gross income from mining"

**CU 22 Mining company****Meaning**

- (1) **Mining company** means a New Zealand company to which 1 of the following applies:
- (a) the company's only source of income is the business described in **subsection (2)**; or
  - (b) the company's main source of income is the business described in **subsection (2)**; or
  - (c) the company's only activity is 1 of the activities described in **subsection (3)**; or
  - (d) the company's main activity is 1 of the activities described in **subsection (3)**; or
  - (e) the company proposes that its only activity or its main activity be 1 of the activities described in **subsection (3)**.

**Business**

- (2) The business referred to in **subsection (1)(a) and (b)** is the business of mining a specified mineral in New Zealand.

**Activities**

- (3) The activities referred to in **subsection (1)(c), (d), and (e)** are—
- (a) exploring, searching, or mining for a specified mineral in New Zealand; or
  - (b) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

**Service for reward**

- (4) An activity described in **subsection (3)** does not include an activity done or to be done as a service to another person for reward unless the reward—
- (a) is wholly or mainly related to and dependent on the production of the specified mineral; or
  - (b) arises wholly or mainly through participation in profits from the production of the specified mineral.

**Defined:** business, income, mining company, New Zealand, New Zealand company, specified mineral

Compare: 1994 No 164 s DN 1(1)

**CU 23 Mining development expenditure****Meaning**

- (1) **Mining development expenditure** means development expenditure that a mining company incurs in its mining operations or associated mining operations.

**Inclusions**

- (2) **Mining development expenditure** includes expenditure that the company incurs—
- (a) on acquiring land as a site for its mining operations or associated mining operations:
  - (b) on preparing the site for its mining operations or associated mining operations:
  - (c) on restoring the site during or after its mining operations or associated mining operations:
  - (d) on any of the following for its mining operations or associated mining operations:
    - (i) buildings, mineshafts, platforms, tunnels, wells, or other improvements:
    - (ii) plant or machinery, including vehicles:
    - (iii) production equipment or facilities:
    - (iv) storage facilities:
  - (e) on vessels or aircraft for use wholly or mainly in its mining operations or associated mining operations:
  - (f) on providing, or contributing to the cost of providing, communication equipment, fuel, light, power, or water for the site of its mining operations or associated mining operations:
  - (g) on buildings or facilities that—
    - (i) are situated at, or adjacent to, the site of any of its mining operations or associated mining operations; and
    - (ii) are for use in the education, housing, or welfare of, or the supply of meals to, its employees in its mining operations or associated mining operations or in the education, housing, or welfare of, or the supply of meals to, the employees' dependants:
  - (h) on providing, or contributing to the cost of providing, communication equipment, fuel, light, power, or water for the buildings or facilities described in **paragraph (g)**.



**Exclusions**

- (3) **Mining development expenditure** does not include expenditure that the company incurs—
- (a) on a building or facility provided for the purpose of deriving income:
  - (b) on an office building that is not situated at, or adjacent to, the site of any of its mining operations or associated mining operations.

**Resident mining operators and non-resident mining operators**

- (4) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

*Defined:* associated mining operations, employee, income, mining company, mining development expenditure, mining operations, mining venture, non-resident mining operator, resident mining operator

Compare: 1994 No 164 ss DN 4(4), DN 5(1), OB 1 “development expenditure” (d)

**CU 24 Mining exploration expenditure****Meaning**

- (1) **Mining exploration expenditure** means expenditure that a mining company incurs in exploring or searching in New Zealand for a specified mineral.

**Inclusions**

- (2) **Mining exploration expenditure** includes expenditure that the company incurs—
- (a) on acquiring mining prospecting information:
  - (b) on acquiring a mining or prospecting right:
  - (c) on geological mapping and geophysical surveys:
  - (d) on systematic searches for areas containing specified minerals:
  - (e) on searching by drilling in areas containing specified minerals:
  - (f) on searching for ore containing a specified mineral within or in the vicinity of an ore body by crosscuts, drilling, drives, rises, shafts, or winzes.

**Exclusions**

- (3) **Mining exploration expenditure** does not include—
- (a) mining development expenditure;
  - (b) expenditure on operations in the course of working a mining property.

**Resident mining operators and non-resident mining operators**

- (4) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were mining ventures, and associated mining operations were mining ventures.

*Defined:* associated mining operations, mining company, mining development expenditure, mining exploration expenditure, mining operations, mining or prospecting right, mining prospecting information, mining venture, New Zealand, non-resident mining operator, resident mining operator, specified mineral

Compare: 1994 No 164 ss DN 4(4), DN 5(1), OB 1 “exploration expenditure” (c)

**CU 25 Mining operations****Meaning**

- (1) **Mining operations** means operations that—
- (a) are carried on by a mining company on a mining property in New Zealand for the purpose of deriving income; and
  - (b) consist of—
    - (i) exploring, searching, or mining for 1 or more specified minerals; or
    - (ii) performing development work for exploring, searching, or mining for 1 or more specified minerals.

**Resident mining operators and non-resident mining operators**

- (2) This definition applies to resident mining operators as if they were mining companies, and to non-resident mining operators as if they were mining companies, mining operations were

mining ventures, and associated mining operations were mining ventures.

*Defined:* associated mining operations, income, mining company, mining operations, mining venture, New Zealand, non-resident mining operator, resident mining operator, specified mineral

Compare: 1994 No 164 ss DN 4(4), DN 5(1), OB 1 “mining operations”

## CU 26 Mining venture

### Meaning

- (1) **Mining venture** means a venture that—
  - (a) is carried on, or is proposed to be carried on,—
    - (i) in New Zealand; and
    - (ii) as a business; and
    - (iii) under an exploration permit, prospecting permit, or mining permit granted under the Crown Minerals Act 1991 or under an existing privilege as defined in section 106 of the Act; and
  - (b) consists, or is proposed to consist, wholly or mainly of—
    - (i) exploring, searching, or mining for a specified mineral in New Zealand; or
    - (ii) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

### Service for reward

- (2) An activity described in **subsection (1)(b)** does not include an activity done or to be done as a service to another person for reward unless the reward—
  - (a) is wholly or mainly related to and dependent on the production of the specified mineral; or
  - (b) arises wholly or mainly through participation in profits from the production of the specified mineral.

### Activities not carried on jointly

- (3) If a mining venture is carried on, or is proposed to be carried on, by 2 or more persons jointly, but 1 of them carries on an activity of the kind described in **subsection (1)(b)** otherwise than

jointly with the others, the carrying on of the activity is not a mining venture of the person and the others.

*Defined:* business, mining venture, New Zealand, specified mineral

Compare: 1994 No 164 s OB 1 “mining venture”

## CU 27 Resident mining operator

### Meaning

- (1) **Resident mining operator** means a person who—
- (a) is resident in New Zealand; and
  - (b) is not a mining company or a petroleum mining company; and
  - (c) carries on, or proposes to carry on, the activities of—
    - (i) exploring, searching, or mining for a specified mineral in New Zealand; or
    - (ii) performing development work for exploring, searching, or mining for a specified mineral in New Zealand.

### How activities carried on

- (2) The person must carry on the activities described in **subsection (1)(c)**, or propose to carry them on,—
- (a) personally and actively in the field; and
  - (b) as a business; and
  - (c) under an exploration permit, prospecting permit, or mining permit granted under the Crown Minerals Act 1991 or under an existing privilege as defined in section 106 of the Act.

### Service for reward

- (3) An activity described in **subsection (1)(c)** does not include an activity done or to be done as a service to another person for reward unless the reward—
- (a) is wholly or mainly related to and dependent on the production of the specified mineral; or
  - (b) arises wholly or mainly through participation in profits from the production of the specified mineral.

*Defined:* business, mining company, New Zealand, petroleum mining company, resident in New Zealand, specified mineral

Compare: 1994 No 164 s OB 1 “active miner”, “resident mining operator”

**CU 28 Other definitions**

In this Act,—

**associated mining operations** means operations that—

- (a) are carried on in New Zealand in association with mining operations; and
- (b) consist of the accumulation, initial treatment, and transport of specified minerals, up to the stage at which the minerals—
  - (i) are in a saleable form and in a location suitable for a person to acquire them; or
  - (ii) are ready to be processed beyond the initial treatment or to be used in a manufacturing operation

**holding company**, for a mining company, means a New Zealand company that holds shares, or for which shares are held, in the mining company

**initial treatment**, for a specified mineral,—

- (a) means—
  - (i) breaking, cleaning, crushing, grading, grinding, leaching, screening, or sizing; or
  - (ii) a treatment that is applied before concentration or, for a specified mineral not requiring concentration, that would have been applied before concentration if the specified mineral had required concentration; or
  - (iii) concentration; and
- (b) does not include—
  - (i) calcining or sintering; or
  - (ii) the production of, or processes carried on in connection with the production of, alumina, or pellets or other agglomerated forms of iron

**loan**, for a holding company and a mining company, means a loan by the holding company to the mining company

**mineral**—

- (a) means all minerals and metals; and
- (b) includes clay, coal, gravel, gum, kauri, precious stones, sand, and stone; and
- (c) does not include petroleum

**mining holding company** means a New Zealand company that is engaged wholly or mainly in—

- (a) holding shares in a mining company or a petroleum mining company; or

- (b) investing money in a mining company or a petroleum mining company; or
- (c) making loans to a mining company or a petroleum mining company

**mining or prospecting right—**

- (a) means an authority, concession, easement, lease, licence, option, permit, privilege, right, or title to explore, search, or mine for, or carry on an operation to recover, a specified mineral; and
- (b) includes a share or interest in any such authority, concession, easement, lease, licence, option, permit, privilege, right, or title

**mining prospecting information** means geological, geophysical, or technical information—

- (a) that is about the presence, absence, extent, or volume of specified minerals in an area; or
- (b) that is likely to assist in determining the presence, absence, extent, or volume of specified minerals in an area

**mining purposes** means—

- (a) subscribing for shares in a mining company or in a mining holding company; or
- (b) paying calls on shares in a mining company or in a mining holding company; or
- (c) making loans to a mining company to enable it—
  - (i) to finance its mining exploration expenditure or mining development expenditure; or
  - (ii) to carry on its mining operations or associated mining operations; or
- (d) making, to a mining holding company, loans that are to be used—
  - (i) to finance a mining company's mining exploration expenditure or mining development expenditure; or
  - (ii) to finance a mining company's mining operations or associated mining operations

**mining share** means a share in a mining company or a mining holding company

**non-resident mining operator** means a person who—

- (a) is not resident in New Zealand; and

- (b) carries on, personally and actively in the field, a mining venture

**prescribed period** means,—

- (a) for an amount derived from a disposal of a mining share, the tax year in which the disposal occurs and the next 6 tax years:
- (b) for an amount repaid for a loan made to a mining company or a mining holding company, the tax year in which the amount is repaid and the next 6 tax years

**prescribed proportion** means the proportion that an amount (**amount A**) bears to another amount (**amount B**), when—

- (a) amount A is the amount owing on all loans made by a holding company to a mining company; and
- (b) amount B is the amount owing on all loans by all holding companies to the mining company

**reinvestment profit** means an amount that is excluded income of a company under any of **sections CX 39 to CX 41** (which relate to mineral mining) or under a corresponding provision of an earlier Act

**specified mineral**—

- (a) means alumina minerals (for example, bauxite, corundum, diaspore, and gibbsite), aluminous refractory clays and fireclays containing over 30% alumina in the fired state, andalusite, antimony, asbestos, barite, bentonite (except bentonite mined in Malvern), bituminous shale, chromite, copper, diatomite, dolomite, feldspar, fluorite, gold, halloysite, kaolin, kyanite, lead, magnesite, manganese, mercury, mica, molybdenite, nickel, perlite, phosphate, platinum group, pyrite, silica in lump form used only in producing silicon carbide, silica in sand form used only in producing silicon carbide, silicon metal or ferro silicon, sillimanite, silver, sodium chloride, sulphur, talc, tin, titanium, titanomagnetite, tungsten, uranium, wollastonite, zeolite, zinc, and zircon; and
- (b) includes a mineral that is declared to be a specified mineral in a *Gazette* notice given by the Minister.

**Defined:** amount, associated mining operations, company, excluded income, holding company, initial treatment, lease, loan, mining company, mining development expenditure, mining exploration expenditure, mining holding company, mining operations, mining share, mining venture, Minister, New Zealand, New Zealand

company, petroleum, petroleum mining company, resident in New Zealand, share, specified mineral, tax year

Compare: 1994 No 164 ss DN 2(10), DN 3(12), OB 1

## Subpart CV—Income specific to certain entities

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- CV 1 Group companies
  - CV 2 Crown Research Institutes
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### CV 1 Group companies

An amount that a company derives in an income year and that would not otherwise be income of the company is treated as its income if—

- (a) the company is for that income year a member of a wholly-owned group of companies; and
- (b) had the group of companies been a single company, the amount would have been income of that single company.

*Defined:* amount, company, income, income year, wholly-owned group of companies

Compare: 1994 No 164 s CK 1

### CV 2 Crown Research Institutes

An amount that a Crown Research Institute derives is income of the Institute if the amount is for the purpose of producing outputs relating to public good science and technology within the meaning of section 2 of the Foundation for Research, Science, and Technology Act 1990.

*Defined:* amount, Crown Research Institute, income

Compare: 1994 No 164 s CK 4(1)



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## Subpart CW—Exempt income

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***Income from business or trade-like activities***

**CW 1 Forestry companies buying land with standing timber from Crown, Maori owners, or holding company**

**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.

**Land sold by Maori Trustee, trustee for Maori owners, or Maori incorporation**

- (2) 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.

**Exempt income**

- (3) The amount calculated using the formula in **subsection (4)** is exempt income of the seller.

#### Formula

- (4) The formula is—
- $$\frac{\text{value of timber}}{\text{value of timber} + \text{value of land}} \times \text{sale price.}$$

#### Definition of items in formula

- (5) In the formula,—
- (a) **value of timber** is the market value of the standing timber on the date of the sale;
  - (b) **value of land** is the market value of the land, as if it did not have standing timber on it, on the date of the sale;
  - (c) **sale price** is the consideration for the sale.

*Defined:* amount, exempt income, forestry company, holding company, Maori incorporation, Maori owners, standing timber, trustee

Compare: 1994 No 164 s DL 5(1)(d)(i)–(iii)

## CW 2 Forestry encouragement agreements

#### When this section applies

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

#### Exempt income: advance

- (2) An amount of income advanced to the person under the agreement is exempt income, even if the person is later relieved from some or all of their liability to repay the principal.

#### Exempt income: interest

- (3) The amount from which the person is relieved in the circumstances described in **subsection (4)** is exempt income.

#### Circumstances for purposes of subsection (3)

- (4) The circumstances are as follows:
- (a) the person is liable to pay interest on an advance made under the agreement; and
  - (b) the interest has not been paid; and

- (c) the person has been denied a deduction for the interest; and
- (d) the person is relieved from some or all of their liability to pay the interest.

*Defined:* amount, deduction, exempt income, income, interest

Compare: 1994 No 164 s DL 6(2)(a), (3)

### **CW 3 Forestry companies and Maori investment companies**

#### **When this section applies**

- (1) This section applies when a forestry company or a Maori investment company issues a qualifying debenture.

#### **Exempt income**

- (2) Interest derived from the qualifying debenture is exempt income to the extent to which it is paid by the issue of a further qualifying debenture.

*Defined:* exempt income, forestry company, interest, Maori investment company, pay, qualifying debenture

Compare: 1994 No 164 s DL 5(1)(a)

#### ***Income from holding property (excluding equity)***

### **CW 4 Annuities under life insurance policies**

#### **When this section applies**

- (1) This section applies when—
  - (a) a person is paid an annuity under a life insurance policy offered or entered into in New Zealand by a life insurer; or
  - (b) a person is paid an annuity under a life insurance policy offered or entered into outside New Zealand by a life insurer resident in New Zealand.

#### **Exempt income**

- (2) The annuity is exempt income.

#### **Excluded annuities**

- (3) An annuity that is excluded income of a superannuation fund under **section CX 35** (Superannuation fund deriving amount

from life insurance policy) is not also exempt income of the fund under this section.

*Defined:* amount, excluded income, exempt income, income, life insurance policy, life insurer, New Zealand, offered or entered into in New Zealand, resident in New Zealand, superannuation fund

Compare: 1994 No 164 s CB 9(f)

### **CW 5 Payments of interest: post-war credits**

Interest derived by a person under section 2 of the Income Tax (Repayment of Post-War Credits) Act 1959 of the United Kingdom Parliament is exempt income.

*Defined:* exempt income, interest

Compare: 1994 No 164 s CB 1(1)(b)

### **CW 6 Payments of interest: farm mortgages**

#### **Exempt income**

- (1) Fifty percent of the interest that a person derives from a mortgage securing a loan made by a seller of a farm is exempt income, if—
- (a) the Rural Banking and Finance Corporation of New Zealand approves the mortgage; and
  - (b) the Corporation gives the Commissioner notice of the approval and each variation.

#### **Exclusions**

- (2) This section does not apply if the person is—
- (a) an absentee; or
  - (b) a company; or
  - (c) a Maori authority; or
  - (d) a public authority; or
  - (e) a trustee liable for income tax under **sections HH 3 to HH 6** (which relate to trustee income), **HK 14** (Rents, royalties, or interest derived by Maori Trustee and not distributed), **and HZ 2** (Trusts that may become qualifying trusts); or
  - (f) an unincorporated body.

#### **Relationship with section KE 1**

- (3) A person who derives interest that is exempt income under this section is not entitled to a rebate for the interest under **section KE 1** (Rebate for interest on home vendor mortgages).

*Defined:* absentee, Commissioner, company, exempt income, income tax, interest, Maori authority, mortgage, notice, public authority, trustee

Compare: 1994 No 164 s CB 1(1)(c), (2)

### **CW 7 Foreign-sourced interest**

Interest that a person derives from a country or territory outside New Zealand is exempt income if—

- (a) the person was not resident in New Zealand during the period for which the interest was payable; and
- (b) the interest was exempt under the laws of the overseas country or territory from a tax that is substantially the same as income tax imposed under this Act.

*Defined:* exempt income, income tax, interest, New Zealand, pay, resident in New Zealand

Compare: 1994 No 164 s CB 2(1)(e)

### **CW 8 Money lent to government of New Zealand**

#### **What this section applies to**

- (1) This section applies to—
- (a) interest derived from money lent under a binding contract entered into on or after 29 July 1983;
  - (b) a redemption payment made on a commercial bill to which both the following apply, “issue” in this paragraph having the meaning given to it by section 2 of the Bills of Exchange Act 1908:
    - (i) it was issued on or after 29 July 1983; and
    - (ii) it was not issued under a binding contract entered into before that date.

#### **Exempt income**

- (2) Interest or a redemption payment that is payable outside New Zealand is exempt income if—
- (a) it is derived by a person who is a non-resident; and
  - (b) it is derived from or in relation to money lent to—
    - (i) the government of New Zealand; or
    - (ii) a local authority or public authority, for the purposes of a non-commercial activity carried on in New Zealand by the local or public authority; and

- (c) in the case of money lent to a local or public authority, the government of New Zealand has approved the exempt status of the interest or redemption payment.

*Defined:* commercial bill, exempt income, interest, local authority, money lent, New Zealand, non-resident, pay, public authority, redemption payment

Compare: 1994 No 164 ss CB 2(1)(b), CZ 2

### *Income from equity*

#### **CW 9 Dividend derived by company from overseas**

##### **Exempt income**

- (1) A dividend is exempt income if derived by a company that is resident in New Zealand from a foreign company.

##### **Dividend withholding payment rules apply**

- (2) The dividend withholding payment rules apply to the dividend.

*Defined:* company, dividend, dividend withholding payment rules, exempt income, foreign company, resident in New Zealand

Compare: 1994 No 164 s CB 10(1)

#### **CW 10 Dividend within New Zealand wholly-owned group**

##### **Exempt income**

- (1) A dividend is exempt income if—
- (a) it is derived by a company (**recipient**) that is resident in New Zealand; and
  - (b) it is derived from a company (**payer**) that is in the same wholly-owned group of companies as the recipient at the time the dividend is derived; and
  - (c) the payer is not a foreign company; and
  - (d) the payer is not a company that can derive only exempt income; and
  - (e) the requirements in **subsections (2) to (7)** are met.

##### **Aligned balance dates**

- (2) At the time the dividend is derived, either—
- (a) the recipient and the payer have income years that end on the same date; or
  - (b) a difference in balance dates—

- (i) is necessary to avoid a material distortion in the net income of 1 of them because aspects of a single business cycle would otherwise be split between 2 income years; and
- (ii) is not part of a tax avoidance arrangement.

**Exclusion: dividends from local authority trading enterprises**

- (3) The dividend must not be derived by a local authority from—
  - (a) a local authority trading enterprise; or
  - (b) a port company, subsidiary company of a port company, or energy company that would be a local authority trading enterprise if section 594B(b)(ii) or (ia) of the Local Government Act 1974 did not exist.

**Exclusion: debt release dividends**

- (4) The dividend must not be the release of an obligation to repay an amount lent, treated as a dividend under **section CD 4(2)** (What is a transfer of value?).

**Exclusion: certain friendly society dividends**

- (5) The dividend must not be derived by a friendly society from a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of the society.

**Exclusion: certain sick, accident, or death benefit fund dividends**

- (6) The dividend must not be derived by a trustee in trust for a sick, accident, or death benefit fund from a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of the trustee.

**Relationship with section FZ 1**

- (7) This dividend must not be a dividend for which a deduction arises under **section FZ 1** (Deduction for dividends paid on certain preference shares).

**Defined:** amount, company, control, deduction, dividend, exempt income, foreign company, friendly society, income year, local authority, local authority trading enterprise, net income, New Zealand, resident in New Zealand, sick, accident, or death benefit fund, tax avoidance arrangement, trustee, wholly-owned group of companies

Compare: 1994 No 164 s CB 10(2), (3)



**CW 11 Dividend of conduit tax relief holding company****Exempt income: credit**

- (1) If a conduit tax relief holding company derives a dividend with a conduit tax relief credit attached, the dividend is exempt income to the extent to which it is fully conduit tax relief credited.

**Exempt income: additional dividend**

- (2) If a conduit tax relief holding company derives a conduit tax relief additional dividend, the conduit tax relief additional dividend is exempt income.

*Defined:* conduit tax relief additional dividend, conduit tax relief credit, conduit tax relief holding company, dividend, exempt income, fully conduit tax relief credited

Compare: 1994 No 164 s CB 10(4), (5)

***Employee or contractor income*****CW 12 Income of Governor-General**

The following are exempt income:

- (a) the salary and allowance of the Governor-General paid under section 3 of the Civil List Act 1979;
- (b) the salary of a person acting as the Administrator of the government paid under section 8 of the Civil List Act 1979.

*Defined:* exempt income

Compare: 1994 No 164 s CB 7(a), (b)

**CW 13 Expenditure on account, and reimbursement, of employees****Exempt income: expenditure on account**

- (1) Expenditure on account of an employee incurred by an employer in connection with the employee's employment or service is exempt income of the employee to the extent to which the expenditure is expenditure for which the employee would be allowed a deduction if they incurred the expenditure and if the employment limitation did not exist.

**Exempt income: reimbursement**

- (2) An amount that an employer pays to an employee in connection with the employee's employment or service is exempt income of the employee to the extent to which it reimburses the employee for expenditure for which the employee would be allowed a deduction if the employment limitation did not exist.

#### **Estimated expenditure of employees**

- (3) For the purposes of **subsection (2)**,—
- (a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and
  - (b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates.

*Defined:* amount, deduction, employee, employer, employment limitation, exempt income, expenditure on account of an employee

Compare: 1994 No 164 s CB 12(1), (3), (3B), (3C)

### **CW 14 Allowance for additional transport costs**

#### **Exempt income**

- (1) An allowance that an employee receives from an employer to reimburse the employee's additional transport costs is exempt income to the extent to which the employee incurs the costs in connection with their employment and for the employer's benefit or convenience.

#### **Estimated expenditure of employees**

- (2) For the purposes of **subsection (1)**,—
- (a) the employer may make, for a relevant period, a reasonable estimate of the amount of expenditure likely to be incurred by the employee or a group of employees for which reimbursement is payable; and
  - (b) the amount estimated is treated as if it were the amount incurred during the period to which the estimate relates.

#### **Meaning of additional transport costs**

- (3) In this section, **additional transport costs** means the costs to an employee of travelling between their home and place of work that are more than would ordinarily be expected. The

costs must be attributable to 1 or more of the following factors:

- (a) the day or time of day when the work duties are performed:
- (b) the need to transport any goods or material in the course of the employee's work:
- (c) the requirement to fulfil a statutory obligation:
- (d) a temporary change in the employee's place of work while in the same employment:
- (e) any other condition of the employee's work:
- (f) the absence of an adequate public passenger transport service that operates fixed routes and a regular time-table for the employee's place of work.

#### **Quantifying additional transport costs**

- (4) Additional transport costs are quantified as follows:
  - (a) when the additional transport costs are attributed to a factor described in any of **subsection (3)(a) to (e)**, the amount by which the costs are more than the employee's ordinarily expected travel costs without reference to that factor:
  - (b) when the additional transport costs are attributed to the absence of an adequate public passenger transport service as described in **subsection (3)(f)**, the amount by which the costs are more than \$5 for each day on which the employee attends work:
  - (c) except in special circumstances, the costs of travelling any distance over 70 kilometres in 1 day are not taken into account in calculating additional transport costs.

*Defined:* additional transport costs, amount, employee, employer, exempt income, pay period

Compare: 1994 No 164 s CB 12(2)–(4)

### **CW 15 Amounts derived during short-term visits**

#### **Exempt income**

- (1) Income that a non-resident person derives from performing personal or professional services in New Zealand during a visit is exempt income if—
  - (a) the visit is not for more than 92 days (counting the days of arrival and departure as a whole day each); and

- (b) the total of that visit and all other visits to New Zealand by the person in the same tax year is no more than 92 days; and
- (c) the services are performed for or on behalf of a person who is not resident in New Zealand; and
- (d) the amount derived from the personal or professional services is chargeable in the country or territory in which the person is resident with a tax that is substantially the same as income tax imposed under this Act.

### **Exclusion**

- (2) This section does not apply to the income of a public entertainer.

### **Meaning of public entertainer**

- (3) In this section, **public entertainer** includes—
  - (a) circus performers, dancers, lecturers, motion picture artists, musicians, radio artists, singers, television artists, and theatre artists; and
  - (b) athletes, boxers, wrestlers, and other professional sportspersons.

*Defined:* amount, exempt income, income, income tax, New Zealand, non-resident, public entertainer, resident in New Zealand, tax year

Compare: 1994 No 164 s CB 2(1)(c)

## **CW 16 Amounts derived by visiting entertainers (including sportspersons)**

### **Exempt income: cultural activities**

- (1) Income that a visiting non-resident entertainer derives from an activity or performance is exempt income if—
  - (a) the activity or performance occurs under a cultural programme of the New Zealand government or an overseas government; or
  - (b) the activity or programme occurs under a cultural programme wholly or partly sponsored by the New Zealand government or an overseas government; or
  - (c) the activity or performance occurs as part of a programme of an overseas foundation, trust, or other organisation that—
    - (i) exists wholly or partly to promote cultural activity; and

- (ii) is not carried on for the private pecuniary profit of any person, directly or indirectly.

**Exempt income: sporting activities**

- (2) Income that a visiting non-resident entertainer derives from an activity or performance that relates to a game or sport is exempt income if the participants are the official representatives of the body that administers the game or sport in an overseas country.

**Exempt income: employer of non-resident entertainer**

- (3) If income derived from an activity or performance of a non-resident entertainer would be exempt income under this section if derived by the non-resident entertainer, that amount is exempt income if derived by a person who—
  - (a) is the employer of that entertainer, or a company or other body of which the non-resident entertainer is an officer or principal; and
  - (b) provides the services of the non-resident entertainer during the visit to New Zealand.

**Meaning of non-resident entertainer**

- (4) In this section, **non-resident entertainer** means a non-resident person within the meaning of **subpart OE** (Source of income and residence) who, during a visit to New Zealand, performs or participates in an activity or performance in connection with—
  - (a) a solo or group performance by actors, compères, dancers, entertainers, musicians, singers, or other artists, whether for cultural, educational, entertainment, religious, or other purposes; or
  - (b) lectures, speeches, or talks for any purpose; or
  - (c) a sporting event or sporting competition of any nature.

**Defined:** amount, company, employer, exempt income, income, New Zealand, non-resident, non-resident entertainer

Compare: 1994 No 164 s CB 2(1)(a)

**CW 17 Amounts derived by overseas experts and trainees in New Zealand by government arrangement****Exempt income: personal or professional services**

- (1) Income that a non-resident person derives from performing personal or professional services in New Zealand is exempt income if—
- (a) the services are provided under an arrangement for assistance entered into by the government of New Zealand; and
  - (b) the services are for or on behalf of a non-resident employer; and
  - (c) the purpose of the services is all or any of the following:
    - (i) providing professional or expert advice or assistance;
    - (ii) teaching or lecturing;
    - (iii) making investigations;
    - (iv) receiving education, training, or experience.

**Exempt income: maintenance and bursaries**

- (2) An amount of income that a non-resident person derives from a payment of maintenance or an allowance, scholarship, or bursary provided for or paid to that person in New Zealand is exempt income if—
- (a) provided under an arrangement for assistance entered into by the government of New Zealand; and
  - (b) provided for all or any of the following purposes:
    - (i) providing professional or expert advice or assistance;
    - (ii) teaching or lecturing;
    - (iii) making investigations;
    - (iv) receiving education, training, or experience.

**Some definitions**

- (3) In this section,—
- arrangement for assistance entered into by the government of New Zealand** means an arrangement entered into by the government of New Zealand—
- (a) in relation to or under—
    - (i) the Commonwealth Education Scheme; or

- (ii) a programme of the United Nations, or any specialised agency of the United Nations, for cultural, economic, educational, expert, professional, or technical assistance; or
- (b) for the purpose of providing education, training, or experience for officers of the Samoan, Cook Islands, Niuean, or Tokelauan public services, or for persons resident in Samoa, the Cook Islands, Niue, or Tokelau; or
- (c) with the government of any other country or with any international organisation, if it is an arrangement that—
  - (i) is for the purpose of providing cultural, economic, educational, expert, professional, or technical assistance, or administrative or other training, or the means or facilities for making investigations, whether upon a bilateral, co-operative, multilateral, mutual, or unilateral basis; and
  - (ii) is in principle similar to any arrangement to which **paragraph (a) or (b)** applies

**international organisation** means an organisation whose members are sovereign powers, whether foreign sovereign powers or countries of the Commonwealth, or the governments of those powers or countries

**non-resident person** means a person who would not be resident in New Zealand if they were not present in New Zealand under an arrangement for assistance entered into by the government of New Zealand. The residence of the person is determined without reference to **section OE 1(2)** (Determination of residence of person other than company).

*Defined:* amount, arrangement, arrangement for assistance entered into by the government of New Zealand, Commonwealth, employer, exempt income, income, international organisation, New Zealand, non-resident person, resident in New Zealand

Compare: 1994 No 164 s CB 2(1)(d), (3), (4)

## **CW 18 Income for military service in operational area**

### **Exempt income**

- (1) The pay and allowances that a person derives from the government of New Zealand are exempt income if, and to the extent to which,—

- (a) the person is engaged in an air, military, or naval force raised in New Zealand or in another part of the Commonwealth; and
- (b) the pay and allowances relate to a period of service in an operational area.

#### **Sickness, injury, or disablement**

- (2) A person's service in an operational area continues even if they are sick, injured, or disabled during their service, unless the sickness, injury, or disability is caused by their negligence or misconduct. The service continues until the person is certified as fit for further service (whether in an operational area or elsewhere) or discharged from the force.

#### **Ministerial committee**

- (3) For the purposes of this section, there is a committee consisting of the Prime Minister, the Minister of Defence, and the Minister of Finance to which the following apply:
  - (a) the committee may—
    - (i) define an area as an operational area:
    - (ii) prescribe the rules for computing a person's period of service in an operational area:
  - (b) the committee's decisions under **paragraph (a)** are set out in orders issued by the Service Board concerned.

#### **Some definitions**

- (4) In this section,—
  - operational area** means an area that the committee described in **subsection (3)** defines as an operational area
  - pay and allowances** does not include—
    - (a) a regular force gratuity; or
    - (b) a bonus or bounty for re-engagement in a regular force.

*Defined:* Commonwealth, exempt income, New Zealand, operational area, pay and allowances

Compare: 1994 No 164 s CB 11



**CW 19 Deferred military pay for active service****Exempt income**

- (1) Deferred military pay that is granted or paid under the Defence Act 1990 to a person for service in the New Zealand armed forces in an active service area is exempt income.

**Some definitions**

- (2) In this section,—

**active service area** means an area outside New Zealand that is designated as an active service area by the Minister of Defence, with the agreement of the Minister of Finance

**deferred military pay** means pay declared to be deferred by the Minister of Defence, with the agreement of the Minister of Finance.

*Defined:* active service area, deferred military pay, exempt income, New Zealand

Compare: 1994 No 164 s CB 9(b)

**CW 20 Value of board for religious society members**

The value of personal board and lodging and other basic personal necessities received by a member of a religious society or order is exempt income if the member's sole occupation is service in that society or order, and it is a condition of that service that members are neither paid for their services nor receive a reward for them (other than those necessities).

*Defined:* exempt income

Compare: 1994 No 164 s CB 6(b)

**CW 21 Jurors' and witnesses' fees**

Fees paid by the Crown to jurors and to witnesses (other than expert witnesses) are exempt income.

*Defined:* exempt income

Compare: 1994 No 164 s CB 6(c)

***Income from living allowances, compensation, and government grants*****CW 22 Pensions****Exempt income**

- (1) The following are exempt income:

- (a) a pension or allowance under the War Pensions Act 1954, other than a veteran's pension:
- (b) a pension or allowance of any other kind granted in New Zealand or overseas by any government relating to any war or to disability attributable to or aggravated by service in the armed forces or police force:
- (c) a payment of portable New Zealand superannuation:
- (d) a payment of portable veteran's pension:
- (e) an overseas pension.

### Meaning of overseas pension

- (2) In this section, **overseas pension** means—
- (a) an overseas pension, to the extent of sums subtracted by the department that is currently responsible for administering the Social Security Act 1964 under section 70 of that Act from a monetary benefit paid under Part 1 or under the Social Welfare (Transitional Provisions) Act 1990 (other than New Zealand superannuation or a veteran's pension):
  - (b) an overseas pension to the extent to which it is subject to an arrangement under section 70(3) of the Social Security Act 1964 (but this exemption does not extend to the equivalent amount of New Zealand superannuation, veteran's pension, or income-tested benefit).

*Defined:* amount, exempt income, income-tested benefit, New Zealand superannuation, overseas pension, portable New Zealand superannuation, portable veteran's pension, veteran's pension

Compare: 1994 No 164 s CB 5(1)(a), (f), (fa), (o)

### CW 23 Annuities from Crown Bank Accounts

An annuity to which the following apply is exempt income:

- (a) it is granted by the Executive Council of New Zealand; and
- (b) it is paid from the Crown Bank Account; and
- (c) it is not designated as being subject to tax.

*Defined:* exempt income, New Zealand, tax

Compare: 1994 No 164 s CB 7(c)

### CW 24 Maintenance payments

The following payments are exempt income:

- (a) child support or spousal maintenance under the Child Support Act 1991:

- (b) a payment in the nature of maintenance out of money belonging to a person's spouse or former spouse.

*Defined:* exempt income

Compare: 1994 No 164 s CB 9(a)

### **CW 25 Scholarships and bursaries**

A basic grant or an independent circumstances grant under regulations made under section 303 of the Education Act 1989 is not exempt income, but any other scholarship or bursary for attendance at an educational institution is exempt income.

*Defined:* amount, exempt income

Compare: 1994 No 164 s CB 9(d)

### **CW 26 Allowances and benefits**

#### **Exempt income**

- (1) The following payments are exempt income:
  - (a) a monetary benefit under the Social Security Act 1964, except an income-tested benefit:
  - (b) a payment under Part 5 or 13 of the Accident Insurance Act 1998, or under Part 11 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, of any of the following kinds:
    - (i) a payment to an insured person for treatment or rehabilitation:
    - (ii) an independence allowance:
    - (iii) a funeral grant:
    - (iv) a survivor's grant:
    - (v) a childcare payment:
  - (c) a participation allowance under regulations made under the Social Security Act 1964:
  - (d) a disabled workshop payment:
  - (e) an amount derived by a trustee of a trust created for the benefit of persons harmed by thalidomide, or a distribution to a beneficiary from the trust:
  - (f) an amount derived by a trustee of the New Zealand Agent Orange Trust that represents the settlement fund and income attributable to the fund, or a distribution to a beneficiary from the Trust.

#### **Meaning of disabled workshop payment**

- (2) In this section, **disabled workshop payment** means a payment to a disabled person for undertaking therapeutic activities in a sheltered workshop within the meaning of the Disabled Persons Employment Promotion Act 1960 or in a similar workshop, when the sums paid are no more than \$50 per week as an average amount in a tax year.

*Defined:* amount, disabled workshop payment, distribution, exempt income, income, income-tested benefit, tax year, trustee

Compare: 1994 No 164 ss CB 5(1)(e), (l), (m), (q), CB 6(a), (e)

## CW 27 Compensation payments

### Exempt income

- (1) An amount of income from the following payments is exempt income:
- (a) a payment relating to incapacity for work:
  - (b) a payment under the Workers Compensation Act 1956:
  - (c) a payment under the Criminal Injuries Compensation Act 1963:
  - (d) a distribution from funds approved by the Minister in charge of War Pensions to ex-prisoners of war held in German concentration camps in World War 2:
  - (e) a payment under the laws of a State of the Federal Republic of Germany or the Republic of Austria to the victims of National Socialist persecution:
  - (f) payments under schedule 1 of the Crown Forest Assets Act 1989 (except clause 3(b)):
  - (g) payments of compensation, solatium payments, or payments to lessors for the purchase of leases under the Maori Reserved Land Amendment Act 1997 (but not interest paid under section 23 of that Act).

### Some definitions

- (2) In this section,—
- accident insurance contract** has the meaning given to it by section 13 of the Accident Insurance Act 1998
- payment relating to incapacity for work** means a payment of 1 of the following kinds made to a person who is incapacitated for work:
- (a) a payment under section 25 of the National Provident Fund Act 1950:

- (b) a payment by a friendly society, but not a payment referred to in **paragraph (d) or (e)** of the definition of the term **accident compensation payment** in **section CF 1(2)** (Benefits, pensions, compensation, and government grants):
- (c) a payment from a sick, accident, or death benefit fund to which the person was a contributor when the period of incapacity began, but not a payment referred to in **paragraph (d) or (e)** of the definition of the term **accident compensation payment** in **section CF 1(2)** (Benefits, pensions, compensation, and government grants):
- (d) a payment under a policy of personal sickness or accident insurance, or an accident insurance contract, but neither a payment referred to in **paragraph (d) or (e) or (f)** of the definition of the term **accident compensation payment** in **section CF 1(2)** (Benefits, pensions, compensation, and government grants) nor a payment calculated according to loss of earnings or profits.

*Defined:* accident insurance contract, exempt income, friendly society, interest, lease, lessor, pay, payment relating to incapacity for work, sick, accident, or death benefit fund

Compare: 1994 No 164 s CB 5(1)(b), (c), (g), (h), (j), (k), (n), (p), (2)

### *Income of certain entities*

#### **CW 28 Public authorities**

##### **Exempt income**

- (1) The following amounts are exempt income:
  - (a) an amount of income derived by a public authority:
  - (b) an amount of income derived from sinking funds relating to the public debt.

##### **Exclusion: amounts received in trust**

- (2) This section does not apply to an amount of income that a public authority derives as a trustee.

##### **Exclusion: superannuation schemes**

- (3) This section does not apply to a public authority to the extent to which it is a superannuation scheme.

##### **Exclusion: certain public authorities**

- (4) This section does not apply to an amount of income derived by the following public authorities:
- (a) Public Trust:
  - (b) State enterprises:
  - (c) Crown Research Institutes:
  - (d) the department or ministry that is currently responsible for administering the Marketing Act 1936, if the amount is derived for a function that the department or ministry exercises under that Act.

**Meaning of public authority**

- (5) In this section, **public authority** includes the Reserve Bank of New Zealand.

*Defined:* amount, Crown Research Institute, exempt income, income, public authority, State enterprise, superannuation scheme, trustee

Compare: 1994 No 164 s CB 3(a), (c), (e)

**CW 29 Local authorities**

**Exempt income**

- (1) The following amounts are exempt income:
- (a) an amount of income derived by a local authority:
  - (b) an amount of income derived from sinking funds relating to the debt of a local authority.

**Exclusion: amounts received in trust**

- (2) This section does not apply to an amount of income that a local authority derives as a trustee.

**Exclusion: certain amounts from commercial undertakings**

- (3) This section does not apply to an amount of income (other than rates) derived by a local authority from—
- (a) a local authority trading enterprise; or
  - (b) a port company, subsidiary of a port company, or energy company that would be a local authority trading enterprise if section 594B(b)(ii) or (iia) of the Local Government Act 1974 did not exist.

**Exclusion: local authority as port operator**

- (4) This section does not apply to an amount of income derived by a local authority in its capacity as a port operator within the

meaning of section 38(4) of the Port Companies Act 1988, from a port-related commercial undertaking within the meaning of that section.

*Defined:* amount, exempt income, income, local authority, local authority trading enterprise, trustee

Compare: 1994 No 164 s CB 3(b), (c)

### **CW 30 Charities: non-business income**

#### **Exempt income**

- (1) The following amounts are exempt income:
  - (a) an amount of income derived by a trustee in trust for charitable purposes:
  - (b) an amount of income derived by a society or institution established exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.

#### **Exclusion: business income**

- (2) This section does not apply to an amount of income derived from a business carried on by or for a trust, society, or institution of a kind referred to in **subsection (1)**. A trust is treated as carrying on a business in the circumstances described in **section CW 31(6)**.

#### **Exclusion: local authority trading enterprise income**

- (3) This section does not apply to income derived by—
  - (a) a local authority trading enterprise; or
  - (b) a local authority from a local authority trading enterprise.

*Defined:* amount, business, charitable purpose, exempt income, income, local authority, local authority trading enterprise, trustee

Compare: 1994 No 164 s CB 4(1)(c), (e), (3)

### **CW 31 Charities: business income**

#### **Exempt income**

- (1) Income derived directly or indirectly from a business carried on by, or for, or for the benefit of a trust, society, or institution of a kind referred to in **section CW 30(1)** is exempt income if—

- (a) the charitable activities of the trust, society, or institution are carried out in New Zealand; and
- (b) no person with some control over the business is able to direct or divert, to their own benefit or advantage, an amount derived from the business.

#### **Exclusion**

- (2) This section does not apply to income derived by—
  - (a) a local authority trading enterprise; or
  - (b) a local authority from a local authority trading enterprise.

#### **Charitable activities in New Zealand and overseas**

- (3) For the purposes of **subsection (1)(a)**, if the charitable activities of the trust, society, or institution are not limited to New Zealand, income derived from the business in a tax year is apportioned reasonably between those activities in New Zealand and those outside New Zealand. Only the part apportioned to the New Zealand activities is exempt income.

#### **Control over business**

- (4) For the purposes of **subsection (1)(b)** for a tax year, a person is treated as having some control over the business, and as being able to direct or divert amounts from the business to their own benefit or advantage if, in the tax year,—
  - (a) the person is, in any way, whether directly or indirectly, able to determine or materially influence the nature or extent of a relevant benefit or advantage, or the circumstances in which it can be afforded, or received, or derived; and
  - (b) that ability to determine or influence the benefit or advantage arises because the person is—
    - (i) a settlor or trustee of the trust by which the business is carried on; or
    - (ii) a shareholder or director of the company by which the business is carried on; or
    - (iii) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
    - (iv) a person associated with a settlor, trustee, shareholder, or director referred to in any of **subparagraphs (i) to (iii)**.



**Control: settlor asset disposed of to trust**

- (5) For the purposes of **subsection (4)**, a person is treated as a settlor of a trust, and as gaining a benefit or advantage in the carrying on of a business of the trust, if—
- (a) they have disposed of an asset to the trust, and the asset is used by the trust in the carrying on of the business; and
  - (b) they retain or reserve an interest in the asset, or the asset will revert to them.

**Control: trustee**

- (6) For the purposes of **subsection (4)**, a trustee is treated as carrying on a business if—
- (a) the trustee derives rents, fines, premiums, or other revenues from an asset of the trust; and
  - (b) the asset was disposed of to the trust by a person of a kind referred to in any of **subsection (4)(b)(i) to (iv)**; and
  - (c) the person retains or reserves an interest in the asset, or the asset will revert to them.

**No control**

- (7) For the purposes of **subsection (1)(b)**, a person is not treated as having a measure of control of a business merely because—
- (a) the person provides professional services to the trust or company by which the business is carried on; and
  - (b) the ability to determine or materially influence a benefit or advantage arises because the person—
    - (i) provides the services in the course of and as part of carrying on, as a business, a professional public practice; or
    - (ii) is a trustee company; or
    - (iii) is Public Trust; or
    - (iv) is the Maori Trustee.

**Benefit or advantage**

- (8) For the purposes of **subsection (1)(b)**, a benefit or advantage to a person—
- (a) may or may not be something that is convertible into money:

- (b) unless excluded under **paragraph (d)**, includes deriving an amount that would be income of the person under 1 or more of the following provisions:
- (i) **section CA 1(2)** (Amounts that are income):
  - (ii) **sections CB 1 to CB 21** (which relate to income from business or trade-like activities):
  - (iii) **section CB 29** (Obtaining property by theft):
  - (iv) **sections CC 1** (Land), **CC 3 to CC 9** (which relate to income from financial instruments), and **CC 10** (Royalties):
  - (v) **section CD 1** (Income):
  - (vi) **sections CE 1** (Amounts derived in connection with employment) and **CE 8** (Attributed income from personal services):
  - (vii) **section CF 1** (Benefits, pensions, compensation, and government grants):
  - (viii) **section CG 3** (Bad debt repayment):
  - (ix) **sections CQ 1** (Attributed controlled foreign company income) and **CQ 4** (Foreign investment fund income):
- (c) includes retaining or reserving an interest in an asset in the case described in **subsection (6)**, if the person has disposed of an asset to a trust:
- (d) does not include earning interest on money lent, if the interest is payable at no more than the current commercial rate, given the nature and term of the loan.

### Non-exempt business income

- (9) If an amount derived from the carrying on of a business by or for a charitable trust is not exempt income because of a failure to comply with **subsection (1)(b)**, the amount is trustee income.

*Defined:* amount, associated person, business, company, director, exempt income, income, interest, local authority, local authority trading enterprise, money lent, New Zealand, shareholder, tax year, trustee, trustee company, trustee income

Compare: 1994 No 164 s CB 4(1)(e), (2), (3)

## CW 32 Charitable bequests

### Exempt income

- (1) An amount of income derived by a deceased's executor or administrator is exempt income to the extent to which the

requirements in **subsections (2) and (3)** are met, having regard to all relevant matters including—

- (a) the terms of the deceased's will, including the rights of annuitants, legatees, and other beneficiaries; and
- (b) the nature and extent of the debts and liabilities of, and other charges against, the estate and their likely effect on the income and assets available for distribution to the beneficiaries; and
- (c) the shares and prospective shares of the beneficiaries in the income and assets of the estate.

#### **Gift to charity**

- (2) The first requirement is that the amount arises from or is attributable to assets of the estate that have been left to a trust, society, or institution of a kind referred to in **section CW 30(1)**.

#### **Exempt in hands of charity**

- (3) The second requirement is that the amount, if derived by the trust, society, or institution or by a business carried on by, or for, or for the benefit of it, would be exempt income under **section CW 30 or CW 31**.

*Defined:* amount, business, distribution, exempt income, income, New Zealand

Compare: 1994 No 164 s CB 4(1)(d)

#### **CW 33 Friendly societies**

An amount of income derived by a friendly society is exempt income, except to the extent to which the amount is derived from—

- (a) a business carried on beyond the membership of the friendly society; or
- (b) a company registered as an insurer under the Accident Insurance Act 1998.

*Defined:* amount, business, company, exempt income, friendly society, income

Compare: 1994 No 164 s CB 4(1)(a)

#### **CW 34 Sick, accident, or death benefit fund**

##### **Exempt income**

- (1) An amount of income derived by a trustee in trust for a sick, accident, or death benefit fund is exempt income.

**Exclusion**

- (2) This section does not apply to an amount derived directly or indirectly from—
- (a) a business carried on by, or on behalf of, or for the benefit of, the trustee; or
  - (b) a company registered as an insurer under the Accident Insurance Act 1998 that is under the control of that trustee.

*Defined:* amount, business, company, control, exempt income, income, sick, accident, or death benefit fund, trustee

Compare: 1994 No 164 s CB 5(1)(i)

**CW 35 Bodies promoting amateur games and sports**

An amount of income derived by a club, society, or association is exempt income if—

- (a) the club, society, or association is established mainly to promote an amateur game or sport; and
- (b) the game or sport is conducted for the recreation or entertainment of the general public; and
- (c) no part of the funds of the club, society, or association is used or is available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

*Defined:* amount, associated person, exempt income, income

Compare: 1994 No 164 s CB 4(1)(h), (2)

**CW 36 TAB and racing clubs****Exempt income: racing organisations**

- (1) An amount of income derived by any of the following bodies is exempt income:
- (a) the Totalisator Agency Board:
  - (b) the New Zealand Racing Industry Board:
  - (c) the New Zealand Racing Conference:
  - (d) Harness Racing New Zealand:
  - (e) the New Zealand Greyhound Racing Association (Incorporated).

**Exempt income: racing clubs**

- (2) An amount of income derived by a racing club within the meaning of section 2 of the Racing Act 1971 is exempt

income, if none of the club's funds is used or is available to be used for the private pecuniary profit of a member of the club or an associate of a member.

*Defined:* amount, associated person, exempt income, income

Compare: 1994 No 164 s CB 4(1)(i), (2)

### **CW 37 Local and regional promotion bodies**

#### **Exempt income: beautification societies**

- (1) An amount of income derived by a society or association is exempt income if—
- (a) the society or association is established mainly to—
    - (i) advertise, beautify, or develop a city or other district so as to attract population, tourists, trade, or visitors; or
    - (ii) create, develop, or increase amenities for the general public in a city or other district; and
  - (b) none of the funds of the society or association is used, or is or may become available to be used, for any other purpose that is not a charitable purpose.

#### **Exclusion: local authority trading enterprise**

- (2) This section does not apply to an amount of income derived—
- (a) by a local authority trading enterprise; or
  - (b) by a local authority from a local authority trading enterprise.

#### **Exempt income: trustees of Cornwall Park**

- (3) An amount of income that the trustees of Cornwall Park, Auckland, derive from the property of the trust is exempt income.

*Defined:* amount, associated person, charitable purpose, exempt income, income, local authority, local authority trading enterprise, trustee

Compare: 1994 No 164 s CB 4(1)(j), (1), (3)

### **CW 38 Bodies promoting scientific or industrial research**

#### **Exempt income**

- (1) An amount of income derived by a society or association established mainly to promote or encourage scientific or industrial research is exempt income if—

- (a) the society or association is approved by the Royal Society of New Zealand; and
- (b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

### **Exclusion**

- (2) This section does not apply to a Crown Research Institute.

*Defined:* amount, associated person, Crown Research Institute, exempt income, income

Compare: 1994 No 164 ss CB 4(1)(b), (2), CK 4(2)

## **CW 39 Veterinary services bodies**

### **Exempt income: veterinary clubs**

- (1) An amount of income derived by a veterinary club, society, or association is exempt income if—
- (a) the club, society, or association was established mainly to promote efficient veterinary services in New Zealand; and
  - (b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

### **Exempt income: Veterinary Council**

- (2) An amount of income derived by the Veterinary Council of New Zealand is exempt income.

*Defined:* amount, associated person, exempt income, income, New Zealand

Compare: 1994 No 164 s CB 4(1)(f), (2)

## **CW 40 Herd improvement societies**

An amount of income derived by a herd improvement society or association is exempt income if—

- (a) the society or association was established mainly to promote the improvement of the standard of dairy cattle in New Zealand; and
- (b) none of its funds is used or available to be used for the private pecuniary profit of a member, proprietor, shareholder, or associate of any of them.

*Defined:* amount, associated person, exempt income, income, New Zealand

Compare: 1994 No 164 s CB 4(1)(g), (2)

*Income from certain activities***CW 41 Non-resident aircraft operators****Exempt income**

- (1) An amount of income derived by a non-resident aircraft operator from air transport from New Zealand is exempt income to the extent to which the Commissioner determines that an aircraft operator resident in New Zealand is, in circumstances corresponding to the circumstances of the non-resident aircraft operator, exempt from, or not liable to, income tax imposed by the laws of the country or territory in which the non-resident aircraft operator is resident.

**Determination**

- (2) A determination by the Commissioner for the purposes of **subsection (1)** may relate to a class of non-resident aircraft operators or a class of resident aircraft operators.

**Some definitions**

- (3) In this section,—

**air transport from New Zealand—**

- (a) means the carriage outside New Zealand by an aircraft of cargo, mail, or passengers emplaned or embarked on the aircraft at an airport in New Zealand; and
- (b) if the aircraft calls at another airport in New Zealand before leaving New Zealand on the flight for which the emplaning or embarking occurred, includes that New Zealand portion of the flight

**non-resident aircraft operator** means a person who—

- (a) is engaged in the business of operating an aircraft for air transport from an airport; and
- (b) is resident in a country or territory outside New Zealand and is not resident in New Zealand.

*Defined:* air transport from New Zealand, amount, business, Commissioner, exempt income, income, income tax, New Zealand, non-resident aircraft operator, resident in New Zealand

Compare: 1994 No 164 s CB 14

**CW 42 Disposal of companies' own shares**

An amount of income derived by a company from disposing of shares in the company is exempt income if—

- (a) the company acquired the shares; and
- (b) the acquisition was treated under section 67A(1) of the Companies Act 1993 as not resulting in the cancellation of the shares.

*Defined:* amount, cancellation, company, exempt income, income, share

Compare: 1994 No 164 s CB 15

### **CW 43 New Zealand companies operating in Niue**

#### **Exempt income: income wholly or mainly from Niue**

- (1) An amount of income derived in a tax year by a New Zealand company that derives its income wholly or mainly from Niue is exempt income.

#### **Exclusion**

- (2) **Subsection (1)** does not apply if the company, if it were a foreign company, would at any time during the tax year be a controlled foreign company.

#### **Exempt income: dividends**

- (3) A dividend derived in a tax year from a New Zealand company that derives its income wholly or mainly from Niue is exempt income, unless the dividend is derived by—
  - (a) a person who is resident in New Zealand; or
  - (b) a company that is a controlled foreign company at any time during the tax year; or
  - (c) a trustee of a trust of which a settlor or beneficiary is resident in New Zealand during the tax year.

#### **Exempt income: Niue development projects**

- (4) An amount of income derived by a New Zealand company from a business or enterprise that the company carries on in Niue is exempt income if—
  - (a) the business or enterprise is declared by an Order in Council made under **subsection (7)** to be a development project for the purposes of this section; and
  - (b) the company's income is derived wholly or mainly from that business or enterprise; and
  - (c) the amount is derived from sources in Niue; and



- (d) the amount is derived while the Order in Council is in force.

### Exclusions

- (5) **Subsections (1), (3), and (4)** do not apply to—
- (a) an amount of income derived from sources in New Zealand; or
  - (b) a dividend, to the extent to which it constitutes distribution of an amount derived by the company from sources in New Zealand.

### Attributed CFC income and foreign investment fund income

- (6) This section does not restrict the application of **section CQ 1** (Attributed controlled foreign company income), **or CQ 4** (Foreign investment fund income), or the FIF rules. For the purposes of the FIF rules, a company that derives its income wholly or mainly from Niue and has exempt income under **subsection (1)** is treated as a foreign entity.

### Order in Council declaring Niue development project

- (7) The Governor-General may, by Order in Council, declare a business or enterprise to be a development project for the purposes of this section if satisfied that the business or enterprise—
- (a) has been or will be entered upon wholly or mainly for the purpose of developing Niue; or
  - (b) is or will be important in the development of Niue.

*Defined:* amount, attributed CFC income, business, company, controlled foreign company, dividend, exempt income, FIF rules, foreign company, foreign entity, foreign investment fund, income, New Zealand, New Zealand company, resident in New Zealand, source in New Zealand, tax year, trustee

Compare: 1994 No 164 s CB 8

### CW 44 Stake money

Stake or prize money for a dog race, horse race, or trotting race is exempt income if—

- (a) it is paid by a club that is licensed to use the totalisator under the Racing Act 1971; or

(b) the race is held outside New Zealand.

*Defined:* exempt income, New Zealand

Compare: 1994 No 164 s CB 9(c), (ca)

### *Foreign-sourced income of non-residents*

#### **CW 45 Foreign-sourced income of non-residents**

An amount of income to which **section BD 1(2)(b)** (Income, exempt income, excluded income, and counted income) applies is exempt income.

*Defined:* amount, exempt income, income, non-resident

### *General exemption under other Acts*

#### **CW 46 Exemption under other Acts**

An amount of income expressly exempted from income tax by any other Act is exempt income.

*Defined:* amount, exempt income, income, income tax

Compare: 1994 No 164 s CB 9(e)

### *Income exempt under Parts F to I*

#### **CW 47 Exemption under Parts to be rewritten**

An amount of income is exempt income if it is exempt under a provision in any of **Parts F to I**.

*Defined:* amount, exempt income, income

Compare: 1994 No 164 s BD 1(2)(a)

### Subpart CX—Excluded income

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## ***Goods and services tax***

### **CX 1 GST**

#### **Excluded income**

- (1) The following amounts are excluded income of a person:
- (a) output tax on goods and services they supply;
  - (b) GST payable to the person by the Commissioner.

#### **Exclusion**

- (2) This section does not apply to an amount calculated under sections 21F and 21G of the Goods and Services Tax Act 1985 and referred to in **section CH 5** (GST adjustments).

*Defined:* amount, Commissioner, excluded income, goods, GST payable, output tax, services

Compare: 1994 No 164 s ED 4(1), (3)(b), (g), (7)

## ***Fringe benefits***

### ***Introductory provisions***

#### **CX 2 When sections CX 2 to CX 33 apply**

#### **Excluded income**

- (1) A benefit that an employer provides to an employee in connection with their employment is a fringe benefit and is excluded income of the employee.

#### **Relationship with subpart ND**

- (2) **Sections CX 7 to CX 33** set out the circumstances in which benefits that an employer provides to an employee in connection with their employment are fringe benefits. The calculation of the taxable value of fringe benefits is dealt with in **subpart ND** (Fringe benefit tax).

*Defined:* employee, employer, employment, excluded income, exempt income, fringe benefit, income

Compare: 1994 No 164 s CI 1

### **CX 3 Past, present, or future employment**

For the purposes of the fringe benefit tax rules, it is not necessary that an employment relationship is in existence when the employee receives the benefit.

*Defined:* employee, employment, fringe benefit tax rules

Compare: 1994 No 164 s CI 2(1)

### **CX 4 Arrangement to provide benefits**

A benefit that is provided to an employee through an arrangement between their employer and another person is treated as having been provided by the employer.

*Defined:* arrangement, employee, employer

Compare: 1994 No 164 s CI 2(1)

### **CX 5 Employment income: relationship with subpart CE**

To the extent to which a benefit that an employer provides to an employee in connection with their employment is employment income under **section CE 1** (Amounts derived in connection with employment), or is otherwise their income under **subpart CE** (Employee or contractor income), the benefit is not a fringe benefit.

*Defined:* employee, employer, employment, employment income, fringe benefit, income

Compare: 1994 No 164 s CI 1(o)(i)

### **CX 6 Exempt income: relationship with subpart CW**

#### **Exempt income not fringe benefit**

- (1) To the extent to which a benefit that an employer provides to an employee in connection with their employment is exempt income under **subpart CW** (Exempt income), the benefit is not a fringe benefit.

**Exclusion**

- (2) **Subsection (1)** does not apply to—
- (a) an allowance that is exempt under **section CW 13** (Expenditure on account, and reimbursement, of employees) to the extent to which it is made to enable the employee to provide a benefit to another person:
  - (b) a payment of a premium on a life insurance policy that is excluded from being expenditure on account of an employee under **section CE 5(2)** (Meaning of expenditure on account of an employee).

**Exempt cash payment not fringe benefit**

- (3) To the extent to which a benefit that an employer provides to an employee in connection with their employment would have been exempt income if it had been paid in cash, the benefit is not a fringe benefit.

**Exclusion**

- (4) **Subsection (3)** does not apply to interest, dividends, or an allowance under **subsection (2)(a)**.

*Defined:* dividend, employee, employer, employment, exempt income, expenditure on account of an employee, fringe benefit, interest, life insurance policy, payment, premium

Compare: 1994 No 164 s CI 1(o)(ii), (iii)

**CX 7 When fringe benefits arise**

A fringe benefit arises when—

- (a) a motor vehicle is made available to an employee for their private use (**sections CX 8 to CX 10**):
- (b) an employer provides subsidised transport for an employee (**section CX 11**):
- (c) an employer provides an employment-related loan to an employee, or a life insurer provides a loan to a policyholder (**sections CX 12 and CX 13**):
- (d) an employer contributes to a superannuation scheme for the benefit of an employee (**section CX 14**):
- (e) an employer makes a contribution for the benefit of an employee to a sick, accident, or death benefit fund (**section CX 15**):
- (f) an employer pays a specified insurance premium or makes a contribution to the insurance fund of a friendly society for the benefit of an employee (**section CX 16**):

- (g) a company or trustee of a group investment fund provides a benefit to an employee who holds shares in the company or is an investor in the fund **section CX 17**);
- (h) an employer provides an employee with an unclassified benefit.

*Defined:* company, contribution, employee, employer, employment, employment-related loan, friendly society, fringe benefit, group investment fund, life insurer, loan, motor vehicle, policyholder, private use, share, sick, accident, or death benefit fund, specified insurance premium, subsidised transport, superannuation scheme, trustee, unclassified benefit

### *Fringe benefits: motor vehicles*

#### **CX 8 Private use of motor vehicle**

##### **When fringe benefit arises**

- (1) A fringe benefit arises when—
  - (a) a motor vehicle is made available to an employee for their private use; and
  - (b) the vehicle is owned, leased, or rented by the person who makes it available to the employee.

##### **Exclusion**

- (2) **Subsection (1)** does not apply when—
  - (a) the nature of the employment requires the employee regularly to use a motor vehicle and to be absent from home in the performance of their duties, and the period of absence is not less than 24 hours continuously; or
  - (b) the vehicle is used as a work-related vehicle; or
  - (c) the vehicle is used for an emergency call.

##### **Whole day**

- (3) For the purposes of **subsection (2)**, the whole of the day on which a motor vehicle is used for a business trip, or as a work-related vehicle, or for an emergency call is treated as a day on which the vehicle is not available for private use.

*Defined:* business, emergency call, employee, employment, motor vehicle, private use, work-related vehicle

Compare: 1994 No 164 ss CI 1(a), (b), CI 11(16), OB 1 “private use or enjoyment”

#### **CX 9 Private use of motor vehicle: use of work-related vehicle**

If an employer makes a work-related vehicle available to an employee for their private use, the employee’s use of the vehicle must be limited to—

- (a) travel to and from their home that is necessary in, and a condition of, their employment; or
- (b) other travel in the course of their employment during which the travel arises incidentally to the business use.

**Defined:** business, employee, employer, employment, motor vehicle, private use, work-related vehicle

Compare: 1994 No 164 s OB 1 “work-related vehicle”

### **CX 10 Private use of motor vehicle: use by more than 1 employee**

If, on any day, a motor vehicle is made available by an employer for the private use of more than 1 employee, this availability is treated as a single instance. The taxable value of the fringe benefit is reduced by the total amount of any contributions paid by an employee or employees.

**Defined:** amount, contribution, employee, employer, fringe benefit, motor vehicle, private use

Compare: 1994 No 164 s CI 2(4)

#### *Fringe benefits: other matters*

### **CX 11 Subsidised transport in course of employer’s business**

#### **Subsidised transport provided by employer**

- (1) A fringe benefit arises if an employer carries on a business that includes charging a sum for transporting members of the public by means other than a motor vehicle, and the employer subsidises the transport of an employee in the course of the business.

#### **Transport provided by arrangement with third person**

- (2) A fringe benefit arises whether the subsidised transport is provided to an employee by their employer or by a person with whom the employer has entered into an arrangement to provide the transport.

**Defined:** amount, arrangement, business, employee, employer, fringe benefit, motor vehicle, subsidised transport

Compare: 1994 No 164 ss CI 1(d), OB 1 “subsidised transport”



## CX 12 Employment-related loans

### When fringe benefit arises

- (1) A fringe benefit arises when—
  - (a) an employer provides a loan to an employee; or
  - (b) a life insurer provides a loan to which **section CX 13** applies.

### Exclusion

- (2) This section does not apply to a loan made—
  - (a) as an employee share loan;
  - (b) under a share purchase scheme approved under **section DC 11** (Loans to employees under share purchase schemes);
  - (c) by a superannuation fund to the extent to which the value of the loan constitutes income of the fund under **section GD 6** (Value of loans provided by superannuation fund deemed to be income of fund).

*Defined:* employee, employee share loan, employer, employment-related loan, fringe benefit, income, life insurance policy, life insurer, loan, offered or entered into in New Zealand, policyholder, share purchase scheme, superannuation fund

Compare: 1994 No 164 ss CI 1(c), (i), (ia), (j), CI 2(8), (9)

## CX 13 Employment-related loans: loans by life insurers

### Loan to policyholder

- (1) A life insurer provides a benefit that is treated as an employment-related loan if—
  - (a) the life insurer makes a loan to a person holding a life insurance policy (or to a person associated with them); and
  - (b) the loan is made because of the capacity or status of the person as a policyholder; and
  - (c) the life insurance policy is offered or entered into in New Zealand.

### Interest charged on loan

- (2) If a life insurer makes a loan to a person holding a life insurance policy (or to a person associated with them), and the interest charged on the loan depends on the capacity or status of the person as a policyholder, the life insurer provides a benefit that is treated as an employment-related loan.

**Life insurer as employer**

- (3) For the purposes of the FBT rules, the life insurer is treated as an employer and the person holding the policy as an employee.

**Meaning of life insurer**

- (4) In this section, **life insurer** means a person who is the insurer under the life insurance policy, or a person associated with them, or a person with whom they have entered into an arrangement related to the making of the loan.

*Defined:* arrangement, associated person, employee, employer, employment-related loan, FBT rules, interest, life insurance policy, life insurer, loan, New Zealand

Compare: 1994 No 164 s CI 2(8), (9)

**CX 14 Contributions to superannuation schemes****Contribution**

- (1) A fringe benefit arises if an employer contributes to a superannuation scheme for the benefit of an employee.

**Exclusion**

- (2) This section does not apply if the contribution is a specified superannuation contribution.

*Defined:* contribution, employee, employer, fringe benefit, specified superannuation contribution, superannuation scheme

Compare: 1994 No 164 s CI 1(g), (k)

**CX 15 Contributions to sick, accident, or death benefit funds**

A fringe benefit arises if an employer makes a contribution for the benefit of an employee to a sick, accident, or death benefit fund that has been approved by the Commissioner for the purposes of **section CW 34** (Sick, accident, or death benefit fund).

*Defined:* Commissioner, contribution, employee, employer, fringe benefit, sick, accident, or death benefit fund

Compare: 1994 No 164 s CI 1(e)

**CX 16 Contributions to insurance funds****Contribution**

- (1) A fringe benefit arises if an employer pays a specified insurance premium or makes a contribution to the insurance fund of a friendly society for the benefit of an employee

**Exclusion**

- (2) This section does not apply to a premium or contribution under an accident insurance contract under section 13 of the Accident Insurance Act 1998, or under a contract to which section 188 (1)(a) of that Act applies, to the extent to which it relates to cover and entitlements for work-related personal injury.

**Meaning of specified insurance premium**

- (3) In this section, **specified insurance premium** means a premium paid on the following policies for the benefit of an employee, their spouse, or their child:
- (a) a policy of life insurance on the life of the employee or their spouse or on their joint lives, or on the life of their child, that has the following characteristics:
    - (i) for policies other than whole of life policies, the minimum term is 10 years (except for a policy on the life of an employee's spouse) or, when the policy's maturity date is not earlier than the date on which a life assured reaches 60 years of age, is 5 years; and
    - (ii) the only benefits payable or distributable earlier than 10 years from the start of the policy or its maturity date (whichever is earlier) are made as a result of the death of a life assured, or are additional benefits payable as a result of accident to, or disease or sickness of, a life assured; and
    - (iii) the policy provides on the death of a life assured for a payment or distribution of a benefit (not a return of premiums) that is substantially capital and not materially less than the total benefit payable under the policy otherwise than as a result of death, or is a deferred life assurance policy on the life of a child, or is a policy on the life of a person who owing to ill health or physical disability

cannot effect a policy of insurance at ordinary rates:

- (b) a policy of pension insurance under which the benefits are payable solely—
  - (i) for a life assured under the policy by way of a pension starting on or after the date on which the life assured reaches 60 years of age, and continuing for the life of the employee, their spouse, or their child; or
  - (ii) as a result of the death of the life assured either by returning a portion of the premiums paid for the assurance to secure the payment of a pension dependent on the life of the employee, their spouse, or their child, or by paying some or all of a bonus declared on the policy attributed to that portion:
- (c) a policy of personal accident or sickness insurance under which the benefits are payable solely for personal accident (whether fatal or not) or disease or sickness suffered by the employee, their spouse, or their child.

*Defined:* contribution, employee, employer, friendly society, fringe benefit, life insurance, premium, specified insurance premium, year

Compare: 1994 No 164 ss CI 1(f), (ja), CI 3(8A), OB 1 “policy of life insurance”, “policy of pension insurance”, “policy of personal accident or sickness insurance”

## **CX 17 Benefits provided to employees who are shareholders or investors**

### **Benefit provided in connection with employment**

- (1) If a company or a trustee of a group investment fund provides a benefit to an employee who holds shares in the company or who is an investor in the fund, the benefit is treated as having been provided in connection with the employment. The shares or investment may be held in the employee’s own right or beneficially.

### **Exclusion**

- (2) **Subsection (1)** does not apply when a payment or distribution under **section CD 12(2)** (Benefits of shareholder-employees or directors) is made to a non-executive director solely in their capacity as a non-executive director.

**Whether fringe benefit or dividend**

- (3) A company or a trustee of a group investment fund that has provided a non-cash benefit to an employee who holds shares in the company or who is an investor in the fund may choose to treat the benefit as a fringe benefit or a dividend. If the company or trustee does not make an election, the benefit is treated as a fringe benefit. If the company or trustee chooses to treat the benefit as a dividend, the FBT rules do not apply.

**Non-cash benefits**

- (4) **Subsection (2)** applies to non-cash benefits that would,—
- (a) if **section CX 5** did not exist, be unclassified benefits if provided to a person in their capacity as an employee;
  - (b) if **section CD 23** (Employee benefits) did not exist, be dividends under **section CD 12** (Benefits of shareholder-employees or directors) if provided to a person in their capacity as a shareholder.

**Notice of election**

- (5) The company or trustee must give notice to the Commissioner of the election referred to in **subsection (2)** within the time allowed for filing a fringe benefit tax return for the period in which the benefit was provided.

*Defined:* Commissioner, company, dividend, employee, employment, FBT rules, fringe benefit, fringe benefit tax, group investment fund, investor, non-executive director, notice, return, share, shareholder, trustee, unclassified benefit

Compare: 1994 No 164 ss CI 2(2), (3), CI 2A

*Exclusions and limitations***CX 18 Benefits provided instead of allowances**

A benefit that an employer provides to an employee in connection with their employment is not a fringe benefit to the extent to which it removes the need that would otherwise exist for the employer to pay the employee an allowance that,—

- (a) if it had been paid, would have been exempt income under **section CW 13** (Expenditure on account, and reimbursement, of employees), and would have been paid for reasons other than to enable the employee to provide a benefit to another person; or
- (b) reimburses the employee for transport costs that would have been incurred both in connection with their

employment and for the benefit of the employer in travelling between home and work, and that are attributable to any 1 or more of the factors set out in **section CW 14(3)(a) to (f)** (Allowance for additional transport costs).

*Defined:* employee, employer, employment, exempt income, fringe benefit

Compare: 1994 No 164 s CI 1(o)(iv), (v)

### **CX 19 Benefits to enable performance of duties**

The taxable value of a benefit that an employer provides to an employee by way of subsidised transport, or in the form of expenditure that an employer incurs on accommodation or transport provided to an employee, is zero if the expenditure—

- (a) is to enable travel by the employee in order for them to perform their duties; and
- (b) does not relate to the providing or taking of leave or a vacation; and
- (c) is not increased as a result of the benefit.

*Defined:* employee, employer, subsidised transport

Compare: 1994 No 164 s CI 4(4)

### **CX 20 Benefits to non-executive directors**

A payment or distribution to, or a transaction with, a non-executive director that is a dividend under **section CD 12(2)** (Benefits of shareholder-employees or directors) is not a fringe benefit if it is made solely because of their capacity as a non-executive director.

*Defined:* distribution, dividend, fringe benefit, non-executive director, shareholder

Compare: 1994 No 164 s CI 1(na)

### **CX 21 Benefits provided on premises**

#### **Nature of exemption**

- (1) A benefit (other than free, discounted, or subsidised travel, accommodation, or clothing) provided by an employer and received or used by an employee on the employer's premises is not a fringe benefit.

#### **Meaning of employer's premises**

- (2) In this section, **employer's premises**—

- (a) includes premises that the employer owns or leases, and applies to premises other than those of the employer when the employee is required to work on those premises (in which case the benefit must be provided at the time the employee is working on those premises); and
- (b) does not include premises occupied by an employee for residential purposes.

*Defined:* employee, employer, employer's premises, fringe benefit, possession

Compare: 1994 No 164 s CI 1(q)

### **CX 22 Benefits provided by charitable organisations**

A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which—

- (a) the employee receives the benefit mainly in connection with their employment; and
- (b) the employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes.

*Defined:* business, charitable organisation, employee, employment, fringe benefit

Compare: 1994 No 164 s CI 1(m)

### **CX 23 Non-liable payments**

A benefit received by an employee is not a fringe benefit to the extent to which it is received in a quarter or in an income year in which they derive a source deduction payment that is not liable for income tax.

*Defined:* employee, fringe benefit, income tax, income year, quarter, source deduction payment

Compare: 1994 No 164 s CI 1(n)

### **CX 24 Assistance with tax returns**

An employer's assistance with the preparation of an employee's income statement or return of income is not a fringe benefit when the expenditure incurred in providing the assistance is expenditure for which the employee would have been allowed a deduction, if it had been incurred by the employee, under **section DB 3** (Determining tax liabilities).

*Defined:* deduction, employee, employer, fringe benefit, income statement, return of income

Compare: 1994 No 164 s CI 1(la)

**CX 25 Accommodation**

The value of board (or an allowance instead of accommodation) that an employer provides to an employee in connection with their employment or service is not a fringe benefit.

*Defined:* employee, employer, employment, fringe benefit

Compare: 1994 No 164 s CI 1(p)

**CX 26 Entertainment****Entertainment not fringe benefit as general rule**

- (1) A benefit in a form of entertainment described in **section DD 2** (Limitation rule) that an employer provides to an employee is not a fringe benefit. This subsection is overridden by **subsection (2)**.

**When entertainment is fringe benefit**

- (2) A benefit in a form of entertainment described in **section DD 2** (Limitation rule) that an employer provides to an employee is a fringe benefit if—
- (a) the employee does not receive or use it in the course of employment; and
  - (b) the employee does not receive or use it as a necessary consequence of their employment duties; and
  - (c) either—
    - (i) the employee may choose when to receive or use the benefit; or
    - (ii) the entertainment is of a kind described in **section DD 7** (Entertainment outside New Zealand).

*Defined:* employee, employer, employment, fringe benefit, New Zealand

Compare: 1994 No 164 s CI 1(r)

**CX 27 Distinctive work clothing****Distinctive work clothing provided by employer**

- (1) Distinctive work clothing that an employer provides to an employee is not a fringe benefit, whether provided by sale or otherwise.

**Meaning of distinctive work clothing**

- (2) In this section, **distinctive work clothing** means clothing (including a single item of clothing) that—



- (a) is worn by an employee as a uniform that can be identified with the employer either—
  - (i) through the permanent and prominent display of a name, logo, or other identification that the employer regularly uses in carrying on their activity or undertaking; or
  - (ii) because the colour scheme, pattern, or style is readily associated with the employer; and
- (b) is worn in the course, or as an incident, of employment; and
- (c) is not clothing that employees would normally wear for private purposes.

**Defined:** distinctive work clothing, employee, employer, employment, fringe benefit

Compare: 1994 No 164 ss CI 1(s), OB 1 “distinctive work clothing”

### **CX 28 Services provided to superannuation fund**

A fringe benefit does not arise if services are provided to a superannuation fund, but only to the extent to which the fund would have been allowed a deduction for expenditure that it incurred in providing the services, if it had provided the services.

**Defined:** deduction, fringe benefit, superannuation fund

Compare: 1994 No 164 s CI 1(l)

## *Definitions*

### **CX 29 Meaning of emergency call**

**Emergency call** means a visit that an employee is required to make, to which all the following apply:

- (a) the employee makes the visit from their home in the course of their employment; and
- (b) the purpose of the visit is to provide—
  - (i) essential services relating to the operation of the plant or machinery of the employer, or of their client or customer; or
  - (ii) essential services relating to the maintenance of services provided by a local authority or public authority, or the carrying on of a business for the supply of energy or fuel to the public; or
  - (iii) emergency services relating to the health or safety of any person; and

- (c) the employer, their client or customer, or a member of the public requests the services; and
- (d) except when **paragraph (b)(iii)** applies, the services are required to be performed between the hours of 6.00 pm and 6.00 am on days other than a Saturday, Sunday or statutory public holiday, and at any time on other days.

*Defined:* business, emergency call, employee, employer, employment, local authority, motor vehicle, public authority

Compare: 1994 No 164 s OB 1 “emergency call”

### **CX 30 Meaning of employee share loan**

#### **Meaning**

- (1) **Employee share loan** means a loan made to an employee under the conditions described in **subsection (3)** for the sole purpose of enabling the employee to acquire, under a scheme of acquisition, shares, rights, or options in the company that is their employer or that is associated with their employer.

#### **Exclusions**

- (2) This section does not apply—
  - (a) to a qualifying company;
  - (b) to a loan to which **section DC 11** (Loans to employees under share purchase schemes) applies;
  - (c) when an employer and an employee are associated persons.

#### **Conditions for loan**

- (3) The conditions applying to an employee share loan are that—
  - (a) the employee must use the loan only for the purpose of the acquisition; and
  - (b) the employee must beneficially own the shares, rights, or options while the loan is owing; and
  - (c) the employee must immediately repay the loan in full if they cease to be the beneficial owner of any of the shares, rights, or options; and
  - (d) the company issuing the shares, rights, or options must maintain a dividend-paying policy during the term of the loan.

#### **When loan is owing**

- (4) The employer provides a fringe benefit in a tax year in which the loan is owing. The circumstances in which a loan is owing include a case in which, under the arrangement for the loan, an amount is payable in the future, or would be payable in the future if a particular event happened, and the employee or an associated person is or would be liable to pay the amount.

*Defined:* amount, arrangement, associated person, company, employee, employee share loan, employer, employment-related loan, fringe benefit, loan, qualifying company, share, tax year

Compare: 1994 No 164 s OB 1 “employee share loan benefit”, “owing”

### CX 31 Meaning of private use

#### Meaning

- (1) **Private use**, for a motor vehicle,—
- (a) includes the employee’s use of the vehicle for travel between home and work, and any other travel that confers a private benefit on the employee; and
  - (b) does not include the use of the vehicle in the course of employment—
    - (i) for an emergency call; or
    - (ii) when the nature of the employment regularly requires the employee to use the vehicle and to be absent from home in the performance of their duties, and the period of absence is not less than 24 hours continuously.

#### Emergency call or absence

- (2) For the purposes of **subsection (1)(b)**, the day on which the emergency call is made, or a day on which the absence continues, is not counted as a day on which the vehicle is available for the employee’s private use.

*Defined:* emergency call, employee, employment, motor vehicle, private use

Compare: 1994 No 164 s OB 1 “private use or enjoyment”

### CX 32 Meaning of unclassified benefit

**Unclassified benefit** means a fringe benefit that arises if an employer provides an employee with a benefit in connection with their employment that is—

- (a) not a benefit referred to in any of **sections CX 8 to CX 17**; and

(b) not a benefit excluded under this subpart.

*Defined:* employee, employer, employment, fringe benefit

Compare: 1994 No 164 s CI 1(h)

### **CX 33 Meaning of work-related vehicle**

**Work-related vehicle** means a motor vehicle (other than a motorcar) that prominently and permanently displays on the exterior of the vehicle the form of identification that the employer regularly uses in carrying on their undertaking or activity. If the vehicle is rented from any person, the identification may instead be in the form that that person regularly uses in their undertaking or activity.

*Defined:* employer, motor vehicle, motorcar, work-related vehicle

Compare: 1994 No 164 s OB 1 “work related vehicle”

## ***Insurance***

### **CX 34 Life insurers and fully reinsured persons**

#### **Persons to whom this section applies**

- (1) The amounts described in **subsection (2)** are excluded income of—
- (a) a life insurer;
  - (b) 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.

#### **Excluded income**

- (2) The amounts are—
- (a) a premium derived by the life insurer or the person under a life insurance policy; or
  - (b) a claim receivable by the life insurer or the person under a life reinsurance policy.

*Defined:* amount, business, claim, excluded income, full reinsurance, life insurance, life insurance policy, life insurer, life reinsurance policy, premium

Compare: 1994 No 164 ss CM 3, CM 12(c), (d)

### **CX 35 Superannuation fund deriving amount from life insurance policy**

#### **When this section applies**

- (1) This section applies when a superannuation fund invests funds in a life insurance policy offered or entered into in New Zealand.

#### **Excluded income**

- (2) An amount that the superannuation fund derives from the policy is excluded income.

*Defined:* amount, excluded income, life insurance policy, offered or entered into in New Zealand, superannuation fund

Compare: 1994 No 164 s CL 2

### **CX 36 Resident insurance underwriters**

#### **When this section applies**

- (1) This section applies when a natural person or an unincorporated body of natural persons—
- (a) is resident in New Zealand; and
  - (b) carries on a business of providing general insurance or guarantees against loss, damage, or risk; and
  - (c) as part of the business, is liable under an insurance contract, whether or not named in it, to pay, or to contribute towards the payment of, some or all of an amount claimable by the person insured under the contract.

#### **Excluded income**

- (2) Income that the natural person or persons derive from carrying on the business outside New Zealand is excluded income to the extent to which it is income not referred to in **section OE 4 (1)(e) or (f) or (g) or (h) or (l) or (m) or (n)** (Classes of income treated as having source in New Zealand).

*Defined:* amount, business, excluded income, general insurance, income, insurance contract, New Zealand, payment, resident in New Zealand

Compare: 1994 No 164 s CN 5

### *Petroleum mining*

#### **CX 37 Disposal of ownership interests in controlled petroleum mining entities**

##### **Excluded income**

- (1) The consideration that a person derives from the disposal of shares or trust interests in a controlled petroleum mining entity is excluded income of the person.

##### **Relationship with section CZ 7**

- (2) This section is overridden by **section CZ 7** (Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001).

*Defined:* consideration, controlled petroleum mining entity, disposal, excluded income, share

Compare: 1994 No 164 s CJ 6

#### **CX 38 Farm-out arrangements for petroleum mining**

Farm-in expenditure under a farm-out arrangement is excluded income of a petroleum miner who is the farm-out party in the farm-out arrangement.

*Defined:* excluded income, farm-in expenditure, farm-out arrangement, farm-out party, petroleum miner

Compare: 1994 No 164 s CJ 4(1)

### *Mineral mining*

#### **CX 39 Disposal of mining shares**

##### **When subsection (2) applies**

- (1) **Subsection (2)** applies when—
  - (a) a company derives an amount from disposing of a mining share; and
  - (b) the amount is more than the cost of the share calculated under **section DU 11(2)** (Disposal of mining shares by company); and
  - (c) the amount would, if this section did not exist, be income of the company under any of **sections CB 1 to CB 4** (which relate to income from business or trade-like activities).

**Excluded income**

- (2) The amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes within the prescribed period.

**When subsection (4) applies**

- (3) **Subsection (4)** applies when—
- (a) a company (**seller**) derives an amount from disposing of a mining share; and
  - (b) the disposal is to a mining company or to a mining holding company (**buyer**); and
  - (c) the amount is more than the cost of the share calculated under **section DU 11(2)** (Disposal of mining shares by company); and
  - (d) the amount would, if this section did not exist, be income of the seller under any of **sections CB 1 to CB 4** (which relate to income from business or trade-like activities).

**Excluded income**

- (4) The amount is excluded income of the seller to the extent to which it consists of mining shares issued to it in the buyer.

*Defined:* amount, company, excluded income, income, mining company, mining holding company, mining purposes, mining share, prescribed period

Compare: 1994 No 164 s DN 2(2)

**CX 40 Disposal of mining shares acquired with reinvestment profit****When subsection (2) applies**

- (1) **Subsection (2)** applies when—
- (a) a company (**seller**) derives an amount from disposing of a mining share; and
  - (b) an amount of the reinvestment profit of the seller is used in calculating the deduction for the cost of the mining share under **section DU 11(2)** (Disposal of mining shares by company); and
  - (c) the amount derived from the disposal would, if this section did not exist, be income of the seller under **section CU 14** (Recovery of reinvestment profit on disposal of mining shares).

**Excluded income**

- (2) The amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes within the prescribed period.

**When subsection (4) applies**

- (3) **Subsection (4)** applies when—
- (a) a company (**seller**) derives an amount from disposing of a mining share; and
  - (b) the disposal is to a mining company or to a mining holding company (**buyer**); and
  - (c) an amount of the reinvestment profit of the seller is used in calculating the deduction for the cost of the mining share under **section DU 11(2)** (Disposal of mining shares by company); and
  - (d) the amount derived from the disposal would, if this section did not exist, be income of the seller under **section CU 14** (Recovery of reinvestment profit on disposal of mining shares).

**Excluded income**

- (4) The amount is excluded income of the seller to the extent to which it consists of mining shares issued to it in the buyer.

**When subsection (6) applies**

- (5) **Subsection (6)** applies when—
- (a) a company (**seller**) derives an amount from disposing of a mining share; and
  - (b) the disposal is of the kind described in **section CU 20** (Mining company or mining holding company liquidated); and
  - (c) the amount derived from the disposal would, if this section did not exist, be income of the seller under **section CU 14** (Recovery of reinvestment profit on disposal of mining shares).

**Excluded income**



- (6) The amount is excluded income of the company to the extent to which it consists of mining shares.

*Defined:* amount, company, deduction, excluded income, income, mining company, mining holding company, mining purposes, mining share, prescribed period, reinvestment profit

Compare: 1994 No 164 s DN 2(9)

### **CX 41 Repayment of loans made from reinvestment profit**

#### **When this section applies**

- (1) This section applies when an amount would, if this section did not exist, be income of a company under **section CU 16** (Recovery of reinvestment profit on repayment of loans).

#### **Excluded income**

- (2) The amount is excluded income of the company to the extent to which it is, or is to be, used for mining purposes within the prescribed period.

*Defined:* amount, company, excluded income, income, mining purposes, prescribed period

Compare: 1994 No 164 s DN 2(6)

## ***Government grants***

### **CX 42 Government grants to businesses**

#### **When this section applies**

- (1) This section applies when—
- (a) a local authority or a public authority makes a grant to a person for a business that the person carries on; and
  - (b) the grant is in the nature of a grant or subsidy or is a grant-related suspensory loan; and
  - (c) the grant is not a payment in the nature of an advance or loan; and
  - (d) the grant is made to the person in relation to—
    - (i) expenditure that they incur and for which they are allowed a deduction; or
    - (ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they have an amount of depreciation loss.

#### **Excluded income**

(2) The grant is excluded income of the person.

**Defined:** business, deduction, depreciation loss, excluded income, grant-related suspensory loan, income, local authority, public authority

Compare: 1994 No 164 ss DC 1, DC 3(1)

### *Superannuation contributions*

#### **CX 43 Employer's superannuation contributions**

An employer's superannuation contribution is excluded income of—

- (a) the employee for whose benefit the contribution is provided;
- (b) the trustees of the superannuation scheme to whom the contribution is made.

**Defined:** employee, employer's superannuation contribution, excluded income, superannuation scheme, trustee

Compare: 1994 No 164 ss CL 1, OB 1 "monetary remuneration"

### *Income equalisation schemes*

#### **CX 44 Income equalisation schemes**

A refund under **section EH 8** (Refund of excess deposit), **EH 43** (Refund of excess deposit), or **EH 70** (Refund of excess deposit) is excluded income.

**Defined:** excluded income

Compare: 1994 No 164 ss EI 1(4), EI 11(4), EI 17(2)

### *Inflation-indexed instruments*

#### **CX 45 Credits for inflation-indexed instruments**

##### **When this section applies**

- (1) This section applies when—
  - (a) an amount payable to a lender for money lent is determined by a fixed relationship to 1 or more indices of general price inflation in New Zealand; and
  - (b) an amount on account of an increase in the amount payable is credited to the lender's account by the borrower; and

- (c) the credit represents a recovery of a decrease, previously debited in account, in the amount payable over a previous period.

### **Excluded income**

- (2) The credit is excluded income of the lender.

*Defined:* amount, excluded income, money lent, New Zealand, pay

Compare: 1994 No 164 s EB 5(1)

### ***Income excluded under Parts F to I***

#### **CX 46 Income excluded under Parts F to I**

An amount of income is excluded income if it is excluded under a provision in any of **Parts F to I**.

*Defined:* amount, excluded income, income

Compare: 1994 No 164 s BD 1(2)(b)

### **Subpart CY—Income under Parts F to I**

#### **CY 1 Amounts that are income under Parts to be rewritten**

An amount is income of a person if it is their income under a provision in any of **Parts F to I**.

*Defined:* amount, income

Compare: 1994 No 164 s BD 1(1)

### **Subpart CZ—Terminating provisions**

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### **CZ 1 Recovery of deductions for software acquired before 1 April 1993**

#### **What this section applies to**

- (1) This section applies to any of the following items for the acquisition of which a person was allowed a deduction before 1 April 1993:
  - (a) the copyright in software:
  - (b) the right to use the copyright in software:
  - (c) the right to use software.

#### **Income**

- (2) An amount derived from the disposal of the item is income.

#### **Relationship with sections EE 36 to EE 44 and EZ 16**

- (3) **Sections EE 36 to EE 44** (which relate to disposals and similar events) apply to the item. **Section EZ 16** (Adjusted tax value for software acquired before 1 April 1993) deals with the adjusted tax value of the item.

*Defined:* adjusted tax value, amount, depreciable property, income

Compare: 1994 No 164 s EG 19(1)(a)(ii)

### **CZ 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 holds a reinsurance contract for the general insurance that covers a period of risk starting before 1 July 1993 and ending after 1 July 1993; and
- (c) the company pays the premiums under the contract outside New Zealand.

**Income**

- (2) An amount derived by the company from a claim under the reinsurance contract is income of the company if the event giving rise to the claim occurs on or after 1 July 1993.

**Timing**

- (3) The income is allocated to the income year in which the event giving rise to the claim occurs.

*Defined:* amount, business, company, general insurance, income, income year, New Zealand, pay, reinsurance contract

Compare: 1994 No 164 s CZ 6(d)(i)–(iii), (vi), (vii)

**CZ 3 Exempt interest: overseas money lent to government or local or public authority before 29 July 1983****Exempt income**

- (1) Amounts that a non-resident derives are exempt income if they are derived from—
  - (a) stock or debentures issued before 29 July 1983 by the government of New Zealand or by a local authority or public authority, the interest on which is payable out of New Zealand; or
  - (b) loans entered into before 29 July 1983, the interest on which was to be exempt from income tax in New Zealand under an agreement or arrangement made with the government of New Zealand.

**Application posted or received before 29 July 1983**

- (2) For the purposes of **subsection (1)(b)**, a loan entered into on or after 29 July 1983 is treated as having been entered into before that date if an exemption of a kind referred to in that provision was authorised as a result of an application received by or

posted to the government of New Zealand before 29 July 1983.

*Defined:* amount, arrangement, debentures, exempt income, income tax, interest, local authority, money lent, New Zealand, non-resident, pay, public authority

Compare: 1994 No 164 ss CB 2(5), CZ 2

#### **CZ 4 Mineral mining: company making loan before 1 April 1979**

##### **Application of this section**

- (1) This section applies if **sections CU 17 to CU 19** (which relate to the repayment by a mining company of an amount written off) 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.

##### **Application of sections CU 17 to CU 19**

- (2) The sections apply, as far as applicable, to such a loan as if section 45 of the Income Tax Amendment Act 1979 were the only provision of it that had been enacted.

*Defined:* company, mineral

Compare: 1994 No 164 s DN 3(11)

#### **CZ 5 Mining company's 1970–71 tax year**

##### **When this section applies**

- (1) This section applies when—
- (a) section 152 or 153 of the Land and Income Tax Act 1954 (as in force before the commencement of section 153F of the Act) applied to a mining company for the 1970–71 tax year; and
  - (b) the company acquires an asset by incurring the exploration expenditure or development expenditure referred to in section 27(3)(a) of the Land and Income Tax Amendment Act 1971.

##### **Application of subpart CU**

- (2) The provisions of **subpart CU** (Income from mineral mining) apply, with any necessary modifications, as follows:
- (a) **section CU 3** (Disposal of assets) applies to the company as if every reference in the section to an asset included a reference to an asset of the kind described in **subsection**

**(1)(b)** that the company disposes of in the 1971–72 tax year or a later tax year:

- (b) **section CU 3** (Disposal of assets) applies to a person who acquires an asset of the kind described in **subsection (1)(b)** from the company as if every reference in the section to an asset included a reference to such an asset that the person acquires in the 1971–72 tax year or a later tax year:
- (c) **section CU 10** (Mining asset used to derive income other than income from mining) applies to the company as if every reference in the section to an asset included a reference to an asset of the kind described in **subsection (1)(b)** that the company uses, wholly or mainly, to derive income other than income from mining in the 1971–72 tax year or a later tax year.

#### **Resident and non-resident mining operators**

- (3) This section applies, with any necessary modifications, 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 that a resident mining operator acquires or that a non-resident mining operator acquires.

*Defined:* income, income from mining, mining company, non-resident mining operator, resident mining operator, tax year

Compare: 1994 No 164 ss DN 1(15)(b), DN 4(6), DN 5(2)(b)

#### **CZ 6 Farm-out arrangements for petroleum mining before 16 December 1991**

##### **Excluded income**

- (1) Excess expenditure under a farm-out arrangement entered into before 16 December 1991 is excluded income of the transferor.

##### **Some definitions**

- (2) In **subsection (1)**, **excess expenditure**, **farm-out arrangement**, and **transferor** have the same meanings as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

*Defined:* excess expenditure, excluded income, farm-out arrangement, transferor

Compare: 1994 No 164 s CJ 4(2)

**CZ 7 Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001****When this section applies**

- (1) This section applies, and **section CX 37** (Disposal of ownership interests in controlled petroleum mining entities) does not apply, to the consideration that a person derives from the disposal of shares or trust interests in a controlled petroleum mining entity if—
  - (a) they entered into a contract to dispose of the shares or trust interests in the controlled petroleum mining entity before 3 December 2001; and
  - (b) they dispose of the shares or trust interests to a person who is not associated with them; and
  - (c) the shares or trust interests are transferred to the buyer within 1 year of the date on which the contract was entered into.

**Income**

- (2) If the person derives consideration on or after 3 December 2001 from the disposal of the shares or trust interests in the controlled petroleum mining entity, the consideration is income of the person. This subsection is overridden by **subsection (3)**.

**Exclusion**

- (3) **Subsection (2)** does not apply if the sum of the percentage described in **paragraph (a) (percentage A)** and the percentage described in **paragraph (b) (percentage B)** is less than 10%. For the purposes of this subsection,—
  - (a) percentage A is the shares or trust interests in the controlled petroleum mining entity that the person disposes of as a percentage of the shares or trust interests that they held in the controlled petroleum mining entity in the year of disposal;
  - (b) percentage B is the shares or trust interests in the controlled petroleum mining entity that the person disposed of during the 2 income years before the income year in which the disposal occurs, as a percentage of the shares or trust interests that they held in the controlled petroleum mining entity in the year of disposal.



### Associates

- (4) For the purposes of **subsection (3)**, all persons associated with each other are treated as 1 person.

*Defined:* associated person, consideration, controlled petroleum mining entity, disposal, excluded income, income, income year, share, year

Compare: 1994 No 164 s CJ 6

## **CZ 8 Treatment of superannuation fund interests in group investment funds on 1 April 1999**

### When this section applies

- (1) This section applies when a superannuation fund has an interest in a group investment fund on 1 April 1999.

### Exclusions from dividends

- (2) **Section CD 14(4)** (Returns of capital: off-market share cancellations) does not apply to the interest.

### Trustee's election

- (3) If a trustee of a group investment fund chose on or before 31 March 1999 to treat a superannuation fund interest in a group investment fund as subject to **section CD 14(4)** (Returns of capital: off-market share cancellations),—
- (a) **subsection (2)** does not apply to the interest:
  - (b) **section CD 14(2)** applies to the interest on and after 1 April 1999.

*Defined:* dividend, group investment fund, superannuation fund, trustee

Compare: 1994 No 164 ss CZ 4A(1), (2), CZ 4B(1), (2)

## **CZ 9 Treatment of units and interests in unit trusts and group investment funds on issue as at 1 April 1996**

### Units and interests in unit trusts and group investment funds

- (1) All units in a unit trust and interests in a group investment fund on issue on 1 April 1996 are treated, on and from that date, as not having been issued on terms that their redemption would be subject to the slice rule.

### Election made for units or interests

- (2) All units or interests to which **subsection (1)** applies and for which an election has been made relying on **paragraph (c)** of the definition of the term **shares of the same class** in **section OB 1** (Definitions) are treated on and from 1 April 1996 as if the election made in reliance upon **paragraph (c)** had never been made.

### **Exclusion**

- (3) This section does not apply to a unit or interest if the manager or trustee of the unit trust or group investment fund so chooses, by giving notice to the Commissioner before 1 April 1996, in which case the relevant unit or interest is treated, on and from 1 April 1996, as having been issued on terms that its redemption would be subject to the slice rule.

*Defined:* Commissioner, group investment fund, notice, shares of the same class, slice rule, trustee, unit trust

Compare: 1994 No 164 s CZ 4(3)–(5)

## **CZ 10 Exchange variations on 8 August 1975**

### **When this section applies**

- (1) This section applies when—
- (a) a person carrying on a business in New Zealand—
    - (i) receives a loan in 2 or more instalments for the purposes of the business; or
    - (ii) makes a loan in 2 or more instalments in the course of carrying on the business; and
  - (b) an exchange variation arises in relation to the whole or partial repayment of the loan; and
  - (c) the person derives an amount or incurs a loss through the exchange variation.

### **Income or deduction**

- (2) The amount derived is income of the person and the loss incurred is a deduction that they are allowed.

### **Instalments and repayments**

- (3) For the purposes of this section, unless the terms of the loan expressly provide otherwise,—
- (a) each instalment is treated as a separate loan; and
  - (b) repayments are applied so that the separate loans are repaid in the order in which they were received.

**Exclusion**

- (4) This section does not apply to a financial arrangement to which the financial arrangements rules apply.

**Some definitions**

- (5) In this section,—

**exchange variation**, for the repayment of some or all of the loan, excluding interest, means a variation by virtue of a fluctuation in the value of the currency or currencies of 1 or more countries other than New Zealand in relation to New Zealand currency, that occurs between—

- (a) the amount of the repayment expressed in New Zealand currency at the time at which the repayment was made; and
- (b) the amount expressed in New Zealand currency that would have been required to make that repayment on or at the later of 8 August 1975 and the time at which the loan was first made

**loan** means—

- (a) in relation to money lent, to a person, on or after 1 January 1974 and on or before 22 January 1985, money that—
  - (i) was lent with the consent of the Minister under the Capital Issues (Overseas) Regulations 1965 or the Overseas Investment Regulations 1974 or with the consent of the Reserve Bank under the Exchange Control Regulations 1978, as applicable; and
  - (ii) was lent in a currency other than a New Zealand currency; and
  - (iii) was expressed to be repayable in a currency other than New Zealand currency:
- (b) in relation to money lent, by a person, on or after 1 January 1974 and on or before 22 January 1985, money that—
  - (i) was lent with the consent of the Reserve Bank under the Exchange Control Regulations 1978 if required; and
  - (ii) was expressed to be repayable in a currency other than New Zealand currency:

- (c) in relation to money lent, to a person, on or after 23 January 1985, money that—
  - (i) is lent in a currency other than New Zealand currency; and
  - (ii) is expressed to be repayable in a currency other than New Zealand currency;
- (d) in relation to money lent, by a person, on or after 23 January 1985, money that is expressed to be repayable in a currency other than New Zealand currency.

*Defined:* amount, business, deduction, exchange variation, financial arrangement, income, loan, money lent, New Zealand, financial arrangements rules

Compare: 1994 No 164 s CZ 1(1), (2), (4), (5)

### **CZ 11 Transitional relief for calculation of attributed repatriation dividends: 2 July 1992**

#### **Loans made by CFC to intermediary before 2 July 1992**

- (1) **Subsection (2)** applies for the purposes of calculating attributed repatriation from a CFC to the extent to which—
  - (a) the CFC made a loan before 8.00 pm New Zealand standard time on 2 July 1992; and
  - (b) the loan enabled another person (**intermediary**) to make a loan to a New Zealand resident associated with the CFC; and
  - (c) the loan is not a loan that is an arrangement subject to **section GC 8** (Arrangement to defeat application of CFC attributed repatriation provisions); and
  - (d) the New Zealand resident associated person repays the intermediary and the intermediary repays the CFC; and
  - (e) the CFC uses the proceeds to make a loan directly to the New Zealand resident associated person.

#### **Loan to associate: treated as existing for whole accounting period**

- (2) The loan to the New Zealand resident associated person is treated as if it were in existence at the start of the accounting period of the CFC in which it is in fact made.

#### **Property acquired under contract binding before 2 July 1992**

- (3) **Subsection (4)** applies for the purposes of calculating attributed repatriation from a CFC if the CFC—
- (a) acquires any property (including an amount accruing on a financial arrangement) under a binding contract entered into before 8.00 pm New Zealand standard time on 2 July 1992; and
  - (b) the acquisition is not as a result of any voluntary action taken by the CFC after that time.

**Acquired property: treated as existing for whole accounting period**

- (4) The property is treated as if it were held by the CFC at the start of the accounting period of the CFC in which it is in fact acquired.

*Defined:* accounting period, arrangement, associated person, attributed repatriation, CFC, financial arrangement, New Zealand, New Zealand resident

Compare: 1994 No 164 s CG 8(9), (12)

**CZ 12 Primary producer co-operative companies: 1987–88 income year**

**Income: sale of asset**

- (1) If a primary producer co-operative company disposes of an asset for which the company was allowed a deduction under section 200 of the Income Tax Act 1976 for the 1987–88 or a previous income year, the company is treated as deriving income in the income year of disposal of an amount equal to the lesser of—
- (a) the total of all deductions relating to the asset that were allowed under section 200; and
  - (b) the amount that the company derived from the disposal of the asset.

**Income: payments to shareholders**

- (2) If a primary producer co-operative company has been allowed a deduction under section 200 for the 1987–88 or a previous income year, and a payment has been made to a shareholder of the company either on the surrender of any of their shares or on the liquidation of the company, an appropriate part of the payment is treated as income of the shareholder. The part that is income is determined under **subsection (3)**.

**Amounts attributable to deductions**

- (3) The part of the payment that is treated as income is only such part as—
- (a) is more than the available subscribed capital per share calculated under the slice rule of the shares surrendered or held on liquidation by the shareholder; and
  - (b) is attributable to an increase in the value of the company's assets that was caused by the company applying or appropriating a deduction allowed under section 200.

**Some definitions**

- (4) In this section,—

**primary producer co-operative company** means a company that, at the end of the 1987–88 income year,—

- (a) was a primary producer co-operative company within the meaning of section 200(1) and (9); and
- (b) could qualify for a deduction under section 200(4)

**section 200** means section 200 of the Income Tax Act 1976 as it was in force before it was repealed by section 41(1) of the Income Tax Amendment Act (No 5) 1988 (which, in general, allowed primary producer co-operative companies to claim a deduction for profits that were reinvested in certain defined primary produce activities and assets).

*Defined:* amount, available subscribed capital, income, income year, liquidation, primary producer co-operative company, section 200, share, shareholder, slice rule

Compare: 1994 No 164 s CK 3

**CZ 13 Interest payable to exiting company: 2001**

Interest payable under schedule 4, clause 12 of the Dairy Industry Restructuring Act 2001 to an exiting company (as defined in section 5 of the Act) as a result of a buy-out of the company's interests in the New Zealand Dairy Board is exempt income.

*Defined:* exempt income, interest, pay

Compare: 1994 No 164 s CB 1(1)(d)

**CZ 14 Dividend of exiting company: 2001**

If an exiting company (as defined in section 5 of the Dairy Industry Restructuring Act 2001) derives a dividend as a result of a buy-out of the company's interests in the New

Zealand Dairy Board under schedule 4 of the Act, the dividend is exempt income.

*Defined:* dividend, exempt income

Compare: 1994 No 164 s CB 10(6)

### **CZ 15 Available capital distribution amount: 1965 and 1985 to 1992**

#### **Section CD 34(7)(e)**

- (1) For the purposes of **section CD 34(7)(e)** (Available capital distribution amount), a company derives a capital gain amount if—
- (a) before 1 April 1988, a net profit or gain is derived by the company to which section 4(5) of the Income Tax Act 1976, and not section 4(5A) of the Income Tax Act 1976, applied immediately before those provisions were repealed by section 31(1) of the Income Tax Amendment Act (No 5) 1988; or
  - (b) an amount is derived by the company that is attributable to—
    - (i) a deduction allowed in the 1985–86 or 1986–87 tax year for livestock under section 86E of the Income Tax Act 1976; or
    - (ii) a revaluation of livestock in any of the 1986–87 to 1991–92 tax years under section 86A of the Income Tax Act 1976; or
    - (iii) a deduction allowed in the 1988–89 tax year for the revaluation of trading stock of wine, brandy, and whisky under section 87A of the Income Tax Act 1976 or section EZ 2 of the Income Tax Act 1994.

#### **Section CD 34(13)(b)**

- (2) For the purposes of **section CD 34(13)(b)** (Available capital distribution amount),—
- (a) the amount has been excluded by section 4(3) of the Land and Income Tax Act 1954 from treatment as a dividend; or
  - (b) the issue has been excluded by section 3(3) of the Income Tax Act 1976 from treatment as a bonus issue.

*Defined:* amount, bonus issue, company, dividend, trading stock

Compare: 1994 No 164 ss CF 3(6), OB 1 “capital gain amount”

## Part D Deductions

### Subpart DA—General rules

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- DA 1 General permission
  - DA 2 General limitations
  - DA 3 Effect of specific rules on general rules
  - DA 4 Treatment of amount of depreciation loss
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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 income; or
  - (b) incurred by them in carrying on a business for the purpose of deriving income.

##### General permission

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

*Defined:* amount, business, deduction, general permission, income, loss

Compare: 1994 No 164 s BD 2(1)(b)(i), (ii)

#### DA 2 General limitations

##### Capital limitation

- (1) A person is denied 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 denied 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 denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving exempt income. This rule is called the exempt income limitation.

**Employment limitation**

- (4) A person is denied 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 denied 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.

**Relationship of general limitations to general permission**

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

*Defined:* amount, capital limitation, deduction, employment limitation, exempt income, exempt income limitation, general limitation, general permission, income from employment, loss, private limitation, schedular income subject to final withholding, withholding tax limitation

Compare: 1994 No 164 s BD 2(2)

**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.

**Express reference needed to supplement**

- (2) 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.

**Relationship of general limitations to supplements to general permission**

- (3) 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**

- (4) A provision in any of **subparts DB to DZ** may override any 1 or more of the general permission and the general limitations.

**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.

**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.

*Defined:* general limitation, general permission

Compare: 1994 No 164 s BD 2(1)(b)(iii), (2)(e)

**DA 4 Treatment of amount of depreciation loss**

The capital limitation does not apply to an amount of depreciation loss merely because the item of property is itself of a capital nature.

*Defined:* amount, capital limitation, depreciation loss

Compare: 1994 No 164 s BD 2(1)(a)

**Subpart DB—Specific rules for expenditure types**

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## ***Taxes***

### **DB 1 Taxes and penalties (other than GST)**

#### **No deduction**

- (1) A person is denied a deduction for the following:
  - (a) income tax:
  - (b) a civil penalty under Part 9 of the Tax Administration Act 1994:
  - (c) a tax, a penalty, or interest on unpaid tax that is—
    - (i) payable under the laws of a country or territory outside New Zealand; and
    - (ii) substantially the same as a civil penalty as defined in section 3(1) of the Tax Administration Act 1994, or a criminal penalty under Part 9 of that Act, or interest imposed under Part 7 of that Act.

#### **Meaning of income tax**

- (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.

*Defined:* deduction, dividend withholding payment, dividend withholding payment penalty tax, fringe benefit tax, further dividend withholding payment, further income tax, general permission, GST, imputation penalty tax, income tax, New Zealand, qualifying company election tax, specified superannuation contribution withholding tax, tax

Compare: 1994 No 164 s DB 1

## DB 2 GST

### No deduction

- (1) A registered person is denied a deduction for the following:
  - (a) input tax on a supply of goods or services to them;
  - (b) GST payable by them to the Commissioner.

### Deduction

- (2) A registered person is allowed a deduction for output tax on a supply of goods or services that section 21 or 21I(1) to 21I(3) of the Goods and Services Tax Act 1985 treats them as making, but only to the extent to which—
  - (a) they are allowed a deduction for expenditure that they incur in acquiring or producing the goods or services; or
  - (b) they are allowed a deduction for an amount of depreciation loss for the goods or services.

### Exclusion

- (3) **Subsection (2)** does not apply to an amount that relates to the application of a capital asset—
  - (a) for the principal purpose of making taxable supplies, when the asset was acquired or produced other than for the principal purpose of making taxable supplies; or
  - (b) other than for the principal purpose of making taxable supplies, when the asset was acquired or produced for the principal 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 EE 44** (Cost: GST).

**Link with subpart DA**

- (5) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (1)** overrides the general permission:
  - (b) **subsection (2)** supplements the general permission. The general limitations still apply.

*Defined:* amount, Commissioner, deduction, depreciable property, depreciation loss, general limitation, general permission, goods, GST, GST payable, input tax, output tax, registered person, services, taxable supply

Compare: 1994 No 164 s ED 4(2), (3), (7)

**DB 3 Determining tax liabilities****Deduction**

- (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 a tax year:
  - (b) calculating or determining the GST 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 or an earlier 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 GST; 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 or an earlier Act, the Tax Administration Act 1994, or the Goods and Services Tax Act 1985.

**Exclusions**

- (2) This section 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 or an earlier 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.

### Some definitions

- (3) In this section,—

#### **GST payable—**

- (a) means an amount of GST calculated under sections 19 to 19D and 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.

*Defined:* amount, assessment, business, deduction, employment limitation, general limitation, general permission, GST, GST payable, income tax liability, Inland Revenue Acts, private limitation, return of income, tax year, taxable activity, taxable period

Compare: 1994 No 164 s DJ 5(1), (3), (4)

**DB 4 Chatham Islands dues****Deduction**

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

**Timing of deduction**

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

**Exclusion of expenditure: other deductions**

- (3) Expenditure to which **subsection (1)** applies must not be taken into account in calculating the cost of the goods for the purpose of a deduction relating to the goods under any other provision of this Act.

**Link with subpart DA**

- (4) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (1)** supplements the general permission and overrides the capital limitation. The other general limitations still apply:
  - (b) **subsection (3)** overrides the general permission.

*Defined:* business, capital limitation, deduction, general permission, general limitation, income year

Compare: 1994 No 164 s DJ 3

***Financing costs*****DB 5 Transaction costs: borrowing money for use as capital****Deduction**

- (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.

*Defined:* capital limitation, deduction, general limitation, general permission, income

Compare: 1994 No 164 s DJ 11

## **DB 6 Interest: not capital expenditure**

### **Deduction**

- (1) A person is allowed a deduction for interest incurred.

### **Exclusion**

- (2) **Subsection (1)** does not apply to interest for which a person is denied a deduction under **section DB 1**.

### **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.

*Defined:* capital limitation, deduction, general limitation, general permission, interest

Compare: 1994 No 164 s DD 1(1)(b)(i), (ii)

## **DB 7 Interest: most companies need no nexus with income**

### **Deduction**

- (1) A company is allowed a deduction for interest incurred.

### **Exclusion: qualifying company**

- (2) **Subsection (1)** does not apply to a qualifying company.

### **Exclusion: exempt income**

- (3) If a company (**company A**) derives exempt income or another company (**company B**) in the same wholly-owned group of companies derives exempt income, **subsection (1)** applies to company A only if all the exempt income is 1 or more of the following:
- (a) dividends; or
  - (b) foreign-sourced income exempted under **section BD 1(2)(b)** (Income, exempt income, excluded income, and counted income); or

- (c) income exempted under **section CW 42** (Disposal of companies' own shares); or
- (d) income exempted under **section CW 44** (Stake money) and ancillary to the company's business of breeding.

**Exclusion: non-resident company**

- (4) If a company is a non-resident company, **subsection (1)** applies only to the extent to which the company incurs interest in the course of carrying on a business through a fixed establishment in New Zealand.

**Exclusion: interest related to tax**

- (5) **Subsection (1)** does not apply to interest for which a person is denied a deduction under **section DB 1**.

**Link with subpart DA**

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

*Defined:* business, capital limitation, company, deduction, dividend, exempt income, exempt income limitation, fixed establishment, general limitation, general permission, income, interest, New Zealand, non-resident company, qualifying company, wholly-owned group of companies

Compare: 1994 No 164 ss BD 2A, DD 1(3), (4)

**DB 8 Interest: money borrowed to acquire shares in group companies**

**Deduction: borrowing to acquire group company shares**

- (1) A company is allowed a deduction for interest incurred on money borrowed to acquire shares in another company in the same group of companies.

**Group in existence at tax year end**

- (2) **Subsection (1)** applies only if the 2 companies are in the same group of companies at the end of the tax year for which the deduction is claimed.

**Deduction: interest after qualifying amalgamation**

- (3) A company is allowed a deduction for interest incurred on money borrowed to acquire shares in another company that has ceased to exist on a qualifying amalgamation.

**Group in existence immediately before qualifying amalgamation**

- (4) **Subsection (3)** applies only if the 2 companies were in the same group of companies immediately before the qualifying amalgamation.

**Application from tax year of qualifying amalgamation**

- (5) **Subsection (3)** applies for the tax year in which the qualifying amalgamation occurs and subsequently.

**Link with subpart DA**

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

*Defined:* company, deduction, exempt income limitation, general limitation, general permission, group of companies, interest, qualifying amalgamation, share, tax year

Compare: 1994 No 164 ss DD 1(1)(b)(iii), (2), DD 3

*Financial arrangements adjustments*

**DB 9 Negative base price adjustment**

**Deduction**

- (1) A person who has a negative base price adjustment under **section EW 37(4)** (Base price adjustment formula) is allowed a deduction for the expenditure to the extent to which it arises from income, under **section CC 3** (Financial arrangements), derived by the person from the financial arrangement in previous income years.

**Link with subpart DA**

- (2) This section supplements the general permission and overrides all the general limitations.

*Defined:* deduction, financial arrangement, general limitation, general permission, income, income year

Compare: 1994 No 164 s EH 47(4)

**DB 10 Repayment of debt sold at discount to associate of debtor****Deduction**

- (1) When **section EW 59(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 all the general limitations.

*Defined:* amount, associated person, deduction, general limitation, general permission

Compare: 1994 No 164 s EH 53(1), (7)

**DB 11 Security payment****When subsection (2) applies**

- (1) **Subsection (2)** applies when—
- (a) a person receives a security payment for a loss; and
  - (b) the person is denied a deduction for the loss under any other provision of this Act.

**Deduction: loss**

- (2) The person is allowed a deduction for the loss quantified in **section EW 60(2)** (Deduction for security payment).

**When subsection (4) applies**

- (3) **Subsection (4)** applies when—
- (a) a person receives a security payment for a share loss within the meaning of **section DB 19**; and
  - (b) the requirements of **section DB 19** are met; and
  - (c) the person is denied a deduction for the loss under any other provision of this Act.

**Deduction: share loss**

- (4) The person is allowed a deduction for the share loss quantified in **section EW 60(4)** (Deduction for security payment).

**Link with subpart DA**

- (5) This section supplements the general permission and overrides all the general limitations.

*Defined:* deduction, general limitation, general permission, loss, security payment

Compare: 1994 No 164 s EH 55(1), (2)

## **DB 12 Sureties**

### **When this section applies**

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

### **No deduction (with exceptions)**

- (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 non-occurrence of an event, if the non-occurrence 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.

*Defined:* associated person, deduction, general permission, loss, security arrangement

Compare: 1994 No 164 s EH 56

## ***Premises costs***

## **DB 13 Transaction costs: leases**

### **Deduction**

- (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.

*Defined:* capital limitation, deduction, general limitation, general permission, lease

Compare: 1994 No 164 s DJ 11

**DB 14 Destruction of temporary building****Deduction**

- (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.

*Defined:* capital limitation, deduction, general limitation, general permission, loss, temporary building

Compare: 1994 No 164 s DD 1(c)

**DB 15 Amount paid 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; and
  - (c) the lessee does not comply with the covenant; and
  - (d) the lessee is, consequently, liable to pay an amount to the lessor; and
  - (e) either—
    - (i) the lessee, during the term of the lease or after it ends, pays the amount to the lessor; or
    - (ii) the lessor recovers the amount from the lessee during the term of the lease or after it ends.

**Deduction**

- (2) The lessee is allowed a deduction for the amount paid 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.

#### **Timing of deduction**

- (3) The deduction is allocated to the income year in which the lessee pays the amount or the lessor recovers the amount.

#### **Relationship with section EJ 20**

- (4) This section is overridden by **section EJ 20** (Amount paid by lessee for non-compliance with covenant for repair).

#### **Link with subpart DA**

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

*Defined:* capital limitation, deduction, general limitation, general permission, income, income year, lease, repairs, term of the lease

Compare: 1994 No 164 s EO 5

### **DB 16 Lessors' offsetting deduction: amounts paid for non-compliance and change in use**

#### **When this section applies**

- (1) This section applies when—
  - (a) a lessor receives an amount for non-compliance with a covenant for repair that is counted income under **section CC 2** (Non-compliance with covenant for repair); and
  - (b) in the tax year in which the lessor receives the amount or in any of the following 4 tax years,—
    - (i) the lessor does not use the land to which the amount 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) the lessor is denied a deduction for the expenditure under any other provision of this Act.

### **Deduction**

- (2) The lessor is allowed a deduction for the expenditure.

### **Amount of deduction**

- (3) The amount of the deduction is the lesser of—
  - (a) the amount of the expenditure; and
  - (b) the part of the amount that is counted income derived by the lessor in the tax year in which the expenditure is incurred through the operation of—
    - (i) **section CC 2** (Non-compliance with covenant for repair); or
    - (ii) **section EI 2** (Amount paid to lessor for non-compliance with covenant for repair); or
    - (iii) **section EI 3** (Amount paid 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.

*Defined:* amount, counted income, deduction, estate, general limitation, general permission, interest, lessor, owner, tax year

Compare: 1994 No 164 s EN 1(6), (8)

## ***Revenue account property***

### **DB 17 Cost of revenue account property**

#### **Deduction**

- (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.

*Defined:* capital limitation, deduction, general limitation, general permission, revenue account property

Compare: 1994 No 164 s DJ 13

## DB 18 Acquiring commercial bills

### Deduction

- (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 6** (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.

*Defined:* amount, commercial bill, deduction, general limitation, general permission, income, matrimonial agreement

Compare: 1994 No 164 s DJ 16

## DB 19 Share losses

### When this section applies

- (1) This section applies when—
- (a) a company (**company A**) acquires a share in another company (**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 (**share loss**), whether on a disposal of the share or a valuation of it under **subpart ED** (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 (**company C**); and

- (e) company B or company C has a net loss, in the calculation of which the amount used is taken into account; and
- (f) company A, or a company that is in the same group of companies as company A at any time in the tax 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 a tax year before the tax year in which company A incurs the share loss.

#### **No deduction (with exception)**

- (2) Company A is denied a deduction for the share loss, except to the extent to which the share loss, as adjusted under **subsection (3)**, is more than the amount offset under **section IG 2** (Net loss offset between group companies), as adjusted under **subsection (4)**.

#### **Other denied deductions added**

- (3) When **subsection (2)** applies, the share loss is adjusted by adding every loss to which all the following apply:
  - (a) company A incurs it as a result of the share's decline in value or the decline in value of another share if the use of the amount subscribed for the other share is taken into account in calculating the net loss; and
  - (b) company A incurs it in a tax year before the tax year in which company A incurs the share loss; and
  - (c) company A has been denied a deduction for it by the operation of **subsection (2)**.

#### **Other offsets added**

- (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 tax year in which company A has the net loss, has offset for the net loss under that section in a tax year before the tax year in which the share loss is incurred.

#### **Link with subpart DA**

- (5) This section overrides the general permission.

*Defined:* amount, company, deduction, general permission, group of companies, loss, net loss, share, tax year

Compare: 1994 No 164 s DJ 1(b)

**DB 20 Undertakings or schemes involving property****When this section applies**

- (1) This section applies when an amount that a person derives from disposing of 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 schemes for profit) and is not otherwise included in their income.

**Deduction**

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

**Determining amount of deduction**

- (3) For the purpose of determining the amount of the deduction that the person is allowed for the cost of the 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.

*Defined:* amount, deduction, general limitation, general permission, income

Compare: 1994 No 164 s DJ 15

**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 11** (Disposal: major development or division begun after 10 years) that is not otherwise included in their income.

**Deduction**

- (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 amount of 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.

*Defined:* amount, deduction, general limitation, general permission, income

Compare: 1994 No 164 s DJ 14(3)

### **DB 22 Changes in permitted use of land**

#### **Deduction**

- (1) If a person derives income from the disposal of land under **section CB 12** (Disposal of land affected by changes in permitted use) that is not otherwise included in their income, they are allowed a deduction to the extent described in **subsection (2)**. The deduction is in addition to any other deductions allowed under this Act.

#### **Calculation of deduction**

- (2) The amount of the deduction is the greater of \$1,000 and an amount calculated using the formula—

percentage of profit × years.

This subsection is overridden by **subsection (3)**.

#### **Maximum amount of deduction**

- (3) The deduction must not be more than the profit obtained from the disposal of the land.

#### **Definition of items in formula**

- (4) 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 consecutive years between the date on which the person acquired the land and the date on which they disposed of it, with the first year starting on the date on which the person acquired the land.

#### **Meaning of profit**

- (5) In this section, **profit** means the excess of the amount derived over the cost of the land.

#### **Link with subpart DA**

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

*Defined:* amount, deduction, general limitation, general permission, income, profit, year

Compare: 1994 No 164 s DJ 14(1), (2)

### ***Bad debts***

#### **DB 23 Bad debts**

##### **No deduction (with exception)**

- (1) A person is denied a deduction in a tax year for a bad debt, except to the extent to which—
- (a) the debt is written off as bad in the tax year; and
  - (b) none of **subsections (2) to (5)** limits the deduction.

##### **Deduction: financial arrangement debt: amount of income**

- (2) A person who derives counted income from a financial arrangement to which the financial arrangements rules apply is allowed a deduction in a tax year for an amount owing under the financial arrangement, but only to the extent to which—
- (a) the amount is a bad debt and is written off as bad in the tax year; and
  - (b) the amount is attributable to the income; and
  - (c) **subsection (5)** does not limit the deduction.

**Deduction: financial arrangement debt: dealers in arrangements**

- (3) A person is allowed a deduction in a tax year for an amount owing under a financial arrangement to which the financial arrangements rules apply, but only to the extent to which—
- (a) the amount is a bad debt and is written off as bad in the tax year; and
  - (b) the person carries on a business for the purpose of deriving counted income that includes dealing in or holding 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.

**Deduction: financial arrangement debt: dealers in property or services sold**

- (4) A person is allowed a deduction in a tax year for an amount owing under a financial arrangement to which the financial arrangements rules apply, but only to the extent to which—
- (a) the amount is a bad debt and is written off as bad in the tax 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.

**Deduction: bad debt representing loss already offset**

- (5) A person is allowed a deduction for a bad debt only to the extent to which it exceeds the total of the amounts offset under **section IG 2** (Net loss offset between group companies) that are described in **paragraphs (e) and (f)** 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**) that uses the amount; and
- (d) company B or company C has a net loss, in the calculation of which the amount used is taken into account; and
- (e) company A, or a company that is in the same group of companies as company A at any time in the tax 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 a tax year before the tax year in which company A writes off the amount of debt (but not before the 1993–94 tax year).

#### Link with subpart DA

- (6) The link between this section and **subpart DA** (General rules) is as follows:
  - (a) **subsections (1) and (5)** override the general permission:
  - (b) for **subsections (2) to (4)**,—
    - (i) they supplement the general permission, to the extent to which they allow a deduction that is denied under the general permission; and
    - (ii) they override the general permission, to the extent to which they deny a deduction that is allowed under the general permission; and
    - (iii) the other general limitations still apply.

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

Compare: 1994 No 164 ss DJ 1(a)(i), (iii), (iv), EH 54(1)–(4)

### DB 24 Bad debts owed to estates

#### When this section applies

- (1) This section applies when—
  - (a) a debt owing to a person at the date of their death is, for a tax year,—
    - (i) counted income of the person; or
    - (ii) counted income of the trustee of their estate; and
  - (b) some or all of the debt is written off as bad because it is not recoverable.

**Deduction**

- (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 tax 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, the trustee or a beneficiary denied a deduction for the balance in the tax year is allowed a deduction in the same manner in the next tax year, and so on.

**Link with subpart DA**

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

*Defined:* amount, counted income, deduction, general limitation, general permission, tax year, trustee, trustee income

Compare: 1994 No 164 s DJ 2

***Research and development*****DB 25 Scientific research****Deduction: 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)**.

**No deduction (with exception)**

- (2) A person is denied a deduction for expenditure of the kind described in **subsection (1)** to the extent to which the expenditure relates to an asset to which both the following apply:
- (a) it is not created from the scientific research; and
  - (b) the person is allowed a deduction for an amount of depreciation loss for it.

**Deduction: 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.

**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.

*Defined:* amount, capital limitation, Commissioner, counted income, deduction, depreciation loss, general limitation, general permission, income

Compare: 1994 No 164 s DJ 9

**DB 26 Research or development**

**Deduction**

- (1) A person is allowed a deduction for expenditure they incur on research or development. This subsection applies only to a person described in any of **subsections (2) to (5)** and does not apply to the expenditure described in **subsection (6)**.

**Person recognising expenditure as expense**

- (2) **Subsection (1)** applies to a person who recognises the expenditure as an expense for financial reporting purposes under paragraph 5.1 or 5.2 of Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities) (**reporting standard**).

**Person not recognising expenditure as asset**

- (3) **Subsection (1)** also applies to a person who does not recognise the expenditure as an asset for financial reporting purposes because of paragraph 5.4 of the reporting standard.

**Person recognising expenditure otherwise**

- (4) **Subsection (1)** also applies to a person who—
- (a) recognises the expenditure as an expense for financial reporting purposes because of paragraph 2.3 of the reporting standard; and

- (b) would be required to recognise the expenditure as an expense for financial reporting purposes under paragraph 5.1 or 5.2, or because of paragraph 5.4, of the standard if—
  - (i) any 1 of those paragraphs were applied to the expenditure; and
  - (ii) the expenditure were material.

#### **Person with minor expenditure**

- (5) **Subsection (1)** also applies to a person who—
  - (a) spends \$10,000 or less, in total, on research and development for a tax year; and
  - (b) has not treated the expenditure as material, as described in paragraph 2.3 of the reporting standard; and
  - (c) has recognised the expenditure as an expense for financial reporting purposes.

#### **Exclusion**

- (6) **Subsection (1)** does not apply to expenditure that the person incurs on property to which all the following apply:
  - (a) the property is used in carrying out research or development; and
  - (b) it is not created from the research or development; and
  - (c) it is 1 of the following kinds:
    - (i) property for which the person is allowed a deduction for an amount of depreciation loss;
    - (ii) property the cost of which is allowed as a deduction by way of amortisation under a provision of this Act outside **subpart EE** (Depreciation);
    - (iii) land;
    - (iv) intangible property, other than depreciable intangible property;
    - (v) property that its owner chooses, under **section EE 8** (Election that property not be depreciable) to treat as not depreciable.

#### **Section need not be applied**

- (7) A person may return income and expenditure in their return of income on the basis that this section does not apply to expenditure incurred on research or development in the tax year to which the return relates.

**Relationship with section EA 2**

- (8) If expenditure to which this section applies is incurred in devising an invention that is patented, the expenditure is not treated as part of the cost of revenue account property for the purposes of **section EA 2** (Other revenue account property).

**Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, depreciable intangible property, depreciation loss, development, general limitation, general permission, income, property, research, return of income, revenue account property, tax year

Compare: 1994 No 164 s DJ 9A(1)–(5)

**DB 27 Some definitions****Definitions**

- (1) In this section, and in **section DB 26**,—

**development** has the meaning given to it by paragraphs 4.1 and 4.2 of the reporting standard as interpreted by paragraphs 4.3 to 4.7

**Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)** means the standard approved under the Financial Reporting Act 1993, or an equivalent standard issued in its place, that applies in the tax year in which the expenditure is incurred

**reporting standard** means Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities)

**research** has the meaning given to it by paragraphs 4.1 and 4.2 of the reporting standard, as interpreted by paragraphs 4.3 to 4.7.

**Meaning of research or development: modification by Order in Council**

- (2) The Governor-General may, by Order in Council, specify—
- (a) a kind of expenditure that is not expenditure on research or development for the purposes of **section DB 26**;
  - (b) an activity that is neither research nor development for the purposes of **section DB 26**;

- (c) the date from which the expenditure or the activity is excluded from being research or development.

*Defined:* development, Financial Reporting Standard No 13 1995 (Accounting for Research and Development Activities), reporting standard, research, tax year

Compare: 1994 No 164 ss DJ 9A(6), (7), DJ 9B

## **DB 28 Patent expenses**

### **Deduction**

- (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 tax 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.

*Defined:* capital limitation, general limitation, general permission, income, tax year

Compare: 1994 No 164 s DJ 6(1)

## **DB 29 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.

### **Deduction: expenditure before 1 April 1993**

- (2) When the person uses the patent in deriving income in a tax year, they are allowed a deduction for expenditure incurred before 1 April 1993, but not if a deduction has been allowed for the expenditure under any other provision of this Act.

### **Deduction: devising invention**

- (3) If the person sells all the patent rights relating to the invention, they are allowed a deduction for the expenditure that they have incurred (whenever it is incurred) in connection with

devising the invention to the extent to which a deduction has not already been allowed under **subsection (2)**.

**Deduction: devising invention: proportion of expenditure**

- (4) If the person sells some of the patent rights relating to the invention, they are allowed a deduction of a proportion of the expenditure described in **subsection (3)**. The proportion is calculated by dividing the amount derived from the disposal by the market value of the whole of the patent rights on the date of disposal.

**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.

*Defined:* capital limitation, deduction, general limitation, general permission, income, patent rights, tax year

Compare: 1994 No 164 ss DJ 6(2), EN 2(3)(a)

**DB 30 Patent rights acquired before 1 April 1993**

**When this section applies**

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

**Deduction**

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

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

**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.

*Defined:* amount, capital limitation, general limitation, general permission, patent rights

Compare: 1994 No 164 s EN 2(3)(b)

**DB 31 Patent rights acquired on or after 1 April 1993****When this section applies**

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

**Deduction**

- (2) The person is allowed a deduction for a loss on the sale of the patent rights. The amount is calculated using the formula—  
total cost – total amounts of depreciation loss.

**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 amounts of depreciation loss** is the total of the amounts of depreciation loss for the patent rights for which the person is allowed a deduction.

**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.

*Defined:* amount, capital limitation, deduction, depreciation loss, general limitation, general permission, patent rights

Compare: 1994 No 164 s EN 2(3)(c)

***Marketing*****DB 32 Gifts of money by company****Deduction**

- (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)** (Rebate in respect of gifts of money).

**Amount of deduction**

- (2) The deduction is limited in a tax 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 in the tax year 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) 5% of the amount that would be the company's net income in the tax year if this section did not exist; and
  - (ii) \$1,000.

**Link with subpart DA**

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

*Defined:* amount, close company, company, deduction, general limitation, general permission, net income, tax year

Compare: 1994 No 164 s DJ 4

***Theft and bribery*****DB 33 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 person is denied a deduction under any other provision of this Act for the loss resulting from the misappropriation.

**Exclusions**

- (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.

**Deduction**

- (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.

**Timing of deduction**

- (4) The deduction for the loss is allocated to the income year in which the loss is ascertained, or in 1 or more earlier years if, in the circumstances, the Commissioner considers it would be fair.

**Link with subpart DA**

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

*Defined:* associated person, business, capital limitation, company, deduction, employee, general limitation, general permission, income year, relative, trustee

Compare: 1994 No 164 s DJ 8

**DB 34 Making good loss from misappropriation by partners****When this section applies**

- (1) This section applies when a person carrying on a business in partnership pays an amount to make good a loss that arises from a partner (other than the person or the person's 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 1 or more of its partners.

**Deduction**

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



**Timing of deduction**

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

**Link with subpart DA**

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

*Defined:* amount, business, capital limitation, deduction, general limitation, general permission, income year

Compare: 1994 No 164 s DJ 7

**DB 35 Restitution of stolen property****Deduction**

- (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.

**Timing of deduction**

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

**Meaning of amount of restitution**

- (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.

*Defined:* amount, amount of restitution, deduction, general limitation, general permission, income, income year, property

Compare: 1994 No 164 s DJ 18

**DB 36 Bribes paid to public officials****When subsection (2) applies: official in New Zealand**

- (1) **Subsection (2)** applies when the following circumstances exist:

- (a) a person (**person A**) corruptly gives a bribe to another person; and
- (b) person A gives the bribe intending to influence a New Zealand public official to act, or to fail to act, in their official capacity in order to—
  - (i) obtain or retain business for person A; or
  - (ii) obtain an improper advantage for person A in the conduct of business; and
- (c) the official either has or does not have the authority to act or to fail to act.

**No deduction**

- (2) Person A is denied a deduction for the amount of the bribe.

**When subsection (4) applies: official overseas**

- (3) **Subsection (4)** applies when the following circumstances exist:
  - (a) a person (**person A**) corruptly gives a bribe to another person; and
  - (b) person A gives the bribe intending to influence a foreign public official to act, or to fail to act, in their official capacity in order to—
    - (i) obtain or retain business for person A; or
    - (ii) obtain an improper advantage for person A in the conduct of business; and
  - (c) person A's giving the bribe was, at the time it was given, an offence under the laws of the foreign country that is the site of the main office of the person, organisation, or other body by whom the foreign public official is employed or for whom they provide services; and
  - (d) the official either has or does not have the authority to act or to fail to act.

**No deduction (with exception)**

- (4) Person A is denied a deduction for the amount of the bribe, unless it was paid wholly or mainly to ensure or expedite the performance by a foreign public official of a routine government action when the value of the benefit is small.

**Some definitions**

- (5) In this section,—

**benefit, foreign country, and foreign public official** have the meanings given to them by section 105C of the Crimes Act 1961

**bribe** has the meaning given to it by section 99 of the Crimes Act 1961

**public official** means—

- (a) a member of Parliament or a Minister of the Crown; and
- (b) a judicial officer, a law enforcement officer, or an official, as those terms are defined in section 99 of the Crimes Act 1961; and
- (c) a foreign public official

**routine government action** has the meaning given to it by section 105C of the Crimes Act 1961.

#### **Link with subpart DA**

- (6) This section overrides the general permission.

*Defined:* amount, benefit, bribe, business, deduction, foreign country, foreign public official, general permission, New Zealand, public official, routine government action

Compare: 1994 No 164 s DJ 22

### ***Pollution control***

#### **DB 37 Preventing pollution of environment**

##### **When this section applies**

- (1) This section applies when—
- (a) a person carries on a business, other than a farming or agricultural business, in New Zealand; and
  - (b) they incur expenditure in the business on constructing on land in New Zealand earthworks, ponds, settling tanks, or other similar improvements whose main purpose is the treatment of industrial waste to prevent or combat pollution of the environment; and
  - (c) no other provision of this Act allows a deduction for the expenditure.

##### **Deduction**

- (2) The person is allowed a deduction for the expenditure.

##### **Timing of deduction**

- (3) The deduction for the expenditure is allocated as follows:
- (a) 20% to the income year in which the expenditure is incurred; and
  - (b) 20% to each of the following 4 income years.

**Re-timing of deduction**

- (4) The deduction may be reallocated so that the minimum that the person has for any of the 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**

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

*Defined:* amount, business, capital limitation, deduction, general limitation, general permission, income year, New Zealand

Compare: 1994 No 164 s DJ 10

***Repayments***

**DB 38 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; and
  - (d) the person is not required to calculate a base price adjustment by **section EW 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.

**Amount, and timing, of deduction**

- (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.

*Defined:* amount, counted income, deduction, dividend, general limitation, general permission, income year

Compare: 1994 No 164 s IE 1(4)(g)

**DB 39 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.

**Deduction**

- (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.

**Timing 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.

*Defined:* amount, counted income, deduction, employee, employment limitation, general limitation, general permission, income year, interest

Compare: 1994 No 164 ss DJ 21, EO 7

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

**DB 40 Trading stock, livestock, and excepted financial arrangements**

**When this section applies**

- (1) This section applies when—
- (a) a person—
    - (i) has a business that has trading stock or livestock; or
    - (ii) holds excepted financial arrangements that are revenue account property; and
  - (b) the trading stock, livestock, or excepted financial arrangements are held at the start of an income year, or at the end of an income year, or both; and
  - (c) **section EA 1** (Trading stock, livestock, and excepted financial arrangements) applies.

**Deduction**

- (2) The person is allowed a deduction for the income year for the adjustment calculated under **section EA 1(3)** (Trading stock, livestock, and excepted financial arrangements).

**Link with subpart DA**

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

*Defined:* business, deduction, excepted financial arrangement, general limitation, general permission, income year, livestock, revenue account property, trading stock

Compare: 1994 No 164 s EE 2(4)

**DB 41 Adjustment for prepayments****When this section applies**

- (1) This section applies when a person has, under **section EA 3** (Prepayments), an unexpired amount of expenditure at the end of an income year.

**Deduction**

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

**Link with subpart DA**

- (3) This section supplements the general permission. The general limitations still apply, but not to the extent to which any relevant general limitation was overridden by a provision that initially allowed a deduction for the expenditure, whether in this Act or an earlier Act.

*Defined:* amount, deduction, general limitation, general permission, income year

Compare: 1994 No 164 s EF 1(1)(b)

**DB 42 Adjustment for deferred payment of employment income****When this section applies**

- (1) This section applies when a person has, under **section EA 4** (Deferred payment of employment income), an unpaid amount of expenditure on employment income in an income year for which the person is to be allowed a deduction in the following income year.

**Deduction**

- (2) The person is allowed a deduction for the unpaid amount for the following income year.

**Link with subpart DA**

- (3) This section supplements the general permission. The general limitations still apply, but not to the extent to which any relevant general limitation was overridden by a provision that

initially allowed a deduction for the expenditure, whether in this Act or an earlier Act.

*Defined:* amount, deduction, employment income, general limitation, general permission, income year

Compare: 1994 No 164 s EF 1(1)(b)

### *Change to accounting practice*

#### **DB 43 Adjustment for change to accounting practice**

##### **When this section applies**

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

##### **Amount, and timing, of deduction**

- (2) The person is allowed a deduction of the amount as quantified and allocated under **section EG 2** (Adjustment for changes to accounting practice).

##### **Link with subpart DA**

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

*Defined:* amount, deduction, general limitation, general permission

Compare: 1994 No 164 s EC 1

#### **Subpart DC—Employee or contractor expenditure**

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## DC 1 Lump sum payments on retirement

### Deduction

- (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.

### Inclusions

- (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 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.

### Exclusion

- (3) This section does not apply to the extent to which the person has accepted a liability, as described in **section DC 9(1)(c)(i)**, to pay an amount of employment income.

### Timing of deduction

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

### Link with subpart DA

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

*Defined:* business, deduction, employee, general limitation, general permission, income year

Compare: 1994 No 164 s DF 5

**DC 2 Pension payments to former employees****Deduction: not close company**

- (1) A person who carries on a business is allowed a deduction for a reasonable amount paid as a pension to an employee or the employee's surviving spouse if all the following apply:
- (a) the employee has retired from the employment or their employment has ended through redundancy or similar circumstances; and
  - (b) the pension is paid for the employee's past services in the business; and
  - (c) the 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.

**Timing of deduction**

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

**Deduction: close company**

- (3) A close company carrying on a business that employs an employee who is or has been a shareholder, or who has a relative who is or has been a shareholder, in the close company is allowed a deduction for an amount paid as a pension to the employee or the employee's surviving spouse if all the following apply:
- (a) the employee's employment was genuine; and
  - (b) the employee has retired from the employment or their employment has ended through redundancy or similar circumstances; and
  - (c) the pension is paid for the employee's past services in the business; and
  - (d) the 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.

**Amount of deduction**

- (4) The amount of the deduction is the amount that would have been paid at arm's length in the open market.

**Timing of deduction**

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

**Relationship with section FF 17(1)**

- (6) This section is overridden by **section FF 17(1)** (Pensions).

**Link with subpart DA**

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

*Defined:* amount, business, close company, deduction, employee, employer, general limitation, general permission, income year, relative, shareholder

Compare: 1994 No 164 s DF 4

**DC 3 Pension payments to former partners**

**When this section applies**

- (1) This section applies when—
- (a) a person is a partner in a partnership; or
  - (b) a person who was a partner in a partnership is in business on their own account.

**Exclusion**

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

**Deduction**

- (3) The person is allowed a deduction for their share of a reasonable amount paid as a pension to a former partner, or to the spouse of a deceased former partner, if all the following apply:
- (a) the partnership in which the former partner was a partner (**old partnership**) carried on the same business as that now carried on either by the partnership that is paying the pension or by the person in business who is paying the pension; and
  - (b) the former partner retired from the old partnership or their employment ended through retirement; and
  - (c) the former partner 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); and

- (d) the pension is paid for the former partner's services in the old partnership.

#### **Link with subpart DA**

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

*Defined:* amount, business, deduction, estate, general limitation, general permission, interest, share

Compare: 1994 No 164 ss DF 8A, DF 8B

### **DC 4 Payments to working partners**

#### **Deduction**

- (1) A person who is 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—
  - (a) are required to be performed in carrying on the business of the partnership; and
  - (b) are performed by the working partner during the currency of the contract of service.

#### **Exclusion**

- (2) This section does not apply to a partnership that is engaged wholly 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.

#### **Relationship with section GD 3**

- (4) This section is overridden by **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).

#### **Some definitions**

- (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.

*Defined:* amount, business, contract of service, deduction, estate, general limitation, general permission, interest, land, share

Compare: 1994 No 164 s DF 8

### **DC 5 Contributions to employees' benefit funds**

#### **No deduction (with exception)**

- (1) An employer is denied 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.

#### **Deduction**

- (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)**.

*Defined:* amount, deduction, employee, employer, general limitation, general permission, superannuation scheme

Compare: 1994 No 164 s DF 2

**DC 6 Contributions to employees' superannuation schemes****Deduction**

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

**Timing of deduction**

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

**Relationship with section EJ 21**

- (3) This section is overridden by **section EJ 21** (Contributions to employees' superannuation schemes).

**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.

*Defined:* capital limitation, deduction, employee, employer, general limitation, general permission, income year, superannuation scheme

Compare: 1994 No 164 s DF 3(1)

**DC 7 Attribution of personal services****When this section applies**

- (1) This section applies when, under **sections GC 14B to GC 14E** (which relate to the attribution rule), a person is required to attribute an amount to another person.

**Deduction**

- (2) The person required to attribute the amount is allowed a deduction for the amount attributed.

**Timing of deduction**

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

**Link with subpart DA**

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

*Defined:* amount, associated person, capital limitation, deduction, general limitation, general permission, income year

Compare: 1994 No 164 ss DJ 19, EO 6

## DC 8 Restrictive covenants or exit inducements

### Deduction

- (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 **CE 10** (Exit inducements).

### Exclusion

- (2) This section 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 **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.

*Defined:* amount, capital limitation, general limitation, general permission, income

Compare: 1994 No 164 s DJ 20

## DC 9 Sale of business: transferred employment income obligations

### When this section applies

- (1) This section applies when—
- (a) a person (**seller**) sells a business, or a part of a business, to another person (**buyer**); and
  - (b) an employee of the seller working in the business, or the part of the business, becomes an employee of the buyer at the time of the sale; and
  - (c) the seller and the buyer agree in writing, as part of the sale arrangements, that—

- (i) the buyer assumes the obligation to pay an amount of employment income to the employee; and
- (ii) the consideration payable by the buyer for the business, or the part of the business, is reduced to take into account the buyer's assumption of the obligation.

**Parties not associated**

- (2) If the seller and the buyer are not associated persons at the time of the sale,—
  - (a) the seller is treated as incurring, at the time of the sale, the obligation to pay any part of the amount that remains contingent on the employee continuing in employment or any similar factor; and
  - (b) the seller is treated under **section EA 4(4)** (Deferred payment of employment income) as having paid the amount at the time of sale.

**Parties associated**

- (3) If the seller and the buyer are associated persons at the time of the sale, the obligation assumed by the buyer to pay the amount of employment income is treated as not being of a capital nature.

**Link with subpart DA**

- (4) The link between this section and **subpart DA** (General rules) is as follows:
  - (a) **subsection (2)(a)** supplements the general permission. The general limitations still apply:
  - (b) for **subsection (2)(b)**, the general permission must still be satisfied and the general limitations still apply:
  - (c) **subsection (3)** overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

*Defined:* amount, associated person, business, capital limitation, employee, employment income, general limitation, general permission, time of the sale

Compare: 1994 No 164 s DF 10



## **DC 10 Transfers of employment income obligations to associates**

### **When this section applies**

- (1) This section applies when—
  - (a) an employee of a person (**person A**) becomes an employee of another person (**person B**); and
  - (b) person A and person B are associated persons at the time; and
  - (c) person B agrees to assume person A's obligation to pay an amount of employment income to the employee; and
  - (d) the employee's becoming an employee of person B does not result from the sale by person A of a business, or a part of a business, to person B.

### **Amount not treated as capital**

- (2) The obligation assumed by person B to pay the amount of employment income is treated as not being 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.

*Defined:* amount, associated person, business, capital limitation, employee, employment income, general limitation, general permission

Compare: 1994 No 164 DF 11

## **DC 11 Loans to employees under share purchase schemes**

### **Deduction**

- (1) A company (**employing 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 for up to 5 years from the date of the loan. The deduction is allowed only if the scheme has the Commissioner's approval, which must be given if the scheme meets all the criteria set out in **sections DC 12 and DC 13**.

### **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.

*Defined:* amount, Commissioner, company, deduction, employee, employing company, general limitation, general permission, group of companies, interest, share, share purchase scheme, year

Compare: 1994 No 164 s DF 7(1)

### **DC 12 Criteria for approval of share purchase schemes: before period of restriction ends**

#### **What this section does**

- (1) This section sets out the criteria that apply to the approval of share purchase schemes to which **section DC 11** applies and that are applied to the period of restriction.

#### **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 on an equal basis 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) 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.

#### **Hardship**

- (6) 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 **section DC 13(4)**, if the trustee is satisfied that the employee's continued participation in the scheme would result in serious hardship.

#### **Withdrawal from scheme**

- (7) 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 **section DC 13(4) and (5)** apply.

*Defined:* amount, company, dividend, employee, notice, share, share purchase scheme, trustee, year

Compare: 1994 No 164 s DF 7(2)(a)–(h), (j), (k)

**DC 13 Criteria for approval of share purchase schemes: when period of restriction ends****What this section does**

- (1) This section sets out the criteria that apply to the approval of share purchase schemes to which **section DC 11** applies and that are applied to the period when the period of restriction ends.

**General rule**

- (2) 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. This subsection is overridden by **subsections (3) and (4)**.

**Death, accident, sickness, redundancy, or retirement at normal retiring age**

- (3) 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.

**Employment ends for other reason**

- (4) 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 ends their employment, subject to the repayment of any outstanding loan under the scheme for the shares.

**Purchase price when trustee buys shares**

- (5) If the trustee buys the shares in any of the circumstances in which employment is ended as described in **subsections (2) to (4)**, the purchase price must not be more than the price paid for the shares by the employee.

*Defined:* amount, company, employee, normal retiring age, share, share purchase scheme, trustee

Compare: 1994 No 164 s DF 7(2)(i)

**DC 14 Some definitions****Definitions**

(1) In this section, and in **sections DC 11 to DC 13**,—  
**employee**—

- (a) means a person employed by a company:
- (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) for an employee other than one to whom **paragraph (b)** applies, no less than 60 years of age:
- (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, no less than 55 years of age:
- (c) for any employee, an age that is earlier than the age referred to in **paragraph (a) or (b)** and that the Commissioner considers reasonable in the nature of the employment or in the general terms of employment in the business or occupation of the 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.

**Meaning of period of restriction**

(2) In this section, and in **sections DC 11 to DC 13**,—

- (a) **period of restriction** has the meaning given to it by **subsections (3) and (4)**; and
- (b) for the purposes of this definition, 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)**.

#### **Different period**

- (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.

*Defined:* associated person, company, director, employee, employing company, group of companies, group of persons, local authority, normal retiring age, period of restriction, public authority, share, share purchase scheme, trustee, year

Compare: 1994 No 164 s DF 7(3)

## Subpart DD—Entertainment expenditure

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## 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 exception)

- (2) The person is denied 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.

### Meaning of limitation rule

- (3) **Limitation rule** means the rule described in **subsection (2)**.

### Link with subpart DA

- (4) This section overrides the general permission.

*Defined:* amount, business, deduction, general permission, income, limitation rule

Compare: 1994 No 164 s DG 1

## DD 2 Limitation rule

### What 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.

#### **Meaning of expenditure**

- (7) In **subsections (2) to (4)**, **expenditure** includes—
- (a) an amount of depreciation loss; and
  - (b) expenditure or loss on running costs and maintenance and similar matters; and
  - (c) a deduction for a lease premium under **section DZ 12** (Premium paid on land leased before 1 April 1993).

*Defined:* amount, business, deduction, general permission, income, limitation rule

Compare: 1994 No 164 s DG 1(1), (3), schedule 6A, part A, cls 1–4, part B, cl 4(a)



**DD 3 When limitation rule does not apply**

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

*Defined:* deduction, limitation rule

Compare: 1994 No 164 s DG 1(2)

**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; or
  - (b) the food or drink is consumed at a meal or function involving an existing or potential business contact as a guest; or
  - (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 the food and drink, when an employee works overtime, if the allowance or reimbursement is exempt income under **section CW 13** (Expenditure on account, and reimbursement, of employees);
  - (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.

**Defined:** business, business contacts, business premises, deduction, employee, exempt income, limitation rule

Compare: 1994 No 164 schedule 6A, part B, cls 1–5

## **DD 5 Promoting businesses, 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 or advertise a person's business, 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 or advertise a business, 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 promotion or advertising 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 book, magazine, paper, or other medium of communication.

**Defined:** associated person, business, business contacts, deduction, employee, limitation rule

Compare: 1994 No 164 schedule 6A, part B, cls 6, 8, 10, 12

**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 1 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.

*Defined:* business, charitable purpose, deduction, limitation rule

Compare: 1994 No 164 schedule 6A, part B, cls 9, 11

**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.

*Defined:* deduction, limitation rule, New Zealand

Compare: 1994 No 164 schedule 6A, part B, cl 7

**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 or to a fringe benefit to which fringe benefit tax applies.

*Defined:* deduction, fringe benefit tax, income, limitation rule

Compare: 1994 No 164 schedule 6A, part B, cls 13, 14

**DD 9 Relationship with fringe benefit tax rules**

**Sections DD 2 to DD 8** 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 under **section CX 26** (Entertainment).

*Defined:* employee, fringe benefit tax rules

Compare: 1994 No 164 s CI 1(r)

**DD 10 Interpretation: reimbursement and 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, the entertainment, and the allowance or reimbursement is exempt income under **section CW 13** (Expenditure on account, and reimbursement, of employees):
- (b) if a person incurs expenditure that relates only partly to the entertainment, the expenditure must be apportioned appropriately.

*Defined:* employee, exempt income, fringe benefit tax rules

Compare: 1994 No 164 s DG 1(3), (4)

**DD 11 Some definitions**

In this subpart,—

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

*Defined:* associated person, business, business contacts, business premises, shareholder

Compare: 1994 No 164 schedule 6A “business”, “business contacts”, “business premises”

## Subpart DE—Motor vehicle expenditure

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***Introductory provisions*****DE 1 What this subpart does****Apportions motor vehicle expenditure**

- (1) This subpart sets out the rules for determining the proportion of business use of a motor vehicle to its total use when a person uses a motor vehicle partly for business purposes and partly for other purposes.

**Exclusions**

- (2) This subpart does not apply—
- (a) to a company;
  - (b) to a person whose only income is income from employment;
  - (c) to a motor vehicle that is used only—
    - (i) for the purpose of deriving income; or
    - (ii) for a purpose that constitutes a fringe benefit.

**Defined:** amount, business purposes, business use, company, deduction, depreciation loss, general limitation, general permission, income, income from employment, motor vehicle, private limitation

Compare: 1994 No 164 s DH 1

**DE 2 Deductions for business use****Deduction**

- (1) A person is allowed a deduction for expenditure that they incur relating to the business use of a motor vehicle or for an

amount of depreciation loss relating to the business use of the vehicle.

### Calculating amount of depreciation loss

- (2) The amount of the deduction allowed in an income year for the amount of depreciation loss for the business use of the vehicle is calculated using the formula—

standard calculation × business proportion.

### Definition of items in formula

- (3) In the formula,—
- (a) **standard calculation** is the amount resulting from a calculation made for the motor vehicle under **section EE 16** (Amount resulting from standard calculation):
  - (b) **business proportion** is the proportion of business use to the total use of the motor vehicle for the income year (expressed as a decimal) calculated under **sections DE 3 to DE 12**.

### Link with subpart DA

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

*Defined:* business use, deduction, depreciation loss, general permission, incurred, motor vehicle, private limitation

Compare: 1994 No 164 ss DH 1(3), EG 2(1)(d)

### DE 3 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 (**section DE 5**):
- (b) a logbook (**sections DE 6 to DE 11**):
- (c) mileage rates when travel for business purposes is no more than 5,000 kilometres in an income year (**section DE 12**).

*Defined:* business purposes, business use, income year, motor vehicle

Compare: 1994 No 164 s DH 2

#### **DE 4 Default method for calculating proportion of business use**

##### **When this section applies**

- (1) This section applies when a person does not measure the proportion of business use of a motor vehicle by 1 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 under **section DE 2** 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.

*Defined:* amount, business use, deduction, motor vehicle

Compare: 1994 No 164 s DH 4

#### ***Actual records***

#### **DE 5 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 person and the Commissioner agree.

*Defined:* business purposes, business use, Commissioner, motor vehicle

Compare: 1994 No 164 s DH 2

#### ***Logbook period***

#### **DE 6 Using logbook for test period**

A person may keep a logbook for a test period for the purpose of establishing the proportion of the business use of a motor vehicle to its total use for 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.

*Defined:* business use, income year, motor vehicle

Compare: 1994 No 164 s DH 3(1)

## **DE 7 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 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, the total distance travelled by the motor vehicle, and any other details that the Commissioner may require. The logbook must record—
  - (a) the start and end of the 90 day test period; and
  - (b) the vehicle's odometer readings at the start and end of the test period; and
  - (c) the 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.

*Defined:* business, business purposes, business use, motor vehicle

Compare: 1994 No 164 s DH 3(2)

## **DE 8 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, which is dealt with in **section DE 11**):
  - (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 9**:
  - (d) a day that a person specifies.

*Defined:* business use, Commissioner, income year, motor vehicle, year

Compare: 1994 No 164 s DH 3(3)

### **DE 9 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 another 90 day period in the logbook term 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.

**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.

**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.

*Defined:* business purposes, business use, Commissioner, income year, motor vehicle

Compare: 1994 No 164 s DH 3(6), (7)

**DE 10 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.

*Defined:* business purposes, business use, motor vehicle

Compare: 1994 No 164 s DH 3(4)

**DE 11 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.

*Defined:* business purposes, business use, income year, motor vehicle

Compare: 1994 No 164 s DH 3(5)

### *Mileage rates*

#### **DE 12 Mileage rate method**

##### **Using mileage rates**

- (1) If a person's business travel is no 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 vehicle.

##### **Calculating 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.

*Defined:* amount, business, business purposes, business use, deduction, income year, motor vehicle

#### **DE 13 Setting mileage rates**

For the purposes of **section DE 12**, the Commissioner must from time to time set and publish a mileage rate.

*Defined:* Commissioner

## Subpart DF—Government grants

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**Index**

- DF 1 Government grants to businesses
  - DF 2 Repayment of grant-related suspensory loans
- 

**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 exception)**

- (2) The person is denied the deduction that they would have been allowed if this section did not exist, except that they are allowed a deduction 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.

*Defined:* amount, assessment, business, Commissioner, deduction, depreciable property, depreciation loss, general permission, grant-related suspensory loan, local authority, public authority, time bar

Compare: 1994 No 164 s DC 1

## **DF 2 Repayment of grant-related suspensory loans**

#### **Deduction**

- (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.

#### **Timing 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 the amounts of depreciation loss for the item for which the person would have been allowed a deduction 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 the amounts of depreciation loss for the item for which the person has been allowed a deduction;
  - (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.

*Defined:* amount, capital limitation, deduction, depreciable property, depreciation loss, general limitation, general permission, grant-related suspensory loan, income year

Compare: 1994 No 164 s DC 3

## Subpart DN—Attributed losses from foreign equity

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### *Attributed controlled foreign company loss*

#### **DN 1 Attributed controlled foreign company loss**

##### **Deduction**

- (1) A person is allowed a deduction for an attributed CFC loss, subject to the jurisdictional ring-fencing rule in **section DN 4**.

##### **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.

*Defined:* attributed CFC loss, capital limitation, deduction, general limitation, general permission

Compare: 1994 No 164 s CG 1(a)

#### **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 1 of its accounting periods, under **sections EX 1 to EX 7** (which relate to the definition of a controlled foreign company):
- (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 **sections EX 8 to EX 13** (which relate to calculating a person's income interest):
- (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 **sections EX 14 to EX 17** (which relate to the 10% threshold):
- (f) the CFC has a branch equivalent loss for the accounting period, under **section EX 21** (Branch equivalent income or loss: calculation rules):
- (g) the CFC is not an unqualified grey list CFC for the accounting period, under **section EX 22** (Unqualified grey list CFCs).

*Defined:* accounting period, attributed CFC loss, branch equivalent loss, CFC, foreign company, grey list, income interest, income year, New Zealand resident

Compare: 1994 No 164 ss CG 6(1), CG 7(1), CG 13(1)

**DN 3 Calculation of attributed CFC loss**

The amount of an attributed CFC loss is calculated under **sections EX 18 to EX 20** (which relate to the calculation of attributed CFC income or loss).

*Defined:* 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 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.

**Relationship with sections IE 3 and IG 4**

- (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 CFC net losses) or **IG 4** (Group of companies attributed CFC net losses).

*Defined:* accounting period, amount, attributed CFC income, attributed CFC loss, attributed CFC net loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, income year

Compare: 1994 No 164 s DP 1



## *Foreign investment fund loss*

### **DN 5 Foreign investment fund loss**

#### **Deduction**

- (1) A person is allowed a deduction for a FIF loss. However,—
  - (a) the deduction for a FIF loss calculated under any calculation method other than the branch equivalent method is subject to the 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 overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

*Defined:* branch equivalent method, calculation method, capital limitation, deduction, FIF loss, general limitation, general permission

Compare: 1994 No 164 ss DP 2(1), DP 3(1)

### **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** (Foreign investment funds); 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 **sections EX 30** (Attributing interests in FIFs) and **EX 31** (Direct income interests in FIFs):
  - (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 EX 32** (CFC rules exemption):
    - (ii) the grey list exemption in **section EX 33** (Grey list exemption):

- (iii) the foreign exchange control exemption in **section EX 34** (Foreign exchange control exemption):
  - (iv) the immigrant's 4 year exemption in **section EX 35** (Immigrant's 4 year exemption):
  - (v) the immigrant's accrued superannuation entitlement exemption in **section EX 36** (Immigrant's exemption for accrued superannuation entitlement):
  - (vi) the annuity or pension exemption in **section EX 37** (Exemption for non-resident's pension or annuity):
- (d) if the person is a natural person and not acting as a trustee, the total cost (calculated under **section EX 56** (Measurement of cost)) of attributing interests in FIFs that the person holds at any time during the income 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 income 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 income year or relevant accounting period under **sections EX 38 to EX 45** (which relate to the calculation of FIF income or loss).

#### **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 income 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 EX 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 **section EX 22** (Unqualified grey list CFCs)).

*Defined:* 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, trustee

Compare: 1994 No 164 ss CG 7(5), CG 15(1), (2), CG 16(2)

### **DN 7 Calculation of FIF loss**

The amount of a FIF loss is calculated, using the relevant calculation method, under **sections EX 42 to EX 49** (which relate to the calculation of FIF income or loss).

*Defined:* 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.

#### **Relationship with sections IE 4 and IG 5**

- (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** (FIF net losses) or **IG 5** (Group of companies FIF 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 income year's income**

- (5) When **subsection (1)(b)** is applied in the case of an amount of FIF income for a previous income 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—

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

**Definition of items in formula**

- (7) In the formula,—
- (a) **FIF income** is all FIF income of the person in the previous income year calculated under the accounting profits method:
  - (b) **FIF losses** is all FIF losses of the person in the previous income 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 income year:
  - (d) **foreign attributed losses** means all foreign attributed loss offsets for the previous income year:
  - (e) **rebate** is the person's conduit tax relief rebate for the previous tax year under **section KH 1** (Conduit tax relief).

**Defined:** accounting profits method, amount, attributing interest, branch equivalent method, business, calculation method, deduction, FIF income, FIF loss, FIF net loss, foreign attributed income, foreign attributed loss offsets, income year, tax year

Compare: 1994 No 164 s DP 2

## 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.

### Relationship with 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** (FIF net losses).

*Defined:* accounting period, amount, attributed CFC income, attributed CFC loss, branch equivalent method, CFC, deduction, FIF, FIF income, FIF loss, FIF net loss, income year

Compare: 1994 No 164 s DP 3

## Subpart DO—Farming and aquacultural business expenditure

### Index

#### *Farming*

- DO 1 Enhancements to land, except trees
- DO 2 Shelter belts
- DO 3 Trees on farms
- DO 4 Improvements to farming land

DO 5 Farming expenditure of lessor or sublessor

*Aquaculture*

DO 6 Improvements to aquacultural business

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## *Farming*

### **DO 1 Enhancements to land, except trees**

#### **Deduction**

- (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.

*Defined:* business, capital limitation, deduction, general limitation, general permission, New Zealand

Compare: 1994 No 164 s DO 3(a)–(d), (g)

### **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.

#### **Deduction**

- (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.

*Defined:* business, capital limitation, deduction, general limitation, general permission, New Zealand

Compare: 1994 No 164 s DO 3(e), (f)

**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.

**Deduction**

- (2) The person is allowed the following deductions:
- (a) for an income year in which the person incurs expenditure on planting trees on the land, they are allowed a deduction of the lesser of \$7,500 and the expenditure that they incur:
  - (b) for an income year in which the person incurs expenditure on maintaining trees on the land, they are allowed a deduction of the lesser of \$7,500 and the expenditure that they incur.

**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.

**Defined:** business, capital limitation, deduction, general limitation, general permission, income year, New Zealand

Compare: 1994 No 164 s DO 7(1), (2)(e)

## **DO 4 Improvements to farming 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** (Expenditure on farming, aquacultural, and forestry improvements) has been made to the land.

### **Deduction: expenditure: 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.

### **Deduction: expenditure: 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—  
schedule 7 percentage × 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** (Expenditure on farming, aquacultural, and forestry improvements):
  - (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** (Expenditure on farming, aquacultural, and forestry improvements) 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.

*Defined:* amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income, income year, New Zealand, owner

Compare: 1994 No 164 s DO 4(1)–(3)(b), (4)

**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 or DO 2 or DO 4**.

**Relationship with section DO 1 or DO 2 or DO 4**

- (2) **Section DO 1 or DO 2 or 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.

*Defined:* business, deduction, estate, lease, leasehold estate, lessor, New Zealand, owner, term of the lease

Compare: 1994 No 164 s DO 6

***Aquaculture*****DO 6 Improvements to aquacultural business****When this section applies**

- (1) This section applies when—
- (a) a 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** (Expenditure on farming, aquacultural, and

forestry improvements) is made for the purposes of the business.

**Deduction: expenditure: 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.

**Deduction: expenditure: 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  $\times$  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 or C or D or E or F** (Expenditure on farming, aquacultural, and forestry improvements):

- (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.

*Defined:* amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand

Compare: 1994 No 164 ss DO 5(1)–(3)(b), OB 1 “aquaculture”

### Subpart DP—Forestry expenditure

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| DP 3  | Plant or machinery  |
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| DP 9  | Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company |
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#### DP 1 Cost of timber

##### When this section applies

- (1) This section applies when—
- a person treats an amount as a cost of timber under generally accepted accounting practice, as applied by the person for financial reporting purposes; and
  - no other provision of this Act allows a deduction for the amount; and
  - an amount derived by the person from disposal of the timber would be income of the person under **section CB 23** (Disposal of timber or right to take timber) or **CB 24** (Disposal of land with standing timber).

**Deduction**

- (2) The person is allowed a deduction for the amount.

**Timing of deduction: trading stock**

- (3) If the amount is a cost of trading stock, the deduction is allocated to the income year in which the timber first becomes trading stock of the person.

**Timing of deduction: not trading stock**

- (4) If the amount is not a cost of trading stock, the deduction is allocated by **section EA 2** (Other revenue account property).

**Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, disposal, general limitation, general permission, generally accepted accounting practice, income, income year, timber, trading stock

Compare: 1994 No 164 ss DJ 13A, DL 1(7)

**DP 2 Expenditure of forestry business****Deduction**

- (1) A person carrying on a forestry business on land in New Zealand is allowed a deduction for expenditure that they incur on—
- (a) administrative overheads, rates, rent, insurance premiums, or other expenses of the same kinds:
  - (b) interest on money borrowed for the purposes of the business and employed as capital in the business:
  - (c) planting or maintaining trees on the land:
  - (d) applying fertiliser after the planting of the trees:
  - (e) disease control, pest control, or weed control (excluding releasing):
  - (f) repair or maintenance of plant, machinery, or equipment used by the person mainly in—
    - (i) planting or maintaining trees on the land; or
    - (ii) preparing or otherwise developing the land for the person's forestry operations:

- (g) repair or maintenance of land improvements, other than trees, effected on the land and used by the person mainly in the business:
- (h) 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:
- (i) the cost of standing timber that is lost or destroyed.

#### **Timing of deduction**

- (2) Although timber is revenue account property, a deduction for expenditure described in **subsection (1)** is not allocated under **section EA 2(2)** (Other revenue account property) but under **section BD 4(2)** (Allocation of deductions to particular income years).

#### **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.

*Defined:* business, capital limitation, deduction, general limitation, general permission, interest, New Zealand, revenue account property, standing timber, timber

Compare: 1994 No 164 s DL 1(2)–(4), (7), (12), (13)(e)

### **DP 3 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.

### **Deduction**

- (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.

*Defined:* amount, business, capital limitation, deduction, depreciation loss, general limitation, general permission, New Zealand

Compare: 1994 No 164 s DL 1(5), (8)

## **DP 4 Improvements to forestry 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** (Expenditure on farming, aquacultural, and forestry improvements) has been made to the land.

### **Deduction: expenditure: 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.

**Deduction: expenditure: 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 × 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** (Expenditure on farming, aquacultural, and forestry improvements):
  - (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.

*Defined:* amount, business, capital limitation, deduction, diminished value, general limitation, general permission, income year, New Zealand, owner

Compare: 1994 No 164 s DL 2(1)–(3)(b)



**DP 5 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.

**Deduction: 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 kinds; or
    - (iii) paying interest on money borrowed for the purposes of developing the trees and employed as capital in developing the trees.

**Deduction: advance**

- (3) The person is allowed a deduction for expenditure that they incur in doing 1 or both of the following:
- (a) making a payment of interest for an advance made under the agreement;
  - (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.

**Defined:** capital limitation, deduction, general limitation, general permission, interest

Compare: 1994 No 164 s DL 6(1)

**DP 6 Forestry encouragement agreement: no deduction****No deduction**

- (1) A person who has made a forestry encouragement agreement under the Forestry Encouragement Act 1962 is denied 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.

*Defined:* amount, deduction, exempt income, general permission

Compare: 1994 No 164 s DL 6(2)(b)

**DP 7 Land contouring: no deduction****No deduction**

- (1) A person who derives income under **section CB 23** (Disposal of timber or right to take timber) or **CB 24** (Disposal of land with standing timber) is denied 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.

*Defined:* deduction, general permission, income

Compare: 1994 No 164 s DL 1(9)

**DP 8 Forestry business on land bought from Crown, Maori owners, or holding company: no deduction****No deduction: forestry company**

- (1) A forestry company is denied 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 denied 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).

**Relationship with sections FC 2 and FZ 2**

- (3) **Sections FC 2** (Interest on debentures issued in substitution for shares) **and 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.

*Defined:* business, deduction, exempt income, forestry company, general permission, holding company, interest, Maori investment company, Maori owners, qualifying debenture

Compare: 1994 No 164 s DL 5(1)(b), (c)

**DP 9 Cost of acquiring timber: forestry business on land bought from Crown, Maori owners, or holding company**

**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.

**Sellers of Maori land**

- (2) 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.

**Cost of acquiring timber**

- (3) The cost to the forestry company of acquiring the timber is the lesser of the following:
- (a) the cost of timber to the seller at the date of the sale; and
  - (b) the amount calculated using the formula in **subsection (4)**.

**Formula**

- (4) The formula is—

$$\frac{\text{value of timber}}{\text{value of timber} + \text{value of land}} \times \text{sale price.}$$

**Definition of items in formula**

- (5) In the formula,—
- (a) **value of timber** is the market value of the standing timber on the date of the sale;
  - (b) **value of land** is the market value of the land, as if it did not have standing timber on it, on the date of the sale;
  - (c) **sale price** is the consideration for the sale.

*Defined:* business, cost of timber, forestry company, holding company, Maori incorporation, Maori land, Maori owners, standing timber, trustee

Compare: 1994 No 164 s DL 5(1)(d)(ii), (iii)

**DP 10 Cost of acquiring timber or right to take timber: other cases****Acquiring land with standing timber**

- (1) For a person acquiring land with standing timber on it in a disposal to which **section CB 24** (Disposal of land with standing timber) applies, the cost of acquiring the timber is the amount that is, under **section CB 24**, income of the person disposing of the land.

**Recharacterisation or avoidance**

- (2) 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 business) **or FF 7** (Disposal of timber under matrimonial agreement) **or GD 1** (Sale of trading stock for inadequate consideration) **or 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 together with other assets of business):
  - (b) the consideration under **section FF 7** (Disposal of timber under matrimonial agreement):
  - (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).

*Defined:* amount, disposal, income, right to take timber, standing timber, timber

Compare: 1994 No 164 ss CJ 1(2)(e)(ii), OB 1 “cost”

## Subpart DQ—Income equalisation schemes

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- DQ 1 Main income equalisation scheme
  - DQ 2 Adverse event income equalisation scheme
  - DQ 3 Thinning operations income equalisation scheme
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## DQ 1 Main income equalisation scheme

### Deduction

- (1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in **section EH 7(2)** (Deduction of deposit).

### Timing of deduction

- (2) The deduction is allocated to the tax year described in **section EH 7(3)** (Deduction of deposit).

### Link with subpart DA

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

*Defined:* amount, capital limitation, deduction, deposit, general limitation, general permission, main income equalisation scheme, person, tax year

Compare: 1994 No 164 s EI 3

**DQ 2 Adverse event income equalisation scheme****Deduction**

- (1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in **section EH 42(2)** (Deduction of deposit).

**Timing of deduction**

- (2) The deduction is allocated to the tax year described in **section EH 42(3)** (Deduction of deposit).

**Link with subpart DA**

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

*Defined:* adverse event income equalisation scheme, amount, capital limitation, deduction, deposit, general limitation, general permission, person, tax year

Compare: 1994 No 164 s EI 13

**DQ 3 Thinning operations income equalisation scheme****Deduction**

- (1) A person who has made a deposit for a tax year is allowed a deduction of the amount quantified in **section EH 69(2)** (Deduction of deposit).

**Timing of deduction**

- (2) The deduction is allocated to the tax year described in **section EH 69(3)** (Deduction of deposit).

**Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, deposit, general limitation, general permission, person, tax year, thinning operations income equalisation scheme

Compare: 1994 No 164 ss EI 3, EI 17(2)

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## Subpart DR—Life insurance business expenditure

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- DR 1 Mortality profit formula: negative result
  - DR 2 Disposal of property
  - DR 3 Specific deductions denied to life insurers and fully reinsured persons
- 

### 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 EY 25(2)** (Mortality profit: when life insurers providing life insurance at start of income year) **or EY 26(2)** (Mortality profit: 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 1 of the exceptions in **section EY 32(2) to (4)** (Mortality profit formula: individual result may be negative only in some cases) applies.

#### Deduction

- (2) The life insurer is allowed a deduction of the amount quantified in **section EY 33(2)** (Mortality profit formula: negative result).

#### Timing of deduction

- (3) The deduction is allocated to the income year described in **section EY 33(3)** (Mortality profit formula: negative result).

#### Link with subpart DA

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

*Defined:* amount, deduction, general limitation, general permission, income year, life insurer, mortality profit formula

Compare: 1994 No 164 s DK 3A

**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.

**Exclusions**

- (2) This section does not apply when the property is—
- (a) a share to which **section DB 19** (Share losses) applies; or
  - (b) a financial arrangement; or
  - (c) property for whose cost the life insurer has already been allowed a deduction, other than for an amount of depreciation loss.

**Deduction**

- (3) The life insurer is allowed a deduction of the amount quantified in **section EY 46(2)** (Deductions for disposal of property).

**Timing of deduction**

- (4) The deduction is allocated to the income year described in **section EY 46(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.

*Defined:* amount, business, capital limitation, deduction, depreciation loss, financial arrangement, general limitation, general permission, income year, life insurance, life insurer, property, share

Compare: 1994 No 164 s DK 3B(1), (2)

**DR 3 Specific deductions denied to life insurers and fully reinsured persons****No deduction**

- (1) A life insurer is denied 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 the actuarial reserves; or



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

### **Inclusion**

- (2) This section 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.

*Defined:* actuarial reserves, amount, business, claim, deduction, full reinsurance, general permission, life insurance, life insurance policy, life insurer, life reinsurance policy, loss, pay, policyholder income, premium

Compare: 1994 No 164 ss DK 3, DK 3D

## **Subpart DS—Film industry expenditure**

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### **DS 1 Acquiring film rights**

#### **Deduction**

- (1) A person is allowed a deduction for expenditure that they incur in acquiring a film right, if the film is completed (whether it is completed before, when, or after the film right is acquired).

#### **Exclusion**

- (2) This section does not apply to expenditure that a person incurs in acquiring a film right if—
- (a) the person operates a television station, a television network, or a cable television system, and the film right

- is acquired mainly 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.

#### **Timing of deduction**

- (3) The deduction is allocated under **section EJ 4** (Expenditure incurred in acquiring film rights in feature films) **or EJ 5** (Expenditure incurred in acquiring film rights in films other than feature films).

#### **No other deductions**

- (4) No other deduction for expenditure incurred in acquiring a film right is allowed under any other provision of this Act.

#### **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.

*Defined:* capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, New Zealand

Compare: 1994, No 164 s EO 3(1)–(5), (7), (9)

## **DS 2 Film production expenditure**

### **Deduction**

- (1) A person is allowed a deduction for film production expenditure that they incur, if the film is completed and the person has a film right in it before the film is completed or when the film is completed.

### **Inclusion**

- (2) For the purposes of **subsection (1)**, if a person (**person A**) reimburses another person (**person B**) for film production expenditure that person B incurs, and does it before the film is completed, the reimbursement is treated as film production expenditure incurred by person A.

### **Exclusion**

- (3) This section does not apply to film production expenditure that a person incurs if—

- (a) the person operates a television station, a television 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.

#### **Timing of deduction**

- (4) The deduction is allocated under **section EJ 6** (Film production expenditure for New Zealand films) **or EJ 8** (Film production expenditure for films other than New Zealand films).

#### **No other deductions**

- (5) No other deduction for film production expenditure is allowed under any other provision of this Act.

#### **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.

*Defined:* capital limitation, completed, deduction, film, film production expenditure, film right, general limitation, general permission, New Zealand

Compare: 1994 No 164 s EO 4(1)–(5)

### **DS 3 Clawback of deductions for film reimbursement schemes**

#### **Reduction of deductions**

- (1) A person who disposes of property under a film reimbursement scheme must use the formula in **subsection (3)** to reduce—
  - (a) the total deductions that they have been allowed under **section DS 1 or DS 2**; or
  - (b) the total deductions that they would be allowed under **section DS 1 or DS 2** if this section did not exist.

#### **Order of reduction**

- (2) Deductions must be reduced in the same order as they have been allowed or would be allowed.

#### **Formula**

- (3) The total deductions must be reduced to the amount calculated using the formula—

total deductions – total consideration.

**Definition of items in formula**

- (4) In the formula,—
- (a) **total deductions** is the total amount of deductions that—
- (i) the person has been allowed under **section DS 1 or DS 2**; or
  - (ii) the person would be allowed under **section DS 1 or DS 2** if this section 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.

**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.

**Exclusion**

- (6) This section does not apply to a deduction for expenditure excluded under **section DZ 3** (Film reimbursement scheme on or before 30 June 2001).

*Defined:* amount, assessment, Commissioner, deduction, film income, film reimbursement scheme, time bar

Compare: 1994 No 164 ss EO 4A(2)–(5), EO 4B

**DS 4 Reduction of deductions if limited recourse loan used****Reduction of deductions**

- (1) A person who uses a limited recourse loan in acquiring, producing, or marketing a film or a film right must subtract the amount of the loan that is so used 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.

**Kind of expenditure and order of reduction**

- (2) The amount of the loan made in a tax year must be subtracted from the deductions that the person would otherwise be allowed for expenditure of the following kinds and must be subtracted in the following order:
- (a) from the deductions for revenue film expenditure that the person incurred in a previous tax year and did not

pay for on or before the start of the tax 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 tax year and did not pay for on or before the start of the tax year, if the loan was borrowed to pay for the expenditure:
- (c) from the deductions for revenue film expenditure that the person incurred in the tax year:
- (d) from the deductions for capital film expenditure that the person incurred in the tax year.

#### **Cumulative application**

- (3) The application of **subsection (1)** is cumulative, that is, 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 kind of expenditure reduced by any previous subtractions under the subsection. The order in **subsection (2)** must be followed.

#### **Link with subpart DA**

- (4) This section overrides the general permission.

*Defined:* amount, capital film expenditure, deduction, film, film right, general permission, limited recourse loan, revenue film expenditure, tax year

Compare: 1994 No 164 s DK 1(1)–(3), (5), (6)

### **DS 5 Repayments of limited recourse loans**

#### **Amount of deduction**

- (1) A person is allowed a deduction that is equal to the amount of any repayment by them of part or all of a limited recourse loan, but is no more than the total amount subtracted under **section DS 4**.

#### **Kind of expenditure and order of deduction**

- (2) The deduction that the person is allowed for the repayment must be for expenditure of the same kind as that for which the person was denied a deduction under **section DS 4(1)** and the deductions must be in the order set out in **section DS 4(2)**.

#### **Cumulative application**

- (3) The application of **subsection (1)** is cumulative, that is, the amount of the deduction that the person is allowed for each

kind of expenditure is the total amount that the person was denied for that kind under **section DS 4(1)** in any previous income year, reduced by any amounts for which the person was allowed a deduction under **subsection (1)** in any previous income year. The order set out in **section DS 4(2)** must be followed.

#### **Repayment of loan with another loan**

- (4) For the purposes of **subsection (1)**, a loan is treated as not having been repaid to the extent to which a limited recourse loan is used directly or indirectly to repay the loan.

#### **Timing of deduction**

- (5) The deduction is allocated to the income year in which the repayment is made.

#### **Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, general limitation, general permission, income year, limited recourse loan

Compare: 1994 No 164 s DK 1(5), (6)

### **DS 6 Meaning of film reimbursement scheme**

#### **Meaning**

- (1) **Film reimbursement scheme** means an arrangement to which **subsections (2) to (4)** apply.

#### **Deduction allowed under section DS 1 or DS 2**

- (2) The first requirement for a film reimbursement scheme is that it is a scheme under which a person may incur expenditure for which they are allowed a deduction under **section DS 1 or DS 2**, or would be allowed a deduction if **section DS 3** did not exist.

#### **Disposal of property**

- (3) The second requirement for a film reimbursement scheme is that 1 of the following applies:
- (a) it enables the person or an associated person to dispose of property; or

- (b) it gives a right to the person or an associated person to dispose of property; or
- (c) it gives a right that creates an obligation for the person or an associated person that they may meet by disposing of property.

#### **Consideration not film income**

- (4) The third requirement for a film reimbursement scheme is that it is a scheme under which some or all of the consideration for the property would not be film income.

#### **Associated persons**

- (5) For the purposes of **subsection (3)**, a shareholder in a loss attributing qualifying company and the company are associated persons, in addition to the associated persons described in **section OD 7** (Defining when 2 persons are associated persons) or **OD 8(3)** (Further definitions of associated persons).

*Defined:* arrangement, associated person, deduction, film income, film reimbursement scheme, loss attributing qualifying company, shareholder

Compare: 1994 No 164 s EO 4A(2), (6), (7)

### **DS 7 Some definitions**

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 film right

**limited recourse loan** means—

- (a) an amount that a person (**person A**) borrows from another person (**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 a person (**person A**) borrows from another person (**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 film right.

*Defined:* amount, arrangement, associated person, business, capital film expenditure, film, film right, income, interest, limited recourse loan, non-recourse loan, revenue film expenditure

Compare: 1994 No 164 s DK 1(2), (3), (8)

## Subpart DT—Petroleum mining expenditure

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***Petroleum exploration expenditure*****DT 1 Petroleum exploration expenditure****Deduction**

- (1) A person is allowed a deduction for petroleum exploration expenditure incurred by them.

**Relationship with section DT 2**

- (2) This section is overridden by **section DT 2**.

**Link with subpart DA**

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

**Defined:** capital limitation, deduction, general limitation, general permission, petroleum exploration expenditure

Compare: 1994 No 164 ss DM 1(1), (2)(a), DM 1A(1)

**DT 2 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 1**; 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 arising from a right given by 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 allowed a deduction in an income year for the expenditure described in **subsection (1)(a)** but only to the extent of an amount equal to the greater of zero and the amount calculated using the formula—
- $$\text{expenditure} - (\text{consideration} - \text{lesser amount}).$$

#### **Exclusion**

- (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—
- $$\text{previous expenditure} - \text{consideration}.$$

#### **Definition of items in formulas**

- (4) In the formulas in **subsections (2) and (3)**,—
- (a) **expenditure** is the amount of expenditure for which the person would be allowed a deduction in the income year under **section DT 1(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 for which a person would be allowed a deduction in previous income years under **section DT 1(1)**;
  - (d) **previous expenditure** is the amount of expenditure for which a person would be allowed a deduction in previous income years under **section DT 1(1)**.

**Order of reduction**

- (5) When an adjustment under **subsection (3)** is being made, deductions are treated as denied in the same order in time as they would have been allowed under **section DT 1(1)**.

**Amendment of assessment**

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

**Relationship with section DT 1**

- (7) This section overrides **section DT 1**.

**Link with subpart DA**

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

*Defined:* amount, arrangement, assessment, associated person, Commissioner, consideration, deduction, exploration permit, exploratory material, income year, petroleum, petroleum exploration expenditure, prospecting permit, time bar

Compare: 1994 No 164 ss DM 1A, DM 1B

**DT 3 Acquisition of licences and permits**

The consideration that a person pays to acquire a prospecting licence, a prospecting permit for petroleum, or an exploration permit for petroleum from a petroleum miner is treated as petroleum exploration expenditure incurred in the income year in which the petroleum miner disposes of the licence or permit to the person.

*Defined:* consideration, disposal, exploration permit, income year, petroleum exploration expenditure, petroleum miner, prospecting licence, prospecting permit

Compare: 1994 No 164 s DM 3(1)

**DT 4 Acquisition of exploratory material**

The 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 petroleum miner disposes of the material to the person.

*Defined:* consideration, disposal, exploratory material, income year, petroleum exploration expenditure, petroleum miner

Compare: 1994 No 164 s DM 3(2)

### *Petroleum development expenditure*

#### **DT 5 Petroleum development expenditure**

##### **Deduction**

- (1) A petroleum miner is allowed a deduction for petroleum development expenditure incurred by them.

##### **Timing of deduction**

- (2) The deduction is allocated under **section EJ 10** (Petroleum development expenditure).

##### **Link with subpart DA**

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

*Defined:* capital limitation, deduction, general limitation, general permission, petroleum development expenditure, petroleum miner

Compare: 1994 No 164 s DM 1(1), (2)(b)

#### **DT 6 Expenditure on petroleum mining assets**

Expenditure that a person incurs in buying a petroleum mining asset is treated as petroleum development expenditure if—

- (a) at the time the asset is bought, petroleum is produced in commercial quantities on a continuing basis under a petroleum permit that—
  - (i) is the one being bought; or
  - (ii) applies to the permit area in which an asset of the kind described in **section CT 7(1)(b)** (Meaning of petroleum mining asset) is to be used; or
- (b) an application for a mining permit for the permit area has been made by a person entitled to a mining permit under section 32(3) of the Crown Minerals Act 1991.

*Defined:* permit area, petroleum, petroleum development expenditure, petroleum permit, petroleum mining asset

Compare: 1994 No 164 s DM 1(8)

#### **DT 7 Exploratory well expenditure**

##### **When this section applies**

- (1) This section applies when—

- (a) a petroleum miner incurs exploratory well expenditure; and
- (b) the miner then uses the exploratory well for the commercial production of petroleum; and
- (c) the exploratory well expenditure is then treated, under **section CT 3** (Exploratory well used for commercial production), as income of the miner.

### **Treatment of expenditure**

- (2) An amount equal to the amount that is treated as income is treated as petroleum development expenditure incurred by the petroleum miner in the income year in which commercial production from the well starts.

*Defined:* amount, capital limitation, commercial production, deduction, exploratory well expenditure, general limitation, general permission, income, income year, petroleum development expenditure, petroleum miner

Compare: 1994 No 164 s DM 1(9)(b)

### **DT 8 Acquisition of certain petroleum mining assets**

The consideration that a person pays to acquire a petroleum mining asset (other than a prospecting licence, a prospecting permit for petroleum, or an exploration permit for petroleum) from a petroleum miner is treated as petroleum development expenditure incurred in the income year in which the petroleum miner disposes of the petroleum mining asset to the person.

*Defined:* consideration, disposal, exploration permit, income year, petroleum development expenditure, petroleum miner, petroleum mining asset, prospecting licence, prospecting permit

Compare: 1994 No 164 s DM 3(1)

### **DT 9 Disposal of petroleum mining asset to associate**

#### **When this section applies**

- (1) This section applies when a petroleum miner disposes of a petroleum mining asset to—
  - (a) a person associated with the miner; or
  - (b) a person who holds the asset on behalf of the miner; or
  - (c) a person who holds the asset on behalf of a person associated with the miner.

#### **No deduction**

- (2) The petroleum miner is denied a deduction under **section DT 5** for the amount for which they would have been allowed a deduction on disposing of the asset if they had not disposed of it to a person described in **subsection (1)**.

**Link with subpart DA**

- (3) This section overrides the general permission.

*Defined:* amount, associated person, deduction, disposal, general permission, petroleum miner, petroleum mining asset

Compare: 1994 No 164 s DM 1(6)

**DT 10 Disposal of petroleum mining asset outside association**

**When this section applies**

- (1) This section applies when a person associated with a petroleum miner acquires a petroleum mining asset from the miner and later disposes of it to—
- (a) a person not associated with the miner; or
  - (b) a person who does not hold the asset on behalf of the miner; or
  - (c) a person who does not hold the asset on behalf of a person associated with the miner.

**Deduction**

- (2) The associated person is allowed a deduction.

**Amount of deduction**

- (3) The amount of the deduction is the amount for which the petroleum miner is denied a deduction under **section DT 9**.

**Timing of deduction**

- (4) The deduction is allocated to the income year in which the associated person disposes of the asset.

**Link with subpart DA**

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

*Defined:* amount, associated person, capital limitation, deduction, disposal, general limitation, general permission, petroleum miner, petroleum mining asset

Compare: 1994 No 164 s DM 1(6)

**DT 11 Association ending****When this section applies**

- (1) This section applies when—
  - (a) a person acquires a petroleum mining asset from a petroleum miner; and
  - (b) the person—
    - (i) is associated with the miner; or
    - (ii) holds the asset on behalf of a person associated with the miner; and
  - (c) the association with the miner ends while the person holds the asset.

**Exclusion**

- (2) This section does not apply when the petroleum miner and the other party to the association end their association—
  - (a) for the purpose of the miner being allowed a deduction under this section; or
  - (b) for various purposes, 1 of which is, as a more than merely incidental purpose, the miner being allowed a deduction under this section.

**Deduction**

- (3) The petroleum miner is allowed a deduction.

**Amount of deduction**

- (4) The amount of the deduction is the amount for which the petroleum miner is denied a deduction under **section DT 9**.

**Timing of deduction**

- (5) The deduction is allocated to the income year in which the association ends.

**Link with subpart DA**

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

**Defined:** amount, associated person, capital limitation, deduction, disposal, general limitation, general permission, income year, petroleum miner, petroleum mining asset

Compare: 1994 No 164 s DM 1(7)(b)

*Other expenditure***DT 12 Disposal of ownership interests in controlled petroleum mining entities****No deduction**

- (1) A person is denied a deduction for the cost of shares or trust interests in a controlled petroleum mining entity.

**Relationship with section DZ 6**

- (2) This section is overridden by **section DZ 6** (Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001).

**Link with subpart DA**

- (3) This section overrides the general permission.

*Defined:* controlled petroleum mining entity, deduction, share

Compare: 1994 No 164 s DM 6

**DT 13 Farm-out arrangements****When this section applies**

- (1) This section applies when a farm-in party under a farm-out arrangement incurs farm-in expenditure that, if it were incurred by the farm-out party under the arrangement, would be petroleum development expenditure, exploratory well expenditure, or prospecting expenditure.

**Treatment of farm-in expenditure**

- (2) The farm-in expenditure is treated as if it were petroleum development expenditure, exploratory well expenditure, or prospecting expenditure, as applicable.

**Deduction**

- (3) The farm-in party is allowed a deduction for the farm-in expenditure that is incurred under the farm-out arrangement on or after 16 December 1991.

**Relationship with section DZ 7**



- (4) Farm-in expenditure that is incurred before 16 December 1991 is dealt with in **section DZ 7** (Farm-out arrangements for petroleum mining before 16 December 1991).

**Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, exploratory well expenditure, farm-in expenditure, farm-in party, farm-out arrangement, general limitation, general permission, petroleum development expenditure, petroleum exploration expenditure, prospecting expenditure

Compare: 1994 No 164 s DM 4(1)

**DT 14 Limited deduction for persons associated with petroleum miner**

**When this section applies**

- (1) This section applies to a person associated with 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—
    - (i) undertakes petroleum mining operations in the licence area of the prospecting licence or mining licence; and
    - (ii) does so under an arrangement for reward; and
    - (iii) when doing so is not a petroleum miner in relation to the petroleum mining operations.

**Deduction**

- (2) The associated person is allowed a deduction for expenditure or loss that they incur in the petroleum mining operations described in **subsection (1)**.

**Amount of deduction**

- (3) The amount of the deduction is limited to the extent of the amount of income that they derive from the petroleum mining operations.

**Link with subpart DA**

- (4) This section overrides the general permission.

*Defined:* amount, arrangement, associated person, deduction, general permission, income, mining licence, petroleum miner, petroleum mining operations, prospecting licence

Compare: 1994 No 164 s DK 2

## **DT 15 Removal or restoration operations**

### **Deduction**

- (1) A petroleum miner is allowed a deduction for expenditure that they incur on removal or restoration operations.

### **Timing of deduction**

- (2) The deduction is allocated to the income year in which the expenditure is incurred.

### **Relationship with section EA 2**

- (3) This section overrides **section EA 2** (Other revenue account property).

### **Link with subpart DA**

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

*Defined:* capital limitation, deduction, general limitation, general permission, income year, petroleum miner, removal or restoration operations

Compare: 1994 No 164 ss DM 1(1), DM 2

## ***General provisions***

## **DT 16 Attribution of expenditure**

### **Petroleum permit**

- (1) A deduction for expenditure incurred to acquire a petroleum permit is attributable to the permit area of the petroleum permit.

### **Other assets**

- (2) A deduction for expenditure incurred to acquire an asset of the kind described in **section CT 7(1)(b)** (Meaning of petroleum mining asset) is attributable to—  
(a) the asset; and

- (b) the permit area to which the asset relates.

**Relationship with this subpart and sections GC 12 and IH 3**

- (3) This section applies for the purposes of this subpart, **sections GC 12** (Petroleum mining) **and IH 3** (Loss carry back by petroleum miners), and section 91 of the Tax Administration Act 1994.

*Defined:* permit area, petroleum permit

Compare: 1994 No 164 s DM 1(4)

**DT 17 Replacement permits**

In this subpart, a reference to a petroleum permit includes a reference to a replacement permit. All expenditure incurred, deductions allowed, and petroleum mining assets that are attributable to the petroleum permit are attributable to the replacement permit.

*Defined:* deduction, petroleum mining asset, petroleum permit, replacement permit

Compare: 1994 No 164 s OB 1 “petroleum permit”

**DT 18 Partnership interests and disposal of part of asset**

In this subpart, unless the context requires otherwise,—

- (a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their interest in the income of the partnership:
- (b) references to the disposal of an asset apply equally to the disposal of part of an asset.

*Defined:* disposal, income, petroleum permit

Compare: 1994 No 164 ss DM 9, DM 10

**DT 19 Petroleum mining operations outside New Zealand**

This subpart applies, with any necessary modifications, 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 petroleum mining activities governed by this Act.

**Defined:** controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 1994 No 164 s DM 7(1)

## Subpart DU—Mineral mining expenditure

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### DU 1 When mining company has mining outgoing excess

#### Meaning of mining outgoing excess

- (1) **Mining outgoing excess** means an amount that a mining company calculates for an income year using the formula—
- $$\text{mining expenditure} - \text{income from mining.}$$

#### 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.

*Defined:* amount, deduction, income from mining, income year, loss, mining company, mining outgoing excess

Compare: 1994 No 164 s OB 1 “mining outgoing excess”

## **DU 2 Effect of mining company having mining outgoing excess**

### **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 no 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—  
$$\text{non-mining income} - \text{non-mining expenditure.}$$

### **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.

*Defined:* amount, deduction, income, income from mining, income year, loss, mining company, mining outgoing excess

Compare: 1994 No 164 s DN 1(3)

## **DU 3 Mining exploration expenditure and mining development expenditure**

### **Deduction**

- (1) A mining company is allowed a deduction for mining exploration expenditure and 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.

*Defined:* amount, capital limitation, general limitation, general permission, mining company, mining development expenditure, mining exploration expenditure

Compare: 1994 No 164 s DN 1(5)

**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 1 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 1 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; or
    - (ii) a longer time allowed by the Commissioner; and
  - (d) the notice specifies an amount that—
    - (i) is no 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 specified in notice**

- (6) The consideration for the acquisition is the amount that the mining company and the person specify in the notice.

*Defined:* amount, associated mining operations, associated person, Commissioner, income year, mining company, mining development expenditure, mining exploration expenditure, mining operations, notice, return of income

Compare: 1994 No 164 s DN 1(10)–(12)

**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.

**Deduction**

- (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 expenditure incurred after the last day of the period 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.

**Defined:** amount, capital limitation, Commissioner, general limitation, general permission, mining company

Compare: 1994 No 164 s DN 1(14)(c)(i), (d), (h)

## **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 no more than its net income for the income year, calculated as if this section did not exist.

### **Deduction**

- (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.

### **Timing 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.

*Defined:* amount, capital limitation, Commissioner, deduction, general limitation, general permission, income, income year, mining company, mining development expenditure, mining exploration expenditure, net income

Compare: 1994 No 164 s DN 1(6)

## 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.

*Defined:* Commissioner, deduction, income, income from mining, income year, mining company

Compare: 1994 No 164 s DN 1(15)(a)

## 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 DZ 10(2)(a)** (Mineral mining: 1954 to 2004); 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 exception)**

- (3) The company is denied a deduction for an amount of depreciation loss for the asset while the company uses it to derive income from mining. However, while the company uses the asset to derive income other than income from mining, it is allowed a deduction for an amount of depreciation loss. 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.

*Defined:* amount, deduction, depreciation loss, general permission, income, income from mining, mining company, mining development expenditure, mining exploration expenditure

Compare: 1994 No 164 s DN 1(7)(a)(ii), (c), (8)(c), (14)(c)(ii)

**DU 9 Resident mining operators****Sections of this subpart applying to resident mining operators**

- (1) **Sections DU 1, DU 3 to DU 5, DU 7, and DU 8** apply, with any necessary modifications, to resident mining operators as if resident mining operators were mining companies.

**Additional modification of section DU 8**

- (2) For the purposes of **subsection (1), section DU 8(1)(a)(ii)** applies as described in **section DZ 10(2)(b)** (Mineral mining: 1954 to 2004).

**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 tax year for expenditure or loss taken into account in the **mining expenditure** item of the formula in **section DU 1** is no more than the lesser of—
- (a) the total amount of the expenditure and loss; and
  - (b) the prescribed amount for the tax year.

#### **Meaning of prescribed amount**

- (4) **Prescribed amount** means 50% of the amount by which the income that the resident mining operator derives in a tax 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 tax year in deriving the income.

#### **Relationship with sections IE 1, IF 1, and IH 1**

- (5) Expenditure or loss of a resident mining operator for which it would be allowed a deduction in a tax year if **subsection (3)** did not exist is a net loss of the operator for the tax year for the purposes of **sections IE 1** (Net losses may be offset against future net income), **IF 1** (Net losses may be offset against future net income), and **IH 1** (Losses of mining companies and petroleum miners).

*Defined:* amount, associated mining operations, deduction, income, loss, mining company, mining operations, mining outgoing excess, net loss, prescribed amount, resident mining operator, tax year

Compare: 1994 No 164 ss DN 4(2), (3), (5), (7), OB 1 “prescribed amount”

### **DU 10 Non-resident mining operators**

#### **Sections of this subpart applying to non-resident mining operators**

- (1) **Sections DU 3 to DU 8 and 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.

**Additional modification of section DU 8**

- (5) For the purposes of **subsection (1)**, **section DU 8(1)(a)(ii)** applies as described in **section DZ 10(2)(b)** (Mineral mining: 1954 to 2004).

*Defined:* associated mining operations, income, income from mining, mining company, mining operations, mining venture, non-resident mining operator

Compare: 1994 No 164 s DN 5(2)(a)

**DU 11 Disposal of mining shares by company**

**Deduction**

- (1) When a company disposes of a mining share, the company is allowed a deduction for the cost of the share to it.

**Amount of deduction**

- (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.

*Defined:* capital limitation, company, deduction, general limitation, general permission, mining share, reinvestment profit

Compare: 1994 No 164 s DN 2(1)–(3), (10)

## **DU 12 Amount written off by holding company**

### **Deduction**

- (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.

### **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 no 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 tax 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 tax year in which the amount is written off, reduced by all the deductions the holding company is allowed under this section in all tax years before the tax year in which the amount is written off.

**Timing of deduction**

- (4) The deduction for the amount written off is allocated to the tax year in which the amount is written off.

**Reduction of amount**

- (5) The amount calculated under **subsection (3)** is reduced in the circumstances described in **section DZ 10(4)** (Mineral mining: 1954 to 2004).

**Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, general limitation, general permission, holding company, interest, loan, mining company, mining development expenditure, mining exploration expenditure, net income, prescribed proportion, reinvestment profit, tax, tax year

Compare: 1994 No 164 s DN 3(1)–(3), (10)

**DU 13 Cost of non-specified mineral****When this section applies**

- (1) This section applies when—
- (a) a person treats an amount as a cost of a mineral under generally accepted accounting practice, as applied by the person for financial reporting purposes; and
  - (b) the mineral is not a specified mineral; and
  - (c) no other provision of this Act allows a deduction for the amount; and
  - (d) an amount derived by the person from disposal of the mineral would be income of the person under **section CB 26** (Disposal of minerals).

**Deduction**

- (2) The person is allowed a deduction for the amount.

**Timing of deduction: trading stock**

- (3) If the amount is a cost of trading stock, the deduction is allocated to the income year in which the mineral first becomes trading stock of the person.

**Timing of deduction: not trading stock**

- (4) If the amount is not a cost of trading stock, the deduction is allocated by **section EA 2** (Other revenue account property).

**Link with subpart DA**

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

*Defined:* amount, capital limitation, deduction, disposal, general limitation, general permission, generally accepted accounting practice, income, mineral, specified mineral, tax year, trading stock

Compare: 1994 No 164 s DJ 13A

**Subpart DV—Expenditure specific to certain entities**

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***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.

### **Deduction**

- (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 and the exempt income limitation. The other general limitations still apply.

*Defined:* capital limitation, counted income, deduction, exempt income limitation, general limitation, general permission, superannuation fund

Compare: 1994 No 164 s DI 3(1)

## **DV 2 Transfer of expenditure to master fund**

### **When this section applies**

- (1) This section applies when—
  - (a) a superannuation fund (**member superannuation fund**) invests some or all of its funds in another superannuation fund (**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 within 1 of the following times:
- (a) the time within which its return of income 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 in the same income year as that in 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) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (7)** supplements the general permission and overrides the capital limitation. The other general limitations still apply:
  - (b) **subsection (9)** overrides the general permission.

*Defined:* amount, capital limitation, Commissioner, counted income, deduction, general limitation, general permission, income year, notice, return of income, superannuation fund

Compare: 1994 No 164 s DI 3(2), (8), (9)(a)

**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 tax 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 tax year in which the expenditure is incurred.

*Defined:* amount, deduction, non-resident withholding income, superannuation fund, tax year, taxable income

Compare: 1994 No 164 s DI 3(2)(d)

**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 tax 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 tax year that it chooses to treat as being incurred by the master superannuation fund;
  - (b) it calculates the maximum deduction for the tax 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 tax 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 tax 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 tax years until all surplus expenditure is deducted.

#### **Deduction allowed 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 tax 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 tax 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 tax year in which the member superannuation fund incurred it.

**Link with subpart DA**

- (8) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (4)** supplements the general permission and overrides the capital limitation. The other general limitations still apply:
  - (b) **subsection (6)** overrides the general permission.

*Defined:* amount, capital limitation, deduction, general limitation, general permission, income, superannuation fund, tax year

Compare: 1994 No 164 s DI 3(3)–(9)

*Other entities*

**DV 5 Investment funds: transfer of expenditure to master funds**

**When this section applies**

- (1) This section applies when—

- (a) a group investment fund that derives category A income, a qualifying unit trust, or a superannuation fund (**member fund**) invests some or all of its funds in a master fund; and
- (b) while the member fund has funds invested in the master fund, the member fund incurs expenditure of a kind described in **subsection (2)**; and
- (c) the member fund has some or all of its funds invested in the master fund throughout the period starting at the time at which the member fund incurs the expenditure and ending with the close of the last day of the tax year in which the expenditure is deducted by the master fund under this section.

#### **Expenditure described**

- (2) The expenditure is expenditure for which the member fund is allowed a deduction,—
  - (a) including expenditure on a financial arrangement that is denominated in New Zealand dollars and for which expenditure is allocated using the yield to maturity method set out in **subpart EW** (Financial arrangements rules); and
  - (b) not including—
    - (i) expenditure on any other financial arrangement; or
    - (ii) expenditure on revenue account property.

#### **When expenditure become master fund's**

- (3) The expenditure incurred by the member fund may be transferred to the master fund, subject to the following conditions:
  - (a) the member fund and the master fund must agree to the transfer of the expenditure; and
  - (b) the member fund may transfer expenditure only to the extent to which it has a net loss in the tax year, with the net loss calculated as if this section did not exist; and
  - (c) a member fund that is a group investment fund that derives category A income may transfer only expenditure that relates to the category A income.

#### **Tax year in which investment stops**

- (4) In the tax year in which the member fund stops investing in the master fund,—

- (a) neither the master fund nor the member fund is allowed a deduction for expenditure that would otherwise be transferable; and
- (b) the member fund must treat the expenditure as an available net loss.

**When expenditure incurred**

- (5) The expenditure is treated as being incurred by the master fund in the tax year in which it is transferred by the member fund.

**Deduction allowed to master fund**

- (6) The master fund is allowed a deduction for the expenditure, subject to the following conditions:
  - (a) a master fund that is a group investment fund that derives category A income may deduct expenditure only from its category A income; and
  - (b) the amount of the deduction is limited by **subsection (7)**.

**Amount of deduction**

- (7) The formula in **section DV 6** is used to calculate the maximum deduction that the master fund is allowed for expenditure of the member fund treated as being incurred by the master fund.

**Additional transfer**

- (8) If, after the date on which the master fund has filed its return of income, the master fund is able to deduct more than the amount actually deducted, the Commissioner may allow the member fund to transfer expenditure to the extent of the difference after the return of income has been filed.

**Deducted expenditure not incurred by member fund**

- (9) The expenditure for which the master fund is allowed a deduction is treated as not being incurred by the member fund.

**Link with subpart DA**

- (10) The link between this section and **subpart DA** (General rules) is as follows:

- (a) **subsection (7)** supplements the general permission and overrides the capital limitation. The other general limitations still apply:
- (b) **subsection (8)** overrides the general permission.

*Defined:* amount, available net loss, capital limitation, category A income, Commissioner, deduction, financial arrangement, general limitation, general permission, group investment fund, master fund, net loss, qualifying unit trust, return of income, revenue account property, superannuation fund, tax year

Compare: 1994 No 164 ss DI 3B(1)–(6), (9), DI 3C(2)–(4)

## DV 6 Formula for calculating maximum deduction

### Formula used to calculate maximum deduction

- (1) The formula referred to in **section DV 5(6)** is—  

$$\text{taxable income} - \text{non-resident withholding income.}$$

### 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 fund's taxable income for the tax year in which the expenditure is transferred if **sections DV 5 to DV 7** 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 fund in the tax year in which the expenditure is incurred.

*Defined:* amount, deduction, master fund, non-resident withholding income, tax year, taxable income

Compare: 1994 No 164 s DI 3C(1)

## DV 7 Carry forward of expenditure of member fund

### Member fund carrying expenditure forward

- (1) For the purposes of **section DV 5**, if a member fund incurs more expenditure than the member fund and the master fund agree can be transferred, the member fund may carry forward the expenditure for transfer in a later tax year.



**Expenditure as available net loss**

- (2) If the member fund carries forward expenditure in a tax year, the member fund may treat some or all of the expenditure as an available net loss.

*Defined:* available net loss, master fund, tax year

Compare: 1994 No 164 s DI 3B(7), (8)

**DV 8 Group investment funds****Deduction**

- (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.

**Timing of deduction**

- (2) The trustees of the fund are treated as having incurred the expenditure in the same tax year as that in 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) The link between this section and **subpart DA** (General rules) is as follows:
- (a) **subsection (1)** supplements the general permission. The general limitations still apply:
  - (b) **subsection (5)** overrides the general permission.

*Defined:* deduction, general limitation, general permission, group investment fund, investor, management fees, return of income, tax year, trustee, trustee company

Compare: 1994 No 164 s DI 3A

**DV 9 Non-profit organisations****When this section applies**

- (1) This section applies when an incorporated or unincorporated organisation—
  - (a) does not have the purpose of making a profit for a proprietor, member, or shareholder; and
  - (b) has a constitution that prohibits a distribution of property in any form to a member, proprietor, or shareholder.

**Amount of deduction**

- (2) 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.

*Defined:* amount, deduction, general limitation, general permission, net income, shareholder

Compare: 1994 No 164 s DJ 17

**DV 10 Trusts****No deduction**

- (1) A person who derives beneficiary income is denied 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 a tax year, beneficiary income of beneficiaries of the trust for the tax year is treated as trustee income.

**Link with subpart DA**

- (3) The link between this section and **subpart DA** (General rules) is as follows:
  - (a) **subsection (1)** overrides the general permission.

- (b) **subsection (2)** supplements the general permission. The general limitations still apply.

*Defined:* beneficiary income, deduction, general limitation, general permission, tax year, trustee, trustee income

Compare: 1994 No 164 ss DI 5, DI 6

## DV 11 Building societies

### Deduction

- (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.

### Timing 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.

### Meaning of balloted loan right

- (3) In this section, **balloted loan right** means a right arising from a ballot that—
- (a) is held by or on behalf of a building society; and
  - (b) is of terminating shares; and
  - (c) is held for the purpose of finding out which of the holders of the shares are entitled to receive an interest-free loan relating to their shares.

### Link with subpart DA

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

*Defined:* amount, balloted loan right, building society, capital limitation, deduction, general limitation, general permission, income year, terminating share, withdrawable share

Compare: 1994 No 164 s DI 1(1)

**DV 12 Maori authorities: donations****Deduction**

- (1) A Maori authority is allowed a deduction for the amount of a donation that it makes for the purposes of the Maori Community Development Act 1962 to a Maori association, as defined in the Act.

**Amount of deduction**

- (2) The deduction in a tax year is limited to 5% of the amount that would be the Maori authority's net income in the tax 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.

*Defined:* amount, capital limitation, deduction, general limitation, general permission, Maori authority, net income, tax year

Compare: 1994 No 164 s DI 2

**DV 13 Group companies****When this section applies**

- (1) This section applies when,—
- (a) in a tax year, a company (**company A**) that is a member of a wholly-owned group of companies derives income under **section CV 1** (Group companies); and
  - (b) company A is denied a deduction under any other provision of this Act for the expenditure it incurs in deriving the income; and
  - (c) if the wholly-owned group of companies were a single company, the single company would be allowed a deduction for the expenditure that company A incurs in deriving the income.

**Amount, and timing, of deduction**

- (2) Company A is allowed a deduction for the expenditure in the tax 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.

*Defined:* company, deduction, exempt income limitation, general limitation, general permission, income, tax year, wholly-owned group of companies

Compare: 1994 No 164 s DI 4

#### **DV 14 Amalgamated company: expenditure on improvements for farming, aquacultural, and forestry businesses**

##### **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 farming land) **or DO 6** (Improvements to aquacultural business) **or DP 4** (Improvements to forestry land) for the land or business if the amalgamation had not occurred.

##### **Deduction**

- (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 farming land) **or DO 6** (Improvements to aquacultural business) **or DP 4** (Improvements to forestry land).

##### **Link with subpart DA**

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

*Defined:* amalgamated company, amalgamating company, business, deduction, general limitation, general permission, qualifying amalgamation

Compare: 1994 No 164 ss DL 7, DO 8

Subpart DW—Expenditure specific to certain industries

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**Index***Airport operations*

DW 1 Airport operators

*Bloodstock racing*DW 2 Bloodstock racing

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***Airport operations*****DW 1 Airport operators****No deduction (with exception)**

- (1) An airport operator is denied 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 in the nature of interest under **section OC 1(2)(h)** (Airport operators).

**Link with subpart DA**

- (2) This section overrides the general permission.

*Defined:* airport operator, deduction, general permission, income, joint venture agreement

Compare: 1994 No 164 s DK 4

***Bloodstock racing*****DW 2 Bloodstock racing****No deduction**

- (1) A person is denied a deduction for expenditure or loss that they incur—
- (a) on the racing of bloodstock; or
  - (b) in relation to the racing of bloodstock.

**No deduction (with exception)**

- (2) A person is denied a deduction for expenditure or loss that they incur in preparing bloodstock for racing, except 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.

**No deduction (with exception)**

- (3) A person is denied a deduction for expenditure or loss that they incur in preparing bloodstock for racing, except in the following circumstances:
- (a) the person incurs the expenditure or loss in preparing the bloodstock for racing; and
  - (b) they receive consideration for preparing the bloodstock for racing; and
  - (c) the consideration is income of the person.

**Link with subpart DA**

- (4) This section overrides the general permission.

*Defined:* bloodstock, business, deduction, general permission, income, loss

Compare: 1994 No 164 s DO 1

**Subpart DX—Other expenditure**

**DX 1 Testamentary annuities**

**When this section applies**

- (1) This section applies when—
- (a) property is subject to the payment of an annuity—
    - (i) because of a provision in a will; or
    - (ii) because of a court order under the Family Protection Act 1955; or
    - (iii) because of a deed of family arrangement; 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.

**Deduction**

- (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.

**Exclusion**

- (3) The owner is denied 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 a tax 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 tax year were from the property or the substituted property.

**Meaning of beneficiary**

- (5) In this section, **beneficiary**—
- (a) means—
    - (i) a person to whom a testator has left the property in his or her will; or
    - (ii) a person to whom the testator has given a right to buy the property in his or her will; and
  - (b) includes a person who is entitled to the property under—
    - (i) an order of a court under the Family Protection Act 1955; or
    - (ii) 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.

*Defined:* amount, arrangement, beneficiary, deduction, general limitation, general permission, income, net income, private limitation, tax year

Compare: 1994 No 164 s DD 2



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## Subpart DY—Specific deduction rules in Parts F to I

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**Index**

- DY 1 Amounts that are deductions under Parts to be rewritten  
DY 2 Amounts that are not deductions under Parts to be rewritten
- 

**DY 1 Amounts that are deductions under Parts to be rewritten****Deduction**

- (1) An amount of expenditure or loss is allowed as 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 1 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.

*Defined:* amount, capital limitation, deduction, employment limitation, exempt income limitation, general limitation, general permission, loss, private limitation, withholding tax limitation

**DY 2 Amounts that are not deductions under Parts to be rewritten****No deduction**

- (1) An amount of expenditure or loss is denied as a deduction if it is denied 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).

*Defined:* amount, deduction, general permission, loss

Compare: 1994 No 164 s BD 2(2)(f)

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## Subpart DZ—Terminating provisions

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**Index**

- DZ 1 Life insurers acquiring property before 1 April 1988
  - DZ 2 General insurance with risk period straddling 1 July 1993
  - DZ 3 Film reimbursement scheme on or before 30 June 2001
  - DZ 4 Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991
  - DZ 5 Expenditure on abandoned exploratory well before 16 December 1991
  - DZ 6 Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001
  - DZ 7 Farm-out arrangements for petroleum mining before 16 December 1991
  - DZ 8 Partnership interests and disposal of part of asset before 16 December 1991
  - DZ 9 Petroleum mining operations outside New Zealand before 16 December 1991
  - DZ 10 Mineral mining: 1954 to 2004
  - DZ 11 Buying patent rights before 1 April 1993
  - DZ 12 Premium paid on land leased before 1 April 1993
- 

### **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** (Disposal of property) does not apply to the disposal.

### **Deduction**

- (2) The life insurer is allowed a deduction for the amount quantified in **section EZ 25** (Life insurers acquiring property before 1 April 1988).

### **Meaning of superannuation policy**

- (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.

*Defined:* 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, old financial

arrangements rules, property, superannuation category 1 scheme, superannuation fund, superannuation policy, superannuation scheme

Compare: 1994 No 164 ss DK 3C, OB 1 “superannuation policy”

## **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 for the general insurance 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 exception)**

- (2) The company is denied 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.

*Defined:* amount, business, company, deduction, general insurance, general permission, insurance contract, New Zealand, pay, payment

Compare: 1994 No 164 s CZ 6(c)(i), (ii), (vi)

## **DZ 3 Film reimbursement scheme on or before 30 June 2001**

### **Film reimbursement scheme**

- (1) **Section DS 3** (Clawback of deductions for film reimbursement schemes) does not apply to a deduction for expenditure that relates to a film and is incurred by a person (**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 EJ 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) 1 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 1** (Acquiring film rights) or **DS 2** (Film production expenditure) is no more than 140% of the physical cost of production of the film; and
  - (g) 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 kind listed in **schedule 17** (Depreciable intangible property), 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—
  - (a) the amount paid is income of person B; or
  - (b) at all times in the tax year in which the payment is made, person B—

- (i) is resident in a country or territory specified in **schedule 3, part A** (International tax rules: grey list countries); and
- (ii) 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
- (iii) 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** (International tax rules: grey list countries).

#### Some definitions

- (3) In this section,—

**government stock** means stock issued under Part 6 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 kind listed in **schedule 17** (Depreciable intangible property).

#### Link with subpart DA

- (4) This section overrides the general permission.

*Defined:* amount, Commissioner, completed, deduction, depreciable intangible property, film, film reimbursement scheme, general permission, government stock, income, income tax, New Zealand, notice, physical cost of production, tax year, year

Compare: 1994 No 164 s EO 4A(2A), (2B), (8)

### DZ 4 Petroleum mining: development expenditure from 1 October 1990 to 15 December 1991

#### Deduction

- (1) A petroleum miner is allowed a deduction for petroleum mining development expenditure incurred by them on or after 1 October 1990 and before or on 15 December 1991. This subsection is overridden by **subsection (2)**.

#### Relationship with sections DT 5 and DZ 5

- (2) The petroleum miner is denied a deduction for petroleum mining development expenditure as described in **subsection (1)** if it has been deducted under—
- (a) **section DT 5** (Petroleum development expenditure); or
  - (b) **section DZ 5**; or
  - (c) sections 214D to 214M of the Income Tax Act 1976 as they were immediately before their repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

#### **Timing of deduction**

- (3) The deduction is allocated under **section EZ 2** (Petroleum development expenditure from 1 October 1990 to 15 December 1991).

#### **Meaning of petroleum mining development expenditure**

- (4) In this section, **petroleum mining development expenditure** has the same meaning as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

#### **Link with subpart DA**

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

*Defined:* deduction, general limitation, general permission, petroleum miner, petroleum mining development expenditure

Compare: 1994 No 164 s DM 1(3)

### **DZ 5 Expenditure on abandoned exploratory well before 16 December 1991**

#### **Deduction**

- (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—
  - (a) to use the exploratory well in petroleum mining operations; or
  - (b) to apply for a mining licence over the area containing the exploratory well.

**Timing 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 overrides the capital limitation. The other general limitations still apply.

*Defined:* capital limitation, commercial production, deduction, exploratory well, general limitation, general permission, income year, mining licence, petroleum miner, petroleum mining operations, seal and abandonment

Compare: 1994 No 164 ss DM 1(5)(c), OB 1 “seal and abandonment”

**DZ 6 Disposal of ownership interests in controlled petroleum mining entities before 3 December 2001**

**When this section applies**

- (1) This section applies to the costs that a person incurs under a contract to dispose of the shares or trust interests in a controlled petroleum mining entity if—
  - (a) they entered into the contract before 3 December 2001; and
  - (b) the shares or trust interests are disposed of to a person who is not associated with them; and
  - (c) the shares or trust interests are transferred to the buyer within 1 year of the date on which the contract is entered into.

**Deduction**

- (2) The person is allowed a deduction for the costs they incurred.

**Timing of deduction**

- (3) The deduction is allocated to the income year in which the consideration derived under the contract is income under **section CZ 7(2)** (Disposal of ownership interests in controlled



petroleum mining entities before 3 December 2001), if the conditions imposed by that section are met.

#### **Link with subpart DA**

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

*Defined:* associated person, capital limitation, consideration, controlled petroleum mining entity, deduction, disposal, general limitation, general permission, share, year

Compare: 1994 No 164 s DM 6

### **DZ 7 Farm-out arrangements for petroleum mining before 16 December 1991**

#### **Deduction: excess expenditure incurred before 16 December 1991**

- (1) 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 1** (Petroleum exploration expenditure) **or DT 5** (Petroleum development expenditure).

#### **Deduction: excess expenditure incurred on or after 16 December 1991**

- (2) 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 if the expenditure has the character of exploratory well expenditure, petroleum exploration expenditure, or petroleum development expenditure. The deduction is allowed under **section DT 1** (Petroleum exploration expenditure) **or DT 5 to DT 7** (which relate to petroleum development expenditure) and quantified and allocated under whichever of **sections EJ 10 to EJ 13** (which relate to petroleum mining) applies.

#### **Reduction of deductions**

- (3) A transferor under a farm-out arrangement entered into before 16 December 1991 must reduce (but is denied as a deduction)

the deductions described in **subsection (4)** by the amount determined under **subsection (5)**.

#### **Deductions to which subsection (3) applies**

- (4) The deductions to which **subsection (3)** 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 (5)(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 under the petroleum permit.

#### **Amount of reduction**

- (5) The amount of the reduction under **subsection (4)**, in an income year, is the same amount as would have been determined under 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 permit or asset, 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 for petroleum was submitted for the relevant licence area; and
  - (c) expenditure that is neither petroleum exploration expenditure nor petroleum development expenditure.

#### **Some definitions**

- (6) In **subsections (2) to (5)**, **excess expenditure**, **farm-out arrangement**, **licence-specific assets**, **permit-specific asset**, **transferee**, and **transferor** have the same meanings as in section 214D of the Income Tax Act 1976 immediately before its repeal by section 15 of the Income Tax Amendment Act (No 5) 1992.

#### **Link with subpart DA**

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

*Defined:* 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

Compare: 1994 No 164 s DM 4(2), (3)

### **DZ 8 Partnership interests and disposal of part of asset before 16 December 1991**

In **sections DZ 4 to DZ 7**, unless the context requires otherwise,—

- (a) a partner is treated as having a share or interest in a petroleum permit or other property of a partnership to the extent of their income interest in the partnership:
- (b) references to the disposal of an asset apply equally to the disposal of part of an asset.

*Defined:* disposal, income, petroleum permit

Compare: 1994 No 164 ss DM 9, DM 10

### **DZ 9 Petroleum mining operations outside New Zealand before 16 December 1991**

**Sections DZ 4 to DZ 8** apply, with any necessary modifications, 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 petroleum mining activities governed by this Act.

*Defined:* controlled foreign company, New Zealand, petroleum miner, petroleum mining operations

Compare: 1994 No 164 s DM 7(1)

### **DZ 10 Mineral mining: 1954 to 2004**

#### **Section CU 4(1)(b)(ii)**

- (1) For the purposes of section **CU 4(1)(b)(ii)** (Compensation for lost, destroyed, or damaged assets),—
  - (a) for a mining company, the deduction is under—
    - (i) section 153F of the Land and Income Tax Act 1954; or

- (ii) section 27 of the Land and Income Tax Amendment Act 1971; or
- (iii) section 216 of the Income Tax Act 1976; or
- (iv) section DN 1(5) of the Income Tax Act 1994; and
- (b) for a resident mining operator or a non-resident mining operator, the deduction is under—
  - (i) section 153J of the Land and Income Tax Act 1954; or
  - (ii) section 31 of the Land and Income Tax Amendment Act (No 2) 1972; or
  - (iii) section 216 of the Income Tax Act 1976; or
  - (iv) section DN 1(5) of the Income Tax Act 1994.

#### **Sections CU 11(1)(a)(ii) and DU 8(1)(a)(ii)**

- (2) For the purposes of **sections CU 11(1)(a)(ii)** (Meaning of asset for **sections CU 3 to CU 10**) and **DU 8(1)(a)(ii)** (Depreciation),—
  - (a) for a mining company, the expenditure is that referred to in section 27(3)(a) of the Land and Income Tax Amendment Act 1971; and
  - (b) for a resident mining operator or a non-resident mining operator,—
    - (i) the expenditure, for **section CU 11(1)(a)(ii)**, is that 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; and
    - (ii) the asset, for **section DU 8(1)(a)(ii)**, is that 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.

#### **Section DU 12**

- (3) This subsection applies 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 section 45 of the Income Tax Amendment Act 1979 were the only provision of it that had been enacted.

#### **Section DU 12(5)**

- (4) For the purposes of **section DU 12(5)** (Amount written off by holding company), 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 **section DU 12(3)** that arises from those payments is reduced by one-third.

*Defined:* company, deduction, holding company, mining company, mining holding company, non-resident mining operator, resident mining operator

Compare: 1994 No 164 ss DN 1(13)(a), DN 3(3), (11), DN 4(5), (7)

### **DZ 11 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.

#### **Deduction**

- (2) The person is allowed a deduction of the amount quantified in **section EZ 28(2)** (Buying patent rights before 1 April 1993).

#### **Link with subpart DA**

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

*Defined:* amount, deduction, general limitation, general permission, income, patent rights, trustee

Compare: 1994 No 164 s EZ 5(1), (3), (4)

### **DZ 12 Premium paid on land leased before 1 April 1993**

#### **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.

#### **Deduction**

- (2) Person A is allowed a deduction of the amount quantified in **section EZ 29(2)** (Premium paid on land leased before 1 April 1993).

**Some definitions**

- (3) In this section, **lease** and **premium** have the meanings given to them by **section EZ 29(5)** (Premium paid on land leased before 1 April 1993).

**Link with subpart DA**

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

*Defined:* amount, deduction, general limitation, general permission, income, lease, premium

Compare: 1994 No 164 s EZ 6